

SPECIFIC FINDINGS

Existing federal law allows returns or return information to be disclosed in either a federal or state judicial or administrative proceeding relating to tax administration under several circumstances, including determining a taxpayer's civil or criminal liability.

Existing federal law requires generally that returns or return information are open to inspection or disclosure in a proceeding not related to tax administration, only pursuant to and upon grant of an ex parte order by a federal district court judge or magistrate, in preparation for specified judicial or administrative proceedings by a federal agency or federal grand jury proceeding, including proceedings pertaining to the enforcement of federal criminal statutes.

Existing federal law was amended in the Taxpayer Bill of Rights 2 (1996) to provide that returns filed under Internal Revenue Code Section 6050I (reports of cash received in trade or business) may be disclosed without court order for purposes other than tax administration, upon written request of federal, state, or local agencies or foreign governments, subject to certain disclosure restrictions.

Existing federal law allows portions of hearings, testimony, evidence, and reports in connection with tax court proceedings to be closed to the public in order to preserve the anonymity, privacy, or confidentiality of any person.

Existing federal law requires many types of information returns to be filed, including returns relating to cash received in a trade or business.

Existing federal law and this department's agreement with the Internal Revenue Service (IRS) regarding Security and Disclosure of federal returns and federal return information provide for their use or disclosure only for purposes relating to state tax administration. Similarly, state returns and state return information may be provided to the IRS only for the purpose of the administration of federal tax law.

Existing state law requires the FTB to provide the AG a copy of federal information return filed with the FTB when the AG has obtained a court order based on an articulable suspicion that a taxpayer has committed a felony to which a federal information return is related.

Existing state law allows disclosure of a return or return information in a judicial or administrative proceeding only if pertaining to tax administration, including determining a taxpayer's civil or criminal liability.

Existing state law allows the FTB to request certain information returns to be filed with the FTB and requires the federal information return relating to cash received in trade or business to be filed with the FTB.

Existing state law allows tax officials of political subdivisions, e.g., cities and counties, to request information from the FTB by affidavit. Upon the request, the affected person is provided a copy of the affidavit.

Existing state law permits reciprocal agreements with the State Board of Equalization and the Employment Development Department to exchange information, but only for tax administration purposes.

This bill would require the FTB to provide the AG, upon request (no reason is required), a copy of any federal information return filed with the FTB. Additionally, the AG shall analyze those returns and report any possible violations to the appropriate criminal justice agency.

This bill would amend existing state law which allows the AG to disclose returns or return information to district attorneys by adding deputy district attorneys to the list of permitted recipients.

This bill also would allow disclosure of returns or return information when the return(s) or return information is material in a criminal proceeding or grand jury proceeding regarding a criminal violation against the taxpayer (regardless of pertinence to tax administration).

Policy Considerations

This bill could jeopardize the department's Disclosure Agreements with the IRS. This may cause the department to lose access to IRS information and data, such as audit reports, federal/state tape exchange information, and listings of taxpayers with California addresses who filed federal returns. Audit and filing enforcement programs could be significantly impacted if the department loses the availability of that information.

The Legislature and the Franchise Tax Board have exhibited extreme concern in the past about the confidentiality and privacy of tax information. A recent example was the enactment of legislation forbidding disclosure of social security numbers on mailed correspondence.

This bill could undermine the integrity of state income tax information and its confidentiality. This may jeopardize the confidence of taxpayers that their tax information is protected, which may lead to reduced voluntary compliance.

The author may want to amend the bill to conform to recent federal changes in the acquisition and disclosure of returns relating to cash received in a trade or business. Narrowing the scope of the bill would allow access to the information without jeopardizing the department's disclosure agreements with the IRS.

FISCAL IMPACT

Tax Revenue Estimate

This bill would have the possibility of jeopardizing the confidentiality agreement FTB has with IRS and could result in the IRS not sharing tax return information. If this should result, the net revenue impact of this bill could be a loss on the order of \$400 million annually in tax that is assessed based on federal information.

PROponents OF THE LEGISLATION

This bill is sponsored by the Attorney General.

POSITION

Pending