



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Bill No:	AB 1416	Date Amended:	06/17/04
Author:	Bermudez	Tax:	Sales and Use
Related Bills:			

BILL SUMMARY

This bill would extend the sunset date on the tax practitioner-client confidentiality privilege from January 1, 2005 to January 1, 2009.

Summary of amendments

Previous versions of this bill contained provisions relating to taxation of cigarette and tobacco products. The June 17 amendments removed those provisions and replaced them with the provisions to extend the sunset date on the tax practitioner-client confidentiality privilege.

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 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.

Current Sales and Use Tax Law conforms to the federal provisions by extending similar tax practitioner-client confidentiality privileges. California law provides 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" means any individual who is authorized under federal law to practice before the IRS if the practice is subject to regulation. These individuals include attorneys, CPA's, 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" is 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 applies to the extent that the communication would be considered a privileged communication if it were between a client and an attorney, and only in non-criminal tax matters before the specified state agencies. The privilege does 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 will be repealed as of January 1, 2005 unless another statute is enacted that extends that date.

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

This bill would amend Section 7099.1 of the Sales and Use Tax Law to extend the sunset date on the tax practitioner-client confidentiality privilege from January 1, 2005 to January 1, 2009.

Background

The attorney-client privilege extends to the client the privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and his/her attorney. Such privilege protects communications between the attorney and client made for purposes of furnishing or obtaining professional legal advice or assistance. The privilege also permits an attorney to refuse to testify as to communications from the client.

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.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the California Society of Certified Public Accountants and California Society of Enrolled Agents in an effort to extend the sunset date for the tax practitioner-client privileges that mirror the IRS Restructuring and Reform Act with respect to confidentiality privileges.
2. **Summary of amendments.** Previous versions of this bill contained provisions relating to taxation of cigarette and tobacco products. The **June 17** amendments removed those provisions and replaced them with the provisions to extend the sunset date on the tax practitioner-client confidentiality privilege.
3. **Allowance of these privileges to Board matters could preclude the discovery and use of any correspondence from a federally-authorized tax practitioner to the taxpayer.** If the privilege also applies or is expanded to court proceedings, it would be much more difficult to prove fraud if the taxpayer files suit in superior court. There has been at least one instance where, prior to the passage of AB 1016, 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. However, since these provisions have been in effect, there has not been an adverse impact on Board proceedings.

COST ESTIMATE

There are no costs associated with this bill.

REVENUE ESTIMATE

This bill would have no impact on state revenues.

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