



Bill Analysis

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SUBJECT

Franchise Tax Board (FTB) Annual Report of Corporate Taxpayer Information

SUMMARY

This bill would, under the Administration of Franchise and Income Tax Laws, require the FTB to annually report specified tax return information of certain taxpayers subject to the Corporation Tax Law (CTL) to an unspecified recipient.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

The March 25, 2020, amendments removed the bill's provision that would have made a nonsubstantive technical change to the Government Code related to the California Fair Employment and Housing Act and replaced it with the provisions discussed in this analysis.

This is the department's first analysis of the bill and only addresses the provisions that impact the department.

REASON FOR THE BILL

The reason for this bill is to require tax return information of certain large corporate taxpayers to be posted on the internet by May 1, 2021, and be updated annually by May 1, thereafter.

ANALYSIS

This bill would require the FTB to provide by April 1, 2021, and annually by April 1 thereafter, to an unspecified entity a list of all taxpayers subject to the CTL with gross receipts greater than or equal to \$5 billion dollars, as measured by gross receipts less returns and allowances, for the taxable year reported on a return filed during the previous calendar year. The list must include the following:

- Name and tax liability of each taxpayer,
- Taxable year for which the return is filed,

- Total gross receipts for that taxable year, and
- Amount of credits claimed for that taxable year.

The determination to include on the list a taxpayer that is included in a combined report would be made based on the combined reporting group's gross receipts, less returns and allowances.

For purposes of the list, this bill would define the following terms:

- "Credits claimed" would mean the amount of credits allowed under the CTL that are applied on the return for the taxable year used to offset the tax liability,
- "Tax liability" would mean the amount of tax owed, in a taxable year, as a result of the taxes imposed under the CTL, and excluding overpayments, estimated tax payments, withholdings, and any other amounts paid, and
- "Gross receipts" would be defined by reference to Revenue and Taxation Code section 25120.

This bill would provide an exception to the FTB's general disclosure provisions, and would allow the FTB to disclose to the unspecified entity identifying information of taxpayers appearing on the list. "Identifying information" would mean all of the following:

- Name of the taxpayer,
- Identification number of the taxpayer,
- Taxable year for which the return is filed,
- Amount of credits claimed, as defined,
- Amount of tax liability, as defined, and
- The total gross receipts for that taxable year, as defined.

Disclosure or use of the information obtained from the FTB by the unspecified entity or any of its current or former officers, employees, or agents, would be limited to the administration of this bill's provisions.

This bill would require the unspecified entity to post the information provided by the FTB on its internet website by May 1, 2021, and each May 1 thereafter, in a list that includes all of the following:

- The entity's name listed on the tax return,
- The amount of tax liability of the entity for the taxable year reported on a return in the previous calendar year, and
- The total amount of credits claimed by the entity for the taxable year reported on a return filed during the previous calendar year.

Effective/Operative Date

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

Federal/State Law

Federal Law

Current Federal law lacks a reporting requirement similar to the reporting this bill would require.

Generally, the 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.

State Law

Current state law lacks a reporting requirement similar to the reporting this bill would require.

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

The department has identified the following implementation concerns. 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 the phrase "combined reporting group's gross receipts" refers to worldwide gross receipts or California gross receipts. For clarity and to ensure consistency with the author's intent, this bill should be amended.

The bill does not specify the recipient of the FTB's annual report of identifying information.

Because the FTB would be required to report specified information for returns filed "during" the previous calendar year (as opposed to "for" a particular taxable year or taxable years), the report would include information from all original and amended returns filed during the specified period without regard to the taxable year of the filing. For example, for a taxpayer that otherwise met the reporting triggers and filed an original return for 2019, and amended returns for 2017 and 2018, during calendar year

2020, the specified information from each of the three filings would be included in the report due in 2021. If this is contrary to the author's intent this bill should be amended.

Further, complete information for a taxable year would be unavailable until approximately 18 months after the April 15th due date in order to account for data from all calendar and fiscal year returns filed by the extended due date. For example, complete information for tax year 2021, would be available approximately June of 2023. The bill lacks clarity on the first tax year subject to reporting. Assuming the initial report would be due by April 1, 2021, data from tax year 2018 would be the first tax year that could be reported on at that time. The bill should be amended to ensure the FTB's reporting requirement can be implemented consistent with the author's intent.

It should also be noted that the annual list would be required to be prepared and delivered during the peak of the tax return filing season which could impact the availability of data.

Technical Considerations

For consistent use of terminology within the code the phrase "calendar year" should be replaced with the phrase "taxable year" and the term "entity" should be replaced with "taxpayer" throughout the bill.

Policy Concerns

None noted.

LEGISLATIVE HISTORY

SB 1395 (Moorlach, 2017/2018) would have required the FTB to provide a report to the Legislature by November 1, 2019, and each November 1 thereafter, that includes the total amount of specified credits allowed under the Personal Income Tax Law and CTL for the previous taxable year. Unlike this bill, SB 1395 did not require this information to be posted to an internet website.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process and implementation concerns are resolved, costs will be identified.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended on March 25, 2020, would not impact state income or franchise tax revenues.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

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

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

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