

SUMMARY ANALYSIS OF AMENDED BILL

Author: Eng & Skinner Analyst: William Koch Bill Number: AB 2439
 Related Bills: See Prior Analysis Telephone: 845-4372 Amended Date: May 2, 2012
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Controller Publish Corporation Tax Liability Information On Website & Maintain Public Record

SUMMARY

This bill would:

- Require certain corporations to report to the Controller their tax liability and whether they elected to utilize a single sales factor apportionment formula, and
- Require the Controller to publish such information on its Internet Web site and maintain a public record of the information.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 2, 2012, amendments revised the provisions of the bill relating to certain corporations reporting their tax payment information to the Controller and instead would require those corporations to report their tax liability and whether or not they elected to utilize a single sales factor apportionment formula.

As a result of the amendments, the "This Bill," "Implementation Considerations," and "Policy Concerns" sections of the department's analysis of this bill as amended April 11, 2012, have been revised, and the "Technical Considerations" section no longer applies. The "Fiscal Impact," and "Economic Impact," sections remain and have been restated for convenience.

ANALYSIS

THIS BILL

This bill would:

- Require corporations that are obligated to file an annual Form 10-K with the federal Securities and Exchange Commission to annually disclose to the Controller their tax liability under the Corporation Tax Law for the previous taxable year and whether or not they elected to utilize a single sales factor apportionment formula. The disclosure would be due to the Controller within three months of the corporation's Form 10-K filing deadline; except for the 2010 and 2011 taxable years, which would be due to the Controller on or before April 1, 2013.

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- Require the Controller to publish on its Internet Web site the information disclosed by corporations, as specified. The Controller would also be required to maintain a record, available to the public, of such information.
- Specify that if the tax liability is contested or otherwise under dispute by the corporation or the Franchise Tax Board (FTB), information regarding the dispute would also be included on the Controller's Internet Web site and records. The FTB would be required to provide the Controller with "the information needed" to comply with this provision.
- Define, for purposes of this bill, "tax liability" as the amount of tax owed after application of any credits, excluding overpayments, estimated tax payments, withholding, or amounts paid with an extension of time to file a tax return.

IMPLEMENTATION CONSIDERATIONS

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

- This bill lacks a definition of "contested or otherwise under dispute." Absent a definition, the department would lack clarity if the author's intent is for this phrase to include tax years under audit, pending assessments, appealed assessments and refund claims.
- This bill would require the FTB to provide the Controller with "the information needed" for the Controller to comply with the provision of the bill that would require the Controller to include information relating to contested or disputed tax liabilities on its website. It is unclear what "the information needed" means or is intended to be. This bill should be amended to define this phrase to specify the department's exact disclosure authority so the FTB can clearly identify what taxpayer information would be subject to this provision.
- Corporations may have difficulty or be unable to comply with the due dates of the information required to be submitted to the Controller. This bill would require corporations to submit the information to the Controller within three months of the corporation's Form 10-K filing deadline. The due date of Form 10-K can be as soon as 60 days after the end of a corporation's fiscal year. Under current law, corporate taxpayers are allowed an automatic 7-month extension to file their tax return. Consequently, the information required to be submitted to the Controller under this bill may not be known to a corporation until months after the deadlines specified in the bill.

FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation concerns identified above have been resolved.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the state's income or franchise tax revenue.

SUPPORT/OPPOSITION¹

Support: California Labor Federation
Service Employees International Union California

Opposition: BIOCOM
California Chamber of Commerce
California Aerospace Technology Association
California Bankers Association
California Healthcare Institute
California Manufacturers and Technology Association
California Retailers Association
California Taxpayers Association
Council on State Taxation
TechAmerica

ARGUMENTS

Proponents: Some people could say this bill is necessary to increase transparency and to evaluate current corporate tax law.

Opponents: Some people could say this bill is unfair because it would make certain confidential tax information available to the public.

POLICY CONCERNS

California has tax system that primarily relies on the taxpayer to self-assess and pay the proper amount tax. If tax liability information is disclosed to public, it is unclear what impact, if any, there may be on the self-assessing tax system.

LEGISLATIVE STAFF CONTACT

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¹ As reported in the April 20, 2012, Assembly Committee on Revenue and Taxation analysis of this bill located at: http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2401-2450/ab_2439_cfa_20120420_142933_asm_comm.html