

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Koretz Analyst: Deborah Barrett Bill Number: AB 875
Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: 02-18-05
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Economic & Employment Enforcement Coalition In Consultation With FTB and Joint Enforcement Strike Force on the Underground Economy Develop & Implement Standards That If Met By Employer Will Trigger tax Audit

SUMMARY

This bill would require the Franchise Tax Board (FTB) to assist in the development of criteria to prompt referrals between state tax agencies and the Labor Commission for audit or investigation.

This bill also includes provisions affecting the Department of Industrial Relations that does not impact FTB and will not be discussed in this analysis.

PURPOSE OF THE BILL

According to the author's staff, the purpose of the bill is to establish a more formal mechanism for coordinating the referrals between the wage enforcers and tax enforcers of the state.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2006, and operative as of that date.

POSITION

Pending.

ANALYSIS

STATE LAW

In 1993, under Executive Order W-66-93, the Joint Enforcement Strike Force on the Underground Economy (JESF) was established to combat the underground economy by pooling resources and sharing data among the state agencies charged with enforcing licensing, labor, and tax laws. In 1995 the Executive Order was codified under the California Unemployment Insurance Code. Member agencies of this strike force include the Employment Development Department (EDD), Department of Industrial Relations (DIR), Department of Consumer Affairs (DCA), Franchise Tax Board (FTB), Board of Equalization (BOE), Department of Justice (DOJ), and Department of Insurance (DOI).

Board Position:

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Department Director

Date

Gerald H. Goldberg

3/22/05

The Governor's 2005-06 Budget Proposal includes funding for EDD to participate in the Economic and Employment Enforcement Coalition (EEEC), a partnership of enforcement agencies that will identify the worst offenders for targeted workplace enforcement actions throughout the state. Members of the coalition will build from their individual expertise to create a team of enforcement officials with better information, access, and ability than previous efforts have produced. This coalition has not yet been assembled.

Existing state law prohibits the disclosure of any taxpayer or tax return information, except to other state agencies for tax administration purposes, and other agencies for purposes identified by statute. Any FTB employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony.

THIS BILL

This bill would require FTB to consult with the EEEEC and JESF to develop and implement, by July 1, 2006, a set of standards that would trigger a recommendation for an audit by appropriate state tax authorities of employers that violate statutes relating to employee wages, hours, and working conditions. The standards would include the severity and number of violations committed by the employer.

This bill would also require FTB to consult with the EEEEC and JESF to develop and implement, by July 1, 2006, a set of tax violation standards that would trigger a referral to the Labor Commission for an investigation of employers for violations of the statutes relating to employee wages, hours and working conditions.

This bill would require, after July 1, 2006, the Labor Commissioner or the appropriate state tax authorities to do the following:

- Notify the appropriate state tax authorities or Labor Commissioner each time the set of standards is met by an employer,
- Provide the appropriate state tax authorities or Labor Commissioner with the name of the employer and all relevant and necessary information regarding the violations, and
- Recommend to the Labor Commissioner to investigate the violations, or recommend to the state tax authorities to audit the employer.

This bill would also require, on an annual basis, the tax authorities and the Labor Commissioner to each compile a list of referrals made to the other agency. This list is to include the name, tax identification number of each employer, and the nature of the violations.

IMPLEMENTATION CONSIDERATIONS

FTB participates in JESF activities on a limited basis due to current prohibitions on disclosure of tax return information. The requirements in this bill for information sharing with the Labor Commission violate the current disclosure laws under which FTB is bound. While information could be shared with other taxing agencies, such as BOE or EDD, current law prevents additional information sharing with the other agencies that participate in the JESF activities. To the extent that agencies that do not administer state tax laws are involved in the newly formed EEEEC, FTB would be restricted on the level of participation with EEEEC's activities.

FTB has an Investigation Bureau that is responsible for all criminal enforcement activities within the department, including identifying, investigating, and effecting prosecution on cases of tax evasion and tax fraud. If this bill included recommendations for potential investigations from the Labor Commission, in addition to recommendations for audits, FTB could leverage both civil and criminal sanctions against the most egregious violators and more effectively combat the underground economy.

TECHNICAL CONSIDERATIONS

This bill requires the Labor Commissioner and appropriate tax agencies to compile an annual list of referrals detailing the name and taxpayer identification number of each employer referred and the nature of the violation. This bill does not specify what is to be done with the list. According to the author's office, the intent is for this list to be distributed to the Assembly Labor and Employment Committee. Clarification of this expectation should be to include in the bill.

PROGRAM BACKGROUND

JESF focuses on implementing joint enforcement projects among member agencies. Here are the goals of JESF:

- Protect workers by ensuring that they receive all benefits to which they are entitled by law relating to wages and hours, health and safety, and income replacement,
- Eliminate unfair business competition,
- Protect the consumer by ensuring that all businesses are properly licensed and that they adhere to the state's consumer protection regulation,
- Reduce the burden on law-abiding citizens by ensuring that all businesses and individuals comply with the state's licensing, regulatory, and tax laws, and
- Increase voluntary compliance with the state tax laws to maximize the state general and special fund revenue.

The JESF efforts provide additional general fund and special fund revenues through subsequent collection activities, insure that workers receive the benefits they are entitled to by law, and provide a deterrent to employers who may consider moving into the underground economy.

LEGISLATIVE HISTORY

SB573 (Alarcon 2003/2004) contained similar language as this bill; however, required only the Labor Commissioner to develop a set of standards for referral to state tax agencies when an employer met the standards. This bill died in the Senate Appropriations Committee.

AB2942 (Koretz 2001/2002) contained similar language as this bill. It also required only the Labor Commissioner to develop the standards that would trigger a referral to the state tax agency, but required the Labor Commissioner to maintain a list of those employers referred. This bill did not pass out of the Assembly Labor and Industrial Relations Committee.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Any possible revenue generated by this bill is dependent on whether the information provided to FTB is classified as new information not available through current sources used by the FTB.

To the extent that FTB receives information it would not have received absent this program, there would likely be an unknown increase in revenue.

LEGISLATIVE STAFF CONTACT

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