STATE OF CALIFORNIA
Franchise Tax Board

Analysis of Amended Bill

Author: Moorlach	Sponsor:	Bill Number: SB 1395
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Attorney: Bruce Langston	Related Bills: See Legislative History	

Subject: FTB Publish on Web Site List of Every Taxpayer Allowed PIT & Corporation Credits

Summary

This bill would require the Franchise Tax Board (FTB) to post certain tax credit information on its Internet Web site.

Recommendation – No position.

Summary of Amendments

The March 22, 2018, amendment limited this bill's reporting requirement to credits of one thousand dollars ($1,000) or more in order to meet this bill's provisions for required posting on an Internet Web site.

This is the department's first analysis of the bill.

Reason for the Bill

The reason for the bill is to encourage accountability and transparency between the people and the government.

Effective/Operative Date

This bill would become effective and operative January 1, 2019.

State Law

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Generally, disclosure is authorized to other state tax agencies, federal tax agencies, and the Multistate Tax Commission solely for tax administration purposes. Additionally, the FTB is authorized to publish statistical data related to taxpayer information so long as no individually identifiable information is revealed. Unauthorized disclosure of state tax information is a misdemeanor and unauthorized disclosure of federal tax information is a felony.

As specifically authorized,[1] the FTB is required to compile and make publicly available an annual list that identifies the largest 500 tax debtors whose delinquencies exceed $100,000 selected from both the personal income tax and corporation tax records.

State law requires the Department of Finance to provide an annual report to the Legislature on tax expenditures providing details on individual categories of the expenditures and historical information on the enactment and repeal of the expenditures. State law requires all state agencies to submit to the Governor a complete plan and itemized statement of all proposed expenditures and estimated revenues for the ensuing fiscal year.

This Bill

This bill would require the FTB to publish and maintain on its Internet Web site a document listing every taxpayer that has been allowed a tax credit of one thousand dollars ($1,000) or more, for any of the five preceding taxable years, under the Personal Income Tax Law (PITL) or the Corporation Tax Law (CTL). The document must include:

- A separate section for each tax credit under the PITL or the CTL.
- For each tax credit section, the name of every taxpayer that has been allowed the credit, the taxable year for which the tax credit was allowed, and the dollar amount of credit allowed to the taxpayer listed.
- If a tax credit has been assigned or transferred, the person to whom the tax credit was assigned or transferred.

The FTB would be required to update the document within 30 days of a taxpayer being allowed a credit under the PITL or the CTL.

Implementation Considerations

Department staff has identified the following implementation considerations 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.

This bill lacks administrative details necessary to implement the credit reporting provisions and determine its impacts to the department's systems, forms, and processes. The bill is silent on the following issues:

- When would the initial report be required to be published?
- What does "allowed a tax credit" mean? The credit as reported on an original return? On an amended return? The credit allowed by the department?

[1] California Revenue and Taxation Code section 19195.

- Would the department be required to update the report each time a credit amount changed? For example, due to an amended return being filed, or the credit amount being adjusted by the department?
- When is the trigger date for determining the "five preceding taxable years?" The date of the report? The taxable year a credit is reported?
- What triggers the 30-day period the department would have to update the report? Receipt of a return with a credit of $1,000 or more? Completion of the processing of such a return?

Updating the report based on the reporting of a credit would require the department to support continuous updating. For ease of administration and to better match report updates to the filing and processing of tax return data, the author may wish to consider a periodic update schedule. For example, a monthly, quarterly, or annual update.

Legislative History

SB 1424 (Perea, Chapter 455, Statutes of 2011) among other things, increased the listing of the top 250 tax debtors to the top 500 tax debtors.

Other States' Information

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws lack a reporting requirement for allowed tax credits comparable to this bill's requirement. The laws of these states were selected due to their similarities to California's economy, business entity types, and tax laws.

Fiscal Impact

This bill would require a substantial effort to collect and assemble the required information from various sources throughout the department and post the information within a very limited timeframe. As the bill moves through the legislative process, costs will be identified.

Economic Impact

This bill would not impact state income tax revenues.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some could argue that public reporting of state income tax credits reported by taxpayers would provide transparency in tax credit usage.

Opponents: Some could argue that this bill would discourage taxpayers from claiming credits to which they are entitled, including the California Earned Income Tax Credit, to avoid being publically listed.

Legal Concern

Since this bill's provisions apply to prior tax years, a taxpayer who would have foregone claiming one or more credits had they known it would result in a publication of their name, may seek legal recourse for the violation of their expectation to privacy of their financial (tax) information[2] under the California Constitution.[3]

Policy Concerns

California has a self-assessed tax system that relies on the responsiveness of the individual and corporate taxpayers to report the proper amount of tax. A self-assessed tax system works in part because the taxpayer has confidence that the information reported to the government will be confidential and used only for the specified purpose. If tax information is used or disclosed for other than the specified purpose as expected at the time a return is filed, the effectiveness of the state's self-assessed tax system may be impacted.

Disclosure of tax credit information would also disclose the socio-economic status of a taxpayer, as certain credits are only available to taxpayers below specified adjusted gross income levels, such as the Renters Credit or the California Earned Income Tax Credit, or meet specified conditions such as the Prison Inmate Labor, Child Adoption Costs, College Access, Joint Custody or Senior Head of Household, and Dependent Parent Credits.

It is unclear how useful the reported tax credit information would be absent additional clarifying information such as filing status, business entity name changes, dissolutions, mergers and acquisitions, and listing of the members of combined reporting returns.

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[2] Burrows v. Superior Court, (1974) 13 Cal. 3d 238, 529 P.2d 590, 118 Cal. Rptr. 166.
[3] California Constitution sections 1 and 3(b)(3).