BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	AR&T Committee	AB 1546

SUBJECT

Limited Partnership Revival-Account Fees, Tax Returns, And Expedited Service Fees/2009 Budget Bill Clean-Up

SUMMARY

This bill would do the following:

Provision 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 2: 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 cease operative date for the reduction of dependent exemption credit,

B. Correct a cross referencing error and repeal a duplicate provision pertaining to the underpayment of estimated tax penalty relating to the new jobs tax credit, and

C. Clarify the operative date, correct a cross referencing error and repeal a duplicate provision relating to the apportionment factor.

PURPOSE OF BILL

<u>Provision 1:</u>

The purpose of this Franchise Tax Board (FTB) sponsored provision is to maintain equitable treatment among taxpayers by aligning the requirements for a domestic LP to revive with the requirements for a corporation to revive.

<u>Provision 2:</u>

According to the author’s office, the purpose of this provision is to clarify and resolve issues related to the recently enacted budget provisions to ensure effective implementation.

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EFFECTIVE/OPERATIVE DATE

Provision 1:

This provision would be effective January 1, 2010, and specifically operative with respect to written confirmations provided by FTB on or after that date.

Provision 2:

Provisions 2A-2C would be effective January 1, 2010, and would be operative January 1, 2010, for provision 2B and January 1, 2011, for provisions 2A and 2C.

On December 4, 2008, the FTB voted 2-0, with the Department of Finance abstaining, to sponsor the language included in provision 1.

The three-member FTB has not considered provision 2.

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 1: Limited Partnership Revival	+<$1,000	+$1,000	+$1,000	+$1,000
*Provision 2: Budget Clean Up	0	0	0	0
Total	**+$<1,000**	**+$1,000**	**+$1,000**	**+$1,000**

*Provision 2, relating to the dependent exemption credit, the underpayment of estimate tax penalty, and the apportionment factor would have no impact on revenue.

PROVISION 1: DOMESTIC LIMITED PARTNERSHIPS

ANALYSIS

STATE LAW

Under existing state law, the provisions of the Uniform Limited Partnership Act (ULPA) of 2008 are mandatory for a domestic LP formed on or after January 1, 2008, and are elective for a domestic LP formed before January 1, 2008. The ULPA of 2008 will govern all domestic limited partnerships, regardless of when they were formed, on and after January 1, 2010.

A domestic LP subject to the ULPA of 2008 must file a certificate of cancellation with the Secretary of State to complete the dissolution process. A domestic LP that has filed a certificate of cancellation may file a certificate of revival with the Secretary of State to revive to active status. Upon filing the certificate of revival, the domestic LP is treated as if it had not been canceled, which includes the validation of all contracts. The certificate of revival must be accompanied by certification from FTB that the domestic LP has paid all of the annual tax, penalties, and interest due, including those amounts for each year between cancellation and revival. A requirement that the domestic LP pay any fees due, such as the collection cost recovery fee, and file any required tax returns prior to certification from FTB is absent under current law.

Additionally, present law lacks provisions for FTB to charge a service fee in instances where a domestic LP requests expedited processing of its request for the certification letter needed to file the certificate of revival.

Under current state law, FTB may suspend a corporation's powers, rights and privileges for non-payment and non-filing of tax returns. Corporations suspended by FTB may revive by filing an Application for Certificate of Revivor, filing all delinquent tax returns, and paying any balance due, which includes taxes, penalties, interest, and fees.

Corporations that request expedited processing of their revivor request must pay a service fee, currently $100.

THIS PROVISION

This provision would:

1. Require a domestic LP to pay any fees due and file any required tax returns to receive the certification letter from FTB needed for the domestic LP to revive.
2. Require payment of a service fee if a domestic LP requests expedited processing of their certification letter request. The service fee would be $100 until January 1, 2011. Thereafter, the expedited service fee amount would be established by regulation.
3. Apply to written confirmation requests made by FTB on or after January 1, 2010.

LEGISLATIVE HISTORY

AB 339 (Harman, Stats. 2006, Ch. 495) enacted the Uniform Limited Partnership Act of 2008, applicable to domestic LPs formed on or after January 1, 2008, and all domestic LPs on and after January 1, 2010, regardless of when formed.

AB 583 (Sher, Stats. 1996, Ch. 1003) enacted the Uniform Partnership Act of 1994, applicable to partnerships formed on or after January 1, 1997.

OTHER STATES' INFORMATION

Review of *Illinois, Massachusetts, Michigan*, *Minnesota*, and *New York* laws found no comparable revival process for cancelled limited partnerships. These states were reviewed because of the similarities between California income tax laws and their tax laws.

FISCAL IMPACT

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

ECONOMIC IMPACT

Based on data and assumptions discussed below, the revenue gain from this provision would be as follows:

Estimated Revenue Impact of AB 1546, Provision 1, Effective On Or After January 1, 2010 Enactment Assumed After June 30, 2009			
Limited Partnership	2009-10	2010-11	2011-12
Revival	+<$1,000	+$1,000	+$1,000

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this provision.

Revenue Discussion:

The revenue impact of this provision depends on the number of canceled domestic LPs that revive and would pay the proposed additional fee for expedited processing of the certification letter request.

Data from the Secretary of State's office indicates that approximately 240 LPs cancelled their registration in fiscal year 2007-2008. Assuming that 5 percent of the canceled domestic LPs would revive and that additional expedited processing fees are $100 per domestic LP, the expedited processing fee revenue would be $1,200 annually (240 cancelled LPs X 5% revival rate X $100).

The requirement for an LP to pay any outstanding fees prior to revival would have minimal impact on the revenue estimate because the number of cancelled LPs that would revive with outstanding fees is estimated to be low.

Additionally, the requirement for an LP to file any required tax return prior to revival would have minimal impact on the revenue estimate because current law requires a cancelled LP to pay any annual tax due prior to revival.

The $1,200 in additional expedited processing fees was split between fiscal years resulting in the first six months of 2010 impact of $625 in fiscal year 2009-10. Fiscal years impacts for 2010-11 and 2011-12 were $1,200, rounded to $1,000.

PROVISION 2: BUDGET CLEAN UP

ANALYSIS

PROVISION 2A: 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 FTB of the result of the statewide election held during the 2009 calendar year, then the credit reduction would cease to be operative on January 1, 2013.

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 2B: UNDERPAYMENT OF ESTIMATED TAX PAYMENT PENALTY

STATE LAW

Recently enacted state tax law, SBX3 15 (Calderon, Stats. 2009, Third Extraordinary Session, Ch. 17), and ABX3 15 (Krekorian, Stats. 2009, Third Extraordinary Session) provide 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[1] because the allocated credit limit had been exceeded.

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[1] 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.

THIS PROVISION

This provision would correct a cross-referencing error in the recently enacted budget trailer bill, SBX3 15 and repeal a duplicate provision that was enacted in ABX3 15.

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 2C: APPORTIONMENT FACTOR

STATE LAW

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), and ABX3 15 (Krekorian, Stats. 2009, Third Extraordinary Session), allow 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.

THIS PROVISION

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,” and repeal a duplicate provision that was enacted in ABX3 15.

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.

Support/Opposition

Support: Support. On December 4, 2008, the FTB voted 2-0, with the Department of Finance abstaining, to sponsor the language included in provision 1.

Opposition: None

VOTES

Assembly Floor – Ayes: 50, Noes: 29
Senate Floor – Ayes: 22, Noes: 15
Concurrence – Ayes: 48, Noes: 30

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