Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author: Cedillo | Analyst: Deborah Barrett | Bill Number: SB 1146

Related Bills: See Prior Analysis | Telephone: 845-4301 | Amended Date: April 3, 2008

Attorney: Patrick Kusiak | Sponsor: ______

SUBJECT: FTB Disclosure Reciprocal Agreement With City /Delete Repeal Date & Allow Request For Any Other Information by Affidavit/City Provide Business Tax Program Information To FTB

_____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended __________________.

__X__ AMENDMENTS IMPACT REVENUE A new revenue estimate is provided.

__X__ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 4, 2008 .

_____ FURTHER AMENDMENTS NECESSARY

_____ DEPARTMENT POSITION CHANGED TO ___________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 4, 2008, STILL APPLIES.

_____ OTHER – See comments below.

SUMMARY

This bill would require a city that administers a business tax to provide specific data to the Franchise Tax Board (FTB) and would authorize a city to exchange data with FTB in lieu of obtaining mandated cost reimbursement.

SUMMARY OF AMENDMENTS

The April 3, 2008, amendments would remove counties from the business tax reporting requirements and tax data sharing statutes, reinstate specific permissive authority for FTB to share tax data with cities, and add provisions related to cost reimbursement for cities, and repeal conditions of the mandate. The April 3, 2008, amendments did not resolve the “Technical Considerations” identified in the department’s analysis of the bill as introduced February 4, 2008, which are restated below for convenience. The “This Bill”, “Implementation Concerns”, “Fiscal Impact”, and “Economic Impact” discussions have been revised. The remainder of the department’s analysis of the bill as introduced February 4, 2008, still applies.

Board Position:			Legislative Director	Date
_______ S	_______ NA	_______ NP		
_______ SA	_______ O	_______ NAR	Brian Putler	4/8/08
_______ N	_______ OUA	___X___ PENDING		

POSITION

Pending

THIS BILL

This bill would do four things:

1. Enact a requirement for cities that assess a business tax or require a license to furnish specified information on the business or license holder to FTB on an annual basis;
2. Modify existing disclosure statutes that require political subdivisions to notify a taxpayer that their tax information is being requested before FTB can release the tax information by limiting that requirement for disclosure to apply to cities and counties;
3. Allow a city to enter into a reciprocal agreement to exchange city tax data for state income tax data and each party would absorb their own costs for providing the data in lieu of reimbursement, and
4. Provide annual funding in the Budget Act to reimburse cities for actual costs not to exceed $1.00 per usable record, adjusted annually for the implicit price deflator and add a repeal provision in the event a determination by either the Commission on State Mandates or the California Court of Appeal that the reimbursement does not cover a city's costs to provide data to FTB.

1. Enact City Business Tax Mandate

This bill would require a city that assesses a city business tax or requires a city business license to furnish FTB, on an annual basis, information collected in the course of administering the tax or license requirements. The information required would be limited to the following:

- Name of the business if a corporation, partnership, or limited liability company, or the owner's name if a sole proprietorship
- Business mailing address
- Federal employer identification number, if applicable, or the business owner's social security number
- Standard Industry Classification Code (SIC) or North American Industry Classification Code (commonly referred to as "NAICS")
- Business start date
- Business cease date
- City number
- Ownership type

Information provided to FTB would be required to be on magnetic media, such as tapes or compact discs, through a secure electronic process, or in other machine-readable form, according to standards prescribed in regulations issued by FTB. The cities would begin providing information as soon as economically feasible, but no later than December 31, 2009. Use of the data would be limited to state tax enforcement or as otherwise authorized by law.

2. Modify Existing Tax Data Sharing Statutes

Under existing law, tax officials of political subdivisions of the state may obtain tax information only after notifying a taxpayer that they are requesting the information from FTB. This bill would remove provisions that allow tax officials of political subdivisions of the state to obtain tax information in this manner and would reinstate authority for only city or county tax officials to access tax information in this way.

The repeal date of the statutes that authorize a city to obtain state income tax data would be removed.

3. Reciprocal Agreement to Exchange Tax Data

This bill would authorize a city to enter into a reciprocal agreement with FTB to exchange tax data between the city and FTB. The bill would define reciprocal agreement to mean an agreement to exchange information for tax administration purposes between tax officials of a city and FTB. Information provided by FTB to the city would be authorized for use in administration of the city business tax or as otherwise authorized by state or federal law. If a city enters into a reciprocal agreement with FTB, both parties in the agreement would be prohibited from obtaining reimbursement of the costs to provide the data. Each party would bear its own costs.

4. Reimbursement Mechanisms for Cities

Reimbursement to cities for costs mandated by this bill would be provided in the annual Budget Act beginning in the 2009-10 fiscal year to reimburse a city for the cost of submitting the information prescribed in this bill. The reimbursement rate would be for actual costs incurred not to exceed $1.00 per usable record submitted to FTB and would be adjusted annually for the implicit price deflator.

If the Commission on State Mandates (Commission) or a California appellate court determines that the costs mandated by the requirements of this bill exceed the rate provided for reimbursement, the entire act would be repealed within 90 days following the date on which the Commission or judicial determination becomes final. The repeal would be stayed if the Director of Finance files a written Notice of Intent to Appeal with the Commission within 90 days of the Commission's determination that the costs exceed the rate provided for in this bill. The Notice of Intent to Appeal would consist of a written notice setting forth the intention of the Director of Finance to seek judicial review of the determination of the Commission.

IMPLEMENTATION CONSIDERATIONS

This bill uses a term that is undefined, i.e., “implicit price deflator”. It is recommended this term be defined to prevent any confusion in how cost adjustments are to be made.

Although the bill provides for funding in the annual Budget Act to reimburse cities for costs associated with providing data to FTB, it is not clear what agency would administer the reimbursement to the cities. The author’s staff has indicated it is the author’s intent that FTB would administer the reimbursements because FTB would be the only entity with information to calculate the number of usable records submitted by a city. Accordingly, it is recommended that FTB be identified as the responsible department for administering the cost reimbursements prescribed in this bill.

The language in the bill provides that the entire act would be repealed within 90 days of a decision from either the Commission on State Mandates or the California Court of Appeal that the reimbursement scheme provided in the statute is insufficient to cover the mandated costs to the cities. It is unclear what the effect on existing law would be if the act were repealed. To ensure the author’s intent is met, it is recommended that explicit language providing for this contingency be added.

TECHNICAL CONSIDERATIONS

On Page 3, Lines 22-23, delete “taxing authorities of” before “the Franchise Tax Board”

On Page 5, Line 37, after “Board”, delete “with”.

FISCAL IMPACT

The provisions of this bill would result in approximately 480 cities providing files on an annual basis to FTB. Additional staff would be required to coordinate receipt of the files, establish secure electronic communication protocols with the cities, and test the quality of the data for departmental use. Additionally, the current costs for collecting and distributing tax data to the cities, which totaled $260,000 in 2007, would no longer be reimbursed by the cities, but would still be incurred by FTB. FTB spent $167,000 in 2007 to purchase city business tax data from cities, which would no longer be expended under this bill. Costs will be developed as the bill moves through the legislative process.

ECONOMIC IMPACT

Based on data and assumptions discussed below, the revenue impact from this bill would be as follows:

Revenue Analysis for SB 1146 Effective and Operative on 1/1/09 Assumes Enactment after 6/30/08 ($ in Millions)			
Fiscal Year	2008-09	2009-10	2010-11
Mandatory Reporting	$6	$22	$34

This analysis does not consider any possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion:

The revenue impact of this bill would be determined by the extent the mandatory annual transmittal of local business and licensing information provided to FTB by cities yields new income tax revenues due to greater non-filer detection and enforcement. The cash flow from the new revenue generated by this bill would begin fiscal year 2009-10. This assumes that cities will begin mandatory reporting of local business activity as early as January 1, 2009. It is expected that this new information would result in new non-filer contacts, beginning with the 2008 tax year. The non-filer assessments would start to be sent in late 2009 or early 2010.

The revenue estimate was developed in the following steps:

- Started with actual revenue collected for a similar statewide program in effect during 1994-1998 of $27 million.
- Adjusted total by a factor of 197% to reflect growth in personal income and population from 1996 to 2007 resulting in $52.5 million ($27 million x 1.97);
- Applied a 10% gross-up adjustment to reflect data technology advancement by cities over the last decade (more cities are able to produce the data required by FTB), resulting in $57.5 million ($52.5 million x 1.10);
- Reduced projected revenue to account for data sources currently received from voluntary participation by cities, resulting in $55 million ($57.5 million - $2.5 million);
- Adjusted first-year impact to account for the following assumptions:
    - 70% participation by cities in the first year (will grow to 100% by fourth year);
    - 80% of available records will be transmitted in time for annual processing;
- Determined the expected flow of revenue based on historical collection data.

Initially, the cash flow impact estimated for fiscal year 2009-10 would be limited to $6 million in revenues gained. This amount is based on 50,000 projected new contacts that result in potential collections of roughly $600 per contact or $30 million (50,000 contacts x $600 tax = $30 million). Given historical payment trends, it is anticipated that 20% of this money would be received by June 30, 2010. In the 2010-11 fiscal year, an additional 45% of revenue generated in the first year would be collected, roughly $13 million. This is combined with the initial flow of revenue associated with the 2009 tax year information, an estimated $9 million, for a total of $22 million of revenue gain in 2010-11.

It is expected that by the fifth year after enactment the direct revenue generated from these information sources will approximate $50 million per year. There is, also, likely to be an increase in voluntary compliance over the long run, but such indirect revenue gains were not considered in this analysis. In addition, while the cash flow impact from this proposal would begin in the 2009-10 fiscal year, the revenue gains are accrued back one year because the underlying tax liability for which the assessments would be based is attributed to a prior tax year.

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