

SUMMARY ANALYSIS OF AMENDED BILL

Author: Harman Analyst: Raul Guzman Bill Number: AB 339
 August 7, 2006 and
 Related Bills: See Prior Analysis Telephone: 845-4624 Amended Date: August 8, 2006
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Uniform Limited Partnership Act of 2008

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended June 26, 2006.
- 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 _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 26, 2006, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This bill would update California law by adopting the newest version of the Uniform Limited Partnership Act of 2008.

This analysis addresses only those provisions of the bill affecting the Franchise Tax Board (FTB).

SUMMARY OF AMENDMENTS

The August 7, 2006, amendments make several cross-reference technical corrections to the Corporations Code. The amendments also update various cross-references in the Corporations Code to the Revenue and Taxation Code (R&TC).

The August 7, 2006, amendments add two provisions to the Corporations Code. The first provision indicates what business activities a limited partnership may engage in lawfully. The second provision indicates that nothing in this act shall be interpreted to change any existing statute pertaining to limited liability partnerships and limited liability corporations. The second provision also explains that the act prohibits the formation of limited liability limited partnership (LLLLP) in this state.

Board Position:	Legislative Director	Date
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<input checked="" type="checkbox"/> PENDING		

The August 8, 2006, amendments added language to resolve a conflict between the Corporations Code provision and the current R&TC provision relating to the tax consequences of the conversion from one entity to another. These amendments explicitly provide an exception in the Corporations Code to clarify that the change being made by this bill does not change the tax consequences of converting from one entity to another.

Except for the items below, the remainder of the department's analysis of the bill as introduced February 10, 2005, still applies. The "Implementation Considerations," "Legal Impact," and "Policy Concerns" are restated below for convenience.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2007. Specific operative dates for various provisions are specified. Provisions of the bill would apply to limited partnerships formed on or after January 1, 2008. All limited partnerships in existence prior to January 1, 2008, would be subject to the provisions of the new Act on and after January 1, 2010.

POSITION

Pending.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this concern.

An LLLP organized in another state that is registered in this state or doing business in this state would be subject to the annual tax imposed on limited partnerships because current law and this bill would recognize an LLLP as a limited partnership. If this is inconsistent with the author's intent, it is recommended that the language be clarified.

FISCAL IMPACT

The department's costs to administer this bill would be minor.

ECONOMIC IMPACT

Revenue Estimate

This bill would revise and recast existing limited partnership laws by adopting the Uniform Limited Partnership Act of 2008. The new Act will still subject limited partnerships to the same fees and taxes.

This bill would have no impact on state income tax revenues.

LEGAL IMPACT

This bill establishes a four-year statute of limitations (SOL) for creditors to sue a limited partnership in an effort to collect a debt. That SOL is four years after a notice of dissolution is published. The general SOL for FTB to collect an unpaid tax debt is 20 years. The abbreviated SOL established by this bill may make it unclear which SOL would control, thus resulting in possible disagreements between FTB and taxpayers. It is recommended that the author add the attached language to resolve the possible conflicting SOLs. See attached amendment.

POLICY CONCERNS

Provisions of this bill would allow recognition of a limited partnership that shields a general partner from liability for the obligations of the partnership by becoming an LLLP in another jurisdiction. That liability protection is similar to the liability protection provided to limited liability companies, which are subject to a fee in addition to an annual tax. There are non-tax reasons for the selection of a business form, but if all things are equal, the form with the lower tax cost will be favored.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 339
As Amended August 8, 2006

AMENDMENT 1

On page 95, after line 18, start new paragraph by inserting the following:

(e) Publication of a notice of dissolution of a limited partnership pursuant to this section shall not bar the collection of any tax, interest, penalty or addition to tax under Part 10 (commencing with Section 17001) of, Part 10.20 (commencing with Section 18401) of, and Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code.