ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Sen Rev & Tax Committee | Analyst: Gloria McConnell | Bill Number: SB 2170

Related Bills: ______ | Telephone: 845-4336 | Amended Date: 08/07/00

Attorney: Patrick Kusiak | Sponsor: ______

SUBJECT: Miscellaneous FTB Tax Provisions

_____ 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.

__X__ OTHER - See comments below.

SUMMARY OF BILL

This bill would make several amendments of a technical nature to the laws administered by the Franchise Tax Board (FTB). It would:

1. Clarify that trade or business property may not be levied by FTB unless the levy is approved by FTB's assistant executive officer or FTB finds that collection of the tax is in jeopardy.

2. Correct an error inadvertently created by SB 1229 (Stats. 1999, Ch. 987) and carry out the intent of SB 1229 by providing relief from the annual limited partnership (LP) tax for specified limited partnerships.

3. Provide that adjustments made by FTB to the amount claimed by a taxpayer under the refundable child and dependent care credit law would be treated by FTB as a math error correction, but the taxpayer would be allowed the right to protest and appeal FTB's adjustment.

SUMMARY OF AMENDMENT

This bill, as amended August 7, 2000, adds the above provisions, which would affect the laws administered by FTB.

Each of the above provisions is addressed separately in this analysis on pages 2, 3 and 5, respectively.

Board Position:			Department Director	Date
_____ S	_____ NA	_____ NP	Gerald H. Goldberg	08/11/2000
_____ SA	_____ O	_____ NAR		
_____ N	_____ OUA	__X__ PENDING		

FISCAL IMPACT

This bill would not significantly affect FTB's departmental costs or have an identifiable impact on state tax revenues.

EFFECTIVE DATE

This bill would be effective on January 1, 2001. The operative date for each provision is also discussed separately in this analysis.

BOARD POSITION

Pending.

1. Levying on Certain Trade or Business Property

PROGRAM HISTORY/BACKGROUND

In response to various federal Taxpayer Bill of Rights (TBR) acts, California has adopted comparable TBR laws. California conformed to some of the federal TBR laws by mirroring the specific language of the Internal Revenue Code (IRC); in others, California modified the language of the federal provision. Modifications were generally made when there was an underlying fundamental difference between California and federal law or processes.

Section 19236 of the Revenue and Taxation Code (R&TC), which affects levies made on tangible personal and real property of a trade or business for FTB's purposes, was added to the Administration of Franchise and Income Tax Laws in response to a federal TBR provision. To conform to the applicable federal provision, there was a misplaced attempt to mirror the federal language without regard to the underlying fundamental difference between California and federal levy laws or processes. For example, when the Internal Revenue Service (IRS) levies on tangible personal and real property of a trade or business, staff of the IRS conducts the seizure and sale of that property. Any related exemptions from levy are described in the IRC. For California purposes, however, FTB must follow rules set out in the Code of Civil Procedure (CCP) to levy on such property just as though FTB were a judgment creditor. To conduct the seizure and sale of the property, FTB uses the services of a law enforcement officer. The property exempt from these levies typically is described in the CCP as it pertains to levies made on behalf of any judgement creditor.

OPERATIVE DATE

This provision would be operative on January 1, 2001.

SPECIFIC FINDINGS

Under current federal law, all tangible personal and real property of a trade or business is exempt from levy under the IRC, unless the levy is approved as specified in writing or collection is in jeopardy.

The current California R&TC provision states that tangible and real personal property used in a trade or business shall **not** be exempt from levy unless the levy is approved in writing or collection is in jeopardy. This structure is incorrect for two reasons: 1) the phrase "shall not be exempt" incorrectly implies that such exemption exists, and 2) under terms of the provision, meeting one of the conditions would seem to have the effect of creating an exemption, instead of removing an exemption.

This bill would clarify that all such property may not be levied (and thereby, is exempt from levy), unless the levy is approved in writing by the assistant executive officer of collections or delegate or collection is in jeopardy.

Implementation Considerations

This provision would assist staff in administering the law relating to levies on tangible personal and real property of a trade or business. This provision would clarify the intent of California's conformity to this TBR provision and would remove confusion as to the implementation of R&TC Section 19236.

2. Minimum Tax for Dissolved Limited Partnerships

LEGISLATIVE HISTORY

SB 2171 (2000; Senate Revenue and Taxation Committee) contains this same provision. However, because SB 2171 also contains a provision that affected tax revenue, it was moved to the Suspense Calendar and held in Senate Appropriations.

PROGRAM HISTORY/BACKGROUND

In 1993 the LP tax was extended to all LPs organized in this state or registered with the Secretary of State (SOS) to transact business in this state. The tax was required to be paid for each taxable year until a certificate of dissolution or cancellation was filed with the SOS.

The portion of the statutory language allowing the tax obligation to be extinguished by filing a certificate of dissolution was enacted in error. It was erroneous because under the Corporations Code the legal existence of a corporation is extinguished by dissolution, while the legal existence of an LP is extinguished by cancellation. Consequently, filing a certificate of dissolution is not the correct method to extinguish the legal existence of an LP.

This error was corrected in 1997 with the enactment of SB 1106 (Stats. 1997, Ch. 604). Effective for taxable years beginning on or after January 1, 1997, a certificate of cancellation was the only filing that would extinguish liability for the LP tax. However, this legislation did not provide transitional relief for an LP that had stopped doing business, filed a final tax return, and filed a certificate of dissolution, but failed to file a certificate of cancellation with the SOS.

SB 1229 (Stats. 1999, Ch. 987) provided relief from the tax for LPs that ceased doing business prior to January 1, 1997, that filed a final tax return with FTB, and that filed a certificate of dissolution with the SOS.

However, as drafted, SB 1229 erroneously limited the relief to LPs that file a certificate of cancellation with the SOS on or after October 10, 1999. A substantial number of LPs filed certificates of cancellation with the SOS prior to October 10, 1999. As the law is presently written, these entities are excluded from relief under SB 1229. This was not the intent of SB 1229.

OPERATIVE DATE

The bill specifies that this provision is consistent with legislative intent in enacting the amendments made by SB 1229 (Stats. 1999, Ch. 987) and is thus declaratory of existing law. Thus, this provision of the bill would apply retroactively to taxable years beginning on or after January 1, 1997, as does SB 1229.

SPECIFIC FINDINGS

Current law requires every LP doing business in California, organized under the laws of California, or registered with the SOS to transact intrastate business in California, to pay an annual tax. The amount of the tax is equal to the minimum franchise tax (currently $800). The tax is required to be paid for each taxable year, or part thereof, until a certificate of cancellation is filed with the SOS.

This bill would provide that certain LPs would not be subject to the annual tax for any period following the date the certificate of dissolution was filed with the SOS, but only if the LP files a certificate of cancellation with the SOS. The relief would be provided for LPs that ceased doing business prior to January 1, 1997, that filed a final tax return with FTB for a taxable year ending before January 1, 1997, and that filed a certificate of dissolution with the SOS prior to January 1, 1997. However, the relief would be provided only if the LP files a certificate of cancellation with the SOS. In the case where a notice of proposed deficiency assessment (NPA) or a notice of tax due (NTD) is mailed to an LP after January 1, 2001, the LP has 60 days after the mailing date of the NPA or NTD to file a certificate of cancellation with the SOS to be eligible for relief.

Policy Considerations

This bill would correct an error in the drafting of SB 1229 and would thus carry out the legislative intent of the LP annual tax relief provision in SB 1229. Nothing in the legislative history of SB 1229 indicates that it was intended that relief should be denied solely because the LP filed the certificate of cancellation with the SOS prior to the date of enactment of SB 1229 (October 10, 1999).

Implementation Considerations

Implementing this provision would provide relief for approximately 150 taxpayers that meet the intent but not the literal language of the current statute.

3. Refundable Child Care Credit

LEGISLATIVE HISTORY

AB 480 (Stats. 2000, Ch. 114) enacted the refundable child and dependent care credit referred to in this provision.

Background

In past years, FTB administered a refundable renter's credit. A taxpayer who claimed the refundable renter's credit had to provide FTB with certain substantiating information. If the information was not provided or the information indicated that the taxpayer was not eligible for the renter's credit, FTB would reduce (adjust) the credit amount claimed by the taxpayer accordingly. The law allowed FTB to treat any such adjustment as a math error, so that the taxpayer would receive notification of the adjustment and the reason for the adjustment. The resulting refund, if any, would be based on the adjusted credit amount. If the taxpayer were to disagree with FTB's adjustment, the taxpayer could protest and appeal FTB's determination.

OPERATIVE DATE

This provision would be operative for credits or refunds claimed on or after January 1, 2001.

SPECIFIC FINDINGS

Existing federal law allows a nonrefundable child and dependent care credit against tax of 20%-30% (depending on the taxpayer's adjusted gross income) of employment-related costs of care for a qualifying individual.

California recently enacted a refundable credit (Stats. 2000, Ch. 114) based on a percentage of the federal nonrefundable child and dependent care credit. For California purposes, however, the child and dependent care credit may be claimed only by taxpayers who maintain a household within the state.

This bill would clarify that any adjustment FTB may make to the refundable child and dependent care credit amount claimed by the taxpayer would be treated as a math error, but any denial would be subject to protest and appeal.

Implementation Considerations

This provision would allow FTB to more effectively administer the refundable child and dependent care credit in a processing manner similar to that used by FTB in past years to effectively administer the refundable renter's credit.