

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Skinner Analyst: Brian Werking Bill Number: AB 2512
Related Bills: See Legislative History Telephone: 845-5103 Introduced Date: February 24, 2012
Attorney: Patrick Kusiak Sponsor: 3 Member Franchise Tax Board

SUBJECT: Expand Imposition Of The Non-Qualified/Suspended/Forfeited Failure To File Penalty to LLCs

SUMMARY

This bill would expand the imposition of the non-qualified, suspended, or forfeited failure to file penalty (\$2,000 Penalty) to include limited liability companies (LLCs).

RECOMMENDATION AND SUPPORTING ARGUMENTS

Support.

On December 1, 2011, the three-member Franchise Tax Board (Board) voted 2-0 to sponsor the language included in this bill, with the representative from the Department of Finance abstaining.

PURPOSE OF THE BILL

The purpose of this Board-sponsored bill is to provide equitable treatment between LLCs and corporations by requiring the Franchise Tax Board (FTB) to impose a \$2,000 Penalty on LLCs where similarly situated corporations are already subject to the penalty.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2013, and operative for non-qualified, suspended, or forfeited LLCs that fail to file a return on or after January 1, 2013.

ANALYSIS

STATE LAW

Current state law authorizes the creation of many different types of business entities, including corporations and LLCs. An LLC is a hybrid, unincorporated business entity having one or more members. All corporations and LLCs that are either doing business in California, or incorporated or registered and qualified by the Secretary of State (SOS) to do business in California, are required to file the appropriate income tax returns or information returns and pay the appropriate tax, penalties, and interest. A corporation or LLC that fails to pay its taxes, penalties, and interest, or fails to file the appropriate tax return or information return, may have its powers, rights, and privileges suspended or forfeited (in the case of a foreign corporation) by a submission from the FTB or by the SOS.

Board Position:

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Executive Officer

Date

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A suspended or forfeited corporation or LLC:

- May not legally transact business.
- May not bring an action or defend itself in court.
- Cannot be granted an automatic extension of time to file.
- Cannot file a claim for refund.
- May not file or maintain an appeal before the Board of Equalization.
- May not continue a protest.
- May have any contract declared void by the other party if entered into during the period of time in which the LLC or corporation was suspended or forfeited.

Under existing law, any corporation or LLC that fails to file a tax return after receiving a notice of demand to file may be subject to a demand penalty. A foreign corporation that fails to qualify to do business in this state, or any corporation whose powers, rights, and privileges have been forfeited or suspended, and is doing business¹ in this state and fails to file a tax return within 60 days of receiving a demand to file, may also be subject to a \$2,000 Penalty. Under existing law, any foreign LLC that fails to qualify to do business in this state, or any LLC whose powers, rights, and privileges have been forfeited or suspended, and is doing business in this state and fails to file a tax return within 60 days of received a demand to file, may be subject only to a demand penalty, and not a \$2,000 Penalty.

THIS BILL

This bill would require the FTB to assess a \$2,000 Penalty against an LLC that is doing business² within the state while not registered to do business within the state, or while suspended or forfeited, if the LLC has failed to file a requested tax return for that period within 60 days after the FTB has sent a formal demand for the past due return.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

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.

None of the states surveyed assess a penalty similar to the \$2,000 Penalty.

FISCAL IMPACT

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

¹ As defined under Revenue and Taxation Code section 23101.

² *Ibid.*

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue gains:

Estimated Revenue Impact of AB 2512 For the Collection of Penalties Assessed On Non-qualified, Suspended, or Forfeited LLCs That Fail to File a Return On or After January 1, 2013 Enactment Assumed After June 30, 2012 (\$ in Thousands)				
2011/12	2012/13	2013/14	2014/15	2015/16
+\$330,000	+\$400,000	+\$490,000	+\$600,000	+\$700,000

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

SUPPORT/OPPOSITION

Support: The Board.

Opposition: None provided.

ARGUMENTS

Pro: Some taxpayers may advocate that this bill would provide equitable treatment between LLC and corporate business structures.

Con: Some taxpayers may argue that imposing an additional penalty on non registered, suspended, or forfeited LLCs may discourage LLCs from transacting business within the state.

LEGISLATIVE STAFF CONTACT

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