Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Committee on Revenue and Taxation	Analyst:	Janet Jennings	Bill Number:	AB 1411
Related Bills:	See Legislative History	Telephone:	845-3495	Introduced Date:	March 19, 2013
		Attorney:	Patrick Kusiak	Sponsor:	The Franchise Tax Board

SUBJECT: Financial Institution Record Match System (FIRM) Address Information for Tax Administration

SUMMARY

This bill would allow Financial Institution Record Match (FIRM) address information to be used for tax administration purposes.

RECOMMENDATION

Support.

On November 8, 2012, the Franchise Tax Board (FTB) voted 2-0 to sponsor the language included in this bill, with the representative from the Department of Finance abstaining.

REASON FOR THE BILL

The reason for this bill is to improve the timeliness of communication with a taxpayer by allowing the use of FIRM address information as a taxpayer's most current address.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2014, and would be specifically operative with respect to information obtained through FIRM before, on, or after that date.

ANALYSIS

FEDERAL LAW

The fourteenth amendment of the United States Constitution guarantees individuals specific rights, including the right to due process of law before property can be taken by the government. The essential elements of due process include reasonable notice.

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Under current federal law, the due process element of reasonable notice is met when the Internal Revenue Service (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 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. When the tax agency has reason to believe that the address previously provided by the taxpayer is no longer correct, the agency has a duty to exercise reasonable diligence to ascertain the correct address.

STATE LAW

Current state law provides that use of the taxpayer's last known address is sufficient to satisfy the reasonable notice element of due process. Last known address is defined as the address that appears on the 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.

Under current state law, FIRM requires financial institutions doing business in this state to participate in a quarterly data exchange process with the FTB to match the FTB's list of delinquent debtors with the financial institution's account holder records.[1] Through FIRM, the FTB receives information regarding those accounts, including current address information on the financial institution's records.

Current state law specifies that any use of the information received from FIRM for purposes other than tax collection is prohibited and is a misdemeanor.

SB 1015 (Chapter 37, Statutes of 2012) expanded FIRM to include specified debts owed to the Employment Development Department (EDD) and the Board of Equalization (BOE). SB 1015 requires the FTB to administer the quarterly FIRM data match program on behalf of the EDD and the BOE. The EDD and the BOE are required to submit their respective delinquent tax debtor files to the FTB in the format and manner specified by the FTB for inclusion in the FIRM process. SB 1015 imposes the same statutory provisions and restrictions on the EDD and the BOE relating to the use of financial institution data received under the FIRM data match program.

PROGRAM BACKGROUND

When correspondence is returned to the FTB by the post office as undeliverable, the FTB will place a "bad address" indicator on the account. To ensure that correspondence reaches the taxpayer, the FTB attempts to locate a better address using various address verification resources.

[1] Under Revenue and Taxation Code section 19266(a)(2), a financial institution may provide a list limited to accountholders that are a match to the FTB's list of delinquent debtors or, for institutions that lack the resources to provide matched accountholders only, the institution may provide a list of all accountholders to the FTB with the FTB performing the data match to limit the data utilized to that of delinquent debtors. Additionally, the FTB is authorized to grant exemptions from or temporarily suspend the FIRM reporting requirements, as specified.

When the FTB receives a new address for a taxpayer, the FTB's current business method is to update the new address into the department's accounting and collection systems. Because the language of the FIRM statute as enacted specifically states that information from FIRM can only be used for "collection purposes," it could be argued that the department is unable to use address information received from FIRM for any purpose not directly related to collections. As a result, the department is arguably prohibited from using the FIRM address information as the best possible address for the taxpayer for purposes other than collection activity.

In some situations, under current law the FTB would be unable to utilize a taxpayer's updated, correct address information, which would hinder those taxpayers from receiving notices, refunds, or other important correspondence from the department.

THIS BILL

This bill would remove the prohibition on using FIRM address information as a taxpayer's current address for purposes other than tax collection.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs or operations.

LEGISLATIVE HISTORY

SB 1015 (Senate Committee on Budget & Fiscal Review, Chapter 37, Statutes of 2012) among other things, required the EDD and the BOE to participate in the FTB's FIRM process.

SB 86 (Senate Committee on Budget & Fiscal Review, Chapter 14, Statutes of 2011) requires the FTB to coordinate with financial institutions doing business in this state to establish FIRM using automated data exchanges to the maximum extent feasible.

OTHER STATES' INFORMATION

Laws in *Indiana, Kentucky, Maine, Maryland*, *Massachusetts, Minnesota, New York, New Jersey* and *North Carolina* authorize the revenue departments of those states to use a financial institution record match process for the collection of delinquent income taxes.

In *Indiana*, financial institutions are reimbursed at least $5 for every warrant issued from the data obtained through the match process. Financial institutions data matches are limited to use for tax judgement and levy administration.

In *Kentucky*, the financial institutions that provide debtor records may charge a fee against an account levied by the Department of Revenue under the match process. The fee may not exceed $20.The Department of Revenue and the financial institutions records must match before a levy is issued.

Maine statutes provide for reimbursement to financial institutions of a reasonable amount not exceeding the actual costs incurred by the financial institution to conduct the matches. The financial institutions do not provide debtor address.

Maryland financial institutions are reimbursed the actual costs incurred. Address information sharing was not located.

It does not appear that the laws in *Massachusetts* or *New Jersey* permit reimbursement to financial institutions that provide customer records. Address information sharing was not located.

Minnesota statutes provide for reimbursement for costs incurred in the data match to financial institutions up to $150 per quarter. Financial institutions data matches are limited to use for tax collection activity.

New York's financial Institution record match program does not provide for any reimbursement to the financial institutions to conduct a data match. Address information sharing was not located.

North Carolina statutes provide for reimbursement to financial institutions of a reasonable amount not exceeding the actual costs incurred by the financial institution to conduct the matches. Address information sharing was not located.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact AB 1411 As Introduced on March 19, 2013 Assumed Enactment After June 30, 2013		
2012-13	2013-14	2014-15
+$150,000	+$200,000	+$150,000

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

SUPPORT/OPPOSITION

Support: Franchise Tax Board (Sponsor).

Opposition: None on file.

ARGUMENTS

Proponents: Some may argue that the FTB should use all information that becomes available to provide timely written communication to taxpayers.

Opponents: Some may argue it is the responsibility of a taxpayer to maintain a current mailing address with the tax authorities.

LEGISLATIVE STAFF CONTACT

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