

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Gaines Analyst: Deborah Barrett Bill Number: AB 461
Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: February 24, 2009
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Economic Crime Act Of 1992 Reenactment/FTB Release Copies Of Defendants Tax Returns & Other Information Regarding Income & Employment To County Financial Officer

SUMMARY

This bill would require Franchise Tax Board (FTB) to provide copies of tax returns to county financial officers for use in determining restitution payments for parolees.

This bill includes provisions related to granting probation upon conviction of theft exceeding \$50,000 that do not impact FTB and are not discussed in this analysis.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to continue enforcement of specific requirements with respect to granting probation for certain economic crimes.

EFFECTIVE/OPERATIVE DATE

This bill contains provisions making it an urgency statute, and as such, would be effective and operative immediately upon enactment.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Federal law requires tax returns and tax return information to be kept confidential, unless disclosure is expressly authorized. Federal law permits the IRS to disclose Federal Tax Information (FTI) to taxing agencies in each state under specific terms and conditions provided under written agreement. A state agency that receives FTI is prohibited from further disclosing FTI for any purpose, unless authorization is received from IRS. A state agency must account to the IRS for all incidences of disclosure of FTI. Improper disclosure of federal tax return and return information is a felony.

Board Position:

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Department Director

Date

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Existing state law prohibits the disclosure of any taxpayer returns and return information, except as specifically authorized by the taxpayer or by statute. Unauthorized disclosure of state tax returns and return information is a misdemeanor.

Generally, disclosure is authorized to other state tax agencies, federal tax agencies, and the Multistate Tax Commission for tax administration purposes only. Tax officials of political subdivisions of the state may obtain tax information only upon submission of an affidavit. At the time the tax official requests the tax information, they are required to provide a copy of the affidavit to the taxpayer whose information is sought, and upon request, make the information obtained available to that person. Other exceptions are specified in statute and, among other things, include disclosure of tax returns and return information for child support enforcement purposes.

THIS BILL

This bill would reenact specific requirements that must be met for probation to be granted to persons convicted of a felony for theft of an amount exceeding \$50,000. This bill would require FTB to provide, upon request from a county financial officer, copies of state tax returns filed by the defendant and other information concerning the defendant's current income and place of employment. The information provided by FTB to the county official would be required to be kept confidential. Any unauthorized disclosure of that information would be a contempt of court punishable by a fine not exceeding \$1,000. In addition, the bill would create a civil cause of action for damages for an unauthorized disclosure.

The bill would allow a county to designate an employee of the county probation department, department of revenue, or any other analogous county department to act as the county financial officer to fulfill the provisions of the bill. The county would be required to reimburse FTB for reasonable administrative expenses incurred in providing the requested information.

The bill states that enactment is necessary for the immediate preservation of the public peace, health, or safety, and as such, would be effective immediately upon enactment as an urgency statute.

The provisions of this bill would remain in effect until January 1, 2019, and as of that date would be repealed, unless a later enacted statute, which is enacted before January 1, 2019, deletes or extends that date.

PROGRAM BACKGROUND

Prior to the repeal of the Economic Crime Act of 1992, FTB was required to provide copies of tax returns of a defendant, upon request by the designated county financial officer.

Generally, unless express authorization to disclose tax return information is provided in the Revenue and Taxation Code, tax return information is released only upon authorization by a taxpayer. A review of department records was unable to identify any circumstance under which FTB was asked to provide a copy of a tax return to a county financial officer.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Exceptions to the general law prohibiting disclosure of taxpayer information are contained in a single Article of the Revenue and Taxation Code (R&TC). Locating all of the exceptions in one place allows taxpayers to understand every circumstance in which their confidential tax data may be disclosed. It is recommended that express language referencing the penal code section requiring disclosure of tax returns to county financial officers be added to the R&TC to prevent any misunderstandings.

The provisions of this bill would require FTB to release "copies of tax returns and other information relating to a defendant's income and employment." It is not clear what "other information" would be subject to a request, which could conflict with disclosure restrictions relating to Federal Tax Information. Accordingly, it is recommended that the term "other information" be defined.

This bill would create a civil cause of action for damages for an unauthorized disclosure of a defendant's tax return or tax return information made available under this bill. The bill is silent on who the cause of action would be against. It is recommended that the author clarify the parties that could be named in the cause of action.

LEGISLATIVE HISTORY

AB 1994 (Gaines 2007/08) carried identical language to this bill. AB 1994 was held in the Senate Public Safety Committee.

AB 293 (Cunneen, Stats.1997, Ch. 551) extended the repeal date of Economic Crimes Act of 1992, statute from January 1, 1998 to January 1, 2008.

SB 541 (Presley, Stats 1992, Ch. 1334) enacted the Economic Crimes Act of 1992.

FISCAL IMPACT

This bill would not significantly impact the department's programs or operations because the bill provides that the county would reimburse FTB for any costs incurred to provide the information required by the bill.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

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