

AMENDED IN SENATE AUGUST 27, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 129

Introduced by Assembly Member Ma

January 16, 2009

An act to add Sections 7099.1 and 21028 to the Revenue and Taxation Code, and to add Section 13019 to the Unemployment Insurance Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 129, as amended, Ma. Confidentiality: taxpayer communications.

Under existing law, the Employment Development Department, the State Board of Equalization, and the Franchise Tax Board administer various taxes and fees.

This bill in modified conformity with federal income tax laws would, with respect to tax advice, require that certain protections of confidentiality that apply to a communication between a client and an attorney also apply to communications between a taxpayer and any federally authorized tax practitioner that appears before those state agencies to the extent that the communication would be considered a privileged communication if it were made between a client and an attorney.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7099.1 is added to the Revenue and
2 Taxation Code, to read:

3 7099.1. (a) (1) With respect to tax advice, the protections of
4 confidentiality that apply to a communication between a client and
5 an attorney, as set forth in Article 3 (commencing with Section
6 950) of Chapter 4 of Division 8 of the Evidence Code, also shall
7 apply to a communication between a taxpayer and any federally
8 authorized tax practitioner to the extent the communication would
9 be considered a privileged communication if it were between a
10 client and an attorney. A federally authorized tax practitioner has
11 the legal obligation and duty to maintain confidentiality with
12 respect to such communication.

13 (2) Paragraph (1) may only be asserted in any noncriminal tax
14 matter before the State Board of Equalization.

15 (3) For purposes of this section:

16 (A) "Federally authorized tax practitioner" means any individual
17 who is authorized under federal law to practice before the Internal
18 Revenue Service if the practice is subject to federal regulation
19 under Section 330 of Title 31 of the United States Code, as
20 provided by federal law as of January 1, 2000.

21 (B) "Tax advice" means advice given by an individual with
22 respect to a state tax matter, which may include federal tax advice
23 if it relates to the state tax matter. For purposes of this
24 subparagraph, "federal tax advice" means advice given by an
25 individual within the scope of his or her authority to practice before
26 the federal Internal Revenue Service on noncriminal tax matters.

27 (C) "Tax shelter" means a partnership or other entity, any
28 investment plan or arrangement, or any other plan or arrangement
29 if a significant purpose of that partnership, entity, plan, or
30 arrangement is the avoidance or evasion of federal income tax.

31 (b) The privilege under subdivision (a) shall not apply to any
32 written communication between a federally authorized tax
33 practitioner and a director, shareholder, officer, or employee, agent,
34 or representative of a corporation in connection with the promotion
35 of the direct or indirect participation of the corporation in any tax
36 shelter, or in any proceeding to revoke or otherwise discipline any
37 license or right to practice by any governmental agency.

1 (c) This section shall be operative for communications made
2 on or after the effective date of the act adding this section.

3 SEC. 2. Section 21028 is added to the Revenue and Taxation
4 Code, to read:

5 21028. (a) (1) With respect to tax advice, the protections of
6 confidentiality that apply to a communication between a client and
7 an attorney, as set forth in Article 3 (commencing with Section
8 950) of Chapter 4 of Division 8 of the Evidence Code, also shall
9 apply to a communication between a taxpayer and any federally
10 authorized tax practitioner to the extent the communication would
11 be considered a privileged communication if it were between a
12 client and an attorney. A federally authorized tax practitioner has
13 the legal obligation and duty to maintain confidentiality with
14 respect to such communication.

15 (2) Paragraph (1) may only be asserted in any noncriminal tax
16 matter before the Franchise Tax Board.

17 (3) For purposes of this section:

18 (A) "Federally authorized tax practitioner" means any individual
19 who is authorized under federal law to practice before the Internal
20 Revenue Service if the practice is subject to federal regulation
21 under Section 330 of Title 31 of the United States Code, as
22 provided by federal law as of January 1, 2000.

23 (B) "Tax advice" means advice given by an individual with
24 respect to a state tax matter, which may include federal tax advice
25 if it relates to the state tax matter. For purposes of this
26 subparagraph, "federal tax advice" means advice given by an
27 individual within the scope of his or her authority to practice before
28 the federal Internal Revenue Service on noncriminal tax matters.

29 (C) "Tax shelter" means a partnership or other entity, any
30 investment plan or arrangement, or any other plan or arrangement
31 if a significant purpose of that partnership, entity, plan, or
32 arrangement is the avoidance or evasion of federal income tax or
33 the avoidance or evasion of the tax imposed under Part 10
34 (commencing with Section 17001) or Part 11 (commencing with
35 Section 23001).

36 (b) The privilege under subdivision (a) does not apply to any
37 written communication between a federally authorized tax
38 practitioner and any person, or any director, officer, employee,
39 agent, or representative of the person, or any other person holding
40 a capital or profits interest in the person in connection with the

1 promotion of the direct or indirect participation of the person in
2 any tax shelter (as defined in Section 6662(d)(2)(C)(ii) of the
3 Internal Revenue Code as modified by substituting the phrase
4 “income or franchise tax” for “Federal income tax”), or in any
5 proceeding to revoke or otherwise discipline any license or right
6 to practice by any governmental agency.

7 (c) This section shall be operative for communications made
8 on or after the effective date of the act adding this section.

9 *SEC. 2.5. Section 21028 is added to the Revenue and Taxation*
10 *Code, to read:*

11 *21028. (a) (1) With respect to tax advice, the protections of*
12 *confidentiality that apply to a communication between a client and*
13 *an attorney, as set forth in Article 3 (commencing with Section*
14 *950) of Chapter 4 of Division 8 of the Evidence Code, also shall*
15 *apply to a communication between a taxpayer and any federally*
16 *authorized tax practitioner to the extent the communication would*
17 *be considered a privileged communication if it were between a*
18 *client and an attorney. A federally authorized tax practitioner has*
19 *the legal obligation and duty to maintain confidentiality with*
20 *respect to such communication.*

21 *(2) Paragraph (1) may only be asserted in any noncriminal tax*
22 *matter before the Franchise Tax Board.*

23 *(3) For purposes of this section:*

24 *(A) “Federally authorized tax practitioner” means any*
25 *individual who is authorized under federal law to practice before*
26 *the Internal Revenue Service if the practice is subject to federal*
27 *regulation under Section 330 of Title 31 of the United States Code,*
28 *as provided by federal law as of January 1, 2000.*

29 *(B) “Tax advice” means advice given by an individual with*
30 *respect to a state tax matter, which may include federal tax advice*
31 *if it relates to the state tax matter. For purposes of this*
32 *subparagraph, “federal tax advice” means advice given by an*
33 *individual within the scope of his or her authority to practice before*
34 *the federal Internal Revenue Service on noncriminal tax matters.*

35 *(b) The privilege under subdivision (a) does not apply to any*
36 *written communication between a federally authorized tax*
37 *practitioner and any person, or any director, officer, employee,*
38 *agent, or representative of the person, or any other person holding*
39 *a capital or profits interest in the person in connection with the*
40 *promotion of the direct or indirect participation of the person in*

1 *any abusive tax avoidance transaction, as defined in Section 19777,*
2 *or in any proceeding to revoke or otherwise discipline any license*
3 *or right to practice by any governmental agency.*

4 *(c) This section shall be operative for communications made*
5 *on or after the effective date of the act adding this section.*

6 SEC. 3. Section 13019 is added to the Unemployment Insurance
7 Code, to read:

8 13019. (a) (1) With respect to tax advice, the protections of
9 confidentiality that apply to a communication between a client and
10 an attorney, as set forth in Article 3 (commencing with Section
11 950) of Chapter 4 of Division 8 of the Evidence Code, also shall
12 apply to a communication between a taxpayer and any federally
13 authorized tax practitioner to the extent the communication would
14 be considered a privileged communication if it were between a
15 client and an attorney.

16 (2) Paragraph (1) may only be asserted in any noncriminal tax
17 matter before the Employment Development Department.

18 (3) For purposes of this section:

19 (A) "Federally authorized tax practitioner" means any individual
20 who is authorized under federal law to practice before the Internal
21 Revenue Service if the practice is subject to federal regulation
22 under Section 330 of Title 31 of the United States Code, as
23 provided by federal law as of January 1, 2000.

24 (B) "Tax advice" means advice given by an individual with
25 respect to a state tax matter, which may include federal tax advice
26 if it relates to the state tax matter. For purposes of this
27 subparagraph, "federal tax advice" means advice given by an
28 individual within the scope of his or her authority to practice before
29 the federal Internal Revenue Service on noncriminal tax matters.

30 (C) "Tax shelter" means a partnership or other entity, any
31 investment plan or arrangement, or any other plan or arrangement
32 if a significant purpose of that partnership, entity, plan, or
33 arrangement is the avoidance or evasion of federal income tax.

34 (b) The privilege under subdivision (a) shall not apply to any
35 written communication between a federally authorized tax
36 practitioner and a director, shareholder, officer, or employee, agent,
37 or representative of a corporation in connection with the promotion
38 of the direct or indirect participation of the corporation in any tax
39 shelter, or in any proceeding to revoke or otherwise discipline any
40 license or right to practice by any governmental agency.

1 (c) This section shall be operative for communications made
2 on or after the effective date of the act adding this section.

3 *SEC. 4. Section 2.5 of this bill shall only become operative if*
4 *(1) both SB 401 and this bill are enacted and become effective on*
5 *or before January 1, 2010, and (2) SB 401 amends Section 19777*
6 *of the Revenue and Taxation Code to provide for a definition of*
7 *“abusive tax avoidance transaction,” in which case Section 2 of*
8 *this bill shall remain operative only until the operative date of SB*
9 *401, at which time Section 2.5 of this bill shall become operative.*

10 ~~SEC. 4.~~

11 *SEC. 5.* This act is an urgency statute necessary for the
12 immediate preservation of the public peace, health, or safety within
13 the meaning of Article IV of the Constitution and shall go into
14 immediate effect. The facts constituting the necessity are:

15 In order to ensure that these communications between taxpayers
16 and tax practitioners remain privileged, it is necessary that this act
17 take effect immediately.