

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Wolk Analyst: William Koch Bill Number: SB 1113
Related Bills: See Legislative History Telephone: 845-4372 Amended Date: April 5, 2010
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Allow FTB To File Suit In Superior Court After Adverse BOE Determination

SUMMARY

This bill would allow the Franchise Tax Board (FTB) to file a suit, as a trial de novo, in superior court after an adverse Board of Equalization (BOE) determination regarding a deficiency assessment, a claim for refund, or a disallowance of interest.

SUMMARY OF AMENDMENTS

The April 5, 2010, amendments deleted spot bill language and added the provisions discussed in this analysis.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to permit certain BOE determinations to be available for judicial review.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2011, and specifically operative for BOE determinations issued on or after January 1, 2011.

POSITION

Pending.

ANALYSIS

FEDERAL LAW

Under federal law, in general, taxpayers may petition the Tax Court to redetermine deficiency assessments proposed by the IRS. This redetermination is a trial de novo, which means trying a new matter--trying it as if it had not been heard before and as if no decision had been previously rendered. Either party may appeal an adverse Tax Court determination to the federal appellate courts. However, for the taxpayer to appeal, a bond must be posted not in excess of double the amount of deficiency at issue.

Board Position:	Department Director	Date
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In lieu of petitioning the Tax Court to redetermine a deficiency, the taxpayer may pay the tax and file a claim for refund with the IRS. Assuming the IRS denies the claim for refund, the taxpayer may bring a lawsuit in federal district court or the U.S. Court of Federal Claims for the recovery of the overpayment (suit for refund). The action is a trial de novo. Either party may appeal an adverse court determination to the federal appellate courts.

CALIFORNIA LAW

FTB is a three-member board that is chaired by the State Controller. The other two board members are the Chair of the BOE and the Director of the Department of Finance.

In general, taxpayers may file an appeal with BOE after FTB has taken the following actions:

- Denied a taxpayer's protest of a proposed deficiency assessment;
- Denied a refund or credit or loss carryover claimed by the taxpayer;
- Denied a taxpayer's request for abatement of interest on a deficiency owed by the taxpayer; or
- Denied a taxpayer's request for the allowance of interest on any claim for refund.

Additionally, if FTB fails to mail notice of action on any refund claim within six months after the claim is filed, the taxpayer may consider the claim disallowed and file an appeal with BOE.

BOE's determination on an appeal from an action of FTB is final unless within 30 days of the determination, FTB or the taxpayer petitions for a rehearing. In the event the petition is granted, BOE's determination becomes final upon the expiration of 30 days from the day BOE issues its opinion on the petition. FTB lacks statutory authority to appeal if it loses at the BOE.

If BOE sustains FTB's action on a protest of a proposed assessment, thereby ruling against the taxpayer, the taxpayer may pay the tax and file a claim for refund with FTB. If FTB denies the claim for refund, the taxpayer may either:

- Bring a lawsuit in superior court against FTB for recovery of the amount paid (suit for refund), or
- File an appeal with BOE. If BOE denies the appeal, the taxpayer may bring a lawsuit for refund in superior court against FTB.

In the lawsuit for refund, the California Office of the Attorney General (AG) is the attorney of record for the state. The action is a trial de novo.

In one unique situation, California law allows taxpayers to file suit in superior court to determine residence prior to payment of a deficiency assessment based on residence.

THIS BILL

This bill would allow FTB, within 90 days after a BOE determination becomes final, to file suit in superior court to:

1. Determine a deficiency.
2. Determine an overpayment.
3. Determine a disallowance of interest.

The suit would be a trial de novo by the court as to law and facts. There would be a rebuttable presumption that the notice of action issued by FTB is correct, and the taxpayer would have the burden of proving that the notice of action issued by FTB is incorrect.

The suit would be commenced and tried in any city or city and county in which the AG maintains an office. A taxpayer would be allowed to file a motion to change the venue of such suit to a venue closer to the taxpayer's principal residence or principal place of business. The AG or FTB would not be able to oppose such motion.

This bill would apply to BOE determinations issued on or after January 1, 2011.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

AB 2472 (Wolk, 2003/2004) would have created the California Tax Court to hear and determine taxpayer appeals from deficiency assessments made by FTB, BOE sales and use tax determinations, and specified insurance tax determinations made by the Department of Insurance. AB 2472 did not pass out of the Assembly Appropriations Committee.

SB 1424 (Burton, 2003/2004) would have created a California Tax Court to hear and determine appeals from deficiency assessments made by FTB. SB 1424 was held in the Senate Revenue and Taxation Committee without hearing.

SB 548 (Burton, 2003/2004) contained provisions similar to the provisions in this bill. SB 548 was held in the Assembly Revenue and Taxation Committee without hearing.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. The tax appeals systems for each of these states are different from one another and also different from California's tax appeal system as follows:

Florida taxpayers may challenge adverse determinations of the Department of Revenue (DOR) either to the:

- Circuit Court, which conducts a trial de novo, and the decisions of which can be appealed by either party to the appellate court of Florida; or
- Division of Administrative Hearings, which conducts a de novo hearing, but has the authority to issue only proposed orders. The final order is written by DOR. Hence, only the taxpayer may appeal adverse decisions to the appellate court of Florida. However, either party may appeal adverse appellate court decisions to the Florida Supreme Court.

Note: Florida has a corporate income tax but no personal income tax.

Illinois taxpayers may challenge adverse determinations of the DOR in Circuit Court by:

- Paying the tax under protest and bringing an action, which is conducted as a trial de novo; or
- Requesting the court to review the DOR's final determination. The review is limited to the record of the determination. Either party may appeal adverse decisions to the appellate court of Illinois.

Massachusetts taxpayers may challenge adverse determinations of the DOR by appealing to the Appellate Tax Board, which conducts a de novo hearing. Either party may appeal adverse decisions to the appellate court of Massachusetts.

Michigan taxpayers may challenge the determination of the Commissioner of Revenue by filing a petition with the Michigan Tax Tribunal or by filing a claim for refund with the Michigan Court of Claims. These forums conduct de novo proceedings. Either party may appeal adverse decisions to the appellate court of Michigan.

Minnesota taxpayers may challenge the DOR's determination in Minnesota Tax Court or file a refund suit in District Court. Both of these courts conduct de novo trials. Either party may appeal an adverse determination of the Tax Court to the Minnesota Supreme Court. Adverse determinations of the District Court are appealed to the appellate courts of Minnesota.

New York taxpayers may challenge determinations of the Department of Taxation and Finance by filing a petition with the Division of Tax Appeals, which provides a de novo hearing by an administrative law judge. Either party may challenge an adverse decision to the Tax Appeals Tribunal, which conducts a de novo hearing based on prior evidentiary record. Only taxpayers can appeal adverse Tribunal decisions to the appellate court of New York.

FISCAL IMPACT

The department estimates that fewer than 10 suits would be filed each year under the authority of this bill. If FTB staff is needed to support the AG in these suits, the departmental costs are expected to be minor and would be accommodated within FTB's existing budget.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in no revenue impact until fiscal year 2012/2013. The revenue gains would vary depending on the outcome of future court decisions. Based on prior experience, these gains could be in the range of zero to \$25 million initially per year and may grow over time.

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