

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Corbett Analyst: William Koch Bill Number: SB 12

Related Bills: None Telephone: 845-4372 Amended Date: May 3, 2012

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Repeal Of Bulk Sales Laws

SUMMARY

This bill would repeal the entire division of laws in the Commercial Code relating to Bulk Sales and make conforming changes in other codes related to the repeal.

This is the department's first analysis of this bill and only addresses the impact this bill would have on the Franchise Tax Board (FTB).

RECOMMENDATION

No position.

REASON FOR THE BILL

The reason for this bill is to ease business transactions in California with regard to bulk sales.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2013.

ANALYSIS

STATE LAW

Current state law in the Commercial Code, also known as the Uniform Commercial Code—Bulk Sales, defines a bulk sale as:

- In the case of a sale by auction or a sale or series of sales conducted by a liquidator on the seller's behalf, a sale or series of sales not in the ordinary course of the seller's business of more than half of the seller's inventory and equipment, as measured by a value on the date of the bulk sale agreement.
- In all other cases, a sale not in the ordinary course of the seller's business of more than half the seller's inventory and equipment, as measured by value on the date of the bulk sale agreement.

Board Position:

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Executive Officer

Date

Selvi Stanislaus

06/26/12

The Uniform Commercial Code—Bulk Sales generally requires the buyer in a bulk sale to record and publish advance notice of the sale. At least 12 business days before the date of the bulk sale, the buyer must (1) record notice of the sale in the county recorder's office, (2) publish a notice of the sale at least once in a newspaper of general circulation, and (3) inform the county tax collector of the sale.

Under current state law, the FTB requires a successor business acquiring either a substantial portion of another business's assets or the entire business to withhold a sufficient part of the purchase price or to set aside property to cover any of the seller's unpaid withholding obligations due to the FTB.¹ A business seller's withholding obligations are any amounts required to be deducted and withheld under the Revenue and Taxation Code, which consist primarily of withholding amounts required on the following:

1. Payments of California source income to nonresidents,
2. Real estate transactions, and
3. Credits or amounts to which an FTB issued "order to withhold" applies.

A business seller's withholding obligations due to the FTB does not include wage withholding, as wage withholding is remitted to and administered by the Employment Development Department.

Upon request of the successor, which the law intends to be made as part of the successor's due diligence before making the acquisition, current law authorizes the FTB to issue a certificate indicating any withholding and associated penalties and interest established on the FTB's records as being owed by the seller. The successor has the later of either the end of 30 days after issuance of the certificate or the day the business or assets are acquired to pay the amount identified in the certificate. If a successor fails to pay the amount required, a penalty of 10 percent of the amount due may be assessed.

If the successor fails to request a certificate, the successor is liable for any withholding and associated penalties and interest established on the FTB's records (prior to the sale) as being owed by the seller, up to but not exceeding the fair market value of the assets or business acquired. A successor is not liable for any other income tax debts owed by the seller. If the FTB fails to issue a certificate within 60 days, the successor is released of any further liability for such amounts owed by the seller.

THIS BILL

This bill would repeal the entire division of laws in the Commercial Code relating to Bulk Sales and make conforming changes in other codes related to the repeal.

As a result, buyers would no longer be required to record notice of the bulk sale in the county recorder's office, publish notice of the sale in a newspaper, or inform the county tax collector of the sale.

¹ Revenue and Taxation Code (R&TC) section 18669, referring to "required to deduct and withhold tax under this article," i.e., Article 5, including withholding at source generally (R&TC section 18662), and withholding of delinquent taxes from bank accounts or other payments (R&TC sections 18670-18677).

PROGRAM BACKGROUND

The FTB uses the knowledge of pending bulks sales as a levy source for the collection of delinquent tax debts owed by seller's involved in a bulk sale. In some instances, buyers in a bulk sale follow the notice requirements in the Commercial Code but fail to request from the FTB the certificate described above in the "State Law" section. In these situations, absent the notice requirement in the Commercial Code, the department would likely be unaware of the sale. In addition, department staff believes that if the notice requirement in the Commercial Code is repealed, as this bill would do, the result could be that fewer buyers would request the certificate described in the "State Law" section. Consequently, the department would be aware of even fewer pending sales, and tax collections would be somewhat reduced, as illustrated in the "Economic Impact" section below.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs or operations.

FISCAL IMPACT

Implementing this bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of SB 12, as Amended May 3, 2012 Effective and Operative January 1, 2013 Enactment Assumed After June 30, 2012		
2012-13	2013-14	2014-15
-\$30,000	-\$150,000	-\$150,000

This estimate does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION²

Support: California Commission on Uniform State Laws (sponsor)

Opposition: California Beer and Beverage Distributors
California Distributors Association
California Escrow Association
California Land Title Association
California Newspaper Publishers Association
Escrow Institute of California
First Corporate Solutions

² As reported in the June 18, 2012, Assembly Committee on Judiciary analysis of this bill located at:
http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_12_cfa_20120618_131530_asm_comm.html

ARGUMENTS

Proponents: Some people would say this bill is needed to eliminate unnecessary burdens of current law relating to bulk sales.

Opponents: Some people would say this bill may put certain creditors at a disadvantage.

LEGISLATIVE STAFF CONTACT

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