

ASSEMBLY BILL

No. 484

Introduced by Assembly Member Eng

February 24, 2009

An act to amend Sections 31 and 7145.5 of the Business and Professions Code, and to add Sections 19265 and 19571 to the Revenue and Taxation Code, relating to taxes.

LEGISLATIVE COUNSEL'S DIGEST

AB 484, as introduced, Eng. Franchise Tax Board: professional or occupational licenses.

The Personal Income Tax Law and the Bank and Corporation Tax Law impose taxes on, or measured by, income. Existing law allows a tax return or return information filed under those laws to be disclosed in a judicial or administrative proceeding pertaining to tax administration under certain circumstances. Existing law requires every board, as defined under the Business and Professions Code, and the Department of Insurance to, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board certain information with respect to every licensee.

This bill would require a state governmental licensing entity, as defined, issuing professional or occupational licenses, certificates, registrations, or permits to provide to the Franchise Tax Board the name and social security number or federal taxpayer identification number of each individual licensee of that entity. The bill would require the Franchise Tax Board, if an individual licensee fails to pay taxes for which a notice of state tax lien has been recorded, as specified, to send a preliminary notice of suspension to the licensee. The bill would provide that the license of a licensee who fails to satisfy the unpaid

taxes by a certain date shall be automatically suspended, except as specified, would require the Franchise Tax Board to mail a notice of suspension to the applicable state governmental licensing entity and to the licensee, and would provide that the suspension be canceled upon compliance with the tax obligation. The bill would require the Franchise Tax Board to meet certain requirements and would make related changes. The bill would make implementation of its provisions contingent upon appropriation of funds for that purpose in the annual Budget Act.

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 31 of the Business and Professions Code
2 is amended to read:

3 31. (a) As used in this section, “board” means any entity listed
4 in Section 101, the entities referred to in Sections 1000 and 3600,
5 the State Bar, the Department of Real Estate, and any other state
6 agency that issues a license, certificate, or registration authorizing
7 a person to engage in a business or profession.

8 (b) Each applicant for the issuance or renewal of a license,
9 certificate, registration, or other means to engage in a business or
10 profession regulated by a board who is not in compliance with a
11 judgment or order for support shall be subject to Section ~~11350.6~~
12 ~~17520 of the Welfare and Institutions Family Code.~~

13 (c) “Compliance with a judgment or order for support,” has the
14 meaning given in paragraph (4) of subdivision (a) of Section
15 ~~11350.6~~ 17520 of the ~~Welfare and Institutions Family Code.~~

16 (d) *Each licensee who has not paid any applicable state income*
17 *tax, including interest, penalties, and other fees, shall be subject*
18 *to Section 19265 of the Revenue and Taxation Code.*

19 SEC. 2. Section 7145.5 of the Business and Professions Code
20 is amended to read:

21 7145.5. (a) The registrar may refuse to issue, reinstate,
22 reactivate, or renew a license or may suspend a license for the
23 failure of a licensee to resolve all outstanding final liabilities, which
24 include taxes, additions to tax, penalties, interest, and any fees that
25 may be assessed by the board, the Department of Industrial

1 Relations, the Employment Development Department, or the
2 Franchise Tax Board.

3 (1) Until the debts covered by this section are satisfied, the
4 qualifying person and any other personnel of record named on a
5 license that has been suspended under this section shall be
6 prohibited from serving in any capacity that is subject to licensure
7 under this chapter, but shall be permitted to act in the capacity of
8 a nonsupervising bona fide employee.

9 (2) The license of any other renewable licensed entity with any
10 of the same personnel of record that have been assessed an
11 outstanding liability covered by this section shall be suspended
12 until the debt has been satisfied or until the same personnel of
13 record disassociate themselves from the renewable licensed entity.

14 (b) The refusal to issue a license or the suspension of a license
15 as provided by this section shall be applicable only if the registrar
16 has mailed a notice preliminary to the refusal or suspension that
17 indicates that the license will be refused or suspended by a date
18 certain. This preliminary notice shall be mailed to the licensee at
19 least 60 days before the date certain.

20 (c) (1) In the case of outstanding final liabilities assessed by
21 the Franchise Tax Board, this section shall be operative within 60
22 days after the Contractors' State License Board has provided the
23 Franchise Tax Board with the information required under Section
24 30, relating to licensing information that includes the federal
25 employee identification number or social security number.

26 ~~(d)~~

27 (2) All versions of the application for contractors' licenses shall
28 include, as part of the application, an authorization by the applicant,
29 in the form and manner mutually agreeable to the Franchise Tax
30 Board and the board, for the Franchise Tax Board to disclose the
31 tax information that is required for the registrar to administer this
32 section. The Franchise Tax Board may from time to time audit
33 these authorizations.

34 (d) *This section shall not be interpreted to conflict with the*
35 *suspension of a license pursuant to Section 19265 of the Revenue*
36 *and Taxation Code.*

37 SEC. 3. Section 19265 is added to the Revenue and Taxation
38 Code, to read:

39 19265. (a) (1) All state governmental licensing entities issuing
40 professional or occupational licenses, certificates, registrations, or

1 permits shall provide to the Franchise Tax Board the name and
2 social security number or federal taxpayer identification number,
3 as applicable, of each licensee of that state governmental licensing
4 entity.

5 (2) If any licensee has failed to pay taxes, including any
6 penalties, interest, and any applicable fees, imposed under Part 10
7 (commencing with Section 17001), Part 11 (commencing with
8 Section 23001), or this part, for which a notice of state tax lien has
9 been recorded in any county recorder's office in this state, pursuant
10 to Chapter 14 (commencing with Section 7150) of Division 7 of
11 Title 1 of the Government Code, the Franchise Tax Board shall
12 mail a preliminary notice of suspension to the licensee indicating
13 that the license will be suspended by a date certain, which shall
14 be at least 60 days after the mailing of the preliminary notice,
15 unless prior to the date certain the licensee pays the unpaid taxes
16 or enters into an installment payment agreement, as described in
17 Section 19008, to satisfy the unpaid taxes. The preliminary notice
18 shall also advise the licensee of the opportunity to request deferral
19 or cancellation of a suspension pursuant to subdivision (b).

20 (3) If any licensee subject to paragraph (2) fails to pay the unpaid
21 taxes or to enter into an installment payment agreement, as
22 described in Section 19008, to satisfy the unpaid taxes prior to the
23 date certain listed in the preliminary notice of suspension, his or
24 her license shall be automatically suspended by operation of this
25 section, except as provided in subdivision (b), and the Franchise
26 Tax Board shall mail a notice of suspension to the applicable state
27 governmental licensing entity and to the licensee. The rights,
28 powers, and privileges of any licensee whose professional or
29 occupational license, certificate, registration, or permit has been
30 suspended pursuant to this section shall be subject to the same
31 prohibitions, limitations, and restrictions as if the professional or
32 occupational license, certificate, registration, or permit were
33 suspended by the state governmental licensing entity that issued
34 the professional or occupational license, certificate, registration,
35 or permit.

36 (4) Upon compliance by the licensee with the tax obligation,
37 either by payment of the unpaid taxes or entry into an installment
38 payment agreement, as described in Section 19008, to satisfy the
39 unpaid taxes, a suspension pursuant to this subdivision shall be
40 canceled. The Franchise Tax Board shall, within 10 business days

1 of compliance by the licensee with the tax obligation, notify both
2 the state governmental licensing entity and the licensee that the
3 unpaid taxes have been paid or that an installment payment
4 agreement, as described in Section 19008, has been entered into
5 to satisfy the unpaid taxes and that the suspension has been
6 canceled.

7 (5) State governmental licensing entities shall provide to the
8 Franchise Tax Board the information required by this subdivision
9 at a time that the Franchise Tax Board may require.

10 (b) (1) The Franchise Tax Board may defer or cancel any
11 suspension authorized by this section if a licensee would experience
12 financial hardship. The Franchise Tax Board shall, if requested by
13 the licensee in writing, provide for an administrative hearing to
14 determine if the licensee will experience financial hardship from
15 the suspension of the license, certificate, registration, or permit.

16 (2) The request for a hearing specified in paragraph (1) shall be
17 made in writing within 60 days from the mailing date of the
18 preliminary notice described in subdivision (a).

19 (3) The Franchise Tax Board shall conduct a hearing within 30
20 days after receipt of a request pursuant to paragraph (1), unless
21 the board postpones the hearing, upon a showing of good cause
22 by the licensee, in which case a suspension pursuant to subdivision
23 (a) shall be deferred until the hearing has been completed.

24 (4) A licensee seeking relief under this subdivision shall only
25 be entitled to relief described in paragraph (1) if the licensee
26 provides the Franchise Tax Board with financial documents that
27 substantiate a financial hardship, and agrees to an acceptable
28 payment arrangement.

29 (c) For purposes of this section and Section 19571, the following
30 definitions shall apply:

31 (1) "Financial hardship" means financial hardship within the
32 meaning of Section 19008, as determined by the Franchise Tax
33 Board, where suspension of a license will result in the licensee
34 being financially unable to pay any part of the amount described
35 in subdivision (a) and the licensee is unable to qualify for an
36 installment payment arrangement as provided for by Section 19008.
37 In order to establish the existence of a financial hardship, the
38 licensee shall submit any information, including information related
39 to reasonable business and personal expenses, requested by the
40 Franchise Tax Board for the purpose of making that determination.

1 (2) "License" includes a certificate, registration, or any other
2 authorization to engage in a profession or occupation issued by a
3 state governmental licensing entity.

4 (3) "Licensee" means an individual authorized by a license,
5 certificate, registration, or other authorization to engage in a
6 profession or occupation issued by a state governmental licensing
7 entity.

8 (4) "State governmental licensing entity" means any entity listed
9 in Section 101, 1000, or 19420 of the Business and Professions
10 Code, the office of the Attorney General, the Department of
11 Insurance, the State Bar of California, the Department of Real
12 Estate, and any other state agency, board, or commission that issues
13 a license, certificate, or registration authorizing an individual to
14 engage in a profession or occupation. "State governmental licensing
15 entity" shall not include the Department of Motor Vehicles.

16 (d) Implementation of this section shall be contingent on the
17 appropriation of funds for the purposes of this section in the annual
18 Budget Act.

19 SEC. 4. Section 19571 is added to the Revenue and Taxation
20 Code, to read:

21 19571. (a) The Franchise Tax Board may disclose to state
22 governmental licensing entities information regarding suspension
23 of a license pursuant to Section 19265.

24 (b) Neither the state governmental licensing entity, nor any
25 officer, employee, or agent, or former officer, employee, or agent
26 of a state governmental licensing entity, may disclose or use any
27 information obtained from the Franchise Tax Board, pursuant to
28 this section, except to inform the public of the suspension of a
29 license pursuant to Section 19265.

30 (c) For purposes of this section, the definitions in Section 19265
31 shall apply.

32 SEC. 5. The Legislature hereby finds and declares the
33 following:

34 (a) It is the intent of the Legislature that, consistent with the
35 decision in *Gallo v. United States District Court* (9th Cir. 2003)
36 349 F.3d 1169, cert. den. (2004) 541 U.S. 1073, the suspension of
37 a professional or occupational license pursuant to this act for failure
38 to pay delinquent taxes is a legislative act, for which due process
39 is satisfied by the legislative notice and hearing procedures.

1 (b) To prevent financial hardship, Section 19265 of the Revenue
2 and Taxation Code, as added by this act, grants a delinquent
3 taxpayer the opportunity for an additional hearing for financial
4 hardship prior to the suspension of a professional or occupational
5 license.

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