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: 2⁄3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

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

7099.1. (a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, also shall 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. A federally authorized tax practitioner has the legal obligation and duty to maintain confidentiality with respect to such communication.

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

(3) For purposes of this section:

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

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

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

(b) The privilege under subdivision (a) shall 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 the corporation in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

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

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

21028. (a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, also shall 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. A federally authorized tax practitioner has the legal obligation and duty to maintain confidentiality with respect to such communication.

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

(3) For purposes of this section:

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

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

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

(b) The privilege under subdivision (a) does not apply to any written communication between a federally authorized tax practitioner and any person, or any director, officer, employee, agent, or representative of the person, or any other person holding a capital or profits interest in the person in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in Section 6662(d)(2)(C)(ii) of the Internal Revenue Code as modified by substituting the phrase "income or franchise tax" for "Federal income tax"), or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

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

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

21028. (a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, also shall 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. A federally authorized tax practitioner has the legal obligation and duty to maintain confidentiality with respect to such communication.

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

(3) For purposes of this section:

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

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

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

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

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

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

13019. (a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, also shall 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.

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

(3) For purposes of this section:

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

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

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

(b) The privilege under subdivision (a) shall 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 the corporation in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

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

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

~~SEC. 4.~~

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

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

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