

# BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
<b>Franchise Tax Board</b>	Hernandez	<b>SB 211</b>

## SUBJECT

Tax Data Sharing Between the FTB and Cities – Extend Sunset

## SUMMARY

This bill would extend the sunset date on the reciprocal sharing of tax information between the Franchise Tax Board and a city's tax officials until January 1, 2019.

## REASON FOR THE BILL

Support.

On December 5, 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.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2014, and operative as of that date, and would remain in effect until January 1, 2019, and as of that date is repealed.

## 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 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.

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

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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.

Responses to a survey of participating cities reported the following 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 extend the sunset provision of current law until January 1, 2019.

This bill would codify the safeguarding of information practices currently in place under the reciprocal agreement contracts between the FTB and cities. The requirements include but are not limited to:

- (A) The completion of a data exchange security questionnaire provided by the FTB prior to approval of a data exchange by the FTB.
- (B) The allowance for an on-site safeguard review conducted by the FTB.
- (C) The completion of disclosure training provided by the FTB and a confidentiality statement signed by all employees with access to information provided by the FTB confirming the requirements of data security with respect to that information and acknowledging awareness of penalties for unauthorized access or disclosure under Sections 19542 and 19552 of the Revenue and Taxation Code and Section 502 of the Penal Code.
- (E) The tax official of a city must notify the FTB within 24 hours upon discovery of any incident of unauthorized or suspected unauthorized access or disclosure and provide a detailed report of the incident and the parties involved.
- (F) All records received by the tax officials of a city shall be destroyed in a manner to deem them unusable or unreadable so an individual record can no longer be ascertained in a time frame specified by the FTB.

**LEGISLATIVE HISTORY**

SB 1146 (Cedillo, Chapter 345, Statutes of 2008), among other things, extended the authority of the FTB to disclose limited confidential tax information to city tax officials until 2013.

SB 1374 (Cedillo, Chapter 513, statutes of 2006) extended the FTB's authority to disclose limited confidential tax information to city tax officials 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**

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

## **ECONOMIC IMPACT**

### Revenue Estimate

Estimated Revenue Impact of SB 211 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.

## **APPOINTMENTS**

None.

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

Support: Franchise Tax Board (Sponsor), California Municipal Revenue and Tax Association; California Professional Firefighters Association; City of Big Bear Lake; City of Brea; City of Buena Park; City of Carson; City of El Paso De Robles; City of El Segundo; City of Fremont; City of Menifee; City of Montebello; City of Newport Beach; City of Oakland; City of Palo Alto; City of Pasadena; City of Red Bluff; City of Roseville; City of Sacramento; League of California Cities; Sacramento Municipal Utilities District.

Opposition: California Taxpayers Association.

<sup>2</sup> As reported by the Senate Governance and Finance committee analysis at: <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml> as of April 25, 2013.

**VOTES**

Concurrence	09/11/13	Y: 32	N: 7
Assembly Floor	09/11/13	Y: 53	N: 22
Senate Floor	05/28/13	Y: 32	N: 6

**LEGISLATIVE STAFF CONTACT**

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