

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: AR&T Committee Analyst: John Pavalasky Bill Number: AB 1740

Related Bills: See Prior Analysis Telephone: 845-4335 Amended Date: July 17, 2003

Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

SUBJECT: AB 1115 Clean-Up/Child and Dependent Care Credit (California CDC)/ Resolves a Constitutional Issue Regarding The Alimony Deduction/Late Filing Penalty

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED

MARCH 11, 2003, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill contains the following provisions:

1. **AB 1115 Clean-up** - Clarifies the method of calculating the taxable income of nonresidents and part-year residents to eliminate concerns that were identified during the implementation of AB 1115 (Stats. 2001, Ch. 920).
2. **California CDC** - Corrects a drafting error made when the California child and dependent care ("CDC") credit was enacted in 2000, as well as a cross-reference error created from a law change made in 2002. These corrections specify the definition of adjusted gross income (AGI) that would be used when calculating the amount of the credit for all residents, nonresidents, and part-year residents.
3. **Resolve a potential federal constitutional issue** - Allows a nonresident taxpayer a prorated alimony deduction.
4. **Late filing penalty** – Presumes that the late filing penalty does not apply when, under certain circumstances, the corresponding federal late filing penalty is determined not to apply.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

7/25/03

SUMMARY OF AMENDMENTS

The July 17, 2003, amendments would add a fourth provision to the bill. It provides a rebuttable presumption that the late filing penalty does not apply when, under certain circumstances, the corresponding federal late filing penalty is determined not to apply.

PURPOSE OF THE BILL

This bill would ease the administration of California’s laws and potentially improve compliance by nonresident taxpayers.

POSITION

Support.

On November 26, 2002, the Franchise Tax Board (FTB) voted 2-0 to sponsor the language discussed in Items 1 and 2 of this bill. At its December 18, 2000, meeting, the FTB voted 2-0 to sponsor language substantially similar to the language discussed in Item 3.

The FTB has not taken a position on Item 4.

ECONOMIC IMPACT

As amended July 17, 2003, the net revenue impact of this bill would be revenue neutral.

Estimated Revenue Impact Effective January 1, 2003 [\$ In Millions]			
	2003-04	2004-05	2005-06
1. AB 1115 Clean-Up	No Impact	No Impact	No Impact
2. California CDC	Minor* Gain	Minor* Gain	Minor* Gain
3. Nonresident Alimony Deduction	Negligible** Loss	Negligible** Loss	Negligible** Loss
4. Late Filing Penalty	Negligible** Loss	Negligible** Loss	Negligible** Loss
Net Impact of Bill	Revenue Neutral	Revenue Neutral	Revenue Neutral

*Minor less than \$500,000

**Negligible less than \$250,000

ANALYSIS

An analysis of the late filing penalty provision (Item 4) is provided below. The previous analysis of the other three provisions of the bill as introduced March 11, 2003, still applies and is not discussed.

- 4. **Late filing penalty** – Presumes that the late filing penalty does not apply when, under certain circumstances, the corresponding federal late filing penalty is determined not to apply.

FEDERAL/STATE LAW

Under current federal and state law, a penalty is imposed when a taxpayer fails to file a return on or before its due date (determined with regard to extensions), unless the failure is due to reasonable cause and not due to willful neglect.

THIS BILL

This bill would create a presumption that the late filing penalty does not apply to the California return when all of the following conditions are met.

- The taxpayer has filed a federal return after its due date.
- The Franchise Tax Board proposes a deficiency based upon a final federal determination.
- The Internal Revenue Service abates the federal late filing penalty based upon reasonable cause and the absence of willful neglect.

The Franchise Tax Board may rebut the presumption by establishing, through a preponderance of the evidence, that the late filing of the California return was not due to reasonable cause or was due to willful neglect.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. Each state surveyed imposes a late filing penalty. In addition, each of these states allow for the abatement of the penalty for reasonable cause.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

This provision is estimated to have a negligible revenue loss.

Revenue Discussion

When FTB proposes a deficiency assessment based upon a final federal determination, the department in most situations would not assess the late filing penalty if the corresponding federal late filing penalty is determined by IRS not to apply due to reasonable cause and not due to willful neglect. According to departmental staff, there are very few penalties currently assessed that would be impacted by this provision. Therefore, this provision is estimated to have a negligible revenue loss.

ARGUMENTS/POLICY CONCERNS

This bill would ease the administration of California's laws and potentially improve compliance by taxpayers.

LEGISLATIVE STAFF CONTACT

John Pavalasky
Franchise Tax Board
845-4335
john.pavalasky@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333
brian.putler@ftb.ca.gov