Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author: Evans
Analyst: Jahna Alvarado
Bill Number: AB 1342

Related Bills: See Prior Analysis
Telephone: 845-4301
Amended Date: January 4, 2010

Attorney: Patrick Kusiak
Sponsor:

SUBJECT: FTB Administer County Income Tax

_____ 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 _________________________ STILL APPLIES.

X OTHER – See comments below.

SUMMARY

This bill would authorize the board of supervisors of any county, or city and county (hereinafter "county"), to place on a ballot by ordinance, subject to voter approval, either provisions to impose a county income tax to be assessed and collected by Franchise Tax Board (FTB) or provisions to impose a vehicle license fee (VLF) administered by the Department of Motor Vehicles (DMV), or both.

SUMMARY OF AMENDMENTS

The January 4, 2010, amendments would do the following:

- Repeal existing prohibitions against counties assessing a tax on income of any person;
- Establish that the county income tax would be treated as though it were assessed under the state income tax statutes;
- Require the FTB to contract with counties to administer any income tax approved by voters, including provisions requiring the county to reimburse the FTB for refunds, losses and costs; and
- Establish that all funds collected are sent to the Treasury for allocation by the Controller to the county.

Board Position:			Asst. Legislative Director	Date
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_______ N	_______ OUA	X PENDING		

The Fiscal Impact discussion is repeated below for convenience. The Effective/Operative Date, This Bill, Implementation Considerations, and Revenue Impact discussions are revised. The remainder of the department's analysis of the bill as amended April 13, 2009, still applies.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2011, and as specified by its terms, would be operative for taxable years beginning on January 1 of the calendar year following voter approval, conditioned on the county elections officials providing notice by September 30 of the preceding year of the passage of the ordinance.

POSITION

Pending.

THIS BILL

In addition to any other tax authority granted under law, this bill would authorize the board of supervisors of any county to, by ordinance, place on a ballot either or both of the following:

1. A local personal income tax on county residents that would be administered by the FTB.
2. A local license fee on any vehicle of a type that is subject to registration under the Vehicle Code.

The bill would authorize the county income tax with the following provisions:

- The bill would allow an additional tax to be imposed on the taxable income of a county resident at the rate approved by the voters of that county. The tax imposed by this bill would be treated as though it were imposed under the same statutes as a state income tax.

- The amounts paid for local personal income tax may not be deducted from the taxpayer's income for purposes of the state income tax, and no state income tax credits would be applicable to reduce the taxes imposed.

- The bill would require the county to enter into an agreement with the FTB to perform all functions incident to the administration of the local personal income tax, which includes a provision that the county would reimburse the FTB for all refunds, losses, and costs incurred in the administration and operation of the local personal income tax.

- The bill would provide that a local ordinance authorized to impose a local personal income tax would become operative for taxable years beginning on or after January 1 of the first calendar year following approval by the voters of the county. The bill requires the county elections official to provide notice of the voter approval no later than September 30 of the preceding calendar year of the passage of the ordinance by voters.

- The bill would authorize the FTB to use any information sources or enforcement remedies available to the county in addition to the information sources and remedies available to the FTB for administering the state income tax.

The bill would authorize the FTB to adopt regulations as necessary to administer its provisions.

The bill would provide that amounts collected under its provisions are to be transmitted to the Treasury and deposited to the credit of the Local Personal Income Tax Account (Account) in the General Fund that would be created under the bill's provisions. The moneys in the Account would be continuously appropriated, regardless of fiscal year, to the Controller for allocation to each county that enacts the tax.

The provisions of the bill related to imposing the VLF would be subject to the following requirements:

- The local license fee shall be assessed and collected in the same manner as the VLF assessed and collected under the Vehicle License Fee Law.
- The local license fee shall be administered by the DMV.
- The DMV would transmit all revenues, less costs of administration and refunds, to the county in which the tax is imposed.

IMPLEMENTATION CONSIDERATIONS

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

The bill would make the operative date of the bill for taxable years beginning on or after January 1 of the first calendar year following approval by the voters, conditioned on the county elections official providing notice no later than September 30 of the preceding year. The bill is silent regarding who is to receive notice from the county. It is recommended that the author specify that notice of a voter approved county income tax would be required to be provided to the FTB.

Additionally, because the bill does not provide an exception to the Administrative Procedures Act requirements, the operative date specified in the bill does not provide adequate time for the FTB to adopt regulations on all facets of administering and collecting a county income tax. It is recommended that the operative date be revised to be January 1 of the second calendar year after the enactment of the ordinance by voters to provide adequate time to complete the regulatory process.

The bill reimbursement structure would require the FTB to borrow funds from the General Fund programs it administers to implement and maintain the county income tax programs until the county can reimburse those amounts at a later date. The FTB lacks sufficient resources to fund the county program for any period without putting at risk the core mission of state income tax administration. It is recommended that, consistent with the process in place between the Board of Equalization and local entities for local sales tax administration, the amounts transferred to the county be a net amount of funds collected reduced by the amount of costs, refunds, adjustments, or losses incurred by the FTB in administering the county income tax.

Additionally, while the bill would provide reimbursement to the department for costs incurred to implement and maintain its provisions, recent budget adjustments have impacted the department's ability to perform the work necessary to implement this bill. Even with reimbursement, additional position authority would be necessary to implement the bill without adversely impacting the department's existing General Fund revenue generating workload priorities.

Tax officials of political subdivisions of the State may obtain tax information from the FTB only upon affidavit. At the time the tax official requests the tax information, they must provide a copy of the affidavit to the taxpayer whose information is sought, and upon request, make the obtained information available to that person. If the author intends that the county tax officials receive information through a different process, express authorization for the FTB to provide information relative to the county income tax reported, paid, or collected would need to be authorized under the bill.

The bill lacks administrative details that must be determined to implement the bill and determine its impacts to the department's systems, forms, and processes. The bill is silent on the following issues:

- Payment priority between state income tax and use tax reported on the return, which are both sources of General Fund revenues, and the county income tax.
- How would taxpayers filing jointly that do not both reside in the county that has imposed the income tax calculate the county tax?
- Because of California residents' mobility, how would residency in a county be determined?
- Would withholding of amounts estimated to cover the county income tax be required? Would estimate payments be required? Would revisions to the Unemployment Insurance Code and withholding table requirements be needed?
- Because the county of residence is unknown, how would non-filer enforcement efforts be applied?
- May the counties enact their own credits? Could the tax enacted be progressive or is it required to be a flat rate?

It is recommended that the bill specify these conditions so that there is no confusion as to the author's intensions.

The FTB lacks the resources to identify taxpayers by county of residence and would need to rely on taxpayers self declaring their residency on their state income tax return. In cases where a taxpayer is subject to a county income tax and fails to file a state income tax return, the department lacks the data to identify the county of residence with certainty because most income data received by the department reflects the taxpayer's mailing address, which may not be in the same county as the taxpayer's county of residence. Calculating an estimated county income tax liability based on a taxpayer's "last known address" could result in inaccurate amounts being remitted to the affected counties.

Because not all counties would enact a county income tax immediately, the first county to enact the tax would incur the entire cost for implementation while counties that enact the tax at a later date would not be charged the startup costs paid by the earlier enacting county. To prevent disputes between the county and the department, it is recommended that the author specify how costs should be allocated among the counties that enact a county income tax.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved but are anticipated to be significant. Fiscal impact will be developed as the bill moves through the legislative process.

ECONOMIC IMPACT

The revenue impact of this bill would be determined by the amount of additional VLFs deducted on tax returns and the tax rates of taxpayers deriving a tax deduction benefit.

For purposes of this estimate, it is assumed that all counties would impose a VLF fee on July 1, 2011. Based on this assumption, the proposed local fee would be allowed as a deduction for tax year 2011. Therefore, fiscal year 2011/12 would be the first year of General Fund revenue losses. This bill is silent on the VLF percentage counties could impose on taxpayers. Assuming the additional assessment ranges from 1 percent to 10 percent, the revenue loss would range from the hundreds of millions to over one billion dollars annually.

POLICY CONCERNS

This bill could create a new population of filers that do not have a State personal income tax liability but must report the county income tax on the state return, potentially inundating the department with returns, and increasing administrative costs significantly with little or no resulting State revenue. It is recommended that the filing threshold for the county income tax be identified in the language of the bill to account for personal exemption credits to prevent unnecessary filing.

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