

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Nestande Analyst: Janet Jennings Bill Number: AB 2725
Related Bills: See Legislative History Telephone: 845-3495 Amended Dates: April 8, 2010 and April 14, 2010
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Repeal Large Corporate Understatement Penalty

SUMMARY

This bill would repeal the Large Corporate Understatement Penalty (LCUP).

SUMMARY OF AMENDMENTS

The April 8, 2010, amendments removed legislative intent language regarding property tax and inserted the provisions to change the estimated payment requirements, to institute a tax amnesty, and to repeal the LCUP.

The April 14, 2010, amendments removed the provisions related to the estimated tax payments and to tax amnesty.

PURPOSE OF THE BILL

According to the author's office, repealing the LCUP would allow businesses to employ Californians by eliminating fear of such a large penalty that causes taxpayers to overestimate their taxes and thus will have more to invest and to employ workers.

EFFECTIVE/OPERATIVE DATE

The bill would be effective January 1, 2011, and would be operative for taxable years beginning on or after January 1, 2011.

POSITION

Pending.

Board Position:

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Legislative Director

Date

Brian Putler

04/20/10

ANALYSIS

STATE LAW

The LCUP is a strict liability penalty assessed against any corporation that has an understatement of tax in excess of \$1 million in any open taxable year beginning on or after January 1, 2003. In the case of taxpayers that are required or authorized to be included in a combined report, the \$1 million threshold applies to the aggregate amount of tax liability for all taxpayers that are required or authorized to be included. The penalty is calculated as 20 percent of the understatement of tax, and the calculation of the understatement is cumulative so that an understatement of \$600,000, followed by a second understatement of \$500,000 for the same taxable year, will result in imposition of the penalty.¹

THIS BILL

This bill would repeal the LCUP for taxable years beginning on or after January 1, 2011.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

LEGISLATIVE HISTORY

SBX6 6 (Hollingsworth, 2009/2010) would repeal the LCUP. This bill was referred to the Senate Rules Committee on February 24, 2010.

SBX1 28 (Committee on Budget and Fiscal Review, Stats. 2008, 1st Ex. Sess. 2007-2008, Ch. 1), among other things, enacted the LCUP.

FISCAL IMPACT

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

¹ For additional information and FAQs about the penalty, see http://www.ftb.ca.gov/businesses/large_corporate_understatement_penalty.shtml.

ECONOMIC IMPACT

Estimated Revenue Impact of AB 2725 Assumed Enactment With Tax Year 2011 Operative as of January 1, 2011 (\$ in Millions)			
2009-10	2010-11	2011-12	2012-13
\$0	-\$240	-\$520	-\$550

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

LEGISLATIVE STAFF CONTACT

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