

Assembly Bill No. 1411

Passed the Assembly May 28, 2013

Chief Clerk of the Assembly

Passed the Senate August 15, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 19266 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1411, Committee on Revenue and Taxation. Tax administration: Financial Institution Record Match System: addresses.

Existing law requires the Franchise Tax Board to administer specified taxes and collect those taxes from delinquent tax debtors. Existing law requires the Franchise Tax 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 Franchise Tax Board to match its list of delinquent tax debtors, as defined, with the lists provided by the financial institutions. Information provided by financial institutions relating to tax debtors includes the name, record address, other addresses, and other identifying information for each delinquent tax debtor, as identified by the Franchise Tax Board. Existing law prohibits the use of tax debtor information by the Franchise Tax Board for purposes other than tax collection, and punishes the unauthorized use of certain data as a misdemeanor.

This bill would remove the prohibition on the Franchise Tax Board on using Financial Institution Record Match System tax debtor address information for purposes other than tax collection.

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

SECTION 1. Section 19266 of the Revenue and Taxation Code is amended to read:

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

(2) The Franchise Tax Board shall prescribe any rules and regulations that may be necessary or appropriate to implement this

section. These rules and regulations shall include all of the following:

(A) A structure by which financial institutions, or their designated data-processing agents, shall receive from the Franchise Tax Board the file or files of delinquent debtors that the institution shall match with its own list of accountholders to identify delinquent tax debtor accountholders at the institution.

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

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

(D) Authority for the Franchise Tax Board to temporarily suspend the requirements of this section for a financial institution if the financial institution provides the Franchise Tax Board with a written notice from its supervisory banking authority that it is determined to be undercapitalized, significantly undercapitalized, or critically undercapitalized as defined by FDIC Regulation 325.103(b)(3), (4), and (5) or NCUA Regulation 702.102. The notice provided pursuant to this subparagraph shall be subject to the protections of Section 19542.

(b) The Financial Institution Record Match System shall not be subject to any limitation set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. However, any use of the information, other than information relating to an address, provided pursuant to this section for any purpose other than the collection of amounts identified in paragraphs (1), (2), and (3) shall be a violation of Section 19542.

(1) Delinquent amounts due the board, as imposed under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), Part 1.7 (commencing with Section 7280), Part 3 (commencing with Section 8601), Part 3.5 (commencing with Section 9401), Part 6

(commencing with Section 11201), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), Part 18.5 (commencing with Section 38101), Part 19 (commencing with Section 40001), Part 20 (commencing with Section 41001), Part 22 (commencing with Section 43001), Part 22.5 (commencing with Section 44000), Part 23 (commencing with Section 45001), Part 24 (commencing with Section 46001), Part 26 (commencing with Section 50101), Part 30 (commencing with Section 55001), or Part 31 (commencing with Section 60001).

(2) Delinquent amounts due the Employment Development Department, as imposed under the Unemployment Insurance Code, or other debts or penalty assessments referred to the Employment Development Department for collection.

(3) Delinquent franchise or income tax or other debts referred to the Franchise Tax Board for collection, as imposed under Part 5 (commencing with Section 10701), Part 10 (commencing with Section 17001), this part, or Part 11 (commencing with Section 23001).

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

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

(d) Unless otherwise required by law, a financial institution furnishing a report or providing information to the Franchise Tax Board pursuant to this section shall not disclose to a depositor or an accountholder, or a codepositor or coaccountholder, that the name, address, social security number or other taxpayer

identification number, or other identifying information of that delinquent tax debtor has been received from or furnished to the Franchise Tax Board.

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

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

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

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

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

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

(h) For purposes of this section:

(1) “Account” means a demand deposit account, share or share draft account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account, regardless of whether the account bears interest.

(2) “Financial institution” means:

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

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

(C) A federal credit union or state credit union, as defined in Section 1752 of Title 12 of the United States Code, including an

institution-affiliated party of a credit union, as defined in Section 1786(r) of Title 12 of the United States Code.

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

(3) “Delinquent tax debtor” means any of the following:

(A) Any person liable for any tax, fee, or surcharge amounts, and any penalty, interest, or other amounts required to be paid to the board, where the liability remains unpaid after 30 days from demand for payment by the board, and the person is not making current timely installment payments on the liability under an installment payment agreement as provided by law.

(B) Any person liable for any amounts required to be paid to the Employment Development Department or for any debts or penalty assessments referred to the Employment Development Department for collection and the person is not making current timely installment payments on the liability under an approved installment payment agreement as provided by law.

(C) Any person liable for any income or franchise tax or other debt referred to the Franchise Tax Board for collection as imposed under Part 5 (commencing with Section 10701), Part 10 (commencing with Section 17001), this part, or Part 11 (commencing with Section 23001), including tax, penalties, interest, and fees, where the tax or debt, including the amount, if any, referred to the Franchise Tax Board for collection remains unpaid after 30 days from demand for payment by the Franchise Tax Board, and the person is not making current timely installment payments on the liability under an agreement pursuant to Section 19008.

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

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

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

(j) The first data exchange for purposes of matching tax debtor records to financial institution accountholder records shall occur no earlier than April 1, 2012.

(k) This section shall be operative 120 days after the effective date of Chapter 14 of the Statutes of 2011 and shall apply with respect to persons that are delinquent tax debtors on and after that date.

(1) Notwithstanding any other law, on or after January 1, 2013, and on a quarterly basis thereafter, the board and the Employment Development Department shall, in the format and manner specified by the Franchise Tax Board, provide their respective delinquent tax debtor information to the Franchise Tax Board for inclusion in the Financial Institution Record Match System.

(2) The Franchise Tax Board shall include the delinquent tax debtor information provided by the board and the Employment Development Department in its data file used to match delinquent tax debtor records to financial institution accountholder records.

(3) The Franchise Tax Board shall provide the board or the Employment Development Department, as applicable, with any matched financial institution accountholder record information resulting from the delinquent tax debtor information provided by the board or the Employment Development Department.

(4) The board and the Employment Development Department shall reimburse the Franchise Tax Board for any costs incurred by the Franchise Tax Board related to the implementation and administration of this section with respect to delinquent tax debtors described in subparagraph (A) or (B), respectively, of paragraph (3) of subdivision (h).

(l) The amendments to this section by the act adding this subdivision shall apply to information provided pursuant to this section before, on, and after the effective date of that act.

Approved _____, 2013

Governor