

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 29, 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 _____.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as amended April 3, 2008.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 3, 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 29, 2008, amendments added a repeal date to the provisions added by the bill. The April 29, 2008, amendments do not resolve the "Implementation Considerations" or "Technical Considerations" identified in the department's analysis of the bill as amended April 3, 2008, and are restated here for convenience. The "This Bill" discussion is revised, and a new "Technical Consideration" is added. The remainder of the department's analysis of the bill as amended April 3, 2008, still applies.

Board Position:	Legislative Director	Date
<input type="checkbox"/> S	Brian Putler	05/19/08
<input type="checkbox"/> SA		
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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 by affidavit but only after notifying a taxpayer that they are requesting the information from FTB. This bill would remove provisions that restrict tax officials of political subdivisions of the state from obtaining tax information in this manner and would reinstate authority for only city or county tax officials to access tax information in this way.

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.

The provisions of this bill that add new provisions to the Revenue and Taxation Code are repealed by their own terms on January 1, 2014. Provisions of the bill that delete conditions on tax officials of political subdivisions obtaining tax information from FTB would not be restored.

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 21, after “and” delete “taxing authorities of”

On Page 4, Line 17, strikeout “board” and insert “Franchise Tax Board”.

On Page 5, Line 32, after “Board”, delete “with”.

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