

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Perea Analyst: Scott McFarlane Bill Number: AB 1423
Related Bills: None Telephone: 845-6075 Amended Date: June 16, 2011
Attorney: Patrick Kusiak Sponsor:

SUBJECT: Conformity to the Federal Regulated Investment Company Modernization Act of 2010

SUMMARY

This bill would generally conform to the Regulated Investment Company Modernization Act of 2010.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

The June 16, 2011, amendments removed provisions that would have made technical amendments to the Sales and Use Tax Law and added the provisions explained in this analysis.

Summary of Suggested Amendments

Minor technical modifications are suggested and have been provided to the author.

PURPOSE OF THE BILL

The general purpose of conforming to changes in federal law is to simplify both the preparation of California income tax returns and the administration of California income tax laws.

Board Position:

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Executive Officer

Date

Selvi Stanislaus

07/05/11

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective immediately. The operative dates of conformity to the following twelve provisions of the Regulated Investment Company Modernization Act of 2010 (herein the “Act”) would be as follows:

	Act Section	Provision	Operative Date
1	101	Capital Loss Carryovers of Regulated Investment Companies	The provision would generally be operative for net capital losses for taxable years beginning on or after December 23, 2010. The provision relating to the treatment of present-law carryovers would be operative for taxable years beginning on or after December 23, 2010.
2	201	Savings Provisions for Failures of Regulated Investment Companies to Satisfy Gross Income and Asset Tests	The provision would be operative for taxable years for with respect to which the due date (determined with regard to any extensions) of the return of tax is due on or after December 23, 2010.
3	301	Modification of Dividend Designation Requirements and Allocation Rules for Regulated Investment Companies	The provision would be operative for taxable years beginning on or after December 23, 2010.
4	302	Earnings and Profits of Regulated Investment Companies	The provision would be operative for taxable years beginning on or after December 23, 2010.
5	303	Pass-Thru of Exempt-Interest Dividends and Foreign Tax Credits in Fund of Funds Structure	The provision would be operative for taxable years beginning on or after December 23, 2010.
6	304	Modification of Rules for Spillover Dividends of Regulated Investment Companies	The provision would be operative for distributions in taxable years beginning on or after December 23, 2010.
7	305	Return of Capital Distributions of Regulated Investment Companies	The provision would be operative for distributions made in taxable years beginning on or after December 23, 2010.

	Act Section	Provision	Operative Date
8	306	Distributions in Redemption of Stock of a Regulated Investment Company	The provision would be operative for distributions on or after December 23, 2010.
9	307	Repeal of Preferential Dividend Rule for Publicly Offered Regulated Investment Companies	The provision would be operative for distributions in taxable years beginning on or after December 23, 2010.
10	308	Elective Deferral of Certain Late-Year Losses of Regulated Investment Companies	The provision would be operative for taxable years beginning on or after December 23, 2010.
11	309	Exception to Holding Period Requirement for Certain Regularly Declared Exempt-Interest Dividends	The provision would be operative for stock for which the taxpayer's holding period begins on or after December 23, 2010.
12	502	Modification of Sales Load Basis Deferral Rule for Regulated Investment Companies	The provision would be operative for charges incurred in taxable years beginning on or after December 23, 2010.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

See page 616 of the Franchise Tax Board's report titled "[Summary of Federal Income Tax Changes – 2010](#)" for a detailed discussion of federal law and the state laws that would be affected by this bill.

THIS BILL

This bill would conform to the following twelve provisions of the Act:

	Act Section	Provision
1	101	Capital Loss Carryovers of Regulated Investment Companies
2	201*	Savings Provisions for Failures of Regulated Investment Companies to Satisfy Gross Income and Asset Tests
3	301	Modification of Dividend Designation Requirements and Allocation Rules for Regulated Investment Companies
4	302	Earnings and Profits of Regulated Investment Companies
5	303	Pass-Thru of Exempt-Interest Dividends and Foreign Tax Credits in Fund of Funds Structure
6	304	Modification of Rules for Spillover Dividends of Regulated Investment Companies
7	305	Return of Capital Distributions of Regulated Investment Companies
8	306	Distributions in Redemption of Stock of a Regulated Investment Company
9	307	Repeal of Preferential Dividend Rule for Publicly Offered Regulated Investment Companies
10	308	Elective Deferral of Certain Late-Year Losses of Regulated Investment Companies
11	309	Exception to Holding Period Requirement for Certain Regularly Declared Exempt-Interest Dividends
12	502	Modification of Sales Load Basis Deferral Rule for Regulated Investment Companies

* This bill would conform to Section 201 with the following modifications: (1) the tax imposed on asset-test failures would be computed by applying the California corporate tax rate (i.e., 8.84 percent) in lieu of the highest federal tax rate (i.e., 35 percent), (2) the minimum amount of tax imposed on asset-test failures would be \$12,500 in lieu of the federal minimum amount of \$50,000, and (3) the tax imposed on income-test failures would not apply.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. *Illinois, Michigan, and New York* automatically conform each year to the Internal Revenue Code (IRC); thus, these states automatically conform to the Act.

Massachusetts has different conformity rules for personal income tax and corporate tax. Under its corporate tax law, *Massachusetts* generally has automatic conformity to the IRC; thus, for corporate tax purposes, *Massachusetts* conforms to the Act. *Minnesota* conforms to the IRC as amended through December 31, 2010, and thus conforms to the Act. *Florida*, which imposes corporate income tax but not personal income tax, currently conforms to the IRC as of January 1, 2010; however, the *Florida* legislature generally updates the IRC conformity date on an annual basis, and will likely retroactively conform to the Act sometime in 2011.

FISCAL IMPACT

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

ECONOMIC IMPACT

	Act Section	Provision	2011/12	2012/13	2013/14
1	101	Capital Loss Carryovers of Regulated Investment Companies	\$0	\$250,000	\$450,000
2	201	Savings Provisions for Failures of Regulated Investment Companies to Satisfy Gross Income and Asset Tests	Negligible Gain	Negligible Gain	Negligible Gain
3	301	Modification of Dividend Designation Requirements and Allocation Rules for Regulated Investment Companies	-\$1,000	-\$500	-\$500
4	302	Earnings and Profits of Regulated Investment Companies	-\$3,000	-\$2,000	-\$2,000
5	303	Pass-Thru of Exempt-Interest Dividends and Foreign Tax Credits in Fund of Funds Structure	-\$100,000	-\$80,000	-\$70,000

	Act Section	Provision	2011/12	2012/13	2013/14
6	304	Modification of Rules for Spillover Dividends of Regulated Investment Companies	Negligible Loss	Negligible Loss	Negligible Loss
7	305	Return of Capital Distributions of Regulated Investment Companies	Negligible Gain	Negligible Gain	Negligible Gain
8	306	Distributions in Redemption of Stock of a Regulated Investment Company	-\$450,000	-\$350,000	-\$350,000
9	307	Repeal of Preferential Dividend Rule for Publicly Offered Regulated Investment Companies	Negligible Loss	Negligible Loss	Negligible Loss
10	308	Elective Deferral of Certain Late-Year Losses of Regulated Investment Companies	-\$1,000	-\$1,000	-\$1,000
11	309	Exception to Holding Period Requirement for Certain Regularly Declared Exempt-Interest Dividends	Negligible Loss	Negligible Loss	Negligible Loss
12	502	Modification of Sales Load Basis Deferral Rule for Regulated Investment Companies	-\$370,000	-\$200,000	-\$100,000
Totals			-\$925,000	-\$383,500	-\$73,500

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: Proponents would argue that without conformity to this Act, California Regulated Investment Companies (RICs) and California RIC investors would be subject to burdensome and confusing differences between federal and California RIC tax rules.

Con: Opponents would argue that with the state's current fiscal condition, any tax changes that reduce revenues should be avoided.

LEGISLATIVE STAFF CONTACT

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