california legislature—2009–10 regular session

ASSEMBLY BILL No. 1387

Introduced by Assembly Member Tran

February 27, 2009

An act to add Section 524 to the Evidence Code, and to add Part 10.1 (commencing with Section 15706) to Division 3 of Title 2 of the Government Code, relating to taxation.

legislative counsel's digest

AB 1387, as introduced, Tran. Taxation: State Board of Equalization: Franchise Tax Board: burden of proof.

Existing law imposes various taxes that are administered and collected by the State Board of Equalization and the Franchise Tax Board. Existing law provides that the taxpayer has the burden of proof in court proceedings for a refund of tax, while the state agency has the burden of proof with respect to its assertion of fraud or intent to evade penalties.

This bill would provide, for purposes of the taxes and fees administered by the State Board of Equalization, that the board shall have the burden of proof, by clear and convincing evidence, in sustaining its assertion of penalties for intent to evade or fraud in a civil proceeding.

This bill would also provide, with specified exceptions, that the State Board of Equalization and the Franchise Tax Board shall have the burden of proof in a court or administrative tax proceeding with respect to any factual issue relevant to ascertaining the tax liability of a taxpayer who has established that it is a cooperating taxpayer.

This bill would also provide that its provisions shall not subject a taxpayer to unreasonable search or access to records in violation of the law.

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

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

SECTION 1. Section 524 is added to the Evidence Code, to read:

524. (a) Notwithstanding any other provision of law, in a civil proceeding to which the State Board of Equalization is a party, that board shall have the burden of proof by clear and convincing evidence in sustaining its assertion of a penalty for intent to evade or fraud against a taxpayer or feepayer, with respect to any factual issue relevant to ascertaining the liability of a taxpayer.

(b) Nothing in this section shall be construed to override any requirement to substantiate any item on a return or claim filed with the State Board of Equalization.

(c) Nothing in this section shall subject a taxpayer to unreasonable search or access to records in violation of the United States Constitution, the California Constitution, or any other law.

SEC. 2. Part 10.1 (commencing with Section 15706) is added to Division 3 of Title 2 of the Government Code, to read:

PART 10.1. BURDEN OF PROOF

15706. (a) The State Board of Equalization and Franchise Tax Board shall have the burden of proof in any court or administrative tax proceeding, with respect to a factual issue related to ascertaining the tax liability of a taxpayer that has established that it is a cooperating taxpayer.

(b) For purposes of this section:

(1) "Administrative tax proceeding" means either of the following:

(A) For disputes concerning taxes or fees collected by the State Board of Equalization, the oral hearing before the members of the State Board of Equalization.

(B) For disputes concerning taxes collected by the Franchise Tax Board, the oral hearing before the members of the State Board of Equalization.

(2) "Cooperating taxpayer" means a taxpayer that satisfies all of the following requirements:

(A) Has complied with all relevant statutory, regulatory, or case law substantiation requirements to substantiate any item on a return or claim filed with the State Board of Equalization or the Franchise Tax Board.

(B) Has maintained all records as required by the Revenue and Taxation Code, or any regulations issued by the State Board of Equalization or the Franchise Tax Board, and, upon a reasonable request by the state agency, has provided those records to the state agency.

(C) Has provided credible evidence to the State Board of Equalization or the Franchise Tax Board with respect to any factual issue relevant to ascertaining the tax liability of the taxpayer.

(3) "Tax liability" means any tax or fee assessed or determined by the State Board of Equalization or the Franchise Tax Board, including any interest accrued or penalties levied in association with the tax or fee.

(c) Unless provided otherwise, the burden of proof for purposes of this part shall be a preponderance of the evidence.

(d) This section does not apply to either of the following:

(1) An adjustment proposed and made to a taxpayer's federal income tax return by the federal government.

(2) An appeal filed under Section 19045 or 19324 of the Revenue and Taxation Code that is subject to the provisions of Section 21024 of the Revenue and Taxation Code.

(e) Nothing in this section shall subject a taxpayer to unreasonable search or access to records in violation of the United States Constitution, the California Constitution, or any other law.

(f) This section shall apply only to court and administrative tax proceedings involving assessments or notices of determination issued on or after the date on which this act becomes effective.

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