

# BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
<b>Franchise Tax Board</b>	<b>Revenue and Taxation Committee</b>	<b>SB 1043</b>

## SUBJECT

Confidentiality of Settlement Negotiations

## SUMMARY

This Franchise Tax Board (FTB) sponsored bill would exclude evidence of settlement negotiations in all administrative civil tax dispute forums in California.

## PURPOSE OF BILL

The purpose of this FTB-sponsored bill is to eliminate the concern that statements made during settlement negotiations by either taxpayers or FTB staff may be used by one party against the other in subsequent administrative proceedings, which would make the settlement process less effective.

## EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2008, and by its terms would be operative to all settlement negotiations entered into on or after the date of enactment without regard to taxable years.

## ANALYSIS

### FEDERAL/STATE LAW

#### Current Federal Law

Under Rule 408 of the federal Rules of Evidence, an offer of compromise or an attempt to compromise a disputed claim is not admissible to prove liability for or invalidity of the claim or its amount. In addition, federal law prohibits a party in an alternative dispute resolution proceeding from disclosing any dispute resolution communication (5 USC § 574).

#### Current State Law

Under Evidence Code section 1152, settlement offers and offers of compromise made by a party in a civil lawsuit are inadmissible in court proceedings to prove such party's liability for loss or damage. Similarly, under Government Code section 11415.60, settlements, settlement offers, and statements made in settlement negotiations between an "agency" and a party are inadmissible in any adjudicative proceeding or civil action to prove liability, except to the extent provided in Evidence Code section 1152; however, appeals heard by the State Board of Equalization are exempt from these provisions of the Administrative Procedure Act.

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## THIS BILL

This FTB-sponsored bill would add a specific provision to the Revenue and Taxation Code prohibiting the admissibility of either any settlement offers or any statements or conduct made in pursuit of settlement from being used as evidence in any subsequent adjudicative proceeding.

This bill would apply to settlement negotiations entered into on or after the date of enactment.

## **PROGRAM BACKGROUND**

Legislation was adopted in 1992 specifically authorizing FTB to settle administrative civil tax disputes. The program is voluntary. Successful settlement negotiations eliminate the hazards and risks of further litigation, which is a benefit to both the taxpayer and the state. The settlement program has collected in excess of \$8.69 billion dollars since its inception. To ensure the continued success of the program, it is necessary to follow the longstanding public policy in California favoring laws excluding any aspect of settlement negotiations as evidence in subsequent adjudicative proceedings.

## **OTHER STATES' INFORMATION**

Because laws excluding settlement negotiations as evidence in subsequent adjudicative proceedings are a matter of longstanding evidence law in California, a comparison of tax adjudication laws of other states would have little relevance.

## **FISCAL IMPACT**

No departmental costs are associated with this proposal.

## **ECONOMIC IMPACT**

This bill would not impact the state's income tax revenue.

## **VOTES**

Assembly Floor – Ayes: 76 , Noes: 0

Senate Floor – Ayes: 39 , Noes: 0

Concurrence – Ayes: 39 , Noes: 0

## **LEGISLATIVE STAFF CONTACT**

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