

## BILL ANALYSIS

Department, Board, Or Commission <b>Franchise Tax Board</b>	Author Committee on Revenue and Taxation	Bill Number <b>AB1411</b>
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### SUBJECT

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

### SUMMARY

This bill would allow FIRM address information to be used for tax administration purposes.

On December 5, 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.

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.

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## 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.<sup>1</sup> Through FIRM, the FTB receives information regarding those accounts, including current address information per 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 (Senate Committee on Budget & Fiscal Review, 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.

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.

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<sup>1</sup> Under Revenue and Taxation Code section 19266(a) (2), a financial institution may provide a list limited to information on 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.

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.

### **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 data matches are limited to use for tax judgment and levy administration.

In *Maine* the financial institutions do not provide debtor address.

In *Minnesota* financial institutions data matches are limited to use for tax collection activity.

Address information sharing was not located in the laws of *Kentucky, Maryland, Massachusetts, New Jersey, New York, or North Carolina*.

### **FISCAL IMPACT**

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

### **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) required the FTB to coordinate with financial institutions doing business in this state to establish FIRM using automated data exchanges to the maximum extent feasible.

**ECONOMIC IMPACT**Revenue Estimate

Estimated Revenue Impact of AB 1411 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.

**APPOINTMENTS**

None.

**SUPPORT/OPPOSITION<sup>2</sup>**

Support: Franchise Tax Board (Sponsor).

Opposition: None on file.

**VOTES**

Assembly Floor	05/28/13	Y: 52	N: 24
Senate Floor	08/15/13	Y: 26	N: 12

**LEGISLATIVE STAFF CONTACT**

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<sup>2</sup> As reported in the Senate Governance and Finance Committee Analysis of the bill as amended May 23, 2013.