

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Alpert Analyst: LuAnna Hass Bill Number: SB 1009

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: June 3, 2003

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Use Tax Collection By Franchise Tax Board

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended May 12, 2003.
- 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 May 12, 2003.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 12, 2003, STILL APPLIES.
- OTHER - See comments below.

SUMMARY

This bill would require the Franchise Tax Board (FTB) to collect certain use tax.

SUMMARY OF AMENDMENTS

The June 3, 2003, amendments resolved an implementation consideration by accepting the amendments suggested in the department's analysis of the bill as amended May 12, 2003. Specifically, the amendments would:

- Clarify that any payment or credit on the return, combined with any other credit on the taxpayer's account, would be applied first to any income or corporation liability and then to the use tax reported on the return.
- Remove language that required the Board of Equalization (BOE) and FTB to enter into an agreement regarding the reimbursement of FTB's costs to administer this bill.
- Clarify that the provisions of the bill that would have been repealed as of December 31, 2009, shall instead cease to be operative as of that date unless a later enacted statute extends the operation of the provision.
- Make various technical changes to the sales and use tax language of the bill.

The department has identified an additional implementation and new technical considerations. For convenience, all new and existing concerns are provided below. The remainder of the department's analysis of the bill as amended May 12, 2003, still applies.

Board Position:

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Legislative Director

Date

Brian Putler

6/13/03

POSITION

Pending.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations and department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Existing Concerns:

- Under the current tax forms design schedule, the design, printing, and distribution of forms and booklets take place in the fall of the actual taxable year. For example, the design of the 2004 returns would begin June 2004, printing would begin October 2004, and distribution of the returns and booklets would begin at the end of 2004. This allows taxpayers to begin reporting and paying their 2004 taxes in January 2005.

The author has expressed an intent that this bill be operative January 1, 2003, and allow taxpayers to report and remit use tax on the 2003 tax returns, which are filed in 2004. However, depending on when this bill might be enacted during the 2003 session, it is uncertain if the department would have sufficient time to design the forms accordingly. In addition, this bill would require BOE to approve the revision to the tax forms to include the use tax. Such an approval process could delay an already tight forms design schedule for the 2003 forms. In the event an urgency clause is added to this bill that would allow taxpayers to report and remit use tax on the 2003 tax returns, Amendment 6 is provided to limit the timeframe allowed for BOE to review the tax form revisions, which would ensure the department has sufficient time to design, print, and distribute the tax forms.

- Under this bill, an election to report qualified use tax on the tax return would be an irrevocable election. Department staff suggests clarifying the term "irrevocable election." Would the election by the taxpayer be irrevocable for that particular return, those particular purchases, or subsequent taxable year returns? Would the election by the taxpayer prohibit the taxpayer from electing to submit use tax to BOE as allowed under current law? Amendment 1 is provided to clarify that the election to report use tax on a tax return would make that tax return a use tax return for purposes of the sales and use tax laws administered by BOE.
- This bill requires FTB to remit the qualified use tax within 60 days of the receipt of the tax. Assuming the taxpayer self-assesses the use tax on the personal income tax (PIT) return, FTB receives PIT returns and payments daily from January through April 15th or, with an extension, October 15th. It is suggested that the author clarify the remittance language to specify how often FTB should remit the taxes. However, absent clarification and in order to ease administration for FTB, the department would likely remit the funds weekly or monthly, which would meet the 60-day criteria and have a minor impact on current fiscal operations.

New Concern:

- The June 3, 2003, amendments remove the language that required BOE and FTB to enter into an agreement regarding the reimbursement of FTB's costs to administer this bill. As a result, this bill contains no provision to allow FTB to recover its costs to administer the use tax. As stated below in "Fiscal Impact," the start-up costs are estimated to be \$1.8-\$2.0 million and the ongoing costs would be \$500,000-\$550,000 annually.

TECHNICAL CONSIDERATIONS

Amendments 2 and 5 are provided to allow exempt organizations to elect to report use tax on an acceptable tax return.

Under current law, the term "tax" as used in the Revenue and Taxation Code generally includes any penalties or interest associated with that tax. Amendments 3 and 7 are provided to clarify the payment application language to reflect the correct usage of the term "tax."

FISCAL IMPACT

This bill would require a calculation for the sales and use tax that would require significant changes to the tax forms, personal income tax systems, and business entities tax systems. Preliminary cost estimates range from \$1.8 million to \$2.0 million for implementation and from \$500,000 to \$550,000 for on-going costs. These costs include costs resulting from changes to the tax forms, instructions, and booklets, processing hours, programming, testing, and maintaining departmental systems, and the development and negotiation of a data exchange with BOE for the sales and use tax remittance.

To ensure the department has the funding to implement this bill, the department would suggest the author add appropriation language to this bill that would cover the full costs of implementation. This would allow the department to begin an implementation plan to revise the tax forms and make systems changes. Absent a direct appropriation for FTB or approval of a deficiency by the Department of Finance for 2003/2004 or a budget change proposal (BCP) for the 2004/2005 fiscal year, the department would be required to redirect staff from other revenue generating activities of the department, such as collections administration or audit, to administer this bill.

Since the bill does not specify which tax forms FTB should revise, the department developed the above costing for those tax returns estimated to have the greatest impact on the use tax election. At this time, the department does not anticipate revising the personal income tax forms for non-residents/part-year residents or water's edge corporations and the above costing does not include the costs to revise the corresponding tax forms. However, if the author or BOE believes that these taxpayer groups should be included, the department could update the above costing accordingly to include those tax forms.

ECONOMIC IMPACT

This bill would have no identifiable revenue impact under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL). Collection of sales and use tax revenue is a function of BOE, which has both the data and expertise in this area. Accordingly, FTB staff defers the revenue estimate for this bill to BOE.

ARGUMENTS/POLICY CONCERNS

The author has expressed an intent that this bill be operative for purchases on or after January 1, 2003, in taxable years beginning on or after that date, and to allow taxpayers to report and remit use tax on the 2003 income tax return, which is filed in 2004. Depending on when this bill may be enacted this year, taxpayers may not have been keeping adequate records or receipts of purchases during 2003 that are subject to the use tax and could be reported on the returns for 2003.

Current laws regarding the non-tax debts administered by FTB provide for a reimbursement to FTB of costs to administer the programs. The laws are usually specific to the amount of reimbursement available to FTB or require an agreement between agencies outlining reimbursement. Although through an agreement the reimbursement could be based on a percentage of collections, concern has arisen when the department contracts for a percentage of collection to cover costs because the possibility exists that the percentage may not cover the costs of the program in any given year and monies from the General Fund may be needed to cover any difference.

Under this bill, administrative functions regarding the use tax would be divided. FTB would collect use tax reported on the returns processed by FTB and transfer the money to BOE. However, BOE would retain responsibilities for auditing, processing claims for refund, and collecting any unpaid use tax reported on the returns processed by FTB. The author may wish to ensure that BOE systems are able to accept the additional taxpayer data that FTB would provide regarding the taxpayer and the use tax data. In addition, the separation of functions may cause confusion for the taxpayer.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1009
As Amended June 3, 2003

AMENDMENT 1

On page 2, line 22, after "irrevocable." insert:

An acceptable tax return that contains use tax shall be considered a tax return for purposes of this part.

AMENDMENT 2

On page 2, modify line 27 as follows:

18633, ~~or~~ Section 18633.5 of Chapter 2 of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

AMENDMENT 3

On page 4, modify line 15 as follows:

17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under Part 10.2 (commencing with Section 18401).

AMENDMENT 4

On page 4, ~~strikeout~~ lines 16 and 17, inclusive, and on line 18 ~~strikeout~~ "(3)" and insert:

(2)

AMENDMENT 5

On page 6, modify line 37 as follows:

with Section 18601), Section 18633, ~~and~~ Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11 in a

AMENDMENT 6

On page 6, line 40, after "6452.1." insert:

The State Board of Equalization shall review the returns and submit their approval or comments to the Franchise Tax Board within 10 days of the returns being submitted to it for review.

AMENDMENT 7

On page 7, modify line 6 as follows:

17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under Part 10.2 (commencing with Section 18401).

AMENDMENT 8

On page 7, strikeout line 7, and on line 8 strikeout "(3)" and insert:

(2)