

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Pan Analyst: Jessica Matus Bill Number: AB 1218
Related Bills: See Legislative History Telephone: 845-6310 Amended Date: April 7, 2011
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Business Expense Deduction/Disallow Tobacco Advertising Expense

SUMMARY

This bill would eliminate income tax deductions for advertising expenses related to cigarette and tobacco products.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

The April 7, 2011, amendments removed all of the bill's provisions related to legislative intent and replaced them with the provisions discussed in this analysis. This is the department's first analysis of the bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to reduce smoking among Californians by limiting the amount of advertising of tobacco products.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2011.

ANALYSIS

FEDERAL/STATE LAW

Current federal and state laws generally allow businesses to deduct their ordinary and necessary expenses, including advertising and promotional costs from the income generated by the business.

Board Position:

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_____ N _____ OUA

Executive Officer

Date

Selvi Stanislaus

04/29/11

THIS BILL

This bill would disallow a deduction from income for the expenses paid or incurred by a taxpayer to advertise the sale, use, or consumption of cigarettes or any other tobacco products.

This bill would define the following terms:

- "Advertise" is defined to include the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, tip sheet, poster, bill, sign, placard, card, label, tag, window display, store sign, or any other means or method now or hereafter employed to sell or promote cigarettes or any other tobacco products.
- "Advertising" is defined to include all cigarette and tobacco product advertising done by cigarette or tobacco products manufacturers, distributors, and retailers.
- "Cigarette" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco and such roll weighs over three pounds per thousand.
- "Tobacco products" includes but is not limited to all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50 percent, tobacco, except cigarettes.

The bill also provides that when advertising space is shared by several products, the cigarette or other tobacco portion of the advertisement shall be prorated for disallowance of the deduction.

Further, the bill states that the disallowance is inapplicable to advertising aimed at discouraging smoking or the use of cigarettes or other tobacco products.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would occur during the department's normal annual update.

LEGISLATIVE HISTORY

SB 1099 (Soto, 2001/2002) would have prohibited corporate manufacturers from deducting the cost of advertising prescription drugs. This bill failed to pass out of the Senate by the constitutional deadline.

AB 1364 (Wayne/Bowen, 1997/1998) would have prohibited a deduction for specified expenses paid or incurred to advertise the sale, use or consumption of cigarettes or any other products containing tobacco. This bill failed to pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

SB 1271 (Hart, 1993/1994) was identical to this bill. This bill failed to pass out of the Senate by the constitutional deadline.

OTHER STATES' INFORMATION

Review of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable disallowance of a deduction. These states were reviewed because of their similarities to California income tax laws.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue gains:

Estimated Revenue Impact of AB 1218 For Taxable Years Beginning On or After January 1, 2011 Enactment Assumed After June 30, 2011 (\$ in Millions)		
2011-12	2012-13	2013-14
+\$35	+\$33	+\$30

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

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: Some taxpayers may argue that this bill would discourage tobacco companies from advertising their products and therefore reduce the number of new smokers in California.

Con: Some taxpayers may argue that this bill unfairly denies businesses that sell tobacco products the same tax benefits enjoyed by other businesses.

POLICY CONCERNS

This bill would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation that may lead to noncompliance.

LEGISLATIVE STAFF CONTACT

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