



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Introduced:	06/22/09	Bill No:	<u>ACA 25</u>
Tax:	Business, Property, Income	Author:	DeVore
Related Bills:			

BILL SUMMARY

This constitutional amendment, if approved by the voters, would rename the Board of Equalization (BOE) as the California Tax Commission (CTC) and increase the membership to eight voting members, as provided. In addition, this constitutional amendment would, in addition to performing the duties of the former Board, require the CTC to collect and administer income taxes and conduct administrative review of state tax matter determinations.

ANALYSIS

CURRENT LAW

Under existing law, the BOE administers, among other things, the following tax and fee programs: sales and use tax, Bradley-Burns uniform local sales and use tax, transactions and use tax, alcoholic beverage tax, cigarette and tobacco products tax, motor vehicle fuel tax, diesel fuel tax, interstate user tax, emergency telephone users surcharge, energy resources surcharge, insurance tax (in part), integrated waste management fee, natural gas surcharge, childhood lead poisoning prevention fee, oil spill response and prevention fee, underground storage tank maintenance fee, use fuel tax, hazardous substances tax, California tire fee, occupational lead poisoning prevention fee, marine invasive species fee, electronic waste recycling fee, timber yield tax and private railroad car tax. The BOE also assesses the property of public utilities and common carriers, and provides certain administrative and oversight functions with respect to the local property tax.

The BOE is comprised of four elected members, one from each equalization district, and the State Controller. The Board itself is responsible for setting the values for state-assessed properties on the Board roll and for hearing appeals of those values. It also hears appeals relating to all of the taxes and fees it administers, as well as the taxes administered by the FTB.

The FTB was created by statute and is comprised of the Controller, the Director of Finance, and the Chair of the BOE. It administers the personal income tax and the corporation tax. In addition, the FTB administers other non-income tax related programs, including the Homeowners and Renters Property Tax Assistance program, child support and other non-tax debt collection programs, Political Reform Audit, and the Non-admitted Insurance Tax program.

The FTB and the BOE adopt rules and regulations for the taxes that the respective agencies administer. In addition, the BOE prescribes rules and regulations to govern county assessors when assessing property and assessment appeals boards when equalizing property values.

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.

Government Code Section 15604 provides that the Members of the BOE may appoint its executive director and prescribe and enforce his duties. The executive director serves at the pleasure of the BOE and receives such compensation as the BOE prescribes.

Under Government Code Section 15701, the Members of the FTB, with the consent and approval of two-thirds of the membership of the Senate, may appoint an executive officer who serves as a civil executive officer and performs such duties as are delegated to him by the FTB. The executive officer may be removed by a two-thirds vote of the FTB.

PROPOSED LAW

This proposed constitutional amendment, if approved by the voters, would amend the California Constitution to do the following:

- Rename the BOE as the CTC.
- Specify that the CTC would consist of eight voting members: one member appointed by the Governor, and seven members elected for four-year terms at gubernatorial elections.
- Require the Governor within an unspecified number of days after commencing a term of office to appoint the one member to serve a term ending on the same date as the terms of the elected members.
- Specify that the state shall be divided into seven CTC districts, as established by the Legislature.
- Specify that a CTC member shall not serve more than two terms.
- Specify that, for purposes of the two-term limitation, a member of the BOE shall include the years and term during which that member was a member of the BOE, and that the term of office shall not be affected by this measure.
- Require the CTC, in addition to performing the duties of the former BOE, to collect and administer taxes on or measured by income that are imposed on persons, corporations, or other entities as prescribed by law. The CTC would also conduct administrative review of state tax matter determinations.
- Authorize the CTC, with the approval of 2/3 of the membership of the Senate, to appoint an executive officer, exempt from civil service, who would be required to perform the duties that are delegated to him or her by the CTC. The executive officer may be removed by a 2/3 vote of the members of the CTC.

This measure would become operative on the first day of the sixth calendar month that commences after the measure is approved by the voters.

IN GENERAL

The BOE has already taken the lead in working with the FTB and the Employment Development Department (EDD) to identify specific, incremental processes that may be conducive to consolidation to optimize capacities and achieve efficiencies. We are also currently working with the Department of Motor Vehicles and the Office of the Chief Information Officer to examine opportunities to consolidate common processes and functions.

A workgroup from these agencies has recently met to discuss those processes and functions that may be the most opportune for consolidation taking into account all practical aspects and costs. Some of the areas under discussion include the tax return process, call centers, printing, mailing and the electronic capture of documents.

The BOE, EDD and FTB currently share an extensive amount of valuable data and have long-standing cooperative partnerships in this effort. To enhance our data sharing capabilities, the agencies have formed a joint agency information sharing team. The main goal of this team is to ensure that new technology projects continue to further our current data sharing abilities, while being consistent and compatible with the direction set by the State's Chief Information Officer and when it is deemed appropriate – given risks and resources – to pursue a more integrated approach for accessing data from the other agencies.

BACKGROUND

The most recent proposed constitutional amendment that would have consolidated the FTB into the BOE was ACA 14 (2005-06, Devore, et al.) which is substantially similar to this bill, except it would have required a membership level of nine voting members (as opposed to the eight voting members this bill is proposing). ACA 14 was held in the Assembly Appropriations Committee.

Another similar measure includes ACA 22 (Dutra, et al.), which was introduced during the 2003-04 Legislative Session. ACA 22 is also similar to this bill, except it would have renamed the BOE as the "California Tax Board" (CTB), and would have maintained a membership level of five voting members. ACA 22 was held in the Assembly Revenue and Taxation Committee.

Several other bills and proposed constitutional amendments have been introduced over the years that have proposed to merge the FTB *into* the BOE. These include:

- **SB 274 (Dutton, 2007-08)**, would have abolished the FTB and transferred all of its duties and powers to the BOE. This bill would have also transferred the tax administrative functions of the EDD and the California Department of Insurance (CDI) to the BOE. The bill was never heard in committee.
- **AB 1615 (Klehs, 2005-06)**, would have also transferred to the BOE the duties, powers, purposes, responsibilities and jurisdiction of the FTB and the tax administrative functions of EDD and CDI. The provisions of the bill were amended out in the Assembly Revenue and Taxation Committee.
- **SB 216 (Dutton, 2005-06)**, would have transferred to the BOE the duties, powers, purposes, responsibilities and jurisdiction of the FTB and the tax administrative functions of EDD and CDI. The bill was never heard in committee.
- **SCA 9 (Ducheny, 2005-06)**, would have renamed the BOE as the CTC and increase the membership to 9 voting members. The CTC would, in addition to collecting and administering the BOE's current taxes and fees, collect and administer income taxes and any taxes withheld from wages, and to conduct administrative review of state tax matter determinations. The bill was never heard in committee.
- **AB 2000 (Dutton, 2003-04)**, would have abolished the FTB and would have transferred all of its duties and powers to the BOE. The bill was held in the Assembly Revenue and Taxation Committee.

- **ACA 13 (Leonard, 2001-02)**, would have changed the name of the BOE to the CTC and required the new Commission, in addition to performing the duties of the former BOE, to administer and collect taxes on income as prescribed by law. ACA 13 was held in the Assembly Appropriations Committee.
- **AB 15 (Klehs, et al., 1993-94)**, would have abolished the FTB and transferred its powers and duties to the BOE. This bill was vetoed by Governor Wilson. In part, the veto message states, "...I support streamlining government and consolidating the Board of Equalization and the Franchise Tax Board. AB 15 is not the way to accomplish this purpose. The Administration sponsored legislation that would have created a Department of Revenue within the Administration. That approach would avoid the conflict of interest inherent in AB 15, in which the Board of Equalization serves as both administrator of the tax system, as well as the appellate body for taxpayer appeals."
- **AB 3338 (McClintock, 1991-92)**, would have abolished the FTB and transferred its powers and duties to the BOE. This bill failed passage in the Assembly Revenue and Taxation Committee.
- **SB 1052/SCA 22 (Alquist, 1989-90)**, would have abolished the FTB and transferred its powers and duties to the BOE. SCA 22 would have added the Director of Finance (DOF) to the membership of the BOE. These bills were never heard in committee.

Other bills have also been introduced that would have consolidated the FTB and the BOE into another entity:

- **AB 2794 (Bowen, et al., 1995-96)**, would have abolished the FTB and, except as provided by the Constitution, the administrative authority of the BOE, and would have provided for the transfer of their respective powers and duties to the Department of Revenue (DOR), which this bill would have created. This bill would have also created a Board of Tax Appeals consisting of seven members appointed by the Governor to serve as an appellate body to hear all tax appeals. This bill failed passage in the Assembly Revenue and Taxation Committee.
- **SB 1727/SCA 29 (Kopp, 1995-96)**, would have, among other things, done the following: (1) abolished the FTB and the BOE and transferred their powers and duties to the California State Tax Authority, which this bill would have created; and (2) created a Board of Tax Appeals consisting of seven members appointed by the Governor to serve as an appellate body to hear all tax appeals. Both bills were held in the Senate Appropriations Committee.
- **SB 87/SCA 5 (Kopp, 1993-94)**, would have, among other things, done the following: (1) abolished the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created; and (2) created a Board of Tax Appeals. SB 87 failed on the Senate floor. SCA 5 was placed on the Senate inactive file.
- **SB 1829 (Campbell, 1993-94)**, would have, among other things, consolidated the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created. The BOE would have provided administrative appellate review of all administrative tax matter decisions made by the DOR. This bill was never heard in committee.

- **SB 2137 (Campbell and Kopp, 1993-94)**, would have, among other things, consolidated the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created. This bill would have also provided that the BOE would serve as the administrative appellate review of all administrative tax matter decisions made by the DOR. This bill failed passage in the Senate Appropriations Committee.
- **SB 23 (Kopp, 1991-92)**, would have, among other things, done the following: (1) abolished the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created; and (2) created a Board of Tax Appeals. This bill failed to move out of the Senate.
- **SB 1695 (Kopp, 1991-92)**, would have, among other things, done the following: (1) abolished the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created; and (2) created a Board of Tax Appeals. SB 1695 was sent to interim study. The Assembly Revenue and Taxation Committee held an oversight hearing on February 24, 1992, which reviewed specific issues related to consolidating the FTB and the BOE into a DOR. The issues discussed included: administration, audit, collections, return processing, legal divisions/appeals process, facilities, and data processing. It was noted in the hearing that the state's budget crisis made consolidation less attractive at the time due to its costs and complexities.
- **SB 1395 (Kopp, Ayala, et al., 1989-90)**, would have, among other things, done the following: (1) abolished the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created; and (2) created a Board of Tax Appeals. This bill failed passage in the Senate Appropriations Committee.

COMMENTS

1. **Sponsor and purpose.** This measure is sponsored by the author. According to the author, this bill has been introduced in order to increase accountability to taxpayers by consolidating California's two largest tax collection agencies into the CTC, creating a single accessible agency for citizens. The author notes that California currently spends billions and employs 18,000 people simply to collect taxes. The bill is intended to streamline these agencies by eliminating redundant departments, thereby cutting spending and limiting bureaucratic red tape.
2. **An eight-member Commission could result in tie votes.** Having eight voting members on the proposed CTC creates the possibility that votes on crucial issues could end in deadlock, as no "tie-breaking" procedure is provided in the bill.
3. **The Legislative Analyst Office (LAO) conducted a study regarding consolidation of certain functions of the BOE, FTB, and EDD.** Chapter 569, Statutes of 2003 (AB 986, Horton), directed the LAO to prepare a report that addresses issues related to the partial consolidation of FTB, BOE, and EDD. The legislation mandated that the LAO report to the Legislature regarding the possible consolidation of payment and document processing of these three agencies. Specifically, based on information provided by the tax agencies, the LAO was required to determine if it would be beneficial to consolidate the management and control of these operations.

In its January 2005 report, the LAO concluded that consolidation of the tax agencies' payment and documentation processing activities could in the medium- to long-term, generate some annual cost savings and interest earnings through elimination of duplicative functions and increased efficiencies. However, the report indicates that the state would have to incur significant net costs in the short term to achieve these savings. In addition, the report indicates that such benefits are likely to be less than the benefits the state would receive if it increased electronic processing. The LAO recommended that low priority be given to consolidation of payment and document processing functions in favor of taking steps to increase electronic processing.

4. **The California Performance Review (CPR) also made its final recommendations to the Governor.** Governor Schwarzenegger, by executive order, created the CPR to conduct a focused examination of California state government and to formulate and recommend practical changes to government agencies, programs and operations. The ultimate goal of this examination was to identify ways to reduce total costs of government operations, increase productivity, improve services, and make government more responsive and accountable to the public.

As part of the Governor's process to decide which CPR recommendations to pursue, Governor Schwarzenegger formed the CPR Commission. The Commission is independent and bipartisan consisting of leaders in the public, private, and non-profit sectors. In its November 2004 report, the Commission agreed with the recommendation that the tax administration functions, such as collection and monitoring, should be consolidated from the different tax collection agencies in order to streamline processes and enhance operations.

The Commission also noted that, although it supports an elected appellate body for tax adjudication functions, a further study should be undertaken to determine the appropriate governing structure for the other tax collection activities. The Commission recommended that such a study should consider, among other issues, the public's expectation of accountability and equity, as well as the role of the Executive Branch in tax collection responsibilities.

5. **The State Controller would no longer be an ex-officio member.** Enactment of this bill would eliminate the State Controller from its constitutional duty to serve as an ex-officio Member of the Board, and would instead, replace that membership with an elected member to serve on the CTC.
6. **Board Members would retain their current positions, but would be subject to a two-term limit.** The bill would provide that a member of the CTC shall not serve more than two terms. If an election were held in November 2009, and a current Board Member ran for a second term and was elected, the Member would be entitled to serve only the remaining term of office – not two additional terms.

7. **A bill to statutorily implement the proposed constitutional amendment should accompany this measure.** For example, the Revenue and Taxation Code currently requires the FTB to collect and administer the income tax. This proposed constitutional amendment would be in conflict with the current Revenue and Taxation Code, since the proposed CTC would be charged with that responsibility. Accordingly, in order to accomplish the transfer of duties and responsibilities from the FTB to the CTC, it is recommended that enabling legislation accompany this measure.
8. **This bill is silent regarding the administration of FTB's non-tax collection programs.** FTB administers certain programs that are not income taxes, such as: child support collections, homeowners and renters assistance, court-ordered debt collections, non-admitted insurance collections, political reform audit, and other programs. It is unclear whether the author wishes to have these responsibilities transferred to the proposed CTC or allocated to other state agencies.
9. **Technical amendments suggested.** Article XIII, Section 18, requires the Board (or, as proposed to be amended, the Commission) to annually measure county assessment levels and to equalize assessment levels by adjusting entire assessment rolls if necessary. This provision was rendered moot by Proposition 13, and the Board hasn't performed the annual measurements or adjusted local rolls since then. Rather than amending this section, it is suggested that it just be deleted in its entirety (page 6, beginning on line 34).
10. **The bill should have a delayed operative date for the assumption of the duties of the CTC.** The proposed constitutional amendment, if approved by the voters, would become operative on the first day of the sixth calendar month following passage by the voters. Depending on the date voters approve the ACA, there would not be sufficient time to transfer the income tax collection and administration responsibilities to the CTC. It is recommended that the measure be amended to specify that the transfer of duties to the CTC would become operative on the first day of the next January commencing more than a year after the voters' approval.
11. **Proponents of consolidation of the agencies have argued the following points on previous proposals:**
 - **Consolidation would reduce administrative costs in the long term.** It would reduce administrative costs, since it would result in the consolidation of administrative and staff services, including personnel and training. Also, it would avoid duplication of collection efforts, fiscal duties, and mailing costs. Data processing operations could be consolidated. Proponents state that consolidation of the data processing operations of the two tax agencies could provide for improved information management and produce economies of scale.
 - **Consolidation would provide uniform tax policy and administration.** It would assure citizens greater uniformity in the compliance and appeals processes and provide an opportunity to simplify and reduce regulations, and to reduce and standardize the number of taxpayer reports that need to be filed.
 - **Audits could be consolidated.** Some proponents argue that if the tax administration were consolidated into one agency, all taxes could be audited at the same time.

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.

- **Elected officials tend to be more responsive than an appointed body.** Proponents have argued that a consolidated tax agency should be administered by an elected body because elected officials are more responsive to the people than appointed officials. Section 15623 of the Government Code requires Board Members to investigate the administration, enforcement, and operation within their districts of all laws in which the administration and enforcement is vested with the BOE. As such, it is the Board Member's job to represent taxpayers and to make sure that BOE's tax programs are administered uniformly. With a representative tax administration, individual taxpayers can go directly to their Board Member for help with tax matters.

12. The following arguments have been made against similar previous proposals:

- **There is no overwhelming reason to consolidate.** In an overall view of the arguments in favor of and against merging the taxing agencies, it appears there is no overwhelming reason to do so. The tax agencies are operating efficiently, and in today's environment, modern technology actually makes physical merging less critical. California has an outstanding record in the field of tax collection and administration. Since it is unclear whether the merge would result in significant improvements, it appears that it may not be warranted to incur the significant costs of merging or to risk any loss of revenue during the period of conversion.
- **Whether economies of scale would be realized is questionable.** Opponents of similar proposals in the past have noted that the contentions of greater economy are largely illusory. Unless certain programs were curtailed, there would still be essentially the same staff requirements and space requirements.
- **This measure only provides a framework for consolidation.** This constitutional amendment does not provide the specifics of how the two tax agencies would consolidate the tax administrative functions. Much more extensive statutory changes are necessary to ensure that the functions are consolidated in a way that ensures maximum long-term cost savings.

COST ESTIMATE

This proposed constitutional amendment in and of itself would not affect administrative costs, but rather the costs would be incurred if voters approve the measure. According to the LAO's January 2005 report, a potential long-term savings exists associated with the partial physical consolidation of the agencies' payment and document processing activities by reducing duplication, streamlining staffing, and making more efficient use of existing capital.

However, the LAO points out that these savings are likely to be achievable only through an up-front investment by the state in additional systems that allow the agencies' separate and distinct processes to function in a consolidated fashion. In addition, given that the agencies are at different levels of technological advancement, the LAO report notes that considerable additional investment may be necessary to avoid losing the technological edge that some agencies have achieved in their processing functions.

The amount of these savings could not be determined without an extensive, detailed study.

REVENUE ESTIMATE

This proposed constitutional amendment in and of itself would not affect the state's revenues. In general, the transfer of the tax collection and administration responsibilities of the income taxes to the BOE would not appear to have any effect on the state's revenues. It is possible, however, that a decrease in revenue could be experienced during the period of conversion as a result of the requirement to spend staff time developing the procedures for the new agency.

Analysis prepared by: Sheila T. Waters 445-6579 08/12/09

Contact: Margaret S. Shedd 322-2376

ls

aca25-1.doc

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.