

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Nunez Analyst: Rachel Coco Bill Number: AB 2868

Related Bills: See Legislative History Telephone: 845-4328 Amended Date: April 15, 2004

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Refund Anticipation Loan Act

## SUMMARY

This bill would enact the Refund Anticipation Loan Act.

## SUMMARY OF AMENDMENTS

The April 15, 2004, amendments removed language that would impose specific requirements on facilitators of refund anticipation loans (RAL). In addition, the amendments added language that would prohibit the same facilitators from engaging in various acts with respect to RALs.

This is the department's first analysis of this bill.

## PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to protect consumers that enter into RALs.

## EFFECTIVE/OPERATIVE DATE

This bill would be operative beginning January 1, 2006.

## POSITION

Pending.

## ANALYSIS

### FEDERAL/STATE LAW

Current federal and state tax laws provide taxpayers with the option of filing an electronic tax return or a paper tax return. In addition, both the Internal Revenue Service (IRS) and the Franchise Tax Board (FTB) issue taxpayer refunds via direct deposit or check.

Existing federal and state tax laws are silent in regard to the regulation of RALs.

Board Position:

\_\_\_\_ S      \_\_\_\_ NA      \_\_\_\_ NP  
\_\_\_\_ SA      \_\_\_\_ O      \_\_\_\_ NAR  
\_\_\_\_ N      \_\_\_\_ OUA      \_\_\_\_ X PENDING

Department Director

Date

Gerald H. Goldberg

5/4/04

## THIS BILL

This bill would establish the "Refund Anticipation Loan Act."

The bill would require facilitators who issue RALs to:

- Register with the Department of Corporations,
- Display fee schedules,
- Conform to advertising restrictions,
- Provide written notice informing taxpayers of direct deposit of refund (DDR) options, and
- File an annual report with the Commissioner of Corporations.

Further, the bill would prohibit facilitators from:

- Misrepresenting the RAL,
- Facilitating a RAL in which the fee being charged is different than the posted fee, or
- Arranging for a creditor to take a security interest in property other than the taxpayer's refund for purposes of securing payment of the RAL.

This bill would define "facilitator" as a person, including any officer, agent, employee, or representative, who either solicits the execution of, processes, receives, or accepts an application or agreement for a RAL or refund anticipation check, or in any other manner facilitates the making of a RAL or refund anticipation check.

This bill would define "refund anticipation loan" as a loan that is secured by or that the creditor arranges to be repaid directly or indirectly from the proceeds of the taxpayer's income tax refund or tax credits.

In addition, this bill would provide various definitions for other key terms.

## IMPLEMENTATION CONSIDERATIONS

This bill would not impact the department's programs or operations.

## **PROGRAM BACKGROUND**

DDR allows taxpayers to have their tax refund electronically deposited into their checking or savings account. Taxpayers must provide FTB with the financial institution's routing transit number, their depositor account number, and whether the account is a checking or savings account. Taxpayers who file electronically and request DDR generally receive their refund in five to seven banking days.

In 1998, the department implemented DDR as a pilot program for e-file returns only. In the next two years the program was expanded to include paper returns and other returns filed over the phone through the TeleFile Program. According to the department's most recent statistics, approximately 2 million refunds were issued by DDR in 2002.

## **OTHER STATES' INFORMATION**

Review of *Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found that only one state provides for the regulation of RALs.

*Minnesota* tax law requires tax preparers who offer RALs to make specific disclosures to clients, including IRS direct deposit options, and to follow prescribed standards of conduct, similar to the standards prescribed by this bill.

These states were selected due to their similarities to California's economy, business entity types, and tax laws.

## **FISCAL IMPACT**

This bill would not impact the department's costs.

## **ECONOMIC IMPACT**

This bill would not impact state income tax revenue.

## **ARGUMENTS/POLICY CONCERNS**

Under this bill, a facilitator would be required to provide the taxpayer with a notice of disclosure, which makes reference to the IRS' DDR program. Since California also provides DDR, the author also may wish to make reference to FTB's DDR program.

## **LEGISLATIVE STAFF CONTACT**

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