



Bill Analysis

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Sponsor:

Bill Number: SB 972

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Amended: July 28, 2020

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Related Bills: See Legislative
History

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 provide tax return information of certain taxpayers subject to the Corporation Tax Law (CTL) to the Assembly Committee on Revenue and Taxation and the Senate Committee on Governance and Finance.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The July 28, 2020, amendments modified the bill's reporting requirements as discussed in this analysis.

This analysis replaces the department's analysis of the bill as amended May 29, and June 15, 2020.

REASON FOR THE BILL

The reason for this bill is to provide tax return information of certain large corporate taxpayers to the Assembly Committee on Revenue and Taxation and the Senate Committee on Governance and Finance (Committees) by May 1, 2021, and to be updated annually by May 1, thereafter.

ANALYSIS

This bill would require the FTB by April 1, 2021, and by each April 1 thereafter to compile a list of 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:

- Name and tax liability of each taxpayer.
- Taxable year for which the return is filed.
- Total gross receipts for that taxable year.
- Amount and types 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 (R&TC) section 25120.

The bill would require the FTB to provide the Committees by May 1, 2021, and by each May 1 thereafter in a list that includes:

- The taxpayer's name listed on the tax return.
- The amount of the taxpayer's tax liability for the taxable year reported on a return in the previous calendar year.
- The total amount and types of credits the taxpayer claimed for the taxable year reported on a return in 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

Under current state law the FTB is required to publish, twice a year, a list of the 500 largest state income tax delinquencies in excess of \$100,000, and update the list when names are removed.

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.

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

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.

To ensure that the FTB or any member thereof is not found guilty of a misdemeanor for providing the specified information to the Committees, the bill should be amended by inserting on page 3, line 1, "Notwithstanding Section 19542" after "(c)".

Because the FTB would be required to report specified information reported on a return in 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 in the previous calendar year 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, in 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.

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 complete data would be available to report. If this is inconsistent with the author's intent, the bill should be amended.

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

Technical Considerations

The phrase "Notwithstanding any other law" on page 2, line 3 is unnecessary and can be deleted.

For consistency with similar provisions of the R&TC, the phrase "in the previous", on page 2, line 9, and on page 3, lines 8 and 10, should be replaced with the phrase "filed during the previous".

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.

AB 1424 (Perea, Chapter 455, Statutes of 2011) among other things, expanded the FTB's top debtor list from 250 to 500 taxpayers, requires the FTB to update the Top 500 tax debtor list at least twice each year, include on the list the type and status of any occupational or professional license held by a tax debtor on the list and provide for the suspension of a tax debtor's occupational or professional license as specified, and allow the FTB to return a tax debtor's name to the list if the tax debtor fails to comply with the terms of the resolution that resulted in the removal of that name from the list.

ABX8 8 (Committee on Budget, 2009/2010), ABX3 19 (Evans, 2009/2010), SBX8 8 (Committee on Budget, 2009/2010), SBX 3 17 (Ducheny, 2009/2010), AB 484 (Eng, 2009/2010), and AB 1925 (Eng, 2007/2008) all would have provided occupational and professional license suspension for tax debtors, but none would have limited the

authority to those appearing on the Top 250 tax debtor list. ABX8 8 failed passage out of the Assembly. ABX3 19 passed the Legislature but was withdrawn from enrollment. SBX8 8 failed passage out of the Senate and SBX3 17 was vetoed by Governor Schwarzenegger on June 30, 2009. In his veto message, Governor Schwarzenegger stated "I have been very clear that the Legislature must solve the entire deficit, must make the hard decisions now, and must not push the problem off to tomorrow. This bill and its companion measure, SB X3 16, do not meet any of those criteria." AB 484 and AB 1925 failed passage out of the Senate Revenue and Taxation Committee.

AB 1418 (Horton, Chapter 716, Statutes of 2006) required the FTB to compile and make publicly available an annual list that identifies the largest 250 tax delinquencies that exceed \$100,000 and for which a Notice of State Tax Lien has been filed with a county recorder's office.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

If the bill is amended to resolve the implementation considerations addressed in this analysis, the department's costs are expected to be minor.

ECONOMIC IMPACT

This bill as amended on July 28, 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

The July 24, 2020, Assembly Revenue and Taxation Committee analysis of SB 972 reports the following support and opposition.

Support: American Civil Liberties Union/northern California/southern California/San Diego and Imperial, Counties, California Professional Firefighters, California State Council of Service Employees International Union (SEIU California), Evolve California, Pico California, and UDW/AFSCME Local 3930

Opposition: Bay Area Council, Biocom, Calaveras County Taxpayers Association, California Bankers Association, California Business Properties Association, California Business Roundtable, California Cable & Telecommunications Association, California Chamber of Commerce, California Life Sciences Association, California Manufacturers and Technology Association, California Retailers Association, California Taxpayers Association, CompTIA, Council on State Taxation, Family Business Association of California, Inland Action, Kern County Taxpayers Association, Orange County Taxpayers Association, San Gabriel Valley Economic Partnership, Santa Maria Valley Chamber of Commerce, Silicon Valley Leadership Group, Solano County Taxpayers Association, Sutter County Taxpayers Association, TechNet, and Western States Petroleum Association

ARGUMENTS

The following statements are direct quotes from the July 24, 2020, Assembly Revenue and Taxation Committee's analysis.

Proponents:

Supporters argue that "[i]n a time when corporate profits are at record highs while governments around the world are facing unprecedented fiscal crises, it is more important than ever to have a complete understanding of the full scope of the taxes paid and tax credits claimed by these large corporations. Tax revenues have plunged to historic lows, and even before the pandemic spurred an economic downturn, corporations were paying the lowest proportion of tax revenue in decades." Additionally, supporters state that "[p]roviding this information publicly will allow for the state and tax agencies to ensure that tax credits are being claimed by the intended recipients and being put to the use for which they were created."

Opponents:

Opponents state that SB 972 "would require the [FTB] to violate taxpayers' right to confidentiality by producing annual reports on corporate taxpayers with gross receipts of \$5 billion or more. The mandated reports would include the name and tax liability of each taxpayer, the taxable year for which the return was filed, and the amount of credits claimed for the taxable year." Specifically, opponents argue that this bill "arbitrarily sets a threshold of \$5 billion annually in gross receipts for businesses whose confidential information must be shared with the public" and will violate "the fundamental principle of taxpayer confidentiality." Opponents also state that lawmakers already "have access to the anonymized aggregate data from the FTB and do not need taxpayer information to make policy decisions.

LEGISLATIVE STAFF CONTACT

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