

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: Harman Analyst: Raul Guzman Bill Number: AB 339

Related Bills: See Prior Analysis Telephone: 845-4624 Amended Date: April 11, May 2, and May 24, 2005, June 8, and June 26, 2006

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Uniform Limited Partnership Act of 2008

- 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 February 10, 2005.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 10, 2005, 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 April 11, 2005, amendments added a provision permitting the Secretary of State to revive a limited partnership that has filed a certificate of cancellation, if the certificate of revival is accompanied by written confirmation by the FTB that all applicable annual taxes, interest, and penalties have been paid for each year between the cancellation of its certificate and its revival.

The May 2, 2005, amendments replaced the provisions relating to the *Uniform Limited Partnership Act of 2005* with a non-substantive technical provision.

Board Position:	Legislative Director	Date
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The May 24, 2005, amendments reintroduced the *Uniform Limited Partnership Act of 2005* provisions, as amended April 11, 2005, and added additional non-substantive technical provisions.

The June 8, 2006, amendments changed the designated year of the *Uniform Limited Partnership Act of "2005"* to *"2006"*. The amendments also changed the operative date of the Act from January 1, 2006, to January 1, 2007, and the repeal date from January 1, 2008, to January 1, 2009. The amendments also added provisions to the Business and Professions Code that include a "series of a limited liability company" as a limited liability company (LLC) for purposes of defining a business entity in connection with covenants not to compete when a business entity is sold.

The June 26, 2006, amendments changed the designated year of the *Uniform Limited Partnership Act of "2006"* to *"2008."* The amendments also changed the operative date of the Act from January 1, 2007, to January 1, 2008, and the repeal date from January 1, 2009, to January 1, 2010. See Effective/Operative Date below. The amendments also deleted Section 15903.03 of the Corporations Code and replaced it with a new section. The new section has a more thorough explanation of the status and obligations of a limited partner. In addition, the amendments added a provision to the Corporations Code that states: "Nothing in this act shall be construed to effect or overturn any decision of law or existing statute regarding the liability of limited partners."

The June 26, 2006, amendments also added Section 14.5 to the bill, which double joints this bill to provisions in AB 2914 <sup>1</sup>.

Except for the items below, which include additional implementation considerations, 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. A new "Legal Impact" was identified; see second comment under "Legal Impact."

## **EFFECTIVE/OPERATIVE DATE**

This bill would be effective January 1, 2008, and operative as of that date. However, specific operative dates for various provisions are specified. Provisions of the bill would require all limited partnerships in existence prior to January 1, 2008, to comply with and be subject to the provisions of the new Act by January 1, 2010.

## **POSITION**

Pending.

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<sup>1</sup> Section 14.5 of this bill incorporates amendments to Section 16101 of the Corporations Code proposed by both this bill and AB 2914.

## **ANALYSIS**

### **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

This bill includes provisions that would permit a revival of a canceled limited partnership. The bill also provides that the annual tax, plus applicable interest and penalties, must be paid for years between cancellation and revival.

The provisions of this bill would require modification of the Revenue and Taxation Code (R&TC) to reflect the annual tax impact of the cancellation and revival processes. Additionally, various cross-references in the R&TC to the Corporations Code would need to be updated.

It is clear that a limited partnership organized as a limited liability limited partnership (LLLP) would have one or more general partners and one or more limited partners. Consequently, 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. However, the application of other provisions of existing law to an LLLP may require modification to reflect changes in the liability of a general partner for the obligations of an LLLP, for example, the ability of FTB to collect the annual tax from a general partner.

Subdivision (g) of Section 15903.04 allows a limited partnership to withhold its records from a limited partner if it determines that it would not be in the limited partnership's best interests to release those records. This statutory authorization to withhold information may adversely impact FTB's enforcement programs, particularly the audit function.

### **FISCAL IMPACT**

Implementing the revival process contained in proposed Section 15902.09 of the Corporations Code would require the development of new procedures at FTB. The department's costs to administer this bill are anticipated to be minor.

### **ECONOMIC IMPACT**

#### **Revenue Estimate**

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 FTB's general SOL for making a proposed assessment of tax is four years after the tax return is filed, which could be after a notice of dissolution is published. The abbreviated SOL established by this bill may make it difficult for FTB to assess and collect the annual tax from the partnership or a general partner.

Section 159011.09 (a) of this bill would provide that an entity that converts into another entity pursuant to this article is for all purposes the same entity that existed before the conversion. The provision of this bill is applicable to the Corporation Code but is not necessarily likewise applicable to the R&TC. This provision appears to be in conflict with existing R&TC and may cause confusion. This bill is silent on the tax consequences of any conversion. The same concern was raised in 2002 with SB 399 (Ackerman, Stats 2002, Ch. 480), Section 1158 (a) of this bill would also provide that an entity that converts into another entity pursuant to this Section would for all purposes be the same entity that existed before the conversion. SB 399 corrected this confusion by inserting language to Section 1158 (a) that specifically addressed our concerns. It is recommended that the author add the same language to Section 159011.09 (a) of this bill. See attached amendment.

## **POLICY CONCERN**

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.

## **LEGISLATIVE STAFF CONTACT**

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 339  
As Amended June 26, 2006

AMENDMENT 1

On page 97, line 19, after "purposes" and before the "," insert:

other than for the purposes of 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