



Bill Analysis

Author: Allen

Sponsor:

Bill Number: SB 799

Related Bills: See Legislative
History

Amended: March 24, 2025,
and April 10, 2025

SUBJECT

Expand False Claims Act (FCA) to Include Tax Matters

SUMMARY

This bill would, under the Government Code (GOV), expand the FCA to apply to claims, records, obligations, or statements under the Revenue and Taxation Code (RTC), if specified conditions are met.

RECOMMENDATION

No position—The three-member Franchise Tax Board has not formally voted or taken a position on this bill.

SUMMARY OF AMENDMENTS

The March 24, 2025, amendments removed provisions of the bill relating to the GOV and replaced them with the provisions discussed in this analysis.

The April 10, 2025, amendments made nonsubstantive changes.

This is the Franchise Tax Board's (FTB) first analysis of the bill and only addresses the provisions that would impact the FTB.

REASON FOR THE BILL

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

ANALYSIS

This bill would apply the FCA to claims, records, obligations, or statements made under the franchise or income tax provisions of the RTC if damages pleaded in an action under the FCA exceed \$200,000 and either:

- The taxable income of any individual, fiduciary, partnership, or limited liability company under the Personal Income Tax Law (PITL), equals or exceeds \$500,000 for any taxable year subject to any action brought under the FCA.
- Or, the gross receipts, defined in Section 25120, less returns and allowances, of any corporation, fiduciary, partnership, or limited liability company, equals or exceeds \$500,000 under the Corporation Tax Law for any taxable year subject to any action brought under the FCA.

This bill would require the Attorney General or prosecuting authority to consult with the taxing authorities to whom the claim, record, or statement was submitted or to whom the obligation was owed prior to filing or intervening in any action under the FCA that is based on the filing of false claims, records, or statements made under the RTC.

This bill would also specify that the Attorney General or prosecuting authority, but not the qui tam plaintiff, is authorized to obtain otherwise confidential records relating to taxes, fees, surcharges, or other obligations, under the RTC needed to investigate or prosecute suspected violations, from state and local taxing and other governmental authorities in possession of such information and records. These authorities would be authorized to make these disclosures. However, the disclosures would not include federal tax information without specific authorization from the Internal Revenue Service (IRS).

The bill provides that any information received would be kept confidential except as necessary to investigate and prosecute violations.

Effective/Operative Date

This bill would be effective and operative on January 1, 2026.

*Federal/State Law**Federal Law*

The federal FCA, 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 his or her own.

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

Generally, the FTB is prohibited under both federal law and an interagency agreement with the 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 GOV sections 12650 – 12656. According to the California Attorney General's office, specifically under the Corporate Fraud Section's False Claims Unit, the FCA:

"...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 California False Claims 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 RTC.

The FTB is responsible for administering and enforcing the franchise and income tax laws under the RTC, 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 FTB by phone, fax, mail, or online. Although current law, RTC section 19525, allows compensation to whistleblowers based on the additional tax produced by the information provided, the program remains unfunded.

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 FTB has identified the following implementation consideration and is available to work with the author's office to resolve these and other considerations that may be identified.

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

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 2289 (Lee, et al., 2021/2022) would have added Part 27, the Wealth Tax Act, under Division 2 of the RTC, that would have imposed an annual wealth tax (WT) on a taxpayer's worldwide net worth in excess of specified amounts, in addition to the income tax imposed under Part 10, PITL (commencing with Section 17001). AB 2289 would have also extended the FCA under the GOV to include claims, records, or statements made under the WT that exceeded \$200,000. AB 2289 did not pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

AB 1270 (Stone, 2019/2020) would have, under the GOV, expanded the FCA to apply to claims, records, or statements made under the RTC, if specified conditions are met on or after January 1, 2020. AB 1270 did not pass out of the Assembly by the constitutional deadline.

AB 2570 (Stone, 2019/2020) would have, under the GOV, expanded the FCA to apply to claims, records, or statements made under the RTC, if specified conditions were met on or after January 1, 2021. AB 2570 did not pass out of the Senate Judiciary Committee.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

None noted.

FISCAL IMPACT

FTB's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

ECONOMIC IMPACT*Revenue Discussion*

This bill as amended on April 10, 2025, does not change the way income or franchise tax is calculated under the RTC.

However, it does allow for the imposition of damages as specified and would result in an unknown revenue gain to the state.

LEGAL IMPACT

None noted.

EQUITY IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Senate Committee on Revenue and Taxation, dated April 23, 2025.

Support

California Department of Justice (Sponsor)
California District Attorneys Association
California Federation of Labor Unions, AFL-CIO
Consumer Attorneys of California
California State Association of Counties
League of California Cities
Taxpayers Against Fraud

Opposition

Acclamation Insurance Management Services
Allied Managed Care
American Petroleum and Convenience Store Association
Brea Chamber of Commerce

California Alliance of Taxpayer Advocates
California Association of Health Facilities
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Attractions and Parks Association
California Bankers Association
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Craft Brewers Association
California Financial Services Association
California Grocers Association
California Hospital Association
California Retailers Association
California Society of Certified Public Accountants
California Taxpayers Association
California Trucking Association
Carlsbad Chamber of Commerce
Cellular Telecommunications and Internet Association
Civil Justice Association of California
Coalition of Small and Disabled Veteran Businesses
Construction Employers Association
Council of Business & Industries
Council on State Taxation
Family Business Association of California
Flasher Barricade Association
Govern for California
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Howard Jarvis Taxpayers Association
National Association of Theatre Owners of California
National Electrical Contractors Association, California Chapters
National Federation of Independent Business
Santa Barbara South Coast Chamber of Commerce
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce
Southern California Contractors Association
TechNet
United Contractors
United Hospital Association
Valley Industry and Commerce Association

ARGUMENTS

Senate Judiciary Committee analysis, dated April 4, 2025.

Proponents

The Consumer Attorneys of California write in support stating:

California's annual estimated tax gap—the difference between what taxpayers owe and what they voluntarily pay—has been estimated to be between \$20-25 billion. The sheer size of the tax gap indicates the need to expand tax enforcement efforts to reduce fraud and deter tax evasion. However, despite the growing tax gap, since its enactment in 1987, the CFCA has specifically excluded tax fraud cases from its provisions.

In order to enhance efforts to close the tax gap, this bill authorizes various public entities and whistleblowers to pursue tax fraud cases under the CFCA if specified income and tax liability thresholds are met. Because of the incentive that the CFCA provides for whistleblowers to come forward.

SB 799 would strengthen tax enforcement in California by helping to reveal new cases of tax fraud that would never be known to authorities without the whistleblower. SB 799 also includes changes intended to further the purpose of the CFCA and strengthen overall enforcement. Successful false claims cases usually depend on insider information, often provided by a company's employees who have access to confidential, internal documents which establish a company's liability. This bill will further shield whistleblowers from civil liability by protecting them from lawsuits relating to disclosures of confidential company documents.

Opponents

Senate Judiciary Committee analysis, dated April 4, 2025.

A coalition of various entities representing business, accountants, and tax advocates, including the Civil Justice Association of California, the California Taxpayers Association, and the California Chamber of Commerce, writes in opposition to the bill stating:

Our organizations in no way condone tax fraud, and we believe the state's large and amply-funded tax enforcement agencies, the Franchise Tax Board and California Department of Tax and Fee Administration, with their years of experience successfully pursuing tax fraud cases, are best equipped to investigate and prosecute tax fraud. On top of this, California's Office of the Attorney General also actively enforces tax code violations.

SB 799 could give rise to the types of harassing lawsuits that we have seen plague California communities under the Private Attorneys General Act (PAGA), the disability access laws (ADA), and Proposition 65. SB 799 would create similar problems by removing a longstanding exemption in the CFCA for tax claims—an exemption that has existed due to the robust whistleblower programs already in place at tax agencies and a desire to avoid duplicating enforcement efforts.

SB 799 would allow private plaintiffs and their lawyers to engage in bounty hunting (qui tam actions) against taxpayers by alleging that legitimate tax positions are “fraud.” SB 799 would also create double jeopardy for taxpayers by allowing relitigation of cases in which experienced auditors at the tax agencies determined no fraud occurred.

Under CFCA, private plaintiffs may receive 15 to 50 percent of the recovery of claims they bring, in addition to attorneys’ fees and costs. Penalties range between \$5,000 and \$11,000 per violation, plus treble damages. As a result, under SB 799, a \$200,000 tax dispute could turn into potential exposure for the taxpayer that could easily exceed seven figures.

The CFCA was designed to deter governmental corruption; it was never meant to be used as a weapon against taxpayers. The last thing California needs during this time of economic and affordability challenges is a new form of bounty-hunter lawsuit that can be used to shake down struggling and law-abiding taxpayers and businesses.

LEGISLATIVE CONTACT

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