



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/20/05	Bill No:	SB 234
Subject:	Taxpayer Confidentiality	Author:	Runner
Related Bills:	SB 280 (Campbell)		

BILL SUMMARY

This bill would prohibit an officer or employee of the Board of Equalization (BOE) or the Franchise Tax Board (FTB) from releasing to the public personal or financial information of a taxpayer unless a court has authorized that disclosure based on a finding that a compelling interest would be served by that disclosure.

The bill would also provide an exception to this general prohibition by authorizing an officer or employee of the BOE to disclose such information if the information was directly related to matters at issue before the BOE.

ANALYSIS

Current Law

Under existing Section 19545 of the Revenue and Taxation Code, in general, it is a misdemeanor for the FTB or any member thereof, or any deputy, agent, clerk, or other officer or employee of the state (including its political subdivisions), or any former officer or employee or other individual, who in the course of his or her employment or duty has or had access to returns, reports, or documents required to be filed under this part, to disclose or make known in any manner information as to the amount of income or any particulars (including the business affairs of a corporation) set forth or disclosed therein. The BOE is the body that hears appeals of actions of the FTB. Once the FTB or the taxpayer provides information to the BOE for an appeal, the information becomes a public record and must be disclosed in response to a request made pursuant to the California Public Records Act (commencing with Government Code Section 6250). Moreover, any decision made by the BOE in an appeal of an action of the FTB is a public record. These decisions are made publicly available to provide guidance to taxpayers and practitioners.

Proposed Law

This bill would add Section 19571 to the Revenue and Taxation Code to prohibit an officer or employee of the BOE or FTB from releasing to the general public personal or financial information of a taxpayer unless a court of competent jurisdiction has authorized that disclosure based on a finding that a compelling interest would be served by that disclosure.

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The section would allow for the disclosure by an officer or employee of the BOE to disclose personal or financial information of a taxpayer to the general public if that information is directly related to matters at issue before the BOE.

Background

Confidentiality Provisions

Various statutes make tax and fee payer information reported to the BOE confidential. For example, Section 7056 of the Revenue and Taxation Code, with certain exceptions, makes records submitted to the Board in its administration of the Sales and Use Tax Law confidential. No similar confidentiality provision is applicable to records submitted to the Board for FTB appeals.

Open Meeting Requirements

The Bagley-Keene Open Meeting Act (commencing with Government Code Section 11120) requires that meetings of state bodies be conducted openly and that public writings pertaining to a matter subject to discussion or consideration at a public meeting be made available for public inspection. Disclosable public writings that are distributed to BOE Members prior to BOE meetings are made available upon request. Since the enactment of AB 1752 (Ch. 156, Stats. 2002, Migden), the BOE is also required to distribute public writings, except those involving a named tax or fee payer, that pertain to a topic under consideration at a public meeting to all persons who request copies, as well as post that information on the Internet, and make the writings available for public inspection at the meeting, prior to the BOE taking final action on that item. As the bill was making its way through the legislature, those taxpayer protections were included in the bill when the BOE raised concerns about making available on the Internet the briefs prepared for FTB cases heard by the Members of the BOE, which are disclosable public records. These briefs may contain detailed personal and financial information about taxpayers submitted as evidence in support or opposition to the appeal. The amended AB 1752 excluded any information that involves a named tax or fee payer and therefore removed the requirement that this information be made available at the hearings, automatically distributed to requesting parties, or posted on the Internet.

COMMENTS

- 1. Sponsor and purpose.** BOE Member Bill Leonard is sponsoring this bill to “provide greater protection of taxpayer information, while also allowing elected members of the Board of Equalization greater latitude to communicate to the public the non-personal issues involved in arriving at decisions.”
- 2. The restriction on disclosing information may not be clear enough.** According to information from the sponsor, the intent of this bill is to protect a taxpayer’s personal information offered at a BOE hearing of FTB cases. Although the restriction would be added to the Revenue and Taxation Code sections pertaining to FTB appeals disclosures, and not in the Government Code or Revenue and Taxation Code sections specific to BOE programs, it is not certain that the statute is only applicable to that specific disclosure of information.

As currently written, due to the lack of limiting language, it is possible that an argument could be made that the restriction applies to all BOE tax and fee

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programs. If the law were to be interpreted that way, certain currently public information would be restricted. For example, under the Sales and Use Tax Law, the information on a seller's permit is public information. This is necessary in order for the BOE to verify to a seller that a buyer who tenders a resale certificate to purchase products without paying the sales tax has a valid, active account with the BOE. Since the seller has the obligation to verify that the account number on the resale certificate is legitimate, the seller would be at a terrible disadvantage if the BOE could no longer provide, for example, the online permit verification service we presently offer.

In order to avoid this uncertainty, it is recommended that the bill be amended to specifically state that the information that shall not be released pertains to "an appeal of an action of the Franchise Tax Board."

3. **The exemption to the proposed restriction may be open to interpretation.** The bill would allow the BOE to disclose information if it "is directly related to matters at issue before the board." Some could argue that all the information submitted to the BOE is directly related to the matter, otherwise the FTB and the taxpayer would not bother to make the information a part of the appeal. Arguably, this bill as drafted would not accomplish its purpose of limiting the publicly available information in FTB appeals. The bill may be improved by specifically defining the restricted information as being confidential taxpayer information. In addition, since taxpayer information in an FTB appeal is currently public at the time it is initially submitted to the BOE, it may be appropriate to amend the bill to also specify at what point in time information may be disclosed to the public.
4. **This measure would impact BOE much more than the FTB.** The restrictions and responsibility for securing the privacy of taxpayer information would fall upon the BOE since the FTB's role in the appeal process is to provide information for the hearing, not restrict its distribution at the hearing.
5. **Suggested technical amendments.** In order to avoid using undefined terms, this bill should reference "member of the public" as defined in subdivision (b) of Government Code Section 6252 instead of "general public." "Member of the public" is specifically defined in that section to mean "any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment."

Commencing at Section 6276 of the California Public Records Act is an alphabetical listing of statutes that identify records or information not required to be disclosed pursuant to subdivision (k) of Section 6254. Section 19571, as a new exemption to the disclosure requirements of the California Public Records Act pursuant to subdivision (k) of Section 6254, is required by Government Code Section 6275 to be included in the alphabetic listing. The following language is recommended:

To Section 6276.16, Alphabetical listing of statutes; Letter E, add:

Equalization, State Board of, limitation on disclosure of personal or financial information regarding appeals from actions of the Franchise Tax Board, Section 19571, Revenue and Taxation Code.

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To Section 6276.18, Alphabetical listing of statutes; Letter F, add:

Franchise Tax Board, limitation on disclosure of personal or financial information, Section 19571, Revenue and Taxation Code.

- 6. Related legislation.** SB 280 (Campbell) proposes to add more specific restrictions to the release of taxpayers' personal or financial information by enacting the Taxpayer Privacy Bill of Rights under the FTB's laws.

COST ESTIMATE

This bill would result in insignificant costs to the Board.

REVENUE ESTIMATE

This bill would not impact the state's revenues.

Analysis prepared by:	Kevin Beile	323-7169	04/25/05
Contact:	Margaret S. Shedd	322-2376	

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