

AMENDED IN SENATE JUNE 21, 1999
AMENDED IN ASSEMBLY MAY 13, 1999
AMENDED IN ASSEMBLY APRIL 14, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1392

Introduced by Assembly Member Hertzberg

February 26, 1999

An act to amend Sections 6931 and 19381 of, and to add Sections 6931.5 and 19381.5 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, as amended, Hertzberg. Taxation: judicial relief.

The California Constitution, the Sales and Use Tax Law, and provisions pertaining to the administration of franchise and income tax laws prohibit the issuance of any injunction, writ of mandate, or other legal or equitable process to prevent or enjoin the assessment or collection of those taxes, but permit an action to be maintained after the tax is paid to recover the tax claimed to be illegal.

This bill would permit an action to determine the validity of an amount of any of those taxes if the plaintiff has ~~paid the amount due or~~ filed a good and sufficient bond to guarantee payment of the amount due and other amounts, as provided.

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

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

1 SECTION 1. Section 6931 of the Revenue and
2 Taxation Code is amended to read:

3 6931. (a) No injunction or writ of mandate or other
4 legal or equitable process shall issue in any suit, action, or
5 proceeding in any court against this state or against any
6 officer of the state to prevent or enjoin the collection
7 under this part of any tax or any amount of tax required
8 to be collected.

9 (b) An action may be maintained in accordance with
10 Section 6931.5 to determine the validity of an amount of
11 tax. During the pendency of any action as so described,
12 the collection of any amount of tax that is the subject of
13 that action shall be limited as specified by Section 6931.5.

14 SEC. 2. Section 6931.5 is added to the Revenue and
15 Taxation Code, to read:

16 6931.5. (a) Notwithstanding any other provision of
17 law, ~~an action to determine the validity of an amount of~~
18 ~~tax or any other amount assessed by the board may,~~
19 ~~subject to subdivisions (b) and (e) within one year after~~
20 ~~an assessment becomes final an action to determine~~
21 ~~whether an assessment is void in whole or in part may,~~
22 ~~subject to subdivisions (c), (d), (e), and (f), be brought~~
23 ~~against the board if the plaintiff does either of the~~
24 ~~following:~~

25 ~~(1) Pays to the board all amounts, including interest~~
26 ~~and penalties, due from the applicant to the state with~~
27 ~~respect to the disputed assessment.~~

28 ~~(2) Files~~ *files* with the board a good and sufficient bond
29 to guarantee the payment of the amount due and any
30 additional amount, including interest and penalties, that
31 may reasonably be expected to become due during the
32 pendency of the action. No other provision of law shall be
33 construed to require that the amount of a bond filed
34 pursuant to this ~~paragraph~~ *subdivision* differ from the
35 bond amount required by this section.

36 (b) With respect to a taxpayer who files a bond in
37 accordance with ~~paragraph (2) of~~ subdivision (a), all of
38 the following apply:



1 (1) The filing of the bond does not toll the accrual of
2 interest with respect to the disputed tax assessment.

3 ~~However, no~~

4 (2) *No* penalty for late payment shall be assessed upon
5 the disputed tax assessment with respect to which the
6 bond is filed.

7 ~~(2)~~

8 (3) If at any time during the pendency of the action or
9 during the pendency of any appeal by the plaintiff of the
10 trial court's decision in that action, the trial court or
11 appellate court, as applicable, determines that the
12 amount of the bond has become insufficient to provide
13 the guarantee described in ~~paragraph (2) of~~ subdivision
14 (a), the plaintiff shall increase the amount of the bond to
15 an amount that is sufficient to provide that guarantee.

16 ~~(3)~~

17 (4) No more than once a year during the pendency of
18 the action or during the pendency of any appeal by the
19 plaintiff of the trial court's decision in that action, the
20 State Board of Equalization may, by written notice to the
21 plaintiff, require the plaintiff, no sooner than 60 days after
22 the date of that notice, to increase the amount of the bond
23 to an amount that is sufficient to guarantee additional
24 interest accruing during the year. *Any plaintiff receiving*
25 *a notice as described in the preceding sentence may, as*
26 *an alternative to increasing the amount of the bond as*
27 *required by that notice, pay the additional interest*
28 *accruing during the year.*

29 (c) The amount and terms of the bond and the sureties
30 on the bond authorized by ~~paragraph (2) of~~ subdivision
31 (a) must be approved by the judge of the trial court
32 hearing the action ~~in accordance with Article 4~~
33 ~~(commencing with Section 995.410) of Chapter 2 of Title~~
34 ~~14 of Part 2 of the Code of Civil Procedure~~, and that
35 approval shall not be unreasonably withheld.

36 (d) *Notwithstanding any other provision of law, the*
37 *bond may be issued only by an admitted surety. The court*
38 *shall follow the rules, definitions, and procedures set forth*
39 *in Sections 995.030, 995.040, 995.050, 995.110, 995.120,*
40 *995.140, 995.150, 995.160, 995.190, 995.320, 995.330, 995.340,*



1 995.350, 995.360, 995.370, 995.380, 995.420, and 995.430 of,
 2 and Article 6 (commencing with Section 995.610) to
 3 Article 15 (commencing with Section 996.510), inclusive,
 4 of Chapter 2 of Title 14 of Part 2 of, the Code of Civil
 5 Procedure. If approval is obtained in accordance with ~~the~~
 6 ~~preceding sentence~~ subdivision (c), no further collection
 7 of any assessed amount that is the subject of the action
 8 shall be made during the pendency of that action.

9 ~~(d)~~

10 (e) The plaintiff, or the agent or attorney of the
 11 plaintiff, shall state under oath that the payment of all
 12 amounts due was made or a bond has been approved and
 13 filed in accordance with this section.

14 ~~(e)~~

15 (f) (1) An action that may be brought pursuant to this
 16 section includes both of the following:

17 (A) An action with respect to a tax assessment made
 18 on or after the effective date of this section.

19 (B) An action with respect to a tax assessment made
 20 prior to the effective date of this section, provided that
 21 the tax period for which the disputed assessment was
 22 made remains open at the time the action is commenced.

23 (2) An action may not be brought pursuant to this
 24 section with respect to a claim for which the bringing of
 25 an action is, as of the effective date of this section, barred
 26 by another provision or rule of law, including, but not
 27 limited to, the doctrine of res judicata.

28 SEC. 3. Section 19381 of the Revenue and Taxation
 29 Code is amended to read:

30 19381. (a) No injunction or writ of mandate or other
 31 legal or equitable process shall issue in any suit, action, or
 32 proceeding in any court against this state or against any
 33 officer of this state to prevent or enjoin the assessment or
 34 collection of any tax under this part.

35 (b) An action with respect to disputed taxes may be
 36 maintained in accordance with either of the following:

37 (1) Any individual after protesting a notice or notices
 38 of deficiency assessment issued because of his or her
 39 alleged residence in this state and after appealing from
 40 the action of the Franchise Tax Board to the State Board



1 of Equalization, may within 60 days after the action of the
 2 State Board of Equalization becomes final commence an
 3 action, on the grounds set forth in his or her protest, in the
 4 Superior Court of the County of Sacramento, in the
 5 County of Los Angeles, or in the City and County of San
 6 Francisco against the Franchise Tax Board to determine
 7 the fact of his or her residence in this state during the year
 8 or years set forth in the notice or notices of deficiency
 9 assessment. No tax based solely upon the residence of
 10 such an individual may be collected from that individual
 11 until 60 days after the action of the State Board of
 12 Equalization becomes final and, if he or she commences
 13 an action pursuant to this section, during the pendency
 14 of the action, other than by way of or under the jeopardy
 15 assessment provisions of this part.

16 (2) An action may be maintained in accordance with
 17 Section 19381.5 to determine the validity of an amount of
 18 tax. During the pendency of any action as so described,
 19 the collection of any amount of tax that is the subject of
 20 that action shall be limited as specified by Section 19381.5.

21 SEC. 4. Section 19381.5 is added to the Revenue and
 22 Taxation Code, to read:

23 19381.5. (a) Notwithstanding any other provision of
 24 law, ~~an action to determine the validity of an amount of~~
 25 ~~tax or any other amount assessed by the Franchise Tax~~
 26 ~~Board may, subject to subdivisions (b) and (e) within one~~
 27 ~~year after an assessment becomes final an action to~~
 28 ~~determine whether an assessment is void in whole or in~~
 29 ~~part may, subject to subdivisions (c), (d), (e), and (f), be~~
 30 brought against the Franchise Tax Board if the plaintiff
 31 ~~does either of the following:~~

32 ~~(1) Pays to the Franchise Tax Board all amounts,~~
 33 ~~including interest and penalties, due from the applicant~~
 34 ~~to the state with respect to the disputed assessment.~~

35 ~~(2) Files files with the Franchise Tax Board a good and~~
 36 sufficient bond to guarantee the payment of the amount
 37 due and any additional amount, including interest and
 38 penalties, that may reasonably be expected to become
 39 due during the pendency of the action. No other
 40 provision of law shall be construed to require that the



1 amount of a bond filed pursuant to this ~~paragraph~~
2 *subdivision* differ from the bond amount required by this
3 section.

4 (b) With respect to a taxpayer who files a bond in
5 accordance with ~~paragraph (2) of~~ subdivision (a), all of
6 the following apply:

7 (1) The filing of the bond does not toll the accrual of
8 interest with respect to the disputed tax assessment.

9 ~~However, no~~

10 (2) *No* penalty for late payment shall be assessed upon
11 the disputed tax assessment with respect to which the
12 bond is filed.

13 ~~(2)~~

14 (3) If at any time during the pendency of the action or
15 during the pendency of any appeal by the plaintiff of the
16 trial court's decision in that action, the trial court or
17 appellate court, as applicable, determines that the
18 amount of the bond has become insufficient to provide
19 the guarantee described in ~~paragraph (2) of~~ subdivision
20 (a), the plaintiff shall increase the amount of the bond to
21 an amount that is sufficient to provide that guarantee.

22 ~~(3)~~

23 (4) No more than once a year during the pendency of
24 the action or during the pendency of any appeal by the
25 plaintiff of the trial court's decision in that action, the
26 ~~State Board of Equalization~~ *Franchise Tax Board* may, by
27 written notice to the plaintiff, require the plaintiff, no
28 sooner than 60 days after the date of that notice, to
29 increase the amount of the bond to an amount that is
30 sufficient to guarantee additional interest accruing
31 during the year. *Any plaintiff receiving a notice as*
32 *described in the preceding sentence may, as an*
33 *alternative to increasing the amount of the bond as*
34 *required by that notice, pay the additional interest*
35 *accruing during the year.*

36 (c) The amount and terms of the bond and the sureties
37 on the bond authorized by ~~paragraph (2) of~~ subdivision
38 (a) must be approved by the judge of the trial court
39 hearing the action ~~in accordance with Article 4~~
40 ~~(commencing with Section 995.410) of Chapter 2 of Title~~



1 ~~14 of Part 2 of the Code of Civil Procedure~~, and that
2 approval shall not be unreasonably withheld.

3 (d) *Notwithstanding any other provision of law, the*
4 *bond may be issued only by an admitted surety. The court*
5 *shall follow the rules, definitions, and procedures set forth*
6 *in Sections 995.030, 995.040, 995.050, 995.110, 995.120,*
7 *995.140, 995.150, 995.160, 995.190, 995.320, 995.330, 995.340,*
8 *995.350, 995.360, 995.370, 995.380, 995.420, and 995.430 of,*
9 *and Article 6 (Commencing with Section 995.610) to*
10 *Article 15 (commencing with Section 996.510), inclusive,*
11 *of Chapter 2 of Title 14 of Part 2 of, the Code of Civil*
12 *Procedure. If approval is obtained in accordance with the*
13 ~~preceding sentence~~ *subdivision (c), no further collection*
14 *of any assessed amount that is the subject of the action*
15 *shall be made during the pendency of that action.*

16 ~~(d)~~

17 (e) The plaintiff, or the agent or attorney of the
18 plaintiff, shall state under oath that the payment of all
19 amounts due was made or a bond has been approved and
20 filed in accordance with this section.

21 ~~(e)~~

22 (f) (1) An action that may be brought pursuant to this
23 section includes both of the following:

24 (A) An action with respect to a tax assessment made
25 on or after the effective date of this section.

26 (B) An action with respect to a tax assessment made
27 prior to the effective date of this section, provided that
28 the tax period for which the disputed assessment was
29 made remains open at the time the action is commenced.

30 (2) An action may not be brought pursuant to this
31 section with respect to a claim for which the bringing of
32 an action is, as of the effective date of this section, barred
33 by another provision or rule of law, including, but not
34 limited to, the doctrine of res judicata.

