

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Fuentes Analyst: Janet Jennings Bill Number: AB 1071  
Related Bills: See Legislative History Telephone: 845-3495 Amended Date: April 5, 2011  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** FTB Establish State Taxpayer Identification Number For Individuals

## SUMMARY

This bill would require the Franchise Tax Board (FTB) to establish a system to generate, apply for, and issue state taxpayer identification numbers for use by individuals on a personal income tax return.

## RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

### Summary of Amendments

The April 5, 2011, amendments removed all of the bill's provisions related to legislative intent, and added the provisions discussed in this analysis. This is the department's first analysis of the bill.

## PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to allow individuals who lack a Social Security Number (SSN) or federal individual taxpayer identification number (ITIN) to obtain a state identification number for state income tax purposes.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2012, and would apply to returns required to be filed after that date.

## ANALYSIS

### FEDERAL/ STATE LAW

Upon the creation of the Social Security Administration, SSNs were assigned to American citizens beginning in 1936. Use of the SSN as a federal government identifier was based on Executive Order 9397. In the 1960s, federal agencies started adopting the SSN as a governmental identifier, and federal and state government use of the SSN for record tracking greatly increased.

Board Position:

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Executive Officer

Date

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By 1980, federal law allowed the use of the Social Security card, and by extension, the associated number, for identification purposes. A Social Security card is used to demonstrate to a prospective employer that a person legally qualifies for employment in the United States. California utilizes the SSN for record keeping of individual income tax accounts in conformity with federal law.

SB 25 (Stats. 2003, Ch. 907) amended the Information Practices Act (IPA) to prohibit State departments from doing the following:

1. Posting or displaying an individual's SSN publicly;
2. Printing an individual's SSN on any card required to access products or services;
3. Requiring an individual to transmit his or her SSN over the Internet unless the connection is secure or the SSN is encrypted;
4. Requiring an individual to use his or her SSN to access an Internet Web site unless a password or unique personal identification number is also required to access the website; and
5. Printing an individual's SSN on any materials that are mailed to the individual, unless state or federal law requires the SSN to be on the document.

SB 25 allows the FTB to use an individual's SSN in the following manner:

1. As an internal identifier,
2. On documents mailed to third parties, such as garnishments and levies, and
3. For requiring taxpayers to place their SSN on their income tax return.

## **PROGRAM BACKGROUND**

The IRS issues an ITIN to individuals who are required to have a U.S. taxpayer identification number to file a federal personal income tax return, but who do not have an SSN because they are ineligible to obtain one.

The FTB computer system lists both an SSN and a California taxpayer identification number (TPID) for each taxpayer. For most taxpayers, the numbers are the same—the SSN is also the TPID. When there is a discrepancy between the taxpayer name and the SSN, the FTB will assign a TPID number beginning with 88 to augment the taxpayer's record. There are no SSNs that begin with 88. Typically, these 88 numbers are assigned to accounts where multiple taxpayers claim the same SSN or the same ITIN, or when a taxpayer either files a return or makes a payment without an SSN or an ITIN. For the 2009 income tax processing year, there were approximately 16 million returns filed and of those, 553,000 returns had at least one assigned TPID (a jointly filed tax return for a married couple or registered domestic partners could have an SSN for one and a TPID for the other or both could have their own TPID). The department's computer systems are unable to match State data with data from the IRS or other state agencies on accounts with a TPID that begins with 88 as the systems are designed to match data utilizing SSNs.

## THIS BILL

This bill would require the FTB to do the following:

1. Establish a system to generate, apply for, and issue a state taxpayer information number to be used by individuals on state personal income tax returns.
2. Revise the personal income tax return forms and instructions to allow, at the taxpayer's discretion, the use of the state taxpayer identification number in lieu of a person's SSN or federal ITIN.
3. Desist from providing any identifying information associated with a state identification number to any federal, state, or local law enforcement agencies, unless used to enforce a liability under the Revenue and Taxation Code or Family Code.

## IMPLEMENTATION CONSIDERATIONS

This bill uses terms that are undefined: "law enforcement agency" and "any identifying information." It is unclear when referring to law enforcement agencies if the author intends to include every department or agency with police officer standing such as the FTB, EDD, and IRS, or if the author intends to include only designated police departments. It is also recommended that the bill clearly state what is identifying information such as names, addresses, former addresses, phone numbers, SSNs, and employers. The absence of definitions could lead to disputes with taxpayers and would complicate the administration of this bill.

To ensure the department is able to apply the provisions of the IPA accurately, it is recommended that the author include an amendment to the IPA to state clearly the scope of any required or permissive disclosure relating to the state identification number.

This bill would require the department to issue a state taxpayer identification number. If the process to apply for the number does not require an SSN, over time the FTB taxpayer accounts will lose the association to the SSN, which would impede the following processes of the FTB:

- The FTB matches various taxpayer data with the IRS and other state agencies. Without a State ID/SSN cross-reference, department systems would be unable to data match between state and federal data. Data matching is used for numerous purposes, including: creating tax models for audit programs; creating tables in the department's annual report; analyzing tax law; and extracting information for the Department of Finance, the Legislative Analyst, and the California Legislature.
- The collection and audit programs utilize payor information (i.e. information from 1099s for wage payers) from the Employment Development Department (EDD) and the IRS to validate information reported on the tax return using the SSN as a common identifier.
- The recently enacted Financial Institution Record Match (FIRM) will use SSN as the basis for matching the file of tax debtors with the file of depositors at financial institutions.
- The Enterprise Wide Bankruptcy System uses the SSN to find bankrupt taxpayers to assure the department obeys the automatic stay issued at the time of bankruptcy filing.
- The Federal Treasury Offset Program (FTOP) requires that an SSN accompany all requests for certification. Accounts without an SSN would not be submitted for a possible offset of federal refunds.

- The Bad Address Trace process takes mail returned because of a bad address and uses SSNs to locate current addresses.
- The Criminal Investigation workloads would be restricted from sharing information with other law enforcement programs for the purpose of identifying instances of income tax fraud and evasion.
- The department's collections system uses SSNs to locate individual's income and assets. Lack of SSNs would prevent the department from determining ownership of income and assets for many debtors.
- The department's Withholding Services and Compliance Section utilize the SSN or ITIN on FTB's withholding forms, similar to wage withholding on a W-2 to allocate the withholding to the correct taxpayer account.

## **OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

None of the states referenced above are required to issue a state taxpayer identification number.

- *Florida* does not have a personal income tax;
- *Illinois, Massachusetts, and Michigan* allow taxpayers to put either federal ITINs or SSNs on individual income tax returns.
- *Minnesota and New York* allow only SSNs on personal income tax returns.

## **FISCAL IMPACT**

Department staff is unable to determine the costs to administer this bill until the application criteria and design of the state identification number is determined, but anticipates the costs would be significant to do the following:

- Test and program the mainframe systems.
- Modify the Public Website applications.
- Redesign the tax forms.
- Account for additional postage costs that will incur as a result of notifying taxpayers of their state identification number.

As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested.

## ECONOMIC IMPACT

Estimated Revenue Impact of AB 1071				
Taxable Years Beginning On or After January 1, 2011				
Enactment Assumed After June 30, 2011				
(\$ in Millions)				
2011-12	2012-13	2013-14	2014-15	2015-16
-\$22.3	-\$41.4	-\$66.6	-\$85.4	-\$99.3

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

Eliminating the usage of SSNs would considerably restrict the department's ability to match taxpayer data with data from the IRS and other state agencies for purposes of determining tax liabilities and would delay data matching performed for FTB's withholding services. As a result, the general fund revenue losses are expected to continue to increase over time as FTB has SSNs for fewer taxpayers.

## SUPPORT/OPPOSITION

Support: None provided

Opposition: None provided

## ARGUMENTS

Pro: Proponents would argue that utilizing a California taxpayer identifying number for filing state income tax returns would reduce the risk of identity theft.

Con: Opponents would argue that the state and federal governments already recognize the SSN as an identifying number and adding a state-only identifying number is unnecessary and would hamper the processes of the FTB.

## LEGISLATIVE STAFF CONTACT

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