

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: Walters Analyst: Anne Mazur Bill Number: AB 561

Related Bills: See Prior Analysis Telephone: 845-5404 Amended Date: April 9, 2007

Attorney: Douglas Powers Sponsor: Franchise Tax Board (FTB)

**SUBJECT:** Amnesty Relief

       DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced February 21, 2007.

       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 \_\_\_\_\_.

  X   REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 21, 2007, STILL APPLIES.

  X   OTHER – See comments below.

**SUMMARY**

This bill would provide relief to certain taxpayers with respect to the 2005 income and franchise tax amnesty as follows:

1. Allow taxpayers to request Chief Counsel review for relief from the amnesty penalty if certain criteria are met.
2. Convert the existing post-amnesty penalty to additional interest for liabilities that become final after the end of amnesty.
3. Eliminate the amnesty penalty on balance due amounts that are generated as a result of a post-amnesty change in interpretation or application of law.
4. Change the rate of interest for corporate taxpayers that filed protective claims in lieu of participating in amnesty so that any overpayment would bear the same interest rate imposed on underpayments.
5. Eliminate all or a portion of the amnesty penalty for taxpayers that made protective claim payments for anticipated additional post-amnesty tax liabilities.

Board Position:	Legislative Director	Date
<u>  X  </u> S	Brian Putler	4/12/07
NA		
SA		
N		
NP		
O		
NAR		
OUA		
PENDING		

## **SUMMARY OF AMENDMENTS**

The April 9, 2007, amendments made the following changes:

- Added an exception to the normal statute of limitations for filing a claim for refund that would allow certain taxpayers to seek amnesty penalty relief under the provisions of the bill.
- Made various technical changes to correct grammar, references, and other nonsubstantive errors identified in the bill as introduced February 21, 2007.

Except as noted, the analysis of this bill as introduced February 21, 2007, still applies. A policy concern in that analysis—some taxpayers that were already assessed and paid the amnesty penalty may be time barred from seeking the relief intended by this bill—is addressed by the April 9, 2007, amendments and, therefore, no longer applies. An analysis of the amendment is provided below. The Summary of Economic Impact included in the analysis of this bill as introduced on February 21, 2007, provided below for convenience, would not change as a result of this amendment. As explained in the Economic Impact section of this analysis, the revenue impact of this amendment would be insignificant.

## **POSITION**

Support.

On September 7, 2005, and December 7, 2005, the Franchise Tax Board voted 2-0, with the Director of Finance abstaining, to sponsor the provisions of the bill described in the Summary section of this analysis as provision numbers 1, 2, 3, 4, and 5.

## **Summary of Suggested Amendments**

A technical amendment is provided as an attachment to correct an incorrect phrase.

**SUMMARY OF ECONOMIC IMPACT**

Estimated Revenue Impact of AB 561 Assumes Enactment After June 30, 2007 (\$ in Millions)				
	2006/07	2007/08	2008/09	2009/10
Chief Counsel Relief of the Amnesty Penalty				
Reduction in penalties	– \$6	– \$6	– \$2	a/
Return of Protective Claims and Future Revenue Offsets	– \$50	+ \$25	+ \$15	+ \$10
Convert Post-Amnesty Penalty to Additional Interest	– \$1	b/	b/	b/
Amnesty Penalty Exclusion For Post-Amnesty Interpretation of Law	c/			
Interest Rate on Corporation Overpayments Same as Underpayments	– \$28	– \$16	– \$9	– \$8
Post-Amnesty Penalty Relief For Taxpayers That Made Protective Claim Payments	– \$9	– \$1	a/	a/
Adjustments for Interaction of Provisions <sup>1</sup>	+ \$25	– \$11	– \$7	– \$5
<b>Total Revenue Impact of this Bill</b>	<b>– \$69</b>	<b>– \$9</b>	<b>– \$3</b>	<b>– \$3</b>

a/ A loss less than \$500,000.

b/ A loss less than \$150,000.

c/ It cannot be predicted which, if any, laws or regulations will be re-interpreted in the future. Consequently, no revenue effect can be assigned to this proposal.

This estimate does not consider the possible changes in employment, personal income, or gross state product that would result from this bill.

<sup>1</sup> The revenue impact of each of the provisions included in this bill was estimated as if each were enacted independent of any other provision; however, if enacted together, the provisions interact with one another and impact the revenue estimate for the bill as a whole. For example, the provision that would permit Chief Counsel relief of the amnesty penalty interacts with both the provision that would increase the interest rate on corporate overpayments and the provision that would provide relief for taxpayers that made protective claim payments.

## **ANALYSIS**

### **BACKGROUND**

Some taxpayers that already paid any assessments of the amnesty penalty may be time barred from requesting relief in the form of a claim for refund. Generally, a taxpayer may file a claim for refund no later than four years from the date of a timely filed tax return or one year from the date of overpayment. It is likely the four-year statute of limitations will have expired for amnesty years—which were limited to taxable years beginning before January 1, 2003—by the presumed effective date of this bill. For some taxpayers, depending on the date they paid the amnesty penalty, the one-year statute of limitations may also be expired. Therefore, such taxpayers would be unable to seek the remedy intended by the relief provisions.

### **THIS PROVISION**

This amendment would permit an exception to the normal statute of limitations for filing a claim for refund to allow taxpayers that, but for expiration of the statute of limitations, would be eligible for a refund of all or a portion of the amnesty penalty under one or more of the relief provisions of the bill. Application of this exception would be limited to the provisions of the bill that would operate retroactively, identified above as provision numbers 1, 3, and 5 in the Summary section of this analysis.

### **IMPLEMENTATION CONSIDERATIONS**

This provision would not significantly impact the programs administered by the department. The number of taxpayers that would seek relief as a result of this provision is unknown, but is expected to be relatively small.

### **FISCAL IMPACT**

This provision would not materially impact the department's costs described in the analysis of the bill as introduced February 21, 2007.

### **ECONOMIC IMPACT**

As of January 2007, departmental data indicate amnesty penalties totaling \$1.67 billion have been assessed. Of this total, \$75 million has been paid. For taxpayers that have paid the amnesty penalty, it is not known how many, if any, would be eligible for a refund of all or a portion of the amnesty penalty under one or more of relief provisions of this bill. Additionally, it is not known how many eligible taxpayers would initiate a claim for refund. Although it is not possible to quantify a revenue impact of an exception to the statute of limitations, any potential impact would most likely be insignificant and fall within the rounding error of current estimates. This would result in no change to estimates for the bill as introduced and indicated in the table above. As this bill would provide a window of opportunity for a period of only one year, potential refunds would occur during fiscal years 2007/2008 and 2008/2009.

### **LEGISLATIVE STAFF CONTACT**

Anne Mazur  
Franchise Tax Board  
(916) 845-5404  
[anne.mazur@ftb.ca.gov](mailto:anne.mazur@ftb.ca.gov)

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

Analyst	Anne Mazur
Telephone #	916-854-5404
Attorney	Douglas Powers

FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 561  
As Amended April 9, 2007

AMENDMENT 1

On Page 8, line 9, ~~strikeout~~ "amending" and insert:

adding