

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: Calderon Analyst: Gail Hall Bill Number: AB 692  
 Related Bills: See Prior Analysis Telephone: 845-6111 Amended Date: July 16, 2009  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Conformity: Federal Administrative Guidance

- 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 \_\_\_\_\_.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED May 4, 2009 STILL APPLIES.
- OTHER – See comments below.

**SUMMARY**

This bill codifies rules for applying federal administrative guidance to state law.

**SUMMARY OF AMENDMENTS**

The July 16, 2009 amendments made the following changes to the bill:

- Removed the provisions related to IRC Section 382 and Notice 2008-83 and resolved the technical considerations discussed in the department’s analysis of the bill as amended May 4, 2009. (See Appendix A).

Except for the “Purpose,” “This Bill,” and “Economic Impact” discussions, the remainder of the department’s analysis of the bill as amended May 4, 2009, still applies.

Board Position:	Legislative Director	Date
<input type="checkbox"/> S	Brian Putler	8/14/09
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NA		
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<input type="checkbox"/> OUA		
<input checked="" type="checkbox"/> NP		
<input type="checkbox"/> NAR		
<input checked="" type="checkbox"/> PENDING		

## **PURPOSE OF THE BILL**

According to the author's staff the purpose of this bill is to ensure that, in the future, the Legislature's authority to enact laws is not impinged by any federal notice or guidance of doubtful legal authority and to protect California's General Fund from losing revenue.

## **POSITION**

Pending.

## **ANALYSIS**

### THIS BILL

This bill would add the following provisions relating to conformity to federal law:

1. Federal administrative guidance regarding an interpretation of a provision of the Internal Revenue Code that California conforms to shall apply for California purposes if it does not "conflict with this part" (state law) or with regulations issued by the Franchise Tax Board.
2. "Federal administrative guidance" means federal revenue rulings, notices, revenue procedures, announcements, and other published administrative guidance promulgated by the Commissioner or Chief Counsel of the Internal Revenue Service (IRS). "Federal administrative guidance" does not include a private letter ruling or any other administrative guidance issued by the Commissioner or Chief Counsel of the IRS with respect to a particular taxpayer.
3. Unless otherwise specifically provided, final or temporary federal regulations and any federal administrative guidance shall not apply for state tax law purposes prior to the applicable specified date of conformity to federal law.
4. "Conflict with this part" includes, but not limited to, any temporary or final federal regulation or any federal administrative guidance, except as specifically provided under state law, that constitutes a substantive change in federal law that is inconsistent with the statute or statutes to which such advice relates or is beyond the scope of the Secretary of the Treasury's authority.

The four provisions discussed above would apply to personal income tax law and corporation tax law.

## **ECONOMIC IMPACT**

### Revenue Discussion and Estimate

This bill simply codifies the department's current practice for determining if specific federal administrative guidance is applicable to state law, therefore, this bill has no revenue impact.

## **LEGISLATIVE STAFF CONTACT**

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## **APPENDIX A**

### **Resolved Technical Considerations AB 692 As Amended May 4, 2009**

#### **Resolved Technical Considerations Discussed In The Department's Analysis of The Bill As Amended May 4, 2009:**

1. On page 2, lines 35 and 36, the legislative finding and declaration provide that Notice 2008-83, references "financial institutions." Notice 2008-83 makes no reference to "financial institutions," therefore, the author may want to revise the legislative findings and declarations and remove the reference to the word "financial institution" and replace it with the term "bank."
2. On page 3, line 31, "Internal Revenue Code Notice 2008-83" should be replaced with "Internal Revenue Service Notice 2008-83."
3. Since Notice 2008-83 was issued in September 2008 and operative retroactively for all open years, the author may want to add specific operative language to the bill to make it clear that its provisions would apply to all taxable periods for which the statute of limitations remains open as of the date of enactment.