Franchise Tax Board **SUMMARY ANALYSIS OF AMENDED BILL**

Author:	Stone	Analyst:	Janet Jennings	Bill Number:	SB 352
Related Bills:	See Prior Analysis	Telephone:	845-3495	Amended Date	April 18, 2017
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Withholding/Nonresident Real Property

SUMMARY

This bill would modify the withholding requirement relating to sales of real property under the Administration of Franchise and Income Tax Laws.

RECOMMENDATION – NO POSITION

SUMMARY OF AMENDMENTS

The April 18, 2017, amendments modified the withholding requirements and failure to withhold penalty provisions applicable to property dispositions that occur on or after January 1, 2018, and made several technical changes.

As a result of the April 18, 2017 amendments, the technical considerations and policy considerations in the department's analysis of the bill as introduced February 14, 2017, have been resolved, the “This Bill” and “Economic Impact” sections have been revised, and the “Fiscal Impact” section is restated for convenience.

THIS BILL

This bill would, in the case of any disposition of a California real property interest on or after January 1, 2018, modify the existing withholding regime as follows:

- Make inoperative the existing withholding requirements relating to the sale of real property interests.
- Require the transferee of a real property interest, if not otherwise exempt, to withhold 3⅓ percent (.0333) of the sales price of the property if the property was either acquired from a person who is a broker required to file a return pursuant to Internal Revenue Code (IRC) section 6045(e) or who authorizes disbursement of proceeds to a transferor whose last known street address at the time of the transfer of the title is outside the state or from a corporation, if immediately after the transfer of title to the California real property, that corporation has no permanent place of business in this state. A corporation would have no permanent place of business in this state if all of the following apply:
    - It is not organized and existing under the laws of California.
    - It does not qualify with the office of the Secretary of State to transact business in California.
    - It does not maintain and staff a permanent office in California.

Allow the ability to elect an alternative method to withhold, once elected, the transferor must certify under penalty of perjury the amount to be withheld, and what rate to apply to the certified gain. The written certification would be in a form prescribed by the Franchise Tax Board (FTB), including specified wording, and requires the FTB to make the form available, as specified.

- Exempt sales by partnerships from the new withholding requirements by specifically providing that “person” excludes a partnership as determined in accordance with Subchapter K of Chapter 1 of Subtitle A of the IRC.
- Makes corresponding changes to the notification requirements applicable to real estate escrow persons.

FISCAL IMPACT

The department’s costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 352 As Amended April 18, 2017 Assumed Enactment After June 30, 2017 ($ in Millions)		
2017-18	2018-19	2019-20
- $340	- $410	- $70

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

Revenue Discussion

The bill would not change the amount of tax due; it would only change the timing of tax payments. Based on the FTB's real estate withholding data adjusted for changes in the economy over time, approximately $1.2 billion in 2018 would be collected as real estate withholding under current law. Using zip code data from California real estate sales, it is estimated that 15 percent of sales are executed by nonresidents and thus would be subject to withholding of 3.333 percent or the election for alternative withholding. As a result of the elimination of the withholding requirement on property dispositions by partnership and California residents, the remaining $1 billion that would have been withheld on sales by residents, and partnerships under current law in 2018 would be due in 2019.

It is assumed that 95 percent of the amount, or $950 million, would be paid in the first two years, 25 percent in the year of the sale and the remaining 75 percent before the due date of the return. The remaining 5 percent would be subject to collection actions. The change in timing of the payments results in an estimated revenue loss of $700 million in 2018 and $80 million in 2019.

The taxable year estimates are converted to fiscal year estimates and then rounded to arrive at the amounts in the above table.

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

LEGISLATIVE STAFF CONTACT

Janet Jennings	Jame Eiserman	Diane Deatherage
Legislative Analyst, FTB	Revenue Manager, FTB	Legislative Director, FTB
(916) 845-3495	(916) 845-7484	(916) 845-6333
janet.jennings@ftb.ca.gov	jame.eiserman@ftb.ca.gov	diane.deatherage@ftb.ca.gov