

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Briggs Analyst: Marion Mann DeJong Bill Number: AB 1016

Related Bills: See Prior Analysis Telephone: 845-6979 Amended Date: 08/14/2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Confidentiality/Taxpayer Communications

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 entitle a taxpayer to the same protections of confidentiality for communications with respect to the tax advice given by any federally authorized tax practitioner as the taxpayer would have for communications if the advising individual were an attorney. The privilege would apply in any noncriminal tax matter before the Franchise Tax Board (FTB). The privilege would sunset January 1, 2005, unless subsequent legislation extends that date.

This bill also would provide similar protections for communications between a taxpayer and a federally authorized tax practitioner in any noncriminal tax matter before the Board of Equalization (BOE) or Employment Development Department (EDD). These provisions are not discussed in this analysis as they do not impact the programs administered by the department.

SUMMARY OF AMENDMENT

The August 14, 2000, amendments deleted references to the Internal Revenue Code (IRC) that provided definitions for "federal tax advice" and "tax shelter" and replaced them with similar definitions in the statute itself.

"Federal tax advice" would mean advice given by an individual within the scope of his or her authority to practice before the Internal Revenue Service (IRS) on noncriminal tax matters. "Tax shelter" would mean a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of the partnership, entity, plan or arrangement is the avoidance or evasion of federal income tax.

Except for the definitions discussed in this analysis, the department's analysis of the bill as amended January 4, 2000, still applies. The policy, implementation and technical considerations and the Board position from the prior analysis are provided below.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input checked="" 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

Legislative Director

Date

Johnnie Lou Rosas

8/30/00

POLICY CONSIDERATIONS

This bill would raise the following policy considerations:

- ?? The IRS has a program that oversees the activities of persons authorized to practice before it and can suspend or revoke that authority if the activities of the practitioner so warrant. California has no such relationship with those authorized to practice before the IRS.
- ?? California law and regulations are broader than federal law in that they allow any individual to represent a taxpayer in FTB-related tax matters. Limiting the extension of the privilege to IRS authorized representatives would mean that taxpayers using federally authorized tax professionals (i.e., CPAs and enrolled agents) would receive the benefit of the privilege, but taxpayers using other representatives (e.g., a family member or someone not authorized to practice before the IRS) would not.
- ?? In recent years, attorneys have become affiliated with accounting firms (as employees or principals) and the line between legal advice and that provided by accountants has blurred. This provision would afford advice given by CPAs the same privilege provided attorneys when discussing similar issues.
- ?? Taxpayers and practitioners may believe that this bill would protect a greater range of communications than actually covered by attorney-client privilege.
- ?? It is unclear how the sunset provision applies. For example, would communications that are privileged when made remain privileged during an audit or other noncriminal proceeding that is commenced or conducted after January 1, 2005, the repeal date?
- ?? This bill would not extend the privilege to claim for refund actions filed in Superior Court.

IMPLEMENTATION CONSIDERATIONS

While this bill would not significantly impact the programs administered by the department, it may increase costs of individual cases for taxpayers and the department due to disputes over whether the confidentiality privilege under this bill applies in a particular case.

TECHNICAL CONSIDERATION

The language limiting the privilege "in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency" is awkward because proceedings do not "discipline" a "license or right to practice." It is unclear whether the taxpayer or the federally authorized tax practitioner is the one being disciplined.

BOARD POSITION

Neutral.

On July 6, 1999, the Franchise Tax Board voted to take a neutral position on the May 19, 1999, version of this bill.