

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 25, 2012
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Make Available Corporation Tax Liability Information

SUMMARY

This bill would require the Franchise Tax Board (FTB) to disclose, upon request, the tax liability of certain corporations and whether those corporations elected to utilize a single sales factor apportionment formula.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 25, 2012, amendments (1) added provisions that would require the FTB to disclose the tax liability of certain corporations and whether those corporations elected to utilize a single sales factor apportionment formula and (2) struck provisions of the bill that would have:

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

As a result of the amendments, the “This Bill” and “Implementation Considerations” sections of the department’s analysis of this bill as amended May 2, 2012, have been revised, and a technical concern has been identified. The “Fiscal Impact,” “Economic Impact,” and “Policy Concerns” sections remain and have been restated for convenience.

ANALYSIS

THIS BILL

This bill would:

- Require the FTB, on and after September 1, 2014, to make available, upon request, information regarding the tax liability of each corporation that is required to file an annual Form 10-K with the federal Securities and Exchange Commission (SEC). The information made available upon request would be the tax liability of a specified corporation with respect to the taxes imposed under the Corporation Tax Law for the taxable year that closed two years before the request and whether or not the corporation elected to utilize a

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single sales factor apportionment formula for that taxable year. For the 2010 and 2011 taxable years, the FTB would be required to disclose the above information on or before September 1, 2013.

- Require the FTB to indicate in its response to a request for information regarding the tax liability of a corporation if the tax liability is contested or otherwise under dispute by the corporation or the FTB.
- 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.

- It is unclear if the author’s intent is for the FTB to disclose, upon every request the department receives, the tax liability information of each, as in every, corporation required to file Form 10-K with the SEC, or only the tax liability information of a specified corporation, as identified by the requestor. To ease the administration of this bill, the author should amend the bill to clarify the tax liability disclosed would only be for a specified corporation as identified by the requestor and also include a requirement that the requestor include the “IRS EIN” (Employer Identification Number) as reported on the corporation’s Form 10-K filed with the SEC. This would eliminate confusion and provide certainty as to which corporation the request relates to.
- The disclosure authorized by this bill would only apply to corporations required to file an annual Form 10-K with the SEC. The FTB may encounter difficulty determining whether a corporation is required to file Form 10-K because the FTB does not administer Form 10-K requirements. The author may wish to amend the bill to limit the disclosure to corporations that actually filed Form 10-K with the SEC, which the FTB could verify on SEC’s website.
- This bill lacks a definition of “contested or otherwise under dispute.” Even if the bill is amended to define this phrase as appeals pending before the Board of Equalization or litigation in a court of law, the requirement to include this information would increase FTB staff research time, thereby increasing the department’s costs to administer this bill. To ease administration of this bill, the author may wish to amend the bill to delete this requirement.
- The reason for the differences in the operative date language for the disclosure provisions is unclear. For the 2010 and 2011 taxable years the FTB would be required to disclose information on or before September 1, 2013, (which would result in precluding the department from disclosing information for these tax years after September 1, 2013) and for later years the language reads on or after September 1, 2014. The author may wish to amend the bill to align the operative date language.

TECHNICAL CONSIDERATIONS

To ensure the “tax liability” that would be disclosed is the corporation’s tax liability after application of tax credits, but excluding all types of payments, the bill should be amended as follows:

On page 3, line 34, after “or” insert:

other amounts paid, including

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

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

POLICY CONCERNS

California has a tax system that primarily relies on the taxpayer to self-assess and pay the proper amount of 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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