

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 1389 (Wendy Carrillo) – As Introduced February 17, 2023

SUBJECT: Notice of levy

SUMMARY: Extends the levy remittance time limit from five days to after ten, but no later than 14 business days after service of the levy. Specifically, **this bill:**

- 1) Defines “business day” as any day other than a Saturday, Sunday, legal holiday as recognized by the Internal Revenue Service, statewide legal holiday as recognized by the State of California, or a day in which the Employment Development Department (EDD) is closed.
- 2) Makes other technical and non-substantive changes.

EXISTING LAW:

- 1) Requires the person receiving a notice of levy, if the levy is made on an account receivable, to remit any credits or personal property owing to the delinquent person or employing unit to EDD within 5 days of receipt of the notice of levy. (Unemployment Insurance (UI) Code, Section 1755)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Purpose:** According to the Author, “EDD is responsible for collecting and administering California’s payroll taxes which include employer contributions for Unemployment Insurance and Employment Training Tax purposes, as well as employee withholdings for Disability Insurance and California Personal Income Tax. The collection of these payroll taxes ensure that workers receive benefits that they deserve. This bill would improve customer service for taxpayers and claimants by providing them with more time to resolve their outstanding tax liabilities or fraudulent overpayments before a levy is remitted to EDD.”
- 2) **Background:** California UI Code Section 1755 governs bank levies by EDD. Existing law explains the levy process, applicable statutory periods, and identifies a response time of “within five days of service of the levy.” This means that once a levy is served upon a financial institution, the institution must remit the levied funds to the EDD “within five days of service of the levy” to avoid being deemed liable for the tax.

Other areas of the law including, California Revenue & Taxation Code and 26 United States Code provide significant guidance regarding how and when banks must surrender deposits that are subject to levy from other taxing agencies. Pursuant to the Revenue & Taxation Code, the bank remits the levied funds “not less than 10 business days from receipt” of the levy notice. Pursuant to the California Department of Tax and Fee Administration Collection (CDTFA) Publication 54, the bank must hold the funds subject to levy for 10 days prior to releasing the levied funds to the CDTFA. Finally, 26 U.S.C. § 6332(c), provides that the financial institution must turn over levied funds “only after 21 days after service of the levy.”

Ultimately, the other taxing agencies demonstrate at least a 10 day minimum holding period after receipt of a levy before remitting the designated funds, which is very different from the language found in UI Code Section 1755, which requires funds to be remitted to the EDD “within five days.”

The limited response time – “within five days” – required under existing law does not provide the taxpayer a sufficient opportunity to determine the validity of the levy, whether funds are exempt from levy, or whether the proposed levy would create undue financial hardship. Modifying the statute could reduce financial hardship to taxpayers and, administrative costs for EDD.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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