**SCS Agency**
Franchise Tax Board

# ANALYSIS OF ORIGINAL BILL

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Related Bills: See Legislative History | Telephone: 845-3036 | Introduced Date: 2/24/97

Attorney: Doug Bramhall | Sponsor:

SUBJECT: Bank Tax Excess Over General Tax/ Local Agency Financial Aid Fund/ In-Lieu Provision

SUMMARY


Under Bank and Corporation Tax Law (B&CTL), this bill would make the following changes to the in-lieu tax for banks and financial corporations:

- require that the revenues from the in-lieu tax be deposited into the Financial Aid to Local Agencies Fund (the Fund), which would be created by the bill, for disbursement to all cities (including cities and counties) based on bank and financial corporation payroll proportions, as determined by the Franchise Tax Board (FTB);
- require that banks and financial corporations in each city semiannually report payroll information to the FTB;
- require the FTB to notify the Controller of the amount of collected taxes attributable to the bank tax; and
- specify that the tax would not be in-lieu of nondiscriminatory parcel taxes.


EFFECTIVE DATE

The bill would be effective for periods as follows:

- The provisions requiring banks and financial corporations to report payroll information to the department and the department's notification to the Controller of the amount of bank taxes collected would apply to the 1997/1998 fiscal year and each fiscal year thereafter.
- The requirements for the deposits into the Fund and the disbursements to the cities would apply beginning January 1, 1998.
- The nondiscriminatory parcel tax provision would apply to income years beginning on or after January 1, 1998.

LEGISLATIVE HISTORY

SB 1326 (Stats. 1982, Ch. 327), AB 3212 (95/96).

DEPARTMENTS THAT MAY BE AFFECTED:

____ STATE MANDATE ____ GOVERNOR'S APPOINTMENT

| Department Director Position: | Agency Secretary Position: | GOVERNOR'S OFFICE USE |
| --- | --- | --- |
| ____ S ____ O<br>____ SA ____ OUA<br>____ N ____ NP<br>_X_ NA ____ NAR<br>________ PENDING | ____ S ____ O<br>____ SA ____ OUA<br>____ N ____ NP<br>____ NA ____ NAR<br>DEFER TO ____________ | Position Approved ____<br>Position Disapproved ____<br>Position Noted ____ |
| Department Director<br>Gerald H. Goldberg 3/21/97 | Agency Secretary Date | By: Date: |

## PROGRAM HISTORY

**Under prior federal law**, states were allowed to tax federally chartered (national) banks only by using one of four methods: 1) taxing bank shares; 2) including bank share dividends in the taxable income of a shareholder; 3) taxing national banks on their net income; or 4) levying a franchise tax on national banks according to or measured by their net income.

**California law** adopted the fourth option by means of the bank tax, which consists of the corporate franchise tax and the "in-lieu" tax. **Under state law**, national banks, state-chartered banks, and financial corporations are exempted from personal property and certain other local taxes and instead are subject to a special in-lieu tax measured by net income in addition to the regular franchise tax.

**Prior state law** required that $10 million of the revenues generated from the bank tax rate be transferred to the Local Agency Reimbursement Fund. The law specified that these revenues were to be distributed to cities, cities and counties, and counties, based on population and the proportion of the bank and financial corporations' employees' wages. The law was applicable for income years ending in 1980 and 1981.

## SPECIFIC FINDINGS

**Existing federal law** requires states to treat national and state banks equally and prohibits states from imposing discriminatory taxes on national banks. The four methods outlined in the “Program History” discussion above have been deleted from federal law, thereby allowing states to use any system of taxation that satisfies the basic criterion of non-discrimination.

**The California Constitution** provides that the tax on state and national banks must be according to or measured by their net income and is in-lieu of all other taxes and license fees upon banks or their shares, except real property taxes and vehicle registration and license fees. However, the Constitution also gives the Legislature the power to override these provisions and provide for other taxes. **Existing state law** specifies that banks and financial corporations are covered under the in-lieu provisions and are subject to specific other taxes, such as local utility taxes, state energy resource taxes, and the state emergency telephone users surcharge. **Under existing state law,** the bank tax rate consists of the general corporation tax rate (currently 8.84%) plus the in-lieu rate of 2%.

**Existing state law** provides that all moneys and remittances received by the department under the B&CTL must be deposited in the Bank and Corporation Tax Fund. Moneys in the Bank and Corporation Tax Fund, upon order of the Controller, may be drawn from the fund to make tax refunds or be transferred to the General Fund.

Under the B&CTL, **this bill** would:

- require that the revenues from the in-lieu rate be deposited into the Fund, which would be created by this bill, for disbursement to cities. The department would determine, and notify the Controller, of the amounts to be distributed semiannually, in June and December, to cities. The distribution would be the proportion that the total payroll of all banks and corporations in each city bears to the total payroll.

- require banks and financial corporations in each city to semiannually report to the Franchise Tax Board (FTB) payroll information needed by the FTB to determine the proportion described above.
- require the Controller to transfer to cities and cities and counties in June and December the amounts in the account as of May 31 and November 31.
- specify that the bank tax would not be in-lieu of nondiscriminatory parcel taxes that are enacted by cities, counties, and special districts according to the constitutionally required two-thirds vote of the voters.

Implementation Considerations

This bill would require a specific date for the semiannual disbursements by the Controller. However, it does not provide a date by which banks and corporations would be required to semiannually report payroll information so the department can determine the proportion an area's bank and financial payroll bears to the bank and financial payroll of the entire state. Moreover, this bill also would not provide a penalty in cases where a bank or financial corporation provides false information or fails to provide the necessary information.

This bill uses, but does not define the term "eligible city." A definition for this term would assist the department in implementing the bill. The bill should either refer to all cities or should define the term "eligible city."

Paragraph (c)(1) would allocate funds to a city based on the proportion that city's bank and financial corporation bears to the total. However, "total payroll" is not defined and could be interpreted many different ways. The ambiguity needs to be resolved before the bill can be implemented.

Once these concerns are resolved, the department can establish a procedure to determine the proportion of in-lieu tax collected that should be disbursed to each city. To make this determination, the department would need to develop and mail forms to all banks and financial corporations to request payroll information. The department would need to semiannually process that payroll information to determine the proportion that should be distributed to each city and city and county. Also, the department would need to compile information regarding the amount of in-lieu tax collected for the report to the Controller. Implementation of these procedures should not significantly impact the department.

Technical Considerations

Paragraph (c)(2) provides for city populations to be determined according to a Department of Finance report. Reference to this report is unnecessary since the proportions allocated under this bill would be based on payroll rather than population. Amendments 1 and 2 would remove this paragraph and make a related technical change.

## FISCAL IMPACT

Departmental Costs

Developing, mailing, and processing forms for banks to report payroll information and compiling that information into the report to the Controller would require the expenditure of administrative resources. The costs to implement these changes could be significant, but the department would be reimbursed for any costs incurred.

Tax Revenue Estimate

Revenue losses to the General Fund under the Bank & Corporation Tax Law are estimated to be:

| Estimate Revenue Impact of AB 511 Effective With Fiscal Years Beginning 1997-8 (In Millions) | | | |
|---|---|---|---|
| 1997-8 | 1998-9 | 1999-0 | 2000-1 |
| ($137) | ($142) | ($141) | ($147) |

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Tax Revenue Discussion

Revenue losses to the General Fund under the Bank & Corporation Tax Law would depend on the amount of profits reported by banks and other corporations subject to the in-lieu tax rate.

The above estimate was based on the actual revenue collected from the in-lieu rate for the 1994 tax year ($115 million) and projected to 1997-8 using the Department of Finance, January 1996, Bank and Corporation Tax Law projected growth in revenues. These moneys would be collected by the Franchise Tax Board and transferred to the State Treasury to the credit of the Financial Aid to Local Agencies Fund, which this bill would create.

POSITION

Neutral, if amended.

The department’s position would be neutral if the bill is amended to resolve the implementation concerns addressed in the analysis.

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FRANCHISE TAX BOARD’S
PROPOSED AMENDMENTS TO AB 511
As Introduced February 24, 1997

AMENDMENT 1

On page 3, line 30, strikeout “(3)” and insert:

(2)

AMENDMENT 2

On page 3, strikeout lines 32 to 39 and insert:

(2) Every bank and financial corporation in each