

SUMMARY ANALYSIS OF AMENDED BILL

Authors: Fuller & Runner Analyst: Davi Milam Bill Number: SB 526
 Related Bills: See Prior Analysis Telephone: 845-2551 Amended Date: May 18, 2015
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	Innocent Spouse Relief / Joint Returns
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SUMMARY

Under the Administration Franchise and Income Tax Law (AFITL), this bill modifies the Innocent Spouse equitable relief provision.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 18, 2015, amendments added a co-author and made other technical changes. As a result, the amendments resolved several, but not all, of the implementation concerns discussed in the department’s analysis of the bill as amended April 14, 2015.

Except for the “This Bill,” “Implementation Considerations,” and “Support/Opposition” sections, the remainder of the department’s analysis of the bill as amended April 14, 2015, still applies. The “Fiscal Impact,” “Economic Impact,” and “Policy Concerns” sections have been restated for convenience.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2016, and specifically operative for requests for relief received on or after January 1, 2016.

THIS BILL

This bill would provide that notwithstanding subdivision (b) of Section 19006, when taking into account facts and circumstances for equitable relief,¹ the fact that the individual’s liability for any unpaid tax or deficiency for any taxable year where a joint return has been filed has been revised under a judgment of dissolution of marriage may be a factor weighing in favor of relief from tax liability on income earned by or subject to the exclusive management and control of the individual, whether or not the individual was a victim of abuse at the time the return was filed or whether or not funds that would have been used to pay the tax or deficiency were misappropriated by the nonrequesting spouse.

¹ Under paragraph (1) of subdivision (f) of R&TC section 18533.

Board Position:	Legislative Director	Date
_____ S _____ NA _____ X _____ NP	Gail Hall	5/27/15
_____ SA _____ O _____ NAR		
_____ N _____ OUA _____		

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 would permit the Franchise Tax Board (FTB) to relieve an individual of liability on the individual's income pursuant to a judgment of dissolution of marriage. However, it is unclear how the order would be applied. For example:

- What date would the order be effective?
- To what taxable years would the order apply?
- Would the order apply only to liabilities due prior to the effective date of the order?
- Would the nonrequesting spouse be notified of the request for relief of liability?

It is recommended that the bill be amended to provide clarity on these issues and ensure consistency with the author's intent.

FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in a revenue impact to the general fund, but the amount is unknown.

Revenue Discussion

According to calculations, for every \$1 million in relief granted, the revenue loss would be \$60,000. This bill would allow, at the discretion of the FTB, subject to appeal to the Board of Equalization (BOE), the requesting spouse's tax liability to be shifted to the nonrequesting spouse or allow instances where neither spouse would be legally obligated to pay the tax liability.

Estimating cases of discretionary relief made by the FTB, subject to appeal to the BOE for revisions of tax deficiencies, as part of the judgment for dissolution of marriage, cannot be predicted. To determine the magnitude of relief, both the frequency and the dollar amount of these judgments must be known. Because it is difficult to predict the frequency and the value of future discretionary actions, the revenue impact is unknown.

SUPPORT/OPPOSITION²

Support: BOE, Vice Chair, George Runner.

Opposition: None provided.

POLICY CONCERNS

State law generally conforms to the federal innocent spouse provisions. This bill would create a difference between federal and state law in the application of these provisions by allowing an individual to be relieved of liability on their own income even if the individual was not a victim of abuse or the funds were not misappropriated by the nonrequesting spouse.

Taxpayers who file a joint return are jointly and severally liable for the full tax liability for the tax year(s) in which they filed jointly. Under state law that liability may be revised by a divorce court, provided the order does not relieve the requesting spouse of tax liability on “income earned by or subject to the exclusive management and control of the requesting spouse.” This condition reflects the longstanding tax policy of “proportional liability” (requesting spouse’s pro rata share of tax liability on the requesting spouse’s income). Applying a divorce order in all situations without regard to the concept of proportional liability would be contrary to this longstanding policy.

LEGISLATIVE STAFF CONTACT

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² As noted in the Senate Governance & Finance Committee analysis dated April 27, 2015.