



## **Analysis of Amended Bill**

Author: McGuire

Sponsor:

Bill Number: SB 344

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Amended: March 26, 2019

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Related Bills: See Legislative  
History

**Subject:** Office of Tax Appeals: Establish Alternative to Appear Before a Tax Appeals Panel

### **Summary**

This bill would, under the Government Code, require the Office of Tax Appeals (OTA) to establish a process for appellants to select an alternative to appearing before a tax appeals panel.

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

### **Recommendation – No position.**

### **Summary of Amendments**

The March 26, 2019, amendments removed provisions of the bill that would have made a nonsubstantive technical change to the Personal Income Tax Law (PITL) and replaced them with the provisions discussed in this analysis.

This is the department's first analysis of the bill.

### **Reason for the Bill**

The reason for the bill is to establish a process for an appellant meeting specified criteria to opt to appear before one Administrative Law Judge (ALJ).

### **Effective/Operative Date**

This bill would become effective and operative January 1, 2020.

## **State Law**

The OTA is an independent and impartial appeals body created by the Taxpayer Transparency and Fairness Act of 2017. The office was established to hear appeals from California taxpayers regarding various taxes and fees administered by the California Department of Tax and Fee Administration (CDTFA) and the Franchise Tax Board. Tax disputes involving personal income, corporate franchise and income, sales and use, excise and other taxes and fees are decided by a tax appeals panel; a three-member panel of ALJ, each of whom is an expert in tax law. The office is independent of the state's tax agencies.

## **This Bill**

This bill would require the OTA to establish a process for an appellant to opt to appear before one ALJ rather than a tax appeals panel if one of the following criteria applies:

- The appeal arises from a tax imposed pursuant to the PITL and the disputed amount is less than five thousand dollars.
- The appeal arises from a tax or fee administered by the CDTFA and the appellant's gross receipts are less than twenty million dollars.

## **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.

This bill uses a term that is undefined, i.e., "total amount in dispute." The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define this term.

In terms of PITL under Part 10, taxes are references and not fees. Limited Liability Company's (LLCs) are subject to a graduated fee in Revenue & Taxation Code section 17942 that starts at \$900. If it is the author's intent to include fees under PITL, this bill should be amended.

A separate question is whether the author intended to exclude corporate taxpayers under Part 11 from qualifying. Currently the bill excludes corporate taxpayers under Part 11 from qualifying for the process specified in the bill, many of which are Partnerships, Limited Partnerships, and LLCs. If this is contrary to the author's intent, the bill should be amended.

Assuming the process makes no changes to procedural aspects of an appeal, for example timelines for filing briefs, implementing this bill would not significantly impact the department's programs and operations.

## **Legislative History**

AB 131 (Assembly Committee on Budget, Chapter 252, Statutes of 2017), made clarifying and conforming changes with regard to the transfer of duties from the State Board of Equalization to the OTA.

## **Other States' Information**

Since this bill would modify the OTA's appeal process, a review of other states' income tax laws would not be relevant.

## **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 would not impact the state's income tax revenue.

## **Legislative Staff Contact**

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