

SUMMARY ANALYSIS OF AMENDED BILL

Author: Ma Analyst: Deborah Barrett Bill Number: AB 129
 Related Bills: See Prior Analysis Telephone: 845-4301 Amended Date: August 27, 2009
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Confidentiality/Taxpayer Communications

- 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 INTRODUCED/AMENDED May 4, 2009, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This bill would provide a taxpayer the same protections of confidentiality with respect to the tax advice given by any “federally authorized tax practitioner” as the taxpayer would have if the advising individual were an attorney for any noncriminal matter before the Franchise Tax Board (FTB) or the State Board of Equalization (BOE).

This bill would also provide similar protections for a taxpayer before the BOE and the Employment Development Department that do not impact the department and are not discussed in this analysis.

SUMMARY OF AMENDMENTS

The August 27, 2009, amendments would add double jointing language specifying that if SB 401 (Wolk, 2009) is enacted amending Revenue and Taxation Code Section 19777 to provide a new definition of abusive tax avoidance transactions, then that definition would apply for communications exempt from the confidentiality privilege. If SB 401 is not enacted, the definition of tax shelters as provided in IRC 6662 would apply to those communications exempt from the privilege. The “Effective/Operative Date,” “This Bill,” “Technical Consideration,” and “Economic Impact” discussions are revised. The remainder of the department’s analysis of the bill as amended May 4, 2009, still applies.

Board Position:	Legislative Director	Date
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<input type="checkbox"/> SA	Brian Putler	09/02/09
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EFFECTIVE/OPERATIVE DATE

Because this bill is an urgency statute, the bill's provisions would be effective immediately and specifically operative for communications between a taxpayer and the tax practitioner that occur on or after the date of enactment. The bill also provides that if SB 401 (Wolk, 2009) and this bill are enacted and become effective on or before January 1, 2010, then the provisions of this bill would remain operative until the operative date of SB 401, at which time the definition as provided in SB 401 of an abusive tax avoidance transaction would become operative.

POSITION

Pending.

THIS BILL

This bill would reinstate the provisions protecting the confidentiality of communications between a taxpayer and a federally authorized tax practitioner that were repealed January 1, 2009, and would make those provisions permanent. Specifically, this bill would provide that the privileged communications afforded between a client and an attorney would apply to communications regarding tax advice, with certain limits discussed below, between a taxpayer and any federally authorized tax practitioner to the extent that the communication would be considered a privileged communication if it were between a client and an attorney.

The bill would provide that a federally authorized practitioner has the legal obligation and duty to maintain confidentiality with respect to communications with the taxpayer.

The bill's provisions would only apply in any noncriminal tax matter before FTB and would not be applicable to written communications between the tax practitioner and person in connection with promotion of the direct or indirect participation in any tax shelter as defined. The bill would define tax shelters to mean a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of state income or franchise tax.

The bill specifies that if this bill and SB 401 are both enacted and effective on or before January 1, 2010, the definition for abusive tax avoidance transaction amended into the Revenue and Taxation Code by SB 401 would apply to those communications that are excluded from the privilege provided in this bill.

The bill also would provide definitions for the terms "federally authorized tax practitioner" and "tax advice".

The bill is specifically operative for communications made on or after the effective date of the act adding the bill's provisions.

TECHNICAL CONSIDERATION

The language of subdivision (c) of 21028, as added by Sec. 2.5 of the bill, and the language of Sec. 4 of the bill provide conflicting operative dates. Sec. 2.5 provides that if both SB 401 and this bill are enacted, Sec. 2 is operative until the operative date of SB 401 (1/1/2010). However, subdivision (c) of 21028, as added by Sec. 2.5 provides the amendments are operative with respect to communications on or after the effective date of the act amending the section, which would be immediately due to the urgency language in the bill. The language of 21028(c), as amended by Sec. 2.5, should be revised to refer to communications on or after January 1, 2010.

ECONOMIC IMPACT

Because the August 27, 2009, amendments would provide a consistent definition of tax shelter if SB 401 (Wolk, 2009) is enacted, the provisions of this bill would not impact state income tax revenues.

LEGISLATIVE STAFF CONTACT

Legislative Analyst

Deborah Barrett

(916) 845-4301

deborah.barrett@ftb.ca.gov

Revenue Director

Jay Chamberlain

(916) 845-3375

jay.chamberlain@ftb.ca.gov

Legislative Director

Brian Putler

(916) 845-6333

brian.Putler@ftb.ca.gov