Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	DeSaulnier	Analyst:	Gail Hall	Bill Number:	SB 1463
Related Bills:	See Legislative History	Telephone:	845-6111	Introduced & Amended Dates:	February 19, 2010 & April 5, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Corporate Flexibility Act Of 2010/Flexible Purpose Corporation

SUMMARY

This bill would create a new type of corporate entity called a "flexible purpose corporation."

This analysis only addresses the provisions of the bill that would require the department to issue a certificate of satisfaction upon certain organizational changes between entities.

SUMMARY OF AMENDMENTS

The April 5, 2010, amendments removed and added provisions requiring the department to issue a certificate of satisfaction.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to encourage and permit corporations to be formed or converted from other forms to pursue one or more purposes in addition to creating economic value for shareholders.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2011, and be operative as of that date.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

In general, a corporation is created under state law whether pursuant to the California Corporations Code and the laws of another state. In some circumstances, corporations have been created under federal law (i.e., Fannie Mae). Current federal and state laws have no corporation types called a "flexible purpose corporation."

Board Position:			Department Director	Date
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Under federal law, a corporation is generally taxed based on its taxable income, computed by subtracting deductions from gross income and taxed at rates that vary from 15 percent to 35 percent.[1]

Under state law, a corporation doing business or receiving income from sources within the state and not expressly exempted from taxation by the provisions of the California Constitution or by Corporation Tax Law (CTL), is generally subject to either the California franchise or the income tax at a rate of 8.84 percent.[2]

THIS BILL

This bill would create, under the California Corporations Code, another type of corporation called a "flexible purpose corporation" that would be subject to the franchise or income tax under CTL. In addition, this bill provides the following:

- If the surviving party of a merger is a corporation or a foreign corporation, or if a flexible purpose corporation, public benefit corporation, mutual benefit corporation, religious corporation, or corporation organized under the Consumer Cooperative Corporation Law is a party to the merger, the surviving party would be required to file a copy of the agreement of merger with the Secretary of State. The agreement of merger could not be filed until the Franchise Tax Board (FTB) issues a certificate of satisfaction certifying that all taxes imposed by that law have been paid or secured.

- If the surviving party of a merger is another business entity, and no public benefit corporation, mutual benefit corporation, religious corporation, or corporation organized under the Consumer Cooperative Corporation Law is a party to the merger, the parties of the merger would file a certificate of merger with the Secretary of State. The certificate of merger could not be filed until the FTB issues a certificate of satisfactory certifying all taxes imposed under CTL have been paid or secured.

- A certificate of satisfaction of the FTB for each disappearing party to the merger would be filed when required under the provisions of this bill or when required by Section 23334 of the Revenue and Taxation Code.

- If a corporation is converting into a flexible purpose corporation, a statement of conversion would be required to be filed with the Secretary of State. The statement or certificate of conversion could not be filed until the FTB issues a certificate of satisfactory certifying all taxes imposed under CTL have been paid or secured. If the converted entity is a flexible purpose corporation, domestic partnership, domestic limited partnership, or domestic limited liability company, the Secretary of State would file the statement or certificate of conversion without the certificate of satisfaction of the FTB and notify the FTB of the conversion.

[1] Internal Revenue Code section 11.
[2] Revenue and Taxation Code section 23151.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

AB 2341 (Villines, et. al, Stats. 2006, Ch. 773) eliminated the requirement to obtain a tax clearance certificate from the FTB prior to terminating the existence of certain entities. That bill streamlined the dissolution and cancellation process, which resulted in more business entities completing the process to terminate existence rather than merely abandoning the entity and becoming suspended. This bill would reinstate the tax clearance process for entities that are part of certain mergers and conversions and thereby result in an increase of entities that fail to terminate existence. The department recommends that the author remove the tax clearance provisions of the bill that circumvent the streamlining effects of AB 2341.

TECHNICAL CONSIDERATIONS

The department has identified the following technical concern. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

On page 14, line 37, the bill refers to section 23334 of CTL that was repealed upon the enactment of AB 2341.

LEGISLATIVE HISTORY

AB 2341 (Villines, et. al, Stats. 2006, Ch. 773) provides that the minimum franchise tax or the annual tax would not be assessed for a taxable year unless specific conditions are met. In addition, this bill eliminated the requirement to obtain a tax clearance certificate from the FTB prior to terminating the existence of certain entities.

AB 2944 (Leno, 2007/2008) would have allowed corporate directors to consider other stakeholders, like employees or the community, when making business decisions.
AB 2944 passed both houses but was vetoed by the Governor on September 30, 2008.

FISCAL IMPACT

Staff has determined that implementing this bill would have a significant impact to the department because of the new workload for collectors to collect tax, process tax clearance letters, retrain staff, and an increased number taxpayer calls.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of SB 1463 Operative for Taxable Years Beginning On or After January 1, 2011 Assumed Enactment Date Before June 30, 2010 ($ in Millions)		
2010/11	2011/12	2012/13
Negligible	Negligible	Negligible

This bill is estimated to have a negligible revenue impact; a revenue gain or loss of less than $250,000.

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

LEGISLATIVE STAFF CONTACT

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