

# State of California

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## Legislative Change No.

**00-43**

Bill Number: SB 1724

Author: Dunn

Chapter Number: 00-1084

Laws Affecting Franchise Tax Board:

Sections 17530.5, 17530.6, 22251 and 22253 of the Business and Professions Code. Section 17991a of the Civil Code. Section 18621.7 of the Revenue and Taxation Code.

Date Filed with the Secretary of the State: 09/30/2000

**SUBJECT:** Prohibit Disclosure of Tax Return Information by Tax Preparers and Business and Prohibit FTB from Approving Electronic Filing Which Requires Taxpayers to Waive Privacy Protections

**Senate Bill 1724 (Dunn), as enacted on September 30, 2000, made the following changes to California law:**

Section 17530.5 of the Business and Professions Code is amended.

This act expands criminal sanctions for disclosure of tax return information by businesses that prepare returns by adding disclosures made either within the tax-preparing firm (for purposes other than tax preparation) or between subsidiaries or affiliates of the tax-preparing firm. "Affiliate" means any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, another entity.

This act adds "filing a state or federal income tax return by electronic transmittal of return data directly to the Franchise Tax Board or the Internal Revenue Service" to the list of activities that defines persons engaged in the business of preparing tax returns or assisting in the preparation of tax returns.

This act specifies that information obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing those returns includes information obtained through an electronic medium.

This act allows the written consent for disclosure to be done electronically with an electronic signature.

Section 17530.6 is added to the Business and Professions Code.

This act requires persons to dispose of tax return information in such a manner (e.g., burning, shredding or electronic deleting) that the disposed of information, alone or in combination with other publicly available information, could not be used to identify the taxpayer. Violation of this provision constitutes a misdemeanor.

Bureau Director

Johnnie Lou Rosas

Date

October 24, 2000

Section 22251 of the Business and Professions Code is amended.

For purposes of the chapter in the Business and Professions Code that regulates the practice of tax preparers, this act modifies the definition of "tax preparers" to include persons who, for consideration other than a fee, prepare tax returns for another person.

Section 22253 of the Business and Professions Code is amended.

This act makes each violation of provisions regulating the practice of tax preparers a separate offense.

Section 1799.1a is added to the Civil Code.

This act establishes civil penalties for most disclosures of tax return information, similar to the penalties provided in the Business & Professions Code. Protected information includes information obtained through an electronic medium or information provided by a consumer in connection with financial or business-related transactions. Disclosure continues to be permitted where the disclosure is:

- ?? authorized by written (either paper or electronically with electronic signature) consent of the consumer in a separate document that states to whom the disclosure will be made and how the information will be used;
- ?? authorized or required by law;
- ?? necessary to complete or service the financial or business-related transaction or to effect, administer or enforce a financial or business-related transaction requested by the customer;
- ?? pursuant to a court order; or
- ?? required to complete any of the following transactions if the disclosure is solely for that purpose:
  1. A proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit;
  2. A proposed or actual securitization or secondary market sale, including the sale of servicing rights;
  3. To provide information to insurance rate advisory organizations, guaranty funds or agencies, rating agencies, and other persons assessing compliance with industry standards;
  4. To protect against or to prevent actual or potential fraud and unauthorized transactions and claims and for institutional risk control activities.

A prohibited disclosure includes disclosures made internally within the entity conducting financial or business-related transactions with the consumer or by that entity to any of its subsidiaries or affiliates (defined as it is in the Business & Professions Code).

Unrelated use of tax information without the consumer's consent is also prohibited. "Unrelated use" means any use that is not necessary to effect, administer or enforce the financial or other business-related transaction with the consumer.

Civil penalties will be imposed if tax return information obtained in connection with financial or business-related transactions was not disposed of in a manner that protects the identity of the consumer. Penalties will be imposed if the disposed of information, alone or in combination with other publicly available information, could identify the consumer.

Each violation of these provisions would be a separate cause of action for which damages could be recoverable.

The Business and Professions Code rather than the Civil Code governs treatment of tax returns by tax preparers.

Section 18621.7 is added to the Revenue and Taxation Code.

This act prohibits the Franchise Tax Board from approving for electronic filing any filing software or electronic tax forms that require taxpayers to consent to the disclosure of information protected under Section 17530.5 of the Business and Professions Code as a condition of access to that software or those forms.

This act is effective January 1, 2001.

This act will not require any reports by the department to the Legislature.