Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	AR&T Committee	Analyst:	William Koch	Bill Number:	AB 1546
Related Bills:	See Prior Analysis	Telephone:	845-4372	Amended Date:	June 30, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Limited Partnership Revival-Account Fees, Tax Returns, And Expedited Service Fees/ Estimated Tax Percentages-Annualized Income Installment Method/2009 Budget Bill Clean-Up

_____ 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 ____________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 14, 2009, STILL APPLIES.

__X__ OTHER – See comments below.

SUMMARY

This bill would do the following:

Provision No. 1: Require a canceled domestic limited partnership (LP) to pay outstanding fees, file missing tax returns, and pay a service fee for expedited revival requests, in addition to the current requirements to revive.

Provision No. 2: Clarify the estimated tax payment percentages used under the annualized income installment method.

Provision No. 3: Clean-up provisions from the recently enacted budget provisions in ABX3 3 (Evans, Stats. 2009, Third Extraordinary Session, Ch. 18) and SBX3 15 (Calderon, Stats. 2009, Third Extraordinary Session, Ch. 17). Specifically, this provision would:

A. Clarify the application of wage withholding toward estimated tax requirements,

B. Clarify the operative date for the dependent exemption credit,

C. Correct cross referencing errors for the underpayment of estimated tax penalty, and

D. Clarify the operative date and correct a cross referencing error in the apportionment factor.

Board Position:			Legislative Director	Date
_______ S	_______ NA	_______ NP		
_______ SA	_______ O	_______ NAR	Brian Putler	7/7/09
_______ N	_______ OUA	___X__ PENDING		

SUMMARY OF AMENDMENTS

The provisions of this bill affecting LPs and estimated tax payment percentages used under the annualized income installment method are unchanged by the June 30, 2009, amendments.

The June 30, 2009, amendments added language that was amended out of AB 1580 (Assembly Committee on Revenue & Taxation 2009/2010), that would do the following:

A. Clarify the application of wage withholding toward estimated tax requirements,
B. Clarify the operative date for the dependent exemption credit,
C. Correct cross referencing errors for the underpayment of estimated tax penalty,
D. Clarify the operative date and correct a cross referencing error in the apportionment factor.

The department's analyses of this bill as introduced March 5, 2009, relating to LPs, and as amended on May 14, 2009, relating to estimated tax payment percentages used under the annualized income installment method, still apply.

ECONOMIC IMPACT –SUMMARY REVENUE TABLE

Estimated Revenue Impact of AB 1546 Enactment Assumed After June 30, 2009				
	2009-10	2010-11	2011-12	2012-13
Provision No. 1: Limited Partnership Revival	+<$1,000	+$1,000	+$1,000	+$1,000
Provision No. 2: Annualized Income Installment Method	+$60 Million	+$12 Million	+$2 Million	+$8 Million
*Provision No. 3:	0	0	0	0
Total	**$60,001,000**	**$12,001,000**	**$2,001,000**	**$8,001,000**

*Provision No. 3, relating to the application of wage withholding, the dependent exemption credit, the underpayment of estimate tax penalty, and the apportionment factor would have no impact on revenue.

EFFECTIVE/OPERATIVE DATE

Provision 3A: **Dependent Exemption Credit**

The dependent exemption credit provision would be effective and operative on January 1, 2010.

Provision 3B: **Wage Withholding - Estimated Tax Payments**

The wage withholding provision would be effective on January 1, 2010, and specifically operative for amounts withheld on wages beginning on or after January 1, 2009.

Provision 3C: **Underpayment of Estimated Tax Penalty**

The underpayment penalty provision would be effective and operative on January 1, 2010.

Provision 3D: **Apportionment Factor**

The apportionment factor provision would be effective and operative on January 1, 2010.

POSITION

Pending.

ANALYSIS

PROVISION 3A: Dependent Exemption Credit

STATE LAW

Recently enacted state tax law, ABX3 3 (Evans, Stats. 2009, Third Extraordinary Session, Ch. 18), reduces the dependent exemption credit from $309 to $99 for taxable years 2009 and 2010.

THIS PROVISION

This provision would clarify that the reduction in the dependent exemption credit would cease to be operative for taxable years beginning on or after January 1, 2011, unless the Director of Finance notifies Franchise Tax Board (FTB) of the result of the statewide election held during the 2009 calendar year, then the credit would cease to be operative on January 1, 2013.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would have no impact to the department.

FISCAL IMPACT

This provision would have no impact to the department.

ECONOMIC IMPACT

This provision would clarify existing law and would have no revenue impact.

PROVISION 3B: Wage Withholding - Estimated Tax Payments

STATE LAW

In general, prior California law required individual and corporate taxpayers to remit four estimated tax payments each equal to 25 percent of their required annual payment. Newly enacted state law, SBX1 28 (Senate Committee on Budget, Stats. 2008, First Extraordinary Session, Ch. 1), changed the required applicable percentages so that the estimated tax payments for taxable years beginning on or after January 1, 2009, is now 30 percent, 30 percent, 20 percent, and 20 percent for the 1st, 2nd, 3rd, and 4th quarter installments, respectively.

Current state law requires the "annual payment" for an individual to be the lesser of the following:

- Option 1: 90 percent of the tax shown on the return for the taxable year, or
- Option 2: 100 percent of the tax shown on the return for the preceding taxable year.

In addition, pre-existing state law requires the annual payment under option 2 to be increased from 100 percent to 110 percent of the tax shown on the return if the adjusted gross income (AGI) of the taxpayer for the preceding taxable year exceeds $150,000 ($75,000 in the case of a married individual filing a separate return). SBX1 28 (Senate Committee on Budget, Stats. 2008, First Extraordinary Session, Ch. 1) modified the options above to additionally provide that a taxpayer with AGI equal to or greater than $1 million ($500,000 in the case of a married individual filing a separate return) may not use option 2 for taxable years beginning on or after January 1, 2009.

Under existing state law and unchanged by SBX1 28 (Senate Committee on Budget, Stats. 2008, First Extraordinary Session, Ch. 1), the "annualized income installment method" allows a taxpayer to calculate the required estimated tax payment based on an estimate of income, deductions and credits attributable to each installment period.[1] The computation of estimated tax payments under the "annualized income installment method" requires the annualized tax due for each installment period to be multiplied by an increasing percentage of 22.5 percent, 45 percent, 67.5 percent, and 90 percent. The percentages used in the calculation equate to 25 percent, 50 percent, 75 percent, and 100 percent of the required annual payment under Option 1.

Under previously existing state law and not explicitly changed by recently enacted state law, wage withholding is equally applied 25 percent, 25 percent, 25 percent, and 25 percent as quarterly installments toward a taxpayer's required annual payment.

Generally, a taxpayer is subject to a penalty for any underpayment of estimated tax. The penalty is an amount equal to the underpayment rate multiplied by the amount of the underpayment. The underpayment rate is the same as the interest rate charged for tax delinquencies, currently 5 percent. The penalty is calculated by comparing the required amount for each estimated tax payment, determined under either the regular method (formerly 25 percent, 25 percent, 25 percent, 25 percent, now 30 percent, 30 percent, 20 percent, 20 percent) or the "annualized income installment method", with the amount paid by the due date of that installment.

[1] A taxpayer whose income fluctuates throughout the year may have a lower required installment using the "annualized income installment method".

THIS PROVISION

This provision would explicitly state that wage withholding would be applied toward a taxpayer's estimated tax payment obligation using the percentages from recently enacted law that are 30 percent-30 percent -20 percent -20 percent.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would occur during the department's normal annual update.

OTHER STATES INFORMATION

Because this provision would clarify existing California law, a comparison of other states is unnecessary.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

PROVISION 3C: Underpayment of Estimated Tax Penalty

Recently enacted state tax law, SBX3 15 (Calderon, Stats. 2009, Third Extraordinary Session, Ch. 17), provides that a penalty for the underpayment of an installment of estimated tax is not imposed if the underpayment was created or increased by the disallowance of the jobs tax credit[2] because the allocated credit limit had been exceeded.

THIS PROVISION

This provision would correct a cross-referencing error in the recently enacted budget trailer bills, ABX3 15 and SBX3 15.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would have no impact to the department.

FISCAL IMPACT

This provision would have no impact to the department.

ECONOMIC IMPACT

This provision would clarify existing law and would have no revenue impact.

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[2] R&TC 17053.80 and 23623- For taxable years beginning on or after January 1, 2009, allows a tax credit of $3,000 for each qualified full-time employee hired by a qualified employer above a baseline amount, determined on an annual full-time equivalent basis.

<u>Provision 3D</u>: Apportionment Factor

<u>STATE LAW</u>

For taxable years beginning on or after January 1, 1993, the apportionment formula for most taxpayers has been a three-factor apportionment formula consisting of property, payroll, and double-weighted sales (three-factor, single-weighted sales, for certain taxpayers).

For taxable years beginning on or after January 1, 2011, recently enacted state tax law, SBX3 15 (Calderon, Stats. 2009, Third Extraordinary Session, Ch. 17), allows certain apportioning trades or businesses to make an annual, irrevocable election to utilize a single factor, 100 percent sales (single sales factor) apportionment formula instead of the three-factor, double-weighted sales, apportionment formula.

<u>THIS PROVISION</u>

This provision would clarify that the single sales factor election may be made by an apportioning trade or business for taxable years beginning on or after January 1, 2011.

This provision would further clarify the effective date of the singles sales factor election by adding a cross reference to Section 25128.

This provision would also correct a cross-referencing error in the meaning of "gross business receipts."

<u>IMPLEMENTATION CONSIDERATIONS</u>

Implementing this provision would have no impact to the department.

FISCAL IMPACT

This provision would have no impact to the department.

<u>ECONOMIC IMPACT</u>

This provision would clarify existing law and would have no revenue impact.

LEGISLATIVE STAFF CONTACT

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