Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Portantino	Analyst:	Jahna Alvarado	Bill Number:	AB 179
Related Bills:	See Legislative History	Telephone:	845-5683	Amended Date:	June 29, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: FTB Report To Legislature Names Of Any Corporation, Entity, Or Individual That Receives Any Exemption, Deduction, Credit, Credit Adjustment, Or Credit Carryover That Results In Tax Reduction Of $1 Million Or More

SUMMARY

This bill would require the Franchise Tax Board (FTB) to report to the Legislature and make public specified information.

SUMMARY OF AMENDMENTS

The June 29, 2009, amendments replaced the bill language as amended on April 29, 2009, with the proposed FTB report.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to provide information to the Legislature and the public on the fiscal effects of tax relief and incentives.

EFFECTIVE/OPERATIVE DATE

If enacted in the first year of the two-year session, this bill would be effective January 1, 2010, and operative on and after that date.

POSITION

Pending.

SUMMARY OF SUGGESTED AMENDMENTS

Department staff is available to assist with amendments to resolve the implementation and policy concerns discussed in this analysis.

Board Position:			Department Director	Date
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ANALYSIS

FEDERAL LAW

Current federal law provides that returns and tax information are confidential and may not be disclosed to federal or state agencies or employees except for authorized purposes. Agencies allowed access to federal return information include certain federal and state agencies, such as the FTB. A federal return is defined as any tax return, information return, declaration of estimated tax, or claim for refund under the Internal Revenue Code. Any FTB employee or member responsible for the improper disclosure of federal tax information is subject to criminal prosecution. Improper disclosure of federal tax information is a felony.

STATE LAW

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Current law specifically authorizes the disclosure of taxpayer information to a legislative committee upon request of the committee.

State law requires the Department of Finance (DOF) to provide an annual report to the Legislature on tax expenditures providing details on individual categories of the expenditures and historical information on the enactment and repeal of the expenditures.

Any FTB employee or member, legislative committee or committee member, clerk, or other officer or employee responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor.

Currently, state law provides that the following information from a corporate tax return can be publicly disclosed:

- Business entity name, address, and corporation number
- Date of incorporation or commencement of business in this state
- Account period ending date
- Due date of the return
- Total unpaid taxes
- Name, date, and title of individuals signing the return
- Classification[1]
- Industry code
- FTB or Secretary of State status

Under the Revenue and Taxation Code, personal taxpayer information received by FTB is confidential and cannot be released as public information.

[1] Entity classification (for example, C or S corporation, limited liability corporation, partnership)

THIS BILL

Under uncodified law, this bill would require the FTB to report to the legislature the name of each corporation, individual, or entity that received an exemption, deduction, credit, credit adjustment, or credit carryover that reduces their tax liability by $1,000,000 or more.

The report would include the following information:

- The name of the corporation, individual, or entity
- The specific exemption, deduction, credit, credit adjustment, or credit carryover that resulted in a tax reduction greater than or equal to $1,000,000
- The tax reduction generated by each exemption, deduction, credit, credit adjustment, or credit carryover

The report would be a public document available by publication and on the Internet.

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.

This bill lacks an exception to the general statutory rules that all taxpayer information is confidential. Without an exception, FTB employees would be in violation of existing confidential taxpayer information disclosure laws. If it is the author's intent that confidential taxpayer information be disclosed for this bill, it is recommended that the bill be amended to provide an exception to the general statutory disclosure rules in order for the department to administer this bill.

Because current federal law prohibits the department from sharing any federal confidential taxpayer information, the department would be prohibited from including any federal information in the report. For example, the calculation of an individual's state income tax begins with federal adjusted gross income. Federal adjusted gross income is the amount of income after the application of deductions. By law, FTB would be unable to provide information on the exemptions, exclusions, or deductions included in the calculation of federal adjusted gross income.

This bill would require a report that includes a list of each corporation, individual, or entity that received an exemption, deduction, credit, credit adjustment, or credit carryover that reduced their tax liability by $1,000,000 or more. If it is the author's intent that the report would be based on tax return information, the author may wish to substitute the term "taxpayer" for the phrase "corporation, individual, or entity."

This bill would require a report that includes a list of each corporation, individual, or entity that received a deduction that reduced their tax liability by $1,000,000 or more. Deductions are not currently captured by the department's processing systems. To begin capturing data on deductions would require system and program changes that would result in significant costs to the department.

This bill would require FTB to provide one report. If it is the author's intent to require a periodic report, the author may wish to amend this bill.

Assuming this bill is enacted in the first year of the current session, this bill would require the report to be provided on or after January 1, 2010. This language results in an unspecified future due date. If the author intends for the report to have a specific due date, this bill should be amended.

This bill uses phrases and terms that are undefined, i.e. "credit adjustment", "exemption", and "made available by publication and on the Internet". The absence of definitions could lead to disputes with taxpayers and would complicate the administration of this bill.

It is unclear if this bill would require the implementation of a new reporting requirement to make available to the department all the data necessary to provide the report. For example, exempt entities are not required to identify income that is exempt from reporting. However, the report would be required to include specific exemptions. An additional reporting requirement could increase the burden on corporations, entities, and individuals, increase the intrusion into corporate, entity, and individual financial affairs, and result in significant additional costs to the department to implement. If it is the author's intent that the report would include information currently available to the department, the author may wish to amend this bill.

An additional consideration is information technology resources. If this bill would require additional data to be captured and is signed by the Governor by September 30, 2009, the department would be unable to incorporate any required changes in the normal annual update for 2009. Assuming that changes could be made in the 2010 annual update, the earliest that a report could be issued would be after the processing of all 2010 tax filings, which could occur in calendar year 2012 to include all fiscal year filers. Also, if additional funding is needed by the department to implement this bill, the earliest that funding would be available under normal budget processes would be July 2010.

LEGISLATIVE HISTORY

AB 1418 (Horton, Stats. 2006, Ch. 716) requires FTB to compile and make publicly available an annual list that identifies the largest 250 tax delinquencies that exceed $100,000 and for which a notice of state tax lien has been filed with a county recorder's office. Prior to including a taxpayer on this report, the FTB must contact the taxpayer and allow 30 days for the taxpayer to pay or make arrangements to pay the delinquent tax liability. There are two critical differences between AB 1418 and this bill. This bill would make public specific information for all corporations, individuals, or entities regardless of their compliance with state income tax laws and provides no method for a corporation, individual or entity to prevent their information from being made public.

AB 168 (Ridley-Thomas, 2005/2006) would have required DOF to submit a report on tax expenditures to the Legislature. This bill was vetoed by Governor Schwarzenegger, whose veto message can be found in Appendix A.

AB 2106 (Ridley-Thomas, 2003/2004) would have required DOF to submit a report on tax expenditures to the Legislature. AB 2106 was vetoed by Governor Schwarzenegger, who stated in his veto message that, "some of the information might not be available for reporting to the Legislature because of existing confidentiality requirements. The entire veto message can be found in Appendix A.

AB 990 (Ridley-Thomas, 2003/2004) would have required DOF to submit a report on tax expenditures to the Legislature. This bill failed to pass out of the Legislature by the constitutional deadline.

SB 1292 (Haynes, 2001/2002) would have required state agencies, boards, commissions, departments, and offices to provide a report regarding financial activities to specific legislative committees for the 2001/2002 fiscal years and preceding fiscal years. SB 1292 failed to pass out of the house of origin.

SB 1379 (Stats. 1984, Ch. 268) changed the requirement that DOF submit a tax expenditure report from every two years to annually.

AB 360 (Stats. 1971, Ch. 1762) required DOF to prepare a tax expenditure report and submit to the state or local government every two years.

PROGRAM HISTORY/BACKGROUND

FTB currently produces the "California Income Tax Expenditures Report". The report describes tax expenditures found in the California Corporation Tax Law and the California Personal Income Tax Law. The report discusses the concept of tax expenditures and covers many definitional and policy issues. The report then presents analyses of current tax expenditures within the California income tax system. The analysis of each tax expenditure includes the number of tax returns affected and the distribution of the expenditure by income category. The tax expenditures are organized within the report according to whether or not they conform to provisions of federal tax law, then by rank order according to their impact on state revenue. The California Tax Expenditures report is a public document and is available on FTB's Web site.[2]

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* have similar laws restricting the disclosure of confidential information. Their laws do not provide for a report comparable to the report required by this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

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[2] http:\\www.ftb.ca.gov/aboutftb/taxExp08.pdf

FISCAL IMPACT

The impact on the department and the department's costs to administer this bill cannot be determined until the implementation concerns have been resolved but are expected to be significant.

ECONOMIC IMPACT

Revenue Estimate

This bill would have no identifiable impact on state income tax revenue.

ARGUMENTS/POLICY CONCERNS

The Legislature and the Franchise Tax Board have exhibited extreme concern in the past regarding the confidentiality and privacy of tax information. For example, the legislation forbidding disclosure of social security numbers on mailed correspondence and requiring taxpayer notification in the event that their tax information is disclosed.

This bill's stated intent is to provide information on the fiscal effects of tax relief and incentives to the Legislature and public. The tax expenditure report may provide adequate detail consistent with the author's intent while preserving the legally required confidentiality of taxpayer information.

This bill could undermine the integrity of state income tax information and its confidentiality. This bill may jeopardize the confidence of taxpayers that their tax information is protected, which may lead to reduced voluntary compliance.

LEGISLATIVE STAFF CONTACT

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Appendix A
To AB 179

BILL NUMBER: AB 168
VETOED DATE: 09/22/2005
To the Members of the California State Assembly:
I am returning Assembly Bill 168 without my signature.
The Department of Finance and the Legislative Analysts Office currently have broad authority to review and report tax expenditures to the Legislature. This bills restatement of the existing tax reporting requirements is redundant and unnecessary.

Sincerely,

Arnold Schwarzenegger

BILL NUMBER: AB 2106
VETOED DATE: 09/24/2004
To the Members of the California State Assembly:
I am returning Assembly Bill 2106 without my signature.
Under existing law, the Department of Finance already is required to provide an annual tax expenditure report to the Legislature containing specific information. This bill changes the type of information that is provided in the annual report. However, some of the information that Department of Finance would be required to report is not available. For example, the original intent of a given tax expenditure is often not clearly defined in the enabling statute. In addition, the number and income distribution of taxpayers benefiting from sales tax exemptions would not be known because this information is not required to be reported by retailers when filing their tax returns. Furthermore, some of the information might not be available for reporting to the Legislature because of existing confidentiality requirements.
Therefore, I cannot sign this bill.

Sincerely,

Arnold Schwarzenegger