

Introduced by Senator AckermanFebruary 8, 2005

An act to amend Section 19008 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 157, as introduced, Ackerman. Taxation: installment payments agreements: business taxpayers.

Existing law allows an individual taxpayer to enter into an installment payment agreement with the Franchise Tax Board for the payment of the amount of the taxpayer's tax liability, but permits all taxpayers, including business entities, to enter into installment agreements, regarding the payment of tax liability, during the tax amnesty period from February 1, 2005, until March 31, 2005. Under existing law, certain nonindividual taxpayers are subject to a 50% amnesty penalty, as provided, if they have a balance due after March 31, 2005, and have not entered into installment payment agreements with the Franchise Tax Board by that time, even though they might have informally agreed to pay the amount of the tax owed.

This bill would expand the category of taxpayers that are allowed to enter into installment payment agreements with the Franchise Tax Board to include nonindividual taxpayers. This bill would also require that certain informal payment plan arrangements between the Franchise Tax Board and nonindividual taxpayers be treated as installment payment agreements for amnesty purposes, and would postpone until July 1, 2005, the imposition of the specialized tax services fee, as provided, for specified installment agreements.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19008 of the Revenue and Taxation
 2 Code is amended to read:
 3 19008. (a) The Franchise Tax Board may, in cases of
 4 financial hardship, as determined by the Franchise Tax Board,
 5 ~~allow an individual or fiduciary a taxpayer~~ to enter into
 6 installment payment agreements with the Franchise Tax Board to
 7 pay taxes due, plus applicable interest and penalties over the life
 8 of the installment period. Failure by ~~an individual or fiduciary a~~
 9 ~~taxpayer~~ to comply fully with the terms of the installment
 10 payment agreement shall render the agreement null and void,
 11 unless the Franchise Tax Board determines that the failure was
 12 due to a reasonable cause, and the total amount of tax, interest,
 13 and all penalties shall be immediately due and payable.
 14 (b) In the case of a liability for tax of an individual under Part
 15 10 (commencing with Section 17001) or this part, the Franchise
 16 Tax Board shall enter into an agreement to accept the payment of
 17 the tax in installments if, as of the date the individual offers to
 18 enter into the agreement, all of the following apply:
 19 (1) The aggregate amount of the liability (determined without
 20 regard to interest, penalties, additions to the tax and additional
 21 amounts) does not exceed ten thousand dollars (\$10,000).
 22 (2) The taxpayer (and, if the liability relates to a joint return,
 23 the taxpayer's spouse) has not during any of the preceding five
 24 taxable years done any of the following:
 25 (A) Failed to file any return of tax imposed under Part 10
 26 (commencing with Section 17001) or this part.
 27 (B) Failed to pay any tax required to be shown on the return.
 28 (C) Entered into an installment agreement under this section
 29 for payment of any tax imposed by Part 10 (commencing with
 30 Section 17001) or this part.
 31 (3) The Franchise Tax Board determines that the taxpayer is
 32 financially unable to pay the liability in full when due ~~(and, and~~
 33 the taxpayer submits any information as the Franchise Tax Board
 34 may require to make this ~~determination)~~ *determination*.

1 (4) The agreement requires full payment of the liability within
2 three years.

3 (5) The taxpayer agrees to comply with the provisions of this
4 part and Part 10 (commencing with Section 17001) for the period
5 the agreement is in effect.

6 (c) Except in any case where the Franchise Tax Board finds
7 collection of the tax to which an installment payment agreement
8 relates to be in jeopardy, or there is a mutual consent to
9 terminate, alter, or modify the agreement, the agreement shall not
10 be considered null and void, or otherwise terminated, unless both
11 of the following occur:

12 (1) A notice of termination is provided to the ~~individual or~~
13 ~~fiduciary~~ taxpayer not later than 30 days before the date of
14 termination.

15 (2) The notice includes an explanation of why the Franchise
16 Tax Board intends to terminate the agreement.

17 (d) No levy may be issued on the property or rights to property
18 of any person with respect to any unpaid tax:

19 (1) During the period that an offer by the taxpayer for an
20 installment agreement under this section for payment of the
21 unpaid tax is pending with the Franchise Tax Board.

22 (2) If the offer is rejected by the Franchise Tax Board, during
23 the 30 days thereafter ~~(and, and,~~ if a request for review of the
24 rejection is filed within the 30 days, during the period that the
25 review is ~~pending) pending.~~

26 (3) During the period that the installment agreement for
27 payment of the unpaid tax is in effect.

28 (4) If the agreement is terminated by the Franchise Tax Board,
29 during the 30 days thereafter (and, if a request for review of the
30 termination is filed within the 30 days, during the period that the
31 review is pending).

32 (5) This subdivision shall not apply with respect to any of the
33 following:

34 (A) Any unpaid tax if either of the following occurs:

35 (i) The taxpayer files a written notice with the Franchise Tax
36 Board that waives the restriction imposed by this subdivision on
37 levy with respect to the tax.

38 (ii) The Franchise Tax Board finds that the collection of that
39 tax is in jeopardy.

1 (B) Any levy that was first issued before the date that the
2 applicable proceeding under this subdivision commenced.

3 (C) At the discretion of the Franchise Tax Board, any unpaid
4 tax for which the taxpayer makes an offer of an installment
5 agreement subsequent to a rejection of an offer of an installment
6 agreement with respect to that unpaid tax (or to any review
7 thereof).

8 (D) The period of limitation under Section 19371 shall be
9 suspended for the period during which the Franchise Tax Board
10 is prohibited under this subdivision from making a levy.

11 (e) The Taxpayers' Rights Advocate shall establish procedures
12 for an independent departmental administrative review for the
13 rejection of the offer of an installment payment and for
14 installment payment agreements that are rendered null and void,
15 or otherwise terminated under this section, for ~~individuals or~~
16 ~~fiduciaries who taxpayers that~~ request that review. This
17 administrative review shall not be subject to Chapter 4.5
18 (commencing with Section 11400) of Part 1 of Division 3 of the
19 Government Code. Unless review is requested by the taxpayer
20 within 30 days of the date of rejection of the offer of an
21 installment agreement or termination of the installment
22 agreement, this administrative review shall not stay collection of
23 the tax to which the installment payment agreement relates.

24 ~~(f) The amendments made by the act adding this subdivision~~
25 ~~are operative on the effective date of that act, except subdivision~~
26 ~~(d) shall be operative for any proposed installment agreement~~
27 ~~submitted after December 31, 2000.~~

28 (f) (1) *In the case of any taxpayer that is making payments to*
29 *the Franchise Tax Board under an informal payment*
30 *arrangement that was in existence prior to the effective date of*
31 *the act adding this subdivision, that informal payment*
32 *arrangement, for purposes of this section, shall be treated as an*
33 *installment payment agreement that was entered into on the later*
34 *of the following:*

35 (A) *January 1, 2005.*

36 (B) *The date on which the arrangement was established by the*
37 *Franchise Tax Board.*

38 (2) *In any case where the date determined under the rules of*
39 *paragraph (1) is a date prior to February 1, 2005, the amount*
40 *due under the informal payment arrangement as of February 1,*

1 2005, shall be treated as an installment payment agreement
2 amount as of the start of the amnesty program within the
3 meaning of Section 19738.

4 (3) Section 19591 does not apply to installment payment
5 agreements, or informal payment arrangements treated as
6 installment payment agreements, entered into, or established
7 prior to, July 1, 2005, or the effective date of this act, whichever
8 is later.

9 SEC. 2. This act is an urgency statute necessary for the
10 immediate preservation of the public peace, health, or safety
11 within the meaning of Article IV of the Constitution and shall go
12 into immediate effect. The facts constituting the necessity are:

13 To provide relief to certain taxpayers that would otherwise be
14 unreasonably penalized under the provisions of the amnesty
15 legislation, it is necessary that this act take effect immediately.

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