Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Calderon/Portantino	Analyst:	Jahna Alvarado	Bill Number:	AB 2171
Related Bills:	See Legislative History	Telephone:	845-5683	Amended Date:	April 27, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Tax Benefits/Conditions Of Allowance

SUMMARY

This bill would limit usage of tax benefits to the allowable amount as annually determined by the Legislature.

SUMMARY OF AMENDMENTS

The April 27, 2010, amendments modified the bill's operative date, eliminated appropriation language, corrected a technical error, and added an author.

As a result of the amendments, a new "Technical Consideration" has been identified and the "Effective/Operative Date," "This Bill," and "Implementation Considerations" discussions, as provided in the department's analysis of the bill as amended April 5, 2010, have been revised. The remainder of that analysis still applies. The "Policy Consideration" section is included for convenience.

EFFECTIVE/OPERATIVE DATE

Assuming enactment before October 1, 2010, this bill would become effective on January 1, 2011, and would be specifically operative with respect to any tax benefit in a statute that takes effect on or after January 1, 2011.

POSITION

Pending.

Summary Of Suggested Amendments

Amendments 1 and 2 are provided to correct a cross reference.

Board Position:			Legislative Director	Date
________ S	________ NA	________ NP		
________ SA	________ O	________ NAR	Patrice Gau-Johnson	7/9/10
________ N	________ OUA	___X___ PENDING	for Brian Putler	

ANALYSIS

THIS BILL

This bill would, for a tax benefit established in a statute that takes effect on or after January 1, 2011, require that the Legislature establish in an act, the amount of the tax benefit that a person would be allowed and the total tax benefit that would be allowed for the taxable year or reporting period. Failure to establish the amount of a tax benefit as required would result in the disallowance of that tax benefit.

The amount allowed would be required to be consistent with the State's ability to meet its expenditure obligations under law.

This bill would require that the legislative determination occur annually.

This bill would define "tax benefit" as a credit, deduction, exclusion, exemption, or other tax advantage to a person that has the effect of reducing the person's tax liability to the state.

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 tax benefits conditional on the enactment of annual laws that would specify the allowable amount of each tax benefit. Because the required action could occur at any time during a year, or not at all, this bill could create confusion and uncertainty for taxpayers and the department that would make this bill difficult to administer. For example, would the department be required to defer processing of returns until the Legislature acted? Would the department be required to disallow tax benefits in excess of the specified amount? Would allowance of the specified tax benefit be on a "first-come, first-served" basis? Would a disallowed amount be subject to penalties or interest? Would an otherwise allowable tax benefit that was disallowed because it exceeded the specified amount be eligible for carryover to subsequent years? Because of the state's general conformity with federal law, would a federal law change affecting a state tax benefit be subject to Legislative action?

The bill uses the undefined term "other tax advantage to a person that has the effect of reducing the person's tax liability to the state." The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this bill. For example, because income that is excluded from tax has the effect of reducing the tax liability (e.g., gain on the sale of a personal residence, certain retirement contributions, employer provided health benefits), this income could be included in the definition of "tax advantage." In order to prevent disputes between taxpayers and the department, it is recommended that the bill be amended to clarify the author's intent.

Because tax advantages that reduce tax liability could include transactions that may not be required to be reported on a tax return (e.g., certain business reorganizations), the department could lack the information needed to identify unreported income that could become subject to tax under the terms of this bill.

TECHNICAL CONSIDERATIONS

Subdivision (a) should be amended to replace the term "Chapter" with "Part" to correspond to the Revenue and Taxation Code. Amendments are provided.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved. Fiscal impact will be developed as the bill moves through the legislative process, and an appropriation will be requested, if necessary.

ARGUMENTS/POLICY CONCERNS

General concepts of sound tax policy include simplicity, transparency, and certainty.[1] Taxpayers need to know that a tax exists, how to determine the tax, and how and when it is imposed on them and others. Because this bill would require annual law changes that (1) state the amount of each tax benefit that would be allowed for the year, and (2) make an appropriation for the tax benefits allowed, this bill could be in conflict with these concepts.

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[1] http://tax.aicpa.org/NR/rdonlyres/AC230E51-D650-4D65-B160-C7450A9381F4/0/2I_08a.pdf

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FRANCHISE TAX BOARD’S
PROPOSED AMENDMENTS TO AB 2171
AS AMENDED APRIL 27, 2010

AMENDMENT 1

On page 2, line 3, strikeout “Chapter” and insert:

Part

AMENDMENT 2

On page 2, line 4, strikeout “Chapter” and insert:

Part