

AMENDED IN SENATE SEPTEMBER 2, 2009

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

1 shelter, or in any proceeding to revoke or otherwise discipline any
2 license or right to practice by any governmental agency.

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

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

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

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

19 (3) For purposes of this section:

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

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

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

38 (b) The privilege under subdivision (a) does not apply to any
39 written communication between a federally authorized tax
40 practitioner and any person, or any director, officer, employee,

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

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

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

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

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

25 (3) For purposes of this section:

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

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

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

1 a capital or profits interest in the person in connection with the
2 promotion of the direct or indirect participation of the person in
3 any abusive tax avoidance transaction, as defined in Section 19777,
4 or in any proceeding to revoke or otherwise discipline any license
5 or right to practice by any governmental agency.

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

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

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

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

20 (3) For purposes of this section:

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

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

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

36 (b) The privilege under subdivision (a) shall not apply to any
37 written communication between a federally authorized tax
38 practitioner and a director, shareholder, officer, or employee, agent,
39 or representative of a corporation in connection with the promotion
40 of the direct or indirect participation of the corporation in any tax

1 shelter, or in any proceeding to revoke or otherwise discipline any
2 license or right to practice by any governmental agency.

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

5 SEC. 4. Section 2.5 of this bill shall only become operative if
6 (1) both SB 401 and this bill are enacted and become effective on
7 or before January 1, 2010, and (2) SB 401 amends Section 19777
8 of the Revenue and Taxation Code to provide for a definition of
9 “abusive tax avoidance transaction,” in which case Section 2 of
10 this bill shall remain operative only until the operative date of SB
11 401, at which time Section 2.5 of this bill shall become operative.

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

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