

SUMMARY ANALYSIS OF AMENDED BILL

Committee on
Governance and

Author: Finance Analyst: Jessica Deitchman Bill Number: SB 813
Related Bills: See Prior Telephone: 845-6310 Amended Date July 17, 2017
Analysis Attorney: Bruce Langston Sponsor: Three-Member FTB

SUBJECT: Voluntary Disclosure Program/Expand Eligibility & Penalty Relief

SUMMARY

This bill would expand the existing Voluntary Disclosure Program (VDP) to allow out-of-state partnerships with non-resident partners, and out-of-state administered trusts to participate in VDP. This bill would also provide penalty relief for S corporations and limited liability companies (LLCs) for the failure to file penalty.

RECOMMENDATION – SUPPORT

On December 8, 2016, the three-member Franchise Tax Board voted 2-0, with the Department of Finance abstaining, to sponsor the language included in this bill.

SUMMARY OF AMENDMENTS

The July 17, 2017, amendments made technical changes to the bill.

AB 1719¹ was recently enacted and allows for relief of late filing penalties to S corporations and LLCs classified as partnerships that enter into a Voluntary Disclosure Agreement (VDA).

As a result of the enactment of AB 1719, the “This Bill” and “Legislative History” sections of the department’s analysis of the bill as introduced March 22, 2017, have been revised. The remainder of the department’s analysis of the bill as introduced March 22, 2017, still applies. The “Economic Impact” and “Fiscal Impact” sections have been restated for convenience.

¹ AB 1719 (Committee on Revenue and Taxation, Chapter 176, Statutes of 2017), signed by the Governor on August 7, 2017.

THIS BILL

For VDAs entered into on or after January 1, 2018, this bill would modify the VDP's provisions to allow:

- Eligibility for out-of-state partnerships with nonresident partners of general partnerships (GPs), limited partnerships (LPs), and limited liability partnerships (LLPs); and
- Eligibility for out-of-state trusts with California resident beneficiaries to participate in the VDP.

Additionally, this bill would duplicate the penalty relief for S corporations or LLCs classified as a partnership for failure to file a timely return, as recently enacted by AB 1719.² Because the penalty relief language is identical, a technical amendment is unnecessary.

LEGISLATIVE HISTORY

AB 1719 (Assembly Committee on Revenue & Taxation, Chapter 176, Statutes of 2017), modified the VDP provisions to allow S corporations or LLCs classified as partnerships penalty relief from the late filing penalties.

AB 2692 (Brough and Ridley-Thomas, 2015/2016), would have added a "qualified small business" to the list of applicants that can participate in VDP. AB 2692 failed to pass out of the house of origin by the constitutional deadline.

SB 1492 (Senate Revenue & Taxation Committee, Chapter 492, Statutes of 2010), allowed taxpayers to file the most recent tax return as late as the extended due date, eliminated the underpayment of estimated tax penalty if the agreement was signed after the quarterly tax payment date, and allowed applicants requesting an Installment Payment Arrangement (IPA) additional time to satisfy the agreement if the IPA requested was denied after the agreement period ended.

AB 3073 (Assembly Revenue and Taxation Committee, Chapter 354, Statutes of 2004), allowed LLCs to qualify for the California's VDP.

SB 1185 (Senate Revenue & Taxation Committee, Chapter 543, Statutes of 2001), an FTB-sponsored bill, added trusts and nonresident beneficiaries to California's VDP.

SB 38 (Lockyer, Chapter 954, Statutes of 1996), added S corporation shareholders to California's VDP. To limit the concern that applying the waiver authority to S corporation shareholders could be viewed as amnesty for these individuals, participation in the California VDP was limited to those S corporation shareholders who were nonresidents on the day that the agreement was signed.

² Ibid.

AB 2880 (Caldera, Chapter 367, Statutes of 1994), an FTB-sponsored bill, established a California VDP for certain out-of-state banks and corporations. In addition to corporations, AB 2880, as introduced, applied to LPs, certain trusts, and certain partners and beneficiaries. During the legislative process, however, because concern was expressed that waiver of penalties for flow-through entities and their partners and beneficiaries might be viewed as amnesty for a small group of individuals, these entities were eliminated from the bill.

S corporations, which are also pass-through entities, were included in the bill as corporate entities, but the status of their shareholders was not addressed.

FISCAL IMPACT

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

ECONOMIC IMPACT

Estimating the amount of penalty relief granted by the Franchise Tax Board (Department) would depend on the number of out-of-state partnerships with nonresident partners of: GPs, LPs, and LLPs, and out-of-state trusts with California resident beneficiaries, and the amount of relief granted by the department.

Current VDP law prohibits the department from approving applications from out-of-state partnerships with nonresident partners of: GPs, LPs, and LLPs, and out-of-state trusts with a California resident beneficiary. Because it is difficult to predict the frequency and the value of future applications, the revenue impact is unknown.

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

Revenue Discussion

Under the current law, out-of-state partnerships with nonresident partners of GPs, LPs, and LLPs and out-of-state trusts with California resident beneficiaries that are ineligible for the VDP may enter into a filing compliance agreement (FCA). Because the VDP limits the period for filing and payment to the preceding six taxable years, as compared with the unlimited period under FCA, this proposal could result in a revenue loss. Using data from the last five years of executed applications for these two programs, the estimated revenue loss could vary from \$5,000 to \$100,000 per year.

This estimate does not account for out-of-state partnerships with nonresident partners of GPs, LPs, and LLPs, and out-of-state trusts with California resident beneficiaries that withdraw their application during the anonymous application process and thus remain non-compliant under current law. If these entities applied and were approved under the modified VDP, the additional revenue would offset the losses above and if large enough could create a revenue gain.

SUPPORT/OPPOSITION

Support: Three-Member FTB.

Opposition: None provided.

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