

SUMMARY ANALYSIS OF AMENDED BILL

Author: Wolk Analyst: William Koch Bill Number: SB 1113
 Related Bills: See Prior Analysis Telephone: 845-4372 Amended Date: April 15, 2010
 Attorney: Patrick Kusiak Sponsor: _____

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

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 AMENDED

April 5, 2010, STILL APPLIES.

OTHER – See comments below.

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, as specified.

SUMMARY OF AMENDMENTS

The April 15, 2010, amendments made technical, non-substantive changes to the bill and added provisions that would limit the FTB’s authority to file suit after an adverse BOE determination, as specified.

Except for the “This Bill” section, the remainder of the department’s analysis of this bill as amended April 5, 2010, still applies.

Board Position:	Legislative Director	Date
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THIS BILL

This bill would allow the FTB, within 90 days after a BOE determination that would otherwise have become 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 the FTB is correct, and the taxpayer would have the burden of proving that the notice of action issued by the FTB is incorrect.

The suit would be commenced and tried in any city or city and county in which the Attorney General (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 the FTB would not be able to oppose such motion.

This bill would apply to BOE determinations issued on or after January 1, 2011, but only when the amount of a deficiency (including tax, additions to tax, penalties, interest, additional amounts, and fees), overpayment, or disallowance of interest exceeds \$100,000 for taxpayers subject to the Personal Income Tax Law, and \$1,000,000 for taxpayers subject to the Corporation Tax Law.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
William Koch
(916) 845-4372
william.koch@ftb.ca.gov

Revenue Manager
Monica Trefz
(916) 845-4002
monica.trefz@ftb.ca.gov

Legislative Director
Brian Putler
(916) 845-6333
brian.putler@ftb.ca.gov