STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	**01/16/09**	Bill No:	**AB 129**
Tax:	**Sales and Use**	Author:	**Ma**
Related Bills:			

BILL SUMMARY

This bill would, among other things unrelated to the Board, reinstate the provisions related to tax practitioner-client confidentiality privilege that sunsetted on January 1, 2009.

ANALYSIS

CURRENT LAW

Under current law, confidential communications between a client and an attorney are protected from disclosure to third parties, under certain circumstances (Evidence Code Sections 950 – 962). Under the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998, the attorney-client privilege is extended to tax advice, as defined, that is furnished to a client-taxpayer by any individual who is authorized to practice before the IRS as well as any federal court, if the IRS is a party to the proceeding.

Up until January 1, 2009, Revenue and Tax Code Section 7099.1 of the Sales and Use Tax Law conformed to the federal provisions by extending similar tax practitioner-client confidentiality privileges. California law provided that with respect to tax advice, certain protections of confidentiality that apply to a communication between a client and an attorney shall also apply to a communication between a taxpayer and any federally-authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney. The term "federally authorized tax practitioner" meant any individual authorized under federal law to practice before the IRS if the practice is subject to regulation. These individuals included attorneys, CPAs, enrolled agents, and enrolled actuaries who are required to abide by the Standards of Ethical Conduct as published in U.S. Treasury Department Circular 230. “Tax advice” was defined as advice given by an individual with respect to a matter that is within the scope of the individual’s authority to practice. The confidentiality protection only applied to the extent that the communication would have been considered a privileged communication if it had been between a client and an attorney, and only in non-criminal tax matters before the specified state agencies. The privilege did not apply to any written communication between a federally-authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of that corporation in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

These provisions sunsetted on January 1, 2009.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

PROPOSED LAW

Among other things, this bill would reinstate Section 7099.1 in the Sales and Use Tax Law to incorporate the tax practitioner-client confidentiality privilege indefinitely.

The bill would become effective immediately upon enactment.

BACKGROUND

Assembly Bill 1016 (Ch. 438, Stats. 2000), added the tax practitioner-client privilege to current law. That bill contained a sunset date of January 1, 2005, and AB 1416 (Ch. 412, Stats. 2004) extended the sunset date to January 1, 2009.

COMMENTS

1. **Sponsor and purpose**. This bill is sponsored by the California Society of Enrolled Agents in an effort to reinstate the tax practitioner-client privilege that inadvertently sunsetted.
2. **The proposed privilege is no broader than the attorney/client privilege, would only apply to non-criminal proceedings, and would afford CPAs and Enrolled Agents the same privilege that is extended to attorneys when discussing similar issues.** The trend toward attorneys joining accounting firms has blurred the distinction between legal advice and guidance provided by accountants. This bill would make that distinction insignificant with respect to confidentiality privileges.
3. **Since enactment of these provisions, there has been no adverse impact on Board proceedings.** Although there was at least once instance where, prior to enactment of this original provision in 2000, a taxpayer could have successfully prevented the Board from viewing a letter at a Board hearing, which may have precluded the imposition of fraud and failure to file penalties, there has not been any adverse impact on Board proceedings since these provisions were first added to the law in 2000.

COST ESTIMATE

There are no costs associated with this bill.

REVENUE ESTIMATE

This bill would have no impact on state or local revenues.

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