

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Arambula Analyst: Deborah Barrett Bill Number: ABX 3 14

Related Bills: See Legislative History Telephone: 845-4301 Amended Date: August 20, 2009

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Crime/Punishment For Income Tax Evasion Or Income Tax Fraud/California Public Safety Commission

## SUMMARY

This bill would revise the sentencing guidelines for state income tax evasion or state income tax fraud.

The bill would also do the following:

- Establish the California Public Safety Commission (Commission),
- Increase thresholds for certain crimes, provide for alternate sentencing developed by the Commission to apply to various crimes, and
- Require the Department of Corrections and Rehabilitations to develop alternate custody programs for inmates.

These provisions do not impact the Franchise Tax Board and are not discussed in this analysis.

## SUMMARY OF AMENDMENTS

The August 20, 2009, amendments removed provisions related to bed capacity in prisons and added provisions revising the sentencing guidelines for tax evasion and tax fraud.

## PURPOSE OF THE BILL

According to the provisions of the bill, the purpose of the bill is to address the fiscal emergency declared by the Governor by proclamation on December 19, 2008.

## EFFECTIVE/OPERATIVE DATE

As a special session bill, this bill would be effective 91 days after the adjournment of the special session and operative on January 1 following that date. The provisions changing consequences for state income tax evasion or fraud would be specifically operative on the operative date of rules promulgated by the Commission. Rules of the Commission submitted to the Legislature on or before June 1 of a calendar year become operative on January 1 of the following year, unless the Legislature passes and the Governor approves a statute rejecting the rule. Rules of the Commission submitted to the Legislature after June 1 of a calendar year becomes operative on January 1 of the calendar year subsequent to the following year, unless the Legislature passes and the Governor signs a statute rejecting the rule.

Board Position:	Department Director	Date
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<input type="checkbox"/> N <input type="checkbox"/> OUA <input checked="" type="checkbox"/> PENDING	Brian Putler	11/17/09

## **POSITION**

Pending.

## **ANALYSIS**

### **FEDERAL LAW**

The Internal Revenue Service (IRS) may pursue criminal prosecution against a taxpayer for certain offenses and the court may award an order of restitution. The offenses that may be pursued criminally include, but are not limited to, the following:

- Willful attempt to evade or defeat tax,
- Willful failure to collect or pay over collected tax, or
- Willful failure to file a return or supply information.

A person convicted of willful attempt to evade or defeat tax is guilty of a misdemeanor and can be fined not more than \$25,000 (\$100,000 in the case of a corporation) or imprisoned not more than one year, or both the fine and imprisonment. The person can also be charged with the costs of prosecution. A willful failure to file a return relating to cash received in a trade or business is punishable as a felony with five years imprisonment instead of one.

### **STATE LAW**

Under existing law, the FTB may refer cases for criminal prosecution in state courts against a person that does any of the following:

- Willfully fails to file any return or to supply any information with intent to evade any tax imposed;
- Willfully makes, renders, signs, or verifies any false or fraudulent return or statement; or
- Supplies any false or fraudulent information.

Upon conviction, the offense is punishable by imprisonment in the county jail not to exceed one year, or in the state prison, or by fine of not more than \$20,000 or by both the fine and imprisonment at the discretion of the court, and can be charged for the costs of investigations and prosecution.

### **THIS BILL**

This bill would provide that on or after the operative date of an applicable rule or rules proposed by the Commission, as an alternative to the existing sentencing structure, a person who violates the provisions for tax fraud or tax evasion could be subject to the applicable sentencing rules.

## IMPLEMENTATION CONSIDERATIONS

The impact of the provisions of this bill on the department programs or operations is unknown because the changes in the sentencing provisions for tax fraud or tax evasion would not take effect until determined by the Commission at a later date.

## **LEGISLATIVE HISTORY**

SB 1502 (Kopp, Stats. 1996, Ch. 996) added costs of investigation and prosecution to amounts to be awarded in tax evasion or tax fraud cases.

## **FISCAL IMPACT**

The tax fraud and tax evasion provisions of this bill would not impact department costs.

## **ECONOMIC IMPACT**

Because the changes in the sentencing provisions for tax fraud or tax evasion would not take effect until determined by the Commission at a later date, the impact of this bill on state income tax revenues is unknown. Any revenue effects would depend on how taxpayers alter their behavior in light of the alternate sentencing structure, which could result with either an increase or decrease in voluntary compliance.

## **LEGISLATIVE STAFF CONTACT**

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