

SUMMARY ANALYSIS OF AMENDED BILL

Author: Block Analyst: Gail Hall Bill Number: AB 1178
 Related Bills: See Prior Analyses Telephone: 845-6111 Amended Date: January 13, 2010
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Water's-Edge Election/Include Income Derived From Or Attributed To A Tax Haven

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 January 6, 2010, STILL APPLIES.

OTHER – See comments below.

SUMMARY

This bill would require multinational corporations that elect to file tax returns based only on income earned inside the U.S., known as the water's-edge method, to include the income of related corporations doing business in or had income derived from or attributable to a tax haven country.

This analysis will not address the bill's sales and use tax provision added by the January 4, 2010, amendments, as it does not impact the department or state income tax revenue.

SUMMARY OF AMENDMENTS

The January 13, 2010, amendments result in the following changes to the provisions of the bill relating to Corporation Tax Law:

- Resolved Implementation Considerations No. 1, 2, and 4 discussed in the department's analysis of the bill as amended January 6, 2010.
- Created a new Technical Consideration.
- Revised the definition of a tax haven.

Board Position:	Legislative Director	Date
<input type="checkbox"/> S <input type="checkbox"/> NA <input type="checkbox"/> NP <input type="checkbox"/> SA <input type="checkbox"/> O <input type="checkbox"/> NAR <input type="checkbox"/> N <input type="checkbox"/> OUA <input checked="" type="checkbox"/> PENDING	Brian Putler	01/15/10

Except for the This Provision, Background, and Technical Consideration discussions, the remainder of the department's analysis of the bill as amended January 4th and 6th, 2010, still applies. The unresolved Implementation Consideration has been included in this analysis for convenience.

POSITION

Pending.

ANALYSIS

THIS PROVISION

This provision would amend the version of Revenue & Taxation Code section 25110 added by SB 663 (Migden, Stats. 2006, Ch. 22).

This provision would include in a water's-edge taxpayer's return the entire income and apportionment factors of any corporation that was doing business in or had income derived from or attributable to a tax haven.

The term "tax haven" would be defined by reference to jurisdictions identified in Table 1 of Appendix I to the December 2008 Report of the United States Government Accountability Office on International Taxation (GAO-09-157) as a jurisdiction for which a United States District Court order granted leave for the federal Internal Revenue Service to serve a "John Doe" summons.

This provision would allow a taxpayer to petition the Franchise Tax Board (FTB) to exclude the income and apportionment factors of a corporation doing business in a tax haven jurisdiction from the water's-edge return if that corporation is engaged in the active conduct of a trade or business in the tax haven¹.

In addition, this provision would provide the following:

- Authorize the FTB to prescribe regulations necessary or appropriate to carry out the purposes of this bill, including regulations prescribing the extent to which activities in a tax haven jurisdiction are presumed to be from the active conduct of a trade or business in the tax haven.
- Require the FTB to issue a notice identifying the jurisdictions that are considered tax havens.
- Require the Legislative Analyst, in consultation with the FTB, to conduct a study regarding the jurisdictions identified by the United States Government Accountability Office as a jurisdiction for which a United States District Court order granted leave for the federal Internal Revenue Service to serve a "John Doe" summons and report to the Legislature no later than January 1, 2012, about whether the definition of the term "tax haven" should be revised.

¹ Within the meaning of Section 367(a)(3)(A) of the Internal Revenue Code and the regulations thereunder.

BACKGROUND

The revised definition of a tax haven discussed in the “This Provision” section above refers to a listing that was published by the United States Governmental Accounting Office on International Taxation in December 2008.² The new definition uses the third column of this listing labeled “U.S. District Court order granting leave for IRS to serve a ‘John Doe’ summons,” which is described, beginning on page 11 of the report, as a list of jurisdictions that are recognized as offshore tax haven or financial privacy jurisdictions by industry analysts and are actively promoted as such by promoters of offshore schemes.

The following countries are listed in the column labeled “U.S. District Court order granting leave for IRS to serve a ‘John Doe’ summons”: Anguilla, Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Costa Rica, Cyprus, Dominica, Gibraltar, Grenada, Guernsey, Hong Kong, Isle of Man, Jersey, Latvia, Liechtenstein, Luxembourg, Malta, Nauru, Netherlands Antilles, Panama, Samoa, Singapore, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Switzerland, Turks and Caicos Islands, and Vanuatu.

IMPLEMENTATION CONSIDERATION

The department has identified the following implementation concern. Department staff is available to work with the author’s office to resolve this and other concerns that may be identified.

The bill would allow a taxpayer to petition the FTB to exclude from the water’s-edge return the income and apportionment factors of a corporation doing business in a tax haven if that corporation’s activities in a tax haven jurisdiction constitute an active trade or business. The author should consider adding that the petition would be in a form and manner determined by the FTB.

TECHNICAL CONSIDERATIONS

The January 13, 2010, amendments provide a definition for “doing business in a tax haven,” but this term is not used in the bill language. It is suggested that “in a tax haven” be deleted from this term.

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² <http://www.gao.gov/new.items/d09157.pdf>