



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/05/10	Bill No:	SB 1113
Tax:	Income	Author:	Wolk
Related Bills:			

BILL SUMMARY

This bill would amend Sections 19048, 19334, and 19346 of the Revenue and Taxation Code to allow the Franchise Tax Board (FTB) to appeal a decision of the Board of Equalization (BOE) by bringing an action for a trial de novo in superior court, as specified.

ANALYSIS

CURRENT LAW

Under existing law, the BOE administers the state and local sales and use tax, and a variety of special taxes and fees, including the alcoholic beverage tax, cigarette and tobacco products tax, motor vehicle fuel tax, and diesel fuel 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 BOE itself is responsible for setting the values for state-assessed properties on the BOE roll and for hearing appeals of those values. It also hears appeals relating to 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.

Under existing law, an income tax taxpayer may appeal a decision of the FTB to the BOE. In general, taxpayers may appeal to the BOE after FTB has taken the following actions:

- Denied a taxpayer's protest of a proposed deficiency assessment;
- Denied a refund or credit or loss carryover claimed by the taxpayer; or
- Disallowed interest on any refund claimed by the taxpayer.

The BOE's determination on an appeal of an FTB action is final unless within 30 days of the determination, the FTB or the taxpayer petitions for a redetermination hearing. In the event the redetermination hearing is granted, the BOE's determination becomes final after 30 days from the time the BOE issues its opinion.

If the taxpayer is not satisfied with the decision of the BOE to sustain the FTB's action, the taxpayer must then pay the tax liability and file a claim for refund. Once the refund claim is denied, the taxpayer may file suit in superior court against the FTB for the recovery of the amount paid. The suit is a trial de novo, and not an appeal of the BOE's decision.

FTB lacks statutory authority to file a lawsuit in superior court if it loses at the BOE.

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.

BACKGROUND

A measure containing similar provisions was considered in the 2003-04 Legislative Session. That measure, SB 548 (Burton), which also contained provisions modifying the contribution limits imposed in law, was held in the Assembly Revenue and Taxation Committee. The BOE had no position on that measure.

PROPOSED LAW

This bill would amend Sections 19048, 19334, and 19346 of the Revenue and Taxation Code to authorize the FTB to bring an action for a trial de novo in superior court to determine the deficiency amount, the amount of refund or credit, or allowance of interest that was the subject of the determination of the BOE. This bill would also authorize a taxpayer to file a motion to change the venue to a venue closer to the taxpayer's principal residence or principal place of business.

The provisions would apply to determinations issued by the BOE on and after January 1, 2011.

COMMENTS

1. **Sponsor and purpose.** This measure is sponsored by the author in order to provide FTB with the opportunity for independent, judicial review for decisions rendered by the BOE as provided under most circumstances in law.
2. **What is trial de novo?** "Trial de novo" means trying a new matter-- trying it as if it had not been heard before and as if no decision had been previously rendered. California Superior Courts sometimes are authorized by law to provide appellate review of an administrative adjudicatory action.

COST ESTIMATE

Enactment of this bill would not materially affect the BOE's administrative costs.

REVENUE ESTIMATE

This bill would have an unknown effect depending on the number of decisions appealed by the FTB and the result of the court decision.

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