



Bill Analysis

Author: Quirk

Sponsor:

Bill Number: AB 1538

Related Bills: See Legislative
History

Introduced: February 19, 2021,
Amended: April 6, 2021, and
April 26, 2021

SUBJECT

Data Sharing with Bona Fide Research Bodies Conducting Research Related to Poverty

SUMMARY

This bill would authorize the Franchise Tax Board (FTB) to disclose, upon request, returns or return information to a bona fide research body for conducting research related to poverty.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 6, 2021, amendments removed changes to the provisions of the Welfare and Institutions Code, which did not affect the FTB.

The April 26, 2021, amendments modified the provisions related to FTB's disclosure of data to bona fide research bodies.

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

REASON FOR THE BILL

The reason for the bill is to allow research bodies access to information to research poverty in California.

ANALYSIS

This bill, under the Revenue and Taxation Code (RTC), would allow the FTB to, upon request, provide anonymized, deidentified data from state returns or return information to a bona fide research body immediately concerned with conducting research regarding poverty, measuring poverty and its effects, and efforts to ameliorate poverty. A bona fide research body would be allowed to use information only for conducting and producing research studies relating to poverty, measuring poverty and its effects, and efforts to ameliorate poverty.

The FTB could require reimbursement for all reasonable costs incurred in providing information disclosed pursuant to this provision.

Bona fide research bodies would not be allowed to use information to identify any taxpayer. An unauthorized disclosure or use of the information disclosed pursuant to this section by a bona fide research body, or the employees and officers thereof, would be a misdemeanor.

The FTB would be prohibited from disclosing any federal tax information to the bona fide research bodies.

Effective/Operative Date

This bill would become effective and operative January 1, 2022.

Federal/State Law

Confidentiality and Disclosure

Current federal law provides that returns and tax information are confidential and may not be disclosed to federal or state agencies or employees except for authorized purposes. Agencies allowed access to federal return information include certain federal and state agencies, such as the FTB. The FTB is prohibited from disclosing federal tax information. A federal return is defined as any tax return, information return, declaration of estimated tax, or claim for refund under the Internal Revenue Code. Any FTB employee or member responsible for the improper disclosure of federal tax information is subject to felony criminal prosecution.

Current state law prohibits the disclosure of any taxpayer information except as specifically authorized by statute. California law permits the FTB to release individual tax return information to specific state agencies. Agencies must have a specific reason for requesting the information, including investigating items of income disclosed on any return or report, verifying eligibility for public assistance, locating absent parents to collect child support, or locating abducted children. For some agencies, only limited information may be released, such as the taxpayer's social security number and address.

California law also permits the FTB to release confidential tax information according to tax return sharing agreements with the Internal Revenue Service, and the taxing authorities of other states and Mexico. The exchange must relate to the enforcement of tax laws and the information must not be made public.

Current state law provides that the FTB may respond to requests from local taxing agencies to furnish information on a specific taxpayer. The request must be in the form of an affidavit signed under penalty of perjury stating that the purpose of the request relates to an investigation of the tax specified in the request and that the information will be used in the ordinary performance of the applicant's duties.

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 uses undefined terms "bona fide research body" and "immediately concerned with conducting research," which are not defined terms. The absence of definitions to clarify this term could lead to disputes as to when the department may disclose information under this provision.

The data requested by the bona fide research body may not be readily available upon request by the researcher. The department requires time to process tax returns, extract, collect and classify data. Because of the automatic extension that allows a timely filed return to be filed as late as October 15th, and the processing time for returns filed later than the April 15th original due date, the required reports may contain data for returns processed to date as opposed to all timely filed returns for a taxable year. Full datasets will not be available until April 2024 or later for the 2022 taxable year.

Additional resources would be needed to accomplish this effort as FTB is unable to redirect existing staff to this workload. While reimbursement will cover the costs incurred, it will not cover the staffing hours necessary to do this workload. The FTB may need to hire and train staff to administer the data sharing contemplated by this bill.

This bill would allow the FTB to disclose data to bona fide research body, however, it does not specify the following details:

- The prioritization of bona fide research bodies requesting the data from the FTB (by date of the request, by volume, etc.);
- The number of processed requests allowed to one bona fide research body per year;
- The amount of time the FTB would be allowed to process one request; and
- The vetting process to determine if the study and/or study meet the requirements and intentions of the bill.

Technical Considerations

For ease and speed of implementation, it is suggested that the bill be amended to authorize the FTB to issue any regulations necessary or appropriate to implement the purposes of this bill. For example, regulations could specify the following parameters of the returns of information disclosure to a bona fide research body: time, resources, number of requests, type of requests, etc.

Policy Considerations

California's system of taxation is based on voluntary self-compliance. Taxpayers file tax returns knowing that their data is used by FTB for the purpose of tax administration and that it is not widely shared absent specific situations embodied under the statutes. This bill may raise concerns with taxpayers and impact their willingness to file as they are concerned with the disclosure of tax information to others for any reason.

The bill may result in the need for FTB to prioritize workloads and data requests if more requests are received than FTB has the resources to accommodate. Additionally, if the research body does not use the information as intended by this bill, there is no methodology for retrieving the data.

LEGISLATIVE HISTORY

Research of California legislative history found no legislation similar to the provisions of this bill.

PROGRAM BACKGROUND

Information received, generated, and maintained by the FTB is generally considered confidential unless specifically provided otherwise by statute.

The California Public Records Act (CPRA) provides access to public information the FTB maintains unless the records are exempt from disclosure by law. This may include written or electronic information. The FTB is exempt from disclosing certain types of information, such as:

- Personnel, medical, or similar files for FTB employees;
- Test questions and scoring keys for employment exams;
- Preliminary drafts of documents not retained by the department;
- Records pertaining to pending litigation; and
- Confidential tax return information.

The FTB has stringent departmental policies and procedures regarding privacy and disclosure. All employees receive training annually about ensuring the confidentiality of taxpayer information and are given updated procedures on a regular basis. Any violation of these policies and procedures is subject to disciplinary action, punishable by law, or both.

To prevent inadvertent disclosure or unauthorized access, authorized recipients of data need to protect confidential data by doing the following:

- Conducting appropriate disclosure training;
- Creating and following reporting, and audit logs;
- Securing premises; and
- Organizing and securing electronic storage areas.

Training staff, ensuring the protection of taxpayer's confidential data, specifying the number of requests per year and their prioritization would normally require the FTB to enter into a data sharing agreement/contract.

The FTB website contains statistics from State of California Personal Income Tax Returns for approximately the last 20 years. It relates the total number of personal income tax returns, self-assessed total tax liability and adjusted gross income to California's counties, cities and zip codes. The visualization filters from county to city to zip code, measuring the total number of returns, total tax liability, or adjusted gross income aggregated for a specific tax year. The above repository is available for public use to conduct research.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. The bill is broad and does not quantify the amount of potential requests that FTB may receive; and it is unclear the volume of information requested within each request or the resources that would be needed to gather and prepare the requested data. As a result, it may be difficult to determine a specific cost, but could likely exceed \$1M per year in cost to FTB to respond to requests.

As such, the FTB could require additional resources and may result in budget change proposal (BCP) being pursued.

ECONOMIC IMPACT

Revenue Estimate

This bill as introduced February 19, 2021, amended April 6, and April 26, 2021, would not impact state income or franchise tax revenue.

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.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

The Assembly Committee on Revenue and Taxation analysis dated April 16, 2021, lists the following support and opposition.

Support: Economic Security Project Action

Opposition: None noted.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov