

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Senate Rev & Tax Committee Analyst: Marion Mann DeJong Bill Number: SB 1061

Related Bills: See Legislative History Telephone: 845-6979 Amended Date: 06/30/2003

Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

SUBJECT: Water's-Edge Election Procedures/Definition of "Taxable Year" for Calendar or Fiscal Years Beginning on or after January 1, 2000/Exempt Organizations Applications for Exemption or Amending Articles of Inc.

SUMMARY

This Franchise Tax Board sponsored bill would:

1. Add a definition of the term "taxable year" for California franchise tax purposes that was inadvertently repealed for taxable years beginning on or after January 1, 2000.
2. Fundamentally reform the water's-edge election procedures to resolve problems that arise with elections made under the current contract rules. Under this bill, water's-edge elections would be made by statutory election rather than by contract.
3. Eliminate inconsistencies between the Corporations Code and the Revenue and Taxation Code (R&TC) regarding the ability of a suspended corporation to apply for tax-exempt status.

SUMMARY OF AMENDMENTS

The June 30, 2003, amendments added the third provision, summarized above, related to tax-exempt organizations. The amendments also made a minor technical change to Section 7073.8 of the Government Code, which is not discussed in this analysis.

Except for the "Technical Considerations" discussion under the "Water's-Edge Election Procedures," the department's analysis of the bill as introduced February 27, 2003, still applies. The following discussion is added related to tax-exempt organizations. The Board position remains support, since the Franchise Tax Board voted on November 26, 2002, to sponsor the three provisions summarized in this analysis.

3. Tax-Exempt Organizations (Section 2205 and 5008.6 of the Corporations Code)

ANALYSIS

FEDERAL/STATE LAW

There is no comparable federal law with regard to a suspended corporation filing for tax-exempt status.

Under the Corporations Code and the R&TC, the Secretary of State (SOS) may suspend the powers, rights, and privileges of a corporation if the entity fails to pay taxes or fails to file tax returns, annual returns, or certain other information returns.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

7/9/03

The R&TC permits a corporation to file an application for tax exemption even if the status of the corporation is suspended. The R&TC also allows a suspended corporation to amend its articles of incorporation to perfect an application for exemption. However, the Corporations Code does not provide authority for a suspended corporation to amend its articles of incorporation, typically to correct required organizational recitals.

The Corporations Code provisions preclude a suspended corporation from either filing for tax-exempt status or amending its articles of incorporation to perfect its tax-exempt application, which actions the R&TC expressly permits. Because of this conflict between the Corporations Code and the R&TC, a suspended corporation can be prevented from obtaining tax-exempt status.

THIS BILL

This provision of the bill would amend the Corporations Code to permit a suspended corporation applying for tax-exempt status to amend its articles of incorporation to perfect its application.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision of the bill would not significantly impact the department's programs and operations. However, it would allow the Franchise Tax Board and the SOS to treat suspended corporations seeking tax-exempt status consistently, thereby improving customer service.

OTHER STATES' INFORMATION

Illinois, Massachusetts, Michigan, Minnesota, and New York laws do not allow corporations to apply for tax-exempt status while the corporation is suspended. The laws of these states were reviewed due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

This provision of the bill would not impact the department's costs.

ECONOMIC IMPACT

This provision of the bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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