

SUMMARY ANALYSIS OF AMENDED BILL

Author: Eng Analyst: William Koch Bill Number: AB 1957
 Related Bills: See Prior Analysis Telephone: 845-4372 Amended Date: June 5, 2008
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Revise Income Tax Forms And Instructions To Allow A Person To Report & Pay Qualified Use Tax-Operative For Returns Filed For Taxable Years Beginning On And After January 1, 2009

____ 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/amended _____.

____ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED

X March 25, 2008, STILL APPLIES.

X OTHER – See comments below.

SUMMARY

This bill would require taxpayers that fail to report and remit a use tax obligation directly to the State Board of Equalization (BOE) to report and remit the use tax obligation with the state income tax return, which is currently an option.

This analysis addresses only the provisions of the bill that impact the Franchise Tax Board (FTB).

SUMMARY OF AMENDMENTS

The June 5, 2008, amendments would limit the option of using the use tax table proposed by this bill to nonbusiness purchases of less than \$1,000. The amendments also made nonsubstantive technical changes and resolved the technical concern addressed in the department's previous analysis of the bill as amended March 25, 2008.

Except for the Summary of Suggested Amendments, This Bill, and Fiscal Impact sections, the remainder of department's analysis of this bill as amended March 25, 2008, still applies. The implementation considerations previously identified remain unresolved and are included below for convenience.

Board Position:	Legislative Director	Date
_____ S _____ NA _____ NP _____ SA _____ O _____ NAR _____ N _____ OUA <u>X</u> PENDING	Brian Putler	6/10/08

Summary of Suggested Amendments

Amendment 1 is provided to suggest appropriation language to fund the department's costs to implement this bill.

ANALYSIS

THIS BILL

In the case where an individual, estate, trust, or business entity fails to report and pay use tax directly to BOE, this bill would eliminate the current election to report and pay use tax on the state income tax return and would instead make it a requirement.

In addition, this bill would require FTB to include a use tax table with the department's income tax forms instructions. The use tax table would indicate an estimate of the use tax due based on the California taxable income of taxpayers who owe use tax for individual, nonbusiness purchases of less than \$1,000. Taxpayers would have the option of either paying the actual amount of use tax due or, with respect to individual, nonbusiness purchases of less than \$1,000, referring to the use tax table to estimate the amount of use tax due.

Under this bill, administrative functions regarding use tax would remain divided between FTB and BOE. FTB would process and collect use tax voluntarily reported on and paid with income tax returns, while BOE would retain responsibilities for auditing, collecting, and processing claims for refund of use tax.

IMPLEMENTATION CONSIDERATIONS

This bill does not specify the methodology to prepare the use tax table FTB would be required to include in the tax forms instructions. Department staff anticipates the BOE would provide the use tax table for inclusion in the income tax forms instructions, however, this bill does not indicate the BOE would be required to do so.

Since this bill is silent regarding the methodology to create the use tax table, this bill may require either FTB and/or BOE to be subject to the Administrative Procedures Act (APA) in creating the use tax table. Furthermore, since the bill lacks any statutory guidance about specifically how taxable income is to be used in creating the use tax table and the bill does not provide either FTB or BOE with a statutory delegation of rulemaking authority to make this determination, it is unclear whether either FTB or BOE would be able to adopt an enforceable interpretative regulation creating the use tax table.

The author may wish to amend this bill to include language to specify the correlation between California taxable income and the estimate of use tax due, and also provide either FTB or BOE with a specific delegation of rulemaking authority to create the use tax table.

FISCAL IMPACT

This bill would require a use tax table in all tax form booklets. As a result, this bill would increase the department's printing costs for tax returns. FTB estimates increased annual costs to be \$172,094. It is recommended that the bill be amended to include appropriation language that would provide funding to implement this bill. Lack of an appropriation will require the department to secure the funding through the normal budgetary process and could delay implementation of this bill.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1957
As Amended June 5, 2008

AMENDMENT 1

On page 7, after line 4, insert:

SEC. 5: The sum of one hundred seventy two thousand, ninety four dollars (\$172,094) is hereby appropriated to the Franchise Tax Board in augmentation of item 1730-001-0001 of the Governor's Budget, Chapter XX, Statutes of XXXX.