

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 2, 2008
POSITION: Oppose unless amended

BILL NUMBER: SB 1146
AUTHOR: G. Cedillo
RELATED BILLS: AB 63 - Statutes of 2001, SB 1374 - Statutes of 2006, SB 978 - 2007-08

BILL SUMMARY: Tax Administration: Disclosure of Information: Cities

Current law generally prohibits the unlawful disclosure or inspection of any income tax return information except as specified in law, but allows the Franchise Tax Board (FTB) to permit tax officials of cities to obtain tax information pursuant to a written agreement between FTB and the taxing authority of a city.

This bill would require cities that assess a city business tax or require a city business license to report certain information annually to FTB.

FISCAL SUMMARY

Finance estimates this bill could result in increased General Fund revenues of \$6 million in 2008-09, \$22 million in 2009-10, and \$34 million in 2010-11. The information required by this bill is collected by the cities under existing law, and requires only electronic transmission to the FTB. Finance concurs with FTB estimates that this bill would result in General Fund costs of \$2.8 million in 2008-09, and \$2.7 million per annum ongoing, including \$1.9 million annual costs to reimburse cities for their costs.

SUMMARY OF CHANGES

Changes to this bill since our analysis of the April 3, 2008 version provide extended sunset dates for the exchange of information among FTB and federal, state and local governments, and restore existing provisions to the Revenue and Taxation Code that require a political subdivision to provide notice to a taxpayer when seeking copies of tax returns from the FTB. We note that amendments to this bill addressing mandate concerns fail to limit the size of possible mandate claims as noted in Finance's previous analysis and do not include all of Finance's suggested amendments.

COMMENTS

Finance notes the following with regards to this bill:

- This bill partially addresses mandate concerns previously expressed by Finance by capping reimbursement of cities' costs at a rate not to exceed \$1 per usable record, and providing that if the Commission on State Mandates (COSM) finds costs in excess of reimbursements, this legislation shall be repealed within 90 days of that finding unless the Director of Finance files a written notice of appeal of the finding.
The first proposed amendment would exempt cities from submitting data in accordance with this bill's requirements if the cost of doing so would exceed \$1 per record submitted. This will help further insulate against the future possibility of a costly mandate claim.

COMMENTS (Continued)

- By stipulating that cities shall not be required to submit information until directed to do so by FTB, the second amendment will ensure that FTB is not required to redirect funding from other activities to reimburse cities for submitting the information. Instead, this will allow FTB to direct that the information

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Department Deputy Director Date

Governor's Office: By: Date: Position Approved
Position Disapproved

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be submitted either upon FTB's receipt of an appropriation, or upon its determination that the associated costs can be absorbed from within existing budgeted resources.

- The projected revenue increases resulting from this bill would be primarily the product of FTB's non-filer enforcement program, when city-supplied information, compared with FTB information on file, provides an indication that a return should be filed.

ANALYSIS

A. Programmatic Analysis

Current law generally prohibits the unlawful disclosure or inspection of any income tax return information except as specified in law, but allows FTB, until December 31, 2011, to permit tax officials of cities to obtain tax information pursuant to a written agreement between FTB and the taxing authority of a city. Generally, disclosure is authorized to other state tax agencies, federal tax agencies, other state tax agencies, and the Multistate Tax Commission for tax administration purposes only. Other exceptions are specified in statute, and among other things, include disclosure of tax information for child support enforcement purposes. Unauthorized disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony.

California law permits FTB to provide specified tax return information to cities for the administration of local city business license requirements. The information provided is limited to only those taxpayers within the city jurisdiction and is limited to the following:

- Taxpayer Name.
- Taxpayer Address.
- Taxpayer Social Security Number or Taxpayer Identification Number.
- Principal Business Activity Code.

Information provided to the cities may be used by city employees only for city business tax purposes. FTB is required to execute an agreement with each participating city that, among other things, provides that the annual cost incurred by FTB to provide the city data is reimbursed by the city to FTB.

This bill would extend the sunset date allowing FTB to provide tax information to local officials until December 31, 2014, and would also require cities that assess a city business tax, or require a city business license, to furnish, on an annual basis, specified limited information to FTB on the businesses that have been assessed the tax or licensed in the preceding calendar year. This requirement would sunset January 1, 2014. The information required to be furnished is information collected in the course of administration of the city's business tax program, limited to the following:

- Name of the business if a corporation, partnership, or limited liability company, or the owner's name if a sole proprietorship.
- Business mailing address.
- Federal employer identification number, if applicable, or the business owner's Social Security number.
- North American Industry Classification Code (commonly referred to as "NAICS").
- Business start date.
- Business cease date.
- Status of license.
- City number.

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- Ownership type.

This bill would require the specified information to be provided to FTB on magnetic media, such as tapes or compact discs, through a secure electronic process, or in other machine-readable form, according to standards prescribed by FTB. The cities would begin providing information as soon as feasible, but no later than December 31, 2009. Use of the data is limited to state tax enforcement.

This bill would also provide that any information, other than the type of tax information specified, may be requested by city tax officials from FTB by affidavit. At the time a tax official makes the request, the person whose information is the subject of the request, shall be provided with a copy of the affidavit.

Finance notes that a similar reporting mandate was repealed in 1999 because of reimbursable state mandate costs exceeding \$8 million annually. This previous reporting mandate required cities to collect and report to the state 29 separate items of information, most of which would not have been collected by the cities in the normal course of city business. This reporting requirement is limited to nine items, all of which are currently collected by the cities.

This bill would further address mandate concerns by providing:

- In cases in which a city and FTB are party to a reciprocal data sharing agreement, each party shall bear their own costs of providing data to the other.
- In cases where a city is not party to a reciprocal data sharing agreement, the maximum cost that a city may be reimbursed is capped at \$1 per usable record provided. FTB understands the meaning of the term "usable record" in the context of this bill to mean a record that may be read by FTB's data processing systems. This provision was included at FTB's request because, during the period of the previous reporting mandate, many reports were submitted in formats unintelligible to FTB's data processing systems.
- Should the Commission on State Mandates find that the costs incurred by a city to provide the data exceeds the reimbursement, then the act is repealed 90 days after that finding, unless the Director of Finance files a written notice of appeal of the finding.
- If appeal filed by the Department of Finance to a superior or appellate court on a determination by the Commission on Mandates that the costs reimbursed to cities are insufficient is denied, the act would be repealed 90 days after a final determination of the court that the costs exceed the reimbursement provided.

The amendment offered by Finance would exempt cities from submitting data in accordance with this bill's requirements if the cost of doing so would exceed \$1 per record submitted. This will help further insulate against the future possibility of a costly mandate claim.

B. Fiscal Analysis

Finance estimates this bill could result in increased General Fund revenues of \$6 million in 2008-09, \$22 million in 2009-10, and \$34 million in 2010-11. The information required by this bill is collected by the cities under existing law, and requires only electronic transmission to the FTB. Finance concurs with FTB estimates that this bill would result in General Fund costs of \$2.8 million in 2008-09, and \$2.7 million per annum ongoing General Fund costs, including \$1.9 million annual costs to reimburse cities for their costs of furnishing specified tax records to FTB.

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

AUTHOR

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Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO RV	PROP 98	FC	2008-2009	FC	2009-2010	FC	2010-2011	Fund Code
1730/FTB	SO	No	C	\$2,833	C	\$2,701		--	0001
1100/Majr Tax Lic	RV	No	U	\$6,000	U	\$22,000		--	0001

Suggested Amendments
SB 1146 (As amended April 3, 2008)

Insert the following language after subdivision (a) of Section 4:

- (1) Local agencies shall not be required to submit information to the Franchise Tax Board pursuant to Section 19551.5 if the cost of doing so exceeds \$1 per record submitted. This dollar amount shall annually be adjusted by the percentage change in the California Consumer Price Index.

Amend subdivision (d) of Section 3 as follows:

Cities shall begin providing to the Franchise Tax Board with the information required by this section ~~as seen as economically feasible, but no later than December 31, 2009~~ only upon receiving a request from the Franchise Tax Board to do so. The Franchise Tax Board shall submit such requests upon either of the following circumstances:

- (1) The receipt of an appropriation for any associated costs.
- (2) Upon a determination by the Franchise Tax Board that the associated costs can be funded from within existing budgeted resources.