



Bill Analysis

Author: Diep & Gipson, et al.

Sponsor:

Bill Number: AB 2528

Analyst: Jahna Carlson

Phone: (916) 845-5683

Amended: May 5, 2020

Attorney: Shane Hofeling

Related Bills: See Legislative History

SUBJECT

Taxpayer's Bill of Rights Timeframe for Response to Request for Written Advice

SUMMARY

This bill would under the Revenue and Taxation Code (R&TC) specify the time by which the Franchise Tax Board (FTB) must acknowledge receipt of and respond to certain requests for written advice.

This bill would also modify provisions of the Sales and Use Tax Law administered by the California Department of Tax and Fee Administration.

This analysis only addresses the provisions that would impact the department.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 5, 2020, amendments clarified that the FTB's existing published guidelines regarding issuance of written advice will remain in effect unless and until modified by the FTB. The amendments also clarified that the bill's acknowledgement and notification requirements would apply to written requests received by the FTB on or after January 1, 2021.

These amendments resolved all but one of the implementation concerns as discussed in the department's analysis of the bill as introduced on February 19, 2020.

REASON FOR THE BILL

The reason for the bill is to provide certainty as to the timing of an acknowledgement of receipt of and response to, a request for the FTB's written advice under the Katz-Harris Taxpayers' Bill of Rights Act (CA Taxpayers' Bill of Rights).

ANALYSIS

This bill, in addition to making several nonsubstantive, technical changes, would modify the CA Taxpayers' Bill of Rights to require that the FTB confirm receipt of a request for written advice by sending a letter of receipt within 30 days of the date the request is received and respond to such a request within 180 days of the date received. The bill states that these changes would apply to written requests received by the FTB on or after January 1, 2021.

This bill also clarifies that the FTB's existing published guidelines that are in effect on December 31, 2020, would remain in effect and be fully enforceable unless and until modified or superseded by the FTB.

Effective/Operative Date

Assuming this bill is signed into law by September 30, 2020, it would become effective January 1, 2021, and would apply to written requests received by the FTB on or after that date.

Federal/State Law

Federal Law

Under current federal law, the Internal Revenue Service (IRS) may issue a private letter ruling (PLR), "a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed." A PLR issued in response to a written request submitted by a taxpayer is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. Source: <https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer>. [Internal Revenue Service Website Page Understanding IRS Guidance a Brief Primer](#)

State Law

Generally, under current state law, a taxpayer that failed to remit the income or franchise tax otherwise due may be relieved of the tax, interest, penalties, or additions to tax when the taxpayer has requested, received, and reasonably relied upon the FTB's written advice as to whether a particular activity or transaction is subject to tax. However relief from the tax is limited to reliance on a Chief Counsel Ruling. Similar to the IRS's PLRs, the FTB's Chief Counsel Rulings are taxpayer-specific, meaning that rulings are neither citeable nor precedential for a taxpayer other than the requester.

Under state law, no relief is available where there was a misrepresentation or omission of material facts from the request for written advice.

Current state law lacks both a requirement that the department confirm receipt of a request for written advice and a timeframe for responding to such a request.

FTB Notice 2009-08, dated October 12, 2009, explains how the FTB provides guidance to taxpayers on issues under the FTB's jurisdiction and the types of guidance the FTB provides, clarifies areas in which the FTB will not issue rulings, and prescribes the form and manner in which a taxpayer may request guidance.

FTB Notice 2009-09, also dated October 12, 2009, provides guidance on relief under the Taxpayers' Bill of Rights when taxpayers rely upon the FTB's written advice. Under this notice Chief Counsel Rulings and determinations of exemption from tax issued pursuant to R&TC section 23701 are written advice that may trigger relief under the Taxpayers' Bill of Rights. Under the notice relief is unavailable based on an Exempt Acknowledgment Letter issued to confirm the FTB's receipt of an organization's federal determination of exempt status.

Implementation Considerations

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

The bill would require the FTB to issue an acknowledgement of receipt of a written request within 30 days of receipt and issue a response within 180 days to any request for written advice from the FTB, and not specifically requests for a Chief Counsel Ruling. If the author intends for the timeframes to apply only to binding Chief Counsel Rulings, this bill should be amended.

Technical Considerations

None noted.

Policy Concerns

None noted.

LEGISLATIVE HISTORY

None noted.

PROGRAM BACKGROUND

None noted.

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.

ECONOMIC IMPACT

Revenue Estimate

This bill, as amended May 5, 2020, would not impact state income or tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Because the impact of current economic circumstances is unknown, this estimate is subject to change.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

Jahna Carlson
Legislative Analyst, FTB
(916) 845-5683
jahna.carlson@ftb.ca.gov

Tiffany Christiansen
Revenue Manager, FTB
(916) 845-5346
tiffany.christiansen@ftb.ca.gov

Annette Kunze
Legislative Director, FTB
(916) 845-6333
annette.kunze@ftb.ca.gov