RESOLUTION 07-03-2015

DIGEST

Taxation: Assets Considered for Compromise of California Tax Liabilities

Amends Revenue and Taxation Code section 19443 to clarify that certain non-taxable assets are not considered when granting a compromise of California tax liabilities.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Association recommends that legislation be sponsored to amend Revenue and Taxation Code section 19443 as follows:

§19443

(a) (1) The Executive Officer and Chief Counsel of the Franchise Tax Board, jointly, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the Franchise Tax Board, upon recommendation by its executive officer and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of the recommendation shall be deemed approved.

(3) The Franchise Tax Board, itself, may by resolution delegate to the executive officer and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500) but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) For an amount to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that the:

(A) Amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income, and

(B) Taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(C) The taxpayer’s current assets shall not include items that are generally exempt from income tax, including but not limited to death benefits paid by reason of death (except as provided in Section 17132.5), an award of damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness, or an award of damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of a wrongful death action of the taxpayer’s spouse or a person on whom the taxpayer was dependent.

(2) The Franchise Tax Board shall have determined that acceptance of the compromise is in the best interest of the state.

(d) A determination by the Franchise Tax Board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(e) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the Franchise Tax Board shall notify the taxpayer in writing.

(f) In the case of a joint and several liability, the acceptance of an offer in compromise from one liable spouse shall not relieve the other spouse from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(g) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the Executive Officer of the Franchise Tax Board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax, and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or the national defense. No list shall be prepared and no releases distributed by the Franchise Tax Board in connection with these statements.

(h) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The Franchise Tax Board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the Franchise Tax Board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to either:

(A) Comply with any of the terms and conditions relative to the offer.

(B) File subsequent required returns and pay subsequent final tax liabilities within 20 days after the Franchise Tax Board issues notice and demand to the person stating that the continued failure to file or pay the tax may result in rescission of the compromise.

(i) Notwithstanding any other provision of this section, if the Franchise Tax Board determines that any portion of an application for an offer in compromise or installment agreement submitted under this section or Section 19008 meets the requirements of clause (i) or (ii) of Section 6702(b)(2)(A) of the Internal Revenue Code, as modified by Section 19179, then the Franchise Tax Board may treat that portion as if it were never submitted and that portion shall not be subject to any further administrative or judicial review.

(j) This section shall become operative on the effective date of Chapter 931 of the Statutes of 1999 without regard to the taxable year at issue.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

The Problem: Offers in compromise help to promote effective tax administration. In some situations, collecting the full outstanding tax liability may prevent a taxpayer from complying voluntarily, or it may cause a taxpayer financial hardship. Both the Internal Revenue Service, and the California Franchise Tax Board ("FTB"), have an offer in compromise ("OIC") program. The FTB has an interest in granting an OIC in situations in which collection of the full tax liability is doubtful and the cost of collection is therefore increased.

Existing California law provides that a taxpayer's assets, or anticipated future increase in assets, must be considered in a determination by the FTB to grant, or deny, an offer in compromise of outstanding tax liabilities by a taxpayer.

The law needs to be clarified with respect to which assets are includable in the FTB's determination of whether or not to grant a taxpayer's offer in compromise.

With respect to personal injury and wrongful death awards, current California law complies with Internal Revenue Code ("IRC") section 104(a) which states that damages received "on account of personal physical injuries or physical sickness" are not taxable.

With respect to death benefits received, current California law complies with IRC section 101(a) which states "gross income does not include amounts received … under a life insurance contract, if such amounts are paid by reason of the death of the insured."

Revenue and Taxation Code section 19443 does not specify which assets are includable in a determination by the FTB to accept an offer in compromise. Since the assets discussed herein above are not includable in income, and therefore not taxable, they should not be included in an offer in compromise analysis by the FTB.

Under current law, a taxpayer is at risk of depleting all, or part, of personal injury damages, wrongful death damages, or death benefits received in connection with the acceptance of an offer in compromise.

This violates public policy concerns surrounding personal injury and wrongful death damages/awards, and/or death benefits, which are generally excluded from taxation. With respect to certain death benefits, there is strong public policy that favors encouraging families to protect themselves financially from the unexpected loss of a provider. With respect to personal injury and wrongful death settlements/awards, there is strong public policy that supports the notion injured plaintiffs should not be overly burdened by taxation of the damages/settlements they receive. In many instances, the damages/settlements of an injured plaintiff need to be preserved because, once depleted, the taxpayer may not be able to replenish their income and/or assets by working or otherwise.

The Solution: This resolution would clarify that certain personal injury awards, wrongful death awards, and death benefits are not includable as an asset in an analysis of whether a taxpayer qualifies for and should receive acceptance of his/her offer in compromise by the FTB.

The statute should be revised so that personal injury awards/settlements and certain death benefits are not includable in the taxpayer's assets for purposes of determining whether an offer in compromise should be granted.

IMPACT STATEMENT
This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION
Not known.

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RESPONSIBLE FLOOR DELEGATE: Christina Weed

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Revenue and Taxation Code section 19443 to clarify that certain non-taxable assets are not considered when granting a compromise of California tax liabilities. This resolution should be approved in principle because it would ensure that California's Offer in Compromise ("OIC") program, which is run through the Franchise Tax Board ("FTB"), is administrated in the same manner as its federal counterpart with the Internal Revenue Service, and promote effective tax administration.

When taxpayers cannot pay their full outstanding tax liability, the FTB, through its OIC program, has the ability to grant an OIC in situations where collection of the full tax liability is doubtful, and the cost of collection to the State is increased. In such situations, the FTB may propose an OIC, so that the FTB may collect as much of the tax liability as possible from the taxpayer, and grant relief from the balance the taxpayer is unable to pay.

When determining whether to grant or deny an OIC, the FTB must consider a taxpayer's assets. However, Revenue and Taxation Code section 19443 does not specify which assets are includable in a determination by the FTB to accept an offer in compromise. Certain assets, including damages awards from personal injury and/or wrongful death settlements, and death benefits, are not considered taxable income for purposes of determining a taxpayer's liability. Accordingly, since these "assets" are not includable in income, and therefore not taxable, they should not be included in an OIC analysis by the FTB.