# SUMMARY ANALYSIS OF AMENDED BILL

**Franchise Tax Board**

Author: Hertzberg | Analyst: Marion Mann DeJong | Bill Number: AB 1392

Related Bills: See Legislative History | Telephone: 845-6979 | Amended Date: 06/30/1999

Attorney: Patrick Kusiak | Sponsor:

**SUBJECT**: Action To Determine Validity Of Amount Of Tax

X DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended June 21, 1999.

____ 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.

X DEPARTMENT POSITION CHANGED TO Support.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 21, 1999, STILL APPLIES.

____ OTHER - See comments below.

## SUMMARY OF BILL

This bill would allow a taxpayer to bring an action to determine whether an amount assessed by the Franchise Tax Board (FTB) is void, by posting a bond to guarantee payment of the amount due.

This bill also would add corresponding provisions that would apply to the Board of Equalization (BOE).

## SUMMARY OF AMENDMENT

The June 30, 1999, amendments made department recommended technical changes, added a subdivision reference and made corresponding amendments in the code sections administered by the BOE.

The June 30, 1999, amendments resolved the Technical Considerations raised in the department's analysis of the bill as amended June 21, 1999. Except for the Technical Considerations and the Board Position, the department's analysis of the bill as amended June 21, 1999, still applies. The Legal Consideration and remaining Implementation Considerations are reiterated below. The Board Position has been changed to reflect recent action by the Franchise Tax Board.

## LEGAL CONSIDERATION

The provisions of this bill are susceptible to constitutional challenge since the California Constitution (Article XIII, Section 32) specifically provides that no legal or equitable process shall issue in any proceeding in any court to prevent or enjoin the collection of any tax. If a taxpayer posts a bond, rather than paying all amounts due, and brings an action, this bill would prevent collection while that action is pending. However, Legislative Counsel has recently opined that this bill would not violate Article XIII, Section 32.

| Board Position: | | | Department/Legislative Director | Date |
|---|---|---|---|---|
| X S | NA | NP | | |
| SA | O | NAR | | |
| N | OUA | PENDING | **Johnnie Lou Rosas** | **7/12/1999** |

## IMPLEMENTATION CONSIDERATIONS

This bill would raise the following implementation considerations:

- Since this bill would allow taxpayers to initiate a lawsuit by posting a bond rather than paying the full proposed liability, more taxpayers may take their cases directly into court without adjudication before the BOE. This would result in increased litigation workloads.

- The bill specifies that the taxpayer must file a “good and sufficient bond to guarantee the payment of the amount due and any additional amount, including interest and penalties, that may reasonably be expected to become due.” If taxpayers and the department dispute whether the bond is “good and sufficient,” increased litigation workloads could result.

- Since under current law the department does not assess late payment penalties on proposed deficiency assessments, the provision prohibiting the assessment of such penalties would have no impact on taxpayers or the department.

## BOARD POSITION

Support.

At its July 6, 1999, meeting, the Franchise Tax Board voted 2-0 to support this bill as amended June 21, 1999.