

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Maldonado Analyst: Gloria McConnell Bill Number: AB 463

Related Bills: _____ Telephone: 845-4336 Amended Date: APTBA

Attorney: Patrick Kusiak Sponsor: FTB

SUBJECT: Requests for Abatements of Interest/Appeals to Board of
Equalization/Deficiency Assessments/Statute of Limitation

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 _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill, which is sponsored by the Franchise Tax Board (FTB), would allow a taxpayer who is protesting a proposed deficiency to include a request for an abatement of related interest. If the taxpayer does not include the request for abatement of interest in the original protest, but later appeals FTB's adverse action on the protested proposed deficiency, the taxpayer then would be required to include the request for abatement of interest with the appeal of the underlying proposed deficiency. The taxpayer could not make a separate request for abatement of interest or appeal a denial thereof. If the taxpayer does not protest or appeal FTB's adverse action on the underlying proposed deficiency or the taxpayer requests an abatement of interest which accrued between the time the deficiency was final and FTB issued its notice of tax due, the time for filing an appeal to the BOE would be reduced by this bill from the present 180 days to the more customary 30 and 90 days, depending upon whether it is a proposed deficiency or abatement request.

Additionally, this bill would allow taxpayers to treat a request for abatement of interest as deemed denied if the FTB does not respond within six months and the taxpayer does not protest/appeal the underlying proposed deficiency.

SUMMARY OF AMENDMENT

This amendment replaces the provisions that otherwise would have extended the statute of limitations for credits and claims for refunds with the provisions summarized above.

Board Position:

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

Department Director

Date

Gerald Goldberg

12/28/99

EFFECTIVE DATE

As proposed to be amended, this bill would be operative for requests for abatement of interest and appeals made on or after January 1, 2001.

PROGRAM HISTORY/BACKGROUND

In the event the amount of tax that a taxpayer self-assesses is less than the amount the Franchise Tax Board (FTB) determines is due, FTB issues a notice of proposed deficiency assessment (NPA). The proposed deficiency becomes final if a protest is not filed with the FTB within 60 days. Even though the applicable amount of interest may be included on a notice of proposed deficiency, the reduction or withdrawal of the underlying proposed deficiency would reduce or eliminate the interest.

Under AB 53 (Stats. 87, Ch. 1138), California generally conformed to the federal Tax Reform Act of 1986. One such conforming provision allows the FTB to abate interest to the extent that interest accrued on a deficiency after the taxpayer was first contacted in writing by the FTB and the accrual was solely attributable to an error or delay of an officer or employee of the FTB in performing a ministerial act. Under federal (temporary) regulations, which are applicable for California purposes, "ministerial act means a procedural or mechanical act that does not involve the exercise of judgment or discretion and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act."

In 1988, the Taxpayers' Bill of Rights was enacted (AB 2788; Stats. 88, Ch. 1573). The Taxpayers' Bill of Rights II (TBR II), which was sponsored by the FTB, was enacted by AB 713 (Stats. 97, Ch. 600). TBR II generally conformed laws administered by the FTB to the federal Taxpayer Bill of Rights 2, which was enacted on July 30, 1996. One such conforming law amended the above-discussed abatement of interest provisions. The TBR II limited the abatements of interest to those attributable to "unreasonable" errors or delays, but expanded the type of acts to include "managerial" as well as ministerial acts. According to the House Ways and Means Committee Report, delays resulting from "managerial acts" would include "the loss of records, personnel transfers, extended illnesses, extended personnel training or extended leave. On the other hand, interest would not be abated for delays resulting from general administrative decisions."

Additionally, under the TBR II, in the event the FTB denied the taxpayer's request for abatement of interest, the taxpayer is allowed to appeal FTB's determination. A taxpayer may appeal to the Board of Equalization (BOE) within 180 days after the FTB mails its notice of determination not to abate interest. The provisions regarding the "unreasonable" errors or delays and "managerial" acts are operative for taxable or income years beginning January 1, 1998. The right of appeal is operative for requests for abatement made on or after January 1, 1998.

SPECIFIC FINDINGS

Under current state law, if an NPA is protested, FTB's action on the protest is final unless within 30 days after FTB issues its notice of action the taxpayer

appeals to the BOE. Once the BOE makes a determination and the proposed deficiency is final, the BOE issues a notice of its determination to the taxpayer. FTB then computes the accrued interest and issues to the taxpayer a notice of tax due, which includes the accrued interest that is due and payable.

In contrast, a claim for refund requires a payment of the tax and interest before the claim may be made. When a taxpayer protests or appeals FTB's action on an NPA and thereafter pays the proposed assessment before it is final, the protest or appeal must be treated as a claim for refund. In addition, rather than protesting the NPA, a taxpayer may pay the NPA and may then file a claim for refund. No statute limits the time that FTB must act on the claim for refund; however, if FTB does not act on a claim for refund within six months after the taxpayer files the claim, the claim may be deemed denied. The taxpayer has 90 days to appeal FTB's action to the BOE or file a suit for refund.

The taxpayer may request an abatement of interest arising out of either a deficiency action or a claim for refund. To request abatement of interest, the taxpayer files an FTB Form 3701 with the FTB. No statute limits the time that FTB must act on a request for abatement. If FTB makes a determination not to abate the interest, the taxpayer has 180 days after the FTB mails its notice of determination to appeal to the BOE. These provisions are similar to the protest and appeal procedures for deficiency assessments and conform to the federal law; however, the appeal of the Internal Revenue Service's denial of interest abatement is made to the Tax Court.

If FTB's adverse action on the protested proposed deficiency and request for interest abatement were appealed, taxpayers could combine the appeals to include both matters. When the underlying deficiency is not at issue, current law permits a taxpayer to make a separate request for abatement of interest after the deficiency is final and to appeal the FTB's denial of interest abatement to the BOE.

This bill would:

1. Allow a request for abatement of interest related to a proposed deficiency to be included with a protest of the underlying proposed deficiency. If FTB's adverse action on the protested proposed deficiency and request for interest abatement were appealed, taxpayers could combine the appeals to include both matters. Even if the taxpayer does not include the request for abatement of interest in the original protest, but later appeals FTB's adverse action on the protested proposed deficiency, the taxpayer would be required to include the request for abatement of interest with the appeal of the underlying proposed deficiency. As a result, the taxpayer could not make a separate request for abatement of interest or appeal a denial thereof.

If the taxpayer does not protest or appeal FTB's adverse action on the underlying proposed deficiency or if the taxpayer requests an abatement of interest which accrued between the time the deficiency was final and FTB issued its notice of tax due, the taxpayer could continue the process provided under current law, subject to the changes in the statute of limitations (SOL) for making the request as described below in item #3.

2. Clarify that it is the interest, which accrues because of a ministerial or managerial delay in the issuance of a deficiency that is subject to abatement, not the tax deficiency itself.
3. Remove the inconsistency in the time allowed for the taxpayer to appeal to the BOE adverse FTB actions on interest abatement requests by reducing the 180-day period for appealing a denial of abatements of interest to the more customary 30 and 90-day periods applicable to proposed deficiencies of tax or denials of claims for refund.
4. Allow the taxpayer to treat a request for abatement of interest as deemed denied if the FTB does not respond within six months and the taxpayer does not protest/appeal the underlying proposed deficiency.

Policy Considerations

- This bill would streamline the appeals process and eliminate the requirement under current law for the taxpayer to go before the BOE twice, once for the tax and later for the interest if the tax reduction is denied.
- Even though this bill would take California further out of conformity with federal law, state law is often out of conformity in its administrative procedures. In this case, nonconformity would be beneficial to California and its taxpayers by streamlining government.

Implementation Considerations

As proposed to be amended, to be operative on January 1, 2001, this bill could be implemented without significant problems for FTB staff. Procedures would be updated to incorporate requests for abatement of interest into the protest and/or appeal process. If the taxpayer protests the underlying deficiency assessment and includes the request for abatement, as provided by this bill, FTB staff would issue at the same time a notice of action on the proposed deficiency and a notice of determination on the request for abatement of interest. If the taxpayer appeals to the BOE, FTB staff would address both matters in its statement/brief to the BOE. If the taxpayer includes a request for abatement of interest for the first time with the appeal of the underlying deficiency, FTB staff would make its determination on the taxpayer's request for abatement of interest at the time it files its brief on the underlying proposed deficiency.

Potentially all taxpayers who appeal the underlying deficiency may routinely include a request for interest abatement as part of the appeal process merely to protect their right to make such a request. However, if requests for interest abatement become routine during the protest and appeal process as a result of this bill, staff would identify and implement necessary efficiencies.

FISCAL IMPACT

Departmental Costs

The increase in departmental costs that may result from this proposal is unknown. The ability to appeal such denied requests has been operative since January 1, 1998. To date the department has received about 50 requests. Departmental costs may increase to the extent that under this bill tax practitioners or taxpayers would routinely request interest abatement in a protest and/or appeal of a deficiency assessment.

Tax Revenue Estimate

This bill should not impact tax revenue.

BOARD POSITION

Sponsor. At its August 4, 1998, meeting, the Franchise Tax Board voted to sponsor the language in this bill.