

## BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
<b>Franchise Tax Board</b>	<b>Assembly Committee on Budget</b>	<b>AB 119</b>

**SUBJECT:** Extension of Time for Filing Return Shall Not Be More Than 7 Months

### SUMMARY

This bill would, under the Administration of Franchise and Income Tax Laws, modify the extension of time to file certain returns.

This analysis only addresses the provisions of the bill that would impact the department's programs and operations.

### REASON FOR THE BILL

The reason for this bill is to allow a seven-month extension of time to file California partnership returns in lieu of the current six-month extension, thereby providing an additional month between the state and the federal extended due date for partnership returns.

### EFFECTIVE/OPERATIVE DATE

This bill, providing for appropriations related to the Budget Bill and identified as a bill related to the budget in the Budget Bill, would be effective immediately upon enactment, and specifically operative for returns required to be filed for taxable years beginning on or after January 1, 2017.

### FEDERAL LAW

#### *Original Return Due Dates*

Federal law requires persons to file income tax returns in the manner prescribed by the Secretary, in compliance with due dates established in the Internal Revenue Code (IRC), if any, or by regulations.

Individuals generally must file by April 15<sup>th</sup> of the year following the close of the taxable year unless the 15<sup>th</sup> falls on a weekend or a holiday recognized by the IRS. For tax year 2016, the individual return could be filed by April 18<sup>th</sup> due to the IRS-recognized Emancipation Day holiday observed on Monday, April 17, 2017.

For taxable years beginning on or after January 1, 2016, the IRC was amended<sup>1</sup> to shorten the due date for partnership returns by one month and extend the due date for C corporation returns by one month so that, unlike prior law, the filing deadline for partnerships would precede the due dates of their individual and corporate investors. Partnership returns are due by the 15<sup>th</sup> day of the third month following the close of the taxable year (generally March 15<sup>th</sup> for calendar-year partnerships). Under prior law, the partnership return due date was the 15<sup>th</sup> day of the fourth month (generally April 15<sup>th</sup> for calendar-year partnerships).

### *Extended Return Due Dates*

Federal law generally provides that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other required document.<sup>2</sup> The extension of time to file does not extend the time to pay.

For individuals and partnerships, the IRS allows an extension of time to file of six months, resulting in an extended due date for individual returns of October 15<sup>th</sup> and an extended due date of September 15<sup>th</sup> for partnership returns.

Federal law provides that the extension of time to file for corporations is six months, except in the following situations:<sup>3</sup>

- In the case of any return for a taxable year of a C corporation with a December 31st year end that begins before January 1, 2026, the extension is five months.
- In the case of any return for a taxable year of a C corporation which ends on June 30th and begins before January 1, 2026, the extension is seven months.

For the 2017 filing season (for 2016 returns), although federal law<sup>4</sup> provides a five-month automatic extension period for calendar-year C corporations, the IRS is instead granting a six-month automatic extension under the general rule that the Secretary may grant a “reasonable extension.”<sup>5</sup> As a result, for 2016 returns, calendar-year C corporations will have an original filing deadline of April 18, 2017, and an extended deadline of October 16, 2017.<sup>6</sup>

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<sup>1</sup> Surface Transportation and Veterans Health Care Choice Improvement Act of 2015.  
<https://www.congress.gov/bill/114th-congress/house-bill/3236/text>

<sup>2</sup> IRC §6081(a).

<sup>3</sup> IRC §6081(b).

<sup>4</sup> IRC §6081(b).

<sup>5</sup> IRC §6081(a). The change is reflected in the new revision of the instructions for the extension application (Form 7004), and was confirmed in a news release issued by the IRS on February 8, 2017.

<sup>6</sup> [www.irs.gov/uac/rda-2017-02-08-2016-form-7004](http://www.irs.gov/uac/rda-2017-02-08-2016-form-7004)

## STATE LAW

### *Original Return Due Dates*

Individuals with income that meets specified filing thresholds<sup>7</sup> are generally required to file an income tax return by April 15<sup>th</sup> of the year following the close of the taxable year. For taxable year 2016, due to the federal Emancipation Day holiday observed on Monday, April 17, 2017, tax returns filed and payments mailed or submitted on April 18, 2017, will be considered timely.

Rather than conforming to the federal law for due dates of filing tax returns of partnerships and C corporations, California has stand-alone law that generally mirrors recent federal changes that modified the original due date for partnership returns and C corporations. For taxable years beginning on or after January 1, 2016, partnership returns are due by the 15<sup>th</sup> day of the third month following the close of the taxable year (generally March 15<sup>th</sup>).<sup>8</sup> C corporation returns are due on or before the 15<sup>th</sup> day of the fourth month following the close of the taxable year.

### *Extended Return Due Dates*

Existing state law authorizes the Franchise Tax Board (FTB) to grant an automatic paperless extension to file of up to six months from the original due date for taxpayers subject to the Personal Income Tax Law (PITL), including individuals and pass-through entities.<sup>9</sup> The granting of the extension is conditioned on the filing of a return within the automatic extension period.<sup>10</sup>

Existing state law authorizes the FTB to grant an automatic extension of up to seven months for returns filed under the Corporation Tax Law if the return is filed within the extension period. For taxable years beginning on or after January 1, 2016, the FTB will allow an automatic extension of time to file of six months to all taxpayers in good standing filing Forms 100, 100W, and 100S.<sup>11</sup>

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<sup>7</sup> For 2016, the most recent year for which information is available, these filing thresholds are \$16,597 in gross income or \$13,278 in adjusted gross income (AGI) for single taxpayers, and \$33,197 in gross income or \$26,558 in AGI for married filing joint taxpayers. These filing thresholds are increased based on the number of dependents claimed and are adjusted annually for inflation.

<sup>8</sup> AB 1775 (Chapter 348, Statutes of 2016). Limited partnerships, limited liability partnerships, limited liability companies (LLC) classified as a partnership, and single member LLCs (SMLLCs) owned by an S corporation, partnership, or a SMLLC classified as a partnership also would have an original return due date of the 15<sup>th</sup> day of the third month following the close of the taxable year.

<sup>9</sup> California Code of Regulations, title 18, section 18567.

<sup>10</sup> In the case of individual calendar-year taxpayers residing or traveling abroad on April 15<sup>th</sup>, the statutory due date is June 15<sup>th</sup>. With the automatic six-month extension, the extended due date for filing is December 15<sup>th</sup>.

<sup>11</sup> Refer to FTB Notice 2016-04 for more details. <https://www.ftb.ca.gov/law/notices/2016/04.pdf>

The extension of time to file does not extend the time for any payment of tax. Tax is due on the original due date of the return without regard to extension. If the return is filed after the extended due date, the automatic extension does not apply and a late filing penalty plus interest is assessed.

## **THIS BILL**

This bill would extend from six months to seven months the maximum number of months that the FTB may grant as an automatic extension of time for filing partnership returns required to be filed under Revenue and Taxation Code (R&TC) sections 18633 or 18633.5 for taxable years beginning on or after January 1, 2017.

Under the terms of this bill, the FTB would be authorized to allow an additional month to file for partnerships, resulting in a possible extended due date of October 15<sup>th</sup> instead of September 15<sup>th</sup>, which would mirror the current federal and California extended due date for calendar-year C corporations.

The bill also would include legislative findings and declarations that the FTB would presume reasonable cause and not willful neglect in the case of any partnership that meets both of the following:

- The partnership return for taxable year 2016 is filed by the extended due date under former law (October 15, 2017, for calendar-year partnerships, or by the 15<sup>th</sup> day of the tenth month following the close of the taxable year of the partnership in the case of fiscal-year filers), and
- The partnership requests relief, in the form and manner specified by the FTB, from the imposition of either or both the delinquent filing penalty under R&TC section 19131, and failure of a partnership to comply with filing requirements penalty under R&TC section 19172. The Legislature intends that this relief be implemented in a streamlined manner.

## **LEGISLATIVE HISTORY**

SB 104 (Senate Committee on Budget and Fiscal Review, 2017/2018), substantially similar to this bill, would extend from six months to seven months the maximum number of months that the FTB may grant as an automatic extension of time for filing partnership returns. SB 104 is pending on the Assembly Third Reading File.

AB 1171 (Oberholte, 2017/2018), substantially similar to this bill, would extend from six months to seven months the maximum number of months that the FTB may grant as an automatic extension of time for filing partnership returns. AB 1171 is pending before the Senate Governance and Finance Committee.

AB 1775 (Oberholte, Chapter 348, Statutes of 2016) modified the original due dates for the California returns of partnerships and C corporations to mirror the federal due dates for such returns.

## **OTHER STATES' INFORMATION**

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws do not allow a seven-month extension of time to file as proposed by this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

For the 2016 tax year, *New York* is the only state surveyed that has conformed to the recent federal change requiring partnership returns to be filed by the fifteenth day of the third month (15<sup>th</sup> day of the 3<sup>rd</sup> month) following the close of the taxable year, and allows a six-month extension of time to file. For calendar-year partnerships, the 2016 tax year extended due date is September 15<sup>th</sup>.

## **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

## **ECONOMIC IMPACT**

### **Revenue Discussion and Estimate**

This bill as amended on June 12, 2017, providing a seven-month extension for partnerships would not impact state income tax or franchise tax liabilities but may have an impact on the timing of payments received with returns filed by the extended due date.

The amount of penalty relief granted for failure of partnerships to comply with filing requirements under R&TC section 19172 would be dependent upon the number of partners who are in partnerships that do not file by the September 15, 2017, extended due date. Because it is difficult to predict the number of partners that would be assessed this penalty, and request relief the revenue loss is unknown.

The amount of penalty relief granted for the delinquent filing penalty under R&TC section 19131 would be dependent upon the amount of unpaid LLC fees for LLCs classified as partnerships that do not file by the September 15, 2017, extended due date. Because it is difficult to predict the partnerships that would be assessed this penalty and request relief, the revenue impact is uncertain. Based on FTB filing and payment data, it is estimated that there could be a revenue loss that, if filing and payment patterns remain consistent, could be up to \$5 million in penalty relief for the 2016 taxable year. To the extent that filing and payment behavior change, the revenue loss could be less.

The revenue estimate is determined using current law. Up until last year, the extended due date for calendar-year partnerships was October 15th. Thus, had the proposal been adopted last year partnerships filing by October 15th would not have had a delinquent penalty.

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

## **APPOINTMENTS**

None.

**VOTES**

	<b>Date</b>	<b>Yes</b>	<b>No</b>
Concurrence	06/15/17	54	23
Senate Floor	06/15/17	27	10
Assembly Floor	05/18/17 <sup>12</sup>	45	25

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<sup>12</sup> This vote was taken on the bill as introduced January 10, 2017, rather than on the bill as amended June 12, 2017.