STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

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SUBJECT

Expand False Claims Act to Include Tax Matters

SUMMARY

This bill would, under the Government Code, expand the False Claims Act (FCA) to apply to claims, records, or statements made under the Revenue and Taxation Code (R&TC), if specified conditions are met on or after January 1, 2021.

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

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The July 2, 2020, amendments deemed a request or demand for payment based on a violation of the FCA prior to the filing of the FCA complaint on behalf of a private person a violation of the requirement that such a complaint be filed "*in camera*," or privately before a judge in superior court.

The July 2, 2020, amendments do not affect the department's programs or operations and are not discussed in this analysis.

This analysis replaces the department's analysis of the bill as amended May 4, 2020.

REASON FOR THE BILL

The reason for the bill is to allow the Attorney General, other prosecuting authorities, and whistleblowers to pursue fraudulent claims under the R&TC.

ANALYSIS

On or after January 1, 2021, this bill would apply the FCA to claims, records, or statements made under the franchise or income tax provisions of the R&TC if both of the following conditions are met:

- Damages pleaded in an action under the act exceed $200,000.
- The taxable income of the person, other than a corporation, or the gross receipts, less returns and allowances, of any corporation or other person other than an individual, equals or exceeds $500,000 for any taxable year subject to any action brought under the act.

The Attorney General or prosecuting authority would be required to consult with the taxing authorities to whom the claim was submitted prior to filing or intervening in any action under the act that is based on the filing of false claims, records, or statements made under the R&TC.

The Attorney General or prosecuting authority, but not the qui tam plaintiff (whistleblower), would be authorized to obtain otherwise confidential records, relating to taxes, fees, surcharges, or other obligations under the R&TC, needed to investigate or prosecute suspected violations, from state and local taxing and other governmental authorities. Those authorities would be authorized to make such disclosures. However, taxing and other governmental authorities would be prohibited from providing federal tax information without authorization from the Internal Revenue Service.

Information received by the Attorney General or prosecuting authority would remain confidential except as necessary to investigate and prosecute violations.

The bill specifies that there would be no retroactive application of the FCA to any claims, records, or statements made under the R&TC before January 1, 2021.

Effective/Operative Date

Assuming enactment by September 30, 2020, this bill would be effective and operative on January 1, 2021.

Federal/State Law

Federal Law

The federal False Claims Act, United States Code Title 31, Sections 3729 – 3733, allows a person or entity with evidence of fraud against federal programs or contracts, commonly known as a whistleblower or qui tam plaintiff, to sue the wrongdoer on behalf of the United States Government. In qui tam actions, the government has the right to intervene and join the action. If the government declines, the private plaintiff may proceed on their own.

The False Claims Act does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

Generally, the Franchise Tax Board (FTB) is prohibited under both federal law and an interagency agreement with the Internal Revenue Service (IRS) from disclosing taxpayer information that the FTB receives from the IRS, which may include a taxpayer's address.

State Law

California's FCA is found in Government Code sections 12650 – 12656. The California Attorney General's website explains that the Act:

> "…permits the Attorney General to bring a civil law enforcement action to recover treble damages and civil penalties against any person who knowingly makes or uses a false statement or document to either obtain money or property from the State or avoid paying or transmitting money or property to the State. The Act's qui tam provision permits a whistleblower to file an action to enforce the Act. The whistleblower's lawsuit is filed under seal to permit the Attorney General or local prosecuting authority to investigate and, if warranted, intervene in the action. The whistleblower may be eligible to receive a share of any recovery, and the Act provides protections against retaliation."

The FCA does not apply to claims, records, or statements made under the R&TC.

Under current state law, the FTB is responsible for administering and enforcing the franchise and income tax laws under the R&TC, including the identification and resolution of tax fraud (the intentional underreporting or failing to report income). In general, the FTB's enforcement activity includes the audit, protest and appeals programs, filing enforcement programs, collection programs, and criminal investigation programs.

Information on alleged tax fraud, including whistleblower complaints, can be submitted to the department by phone, fax, mail, or online. Although current law, R&TC section 19525, allows compensation to whistleblowers based on the additional tax produced by the information provided, the program remains unfunded.

Under current state tax law, the FTB is prohibited from disclosing any confidential taxpayer information unless an exception to the general disclosure law specifically authorizes the disclosure. Similarly, current state law applies the prohibition on disclosure to an authorized recipient of confidential taxpayer data.

Current state law lacks an exception from disclosure similar to the exception this bill would allow.

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.

It is unclear whether and how a claim under the FCA and deployment of the department's existing enforcement tools would be coordinated. For example, if a taxpayer is currently under examination or investigation with the department, what would be the effect of this provision.

Technica*l Considerations*

None noted.

Policy Concerns

None noted.

LEGISLATIVE HISTORY

AB 1270 (Stone, 2019/2020) would have, similar to this bill, added claims, records, or statements made under the R&TC to matters that may be pursued under the FCA. AB 1270 is held under submission by the Senate Committee on Appropriations.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

At this time, the department does not expect additional costs to implement the changes in this bill. However, volumes are uncertain and costs could change if workload demands resulting from this program later increase.

ECONOMIC IMPACT

Revenue Estimate

Although the provisions of AB 2570 as amended July 2, 2020, could provide additional collection resources and may result in an impact on the general fund, the provisions do not change the computation of franchise or income tax under current law, and therefore, does not fall within the scope of the FTB's revenue estimates.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

None noted.

ARGUMENTS

The following statements are from the June 5, 2020, Assembly Floor Analysis.

PRO

"The California Special Districts Association emphasizes the importance of this bill for its members:

Many local agencies, including several special districts, are either partially—or wholly—dependent on tax revenue, particularly property tax revenue. In the case of those special districts, the districts rely on property tax revenue to fund the services they provide to their community. With an estimated $20 to $25 billion in lost revenue due to taxpayers paying less than their tax share in California, special districts are losing out on potentially significant amounts of revenue."

CON

"Southwest California Legislative Council disputes the need for this bill:

There is no reporting of rampant tax fraud in California that would justify new tools such as the FCA being utilized or would suggest additional income if FCA lawsuits could be brought."

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