

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: McPherson Analyst: Kristina E. North Bill Number: SB 205

Related Bills: See Legislative History Telephone: 845-6978 Amended Date: May 7, 2001

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Crime/False, Fraudulent or Deceptive Conduct with Regard to the Personal Income Tax Law and the Bank and Corporation Tax Law

SUMMARY

This bill would specify that felony penalty provisions for filing a false tax return would conform to the Penal Code determinate sentencing.

This bill also would make technical and nonsubstantive changes to other codes that do not affect the department and are not discussed in this analysis.

SUMMARY OF AMENDMENTS

The May 7, 2001, amendment makes additional technical and nonsubstantive changes to the codes that do not affect the department and thus, are not discussed in this analysis.

PURPOSE OF THE BILL

According to the author's office, this bill would conform the felony filing a false return penalty provision from an indeterminate term to the standard determinate sentence under the Penal Code.

EFFECTIVE/OPERATIVE DATE

As an urgency bill, this bill would be effective immediately upon enactment.

POSITION

Pending.

ANALYSIS

STATE LAW

Current state tax law provides for the imposition of specific penalties and additions to tax for non-compliance with the state income or franchise tax laws.

Current state tax law also allows misdemeanor and felony charges to be filed in instances of criminal and willful violations of the state income or franchise tax laws. Examples of actions identified as misdemeanor crimes include forging a spouse's signature, or a tax preparer endorsing a refund warrant issued to any other taxpayer.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald H. Goldberg

05/23/01

Examples of actions identified as a felony include failing to collect and remit withheld taxes or fraudulently endorsing or negotiating state income tax refund warrants that the recipient is not entitled to receive. Some criminal actions, such as failing to file a tax return or filing a false return, may be either a misdemeanor or a felony depending on the severity of the action. These statutes apply to taxpayers who aid and abet the criminal activity, as well as the taxpayer who actually performs the deed.

Under current state tax law and at the discretion of the court, a taxpayer who commits and is convicted of 1) a misdemeanor may be fined \$5,000 and/or sentenced for up to one year of imprisonment and also may be liable for the costs of investigation and prosecution; and 2) a felony may be fined up to \$50,000 and/or sentenced for up to three years of imprisonment. Taxpayers convicted of felonies also may be liable for costs of investigation and prosecution.

Under current state law, with the exception of life terms, California prison terms are generally specified in determinate terms. The determinate prison term for each crime is expressed as a "triad" of lower, middle, and upper terms. (For example, a defendant convicted of a felony receives a term of 16 months, two years, or three years.) A defendant generally receives the middle term unless factors in aggravation or mitigation indicate that he or she should receive the upper or lower term respectively. (Penal Code §§1170 and 1170.1.) Unless another triad is specified, a defendant convicted of a felony receives the standard determinate sentence discussed above. A recent appellate decision (*People v. Hagen* (2001) Cal.App.4th _____. NOTE: This case is not final and cannot be cited as authority.) confirmed that such provisions are indeterminate terms and that a sentencing court could not impose less than the indeterminate sentence specified. Under current law, no provision exists for the Department of Corrections or the Board of Prison Terms to determine when a prisoner would be eligible for parole or a release date from prison for a non-life indeterminate sentence.

THIS BILL

For an individual found guilty of a felony for specified deceptive and fraudulent conduct relating to income or franchise taxes, this bill would remove the three-year limitation for imprisonment and specify imprisonment would be in a state prison.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

SB 94 (Chesbro, Stats. 1999, Ch. 31) among other provisions, added false, fraudulent or deceptive conduct in connection with offers in compromise to crimes subject to penalty to the Taxpayer Bill of Rights.

OTHER STATES' INFORMATION

Due to similarities in state tax law or population or both, information is provided about *Florida*, *Illinois*, and *Massachusetts* for taxpayers who commit willful and fraudulent acts or for those who aid and abet those acts:

Florida - a guilty verdict of a felony of the third degree is punishable by a term of up to five years of imprisonment, depending upon the crime.

Illinois - a guilty verdict of a Class 4 felony is punishable by a term between one and three years for the first offense and a Class 3 felony is punishable by a term of between three and seven years for each subsequent offense.

Massachusetts - a guilty verdict of a felony is punishable by up to three years in prison and/or fined up to \$100,000.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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