

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Nakano Analyst: Kristina E. North Bill Number: AB 1859

Related Bills: See Prior Analysis Telephone: 845-6978 Amended Date: June 15, 2004

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Limited Liability Companies/Certificate of Cancellation

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 AMENDED APRIL 12, 2004, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would allow domestic limited liability companies (LLCs) to cancel their existence in California without obtaining a tax clearance certificate.

SUMMARY OF AMENDMENTS

The June 15, 2004, amendments specify that this bill would apply to domestic LLCs that filed articles of incorporation on or after January 1, 2004. The amendments also would specify that a domestic LLC filing a certificate of cancellation is not entitled to receive a refund of any previously paid minimum franchise tax (MFT).

As a result of the amendments and further review, technical considerations are included below. The remainder of the department's analysis of the bill as amended April 12, 2004, still applies.

POSITION

No Position.

On June 10, 2004, the Franchise Tax Board voted 2-0 to take no position on this bill, as amended April 12, 2004.

Board Position:

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

Legislative Director

Date

Brian Putler

6/28/04

TECHNICAL CONSIDERATIONS

While LLCs classified as corporations do file a “franchise” tax return, the return filed by LLCs not classified as a corporation is not considered a franchise tax return. In addition, Chapter 10.6 does not require a tax return be filed with the FTB. Amendment 1 removes the word “franchise” and revises the return filing requirement to reference Part 10.2.

LLCs file articles of organization” rather than “articles of incorporation.” Amendment 2 would change “incorporation” to “organization.”

Under this bill, domestic LLCs filing a certificate of cancellation would not be entitled to a refund of any “MFTs” already paid. However, domestic LLCs not classified as a corporation pay an “annual tax” that is equal to the MFT and may also be required to pay an annual fee. Amendment 3 would change “MFT” to “taxes or fees.”

LLCs classified as a corporation are subject to tax under the CTL. Amendments 4 and 5 add language to include reference to the taxes imposed under Part 11.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1859
As Amended June 15, 2004

AMENDMENT 1

On page 3, strikeout lines 7-9 and insert:

(5) That the final tax return has been filed with the Franchise Tax Board as required under Part 10.2 of Division 2 of the Revenue and Taxation Code.

AMENDMENT 2

On page 3, line 38, strikeout 'incorporation' and insert:

organization

AMENDMENT 3

On page 5, strikeout line 4 and insert:

any taxes or fees already paid.

AMENDMENT 4

On page 5, line 21, after "chapter" insert:

or all taxes imposed by Part 11

AMENDMENT 5

On page 5, line 30, strikeout "code." and insert:

part or Part 11.