

AMENDED IN SENATE APRIL 16, 2009

SENATE BILL

No. 402

Introduced by Senator Wolk

February 26, 2009

An act to add Sections 19266 and 19560 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 402, as amended, Wolk. Franchise Tax Board: collections.

Existing laws require the Franchise Tax Board to administer specified taxes and collect those taxes from delinquent tax debtors.

This bill would require the board, in coordination with financial institutions doing business in this state, to operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible in order to allow the board to match its list of delinquent tax debtors with the lists provided by the financial institutions. The bill would authorize the board to institute civil proceedings to enforce specified provisions of the bill, and would impose specified penalties on financial institutions for failure to provide records in connection with the match system, as provided. This bill would provide that the specified use of certain data is a misdemeanor.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19266 is added to the Revenue and
2 Taxation Code, to read:

3 19266. (a) (1) The Franchise Tax Board, in coordination with
4 financial institutions doing business in this state, shall operate a
5 Financial Institution Record Match System utilizing automated
6 data exchanges to the maximum extent feasible. ~~The~~

7 (2) *The* Franchise Tax Board shall prescribe any rules and
8 regulations that may be necessary or appropriate to implement this
9 section. These rules and regulations shall include ~~a~~ *all of the*
10 *following:*

11 (A) A structure by which financial institutions, or their
12 designated data-processing agents, shall receive from the Franchise
13 Tax Board the file or files of delinquent debtors that the institution
14 shall match with its own list of accountholders to identify
15 delinquent tax debtor accountholders at the institution. ~~The rules~~
16 ~~and regulations shall include an~~

17 (B) An option by which financial institutions without the
18 technical ability to process the data exchange, or without the ability
19 to employ a third-party data processor to process the data exchange,
20 may forward to the Franchise Tax Board a list of all accountholders
21 and their social security numbers or other taxpayer identification
22 numbers, so that the Franchise Tax Board shall match that list with
23 the file or files of delinquent tax debtors.

24 (C) *Authority for the Franchise Tax Board to exempt a financial*
25 *institution from the requirements of this section if the Franchise*
26 *Tax Board determines that the financial institution participation*
27 *would not generate sufficient revenue to be cost effective for the*
28 *Franchise Tax Board.*

29 (D) *Authority for the Franchise Tax Board to temporarily*
30 *suspend the requirements of this section for a financial institution*
31 *if the Franchise Tax Board determines that the financial institution*
32 *is undercapitalized (as defined by FDIC Regulation 325.103 (3)*
33 *subparts (1) and (2)).*

34 (b) The Financial Institution Data Record Match System shall
35 not be subject to any limitation set forth in Chapter 20
36 (commencing with Section 7460) of Division 7 of Title 1 of the
37 Government Code. However, any use of the information provided
38 pursuant to this section for any purpose other than the collection

1 of delinquent franchise or income tax or other debts referred to
2 the Franchise Tax Board for collection, as imposed under Part 5
3 (commencing with Section 10878), Part 10 (commencing with
4 Section 17001), Part 10.2 (commencing with Section 19280), or
5 Part 11 (commencing with Section 23001) shall be a violation of
6 Section 19542.

7 (c) (1) To effectuate the Financial Institution Record Match
8 System, financial institutions subject to this section shall provide
9 to the Franchise Tax Board on a quarterly basis the name, record
10 address, and other addresses, social security number or other
11 taxpayer identification number, and other identifying information
12 for each delinquent tax debtor, as identified by the Franchise Tax
13 Board by name and social security number or other taxpayer
14 identification number, who maintains an account at the institution.

15 (2) *The first data file created by the Franchise Tax Board for*
16 *purposes of matching tax debtor records to financial institution*
17 *accountholder records shall be limited to 600,000 tax debtor*
18 *records. The number of tax debtor records included in a subsequent*
19 *data file created by the Franchise Tax Board may be increased by*
20 *no more than 600,000 tax debtor records greater than the number*
21 *of tax debtor records included in the immediately preceding data*
22 *file until all eligible tax debtor records are included in the data*
23 *match file.*

24 (d) Unless otherwise required by law, a financial institution
25 furnishing a report or providing information to the Franchise Tax
26 Board pursuant to this section shall not disclose to a depositor or
27 an accountholder, or a codepositor or coaccountholder, that the
28 name, address, social security number or other taxpayer
29 identification number, or other identifying information of that
30 delinquent tax debtor has been received from or furnished to the
31 Franchise Tax Board.

32 (e) A financial institution shall incur no obligation or liability
33 to any person arising from any of the following:

34 (1) Furnishing information to the Franchise Tax Board as
35 required by this section.

36 (2) Failing to disclose to a depositor or accountholder that the
37 name, address, social security number or other taxpayer
38 identification number, or other identifying information of that
39 delinquent tax debtor was included in the data exchange with the
40 Franchise Tax Board required by this section.

1 (3) Any other action taken in good faith to comply with the
2 requirements of this section.

3 (f) The Franchise Tax Board may institute civil proceedings to
4 enforce this section.

5 (g) Any financial institution that willfully fails to comply with
6 the rules and regulations promulgated by the Franchise Tax Board
7 for the administration of delinquent tax collections, unless it is
8 shown to the satisfaction of the Franchise Tax Board that the failure
9 is due to reasonable cause, shall be assessed a penalty upon notice
10 and demand of the Franchise Tax Board and collected in the same
11 manner as tax. The penalty imposed under this section shall be in
12 an amount equal to fifty dollars (\$50) for each record not provided,
13 but the total imposed on that financial institution for all such
14 failures during any calendar year shall not exceed one hundred
15 thousand dollars (\$100,000).

16 (h) For purposes of this section:

17 (1) "Account" means any demand deposit account, share or
18 share draft account, checking or negotiable withdrawal order
19 account, savings account, time deposit account, or money market
20 mutual fund account, regardless of whether the account bears
21 interest.

22 (2) "Financial institution" means:

23 (A) A depository institution, as defined in Section 1813(c) of
24 Title 12 of the United States Code.

25 (B) An institution-affiliated party, as defined in Section 1813(u)
26 of Title 12 of the United States Code.

27 (C) Any federal credit union or state credit union, as defined in
28 Section 1752 of Title 12 of the United States Code, including an
29 institution-affiliated party of a credit union, as defined in Section
30 1786(r) of Title 12 of the United States Code.

31 (D) Any benefit association, insurance company, safe deposit
32 company, money-market fund, or similar entity authorized to do
33 business in this state.

34 (3) "Delinquent tax debtor" means any person liable for any
35 income or franchise tax or other debt referred to the Franchise Tax
36 Board for collection as imposed under Part 5 (commencing with
37 Section 10878), Part 10 (commencing with Section 17001), Part
38 10.2 (commencing with Section 19280), or Part 11 (commencing
39 with Section 23001), including tax, penalties, interest, and fees,
40 where the tax or debt, including the amount, if any, referred to the

1 Franchise Tax Board for collection remains unpaid after 30 days
2 from demand for payment by the Franchise Tax Board, and the
3 person is not making current timely installment payments on the
4 liability under an agreement pursuant to Section 19006.

5 ~~(i) The Franchise Tax Board shall consult with financial~~
6 ~~institution representatives to develop a reasonable methodology~~
7 ~~to reimburse actual costs incurred by financial institutions to~~
8 ~~conduct tax data matches pursuant to this section.~~

9 *(i) A financial institution shall be reimbursed by the Franchise*
10 *Tax Board for actual costs incurred to implement the provisions*
11 *of this section. Upon receipt of an invoice from the financial*
12 *institution, cost reimbursement by the Franchise Tax Board shall*
13 *be limited to the following:*

14 *(1) For one-time startup costs of a financial institution, no more*
15 *than two thousand five hundred dollars (\$2,500).*

16 *(2) For data matching costs of a financial institution, other than*
17 *one-time startup costs, no more than two hundred fifty dollars*
18 *(\$250) per calendar quarter.*

19 *(j) Implementation of this section shall be contingent on the*
20 *appropriation of funds for the purposes of this section, and*
21 *shall be operative 120 days after that date.*

22 *(k) This section shall apply with respect to persons that are*
23 *delinquent tax debtors on and after the effective date of the act*
24 *adding this section.*

25 SEC. 2. Section 19560 is added to the Revenue and Taxation
26 Code, to read:

27 19560. Notwithstanding any law to the contrary, to effectuate
28 the Financial Institution Record Match System prescribed under
29 Section 19266, the Franchise Tax Board may disclose the name
30 and social security number or taxpayer identification number to
31 designated financial institutions or their authorized processing
32 agent for purposes of matching debtor records to accountholder
33 records at the financial institution. Any use of the data provided
34 by the Franchise Tax Board for a purpose other than those
35 identified by Section 19266 is prohibited and considered a violation
36 of Section 19542.

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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