**Franchise Tax Board**

# SUMMARY ANALYSIS OF AMENDED BILL

Author: Assembly Revenue & Taxation Committee Analyst: Rachel Coco Bill Number: AB 1767

Related Bills: See Prior Analysis Telephone: 845-4328 Amended Date: July 1, 2005

Attorney: Patrick Kusiak Sponsor:

**SUBJECT:** Claim of Right Deduction/Liquidation Of Securities/Reimbursement Due To Erroneous Actions/FTB Provide Taxpayer Address Information To DOJ For Locating Unregistered Sex Offenders

_____ 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 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 April 20, 2005, STILL APPLIES.

__X__ OTHER – See comments below.

## SUMMARY

This bill would:

1. clarify current state law by conforming more closely to federal law with regard to the claim of right deduction,
2. require financial institutions, upon request, to liquidate a taxpayer's securities to satisfy the taxpayer's tax liability,
3. provide an exception to the underpayment of estimated tax penalty due to an erroneous action by the Franchise Tax Board (FTB),
4. incorporate into the Revenue and Taxation Code a provision of the Penal Code that provides an exception to FTB's general disclosure law, and
5. allow reimbursement to persons for third-party charges and fees caused by an erroneous action by FTB.

## SUMMARY OF AMENDMENTS

The July 1, 2005, amendments would make changes to item 2, described above. Specifically, the amendments would allow the taxpayer additional time to designate specific stocks or bonds to be liquidated in the event that the taxpayer's assets are greater than the outstanding tax liability.

| Board Position: | | | Legislative Director | Date |
|---|---|---|---|---|
| __X__ S | _____ NA | _____ NP | | |
| _____ SA | _____ O | _____ NAR | Brian Putler | 7/19/2005 |
| _____ N | _____ OUA | _____ PENDING | | |

The amendments would also increase the time in which a brokerage firm would be required to liquidate taxpayer assets. The amendments would also make several non-substantive technical changes throughout the bill. As a result of these amendments, the "This Provision" discussion for item 2 as provided in the analysis of the bill as introduced March 17, 2005, has been revised. The remainder of the analysis still applies.

**POSITION**

Support.

On December 1, 2004, the Franchise Tax Board voted 2-0, with the representative from the Department of Finance abstaining, to sponsor the provisions of this bill.

## LIQUIDATION OF SECURITIES

THIS PROVISION

This provision would require financial institutions or those that maintain, administer, or manage an asset to fulfill the terms of an Order To Withhold (OTW) by liquidating a taxpayer's non-cash assets within 90 days of receiving an OTW from FTB. The provision would require the proceeds from the liquidation, minus any reasonable commissions or fees, to be submitted to FTB within five days of the liquidation.

This provision provides that if the value of the assets to be liquidated exceeds the tax liability, the taxpayer may choose which assets are to be sold to satisfy the liability. If the taxpayer does not provide instructions for liquidation within 60 days of the issuance of the OTW, assets will be liquidated beginning with the assets purchased most recently.

The provision provides that a financial asset would include a security, uncertificated security, certificated security, security entitlement, or a securities account, as defined within the Commercial Code.

**LEGISLATIVE STAFF CONTACT**

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