

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Alejo Analyst: Janet Jennings Bill Number: AB 2014

Related Bills: None Telephone: 845-3495 Amended Date: April 8, 2014

Attorney: Bruce Langston Sponsor: \_\_\_\_\_

**SUBJECT:** Use of Taxpayer Identification Number/FTB Ensure Confidentiality & Report to Governor & Legislature Regarding Number of Natural Persons Who Filed Returns Using Taxpayer Identification Number

## SUMMARY

This bill would establish rules for individuals that file their state income tax return using an individual taxpayer identification number (ITIN).

## RECOMMENDATION

No position.

## Summary of Amendments

The April 8, 2014, amendments removed provisions of the bill related to permits for agricultural employees, and replaced them with the provisions discussed in this analysis. This is the department's first analysis of the bill. This analysis only addresses the provisions of this bill that impact the department's programs and operations.

## REASON FOR THE BILL

The reason for the bill is to encourage those who are not eligible to receive a social security number to file a California state income tax return using an ITIN.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2015. The requirement for the FTB to issue a receipt or proof of filing to a taxpayer filing a state income tax return using an individual taxpayer identification number would be operative for returns filed for taxable years beginning on or after January 1, 2014.

## ANALYSIS

### FEDERAL/STATE LAW

Upon the creation of the Social Security Administration, Social Security Numbers (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 began adopting the SSN as a governmental identifier, and federal and state government use of the SSN for record tracking greatly increased.

Board Position:  
\_\_\_\_\_ S      \_\_\_\_\_ NA        X   NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA

Executive Officer	Date
Selvi Stanislaus	04/29/14

The IRS issues an individual taxpayer identification number, called an ITIN, to individuals who are required to have a U.S. taxpayer identification number to file a federal personal income tax return, but do not have an SSN because they are ineligible to obtain one. The ITIN is a nine-digit number that always starts with the number 9. California utilizes the SSN and ITIN for record keeping of individual income tax accounts in conformity with federal law.

Current state law allows a taxpayer to file an income tax return with the FTB using an ITIN or a SSN.

Existing state law allows the disclosure of taxpayer and return information when specifically authorized by statute. Generally, disclosure is authorized to other state tax agencies and federal tax agencies for tax administration purposes only.

### THIS BILL

This bill would require the department to advertise the availability of filing a state income tax return using an ITIN by a California resident who is not eligible to receive a social security number. This requirement would not apply to any natural person whom the Franchise Tax Board (FTB) has cause to believe has a social security number or is eligible for a social security number and is fraudulently filing a California state income tax return using an ITIN for purposes unrelated to the person's ineligibility to receive a social security number.

The FTB would be required to do both of the following:

- Collaborate with the Department of Justice (DOJ) to draft regulations to administer the above provisions, and
- Ensure the confidentiality of information regarding a natural person who has filed a California state income tax return using an ITIN is maintained to the maximum extent possible.

Additionally, the FTB would be required, to issue a receipt or proof of filing to a taxpayer filing an income tax return using an ITIN for returns filed for taxable years beginning on or after January 1, 2014.

On or before December 31, 2015, and on or before December 31, of each successive year, the FTB would be required to issue a report to the Legislature and the Governor, in compliance with Section 9795 of the Government Code with respect to the immediately preceding taxable year that includes:

- the number of natural persons who have filed state tax returns using the ITIN,
- the aggregate taxable income reported by those persons, and
- the aggregate amount of income tax paid by those persons with respect to the immediately preceding taxable year.

## 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.

Because current law already allows an individual to file a return using an SSN or ITIN, it is unclear if the bill's definition of an "individual taxpayer identification number" is meant to have a different meaning. Clarity is necessary before the department could implement this bill.

The term "undertake any enforcement action", is undefined in the bill. The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this bill.

The bill adds unique disclosure provisions that:

- duplicate protections that are already in statute,
- conflict with statutes that authorize disclosure and sharing of tax information with state and federal agencies, and
- waive disclosure provisions when the FTB has cause to believe the number was used fraudulently, which may violate current disclosure statutes.

This bill would require the FTB to collaborate with the DOJ to prescribe regulations. Existing law provides the FTB the authority to prescribe regulations; additionally, the need for collaboration with the DOJ is unclear.

Personal income tax returns may be filed, with extension, until October 15. The department generally processes returns within six months of receipt. If the author's intent is to have each report contain complete information for the taxable year, the due date of the report should be changed.

## **OTHER STATES' INFORMATION**

The states surveyed include *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.

The above states require an SSN or ITIN on their individual income tax returns.

## **FISCAL IMPACT**

As the bill continues to move through the legislative process and the implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

## **ECONOMIC IMPACT**

### Revenue Estimate

Current law allows taxpayers to file a state income tax return utilizing an ITIN, therefore, this bill would not impact the state's income tax revenue.

## **SUPPORT/OPPOSITION**

Support: None on file.

Opposition: None on file.

## **ARGUMENTS**

**Proponents:** Some would argue that adding additional reporting requirements relating to taxpayers that utilize ITINs would be helpful.

**Opponents:** Some would argue that current law already allows a taxpayer to utilize an ITIN, therefore, this bill is unnecessary.

## **LEGISLATIVE STAFF CONTACT**

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