

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Assembly Budget Comm. Analyst: LuAnna Hass Bill Number: AB 1756

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: July 27, 2003

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Mandatory e-file for tax practitioners

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 amended June 26, 2003.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 26, 2003, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would require tax practitioners that prepare more than 100 individual income tax returns in a calendar year to electronically file (e-file) all individual returns with the Franchise Tax Board (FTB) beginning with the following calendar year.

SUMMARY OF AMENDMENTS

The July 27, 2003, amendments made various changes to the bill regarding the 2003 budget. The amendments do not impact the department. For convenience, the department's existing concerns as well as the fiscal impacts are provided below. The remainder of the department's analysis of the bill as amended June 26, 2003, still applies.

POSITION

Pending.

Board Position:

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Legislative Director

Date

Jana Howard for Brian Putler 07/31/03

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

As written, this bill would give FTB the authority to assess a \$50 penalty for each tax return that is prepared by a tax preparer but is not e-filed as required by this bill. However, the bill provides that the tax preparer would not be subject to the penalty if the taxpayer elects not to e-file the tax return. As a result, FTB would have no basis to impose the penalty provided in this bill since the basis of the penalty is the receipt of a tax return that is filed using any method other than electronic filing. The receipt of a tax return filed using a method other than e-file would almost certainly be considered evidence of the taxpayer's election not to e-file their tax return. Hence, FTB could be unable to assess a penalty. As a result, the penalty in this bill would have no effect, and this would create an opt-out provision that changes the intent of this bill from a mandated program to a voluntary program.

The definition of "tax preparation software" includes software programs intended for tax preparation, accounting, and tax compliance. Generally, tax returns are completed using specific tax preparation software. Although accounting or tax compliance software may provide information helpful in completing a tax return, these software programs generally do not include processes that complete a tax return. A definition this broad could create implementation issues for the department when trying to determine which tax preparers would be subject to the e-file requirement in this bill. Department staff recommends either 1) removing the terms accounting and tax compliance from the definition of tax preparation software, or 2) removing the definition of tax preparation software from the bill.

FISCAL IMPACT

The proposed Budget Act includes a net reduction in FTB's budget of \$1.23 million and 45.5 PYs in fiscal year 2003/04 for the proposal to mandate e-file for tax practitioners that prepare more than 100 individual income tax returns.

The department may not realize the savings included in the Budget Act due to this bill's penalty provision specifying that the taxpayer may "*elect* not to e-file." The savings above is based on a volume of 2,925,000 returns converting from paper to electronic filing. The conversion of the full volume of returns may not occur with the election. Upon approval of the Budget Act, the department's budget will be reduced to reflect the 45.5 PYs of savings. Due to the election in this bill, these PY's may be needed to maintain the current level of processing and avoid delays in refunds if the volumes of returns above are received via paper instead of electronically.

If the department does not receive the anticipated volume conversion from paper to e-file, a deficiency request and a budget change proposal may be necessary for the permanent restoration of the funds and PYs previously identified as savings.

ARGUMENTS/POLICY CONCERNS

Based on the number of tax professionals that have been identified as currently preparing more than 100 tax returns using tax preparation software, the department anticipates that this bill would impact approximately 10,000 tax professionals that do not currently e-file tax returns out of the estimated 40,000 tax professionals that do business in California.

LEGISLATIVE STAFF CONTACT

LuAnna Hass
Franchise Tax Board
845-7478
LuAnna.Hass@ftb.ca.gov

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