AMENDED IN SENATE JUNE 15, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2183

Introduced by Assembly Member Smyth

February 23, 2012

An act to ~~repeal Section 6515 of the Government Code~~ *amend Section 15640 of the Government Code, and to add Article 2.5 (commencing with Section 1660) to Chapter 1 of Part 3 of Division 1 of the Revenue and Taxation Code*, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2183, as amended, Smyth. ~~Joint exercise of powers.~~ *Local government: assessors: county board of equalization: assessment appeals board: tax agents.*

Existing law requires every assessor to assess all property subject to general property taxation at its full value on the lien date, as provided, and to prepare an assessment roll in which all property within the county which it is the assessor's duty to assess is required to be listed. Existing law requires a county board of equalization or an assessment appeals board to equalize the valuation of taxable property within the county for the purpose of taxation. Existing law authorizes a taxpayer, with respect to each assessment year, to file an application for a reduction in an assessment, as provided, with the county board, which is the county board of supervisors meeting as a county board of equalization of an assessment appeals board.

This bill would, on and after January 1, 2014, require an agent, as defined, representing a taxpayer before the assessor, a county board of equalization, or an assessment appeals board, to register with a registering jurisdiction, as defined, prior to representing a taxpayer *before that jurisdiction. This bill would require specified information to be included in the agent registration, and would authorize the registering jurisdiction to prescribe the procedures, forms, and means of filing the agent registration. This bill would require the registering jurisdiction to set, charge, and collect a fee in an amount necessary to recover the costs of registration, including the amendment and renewal of registrations. This bill would impose certain affirmative duties upon each agent, and would prohibit each agent from engaging in certain activities. This bill would authorize the registering jurisdiction to reprimand, suspend, or deregister any agent from representation before that jurisdiction under certain circumstances, and to impose a monetary penalty on any agent who engages in certain prohibited activities, as provided.*

By imposing new duties upon local county officials with respect to the registration of tax agents, this bill would impose a state-mandated local program.

Existing law requires the State Board of Equalization to make surveys in each county and city and county to, among other things, determine the adequacy of the procedures and practices employed by the county assessor in the valuation of property for the purposes of taxation and in the performance generally of the assessor's duties.

This bill would expand the requirements of the survey conducted by the State Board of Equalization to include a review of the procedures and practices that regulate the behavior of agents, as defined.

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.

~~Existing law provides that in addition to other powers, any agency, commission, or board provided for by a joint powers agreement between an irrigation district and a city, is authorized to issue revenue bonds to pay the cost and expense of acquiring, constructing, improving, and financing a project for specified purposes. Existing law makes this provision inoperative after December 31, 1973, except as specified.~~

~~This bill would repeal this provision.~~

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:

SECTION 1. Section 15640 of the Government Code is amended to read:

15640. (a) The State Board of Equalization shall make surveys in each county and city and county to determine the adequacy of the procedures and practices employed by the county assessor in the valuation of property for the purposes of taxation and in the performance generally of the duties enjoined upon him or her.

(b) The surveys shall include a review of the practices of the assessor with respect to uniformity of treatment of all classes of property to ensure that all classes are treated equitably, and that no class receives a systematic overvaluation or undervaluation as compared to other classes of property in the county or city and county.

(c) The surveys may include a sampling of assessments from the local assessment rolls. Any sampling conducted pursuant to subdivision (b) of Section 15643 shall be sufficient in size and dispersion to insure an adequate representation therein of the several classes of property throughout the county.

(d) In addition, the board may periodically conduct statewide surveys limited in scope to specific topics, issues, or problems requiring immediate attention.

(e) The board's duly authorized representatives shall, for purposes of these surveys, have access to, and may make copies of, all records, public or otherwise, maintained in the office of any county assessor.

(f) The board shall develop procedures to carry out its duties under this section after consultation with the California Assessors' Association. The board shall also provide a right to each county assessor to appeal to the board appraisals made within his or her county where differences have not been resolved before completion of a field review and shall adopt procedures to implement the appeal process.

(g) The survey may include a review of the procedures and practices that regulate the behavior of agents as defined in Section 1661 of the Revenue and Taxation Code.

SEC. 2. Article 2.5 (commencing with Section 1660) is added to Chapter 1 of Part 3 of Division 1 of the Revenue and Taxation Code, to read:

Article 2.5. Duties of Tax Agents

1660. The Legislature finds and declares that in order to protect the rights of taxpayers and to advance the professional practice of tax agents at the local level so that tax agents are held to the highest ethical standards in California, it is necessary to enact legislation establishing a code of practice for tax agents similar to regulations established at the federal level for enrolled agents.

1661. (a) For purposes of this chapter and Chapter 3, "agent" shall include any person authorized to represent a taxpayer as an agent in connection with any matter before the assessor, a county board of equalization, or an assessment appeals board. An agent may be a firm or other entity, but that firm or entity may only use individual agents registered pursuant to this article to represent a taxpayer before a registering jurisdiction.

(b) For purposes of this article, a "registering jurisdiction" means the county with which an agent has registered pursuant to this article.

(c) This article shall not apply to a person representing any of the following:

(1) Himself or herself.

(2) An immediate family member.

(3) The agent's full-time employer.

(4) An entity of which the agent is a partner, officer, or owner of 10 percent or more of the value of the entity.

(d) This article shall not be construed to authorize persons who are not members of the bar to practice law.

1662. (a) An agent shall register with a registering jurisdiction pursuant to this article prior to the representation of a taxpayer before the assessor, a county board of equalization, or an assessment appeals board in that jurisdiction. The registration required by this section shall further apply in situations where an authorized agent relationship with the taxpayer has already been formed.

(b) An entity that employs or contracts for the services of individual agents and provides representation services may itself register as an agent, provided that each employee or contractor who will provide services as an agent is also registered pursuant to this article.

(c) A person may not register or provide services as an agent if that person satisfies any of the following:

(1) Has been convicted of any criminal offense under state or federal tax laws.

(2) Has been convicted of any criminal offense involving dishonesty, breach of trust, or moral turpitude.

(3) Has been disbarred or suspended from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any state, territory, or possession of the United States, including a commonwealth, or the District of Columbia, any court of record, or any agency, body, or board.

(d) (1) Attorneys and enrolled agents shall not be required to register pursuant to this section.

(2) For purposes of this section, both of the following shall apply:

(A) "Attorney" means any natural person, professional law association, corporation, or partnership authorized under the applicable laws of this state to practice law.

(B) "Enrolled agent" means any individual enrolled as an agent pursuant to Part 10 of Title 31 of the Code of Federal Regulations who is not currently under suspension or disbarment from practice before the Internal Revenue Service.

(e) It shall be a violation of this article for any person to act as an agent under this chapter if that agent's registration has been suspended or that agent has been deregistered.

1663. (a) The agent registration shall include all of the following information:

(1) The full name, business address, business telephone number, and business e-mail address, if applicable, of the agent.

(2) If the agent is an individual, the name of the agent's employer.

(3) If the agent is a firm or other entity, a list of the partners, owners, officers, employees, or contractors of the agent firm or entity that may provide services as a registered agent.

(4) A recent photograph of the agent, if applicable.

(5) A signed statement that the agent is qualified for registration under this article, and has read, understands, and agrees to comply with this article.

(6) Any other information required by the registering jurisdiction.

(b) If any material change occurs in the agent's registration information, the agent shall file an amendment to the agent registration with the registering jurisdiction within 30 days of the change of information.

(c) Agent registrations shall be renewed by the agent every two years. An agent shall have 30 days from the two-year expiration date to renew the registration, after which the authority to represent a taxpayer before the registering jurisdiction is automatically suspended.

(d) The registering jurisdiction may prescribe the procedures, forms, and means of filing for registration.

(e) The registering jurisdiction shall set, charge, and collect a fee in an amount necessary to recover the costs of registration for each agent, including the amendment and renewal of registrations.

(f) The agent registration required pursuant to this section is a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

1664. (a) Every agent shall have an affirmative duty to do all of the following:

(1) Exercise due diligence in determining the correctness of oral or written representations made by the agent and the taxpayer, and otherwise be thoroughly familiar with the facts pertaining to the matter before the registering jurisdiction.

(2) Promptly submit records or information upon request of the registering jurisdiction in any matter before the registering jurisdiction unless the agent believes in good faith and on reasonable grounds that the records or information are privileged or otherwise confidential.

(3) Not interfere, or attempt to interfere, with any proper and lawful effort by the registering jurisdiction, its public officials, or public employees, to obtain any record or information unless the agent believes in good faith and on reasonable grounds that the record or information is privileged.

(4) Promptly advise a taxpayer, if the agent knows the taxpayer has not complied with applicable statutes, regulations, and rules or has made an error in or omission from any document submitted or executed under this chapter, of the fact of such noncompliance,

error, or omission, and further advise the taxpayer of the consequences under the applicable statutes, regulations, and rules.

(5) Promptly return any and all records of the taxpayer that are necessary for the taxpayer to comply with his or her legal obligations, although the agent may retain copies of the records returned to a taxpayer.

(6) (A) Include in any written or broadcast advertisement, promotion, offer, or solicitation of an assessment reduction filing service a disclosure that the agent is registered in the registering jurisdiction where the service is being offered, including the agent's registration number for that registering jurisdiction.

(B) For purposes of this paragraph, "assessment reduction filing service" has the same meaning as defined in Section 17537.9 of the Business and Professions Code.

(b) The existence of a dispute over fees does not relieve the agent of his or her responsibility under this section.

1665. An agent shall not engage in any of the following activities:

(a) Directly or indirectly attempt to influence, or offer or agree to attempt to influence, the official action of any public official or public employee of the registering jurisdiction by the use of threats, false accusations, duress, or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, campaign contribution, favor, or thing of value.

(b) Do anything with the purpose of placing any public official, public employee, or candidate for public office under personal obligation to the agent or another.

(c) Use false or misleading representations with the intent to deceive a client or prospective client in order to procure employment, or intimate that the agent is able improperly to obtain special consideration or action from the registering jurisdiction or any public official, public employee, or candidate for public office.

(d) Act or attempt to act in any way as an agent of a taxpayer, or falsely claim to be the agent of a taxpayer, without the valid authorization of that taxpayer to establish an agency relationship.

(e) Deceive or attempt to deceive any public official or candidate for public office with regard to any material fact pertinent to any pending or proposed tax related or administrative action pending before the registering jurisdiction.

(f) Knowingly give false or misleading information, or participate in any way in the giving of false or misleading information to the registering jurisdiction or any public official or public employee thereof, in connection with any matter pending or likely to be pending before them. Facts or other matters contained in testimony, tax returns, financial statements, assessment appeals, affidavits, declarations, valuations, and any other document or statement, written or oral, are included in the term "information."

(g) Use or participate in any way in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim, or a misleading or deceptive statement or claim.

(h) Willfully assist, counsel, or encourage a client or prospective client to violate any federal, state, or local tax law, or knowingly counsel or suggest to a client or prospective client an illegal plan to evade federal, state, or local taxes or payment thereof.

(i) Willfully, recklessly, or through gross incompetence submit or execute a document, make an oral representation, or advise a taxpayer to submit or execute a document or make an oral representation, that the agent knows or reasonably should know contains a position that is frivolous, lacks a reasonable basis in fact, or represents a willful attempt to understate the liability for tax or a reckless or intentional disregard of applicable statutes, rules, or regulations by the agent.

(j) Willfully fail to prepare, execute, or submit required documents unless the failure is due to reasonable cause and not due to willful neglect.

(k) Charge an unconscionable fee in connection with any matter before the registering jurisdiction.

(l) Violate Section 17537.9 of the Business and Professions Code.

(m) Knowingly aid and abet another person to practice as an agent before the registering jurisdiction during a period of suspension, deregistration, or ineligibility of such other person.

(n) Willfully represent a taxpayer before a public official or public employee of the registering jurisdiction unless the practitioner is authorized to do so pursuant to this article.

(o) Engage in contemptuous conduct in connection with practice before the registering jurisdiction, including the use of abusive

language, making false accusations or statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

1666. The registering jurisdiction, after notice and an opportunity for a proceeding sufficient to ensure due process, may do both of the following:

(a) (1) Reprimand, suspend, or deregister any agent from representation before the jurisdiction if the agent fails to materially comply with this article.

(2) A suspended or deregistered agent may petition for reinstatement before the registering jurisdiction after the expiration of five years following the suspension or deregistration. Reinstatement may not be granted unless the registering jurisdiction is satisfied that the petitioner is not likely to thereafter conduct himself or herself contrary to this article, and that granting the reinstatement would not otherwise be contrary to the public interest.

(b) (1) Impose a monetary penalty on any agent who violates Section 1662 or 1665. If the agent is found to have acted on behalf of an employer, firm, or entity, the registering jurisdiction may impose a monetary penalty on the employer, firm, or entity if the employer, firm, or entity reasonably should have known of the conduct. The registering jurisdiction may accept an agent's offer of consent to be sanctioned in lieu of instituting or continuing a proceeding.

(2) The amount of the penalty shall not exceed the gross income derived or to be derived from the conduct giving rise to the penalty. Any monetary penalty imposed on an agent under this section may be in addition to or in lieu of any reprimand, suspension, or deregistration and may be in addition to a penalty imposed on an employer, firm, or other entity under this section.

(3) The penalties imposed by this subdivision shall take into account all relevant facts and circumstances.

1667. A registering jurisdiction may jointly administer the registration of tax agents pursuant to this article with another registering jurisdiction upon approval of the county board of supervisors of each registering jurisdiction.

1668. The registering jurisdiction may adopt further ordinances, standards, criteria, procedures, determinations, rules, notices, guidelines, forms, and instructions necessary to carry out *the purposes of this article, which is to regulate the activity of agents representing taxpayers in equalization matters before that jurisdiction.*

1669. This article shall become operative on January 1, 2014.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

~~SECTION 1. Section 6515 of the Government Code is repealed.~~

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