

SUMMARY ANALYSIS OF AMENDED BILL

Author: Wolk Analyst: Scott McFarlane Bill Number: SB 401
 Related Bills: See Prior Analysis Telephone: 845-6075 Amended Date: August 31, 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 15, 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	09/03/09
<input type="checkbox"/> NA		
<input type="checkbox"/> NP		
<input type="checkbox"/> SA		
<input type="checkbox"/> O		
<input type="checkbox"/> NAR		
<input type="checkbox"/> N		
<input type="checkbox"/> OUA		
<input checked="" type="checkbox"/> PENDING		

SUMMARY OF AMENDMENTS

The August 31, 2009, amendments would incorporate changes proposed by this bill and AB 1580 if both bills are chaptered and this bill is chaptered last.

The department's analysis of the bill as amended July 15, 2009, still applies.

PURPOSE OF THE BILL

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

POSITION

Pending.

Summary of Suggested Amendments

A technical amendment is suggested.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 401
As Amended August 31, 2009

AMENDMENT 1

On page 6, line 30, after "to", ~~strikeout "of"~~.