

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Eng & Skinner Analyst: William Koch Bill Number: AB 2439  
Related Bills: See Legislative History Telephone: 845-4375 Introduced Date: February 24, 2012  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Controller Publish Corporation Tax Payment Information On Website & Maintain Public Record

### SUMMARY

This bill would:

- Require certain corporations to report to the Controller payments made to the Franchise Tax Board (FTB) pursuant to the Corporation Tax Law, and
- Require the Controller to publish such payment information on its Internet Web site and maintain a public record of the information.

### RECOMMENDATION

No position.

### REASON FOR THE BILL

According to the author's office and intent language in the bill, the purpose of this bill is to supplement federal tax reporting requirements for corporations required to file Form 10-K to determine the distribution of benefits and costs of recent changes to the Corporation Tax Law relating to the single sales factor apportionment formula.

### EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2013.

### ANALYSIS

#### FEDERAL/STATE LAW

The Securities and Exchange Commission (SEC) requires most publicly traded companies to file Form 10-K on an annual basis. Form 10-K is a comprehensive overview of the company's business and financial condition. The form may include the following statements: a balance sheet, statements of income, and statements of cash flows. Currently, Form 10-K must be filed with the SEC, and depending on the company's "public float," is due within 60, 75, or 90 days after the end of the company's fiscal year. Once Form 10-K is filed, companies must give their shareholders a copy upon request. This form can also be viewed by the public via the SEC website.

Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA        X   NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA

Executive Officer

Date

Selvi Stanislaus

04/17/12

Current state law prohibits the disclosure of taxpayer return and return information, except as specifically authorized by statute. Generally, disclosure is authorized to other state tax agencies, federal tax agencies, and the Multistate Tax Commission for tax administration purposes only.

Existing state law requires the FTB to compile and make publicly available, at least twice per year, a list that identifies the Top 500 tax delinquencies that exceed \$100,000, selected from both the Personal Income Tax and Corporation Tax records. For purposes of the Top 500 list, a tax delinquency is defined as the total amount owed by a taxpayer to the State of California for which a Notice of State Tax Lien has been recorded in any county recorder's office in the state.

Recently enacted state law, SBX3 15 (Calderon, Chapter 17, Statutes of 2009), allows, for taxable years beginning on or after January 1, 2011, an apportioning trade or business (other than an apportioning trade or business that derives more than 50 percent of its gross business receipts from conducting a qualified business activity), to make an annual, irrevocable election to utilize a single factor, 100 percent sales (single sales factor), apportionment formula instead of the three-factor, double-weighted sales apportionment formula.

### THIS BILL

This bill would:

- Require corporations that are obligated to file an annual Form 10-K with the federal Securities and Exchange Commission to annually disclose to the Controller payments made to the FTB pursuant to the Corporation Tax Law for the previous taxable year. The disclosure would be due to the Controller within three months of the corporation's Form 10-K filing deadline.
- Require the Controller to publish on its Internet Web site the payment information disclosed by corporations. The Controller would also be required to maintain a record, available to the public, of such information. If a payment amount is contested or otherwise under dispute by the corporation or the FTB, information regarding the dispute would also be included on the Controller's Internet Web site and records.

### 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.

1. This bill would require information about a payment amount contested or under dispute by the corporation or the FTB to be included on the Controller's Internet Web site and records. It is unclear if the author's intent is for the FTB to provide the Controller what would normally be confidential taxpayer information. If this is the author's intent, the bill should be amended to provide the FTB specific disclosure authorization.
2. "Payment amounts" are not typically contested; rather, usually it is the underlying tax liability that is disputed. In addition, it is unclear if the payment amount reported by the corporation is intended to be (1) net of any refunds issued by the FTB, and (2) only relating to payments applied to the previous taxable year, or the total payments made during the previous taxable year, without regard to which taxable year the payments were due. The author may wish to amend the bill to provide clarity on these issues.

## **LEGISLATIVE HISTORY**

SB 389 (Romero, 2003/2004) and AB 1220 (Romero, 1999/2000) would have required corporate taxpayers to provide the FTB with a list of specific information when certain credits are claimed on their corporate tax returns. This information would have been provided to the Legislature and the public, and also would have been published on the FTB's website. The income tax provisions of SB 389 were amended out of the bill June 23, 2003. AB 1220 was vetoed by Governor Davis, who in his veto message stated his concern about the significant administrative costs that FTB would have incurred under the bill.

## **FISCAL IMPACT**

Department staff is unable to determine the costs to administer this bill until the implementation concerns identified above have been resolved.

## **ECONOMIC IMPACT**

### Revenue Estimate

This bill would not impact the state's income or franchise tax revenue.

## **SUPPORT/OPPOSITION**

Support: None provided.

Opposition: None provided.

## **ARGUMENTS**

Proponents: Some people could say this bill is necessary to increase transparency and to evaluate current corporate tax law.

Opponents: Some people could say this bill is unfair because it would make certain confidential tax information available to the public.

## **POLICY CONCERNS**

California has tax system that primarily relies on the taxpayer to self-assess and pay the proper amount tax. If tax payment information is disclosed to public, it is unclear what impact, if any, there may be on the self-assessing tax system

## **LEGISLATIVE STAFF CONTACT**

William Koch  
Legislative Analyst, FTB  
(916) 845-4372  
[william.koch@ftb.ca.gov](mailto:william.koch@ftb.ca.gov)

Titus Toyama  
Interim Legislative Director, FTB  
(916) 845-6333  
[titus.toyama@ftb.ca.gov](mailto:titus.toyama@ftb.ca.gov)