Section 19266 is adopted to read:

§ 19266. Financial Institution Record Match.

(a) Overview. Pursuant to Revenue and Taxation Code section 19266 and this regulation, the Franchise Tax Board shall operate and administer a Financial Institution Records Match (FIRM), which utilizes automated data exchanges to the maximum extent feasible to identify accounts of delinquent tax debtors held at financial institutions doing business in California.

(b) FIRM Program Administrator. The Franchise Tax Board and its designated third party administrator (collectively, FIRM Program Administrator) shall operate and administer the quarterly data exchange under the Participation Schedule set forth in subsection (h), pursuant to forms and instructions provided by the Franchise Tax Board.

(c) Employment of a Third Party Vendor (Transmitter) by a Financial Institution. A financial institution may use a transmitter for the automated data exchanges. If a transmitter is used, the financial institution shall provide the name and contact information of its transmitter to the FIRM Program Administrator on the FIRM Election Form provided by the Franchise Tax Board. By designating a transmitter on the FIRM Election Form and filing it with the FIRM Program Administrator, the financial institution grants the FIRM Program Administrator permission to exchange data and records as well as communicate with the transmitter on behalf of the financial institution. The use of a transmitter by a financial institution does not relieve that financial institution of liability for any penalty under subdivision (g) of Section 19266 of the Revenue and Taxation Code for failure to provide one or more records.

(d) Match Methodology. The financial institution shall complete and submit to the FIRM Program Administrator a FIRM Election Form, which establishes the financial institution's chosen method of data matching with the Franchise Tax Board using either Method 1 or Method 2.

(1) Method 1. Pursuant to the FIRM Participation Schedule set forth in subsection (h), the financial institution or its transmitter shall submit a data file via a secured internet transfer application to the FIRM Program Administrator that contains records of all open accounts held by the financial institution ("All Account File"). Submitted files are matched against the Franchise Tax Board delinquent tax debtor file ("Debtor File") by the FIRM Program Administrator.

(A) A financial institution shall select Method 1 only if it does not have the technical ability to process the data exchange or the ability to employ a third party data processor to process the data exchange.

(B) Subject to the requirements stated in subsection (d)(1)(A), a financial institution may utilize a transmitter to assist in submitting a data file via a secured internet transfer application to the FIRM Program Administrator.

(C) For all subsequent quarters, the financial institution or its transmitter shall submit a file containing either records of accounts opened, closed, or changed during a particular quarter ("Update File"), or an All Accounts File.

(2) Method 2. Pursuant to the FIRM Participation Schedule set forth in subsection (h), the financial institution or its transmitter shall retrieve a downloaded delinquent tax debtor file (the "Franchise Tax Board Inquiry File") via a secured internet transfer application pursuant to forms and instructions provided by the Franchise Tax Board.

(A) The financial institution or its transmitter shall match the Franchise Tax Board Inquiry File against all open accounts maintained by the financial institution for the calendar quarter and submit a file of matched records to the FIRM Program Administrator via a secured internet file transfer application in accordance with forms and instructions provided by the Franchise Tax Board.

(B) The financial institution or its transmitter shall match the Franchise Tax Board Inquiry File against all open accounts maintained by the financial institution, regardless of the residence of the accountholder.

(C) If the financial institution determines that its transmitter is unable to process the data exchange as required under subsection (d)(2)(A) and (B), the financial institution shall complete and submit a new Election Form to the FIRM Program Administrator stating its change in transmitter or election method pursuant to subsection (e) (3).

(D) The financial institution and its transmitter shall protect the confidentiality of the Franchise Tax Board Inquiry File and any data and records supplied to the financial institution by the FIRM Program Administrator.

(e) Filing the FIRM Election Form. Financial institutions doing business in the State of California, within the meaning of Section 23101 of the Revenue and Taxation Code, shall complete and file with the FIRM Program Administrator the FIRM Election Form, which establishes FIRM program participation, the chosen method of data matching, and the name of the transmitter (if one is used).

(1) Once the financial institution submits and files a completed Election Form with the FIRM Program Administrator, the election on the FIRM Election Form remains binding until the financial institution submits a new form.

(2) The financial institution shall submit and file any changes to the financial institution's name with the FIRM Program Administrator on a new FIRM Election Form within thirty (30) calendar days of approval of a name change from its primary regulator. Any new contact information shall be submitted and filed with the FIRM Program Administrator on a new FIRM Election Form as soon as the change is established at the financial institution.

(3) The financial institution shall submit and file any changes to the financial institution's transmitter or election method with the FIRM Program Administrator on a new FIRM Election Form at least sixty (60) calendar days in advance of the next calendar quarter.

(f) Acknowledgement of Receipt of Election Form; Notification to Begin FIRM Participation.

(1) Following the Program Administrator's receipt and review of the FIRM Election Form for completeness, the FIRM Program Administrator shall notify the financial institution in writing that it has received the financial institution's completed FIRM Election Form. The FIRM Program Administrator shall notify the financial institution in writing if the information is incomplete. The financial institution shall submit a new FIRM Election Form within thirty (30) calendar days of receiving notification of an incomplete FIRM Election Form.

(2) The FIRM Program Administrator shall notify the financial institution in writing as to the calendar quarter that the financial institution shall begin its quarterly participation under the Participation Schedule set forth in subsection (h).

(3) Unless otherwise directed in writing by the FIRM Program Administrator, all subsequent data matches shall continue under the Participation Schedule set forth in subsection (h).

(g) Data Format and Media Methodology. All data exchanged or submitted to and from the financial institution shall be submitted according to forms and instructions provided by the Franchise Tax Board, including but not limited to data formatting, record layout, naming conventions, and secure internet application specifications.

(h) Participation Schedule. The FIRM Participation Schedule is shown below. The schedule includes the Inquiry File Availability Date for the Method 2 Inquiry File provided by the FIRM Program Administrator and the Due Date for financial institutions to submit the Method 1 and 2 Matched Files (Method 1 & 2 Matched Files Due Date).

Quarter	Quarter Months	Quarter Ending Date	Inquiry File Availability Date (Method 2)	Method 1 & 2 Matched Files Due Date
1st Qtr	Jan, Feb, Mar	Mar 31	Apr15	May 30
2nd Qtr	Apr, May, Jun	Jun 30	July 15	Aug 30
3rd Qtr	Jul, Aug, Sep	Sep 30	Oct 15	Nov 30
4th Qtr	Oct, Nov, Dec	Dec 31	Jan 15	Feb 28

(1) If the due date falls on a weekend or holiday, the due date shall be the next business weekday.

(2) To assist in program administration, the Inquiry File Availability Dates (Method 2) and the Method 1 & 2 Match Files Due Dates may be modified at any time by the Franchise Tax Board, but in no event shall such dates be earlier than the dates specified in the table above. The FIRM Program Administrator shall provide written notice to the financial institutions prior to any change in the schedule.

(i) Replacement Files. The FIRM Program Administrator may request the financial institution to submit a data match replacement file if there were errors encountered while processing the original file. If the FIRM Program Administrator requests a replacement file, it will submit a written request to the financial institution; the financial institution shall return the entire file to the FIRM Program Administrator for processing within thirty (30) calendar days of the date of the written request and in accordance with forms and instructions provided by the Franchise Tax Board.

(j) Temporary Exemptions. The Franchise Tax Board is authorized to exempt a financial institution from the requirements of Revenue and Taxation Code section 19266, subdivision (a)(2)(C), if the Franchise Tax Board determines that the financial institution's participation would not generate sufficient revenue to be cost effective for the Franchise Tax Board.

(1) The temporary exemption requirements of subsection (j) apply to financial institutions holding less than 250 open accounts, unless it would be cost effective for the Franchise Tax Board to require the financial institution to comply with the requirements of the FIRM data match process. A financial institution holding less than 250 open accounts may submit a Temporary Exemption Request to the FIRM Program Administrator under forms and instructions provided by the Franchise Tax Board. The Franchise Tax Board reserves the right to require a financial institution that has been granted temporary exemption to complete and file an Election Form with the FIRM Program Administrator and participate in the FIRM data match process. The FIRM Program Administrator shall notify the financial institution in writing of the date that the FIRM Election Form is to be filed and the date that the financial institution shall begin participating in the FIRM data match process.

(2) If paragraph (1) does not apply and a financial institution believes facts exist for Franchise Tax Board staff to grant a temporary exemption under the requirements of subsection (j), the financial institution may submit and file a Temporary Exemption Request with the FIRM Program Administrator. The financial institution shall provide sufficient detail for Franchise Tax Board staff to evaluate its request under subsection.

(A) Example: Financial institution B has merged with Financial Institution A. The institutions are undergoing a major data processing change at the end of a quarter. Financial Institution A (the surviving financial institution) can apply to the Franchise Tax Board for a Temporary Exemption Request stating that the additional cost to participate in the data match for that quarter would be

significant and not cost effective. Based on the facts, the Franchise Tax Board may grant a temporary exemption for one quarter.

(3) The Franchise Tax Board shall consider a financial institution's Temporary Exemption Request and respond in writing to the financial institution within sixty (60) calendar days of receipt of the Temporary Exemption Request. Unless otherwise stated, the temporary exemption remains in effect for twelve months from the date of approval or until the FIRM Program Administrator receives written notice from the financial institution that a change has occurred in the underlying facts that warranted the temporary exemption.

(4) Sixty days prior to expiration of the temporary exemption, a financial institution that seeks to renew its temporary exemption status shall complete and submit a new Temporary Exemption Request to the FIRM Program Administrator.

(5) Within sixty (60) calendar days of determining that the facts upon which the temporary exemption no longer exists, the financial institution shall notify the FIRM Program Administrator of the change and shall file a FIRM Election Form with the FIRM Program Administrator to begin participation in the exchange process.

(k) Temporary Suspension. The Franchise Tax Board is authorized to temporarily suspend a financial institution from the requirements of Revenue and Taxation Code section 19266, subdivision (a)(2)(D), if the financial institution provides the Franchise Tax Board with a written notice from its supervisory banking authority that it is determined to be undercapitalized, significantly undercapitalized, or critically undercapitalized as defined by FDIC Regulation 325.103(b)(3), (4), and (5), or NCUA Regulation 702.102.

(1) The notice from the supervisory banking authority provided pursuant to this subsection shall be subject to the non-disclosure protections of Revenue and Taxation Code section 19542.

(2) A financial institution that requests a temporary suspension shall submit a Temporary Suspension Request to the FIRM Program Administrator under forms and instructions provided by the Franchise Tax Board. The Franchise Tax Board shall consider the request and respond to the financial institution in writing within sixty (60) days of the request. If granted, the temporary suspension remains in effect for twelve months from the date of approval. Sixty (60) days prior to the expiration of the grant of the temporary suspension, a financial institution that seeks to renew its temporary suspension status shall complete and submit a new Temporary Suspension Request to the FIRM Program Administrator.

(3) Within sixty (60) days of receipt of a written notice from its supervisory banking authority removing the determination set forth in subsection (k), the financial institution shall notify the FIRM Program Administrator of its change in financial condition and shall file a FIRM Election Form with the FIRM Program Administrator to begin participation in the exchange process.

(l) Reimbursement to Financial Institutions.

(1) Amount of Reimbursement. Pursuant to Revenue and Taxation Code section 19266, subdivision (i), a financial institution may be entitled to reimbursement for submitting the information specified under Revenue and Taxation Code section 19266 and this regulation in the following amounts:

(A) Actual costs for FIRM one-time start-up operations of no more than $2,500.

(B) Actual costs for FIRM data matching (other than one-time start up operations) of no more than $250 per calendar quarter.

(2) Submission of Reimbursement Invoices. A financial institution is not entitled to reimbursement under subsection (l)(1) unless it has participated in the FIRM data exchange under the written direction and schedule established by the FIRM Program Administrator. Once the financial institution's participation has occurred under the written direction of the FIRM Program Administrator, a financial institution may submit a completed FIRM Reimbursement Invoice for its initial start-up costs and quarterly data matching no later than 30 days following the end of the State's fiscal year (by July 30).

(A) Reimbursement is based on the FIRM data match services performed during the State's fiscal year ending June 30.

(B) For quarterly matching that has occurred, up to four quarters may be submitted at one time.

(C) Any FIRM reimbursement invoice received after July 30 for the prior fiscal year ending June 30 will not be honored.

(D) Financial Institutions are responsible for maintaining supporting documentation of these expenditures for three years.

(m) Enforcement and Penalties.

(1) Under Revenue and Taxation Code section 19266, subdivision (f), the Franchise Tax Board may institute civil proceedings to enforce the provisions of Revenue and Taxation Code section 19266 and this regulation.

(2) The Franchise Tax Board shall assess a penalty for willful failure to comply with rules and regulations relating to Revenue and Taxation Code section 19266 and these regulations, unless it is shown that the failure is due to reasonable cause, The penalty imposed under this section is fifty dollars ($50) for each record not provided, but the total imposed for all such failures during any calendar year shall not exceed one hundred thousand dollars ($100,000).

(n) Operative Date. This regulation shall apply beginning with the data from the first quarter of 2012.

Note: Authority cited: Section 19503, Revenue and Taxation Code.
Reference cited: Section 19266, Revenue and Taxation Code.