

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Dunn Analyst: Marion Mann DeJong Bill Number: SB 1724

Related Bills: See Legislative History Telephone: 845-6979 Introduced Date: 02/23/2000

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Prohibit Disclosure of Tax Return Information by Tax Preparers and Businesses

SUMMARY

This bill would:

- Ⓟ Expand criminal sanctions for disclosures of tax return information by businesses that prepare returns to add certain disclosures made either within the tax preparing firm or to subsidiaries or affiliates of the tax preparing firm.
- Ⓟ Establish a civil penalty for disclosure of tax return information provided by a consumer in connection with financial or business-related transactions.
- Ⓟ Make each violation of criminal provisions regulating the practice of tax preparers a separate offense.

This bill does not directly impact the programs administered by the Franchise Tax Board.

EFFECTIVE DATE

This bill would become effective January 1, 2001.

BACKGROUND

FTB has been pursuing methods to permit expanded options for electronic filing and electronic payment of taxes. Currently taxpayers must use a third party electronic return transmitter to electronically file a tax return. The need to utilize the services of a third party to file returns electronically has raised concerns regarding possible disclosure of tax information.

Current laws regarding disclosure of tax information do not apply to electronic return transmitters. In addition, the law does not prevent such companies from sharing personal information, such as name, address, e-mail address and phone number with other companies.

In recognition of the need and demand for direct Internet filing by taxpayers, the Franchise Tax Board recently directed department staff to proceed with the development of a direct filing portal (DFP). The DFP would provide taxpayers the option of transmitting a completed return directly to FTB instead of via a third party. This project is scheduled for implementation by January 1, 2001.

Board Position:

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_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Alan Hunter for GHG

4/4/00

SPECIFIC FINDINGS

Current federal and state laws protect the confidentiality of taxpayer information.

Under federal law, a return preparer that uses return information for any purpose other than to prepare a return or that makes an unauthorized disclosure of return information is subject to a \$250 penalty for each disclosure, up to a maximum of \$10,000. If the action is undertaken knowingly or recklessly, the preparer may be subject to criminal penalties or a fine of up to \$1,000, or up to a year in jail, or both, together with the cost of prosecution.

Under the California Business and Professions Code, it is a misdemeanor for anyone to disclose any information obtained in the business of preparing federal or state income tax returns or in assisting taxpayers to prepare their returns, unless the disclosure is:

- Ⓟ authorized by written consent of the taxpayer;
- Ⓟ authorized by law;
- Ⓟ necessary to the preparation of the return; or
- Ⓟ pursuant to a court order.

This bill would establish civil penalties for the disclosure of tax return information provided by a consumer in connection with financial or business-related transactions, unless the disclosure is:

- Ⓟ authorized by written consent of the consumer;
- Ⓟ authorized by law;
- Ⓟ necessary to complete the financial or business-related transaction; or
- Ⓟ pursuant to a court order.

A prohibited disclosure would include disclosures made internally within the entity conducting financial or business-related transactions with the consumer or by that entity to any of its subsidiaries or affiliates.

Unrelated use of tax information without the consumer's consent would also be prohibited. "Unrelated use" would mean any use that is not necessary to effect, administer, or enforce the financial or other business-related transaction with the consumer.

This bill would expand criminal sanctions for disclosure of tax return information by businesses that prepare returns to add disclosures made either within the tax preparing firm or to subsidiaries or affiliates of the tax preparing firm. "Affiliate" would mean any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another entity.

This bill also would make each violation of provisions regulating the practice of tax preparers a separate offense.

Policy Considerations

This bill would provide additional protection to taxpayers from unauthorized disclosure of tax return information. The added protection would cover businesses that prepare and electronically file tax returns and should reduce taxpayer fears regarding electronic filing. Taxpayer confidence in electronic filing is needed to accomplish the department's goal of a paperless filing system.

However, it is unclear whether this bill would provide additional protection from unauthorized disclosure by businesses that do not prepare the tax return but simply transmit the return electronically for a fee. Such businesses would not be covered under Section 17350.5 of the Business and Professions Code since they do not prepare returns. It is unclear whether they would fall under Civil Code Section 1799.15 as an "other business-related transaction."

Implementation Considerations

Implementing this bill would not affect the department's programs and operations, but may foster greater acceptance of paperless, electronic filing methods.

FISCAL IMPACT

Departmental Costs

This bill would not impact the department's costs.

Tax Revenue Estimate

This bill would not impact the state's income tax revenue.

BOARD POSITION

Pending.