

ANALYSIS OF AMENDED BILL

Author: Gipson Analyst: Janet Jennings Bill Number: AB 795
Related Bills: None Telephone: 845-3495 Amended Date: March 27, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: Free Tax Filing and Reporting Act of 2017, Volunteer Income Tax Assistance Program

SUMMARY

This bill would require the Franchise Tax Board (FTB), the State Board of Equalization (BOE), and the Employment Development Department (EDD) to, among other items, expand the training provided to volunteers with the federal Volunteer Income Tax Assistance (VITA) program.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

RECOMMENDATION – NO POSITION

Summary of Amendments

The March 27, 2017, amendments removed provisions relating to BOE judgments, and replaced them with the provisions discussed in this analysis. This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for the bill is to specifically authorize the use of state resources to educate taxpayers about their California tax obligations and to provide Californians who volunteer in the federal VITA program with additional training on state law issues.

EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative January 1, 2018.

FEDERAL LAW

Under federal law, the Internal Revenue Service (IRS) administers the federal tax laws.

The IRS offers the VITA program to provide free tax help by trained volunteers for low- to moderate-income individuals, persons with disabilities, the elderly, and limited English speakers to prepare and file their basic tax returns each year. VITA sites that provide free basic income tax return preparation for individuals are available locally in most communities.

The IRS also administers a VITA grant program. The grant program is an IRS initiative designed to support free tax preparation service for the underserved through various partner organizations. The IRS awards matching funds to support organizations that offer free tax preparation services during the tax filing season at locations in all 50 states and the District of Columbia.

STATE LAW

Under state law, three separate agencies are involved in the administration of the majority of California tax laws:

- The BOE is a constitutional body. The BOE administers property tax, sales and use tax, and special taxes including fuel tax, excise tax, environmental fees, insurance gross premiums tax, and the electronic waste recycling fee. The five-member BOE includes the State Controller and four elected members.¹ The five-member BOE is vested with the authority under the Sales and Use Tax Law to “redetermine,” that is, administratively review, determinations made by the BOE with respect to tax programs it administers. In addition, the five-member BOE is authorized to hear and determine taxpayer appeals of FTB actions on personal income tax, corporation income tax, and franchise tax.
- The EDD is a department within the Labor and Workforce Development Agency. The EDD’s Tax Branch administers the collection, accounting, and audit functions of California’s payroll tax program. The program consists of Unemployment Insurance and Employment Training Tax, which are employer contributions, and Disability Insurance and Personal Income Tax, which are withheld from employees’ wages.
- The FTB is a department within the Government Operations Agency that administers the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL). The FTB collects taxes under the PITL and CTL through withholding from sources other than wages, generally from withholding a percentage of real estate proceeds and payments to nonresidents. The FTB also receives payments of estimated income taxes and other remittances such as payments made at the time of filing a tax return, and, if necessary, collects delinquent balances due by recording property liens or issuing withholding orders on earnings or bank accounts. In addition to administering the PITL and CTL, the FTB also administers non-income tax related programs including: collections of court-ordered debt, vehicle registration debts, and interagency intercepts; Political Reform Audit; and the Nonadmitted Insurer Tax program. The three-member FTB is comprised of the State Controller, the Director of the Department of Finance, and the Chair of the BOE.

¹ For this purpose, the state is divided into four districts. One member is elected from each district.

The Taxpayers' Bill of Rights² established the Taxpayers' Rights Advocate to coordinate the resolution of taxpayer complaints and problems, including any complaints regarding unsatisfactory treatment of taxpayers by FTB employees. The Advocate has authority to implement a taxpayer education and information program.

PROGRAM BACKGROUND

The FTB is a key partner with the federal VITA program. FTB staff assists in developing the training concepts and materials for California taxes, as well as evaluating and coordinating the statewide programs with Volunteer Program Coordinators. The FTB works closely with VITA partners (United Way, IRS, Financial Institutions, Local Schools, and the Department of Human Assistance, etc.) by providing certified volunteers to work at their events. Certified volunteers can be FTB staff participating at these events on their own time. FTB employees who wish to volunteer their time for VITA are required to complete the annual federal certification training program on their own time.

FTB's Taxpayer Advocate is the FTB's main channel of outreach activities for taxpayers and tax professionals with the majority of the focus on tax professionals (who can reach numerous taxpayers) and small businesses. The FTB often provides training sessions directly to or develops webinars for interested professionals and taxpayers. The FTB also includes various materials online for specific topics of interest to taxpayers and tax professionals ('What to Expect During an Audit' and 'What do I do With this Notice' infomercials). Annually, the FTB assists in approximately 150 outreach events for tax professionals and taxpayers.

The California Fed State Partnership, which consists of the FTB, BOE, EDD, and the IRS, works to streamline and improve communication and parallel processes across each organization with a key focus on educational programs. One result of the partnership was the development of the California Tax Service Center website, www.taxes.ca.gov. The goal of the website is to provide one-stop tax help to California taxpayers and guide them to the forms and services they need. The website provides information on income, sales and use tax, payroll, as well as other taxes and fees, and provides links to the appropriate forms, information, requirements, and payment options located on the FTB's, BOE's, EDD's, and the IRS's individual websites. This website provides a significant amount of the information desired under this bill with only a few exceptions.

THIS BILL

This bill would require the FTB, BOE, and EDD, as part of their professional development programs, to provide their employees who volunteer with the federal VITA program an eight hour class during their regularly scheduled work time on:

- The laws relative to the California tax gap;
- Key noncompliance issues;

²Commencing with Revenue and Taxation Code section 20001.

- Current laws related to filing and reporting all California income, sales and use; and payroll taxes; and
- The history of the federal VITA program.

In addition, this bill would require the FTB, BOE, and EDD to train all volunteers in the federal VITA program on California tax law and the tax gap, including key noncompliance issues. This training could not exceed eight hours and would be in addition to any federally required training for VITA program volunteers.

The FTB, BOE, and EDD would be required to collaborate on the development of tutorials and a joint Internet Web site designed to educate California taxpayers on how to self-file their income, sales and use, and payroll taxes and how to comply with basic tax laws. The tutorials and joint internet Web site must include at a minimum:

- Instructions on how to use the tax tables and the California e-file program.
- Existing tutorial programs for each agency.
- Contact information for each agency's customer service centers.
- Contact information for each agency's Office of the Taxpayers' Rights Advocate.

The bill would require the FTB, BOE, and EDD to collaborate on the enhanced development of a centralized Internet Web site or Web portal where taxpayers, including individuals eligible for services from the federal VITA program, can:

- Access information, including federal, state, and local poverty prevention resources.
- Register for free tax filing and reporting services.
- Utilize state tutorials on reporting all California taxes.
- Obtain information on how to claim the federal and state Earned Income Tax Credit.

The bill would require the FTB, BOE, and EDD to collaborate on developing and annually presenting an eight hour seminar for college and university students and other participating VITA program volunteers on:

- Changes in California tax law,
- The California tax gap,
- Key areas on noncompliance, and
- How to use the agencies' tutorials on self-filing and reporting.

The bill states the goal of the seminar is to provide an opportunity for college and university students to attend and enhance their ability to assist California taxpayers with complying with California tax law.

The bill would require the FTB, BOE, and EDD to participate at several (the number of the events participated in is at the discretion of each agency) VITA program events each year throughout the state to provide hands-on training and assistance in helping taxpayers to pay their sales and use, income, and payroll taxes.

The bill would require the FTB, BOE, and EDD to establish a joint employment initiative to recruit college and university students who complete VITA-related training and work at VITA program sites by informing those students of employment opportunities with the agencies.

The bill would require the FTB, BOE, and EDD to use public service announcements, free media, electronic mailing, and add-on messaging to more effectively educate taxpayers.

The bill would require the FTB, BOE, and EDD to encourage California technology companies to provide support for training taxpayers to self-file at free tax preparation sites and events and participating colleges and universities to assist with providing the appropriate tax preparation software to enable self-filing.

The bill would require the FTB, BOE, and EDD to provide grants, upon appropriation by the Legislature, to colleges and universities for enhanced training of student VITA volunteers, with the goal of helping to educate low-income individuals on reporting their taxes, claiming the federal and state earned income tax credit, and accessing poverty prevention programs.

The bill would require grant recipients to annually report to the FTB, BOE, and EDD an accounting on the:

- Use of the grant funds;
- Number of participating VITA volunteers;
- Number of individual served through the VITA program;
- Number of returns filed and credits claimed;
- Data collected through the grant recipient's tax filing interview questionnaire; and
- Verification that information was communicated about California's tax gap.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation consideration for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The scope, roles, and duties of each agency with regard to each aspect of the required collaboration must be determined before a complete analysis of this bill's impact to the FTB can be ascertained. As this bill moves through the legislative process, the FTB, BOE, and EDD, would need to develop an implementation plan that establishes the scope of the agency's roles and duties.

The department lacks expertise on providing grants for training as specified in this bill. Typically in areas where the department lack expertise the bill is amended to designate another agency or agencies that possess the relevant expertise. It is recommended that the bill be amended to designate a state agency with experience in providing grants for specified training.

This bill would require the FTB, BOE, and EDD to train VITA volunteers on the California tax gap including key noncompliance issues. The bill's language suggests this is mandatory versus discretionary training for the volunteer which could reduce their willingness to volunteer for the VITA program and it is unclear whether the FTB would be required to ban volunteers opting out of this additional training from preparing California tax returns or otherwise state what the consequences (if any) would be if the volunteer fails or declines to take the additional training.

TECHNICAL CONSIDERATIONS

Subdivision (f) should be amended to replace the term "pay" with "on reporting" and subdivision (j) should be amended to replace the term "on reporting" with "on their tax reporting options" which may provide more clarity.

OTHER STATES' INFORMATION

As stated above, the federal VITA program operates in all 50 states and the District of Columbia.

FISCAL IMPACT

The costs to implement this bill, although unknown at this time, could be significant. As indicated in the "Implementation Considerations" section, the scope, roles, and duties of the FTB, BOE, and EDD need to be identified before a complete analysis of this bill's impact on the FTB can be ascertained. As this bill moves through the legislative process and the FTB, BOE, and EDD develop an implementation plan, costs to implement this bill will be identified.

ECONOMIC IMPACT

This bill as amended on March 27, 2017, would not impact state income or franchise tax revenue.

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some could argue that establishing legislatively mandated metrics for the VITA program would increase collaboration among the state's tax agencies, volunteer preparedness and satisfaction, and the quality and scope of assistance provided to taxpayers.

Opponents: Some could argue that this bill would impose ambiguous and costly mandates on the state's taxing agencies.

POLICY CONCERNS

An additional Internet Web site or portal, as proposed by this bill, could add to taxpayer confusion over where to obtain California tax information.

Because the VITA program provides free basic tax preparation, it is unclear how additional training requirements in California sales and use tax, and tax reporting requirements for business employers, would be beneficial to the VITA program volunteers or participants. In addition, the volunteer base may decrease due to the volunteer's additional time commitment and knowledge base expansion required under this bill.

The FTB has attempted to provide additional California income tax law training to volunteers. The VITA site coordinators, who have discretion to allow additional training or not, have been unsupportive of expanding the VITA training program outside of the federal nationwide program.

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of the statute by the Legislature.

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