

**ANALYSIS OF AMENDED BILL**

Author: Figueroa Analyst: Rachel Coco Bill Number: SB 229  
 Related Bills: See Legislative History Telephone: 845-4328 Amended Date: April 18, 2005  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:**

FTB To Assess Penalty On Tax Preparers Not Registered With California Tax Education Council

**SUMMARY**

This bill would require the Franchise Tax Board (FTB) to impose a penalty on Tax Preparers who fail to register with the California Tax Education Council (CTEC).

This bill also would make numerous other changes to the Business and Professions Code. This analysis will only discuss those provisions impacting FTB.

**SUMMARY OF AMENDMENTS**

The April 18, 2005, amendments removed language that would have extended the existence of the Structural Pest Control Board and replaced it with the provisions discussed in this analysis.

This is the department's first analysis of this bill.

**PURPOSE OF THE BILL**

According to the author's office, the purpose of the bill is to bring non-compliant Tax Preparers into compliance with existing law thereby ensuring all Tax Preparers are following the same prescribed rules.

**EFFECTIVE/OPERATIVE DATE**

This bill would be effective and operative beginning on or after January 1, 2006.

**POSITION**

Pending.

**ANALYSIS**STATE LAW

The Business and Professions Code (B&PC) defines a "Tax Preparer" as a person who for a fee assists with or prepares state or federal tax returns for another person or who assumes responsibility for final completed work on a tax return. Under the B&PC, a "Tax Preparer" does not include a certified public accountant, a licensed attorney, trusts, or enrolled agents.

Board Position:

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

Department Director

Date

Gerald H. Goldberg

5/5/05

The B&PC prescribes rules regulating Tax Preparers, including requiring a \$5,000 bond and registration with CTEC. Current state law specifies that it is a violation of the rules to take several actions, including any of the following:

- Failing to sign a customer's tax return once payment for services has been rendered,
- Failing to give a customer a copy of a tax return, or
- Engaging in misleading advertising practices.

The B&PC requires FTB to notify CTEC when it identifies individuals preparing tax returns who are not registered with CTEC. In addition, FTB has authority to:

- cite individuals preparing tax returns in violation of any of the rules governing Tax Preparers, as described above,
- levy a fine on these individuals not to exceed \$5,000 per violation, and
- issue a cease and desist order, effective until the Tax Preparer is in compliance with the registration requirement.

The laws regulating the professional performance of Tax Preparers will cease to be operative July 1, 2008, and are repealed January 1, 2009.

CTEC is a private industry association responsible for approving the curriculum of tax schools and certifying the education of Tax Preparers. CTEC has the authority to establish guidelines for Tax Preparers, including specific initial and continuing education requirements.

Currently, the Revenue and Taxation Code (R&TC) authorizes FTB to impose a penalty on any individual who prepares an income tax return for compensation and that understates a taxpayer's liability or fails to do any of the following:

- furnish a copy of a prepared return to the taxpayer,
- furnish FTB with an identifying number,
- retain a copy or list of returns prepared for taxpayers, or
- retain a copy of a signed electronic filing declaration.

### THIS BILL

Under the R&TC, this bill would authorize FTB to impose a penalty on Tax Preparers who fail to register with CTEC as required under the B&PC. Unless the failure to register was due to reasonable cause and not willful neglect, the penalty would be in the amount of \$2,500 for the first failure. Any subsequent failures would result in a penalty of \$5,000.

This bill would provide that the initial penalty would be waived if, within a period of 90 days from the date of notification of the penalty, the preparer provides proof of registration to FTB.

This bill would specify that FTB would not begin imposing the penalty until an appropriation is received or an agreement is executed between FTB and CTEC outlining reimbursement of FTB's costs associated with that activity.

Under the B&PC, this bill would remove FTB's authority to enforce the penalties for violating the rules governing Tax Preparers.

## IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to the departments computer systems. These changes are expected to be minor and should not significantly impact the departments programs or operations.

## **LEGISLATIVE HISTORY**

SB 1543 (Stats. 2004, Ch. 921), among other things, removed the authority from other government entities to enforce the laws regulating Tax Preparers and placed that authority with FTB. The bill specified that FTB would not begin enforcing the rules regulating Tax Preparers until funding of the costs associated with those activities were funded via FTB's annual budget or through reimbursement from CTEC.

SB 1955 (Stats. 2002, Ch. 1150) authorized FTB to notify CTEC when it encountered Tax Preparers that were not properly registered. The bill required CTEC to notify specific entities of the unregistered Tax Preparers and authorized those entities to enforce the penalties set forth in the provision.

## **OTHER STATES' INFORMATION**

Since this bill is only clarifying FTB's authority in regard to the regulation of Tax Preparers, a comparison of other states is unnecessary.

## **FISCAL IMPACT**

In anticipation of the provisions in this bill, CTEC and FTB have developed an agreement for reimbursement of FTB's costs to administer the penalty. However, the agreement would need to be renewed once it expires, or the department would have to seek funding through the normal budgetary process in order to continue the activities required by this bill.

## **ECONOMIC IMPACT**

For calendar year 2005, twenty-five Tax Preparers have been identified as unregistered and will be reported to CTEC.

Since this proposal allows a 90 day compliance provision, once a Tax Preparer is notified of a potential penalty equal to \$2,500 for the first offense and \$5,000 for each offense thereafter, it is likely that the Tax Preparer will pay the \$30 fee required by CTEC in order to become registered.

Assuming all 25 identified non-registered Tax Preparers choose to pay the \$2,500 fine, the total revenue would amount to \$62,500. Therefore, revenue gains from this proposal would be insignificant.

## **LEGISLATIVE STAFF CONTACT**

Rachel Coco  
Franchise Tax Board  
(916) 845-4328  
[rachel.coco@ftb.ca.gov](mailto:rachel.coco@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
(916) 845-6333  
[brian.putler@ftb.ca.gov](mailto:brian.putler@ftb.ca.gov)