

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Price Analyst: Janet Jennings Bill Number: SB 211  
Related Bills: See Legislative History Telephone: 845-3495 Introduced Date: February 11, 2013  
Attorney: Patrick Kusiak Sponsor: FTB

**SUBJECT:** Tax Data Sharing Between the FTB and Cities – Repeal Sunset

### SUMMARY

This bill would repeal the sunset date on the reciprocal sharing of tax information between the Franchise Tax Board (FTB) and a city's tax officials.

### RECOMMENDATION

Support.

On November 8, 2012, the Franchise Tax Board 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 the bill is to provide stability and reliability to the tax-data-sharing program in order to encourage additional cities to participate in the program and increase revenue for the State of California and cities.

### EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2014, and operative as of that date.

### ANALYSIS

#### STATE LAW

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

Current state law authorizes the FTB to enter into agreements with cities to exchange tax data. The agreements can either require the cities to reimburse the FTB's costs for providing the data, or allow for waiver of the FTB's costs if the cities agree to provide their tax data at no cost to the FTB. If the cities provide tax data to the FTB without agreeing to receive tax data from the FTB free of charge, the FTB is required to reimburse the cities' costs of providing the tax data at a maximum rate of \$1 per usable record. Employees of the cities may only use tax data received

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from the FTB for city business tax administration purposes—any other use or disclosure of the information is a misdemeanor.<sup>1</sup> The FTB may only provide a city with tax data for taxpayers with an address within that city's jurisdiction and is limited to the following data:

- Taxpayer name,
- Taxpayer address,
- Taxpayer social security number or taxpayer identification number, and
- Principal business activity code.

In addition, a city's tax officials may request from the FTB any other taxpayer information but must do so by affidavit. At the time the tax official requests the tax information, he or she must provide a copy of the affidavit to the taxpayer whose information is sought, and upon request, make the obtained information available to that taxpayer.

The information the FTB can request from cities is limited to the following:

- The name of the business if it is a corporation, partnership, or limited liability company, or the owner's name if it is a sole proprietorship,
- Business mailing address,
- Federal employer identification number, if applicable, or the business owner's social security number,
- Standard Industry Classification (commonly referred to as "SIC") Code or North American Industry Classification System (commonly referred to as "NAICS") Code,
- Business start date,
- Business termination date,
- City number, and
- Ownership type.

The current tax-data-sharing program is scheduled to sunset on December 31, 2013.

## **PROGRAM BACKGROUND**

The FTB compiles information from many sources including employers, financial institutions, and federal and state entities for purposes of ensuring compliance with the state's income tax laws. When the FTB receives information indicating that a tax return should be filed for a taxable year, but has no record of a return, the FTB may contact the taxpayer to request that the taxpayer file a return or explain why no return is required. When a taxpayer is required to file a return, but fails to do so, the FTB is authorized to assess tax based on reported and estimated income from all available sources.

The FTB uses data obtained from cities to ensure compliance with state income tax requirements; cities use data obtained from the FTB to ensure compliance with city business tax requirements. In fiscal year 2011-2012, the tax data received from cities resulted in approximately \$3 million in revenue for the State of California.

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<sup>1</sup> Revenue and Taxation Code sections 19542 and 19552.

Currently, the FTB has a reciprocal agreement with 102 of the 478 incorporated cities in California. The annual costs for the department to administer the program are approximately \$718,000. The tax-data-sharing program continues to provide revenue for participating cities during a time of financial crisis for most local governments.

Respondents to a survey of participating cities reported significant revenue in the 2011-12 fiscal year:

<b>Reporting City</b>	<b>Revenue Generated FY 2011-12</b>
Los Angeles	\$13.9 million
San Diego	\$1.1 million
Newport Beach	\$360,500
Oakland	\$260,000
Menlo Park	\$172,000
Concord	\$154,000
Sunnyvale	\$131,000

### THIS BILL

This bill would repeal the sunset provision of current law and would make the tax-data-sharing program between the FTB and cities permanent.

### IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require the FTB to continue administering the tax-data-sharing program.

### **LEGISLATIVE HISTORY**

SB 1146 (Cedillo, Chapter 345, Statutes of 2008) extended the authority of the FTB to disclose limited confidential tax information to city tax officials, and allowed a city that administers a business tax to provide specific data to the FTB upon request and authorized cities to exchange data with the FTB in lieu of obtaining mandated cost reimbursement. This authority is set to expire in 2013.

SB 1374 (Cedillo, Chapter 513, statutes of 2006) extended the FTB's authority to disclose limited confidential tax information to city tax officials, established by AB 63, until 2011

AB 63 (Cedillo, Chapter 915, Statutes of 2001) authorized the FTB to disclose limited confidential tax information to city tax officials in order to enhance the enforcement of an existing city business tax law. This authority was originally set to expire in 2002.

### **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.

A review of *Florida, Illinois, Massachusetts, Michigan, and Minnesota* laws found no comparable statutes. *New York* law provides for a reciprocal sharing of tax information between the New York Tax Commission and city tax officials.

### FISCAL IMPACT

As discussed above, the department's costs to administer the tax-data-sharing program are \$718,000 annually.

### ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of SB 211 For Data Exchanges On or After January 1, 2014 Assumed Enactment After June 30, 2013 (\$ in Millions)		
2013-14	2014-15	2015-16
\$0	+ \$1.5	+ \$4.9

This analysis 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.

Opposition: None on file.

### ARGUMENTS

**Proponents:** Supporters could argue that repealing the sunset provision of current law allowing tax-data-sharing between the FTB and cities would provide continuity that could encourage additional cities to participate in the program.

**Opponents:** Some could argue that eliminating the program's sunset date would have little impact on expanding the number of participating cities as it is the lack of city resources that has left participation at low levels.

### LEGISLATIVE STAFF CONTACT

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