

AMENDED IN ASSEMBLY FEBRUARY 22, 2010

CALIFORNIA LEGISLATURE—2009—10 EIGHTH EXTRAORDINARY SESSION

SENATE BILL

No. 8

Introduced by Committee on Budget and Fiscal Review

January 20, 2010

~~An act relating to the Budget Act of 2009. An act to amend Sections 31 and 7145.5 of the Business and Professions Code, and to amend Sections 6203, 19116, 19504, and 19777 of, to add Sections 18407.5, 19265, 19266, 19560.5, 19571, and 19777.1 to, and to repeal and amend Section 19755 of, the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 8, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2009. Franchise Tax Board: State Board of Equalization: administration.~~

(1) *The Personal Income Tax Law and the 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 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, and 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.

(2) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use or other consumption in this state, measured by sales price. That law defines a “retailer engaged in business in this state” to include retailers that engage in specified activities in this state and requires every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state to register with the State Board of Equalization and to collect the tax from the purchaser and remit it to the board.

This bill would include in the definition of a “retailer engaged in business in this state” any retailer entering into agreements under which a person in this state, for a commission or other consideration, directly or indirectly refers potential purchasers, whether by a link or an Internet Web site or otherwise, to the retailer, provided the total cumulative sales price from all sales by the retailer to purchasers in this state that are referred pursuant to these agreements is in excess of \$10,000 within the preceding 12 months, except as specified.

(3) The Franchise Tax Board administers the Personal Income Tax Law and the Corporation Tax Law. Existing law authorizes persons that are required to withhold taxes from recipients of income to require the recipients of the income to provide that person with the recipient’s name and address.

This bill would require the recipient of income to also provide the person paying the income with the recipient’s social security number or other taxpayer identification number if requested by the person paying the income.

(4) 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 disclose specified taxpayer information for purposes of data matching, 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.

(5) Existing law imposes various taxes and fees, and certain penalties in connection with tax avoidance and abusive tax shelters, including reportable transactions.

This bill would expand the definition of reportable transactions to include abusive tax avoidance transactions, as defined, and transactions of interest, as defined. This bill would also make technical, nonsubstantive changes to conform to this reference.

(6) 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.

(7) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2009.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

~~This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.~~

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

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
26 Relations, the Employment Development Department, or the
27 Franchise Tax Board.

28 (1) Until the debts covered by this section are satisfied, the
29 qualifying person and any other personnel of record named on a
30 license that has been suspended under this section shall be
31 prohibited from serving in any capacity that is subject to licensure

1 under this chapter, but shall be permitted to act in the capacity of
2 a nonsupervising bona fide employee.

3 (2) The license of any other renewable licensed entity with any
4 of the same personnel of record that have been assessed an
5 outstanding liability covered by this section shall be suspended
6 until the debt has been satisfied or until the same personnel of
7 record disassociate themselves from the renewable licensed entity.

8 (b) The refusal to issue a license or the suspension of a license
9 as provided by this section shall be applicable only if the registrar
10 has mailed a notice preliminary to the refusal or suspension that
11 indicates that the license will be refused or suspended by a date
12 certain. This preliminary notice shall be mailed to the licensee at
13 least 60 days before the date certain.

14 (c) (1) In the case of outstanding final liabilities assessed by
15 the Franchise Tax Board, this section shall be operative within 60
16 days after the Contractors' State License Board has provided the
17 Franchise Tax Board with the information required under Section
18 30, relating to licensing information that includes the federal
19 employee identification number or social security number.

20 ~~(d)~~

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

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

31 *SEC. 3. Section 6203 of the Revenue and Taxation Code is*
32 *amended to read:*

33 6203. (a) Except as provided by Sections 6292 and 6293, every
34 retailer engaged in business in this state and making sales of
35 tangible personal property for storage, use, or other consumption
36 in this state, not exempted under Chapter 3.5 (commencing with
37 Section 6271) or Chapter 4 (commencing with Section 6351),
38 shall, at the time of making the sales or, if the storage, use, or other
39 consumption of the tangible personal property is not then taxable
40 hereunder, at the time the storage, use, or other consumption

1 becomes taxable, collect the tax from the purchaser and give to
2 the purchaser a receipt therefor in the manner and form prescribed
3 by the board.

4 (b) As respects leases constituting sales of tangible personal
5 property, the tax shall be collected from the lessee at the time
6 amounts are paid by the lessee under the lease.

7 (c) “Retailer engaged in business in this state” as used in this
8 section and Section 6202 means and includes any of the following:

9 (1) Any retailer maintaining, occupying, or using, permanently
10 or temporarily, directly or indirectly, or through a subsidiary, or
11 agent, by whatever name called, an office, place of distribution,
12 sales or sample room or place, warehouse or storage place, or other
13 place of business.

14 (2) Any retailer having any representative, agent, salesperson,
15 canvasser, independent contractor, or solicitor operating in this
16 state under the authority of the retailer or its subsidiary for the
17 purpose of selling, delivering, installing, assembling, or the taking
18 of orders for any tangible personal property.

19 (3) As respects a lease, any retailer deriving rentals from a lease
20 of tangible personal property situated in this state.

21 (4) (A) Any retailer soliciting orders for tangible personal
22 property by mail if the solicitations are substantial and recurring
23 and if the retailer benefits from any banking, financing, debt
24 collection, telecommunication, or marketing activities occurring
25 in this state or benefits from the location in this state of authorized
26 installation, servicing, or repair facilities.

27 (B) This paragraph shall become operative upon the enactment
28 of any congressional act that authorizes states to compel the
29 collection of state sales and use taxes by out-of-state retailers.

30 (5) (A) *Any retailer entering into an agreement or agreements*
31 *under which a person or persons in this state, for a commission*
32 *or other consideration, directly or indirectly refers potential*
33 *purchasers of tangible personal property to the retailer, whether*
34 *by a link or an Internet Web site or otherwise, provided that the*
35 *total cumulative sales price from all of the retailer’s sales of*
36 *tangible personal property to purchasers in this state that are*
37 *referred pursuant to all of those agreements with a person or*
38 *persons in this state, within the preceding 12 months, is in excess*
39 *of ten thousand dollars (\$10,000).*

1 (B) This paragraph shall not apply if the retailer can
2 demonstrate that the person in this state with whom the retailer
3 has an agreement did not engage in referrals in the state on behalf
4 of the retailer that would satisfy the requirements of the commerce
5 clause of the United States Constitution.

6 (C) An agreement under which a retailer purchases
7 advertisements from a person or persons in this state, to be
8 delivered on television, radio, in print, on the Internet, or by any
9 other medium, is not an agreement described in subparagraph
10 (A), unless the advertisement revenue paid to the person or persons
11 in this state consists of commissions or other consideration that
12 is based upon sales of tangible personal property.

13 ~~(5)~~

14 (6) Notwithstanding Section 7262, a retailer specified in
15 paragraph (4) above, and not specified in paragraph (1), (2), or (3)
16 above, is a “retailer engaged in business in this state” for the
17 purposes of this part and Part 1.5 (commencing with Section 7200)
18 only.

19 (d) (1) For purposes of this section, “engaged in business in
20 this state” does not include the taking of orders from customers in
21 this state through a computer telecommunications network located
22 in this state which is not directly or indirectly owned by the retailer
23 when the orders result from the electronic display of products on
24 that same network. The exclusion provided by this subdivision
25 shall apply only to a computer telecommunications network that
26 consists substantially of online communications services other
27 than the displaying and taking of orders for products.

28 (2) This subdivision shall become inoperative upon the operative
29 date of provisions of a congressional act that authorize states to
30 compel the collection of state sales and use taxes by out-of-state
31 retailers.

32 (e) Except as provided in this subdivision, a retailer is not a
33 “retailer engaged in business in this state” under paragraph (2) of
34 subdivision (c) if that retailer’s sole physical presence in this state
35 is to engage in convention and trade show activities as described
36 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the
37 retailer, including any of his or her representatives, agents,
38 salespersons, canvassers, independent contractors, or solicitors,
39 does not engage in those convention and trade show activities for
40 more than 15 days, in whole or in part, in this state during any

1 12-month period and did not derive more than one hundred
2 thousand dollars (\$100,000) of net income from those activities
3 in this state during the prior calendar year. Notwithstanding the
4 preceding sentence, a retailer engaging in convention and trade
5 show activities, as described in Section 513(d)(3)(A) of the Internal
6 Revenue Code, is a “retailer engaged in business in this state,” and
7 is liable for collection of the applicable use tax, with respect to
8 any sale of tangible personal property occurring at the convention
9 and trade show activities and with respect to any sale of tangible
10 personal property made pursuant to an order taken at or during
11 those convention and trade show activities.

12 (f) Any limitations created by this section upon the definition
13 of “retailer engaged in business in this state” shall only apply for
14 purposes of tax liability under this code. Nothing in this section is
15 intended to affect or limit, in any way, civil liability or jurisdiction
16 under Section 410.10 of the Code of Civil Procedure.

17 *SEC. 4. Section 18407.5 is added to the Revenue and Taxation*
18 *Code, to read:*

19 *18407.5. (a) The term “reportable transaction,” as defined*
20 *in paragraph (3) of subdivision (a) of Section 18407, shall also*
21 *include any transaction of a type that the Secretary of the Treasury*
22 *under Section 6011 of the Internal Revenue Code for federal*
23 *income tax purposes or the Franchise Tax Board under this section*
24 *for California income or franchise tax purposes determines is a*
25 *transaction of interest, and shall be reported on the return or the*
26 *statement required to be made.*

27 *(b) A transaction of interest is a transaction that is the same as*
28 *or substantially similar to one of the types of transactions that the*
29 *Franchise Tax Board has identified by notice, regulation, or other*
30 *form of published guidance as a transaction of interest. In addition,*
31 *any transaction of interest identified and published pursuant to*
32 *the preceding sentence shall be published on the Internet Web site*
33 *of the Franchise Tax Board.*

34 *(c) This section shall apply to any transaction of interest*
35 *published on or after the effective date of the act adding this*
36 *section.*

37 *SEC. 5. Section 19116 of the Revenue and Taxation Code is*
38 *amended to read:*

39 *19116. (a) In the case of an individual who files a return of*
40 *tax imposed under Part 10 (commencing with Section 17001) for*

a taxable year on or before the due date for the return, including extensions, if the Franchise Tax Board does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis of the liability before the close of the notification period, the Franchise Tax Board shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(b) For purposes of this section:

(1) Except as provided in subdivision (e), "notification period" means the 18-month period beginning on the later of either of the following:

(A) The date on which the return is filed.

(B) The due date of the return without regard to extensions.

(2) "Suspension period" means the period beginning on the day after the close of the notification period and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(c) This section shall be applied separately with respect to each item or adjustment.

(d) This section shall not apply to any of the following:

(1) Any penalty imposed by Section 19131.

(2) Any penalty imposed by Section 19132.

(3) Any interest, penalty, addition to tax, or additional amount involving fraud.

(4) Any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return.

(5) Any criminal penalty.

(6) Any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement.

(7) Any interest, penalty, addition to tax, or additional amount relating to any reportable transaction with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, and any listed transaction, as defined in Section 6707A(c) of the Internal Revenue Code.

(8) *Any interest, penalty, addition to tax, or additional amount relating to any abusive tax avoidance transaction, as defined in Section 19777, as amended by the act adding this paragraph.*

(e) For taxpayers required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority the following rules shall apply:

(1) The notification period under subdivision (a) shall be either of the following:

(A) One year from the date the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if the taxpayer or the Internal Revenue Service reports that change or correction within six months after the final federal determination.

(B) Two years from the date when the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if after the six-month period required in Section 18622, a taxpayer or the Internal Revenue Service reports a change or correction.

(2) The suspension period under subdivision (a) shall mean the period beginning on the day after the close of the notification period under paragraph (1) and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(f) For notices sent after January 1, 2004, this section does not apply to taxpayers with taxable income greater than two hundred thousand dollars (\$200,000) that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter ~~(within the meaning of Section 19777)~~ as defined by Section 19777, as added by Chapter 656 of the Statutes of 2003 and amended by Section 331 of Chapter 183 of the Statutes of 2004.

(g) This section shall apply to taxable years ending after October 10, 1999.

(h) The amendments made to this section by ~~the act adding this subdivision~~ Chapter 691 of the Statutes of 2005 shall apply to notices sent after January 1, 2005.

(i) *The amendments made to this section by the act adding this subdivision shall apply to notices mailed, or amended returns filed, on or after the effective date of the act adding this subdivision.*

SEC. 6. Section 19265 is added to the Revenue and Taxation Code, to read:

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

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

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

37 (4) Upon compliance by the licensee with the tax obligation,
38 either by payment of the unpaid taxes or entry into an installment
39 payment agreement, as described in Section 19008, to satisfy the
40 unpaid taxes, a suspension pursuant to this subdivision shall be

1 canceled. The Franchise Tax Board shall, within 10 business days
2 of compliance by the licensee with the tax obligation, notify both
3 the state governmental licensing entity and the licensee that the
4 unpaid taxes have been paid or that an installment payment
5 agreement, as described in Section 19008, has been entered into
6 to satisfy the unpaid taxes and that the suspension has been
7 canceled.

8 (5) If a license is not suspended, or if the suspension of a license
9 is canceled, based on the licensee entering into an installment
10 payment agreement as described in Section 19008, and the licensee
11 fails to comply with the terms of the installment payment
12 agreement, that license shall be suspended as of the date that is
13 30 days after the date of termination of that installment payment
14 agreement. If a license is suspended pursuant to this paragraph,
15 the Franchise Tax Board shall provide notice of suspension to the
16 applicable state governmental licensing entity and mail a notice
17 of suspension to the licensee.

18 (6) State governmental licensing entities shall provide to the
19 Franchise Tax Board the information required by this subdivision
20 at a time that the Franchise Tax Board may require.

21 (b) (1) The Franchise Tax Board may defer or cancel any
22 suspension authorized by this section if a licensee would experience
23 financial hardship. The Franchise Tax Board shall, if requested
24 by the licensee in writing, provide for an administrative hearing
25 to determine if the licensee will experience financial hardship from
26 the suspension of the license, certificate, registration, or permit.

27 (2) The request for a hearing specified in paragraph (1) shall
28 be made in writing within 30 days from the mailing date of the
29 preliminary notice described in subdivision (a).

30 (3) The Franchise Tax Board shall conduct a hearing within
31 30 days after receipt of a request pursuant to paragraph (1), unless
32 the board postpones the hearing, upon a showing of good cause
33 by the licensee, in which case a suspension pursuant to subdivision
34 (a) shall be deferred until the hearing has been completed.

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

1 (5) If the deferral of a suspension of a license under this
2 subdivision is no longer operative, that license shall be suspended
3 as of the date that is 30 days after the date the deferral is no longer
4 operative. If a license is suspended pursuant to this paragraph,
5 the Franchise Tax Board shall provide notice of suspension to the
6 applicable state governmental licensing entity and mail a notice
7 of suspension to the licensee.

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

10 (1) “Financial hardship” means financial hardship within the
11 meaning of Section 19008, as determined by the Franchise Tax
12 Board, where suspension of a license will result in the licensee
13 being financially unable to pay any part of the amount described
14 in subdivision (a) and the licensee is unable to qualify for an
15 installment payment arrangement as provided for by Section 19008.
16 In order to establish the existence of a financial hardship, the
17 licensee shall submit any information, including information
18 related to reasonable business and personal expenses, requested
19 by the Franchise Tax Board for the purpose of making that
20 determination.

21 (2) “License” includes a certificate, registration, or any other
22 authorization to engage in a profession or occupation issued by
23 a state governmental licensing entity.

24 (3) “Licensee” means an individual authorized by a license,
25 certificate, registration, or other authorization to engage in a
26 profession or occupation issued by a state governmental licensing
27 entity.

28 (4) “State governmental licensing entity” means any entity listed
29 in Section 101, 1000, or 19420 of the Business and Professions
30 Code, the office of the Attorney General, the Department of
31 Insurance, the State Bar of California, the Department of Real
32 Estate, and any other state agency, board, or commission that
33 issues a license, certificate, or registration authorizing an
34 individual to engage in a profession or occupation. “State
35 governmental licensing entity” shall not include the Department
36 of Motor Vehicles.

37 (d) Notwithstanding any other law, a state governmental
38 licensing entity may, with the approval of the appropriate
39 department director or governing body, impose a fee on licensees
40 whose license has been suspended as described in subdivision (a).

1 The fee shall not exceed the amount necessary for the licensing
2 entity to cover its costs in carrying out the provisions of this
3 section. Fees imposed pursuant to this section shall be deposited
4 in the fund in which other fees imposed by the state governmental
5 licensing entity are deposited and shall be available to that entity
6 upon appropriation in the annual Budget Act.

7 (e) The process described in subdivision (b) shall constitute the
8 sole administrative remedy for contesting the suspension of a
9 license under this section. The procedures in the administrative
10 adjudication provisions of the Administrative Procedure Act
11 (Chapter 4.5 (commencing with Section 11400) and Chapter 5
12 (commencing with Section 11500) of Part 1 of Division 3 of Title
13 2 of the Government Code) shall not apply to the suspension of a
14 license pursuant to this section.

15 SEC. 7. Section 19266 is added to the Revenue and Taxation
16 Code, to read:

17 19266. (a) (1) The Franchise Tax Board, in coordination with
18 financial institutions doing business in this state, shall operate a
19 Financial Institution Record Match System utilizing automated
20 data exchanges to the maximum extent feasible.

21 (2) The Franchise Tax Board shall prescribe any rules and
22 regulations that may be necessary or appropriate to implement
23 this section. These rules and regulations shall include all of the
24 following:

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

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

37 (C) Authority for the Franchise Tax Board to exempt a financial
38 institution from the requirements of this section if the Franchise
39 Tax Board determines that the financial institution participation

1 would not generate sufficient revenue to be cost effective for the
2 Franchise Tax Board.

3 (D) Authority for the Franchise Tax Board to temporarily
4 suspend the requirements of this section for a financial institution
5 if the financial institution provides the Franchise Tax Board with
6 a written notice from its supervisory banking authority that it is
7 determined to be undercapitalized, significantly undercapitalized,
8 or critically undercapitalized as defined by FDIC Regulation
9 325.103(b)(3), (4), and (5) or NCUA Regulation 702.102. The
10 notice provided pursuant to this section shall be subject to the
11 protections of Section 19542.

12 (b) The Financial Institution Data Record Match System shall
13 not be subject to any limitation set forth in Chapter 20
14 (commencing with Section 7460) of Division 7 of Title 1 of the
15 Government Code. However, any use of the information provided
16 pursuant to this section for any purpose other than the collection
17 of delinquent franchise or income tax or other debts referred to
18 the Franchise Tax Board for collection, as imposed under Part 5
19 (commencing with Section 10701), Part 10 (commencing with
20 Section 17001), Part 10.2 (commencing with Section 18401), or
21 Part 11 (commencing with Section 23001) shall be a violation of
22 Section 19542.

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

31 (2) The first data file created by the Franchise Tax Board for
32 purposes of matching tax debtor records to financial institution
33 accountholder records shall be limited to 600,000 tax debtor
34 records. The number of tax debtor records included in a subsequent
35 data file created by the Franchise Tax Board may be increased by
36 no more than 600,000 tax debtor records greater than the number
37 of tax debtor records included in the immediately preceding data
38 file until all eligible tax debtor records are included in the data
39 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 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), Part 10.2 (commencing with Section 18401), 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 19006.

(i) A financial institution shall be reimbursed by the Franchise Tax Board for actual costs incurred to implement the provisions of 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) This section shall apply with respect to persons that are delinquent tax debtors on and after the effective date of the act adding this section.

SEC. 8. Section 19504 of the Revenue and Taxation Code is amended to read:

19504. (a) The Franchise Tax Board, for the purpose of administering its duties under this part, including ascertaining the correctness of any return; making a return where none has been made; determining or collecting the liability of any person in

1 respect of any liability imposed by Part 10 (commencing with
2 Section 17001), Part 11 (commencing with Section 23001), or this
3 part (or the liability at law or in equity of any transferee in respect
4 of that liability); shall have the power to require by demand, that
5 an entity of any kind including, but not limited to, employers,
6 persons, or financial institutions provide information or make
7 available for examination or copying at a specified time and place,
8 or both, any book, papers, or other data which may be relevant to
9 that purpose. Any demand to a financial institution shall comply
10 with the California Right to Financial Privacy Act set forth in
11 Chapter 20 (commencing with Section 7460) of Division 7 of Title
12 1 of the Government Code. Information that may be required upon
13 demand includes, but is not limited to, any of the following:

14 (1) Addresses and telephone numbers of persons designated by
15 the Franchise Tax Board.

16 (2) Information contained on Federal Form W-2 (Wage and Tax
17 Statement), Federal Form W-4 (Employee's Withholding
18 Allowance Certificate), or State Form DE-4 (Employee's
19 Withholding Allowance Certificate).

20 (b) The Franchise Tax Board may require the attendance of the
21 taxpayer or of any other person having knowledge in the premises
22 and may take testimony and require material proof for its
23 information and administer oaths to carry out this part.

24 (c) (1) The Franchise Tax Board may issue subpoenas or
25 subpoenas duces tecum, which subpoenas must be signed by any
26 member of the Franchise Tax Board, and may be served on any
27 person for any purpose.

28 (2) For taxpayers that have been contacted by the Franchise Tax
29 Board regarding the use of a ~~potentially abusive tax shelter (within~~
30 ~~the meaning of Section 19777)~~ *an abusive tax avoidance*
31 *transaction, as defined by Section 19777 as amended by the act*
32 *amending this paragraph*, the subpoena may be signed by any
33 member of the Franchise Tax Board, the Executive Officer of the
34 Franchise Tax Board, or any designee.

35 (d) Obedience to subpoenas or subpoenas duces tecum issued
36 in accordance with this section may be enforced by application to
37 the superior court as set forth in Article 2 (commencing with
38 Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of
39 the Government Code.

(e) When examining a return, the Franchise Tax Board shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Franchise Tax Board has a reasonable indication that there is a likelihood of unreported income. This subdivision applies to any examination beginning on or after October 10, 1999.

(f) *The amendments made to this section by the act adding this subdivision shall apply to subpoenas issued on or after the effective date of the act adding this subdivision.*

SEC. 9. Section 19560.5 is added to the Revenue and Taxation Code, to read:

19560.5. *Notwithstanding any law to the contrary, to effectuate the Financial Institution Record Match System prescribed under Section 19266, the Franchise Tax Board may disclose the name and social security number or taxpayer identification number to designated financial institutions or their authorized processing agent for purposes of matching debtor records to accountholder records at the financial institution. Any use of the data provided by the Franchise Tax Board for a purpose other than those identified by Section 19266 is prohibited and considered a violation of Section 19542.*

SEC. 10. Section 19571 is added to the Revenue and Taxation Code, to read:

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

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

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

SEC. 11. Section 19755 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

~~19755. (a) Notwithstanding Section 19057, with respect to proposed deficiency assessments related to an abusive tax avoidance transaction, as defined in subdivision (c) of Section~~

1 19753, a notice of a proposed deficiency assessment may be mailed
2 to the taxpayer within eight years after the return was filed, or
3 within the period otherwise provided in Article 3 (commencing
4 with Section 19031) of Chapter 4 of this part, whichever expires
5 later.

6 (b) ~~This section shall apply to any return filed under this part
7 on or after January 1, 2000.~~

8 *SEC. 12. Section 19755 of the Revenue and Taxation Code, as*
9 *added by Section 13 of Chapter 656 of the Statutes of 2003, is*
10 *amended to read:*

11 19755. (a) Notwithstanding Section 19057, with respect to
12 proposed deficiency assessments related to an abusive tax
13 avoidance transaction, as defined in ~~subdivision (c) of Section~~
14 ~~19753~~, Section 19777, other than a gross misstatement within the
15 meaning of Section 6404(g)(2)(D) of the Internal Revenue Code,
16 a notice of a proposed deficiency assessment may be mailed to the
17 taxpayer within eight years after the return was filed, or within the
18 period otherwise provided in Article 3 (commencing with Section
19 19031) of Chapter 4 of this part, whichever expires later.

20 (b) This section shall apply to any return filed under this part
21 on or after January 1, 2000.

22 (c) *The amendments made to this section by the act adding this*
23 *subdivision shall apply to taxable years beginning on or after*
24 *January 1, 2010.*

25 *SEC. 13. Section 19777 of the Revenue and Taxation Code is*
26 *amended to read:*

27 19777. (a) If a taxpayer has been contacted by the Franchise
28 Tax Board regarding a reportable transaction, as defined in Section
29 6707A(c)(1) of the Internal Revenue Code with respect to which
30 the requirements of Section 6664(d)(2)(A) of the Internal Revenue
31 Code are not met, any listed transaction, as defined in Section
32 6707A(c)(2) of the Internal Revenue Code, or a gross misstatement
33 within the meaning of Section 6404(g)(2)(D) of the Internal
34 Revenue Code, and has a deficiency, an abusive tax avoidance
35 transaction, and has a deficiency attributable to an abusive tax
36 avoidance transaction, there shall be added to the tax an amount
37 equal to 100 percent of the interest payable under Section 19101
38 on the portion of the deficiency attributable to that transaction for
39 the period beginning on the last date prescribed by law for the

1 payment of that tax (determined without regard to extensions) and
2 ending on the date the notice of proposed assessment is mailed.

3 (b) For purposes of this section, “abusive tax avoidance
4 transaction” means any of the following:

5 (1) A tax shelter as defined in Section 6662(d)(2)(C) of the
6 Internal Revenue Code. For purposes of this chapter, Section
7 6662(d)(2)(C) of the Internal Revenue Code is modified by
8 substituting the phrase “income or franchise tax” for “federal
9 income tax.”

10 (2) A reportable transaction, as defined in Section 6707A(c)(1)
11 of the Internal Revenue Code, with respect to which the
12 requirements of Section 6664(d)(2)(A) of the Internal Revenue
13 Code are not met.

14 (3) A listed transaction, as defined in Section 6707A(c)(2) of
15 the Internal Revenue Code.

16 (4) A gross misstatement, within the meaning of Section
17 6404(g)(2)(D) of the Internal Revenue Code.

18 (5) Any transaction to which Section 19774 applies.

19 ~~(b)~~

20 (c) The penalty imposed by this section is in addition to any
21 other penalty imposed under Part 10 (commencing with Section
22 17001), Part 11 (commencing with Section 23001), or this part.

23 (d) (1) If a taxpayer files an amended return reporting an
24 abusive tax avoidance transaction, described in subdivision (b),
25 after the taxpayer is contacted by the Franchise Tax Board
26 regarding that abusive tax avoidance transaction but before a
27 notice of proposed assessment is issued under Section 19033, then
28 the amount of the penalty under this section shall be 50 percent
29 of the interest payable under Section 19101 with respect to the
30 amount of any additional tax reflected in the amended return
31 attributable to that abusive tax avoidance transaction.

32 (2) If a notice of proposed assessment under Section 19033,
33 with respect to an abusive tax avoidance transaction as described
34 in subdivision (a), is issued after the amended return described in
35 paragraph (1) is filed, the penalty imposed pursuant to subdivision
36 (a) shall be applicable to the additional tax reflected in the notice
37 of proposed assessment attributable to that abusive tax avoidance
38 transaction.

39 (e) The amendments made to this section by the act adding this
40 subdivision shall apply to notices mailed on or after the effective

1 *date of the act and to amended returns filed more than 90 days*
2 *after the effective date with respect to taxable years for which the*
3 *statute of limitations for mailing a notice of proposed assessment*
4 *has not expired as of that date.*

5 SEC. 14. *Section 19777.1 is added to the Revenue and Taxation*
6 *Code, to read:*

7 *19777.1. (a) If the notice of proposed assessment of additional*
8 *tax has been sent with respect to the penalty to which Section*
9 *19777 applies, only the Chief Counsel of the Franchise Tax Board*
10 *may compromise all or any portion of that penalty.*

11 *(b) The exercise of authority under subdivision (a) shall be only*
12 *at the sole discretion of the Chief Counsel of the Franchise Tax*
13 *Board and may not be delegated.*

14 *(c) Notwithstanding any other law, any determination under*
15 *this section may not be reviewed in any administrative or judicial*
16 *proceeding.*

17 SEC. 15. *The Legislature hereby finds and declares the*
18 *following:*

19 *(a) It is the intent of the Legislature that, consistent with the*
20 *decision in Gallo v. United States District Court (9th Cir. 2003)*
21 *349 F.3d 1169, cert. den. (2004) 541 U.S. 1073, the suspension of*
22 *a professional or occupational license pursuant to Revenue and*
23 *Taxation Code Section 19265, as added by Section 7 of this act*
24 *for failure to pay delinquent taxes, is a legislative act, for which*
25 *due process is satisfied by the legislative notice and hearing*
26 *procedures.*

27 *(b) To prevent financial hardship, Section 19265 of the Revenue*
28 *and Taxation Code, as added by this act, grants a delinquent*
29 *taxpayer the opportunity for an additional hearing for financial*
30 *hardship prior to the suspension of a professional or occupational*
31 *license.*

32 SEC. 16. *The provisions of this measure are severable. If any*
33 *provision of this measure or its application is held invalid, that*
34 *invalidity shall not affect other provisions or applications that can*
35 *be given effect without the invalid provision or application.*

36 SEC. 17. *No reimbursement is required by this act pursuant*
37 *to Section 6 of Article XIII B of the California Constitution because*
38 *the only costs that may be incurred by a local agency or school*
39 *district will be incurred because this act creates a new crime or*
40 *infraction, eliminates a crime or infraction, or changes the penalty*

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

5 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
6 ~~changes relating to the Budget Act of 2009.~~

7 ~~SEC. 2.~~

8 *SEC. 18.* This act addresses the fiscal emergency declared by
9 the Governor by proclamation on January 8, 2010, pursuant to
10 subdivision (f) of Section 10 of Article IV of the California
11 Constitution.

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