Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Assembly Rev & Tax Committee	Analyst:	Deborah Barrett	Bill Number:	AB 1747
Related Bills:	See Legislative History	Telephone:	845-4301	Introduced Date:	March 22, 2007
		Attorney:	Tommy Leung	Sponsor:	

SUBJECT: Use of Last Known Address/TBOR Change Due Date Of Report To Legislature

SUMMARY

This Franchise Tax Board (FTB) sponsored bill would make two changes to the Revenue and Taxation Code:

- define the term "last known address" for legal notices, and
- change the date that the annual Taxpayer Bill of Rights Report is due to the Legislature.

The bill's provisions will be discussed separately

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2008, and would be operative for notices or reports issued on and after that date.

USE OF LAST KNOWN ADDRESS

PURPOSE OF THE PROVISION

The purpose of this provision of the bill is to create a statutory standard for mailing notices to taxpayers by substantially conforming to federal law.

POSITION

Support.

In its meeting held December 7, 2005, the three member Franchise Tax Board voted 2-0, with the member from Department of Finance abstaining, to sponsor this provision.

Board Position:			Department Director	Date
X S	NA	NP		
SA	O	NAR	Selvi Stanislaus	4/16/07
N	OUA	PENDING		

ANALYSIS

Current Federal Law

The fourteenth amendment of the United States Constitution guarantees to individuals specific rights, including the right to due process of law before property can be taken from the individual by the government. The essential elements of due process include reasonable notice.

Under current federal law, the due process element of reasonable notice is met when the IRS mails a required notice to the taxpayer at the taxpayer's last known address. Federal regulations require that unless the IRS has been given clear and concise notice of a different address, the address that appears on the taxpayer's most recently filed federal tax return is the taxpayer's last known address. The regulation also provides that under certain conditions, updated address information received from the United States Postal Service (USPS) National Change of Address (NCOA) database will be considered the taxpayer's last known address, unless the IRS is given clear and concise notification of a different address.

The purpose of the "last known address rule" is to place the responsibility on the taxpayer to notify the taxing agency of any change of address. This rule absolves the taxing agency in instances where the taxing agency does not have the taxpayer's correct address because of the failure of the taxpayer to notify the agency of a change. The rationale for this rule is that with the transient nature of many taxpayers, the taxing agency does not have sufficient resources to track the movements of several hundred thousand taxpayers each year. When the tax agency has reason to believe that the address previously provided by the taxpayer is no longer correct, the agency does have a duty to exercise reasonable diligence to ascertain the correct address.

Current State Law

Current state tax law does not define "last known address," nor does state tax law specify the address to which required notices must be sent to satisfy the reasonable notice element of due process. In practice, FTB has generally followed the federal "last known address" law and procedures. The department mails notices to the taxpayer's last known address as shown on the taxpayer's last filed return, unless the taxpayer provides clear and concise notice of a different address.

Department policy requires staff to exercise reasonable diligence to ascertain and utilize the current address when mailing correspondence and notices to taxpayers. Department policy is similar to the federal regulation requiring use of information from the USPS NCOA database to update a taxpayer's address for sending notices to taxpayers.

In addition, the department may receive taxpayer address information from sources, such as the Employment Development Department, 1099 Information Returns, and interest income statements from financial institutions. If FTB determines that an address provided by such a third party source is a more current address, rather than the address then within departmental records, the new address will be used. In accordance with this policy, the department's Integrated Non Compliance system (INC) uses the address with the most recent date to send a notice to a taxpayer.

Decisions of the State Board of Equalization on taxpayer's administrative appeals of FTB action have generally interpreted the term “last known address” to be the same as the federal “last known address” definition when determining the sufficiency of FTB notices.

THIS PROVISION

This provision would provide that any notice mailed to a taxpayer is sufficient if it is mailed to the taxpayer’s last known address. The provision would define the last known address as the address that appears on the taxpayer's last return filed with FTB, unless the taxpayer has provided FTB clear and concise written or electronic notification of a different address or FTB has an address it has reason to believe is the most current address for the taxpayer.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would not significantly impact the department’s programs or operations.

FISCAL IMPACT

This provision would not impact the department’s costs because it would codify current administrative practice.

ECONOMIC IMPACT

This provision would not impact the state’s income tax revenues.

ARGUMENTS/POLICY CONCERNS

This provision would eliminate any uncertainty surrounding the proper address to be used in mailing notices to taxpayers. This provision would bring California law into conformity with federal law regarding the use and definition of last known address. Substantially conforming to the federal statute would provide the benefit of an already established body of case law and would provide taxpayers with consistent procedures when dealing with both federal and California income tax agencies.

TAXPAYER BILL OF RIGHTS REPORT CHANGE DATE DUE TO LEGISLATURE

PURPOSE OF THE PROVISION

The purpose of this provision is to provide FTB with sufficient time to prepare a complete and accurate report to the Legislature.

POSITION

In its meeting held December 4, 2006, the three member Franchise Tax Board voted 2-0, with the member from Department of Finance abstaining, to sponsor this provision.

Current State Law

FTB is required to provide an annual Taxpayers' Bill of Rights Report to the Legislature no later than October 1st of each year. The report is required to include information on proposals requiring legislative changes resulting from the annual Taxpayers' Bill of Rights hearing, as well as other changes in statute or regulations.

The Legislature maintains a legislative calendar governing the introduction and processing of legislative measures during each two-year regular session. The first year of the two-year session allows the Legislature until the second week of September to pass bills, and the second year of the two-year session allows the Legislature until August 31st to pass bills. The Governor has 30 days from either of those dates to sign or veto bills passed by the Legislature. (See chart below under Background.)

Background

The following were the 2000 to 2006 legislative calendars commencing with the end of the session:

2000 - Session ended August 31, last day for Governor to act September 30
2001 - Session ended September 14, last day for Governor to act October 14
2002 - Session ended August 31, last day for Governor to act September 30
2003 - Session ended September 12, last day for Governor to act October 12
2004 - Session ended August 31, last day for Governor to act September 30
2005 - Session ended September 9, last day for Governor to act October 9
2006 - Session ended August 31, last day for Governor to act September 30

THIS PROVISION

This provision would change the due date of the annual Taxpayer Bill of Rights Report to the Legislature from October 1st of each year to December 1st of each year.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would assist the department's programs and operations because it will allow sufficient time between when legislation is enacted and when the report addressing that legislation is submitted to the Legislature.

FISCAL IMPACT

This provision would not impact department costs.

ECONOMIC IMPACT

This provision would not impact state tax revenues.

LEGISLATIVE STAFF CONTACT

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