

ANALYSIS OF AMENDED BILL

Author: Ting Analyst: Scott McFarlane Bill Number: AB 154
 See Legislative Introduced Date: January 16, 2015
 Related Bills: History Telephone: 845-6075 Amended Date: March 26, 2015
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	Conformity Act of 2015
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SUMMARY

This bill would enact two conformity provisions:

1. The first provision would change California’s general “specified date” of conformity to federal income tax laws from January 1, 2009, to January 1, 2015, for taxable years beginning on or after January 1, 2015, and thereby generally conform to the numerous changes that were made to federal income tax laws during that six-year period, except as otherwise provided.
2. The second provision would generally conform to the federal net operating loss (NOL) rules that allow corporations expecting an NOL carryback to extend the time for payment of taxes for the preceding taxable year.

Summary Revenue Estimate	2015-16	2016-17	2017-18
Provision 1	\$15,177,000	\$7,328,000	\$7,128,000
Provision 2	-\$12,000,000	-\$8,000,000	-\$3,000,000
Total Revenue Estimate	\$3,177,000	-\$672,000	\$4,128,000

RECOMMENDATION

No position.

Summary of Amendments

As introduced January 16, 2015, this was a spot bill. The March 26, 2015, amendments added the provisions discussed in this analysis. This is the department’s first analysis of the bill.

REASON FOR THE BILL

The reason for the bill is to simplify the preparation of California income tax returns, the return-filing process and the administration of California income tax laws, and to provide relief to corporations that expect to incur an operating loss in the current year.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment, and generally operative for taxable years beginning on or after January 1, 2015, except as otherwise provided.

Board Position: _____ S _____ NA _____ X _____ NP _____ SA _____ O _____ NAR _____ N _____ OUA _____	Executive Officer Selvi Stanislaus	Date 5/14/15
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Provision 1 – Changing the Specified Date of Conformity to the Internal Revenue Code

FEDERAL/STATE LAW

See the Franchise Tax Board's (FTB's) annual reports titled "[Summary of Federal Income Tax Changes – 2009](#)," "[Summary of Federal Income Tax Changes – 2010](#)," "[Summary of Federal Income Tax Changes – 2012](#)," "[Summary of Federal Income Tax Changes – 2013](#)," and "[Summary of Federal Income Tax Changes – 2014](#)."

(Note that there is no link to the "Summary of Federal Income Tax Changes – 2011" because there are no applicable conformity changes from that year.)

THIS PROVISION

This provision would change the California Revenue and Taxation Code's (R&TC's) general "specified date" of conformity to the Internal Revenue Code (IRC) from January 1, 2009, to January 1, 2015, for taxable years beginning on or after January 1, 2015. Changing the specified date would mean that the R&TC would conform to IRC changes made from January 1, 2009, through December 31, 2014, to IRC sections that have been previously incorporated by reference. In other words, California tax laws would conform to the changes made to federal tax laws during that six-year period to the extent California conforms to those laws by reference, except as otherwise provided.

This provision would also make numerous changes either to specifically not conform to or to modify certain provisions in the IRC. In addition, technical changes regarding cross references and deletion of unnecessary language that was used to conform to federal law changes subsequent to January 1, 2009, and prior to January 1, 2015, would be made by this provision.

This provision would additionally provide that it is the intent of the Legislature to confirm the validity and ongoing effect of Senate Bill 401 (Wolk, Chapter 14 of the Statutes of 2010).

The following tables list:

- The federal act sections that impact provisions of the Personal Income Tax Law (PITL), the Administration of Franchise and Income Tax Laws (AFITL), and the Corporation Tax Law (CTL);
- The beginning page number in the FTB's annual report where that provision is discussed; and
- The change under this provision -- whether AB 154 would conform or not conform to that federal change. (Note that conformity decisions that would require modification are listed in the conform column.)

These tables contain only items for which a conformity decision is necessary. For certain federal provisions, California law automatically conforms to a federal law change and those provisions are not listed or discussed in this analysis. Additionally, those federal provisions that are not applicable to the PITL, the AFITL, or the CTL are not listed or discussed in this analysis.

2009 Conformity Decisions

American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5)				
Act Section	Provision	FTB's 2009 Annual Report Page Number	Decision	
			Conform	Not Conform
1262	Treatment of Certain Ownership Changes for Purposes of Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses	107		X

Worker, Homeowner, and Business Assistance Act of 2009 (WHBAA) (Public Law 111-92)				
Act Section	Provision	FTB's 2009 Annual Report Page Number	Decision	
			Conform	Not Conform
14	Exclusion from Gross Income of Qualified Military Base Realignment and Closure Fringe	208	X	
16	Increase in Penalty for Failure to File a Partnership or S Corporation Return	214	X	
17	Certain Tax Returns Preparers Required to File Returns Electronically	217		X

2010 Conformity Decisions

Hiring Incentives to Restore Employment (HIRE) Act (Public Law 111-147)				
Act Section	Provision	FTB's 2010 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
511	Disclosure of Information with Respect to Foreign Financial Assets	72	X	

Patient Protection and Affordable Care Act (Public Law 111-148)				
Act Section	Provision	FTB's 2010 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
9004	Increase in Additional Tax on Distributions from Archer MSAs Not Used for Qualified Medical Expenses	176	X	
9008	Denial of Deduction for Annual Fee on Branded Prescription Pharmaceutical Manufacturers and Importers	191		X
9013	Modification of Itemized Deduction for Medical Expenses	203		X

Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203)				
Act Section	Provision	FTB's 2010 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
1601	Certain Swaps, etc., not Treated as Section 1256 Contracts	308	X	

State Fiscal Relief and Other Provisions; Revenue Offsets (Public Law 111-226)				
Act Section	Provision	FTB's 2010 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
215	Special Rule with Respect to Certain Redemptions by Foreign Subsidiaries	336	X	

Small Business Jobs Act of 2010 (Public Law 111-240)				
Act Section	Provision	FTB's 2010 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
2041	Limitation on Penalty for Failure to Disclose Reportable Transactions Based on Resulting Tax Benefits	368	X	
2043	Removal of Cellular Telephones and Similar Telecommunications Equipment from Listed Property	374	X	
2102	Increase in Information Return Penalties	380	X	
2113	Special Rules for Annuities Received from Only a Portion of a Contract	397	X	

2012 Conformity Decisions

FAA Modernization and Reform Act of 2012 (Public Law 112-95, Title XI)				
Act Section	Provision	FTB's 2012 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
1108	Modification of Control Definition for Purposes of Section 249	16	X	

Moving Ahead for Progress in the 21st Century Act (MAP-21) (Public Law 112-141)				
Act Section	Provision	FTB's 2010 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
40241 - 40242	Transfers of Excess Pension Assets	39	X	

2013 Conformity Decisions

American Taxpayer Relief Act of 2012 (ATRA) (Public Law 112-240)				
Act Section	Provision	FTB's 2013 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
301	Extension and Modification of Research Credit <i>Modifications to Acquisitions, Dispositions, and Aggregation of Expenditures</i>	70	X	

2014 Conformity Decisions

Tribal General Welfare Act of 2014 (Public Law 113-168)				
Act Section	Provision	FTB's 2014 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
2 - 4	Indian General Welfare Benefits	16	X	

Tax Increase Prevention Act of 2014 (Title I of Division A of Public Law 113-295)				
Act Section	Provision	FTB's 2014 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
119	Extension of Work Opportunity Credit	96	X	

Tax Technical Corrections Act of 2014 (Title II of Division A of Public Law 113-295)				
Act Section	Provision	FTB's 2014 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
202 - 221	Various Technical and Clerical Corrections, Removal of Deadwood	188	X	

The Achieving a Better Life Experience Act of 2014 (Division B of Public Law 113-295)				
Act Section	Provision	FTB's 2014 Annual Report Page Number	Decision	
			<i>Conform</i>	<i>Not Conform</i>
102	Qualified ABLE Programs	212		X
105	Investment Direction Rule for 529 Plans	218	X	
208	Inflation Adjustment for Certain Civil Penalties under the Internal Revenue Code of 1986	222		X

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would require some changes to the department's operations, information systems, and tax forms and instructions, which could be accomplished during the normal annual update.

TECHNICAL CONSIDERATIONS

Amendment two is suggested to make a minor technical correction to this provision.

LEGISLATIVE HISTORY

SB 410 (Wolk, Chapter 14, Statutes of 2010) changed California's specified date of conformity to federal income tax law from January 1, 2005, to January 1, 2009, for taxable years beginning on and after January 1, 2010.

AB 115 (Klehs, Chapter 691, Statutes of 2005) changed California's specified date of conformity to federal income tax law from January 1, 2001, to January 1, 2005, for taxable years beginning on and after January 1, 2005.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

For corporate tax purposes, *Florida* conforms to the IRC as amended and in effect in the taxable year. *Florida* does not impose a personal income tax. *Massachusetts* generally conforms to the IRC as amended and in effect for the taxable year, except that *Massachusetts* conforms to the IRC as amended on January 1, 2005, with respect to conformity to specific IRC sections. *Michigan, Minnesota, and New York* generally conform to the IRC as amended and in effect for the taxable year.

FISCAL IMPACT

This provision would impact the department's printing, processing, and programming costs. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Based on data and assumptions discussed below, the revenue impact from this provision would be as shown in the following tables. Each year has its own subtotal, and total summaries of all years are provided at the end. This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this provision.

2009 Conformity Revenue Tables

Worker, Homeowner, and Business Assistance Act of 2009 (WHBAA) (Public Law 111-92)				
Act Section	Provision	2015-16	2016-17	2017-18
14	Exclusion from Gross Income of Qualified Military Base Realignment and Closure Fringe	- \$70,000	- \$40,000	- \$40,000
16	Increase in Penalty for Failure to File a Partnership or S Corporation Return	\$7,000	\$8,000	\$8,000
2009 Conformity Provisions		2015-16	2016-17	2017-18
Totals		- \$63,000	- \$32,000	- \$32,000

2010 Conformity Revenue Tables

Hiring Incentives to Restore Employment (HIRE) Act (Public Law 111-147)				
Act Section	Provision	2015-16	2016-17	2017-18
511	Disclosure of Information with Respect to Foreign Financial Assets	\$600,000	\$800,000	\$900,000

Patient Protection and Affordable Care Act (Public Law 111-148)				
Act Section	Provision	2015-16	2016-17	2017-18
9004	Increase in Additional Tax on Distributions from Archer MSAs Not Used for Qualified Medical Expenses	\$380,000	\$700,000	\$900,000

Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203)				
Act Section	Provision	2015-16	2016-17	2017-18
1601	Certain Swaps, etc., not Treated as Section 1256 Contracts	\$0	\$0	\$0

State Fiscal Relief and Other Provisions; Revenue Offsets (Public Law 111-226)				
Act Section	Provision	2015-16	2016-17	2017-18
215	Special Rule with Respect to Certain Redemptions by Foreign Subsidiaries	\$500,000	\$500,000	\$400,000

Small Business Jobs Act of 2010 (Public Law 111-240)				
Act Section	Provision	2015-16	2016-17	2017-18
2041	Limitation on Penalty for Failure to Disclose Reportable Transactions Based on Resulting Tax Benefits	- \$250,000	- \$250,000	- \$250,000
2043	Removal of Cellular Telephones and Similar Telecommunications Equipment from Listed Property	- \$1,800,000	- \$1,500,000	- \$1,600,000
2102	Increase in Information Return Penalties	\$10,000	\$10,000	\$10,000
2113	Special Rules for Annuities Received from Only a Portion of a Contract	\$5,800,000	\$4,800,000	\$5,900,000

2010 Conformity Provisions	2015-16	2016-17	2017-18
Totals	\$5,240,000	\$5,060,000	\$6,260,000

2012 Conformity Revenue Tables

FAA Modernization and Reform Act of 2012 (Public Law 112-95, Title XI)				
Act Section	Provision	2015-16	2016-17	2017-18
1108	Modification of Control Definition for Purposes of Section 249	\$0	\$0	\$0

Moving Ahead for Progress in the 21st Century Act (MAP-21) (Public Law 112-141)				
Act Section	Provision	2015-16	2016-17	2017-18
40241 - 40242	Transfers of Excess Pension Assets	Negligible	Negligible	Negligible

2012 Conformity Provisions	2015-16	2016-17	2017-18
Totals	Negligible	Negligible	Negligible

2013 Conformity Revenue Tables

American Taxpayer Relief Act of 2012 (ATRA) (Public Law 112-240)				
Act Section	Provision	2015-16	2016-17	2017-18
301	Extension and Modification of Research Credit <i>Modifications to Acquisitions, Dispositions, and Aggregation of Expenditures</i>	Negligible	Negligible	Negligible

2013 Conformity Provisions	2015-16	2016-17	2017-18
Totals	Negligible	Negligible	Negligible

2014 Conformity Revenue Tables

Tax Increase Prevention Act of 2014 (Title I of Division A of Public Law 113-295)				
Act Section	Provision	2015-16	2016-17	2017-18
119	Extension of Work Opportunity Credit	\$10,000,000	\$2,300,000	\$900,000

Tax Technical Corrections Act of 2014 (Title II of Division A of Public Law 113-295)				
Act Section	Provision	2015-16	2016-17	2017-18
202 - 221	Various Technical and Clerical Corrections, Removal of Deadwood	\$0	\$0	\$0

The Achieving a Better Life Experience Act of 2014 (Division B of Public Law 113-295)				
Act Section	Provision	2015-16	2016-17	2017-18
105	Investment Direction Rule for 529 Plans	Negligible	Negligible	Negligible

2014 Conformity Provisions	2015-16	2016-17	2017-18
Totals	\$10,000,000	\$2,300,000	\$900,000

Total Revenue Impact of Provision 1	2015-16	2016-17	2017-18
2009 Totals	- \$63,000	- \$32,000	- \$32,000
2010 Totals	\$5,240,000	\$5,060,000	\$6,260,000
2012 Totals	Negligible	Negligible	Negligible
2013 Totals	Negligible	Negligible	Negligible
2014 Totals	\$10,000,000	\$2,300,000	\$900,000
Grand Totals	\$15,177,000	\$7,328,000	\$7,128,000

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Those in support of this provision may argue that California should conform to federal tax rules to eliminate differences between federal and state law that complicate the preparation of tax returns.

Opponents: Those in opposition to this provision may argue against it because it would result in a tax increase for some taxpayers.

Provision 2 – Modified Conformity to the Federal NOL Carryback Procedures

FEDERAL LAW

Net Operating Losses in General

Federal law generally defines an NOL as the excess of deductions allowed over the gross income.

When a taxpayer has an operating loss for a taxable year, the operating loss that may be deducted in another year is called an NOL. An operating loss occurs when a taxpayer's allowed deductions exceed their gross income for that year. Federal law generally provides that an NOL can be carried back two years and forward 20 years. Special rules are provided for the carryback of NOLs relating to issues such as specified liability losses, casualty or theft losses, disaster losses of a small business, and farming losses.

Extension of Time for Payment of Taxes by Corporations Expecting Carrybacks

A corporation that expects an NOL in the current tax year may file a statement with the Secretary of the Treasury to extend the time for payment of tax for the immediately preceding tax year, which includes extending the time for payment of a tax deficiency.¹ The payment of tax that can be postponed cannot exceed the expected overpayment from the carryback of the NOL.

In general, the extension for paying the tax expires at the end of the month in which the return for the tax year of the expected NOL is required to be filed, including extensions.

¹ IRC section 6164.

STATE LAW

Net Operating Losses in General

California generally conforms to the federal NOL rules, with modifications. NOLs attributable to taxable years beginning on or after January 1, 2008, may be carried forward 20 years. NOLs attributable to taxable years beginning on and after January 1, 2013, may be carried back two years. No losses may be carried back to years beginning before January 1, 2011. For NOLs attributable to taxable years beginning before January 1, 2013, NOL carrybacks are not allowed.

NOL deductions were suspended for taxable years beginning on or after January 1, 2008, and before January 1, 2012.² However, the current-law NOL carryback provisions disregard the NOL suspension period, and allow taxpayers to carryback an NOL attributable to taxable years beginning on or after January 1, 2013, two years (i.e., to taxable years beginning on or after January 1, 2011).

Extension of Time for Payment of Taxes by Corporations Expecting Carrybacks

California does not conform to the federal rules that allow an extension of time for payment of taxes by corporations expecting carrybacks.

THIS PROVISION

This provision would conform to the federal provision that allows a corporation expecting an NOL carryback to extend the time for payment of taxes for the immediately preceding taxable year.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would require changes to the department's operations, information systems, and tax forms and instructions, which could be accomplished during the normal annual update.

TECHNICAL CONSIDERATIONS

Amendment one is suggested to make a technical change to this provision.

² All NOL deductions were suspended for taxable years beginning on or after January 1, 2008, and before January 1, 2010. For taxable years beginning on or after January 1, 2010, and before January 1, 2012, NOL suspensions applied under the Personal Income Tax Law to taxpayers with modified adjusted gross income of \$300,000 or more, and under the Corporation Tax Law to taxpayers with pre-apportioned income of \$300,000 or more.

LEGISLATIVE HISTORY

AB 1984 (Harkey, 2013/14) would have conformed to the federal provision to allow an extension of time for payment of taxes by corporations expecting carrybacks, similar to this provision, and would have additionally conformed to the federal rules that allow corporations expecting carrybacks to obtain a tentative refund. AB 1984 was held in the Assembly Appropriations Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida, Illinois, Massachusetts, Michigan, and Minnesota do not allow NOL carrybacks. *New York* allows NOL carrybacks, but limits the amount of the NOL carryback to \$10,000.

FISCAL IMPACT

This provision would impact the department's printing, processing, and programming costs. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Impact

This provision would result in the following accelerated revenue loss:

Estimated Revenue Impact of AB 154 - Provision 2 As Amended March 26, 2015 Assumed Enactment After June 30, 2015		
2015-16	2016-17	2017-18
- \$12,000,000	- \$8,000,000	- \$3,000,000

This estimate does not account for changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

Based on the FTB's corporate micro-simulation model, it is estimated that corporations could carryback \$2.8 billion of NOLs from tax year 2014. An average marginal tax rate of 5.8 percent is applied to estimate the tax effect of the estimated NOL carryback amount. It is assumed that 40 percent of corporations expecting an NOL in the current taxable year would elect to file an application for an extension of time to pay taxes for the preceding taxable year. It is estimated there would be no revenue impact for 50 percent of corporate tax payments that would be

affected by this provision because of the refund accrual rules. For example, if a corporation makes a taxable year 2015 payment in April of 2016, that payment would be assigned to fiscal year 2015-16. If the same corporation then generates an NOL in tax year 2016 and is issued a refund in April of 2017, the refund would be accrued back to fiscal year 2015-16. As a result, the fiscal-year impact would be zero. This estimate assumes that the remaining 50 percent of corporate tax payments would accelerate the fiscal-year assignment of the refund, resulting in an acceleration of that loss.

The tax-year estimates are converted to fiscal years and rounded to arrive at the amounts reflected in the table above.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Those in support of this provision may argue that it would provide tax relief when a corporation is experiencing an operating loss.

Opponents: Those in opposition to this provision may argue that similar relief should be provided to all businesses, not just corporations.

LEGISLATIVE STAFF CONTACT

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PROPOSED AMENDMENTS TO
AB 154, AS AMENDED MARCH 26, 2015

AMENDMENT 1

On page 14, lines 15-17, after "Code", ~~strikeout: "is modified by substituting the phrase "Section 19307.5" in lieu of the phrase "Section 6411."~~

and insert:
shall not apply.

AMENDMENT 2

On page 21, line 12, ~~strikeout: "for"~~, and insert:

to