SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Haynes	Analyst:	LuAnna Hass	Bill Number:	SB 366
Related Bills:	See Prior Analysis	Telephone:	845-7478	Amended Date:	August 30, 2001
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Taxpayer Bill of Rights/No Levy May be Made on Principal Residence of Innocent Investor/Release of Certain State Tax Liens

____	DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ________________________.
X	AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
X	AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended July 10, 2001.
X	FURTHER AMENDMENTS NECESSARY.
____	DEPARTMENT POSITION CHANGED TO ________________________.
X	REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED July 10, 2001, STILL APPLIES.
____	OTHER - See comments below.

SUMMARY

Under this bill, when a taxpayer substantiates their innocent investor status, the Franchise Tax Board would be:

- prohibited from seizing and selling (levying) the principal residence if the reason for the levy is the underpayment of tax as a result of an investment in an abusive tax shelter.
- required to release the proceeds from the sale or other transaction related to the levying of a principal residence.
- required to release any state tax lien, including liens that survive the bankruptcy of an innocent investor, if the reason for the lien is the underpayment of tax resulting from an investment in an abusive tax shelter.
- required to return any proceeds from the sale of a principal residence that were received in satisfaction of a state tax lien or as a result of a levy, upon written notification from the innocent investor.

In addition, this bill would allow taxpayers to take an action against FTB as a result of a denial of a return of the proceeds.

Board Position:			Legislative Director	Date
____ S	____ NA	____ NP	Brian Putler	09/19/01
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____ N	____ OUA	X PENDING		

SUMMARY OF AMENDMENT

The August 30, 2001, amendments resolved the department's technical concern as discussed in the department's analysis of the bill as amended August 22, 2001. Specifically, the amendments would:

- allow the owner of a principal residence to file a legal action against FTB in Superior Court when a request has been denied for the return of the proceeds that were received as a result of a levy or in satisfaction of a lien;
- provide that the basis for either a levy or lien must be the underpayment of any tax resulting from an abusive tax shelter for any taxable year ending on or before December 31, 2000; and
- revise the criteria for defining an innocent investor to be specific to taxpayers liable for underpayment of any tax resulting from an abusive tax shelter for any taxable year ending on or before December 31, 2000.

The remainder of the department's analysis of the bill as amended July 10, 2001, still applies. The remaining policy concerns are included below for convenience.

POSITION

Pending.

ECONOMIC IMPACT

Revenue Discussion

This bill would result in a minor revenue loss of less than $500,000 annually beginning in 2001-2002. The loss is due to the amount of foregone collections and refunds of levy or lien amounts received by FTB.

The August 30, 2001, amendment specifies that this bill is applicable to tax years ending on or before December 31, 2000. Limiting the bill to taxable years 2000 and earlier reduces the previous estimate for the 2003-04 fiscal year from potentially $1 million to a minor loss. The revenue discussion as provided in the analysis for the August 22, 2001, amendment still applies.

ARGUMENTS/POLICY CONCERNS

Current laws and FTB practices, on a case-by-case basis, would provide tax relief to "Hoyt"-like taxpayers experiencing financial hardship and free their personal residence from levy and liens. Some may argue that current law and practice are sufficient to protect any of these "Hoyt" taxpayers who are truly "innocent investors."

Many taxpayers that were not investors in abusive tax shelter partnerships for tax years ending prior to December 31, 2000, experienced devastating financial hardships. The intent of this bill is to offer tax collection protections to these certain investors beyond those given to other similarly situated taxpayers.

This bill would allow proceeds from a sale of the principal residence, regardless of the amount of the proceeds, to escape a recorded state tax lien in these limited circumstances. This policy would be in conflict with the law that allows liens to be released only if the release will not endanger or jeopardize the collection of taxes.

There have been several recent efforts at the federal level to discourage corporations from investing in abusive tax shelters. These efforts have included regulatory action by the Treasury Department and the introduction of proposed federal legislation. While such legislation has not been enacted, this bill would move in the opposite direction by allowing taxpayers who invested in some of the most aggressive shelters for tax years ending prior to December 31, 2000, to ultimately avoid paying the correct amount of tax.

Federal bankruptcy law allows tax liens to survive a taxpayer's bankruptcy proceeding. This bill would be inconsistent with bankruptcy law because FTB would be required to release tax liens (that meet specified criteria) on an innocent investor's principal residence. A lien release under these circumstances would result in the loss of a collection tool for the department and benefit other taxing agencies in other states and the IRS. That is because the federal government and other states do not have similar laws and are not required to release liens under the same circumstances.

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