

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Richardson Analyst: Deborah Barrett Bill Number: AB 1199

Related Bills: None Telephone: 845-4301 Amended Date: April 12, 2007

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Aggravated White Collar Crime Enhancement/Fraud Or Embezzlement

SUMMARY

This bill would apply existing provisions of the white collar crime enhancement statutes to include cases where the felony acts result in the loss by another person or entity of more than \$100,000.

SUMMARY OF AMENDMENTS

The March 28, 2007, amendments added language to include instances when related felony conduct results in the loss by another person or entity of more than \$100,000. The April 12, 2007, amendments added intent language that the revisions made by this bill are declaratory of existing law.

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

PURPOSE OF THE BILL

According to the author's staff, a recent court ruling questioned whether felony failure to file tax return cases met the criteria of "taking¹" for purposes of the white collar crime enhancement statutes. The purpose of this bill is to clarify that the application of this statute to felony failure to file tax return cases is appropriate and consistent with the legislative intent of the statute.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2008, and be operative for felony acts committed on or after that date.

POSITION

Pending

¹ For example, Penal Code section 186.11(a)(1).

Board Position:

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Department Director

Date

Lynette Iwafuchi
for Selvi Stanislaus

5/8/07

ANALYSIS

STATE LAW

California law contains a provision known as "The White Collar Crime Enhancement" law. In addition to any other sanctions imposed upon conviction, a person who meets specified criteria can be subject to additional terms of imprisonment, fines, or both. To qualify for these enhancement provisions, the following must be in place:

- A person is convicted of two or more related felony acts in a single proceeding,
- The felony acts include elements of fraud or embezzlement,
- The felony acts involve a pattern of related felony conduct as defined, and
- The felony acts involve the taking of \$100,000 or more.

Under California tax law, any person that commits certain fraudulent acts made in connection with the filing of tax returns, or other documents required under the Personal Income Tax Law, can be guilty of a felony and upon conviction subject to a fine of not more than \$50,000 or imprisonment in state prison or both. Any person that willfully fails to file any return or supply information with intent to evade any tax can, upon conviction, be punished by imprisonment in the county jail not to exceed one year, or in the state prison or by a fine of not more than \$20,000 or by both the fine and imprisonment. Any person that commits certain fraudulent acts related to obtaining or negotiating a tax refund can, upon conviction, be punished by imprisonment in the county jail not to exceed one year, or in the state prison, or by a fine of not to exceed \$50,000, or both the fine and imprisonment.

Program Background

Franchise Tax Board (FTB) refers investigation cases involving tax fraud to the local District Attorney (DA) for prosecution and assists in criminal prosecutions handled by the DAs for medical program fraud, elder abuse, grand theft, embezzlement, and other crimes. Tax charges are often added to such cases by the DA because evidence supporting the tax crimes is relatively straightforward to establish.

THIS BILL

This bill would clarify that the white collar crime enhancement provisions apply to cases where the felony acts result in the loss by another person or entity of more than \$100,000.

IMPLEMENTATION CONSIDERATIONS

Implementing the provisions of this bill would not significantly impact the department's operations or programs because it would clarify existing sanctions for tax fraud cases.

FISCAL IMPACT

This bill would not impact department costs.

ECONOMIC IMPACT

The provisions of this bill would not impact state income tax revenues.

LEGISLATIVE STAFF CONTACT

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