

SUMMARY ANALYSIS OF AMENDED BILL

Author: Wolk Analyst: Scott McFarlane Bill Number: SB 401
 Related Bills: See Prior Analysis Telephone: 845-6075 Amended Date: July 15, 2009
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Tax Shelters & Tax-Shelter Penalties

- 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
- JULY 1, 2009, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This bill would eliminate inconsistencies in various abusive tax-shelter laws by providing a single, consistent definition for abusive tax shelters (ATS), which would be referred to as “abusive tax avoidance transactions.”

In addition, this bill would:

- Modify the ATS-use penalty¹ to prevent taxpayers from avoiding the penalty by filing an amended return prior to Franchise Tax Board (FTB) issuing a deficiency notice; instead, this bill would impose 50 percent of the penalty in such situations; and
- Create a new California reportable-transaction category for transactions of interest.

¹ The ATS-use penalty under R&TC section 19777 is often referred to as the interest-based penalty.

Board Position:	Legislative Director	Date
<input type="checkbox"/> S	Brian Putler	8/12/09
<input type="checkbox"/> NA		
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NP		
<input type="checkbox"/> O		
<input type="checkbox"/> NAR		
<input checked="" type="checkbox"/> PENDING		
<input type="checkbox"/> OUA		

SUMMARY OF AMENDMENTS

The July 15, 2009, amendments would make technical non-substantive changes. The department's analysis of the bill as amended July 1, 2009, still applies.

PURPOSE OF THE BILL

The purpose of the bill is to clarify state tax laws that apply to potentially abusive tax avoidance transactions, and to improve the effectiveness of the ATS-use penalty.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2010. The operative dates would be as follows:

- The provision relating to transactions of interest would be operative for transactions of interest published on or after January 1, 2010.
- The provision relating to interest suspension would be operative for notices mailed or amended returns filed on or after January 1, 2010.
- The provision relating to subpoenas would be operative for subpoenas issued on or after January 1, 2010.
- The provision relating to the eight-year statute of limitations would be operative for taxable years beginning on or after January 1, 2009.
- The provision relating to the ATS-use penalty would be operative for notices mailed on or after January 1, 2010, and for amended returns filed more than 180 days after January 1, 2010, with respect to the taxable years beginning on or after January 1, 2010.

POSITION

Pending.

Summary of Suggested Amendments

Technical amendments are necessary and have been provided to the author.

ANALYSIS

THIS BILL

This bill would provide a single, consistent definition for "abusive tax avoidance transactions," which would mean any of the following:

1. A federal tax shelter;
2. A reportable transaction that is not adequately disclosed;
3. A listed transaction;
4. A gross misstatement; or
5. A transaction subject to the noneconomic substance transaction understatement penalty.

This bill would coordinate this definition of “abusive tax avoidance transactions” in the application of:

- The eight-year statute of limitations;
- The ATS-use penalty;
- The interest-suspension rule; and
- The authority to issue subpoenas.

This bill would modify the ATS-use penalty to:

- Prevent taxpayers from avoiding the penalty by filing an amended return prior to FTB issuing a deficiency notice; instead, this bill would impose 50 percent of the penalty in such situations; and
- Allow the Chief Counsel of the FTB to compromise all or any portion of the penalty.

This bill would enact a new California reportable-transaction category of transactions of interest, similar to the federal reportable-transaction category of transactions of interest. A California transaction of interest would:

- Be a transaction that is the same as, or is substantially similar to, a transaction specifically identified by FTB by notice or regulation as a transaction of interest;
- Apply to taxable years beginning on or after January 1, 2010; and
- Be published on FTB’s website.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Scott McFarlane
(916) 845-6075
scott.mcfarlane@ftb.ca.gov

Revenue Director
Jay Chamberlain
(916) 845-3375
jay.chamberlain@ftb.ca.gov

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