

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Alpert Analyst: Marion Mann DeJong Bill Number: SB 304

Related Bills: SB 1015 (1999) Telephone: 845-6979 Amended Date: 04/19/1999

Attorney Patrick Kusiak Sponsor:

SUBJECT: Combined Reporting/Top Tier Corporations Of Commonly Controlled Groups/Regulated Public Utility Group

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 would allow "top tier" corporate taxpayers to elect to include all the income and apportionment factors of the members of a designated regulated public utility group (as defined) in a combined report, regardless of whether the group members are unitary. This bill also would define "unitary business" for a non-electing regulated public utility group as one whose business activities show operational interdependence (as defined), strong central management (as defined), or a qualified holding company relationship (as defined).

SUMMARY OF AMENDMENT

The April 19, 1999, amendments clarify the operative date for the unitary business definition for non-electing parties and provide legislative declarations and intent. Specifically, the amendments provide that the unitary business definition provision shall apply only to income years beginning on or after the effective date of the elective combination provision. In addition, the unitary business definition provision shall not be inferred to reflect legislative intent in prior years with respect to the unitary business concept. The determination of a unitary business prior to the effective date of the unitary business definition provision shall be in accordance with the law and judicial and administrative interpretations of the law in effect prior to the enactment of the new definition. These amendments are intended to clarify that the unitary business definition for non-electing parties shall not apply to income years beginning prior to the enactment of this bill.

The department's analysis and revised analysis of the bill as introduced February 4, 1999, still apply. The department's Implementation and Technical Considerations and the Board Position are reiterated below. A new Implementation Consideration regarding the April 19, 1999, amendment is also provided below.

Board Position:

<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 **5/4/1999**

IMPLEMENTATION CONSIDERATIONS

This bill would raise the following implementation considerations. Department staff is available to assist the author with any necessary amendments.

- The operative date language added by the April 19, 1999, amendment could be interpreted to "freeze" the relevant law as of the effective date of this bill by making cases (covering prior years' taxes) decided after the enactment date of this bill not applicable. Amendment 2 would delete the sentence.
- This bill would allow taxpayers to make an election for income years beginning on or after January 1, 1999; however, the election must be made before the first day of the designated income year. Taxpayers with income years beginning before the enactment date of this bill would not be able to make the election until the next income year, while taxpayers with income years beginning after the date of enactment could make the election for the 1999 income year. In addition, the department would need time to provide instructions for making elections to taxpayers. To provide consistency for taxpayers and for ease of administration, the bill should become operative for income years beginning on or after January 1, 2000.
- This bill would provide for the automatic renewal of an election unless the group did not constitute a designated regulated public utility group for the last 12 months of the 84-month election period. It is unclear whether this would require the department to audit each group prior to renewal to determine if the group is a designated regulated public utility group.
- Many regulated public utility companies invest in tax shelters such as low-income housing limited partnerships. Generally, when a partnership and the partner are not unitary, the distributive share of partnership activities is treated as a separate trade or business. It is unclear how the election works in this situation. Would this separate trade or business be deemed unitary by the election? Does the election provision refer to lines of business or only to separate corporations?
- This bill would provide that if an election is terminated or not renewed, another election may not be made for any income year beginning 60 months after the last day of the election period that was terminated or not renewed. It is unclear when the 60-month period begins: the date of the termination or nonrenewal or the end of the original 84-month election period. Further, this could be read to preclude an election for a period beginning 60 months from the termination or nonrenewal.
- It is unclear whether the **transfer** of technical or marketing information, for determining operation interdependence, means the physical transferring of information or the mere sharing of information.

TECHNICAL CONSIDERATIONS

Technical amendments are provided to do the following:

- Amendment 1 would change a word to its plural form.
- Amendment 3 would change an incorrect reference.

BOARD POSITION

Neutral.

At its March 23, 1999, meeting, the Franchise Tax Board voted 2-0 to take a neutral position on this bill.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 304
As Amended April 19, 1999

AMENDMENT 1

On page 3, line 29, strikeout "provision" and insert:

provisions

AMENDMENT 2

On page 6, delete lines 32 through 36, inclusive, and insert:

respect to the unitary business concept.

AMENDMENT 3

On page 7, line 28, strikeout "25101.2," and insert:

25102.2,