

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Chu Analyst: LuAnna Hass Bill Number: AB 2203

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: May 26, 2004

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Franchise Tax Board Administer Tax Amnesty Program

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 April 13, 2004.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 13, 2004, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would create an amnesty program for taxpayers subject to the Personal Income Tax Laws, the Corporation Tax Laws, and the Sales and Use Tax Laws.

For purposes of the Franchise Tax Board (FTB), this bill would create an amnesty program for certain taxpayers that:

- failed to file income tax¹ returns,
- underreported income on a previously filed income tax return, or
- failed to pay any taxes previously assessed.

SUMMARY OF AMENDMENTS

The May 26, 2004, amendments resolved the implementation concerns, technical concerns, and one policy concern as discussed in the department's analysis of the bill as amended April 13, 2004. Specifically, the amendments would:

- Clarify that the increased accuracy-related penalty would not apply to understatements relating to tax shelter items since a taxpayer that would have qualified for the Voluntary Compliance Initiative (VCI) would have a separate set of increased penalties.

¹ In this analysis, "income tax" is intended to include generally the income tax for individuals, fiduciaries, estate, trusts, partnerships, and corporations, as well as the franchise tax, which is the corporate tax measured by income.

Board Position:	Legislative Director	Date
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<input type="checkbox"/> SA <input type="checkbox"/> O <input type="checkbox"/> NAR	Brian Putler	6/10/04
<input type="checkbox"/> N <input type="checkbox"/> OUA <input checked="" type="checkbox"/> PENDING		

- Clarify that a taxpayer would qualify for amnesty for a proposed assessment that has not been finalized.
- In the event FTB issues a correction notice to the taxpayer as a result of an amnesty application, these amendments would allow the taxpayer 15 days to pay the amount reflected on the correction notice and the payment would still be considered a payment made within the amnesty period.
- Clarify the 50% interest penalty by specifying those circumstances in which the penalty would apply.
- Make various technical corrections for consistency purposes, to reflect correct tax terminology, or to correct erroneous cross-references.
- Make the following changes to the provision requiring FTB to post delinquent taxpayers on the Internet:
 - Specify that a tax delinquency for purposes of the Internet posting provision would be those delinquencies where FTB has a notice of state tax lien recorded with a county.
 - Specify that FTB would post the taxpayer's entire current delinquency amount, the date the state tax lien was recorded, and the county where the lien was recorded.
 - Clarify that a delinquency under protest or appeal by the taxpayer would not be eligible for the Internet posting.
 - Remove the requirement that FTB specifically post a taxpayer's address.
 - Clarify that FTB may remove a taxpayer from the Internet posting if the taxpayer meets certain criteria.
 - Replace the broad concept of a tax debt being deemed "uncollectible" for purposes of the Internet posting provision. The language in this amendment would allow FTB to remove a taxpayer from the Internet if under FTB's collection modeling policies, practices, and procedures, the efforts to collect the delinquency would not be economical. In addition, these determinations would not be subject to review, and the standards used for such determinations would not be subject to disclosure if the FTB determines disclosure will seriously impair tax assessment, collection, or enforcement.

The department has identified additional implementation considerations. For convenience, all new and existing concerns are provided below. In addition, the department has updated the Economic Impact table and discussion, and the revised information is provided below. The remainder of the department's analysis of the bill as amended April 13, 2004, still applies.

Summary of Suggested Amendments

The department has attached suggested amendments to resolve the implementation considerations discussed in this analysis.

POSITION

Pending.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would have a significant impact on the department, as discussed below under Fiscal Impact. To ensure that the amnesty program will be adequately funded, an appropriation should be provided in the bill. Amendment 13 is attached to provide an appropriation. In addition, department staff has attached suggested amendments to resolve the following issues and ensure FTB's successful implementation of an amnesty program.

- Amendments 1 through 5 would clarify that taxpayers that are underreporters must file an amended return and nonfilers must file a tax return in addition to paying the tax and interest under amnesty. These amendments would resolve a policy issue by requiring taxpayers to comply with tax law filing requirements by actually filing a tax return. In addition, these amendments would resolve an implementation issue by preventing possible erroneous refunds from being issued post-amnesty to a non-filer as a result of a late filing of an amnesty year return.
- Amendment 6 would allow a taxpayer under federal bankruptcy court protection to participate in amnesty if a court order is obtained from the federal bankruptcy court with jurisdiction over the taxpayer's case approving the taxpayer's participation in the amnesty program, and the approved plan is submitted to FTB with the application to participate in the amnesty program. This language would protect FTB and the State from possible legal action that could be taken by a competing creditor of the taxpayer that may object to the taxpayer's use, absent bankruptcy court approval, of funds in the bankruptcy estate to satisfy a tax debt under amnesty.
- Amendment 7 would require state agencies to cooperate with FTB and expedite any review process necessary to administer amnesty by setting a maximum review period of 20 state business days. The costs described below include modifications to FTB's existing information systems, which generally require a project study and a Feasibility Study Report (FSR) for approval by the Department of Finance (DOF) prior to the agency beginning work on a project. DOF approval of an FSR can take 30-60 days or longer.
- Amendment 10 is necessary for FTB to expedite necessary procurements. Generally, the procurement process to secure a contract can take from four to six months to post, review, and award a contract through the normal process, which includes review and approval from State and Consumer Services Agency, Department of General Services (DGS), and DOF. FTB anticipates two contracts being needed for the amnesty program. One contract would secure consulting for the publicity campaign, which would be a competitive procurement. The second contract would be for consulting services for proprietary software modifications, which would be a non-competitive bid justification. The amendment provides for a delegation of procurement authority from DGS to FTB via its Procurement Officer, which would allow FTB to expedite the process and still follow the Public Contract Code for procuring services. The amendment would also set the maximum review period for state agencies to 20 state business days (approximately one month.)
- Amendments 11 and 12 would clarify that the new 50% interest penalty would not apply to a taxpayer that 1) initiates and is compliant with an installment agreement to pay amounts due under the amnesty program, or 2) pays in full the taxes and interest due within 15 days of receiving notification from FTB of a math error or interest computation correction.

ECONOMIC IMPACT

FTB has formulated a preliminary implementation plan for conducting an amnesty program as required by this bill. As a result, the department costs have been calculated and are estimated to be approximately \$10.2 million. This amount includes costs resulting from increased customer service contact and notices, publicity costs necessary to the success of amnesty, and modifications to the basic processing functions and department systems.

Absent funding in the 2004/2005 budget or DOF approval of a deficiency for the 2004/2005 fiscal year, it is unclear how the department would pay for the additional costs it would incur to administer an amnesty program. Therefore, the department would suggest the author add appropriation language to this bill that would cover the costs of implementation and ensure the department has the funding to implement this bill. Amendment 13 would provide FTB \$10,183,000 for the 2004/2005 fiscal year.

FISCAL IMPACT

Revenue Estimate

Based on the discussion below, the revenue impact of this proposal is as follows:

Estimated Revenue Impact of AB2203 For Tax Reporting Periods Ending On or Before January 1, 2003 Fiscal Year (In Millions)				
	2004-05	2005-06	2006-07	2007-08
Total Gross Revenue	\$600	\$85	\$105	\$95
Collections Absent Amnesty Attributable To Amnesty Participants	-\$380	-\$75	-\$40	-\$15
Total Net Revenue	\$220	-\$10	\$65	\$80

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

Revenue Discussion:

The number of taxpayers that file amnesty applications, file the appropriate returns, and pay the required tax under the amnesty program (less what would have been collected under current law) will determine the net revenue impact for this bill.

Revised revenue estimates above reflect an increase of \$35 million for 2004-05, \$25 million for 2005-06, and \$55 million for 2006-07 from the previous version of this bill. This increase in revenue is primarily attributable to increasing the amount of revenue allocated to new revenue and reducing the amount of revenue associated with accelerated revenue. The change in revenue allocation is based on updated information received from New York for their 2002-03 tax amnesty program.

These estimates are based on New York's experiences in administering a tax amnesty program during 2002/2003. Using New York's experience, adjusted to better fit California's filing and non-filing profile, this analysis attempts to measure the extent to which people would respond to tax amnesty based on relative economic elasticities experienced by New York. The essence of the calculation is to apply New York's elasticity factor response to their amnesty program (compared to the cost implications of not participating in amnesty) to California's relative advantage of participating in amnesty versus the cost implication of non-participation.

ARGUMENTS/POLICY CONCERNS

- This bill could benefit tax law-abiding businesses. Under this bill, tax law-abiding businesses and those businesses that will become tax law-abiding under amnesty would both be paying their respective fair share of taxes.
- Programming, managerial, and other key staff would be redirected from other projects or core functions for an amnesty. Many of these experienced staff would undoubtedly be redirected from revenue-producing activities, namely auditing and collecting. Such redirection may result in backlogs in other operations within FTB. The current hiring freeze could make the redirection of staff to an amnesty program an even more critical issue for FTB.
- Experience with the 1984-85 amnesty indicates that the estimated workload and time necessary to resolve the amnesty accounts could be understated. For example, the department continued to handle miscellaneous amnesty workloads for several years after the close of the amnesty program. To the extent that this is the case, a General Fund deficiency or budget change proposal could be needed in addition to the appropriation suggested in this analysis. Under the present budgetary process, the likelihood of readily receiving such a deficiency to complete an unforeseen amnesty workload would be remote.
- On occasion prosecuting attorneys (Attorney General, district attorneys, and city attorneys) may seek FTB's assistance in their criminal cases where a person has received income as a result of criminal activities. FTB assists in these cases when the person has criminally violated the income tax laws by not reporting that income to FTB. If amnesty were granted under this bill, the prosecuting attorneys would be unable to pursue criminal penalties for violations of the tax laws. Therefore, prosecuting attorneys may have concerns with amnesty.
- This bill would require FTB to remove persons from the Internet posting delinquency list if the taxpayer establishes that a bankruptcy proceeding has been completed and there are no assets available to pay the delinquency. However, a taxpayer may not have their tax debts discharged in a bankruptcy proceeding and once the proceeding is completed, FTB is able to renew collection efforts to collect the debt. The department has a sophisticated automated collections computer system that continually searches for assets and levies upon an asset once located. Therefore, while the taxpayer may not have any immediate wage or bank account assets, which would require FTB to remove the taxpayer from the Internet listing, the automated system will continue to look for assets. Since the system is automated, department staff generally has minimal intervention with the process and may experience issues in tracking taxpayers that may be able to return to the listing once assets are located.
- This bill would require FTB to post the 10 largest corporation delinquencies and PIT liabilities. Tax delinquency would include the nonreporting of a tax liability. Under current law, a taxpayer that fails to file a tax return could be issued a failure to file assessment by the department. Often the taxpayer may provide the department information that may result in a reduction in the amount of the department's provisional failure to file assessment. As a result, this bill could result in taxpayers with a larger assessment than their actual final tax liability to be included in the Internet listing.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2203
As Amended May 26, 2004

AMENDMENT 1

On page 17, line 2, strikeout "either of"

AMENDMENT 2

On page 17, modify line 9 as follows:

~~(iii)~~ (B) Pays in full ~~the~~ any taxes and interest due for each taxable year

AMENDMENT 3

On page 17, line 10, after "and (ii)" and before ", as", insert:

of subparagraph (A) of paragraph (3) of subdivision (a)

AMENDMENT 4

On page 17, modify lines 13 through 17 as follows:

~~(B)~~ For taxpayers who have not paid in full any taxes previously ~~assessed or~~ proposed to be assessed, pays in full the taxes and interest due for that portion of the proposed assessment for each taxable year for which amnesty is requested or applies for an installment payment agreement under subdivision (b).

AMENDMENT 5

On page 17, lines 26 and 27, strikeout "either clause (iii) of subparagraph (A) of paragraph (3) of subdivision (a) or"

AMENDMENT 6

On page 17, line 25, before "(b)" insert:

(5) In the case of any taxpayer that has filed for bankruptcy protection under Title 11 of the United States Code, submits an order from a Federal Bankruptcy Court allowing the taxpayer to participate in the amnesty program.

AMENDMENT 7

On page 19, line 9, after "(c)" insert:

Notwithstanding any state laws, regulations, policies, procedures, or guidelines, including those set forth in state manuals, or process or procedure implemented by the Franchise Tax Board under this chapter, all state agencies shall cooperate with the Franchise Tax Board to expedite the procurement, development, implementation, and operation of the tax amnesty program under this chapter, and shall delegate to the Franchise Tax Board, to the full extent possible, all functions including acquisition authority as provided in the Public Contract Code, that may assist the Franchise Tax Board. All state agencies shall give review processes affecting the tax amnesty program their highest priority and expedite these review processes to require no more than twenty (20) state business days.

(d)

AMENDMENT 8

On page 21, line 14, ~~strikeout "(d)"~~ and insert:

(e)

AMENDMENT 9

On page 21, line 18, ~~strikeout "(e)"~~ and insert:

(f)

AMENDMENT 10

On page 21, line 32, after "(b)" insert:

(1) Notwithstanding any state policies, procedures, or guidelines, including those set forth in state manuals, all state agencies shall cooperate with the Franchise Tax Board to expedite the procurement, development, implementation, and operation of the necessary systems for the operation of the amnesty program and shall delegate to the Franchise Tax Board, to the full extent possible, all functions, including acquisition authority as provided in the Public Contract Code, that may assist the Franchise Tax Board. In addition, the Franchise Tax Board is granted full exemption from any competitive bidding provisions in state law or policy for all procurements of goods and services under five million dollars (\$5,000,000) and no prior approval or exemption by oversight agencies shall be required for those procurements of goods and services.

(2) Notwithstanding any other provision of law, the procurements for the public outreach program and publicity of the tax amnesty program, and any bid protest conducted under this chapter, shall be subject to the following procedures:

(A) The Executive Officer of the Franchise Tax Board, or his or her designee, may consider and decide initial protests. A decision regarding initial protest shall be final.

(B) A contract may be entered into pending a final decision on a protest. The protest shall not prevent the commencement of work in accordance with the terms of the contract awarded.

(C) Protests shall be limited to participating bidders.

(D) A protest shall be filed within five days of the posting of the notice of the reward. The Department of General Services shall review a protest within seven days of the filing date. If the Department of General Services finds that a protest is clearly insufficient on its face, entirely without merit, or outside the scope of permissible protest, it may make a final disposition of the protest.

(E) The Director of General Services shall issue a ruling within a period not to exceed 45 days from the date the protest is filed.

(F) Grounds to protest under this section shall be limited to violations of the solicitation procedures resulting in the protestor's proposal not being selected. These grounds shall be stated in the solicitation document with the protest procedures.

(G) Any bidder that has filed a protest that is determined by the Department of General Services to be clearly insufficient on its face, entirely without merit, or outside the scope of permissible protest, shall not be eligible to participate in solicitations conducted under this section.

(c)

AMENDMENT 11

On page 23, line 15, after "(c)" and before "Article", insert:

This section shall not apply to any amounts that are treated as paid during the amnesty program period under paragraph (4) of subdivision (a) of Section 19733 or paragraph (1) of subdivision (b) of Section 19733.

(d)

AMENDMENT 12

On page 23, line 20, strikeout "(d)" and insert:

(e)

AMENDMENT 13

On page 23, after line 23, insert:

SEC. 10. There is hereby appropriated from the General Fund for the 2004-05 fiscal year the sum of ten million one hundred eighty three thousand dollars (\$10,183,000), to the Franchise Tax Board, in augmentation of Item 1730-001-0001 of the Budget Act of 2004.