



Analysis of Original Bill

Author: Morrell

Sponsor:

Bill Number: SB 1473

Analyst: Janet Jennings

Phone: (916) 845-3495

Introduced: February 16, 2018

Attorney: Bruce Langston

Related Bills: See Legislative
History

Subject: Taxpayers' Bill of Rights/Taxpayer Representation

Summary

This bill would, under the Taxpayers' Bill of Rights provisions of the Revenue and Taxation Code (R&TC), modify the Franchise Tax Board's (FTB's) authority to communicate with a taxpayer that is represented by a federally authorized tax practitioner (FATP).

Reason for the Bill

The reason for the bill is to ensure a taxpayer's right to representation.

Effective/Operative Date

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

Federal Law

Federal law authorizes the Secretary of the Treasury to regulate the practice of representatives of persons before the Treasury. Individuals may be "authorized to practice" before the IRS. Generally, those authorized include attorneys, certified public accountants (CPA), enrolled agents (EA), and enrolled actuaries. The IRS has a program¹ that oversees the activities of persons authorized to practice before it, and can suspend or revoke that authority if the activities of the practitioner so warrant.

State Law

California law requires anyone who prepares (or assists with) tax returns for a fee, and is not an attorney, CPA or EA, to register as a tax preparer with California Tax Education Council.

¹ The Office of Professional Responsibility <https://www.irs.gov/tax-professionals/the-office-of-professional-responsibility-opr-at-a-glance>.

Program Background

The FTB currently makes available to taxpayers its own Power of Attorney (POA) Declaration forms to allow a taxpayer to authorize another individual to represent the taxpayer in a matter before the FTB or to authorize receipt of confidential tax information about the taxpayer. Generally, no other forms are accepted by the FTB to appoint a POA.

MyFTB is an external secure web-based application that allows taxpayers and tax practitioners the ability to view the status of a tax return, view payment status, and method of payment. Taxpayers or their POA can secure chat with an FTB agent about details of the taxpayer's account.

Taxpayer representatives can also access information from a taxpayer's MyFTB account, if authorized by their client. Taxpayer representatives who have a valid POA for a client and are authorized to access MyFTB, can access more features such as the ability to build a client list, view tax returns, notices and correspondence. Taxpayer representatives with a valid POA can also file protests and update address information on behalf of clients through MyFTB. In addition, R&TC section 18416.5 authorizes taxpayers and taxpayer representatives to elect into an alternative communication method to receive electronic notifications of notices by email instead of by United States Mail. Through this election, a taxpayer may designate a tax representative to receive electronic notification of notices or correspondence on their behalf.

Representatives with a MyFTB account who do not provide an email address are still able to view the notices for their clients, but do not receive a notification when a notice is issued. The FTB's policy when a taxpayer appoints a representative is to work directly with the representative regarding all matters within the scope of the representative's authorization. The taxpayer's right to representation must be respected by our employees at all times. However, the FTB will continue to be responsive to any direct communication from the taxpayer, and includes the taxpayer in written correspondence sent to the representative, when appropriate.

This Bill

This bill would, beginning January 1, 2019, prohibit an agent from a California taxing authority from contacting a taxpayer represented by a FATP pursuant to an executed power of attorney form, duly submitted to the appropriate California taxation authority without the federally authorized tax practitioner's knowledge and would require a copy of all correspondence sent to the taxpayer to be sent to the FATP. The bill states that a violation of the right to representation would result in the removal of the taxpayer's case to a new and impartial agent who would be prohibited from considering any information that was improperly obtained by the agent who was replaced.

The purposes of the bill:

- A FATP would have the same meaning as in California R&TC section 21028, which states in subparagraph (A) that "Federally authorized tax practitioner" means any individual who is authorized under federal law to practice before the Internal Revenue Service if the practice is subject to federal regulation under Section 330 of Title 31 of the United States Code, as provided by federal law as of January 1, 2000.

- An executed power of attorney form would include FTB Form 3520, DE 48, or other equivalent form.

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.

The bill should be amended to reference "FTB form for a Power of Attorney Declaration" when referring to various forms that would be considered "an executed power of attorney form."

The provisions of this bill would be inapplicable to a taxpayer that completes a Power of Attorney designating a representative other than an FATP. If this is contrary to the author's intent, this bill should be amended.

This bill lacks administrative details necessary to implement the bill's requirements. The bill is silent as to:

- What is meant by "contact the taxpayer" and "correspondence" -- a telephone call, an electronic communication, or a written communication?
- To whom, by when, and following what procedures would a taxpayer or FATP assert a violation of this bill's provisions has occurred?
- How the provisions of this bill would be enforced?

The bill uses the term "duly submitted" which presumably means either the FTB paper Power of Attorney Declaration form, or the preferred electronic method using MyFTB on the FTB website. The author may want to amend the language to include electronic communications.

Legislative History

AB 2177 (Beall, Chapter 136, Statutes of 2010) added an alternative communication method that, at the request of a taxpayer or the taxpayer's authorized representative, would allow specified electronic communications between the FTB and the taxpayer.

SB 685 (Monteith, Chapter 348, Statutes of 1999) added additional Taxpayers' Bill of Rights provisions relating to lien protections for the taxpayer.

SB 94 (Chesbro, Chapter 931, Statutes of 1999) added additional Taxpayers' Bill of Rights provisions that are generally the same as those enacted under federal Taxpayers' Bill of Rights law.

AB 2788 (Harris, Chapter 1573, Statutes of 1988) established the Taxpayers' Bill of Rights that is administered by the FTB.

Other States' Information

The majority of the states have Taxpayers' Bill of Rights provisions. Most states, like California, follow the federal law.

Fiscal Impact

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved, but anticipate the costs to be significant.

Economic Impact

This bill would not impact state income or franchise tax revenue.

Legal Impact

Due process requires reasonable notice and opportunity to be heard. Based on the language in this bill, due process may be violated if taxpayers no longer receive notices if represented by a FATP.

The income tax provisions of the R&TC require that notices be provided to the taxpayer. The bill conflicts with existing laws relating to taxpayer notification.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may argue that this bill protects taxpayer's rights to representation.

Opponents: Some may argue that this bill could result in unnecessary expenses and delays for taxpayers by limiting the taxpayer's ability to directly contact the FTB if they have a FATP on record.

Legislative Staff Contact

Janet Jennings
Legislative Analyst, FTB
(916) 845-3495
janet.jennings@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Diane Deatherage
Legislative Director, FTB
(916) 845-6333
diane.deatherage@ftb.ca.gov