



Analysis of Original Bill

Author: Bates	Sponsor:	Bill Number: SB 1237
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Subject: Property Tax Change of Ownership/FTB Revise Question on Return

Summary

This bill would make changes to the provisions of the Revenue and Taxation Code requiring the Franchise Tax Board (FTB) to include a question on specified state tax returns regarding any change in property ownership.

This bill would also modify provisions of the Property Tax Law. This analysis only addresses the provisions of the bill that impact FTB's programs and operations.

Recommendation – No position.

Reason for the Bill

The reason for the bill is to ensure fair and equitable tax treatment when assessing property values for California real property owners.

Effective/Operative Date

As an urgency measure, this bill would be effective immediately and specifically operative for sales or transfers of ownership interests that occur on or after January 1, 2019.

State Law

For purposes of determining whether there has been a change in the ownership of California real property for property tax purposes, current state law requires the FTB to place the following question (or a question substantially similar) on the tax return for partnerships, banks, and corporations, with the exception of tax-exempt organizations:

If the corporation (or partnership or limited liability company) owns real property in California, has cumulatively more than 50 percent of the voting stock (or more than 50 percent of total interest in both partnership or limited liability company capital and partnership or limited liability company profits) (1) been transferred by the corporation (or partnership or limited liability company) since March 1, 1975, or (2) been acquired by another legal entity or person during the year?

If an entity answers “yes,” the FTB is required to furnish the name and address of the entity and the name and addresses of the stock, partnership, or limited liability company ownership interest transferees to the Board of Equalization (BOE).

This Bill

This bill would require the FTB to include an additional question on returns for partnerships, banks, and corporations, except for tax-exempt organizations. The question would be required to be substantially similar to the following:

If the corporation (or partnership or limited liability company) owns real property in California, has 90 percent or more of the direct or indirect ownership interests in that legal entity been sold or transferred (1) in a single transaction, or (2) amongst persons described in Section 267(b)¹ of Title 26 of the United States Code, or (3) in multiple transactions (other than those occurring on an established securities market) within a 36-month period? (See instructions.)

The FTB would be required to provide to the BOE the name and address of each entity that answers “yes” to this question along with the names and addresses of the stock, partnership, or limited liability company ownership interest transferees.

Implementation Considerations

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

If this bill is enacted in late September or October of 2018, the department would have developed the forms and instructions for the 2019 taxable year. Thus, the department may incur additional costs to develop alternative forms and instructions in the short time frame necessary to ensure they are available for taxpayers to comply with the reporting requirement.

Implementing this bill would require the FTB to capture additional information and transfer this information to the BOE.

Legislative History

AB 1040 (Ting, 2015/2016) would have required the FTB to include a question on specified tax forms regarding changes in property ownership, and report specified information to the BOE. AB 1040 failed to pass by the constitutional deadline.

SB 259 (Bates, 2015/2016) would have required the FTB to include a question on specified tax forms regarding changes in property ownership that occurred on or after January 1, 2016, and report specified information to the BOE. SB 259 failed to pass by the constitutional deadline.

¹ Internal Revenue Code Section 267(b) describes specific relationships under which certain taxpayers would be considered related taxpayers.

AB 2372 (Ammiano & Bocanegra, 2013/2014) would have required the FTB to include a question on specified tax forms regarding changes in property ownership that occurred on or after January 1, 2015, and report specified information to the BOE. AB 2372 failed to pass by the constitutional deadline.

Other States' Information

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

Florida, Illinois, and Massachusetts require taxpayers to file a business activity questionnaire that includes questions about changing ownership interests during the tax year. *Michigan* requires taxpayers to file a property transfer affidavit within 45 days of the transfer. *Minnesota* requires businesses registered outside the state to submit a business activity report that includes a question regarding real property ownership. *New York* income tax return forms for corporations and partnerships include a question regarding real property ownership.

Fiscal Impact

If the bill is amended to resolve the implementation considerations addressed in this analysis, the department's costs are expected to be minor.

Economic Impact

Revenue Estimate

This bill as introduced February 15, 2018, would not impact state income or franchise tax revenue.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some could argue the additional information provided to the BOE would assist the BOE in determining a change of ownership, thus assuring the correct amount of property tax is assessed.

Opponents: Some could argue that including additional questions on the specified tax returns could make the returns more complex and burdensome to taxpayers.

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