

# BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
<b>Franchise Tax Board</b>	<b>Beall</b>	<b>AB 2177</b>

## SUBJECT

Allow Electronic Communication To Taxpayers To Inform Of Tax Change

## SUMMARY

This Franchise Tax Board (FTB) sponsored bill would authorize electronic communications between taxpayers and the FTB.

## PURPOSE OF BILL

This bill would allow taxpayers and the FTB to communicate electronically, thus improving efficiency for notifying taxpayers about issues related to their FTB accounts.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2011, and operative upon publication of FTB regulations.

## ANALYSIS

### FEDERAL LAW

The 14th Amendment to the United States Constitution guarantees to individual's specific rights, including the right to due process of law before property can be taken from the individual by any state. The essential elements of due process include reasonable notice.

Under current federal tax law, the due process element of reasonable notice is met when the IRS mails a required notice to the taxpayer at the taxpayer's last known address. Federal regulations require that unless the IRS has been given clear and concise notice of a different address, the address that appears on the taxpayer's most recently filed federal tax return is the taxpayer's last known address. The regulation also provides that under certain conditions, updated address information received from the United States Postal Service (USPS) National Change of Address database will be considered the taxpayer's last known address unless the IRS is given clear and concise notification of a different address.

The last known address rule places responsibility on the taxpayer to notify the tax agency of any change of address. The rationale for this rule is that with the transient nature of many taxpayers, the tax agency does not have sufficient resources to track the movements of several hundred thousand taxpayers each year. When the tax agency has reason to believe that the address previously provided by the taxpayer is no longer correct, the agency does have a duty to exercise reasonable diligence to ascertain the correct address.

While the IRS allows taxpayers to submit returns and payments electronically, the IRS explicitly informs taxpayers that it does not communicate on taxpayer accounts electronically.

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## STATE LAW

Under California tax law, any notice mailed to a taxpayer is sufficient to satisfy the reasonable notice element of due process if it is mailed to the taxpayer's last known address. Last known address is defined as the address that appears on the taxpayer's last return filed with the FTB, unless the taxpayer has provided the FTB clear and concise written or electronic notification of a different address or the FTB has an address it has reason to believe is the most current address for the taxpayer.

Specifically under California tax law, a Notice of Proposed Assessment and final deficiency notice issued after January 1, 2008, requires a postmark. A postmark is defined as a postal marking made on a letter, package, or postcard indicating the date the item is delivered to the USPS.

Taxpayers may authorize a person to act on their behalf and authorize the representative, in writing, to do the following through an executed Power of Attorney form:

- Represent the taxpayer in matters involving the FTB.
- Receive, but not endorse, and cash refund checks.
- Sign waivers to extend the statutory period for assessment or determination of taxes.
- Execute closing agreements.
- Delegate authority or substitute another representative.
- Execute settlement agreements.
- Receive confidential tax information.

Beginning January 1, 2008, recently adopted California Rules of Court,<sup>1</sup> provide that a notice may be served via electronic service when a party indicates that the party agrees to accept an electronic service by either filing or serving a notice to that effect or by electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic communication address provided. Service is considered complete at the time of transmission and any deadlines explicit in the notice served are extended by two court days if served electronically. Proof of service must state the electronic communication address of the person making the service in addition to the person's residence or business address.

## THIS BILL

This bill would authorize the FTB to draft regulations to allow the department, upon request of a taxpayer or their authorized representative, to send an electronic notification, such as an email, stating that a notice, statement, bill, or other communication has been posted to or updated on the taxpayer's account. The notification would provide information guiding the taxpayer or authorized representative to log into the taxpayer's secure folder on the FTB's internet Web site.

Prior to obtaining the consent of the taxpayer or their authorized representative to participate in the alternative communication method, this bill would require the FTB to advise the taxpayer or authorized representative of the ramifications of electing to receive electronic notices and of failing to take appropriate action in response to those notifications.

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<sup>1</sup> California Rules of Court Rule 2.260 Electronic service.

This bill would further require that any communication sent to a taxpayer or authorized representative contain plain language stating that failure of the taxpayer or their authorized representative to act in response to the communication may cause the taxpayer to forego procedural or administrative rights to challenge the proposed action of the FTB.

Additionally, this bill would provide the FTB, by regulation, to allow a taxpayer or authorized representative to file a protest, notification, or other communication to the FTB electronically in a secure manner.

The FTB would be directed to prescribe the necessary implementing regulations to ensure that procedural due process requirements are satisfied.

Finally, the bill would be repealed by its own terms on January 1, 2018.

## **PROGRAM BACKGROUND**

A taxpayer or their designated representative can obtain limited confidential FTB account information through their "MY FTB ACCOUNT" on the department's website. To access the MY FTB ACCOUNT, a taxpayer uses his or her social security number and the customer service number (CSN) that is issued annually to each taxpayer to authenticate that the person accessing the account is the taxpayer. The taxpayer can access the following information through their MY FTB ACCOUNT:

- Up to 25 estimated tax payments, estimate transfers, and extension payments waiting to be applied to a tax return.
- Up to 60 of the most recent payments applied to the taxpayer's balance due.
- A summary of up to 10 tax years with a balance and the total amount due.
- A summary of each tax year with a balance due.
- Up to 4 years of California wage and withholding information.
- Up to 3 years of FTB-issued 1099-G and 1099-INT information.
- Links to other online services offered by FTB.

Currently, taxpayers are sent paper notices and bills through the US mail.

Under the Enterprise Data to Revenue (EDR), FTB plans to reconfigure existing systems to implement service oriented architecture to improve the efficiency of existing processes. One feature of EDR is the Taxpayer Folder, where all information regarding a taxpayer would be made available to a taxpayer through the Taxpayer Folder. The Taxpayer Folder would contain the accounting data, address data, and account history data for each taxpayer and include an historical record of every notice or bill issued to the taxpayer. The Taxpayer Folder would be accessible online by all taxpayers or their authorized representative using their SSN and CSN to authenticate the user. At the option of the taxpayer, an electronic communication option would be available that would allow taxpayers to elect to receive electronic communication of notices or bills issued by the FTB. The Taxpayer Folder is scheduled to be completed and available to taxpayers by January 1, 2013.

The FTB issues approximately 17 million bills and notices each year to taxpayers that include notices in response to returns filed, collection notices for unpaid liabilities, filing enforcement notices when returns are not filed, and notices related to audit activities of taxpayer returns. Some are merely correspondence regarding a pending matter, but many have legal significance in that consequences can occur if a taxpayer fails to take action or otherwise respond.

### **OTHER STATES' INFORMATION**

A review of websites for the Department of Revenue for the states of *Florida, Illinois, Massachusetts, Michigan, Minnesota, New York* revealed that while each of these states have electronic filing and payment options available for taxpayers, none use an electronic communication option to service their taxpayers income tax needs. These states were chosen due to the similarity to California's tax laws and economy.

### **FISCAL IMPACT**

Costs to provide access to the Taxpayer Folder have been included in EDR estimates. While the department anticipates there would be some potential postage and mailing savings related to making electronic communication available in lieu of paper notices, the amount of savings is based on the number of taxpayers that choose this option and is not quantifiable at this time.

### **ECONOMIC IMPACT**

This proposal would not impact state income tax revenue. Taxpayers that prefer electronic communication are not expected to remit tax payments any earlier.

### **Appointments**

None.

### **Support/Opposition**

**Support:** Franchise Tax Board (Sponsor), California Taxpayers' Association, California Manufacturers and Technology Association, California Society of Enrolled Agents.

**Opposition:** None.

### **VOTES**

Assembly Floor – Ayes: 74, Noes: 0

Senate Floor – Ayes: 34, Noes: 0

Concurrence – Ayes: 76, Noes: 0

### **LEGISLATIVE STAFF CONTACT**

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