

SUMMARY ANALYSIS OF AMENDED BILL

Author: Knox Analyst: Colin Stevens Bill Number: AB 385

Related Bills: See prior analysis Telephone: 845-3036 Amended Date: 4/28/99

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Disclosure of Tax Return Information to Charter Cities If Written Agreement Exists

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO NEUTRAL.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED FEBRUARY 11, 1999, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

Under the Administration of Franchise and Income Taxes (AFITL), this bill would permit the Franchise Tax Board (FTB) to disclose California income tax information to tax officials of charter cities in California. Disclosure would be under a written agreement and would be limited to (1) information essential for tax administration purposes, (2) information regarding only taxpayers with a business or residence-based business located within the charter city, and (3) a taxpayer's name, address, social security or taxpayer identification number, and business activity code. Use of the information would be limited to employees of the taxing authority of a charter city.

The charter city first would be required to certify to the FTB that taxpayers in the business activity codes for which information is requested are subject to tax under the city's ordinance. However, disclosure of information on individuals self-identified as engaging in business or professional activity code 711510 or 711130 would not be allowed if certain conditions are met.

SUMMARY OF AMENDMENT

The April 28, 1999 amendments:

- instead would add Section 19551.1 to the R&TC;
- specify that individuals identified as engaging in federal business or professional activity codes 711510 (independent artists, writers and performers) or 711130 (musicians) could not be reported by the FTB to charter cities unless the FTB first notifies the taxpayer and the taxpayer fails to respond. The FTB could provide information to a charter city on individuals identified as engaging in federal professional activity codes 711510 or 711130

Board Position:

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|---------------------------------------|------------------------------|----------------------------------|
| <input type="checkbox"/> S | <input type="checkbox"/> NA | <input type="checkbox"/> NP |
| <input type="checkbox"/> SA | <input type="checkbox"/> O | <input type="checkbox"/> NAR |
| <input checked="" type="checkbox"/> N | <input type="checkbox"/> OUA | <input type="checkbox"/> PENDING |

Department/Legislative Director

Date

Johnnie Lou Rosas

5/21/1999

only if the taxpayer does not certify within 90 days of receipt of a notice that the taxpayer is a writer, musician, director, or other creative artist, as defined;

- provide that the FTB may not use information for taxpayers described above for purposes of a municipal tax amnesty or other municipal tax enforcement program;
- provide a repeal date of January 1, 2007;
- require the California Research Bureau to prepare a report to the Legislature by December 31, 2005, on the effectiveness of this bill.

Except for the discussion above, the new position, the resolution of the implementation consideration relating to business activity codes and the prior technical considerations, and the new considerations shown below, the department's analysis of AB 385 as introduced February 11, 1999, still applies.

Implementation Consideration

This bill would allow the FTB to provide information to charter cities about taxpayers in professional activity codes 711510 or 711130 on their Schedule C if, after 90 days from receipt of the notice, the taxpayer does not submit occupational certification. However, it is not possible for the FTB to know when or whether a taxpayer received notification. Consistent with other notice requirements in the Revenue and Taxation code, a more viable solution would allow the FTB to provide information to cities if the FTB has not received a response from the taxpayer within a given number of days after sending the notification.

Technical Consideration

Subdivision (a) makes reference to tax information FTB is allowed to provide pursuant to subdivision (a) of Section 19551. However, Section 19551 (a) does not refer to charter cities, and the only such reference in that section is in subdivision (b). Further amendments to clarify the author's intent would assist the department in implementing the bill.

The repeal language in this bill varies from the language typically provided to repeal a section. Amendment 1 would provide language similar to the language usually contained in the R&TC.

Code 711130 is a valid code within the North American Industry Classification System, but it is not utilized for purposes of federal principal business or professional activity reported on a taxpayer's federal tax return. To ensure that the bill excludes the intended taxpayers from having information reported to cities, the author may wish to revise the reference to code 711130.

The bill specifies that information may not be provided on a taxpayer who identified his or her business or professional activity code for federal income tax purposes as described under federal codes encompassing "independent writers, artists, and performers" and "musicians," but then states that the taxpayer must certify that he or she is a "writer, musician, director, or other creative artist." The terms used by the bill should be consistent.

BOARD POSITION

Neutral.

At its March 23, 1999, meeting, the Franchise Tax Board voted to take a neutral position on this bill as introduced February 11, 1999.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 385
As Amended April 28, 1999

AMENDMENT 1

On page 5, lines 26-27, strike "unless a later enacted statute deletes or extends that date"