

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Anderson Analyst: Deborah Barrett Bill Number: AB 1360

Related Bills: See Legislative History Telephone: 845-4301 Amended Date: March 29, 2007

Attorney: Tommy Leung Sponsor: _____

SUBJECT: FTB Postmark Notices of Proposed Deficiency Assessment Mailed To Taxpayers After January 1, 2008

SUMMARY

This bill would require the Franchise Tax Board (FTB) to postmark certain notices mailed to taxpayers.

SUMMARY OF AMENDMENTS

The March 29, 2007, amendments removed intent language and replaced it with the requirement for FTB to postmark Notices of Proposal Deficiency Assessment (NPAs) and final deficiency notices issued after January 1, 2008. This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to ensure that taxpayers do not experience any delays in receiving an NPA that carries consequences if taxpayers do not take action within a prescribed time

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2008, and specifically operative for all NPAs and final deficiency notices issued on or after that date.

POSITION

Pending.

Board Position:

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Department Director

Date

Selvi Stanislaus

4/17/07

ANALYSIS

FEDERAL/STATE LAW

Under federal law, the U.S. Postal Service (USPS) requires that all senders of first class mail affix sufficient postage on each envelope submitted for mailing at a rate determined by the USPS. For senders that utilize metered mail machines, the USPS has established criteria for use of the machine that includes postmarks containing the date of mailing and the proper amount of postage. Generally, mail postmarked with a given date by a metered mail machine must be mailed on that date.

FTB examines selected returns to determine the correct amount of tax. If FTB determines that the amount of tax reported on the return is less than the tax determined after examination, FTB is required to mail an NPA to the taxpayer. A taxpayer may file a protest of the NPA within 60 days after the NPA was mailed. The NPA is required to identify the last day the taxpayer may file a written protest, although failure to include this date does not invalidate a notice. Unless a protest is filed, the NPA becomes final upon expiration of the 60-day period. Once the NPA is final, FTB is required to send the taxpayer a notice and demand for payment of the assessment. The assessment is due and payable at the expiration of 15 days from the date on the notice and demand.

THIS BILL

This bill would require that NPAs and final deficiency notices issued by FTB be postmarked for all notices issued on or after January 1, 2008.

IMPLEMENTATION CONSIDERATIONS

The bill does not define the term "postmark" namely specifics of what information would comprise a valid postmark. It is recommended that a definition be supplied to ensure that current and future department practice remains consistent with the author's intent.

It is unclear whether it is the intent of the bill that FTB place a postmark on the mailing envelope in addition to the USPS postmark or whether the mark is to be placed on the actual notice. If the intent is that the mark be added to the envelope, consideration should be given to possible USPS requirements or limitations.

LEGISLATIVE HISTORY

SB 94 (Chesbro, Stats 1999, CH. 931) was an FTB sponsored bill that requires the NPA to include the last day on which the taxpayer may file a written protest.

PROGRAM BACKGROUND

FTB utilizes metered mail machines to affix postage on the majority of the mail sent from the department, including NPAs and final deficiency notices. The postage affixed by the metered mail machine includes the date stamp. In some instances, a postage stamp may be used, but these notices are sent first class mail in a manner specified by the USPS. Generally, the postmark date is the same date as shown on the notice. In an instance where there are different dates on the postmark and the notice, the department uses the actual postmark date to determine the date by which the taxpayer must take action.

FISCAL IMPACT

This bill would not impact department costs because it is consistent with current department practice.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

LEGISLATIVE STAFF CONTACT

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