Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Frommer	Analyst:	Gail Hall	Bill Number:	AB 1037
Related Bills:	See Prior Analysis	Telephone:	845-6111	Amended Date:	January 18, 2006
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Net Receipts In Sales Factor For Treasury Function/Single Sales Factor For Qualified Business Activity

____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.

____ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED September 8, 2005, STILL APPLIES.

X OTHER – See comments below.

SUMMARY

Under the Corporation Tax Law, this bill would provide a definition of gross receipts and change the method used by companies in specified industries to calculate their California business income.

SUMMARY OF AMENDMENTS

The January 18, 2006, amendments made the following changes:

1. removed the election to use the single sales factor for businesses with Principal Business Activity Codes (PBACs) relating to energy-related activities (see Appendix A), and
2. added amendments that would require an extractive business activity to use a three-factor, single-weighted sales apportionment formula if it derives more than 50 percent of its gross receipts from conducting an extractive business activity.[1]

[1] This is consistent with current law. (Revenue and Taxation Code Section 25128(b).)

Board Position:			Legislative Director	Date
_____ S	_____ NA	_____ NP		
_____ SA	_____ O	_____ NAR	Patrice Gau-Johnson	02/23/06
_____ N	_____ OUA	X PENDING	(For Brian Putler)	

Except for the amendments discussed above, Appendix A, and the Economic Impact section of this analysis, the remainder of the department's analysis of the bill as amended on September 8, 2005, still applies.

The technical considerations discussed in the analysis of the bill as amended September 8, 2005, have not been resolved. These technical considerations and their related proposed amendments have been attached for convenience purposes. Please note that the page and line numbers referenced in the amendments attached to the analysis of the bill as amended on September 8, 2005, have been revised to reflect the changes made to the bill on January 18, 2006.

ECONOMIC IMPACT

Revenue Estimate

The revenue impact of this bill is estimated to be as shown in the following table:

Estimated Revenue Impact of AB 1037 Assumed Enacted After June 30, 2006 Effective for tax years BOA Jan. 1, 2006 $ Millions					
	2006-07	2007-08	2008-09	2009-10	2010-11
Treasury function	$100	$110	$55	$0	-$105
Single sale factor	-$5 Phase-In	-$25 Phase-In	-$50 Phase-In	-$80 Phase-In	-$115
Total	$95	$85	$5	-$80	-$220

The revenue estimate for the single sales factor has been revised to reflect the January 18, 2006, amendments that removed the election to use the single sales factor for energy-related activities. Except for this revision, the remainder of the discussion in the Economic Impact section of the analysis of the bill as amended September 8, 2005, still applies.

TECHNICAL CONSIDERATIONS

1. The reference to "section 38006" should be expanded to provide that it is located in Part 18. See attached Amendment 1.
2. The definition of "treasury function" should be restored to the amendments in the bill as amended April 7 and 12, 2005. This would take care of issue number one found in the LEGAL IMPACT portion of the analysis of the bill as amended on September 8, 2005. See attached Amendment 2.
3. To ensure the amendments made by the bill include comprehensive definitions for treasury function activities, language should be added to include repurchase arrangements in the definition of a "liquid asset," since those transactions may account for a significant portion of the treasury function activity. See attached Amendment 3.
4. The word "it" should be added to clarify the 90% employee test. See attached Amendment 4.

LEGISLATIVE STAFF CONTACT

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APPENDIX A
(Principal Business Activity Codes Used In AB 1037)

1. QUALIFIED TAXPAYER

Code	Description
325410	Pharmaceutical & Medicine Mfg
333295	Semiconductor Machinery Mfg
334110	Computer & Peripheral Equipment Mfg
334200	Communications Equipment Mfg
334410	Semiconductor & Other Electronic Component Mfg
339110	Medical Equipment & Supplies Mfg
511210	Software Publishers
512100	Motion Picture & Video Industries (except video rental)
515100	Radio & Television Broadcasting
515210	Cable & Other Subscription Programming
517510	Cable and Other Program Distribution
541519	Other Computer Related Services
713100	Amusement Parks & Arcades

2. MORE THAN $1 BILLION OF GROSS BUSINESS RECEIPTS

Code	Description
512100	Motion Picture & Video Industries (except video rental)
515100	Radio & Television Broadcasting
515210	Cable & Other Subscription Programming
517510	Cable and Other Program Distribution
713100	Amusement Parks & Arcades

~~3.~~ ~~MORE THAN 50% OF GROSS BUSINESS RECEIPTS~~ (REMOVED)

~~Code~~	~~Description~~
~~211110~~	~~Oil & Gas Extraction~~
~~221210~~	~~Natural Gas Distribution~~
~~324110~~	~~Petroleum Refineries (including integrated)~~
~~324190~~	~~Other Petroleum & Coal Products Mfg~~
~~424700~~	~~Petroleum & Petroleum Products~~
~~425120~~	~~Wholesale Trade Agents & Brokers~~
~~447100~~	~~Gasoline Stations (including convenience stores w/gas)~~
~~454312~~	~~Liquefied Petroleum Gas (Bottle Gas) Dealers~~
~~486000~~	~~Pipeline Transportation~~
~~523130~~	~~Commodity Contracts Dealing~~

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FRANCHISE TAX BOARD
PROPOSED AMENDMENTS TO AB 1037
As Amended January 18, 2006

AMENDMENT 1

On page 3, line 25, strikeout “38006,” insert:

38006 of Part 18 (commencing with Section 38001),

AMENDMENT 2

On page 3, line 35, after “assets” insert:

for the purpose of satisfying the cash flow needs of the trade or business, including, but not limited to, providing a reserve for business contingencies and business acquisitions

AMENDMENT 3

On page 4, revise lines 1 through 4 to read as follows:

(2)(A) “Liquid asset” means a readily marketable intangible, including, but not limited to, bonds, stocks, futures contracts, debentures, options, warrants, foreign currency, ~~and~~ mutual funds that hold those intangibles, and repurchase arrangements relating to such intangibles. "Liquid asset" does not mean

AMENDMENT 4

On page 8, line 37, after "employees" insert:

“it”