



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/19/10	Bill No:	AB 2433
Tax:	Business Taxes	Author:	Ruskin
Related Bills:		Position:	Support as Sponsor

BILL SUMMARY

This Board of Equalization (Board) sponsored bill would authorize the Board to admit into evidence Employment Development Department's confidential employment tax information in hearings and court proceedings to resolve disputes regarding the Board's administration of a fee or tax law, the amount owed by a tax or feepayer, or the amount to be refunded.

ANALYSIS

CURRENT LAW

Under existing Unemployment Insurance Code (UIC) Section 322, the Employment Development Department (EDD) may exchange information with state agencies, as specified. The Board is an authorized receiver of the EDD confidential information and has an existing reciprocal sharing agreement for the exchange of information.

Section 1094 of the UIC specifies that unless specifically provided, the information obtained by the EDD in the administration of the UIC is confidential, not open to the public, and shall be for the exclusive use and information of the director of EDD in discharge of his or her duties. Additionally, Section 1094 provides that the information released to authorized entities, such as the Board, is not admissible as evidence in any action or special proceeding, other than those actions or special proceedings described in Section 1095 or provided for in the UIC. Wages and amounts to be deducted and withheld, as specified in the UIC, may be disclosed in the administration of franchise and income tax laws.

Section 1095 of the UIC authorizes certain state, local, and federal government agencies to use the EDD confidential information as evidence in an action or special proceeding. Some of the current authorized uses include determining entitlement to general assistance, investigating disability income, administering child support programs, investigating workers comp insurance fraud, and verifying employment history.

As an authorized receiver, the Board uses the EDD's confidential information to verify a feepayer's reported number of employees for both the environmental fee and the occupational lead poisoning prevention fee. The applicability and amount of the fee for both programs is based, in part, on the size of a feepayer's employee workforce. The Board also uses EDD's information to discover unregistered feepayers and underreported taxes and/or fees, and to verify refunds. In addition, the EDD's information is useful for collection purposes and as a basis for claims in bankruptcy. Consequently, the EDD's information is critical to arriving at the correct resolution of a fee dispute heard by the Board in an administrative hearing or litigated in a court proceeding.

PROPOSED LAW

This proposal would amend UIC Section 1095 to specifically authorize the Board to admit into evidence EDD's confidential employment tax information in Board hearings and court proceedings to resolve disputes regarding the Board's administration of a fee or tax law, the amount owed by a tax or feepayer, or the amount to be refunded.

The use of this information to sustain a taxpayer liability, or verify a refund, is consistent with the use of other confidential information obtained by the Board. This bill would also ease the compliance burden on employers, as the use of EDD information is less burdensome than providing access to their payroll records. This measure clarifies in statute that the Board may efficiently and effectively use the information it currently obtains from the EDD to enforce the tax and fee laws it administers.

BACKGROUND

Beginning January, 1, 2007, Assembly Bill 1803 (Ch. 77, Stats. 2006) expanded the environmental fee to include general partnerships, limited partnerships, limited liability partnerships, limited liability companies and sole proprietorships, as well as corporations. The expansion of the fee was intended to address the erosion in the annual environmental fee base, which was occurring in part because fewer businesses were being classified as corporations. The implementation of this legislation resulted in an increase in the number of registrants by approximately 7,700. Thus there was a corresponding increase in revenue and an increase in appealed assessments, thereby placing greater pressure on limited audit resources to review payroll records in spite of the fact that the program only received one audit position to manage the increased workload.

Moreover, in the past, the Board had relied upon an interagency agreement with the EDD in which the Board believed that the EDD information could be used in "any action or special proceeding," as long as it was presented in summary form. Recently, the EDD reiterated to Board staff that Section 1094 provisions specify that the confidential information released to authorized entities cannot be admitted as evidence in "any action or special proceeding" unless specifically authorized by Section 1094 or 1095, or some other statutory provision in the UIC.

The most recent information sharing agreement with EDD, which covers the period November 1, 2008 through June 30, 2011, specifies that the EDD will provide access to its confidential information, provided the Board "maintains confidentiality of the information as required by UIC Section 1094." There is no ambiguity in the most recent agreement, which has prompted the Board to change its practices in using the information, and in the case of both the environmental fee and the occupational lead poisoning prevention fee, ensures that the Board would need to audit an employer's actual payroll records. However, even examination of the actual payroll records does not eliminate the need for the Board to access and compare actual payroll to that reported to EDD, which still results in the potential for a Board assessment to be based on EDD payroll records. Auditing actual payroll records is intrusive to the feepayer, costly to the state, and inefficient, when this same information is readily available to the Board by directly accessing EDD information.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Board and is intended to clarify in statute that the Board may admit as evidence in any action or special proceeding the information it currently obtains from the EDD.
2. **The Board currently has access to EDD confidential information.** As stated, the Board is an authorized receiver of the EDD confidential information. In September 2009 the Board completed its most recent information sharing agreement for the exchange of confidential information with the EDD. This bill would allow the Board to use the confidential information it already received from the EDD. The Board views this bill as being an efficient and effective use of information sharing and believes it is less burdensome on affected taxpayers.

If the Board is unable to use the EDD information as evidence in a Board hearing, then we may need to request the actual payroll records from the taxpayer. This alternative places an additional compliance burden on the taxpayer and increases the workload for both the Board and the taxpayer.

3. **The environmental fee and the occupational lead poisoning prevention fee are directly affected by the EDD information.** The applicability and amount of the fee for both programs is based, in part, on the size of a feepayer's employee workforce. The Board uses the data obtained from EDD as a basis for an audit or assessment, for failing to file a return, for a refund request, or to identify businesses that failed to register as a feepayer with the Board. Without passage of this bill the Board would still be able to perform these functions, but we would be prohibited from using that same information in an appeal to be heard and decided by the Board. In those situations, the Board would need to request the employer records from the feepayer.
4. **It is the intent of the Board to continue to protect the confidentiality of the EDD information.** The Board takes seriously its responsibility to protect the confidential employment information and intends to make it policy that, with respect to employee information gathered and used by the Board in administering the above fee programs, we would include only the last four digits of the social security number and the first two initials of the first and last name, along with other relevant compensation or employment information for the employees. The Board worked in collaboration with the EDD on the proposed language and we will continue to work cooperatively in addressing our reciprocal responsibilities and concerns regarding taxpayer confidentiality.

COST ESTIMATE

This bill would allow the Board's various tax and fee programs the ability to use the EDD information to which we currently have access. If Board audit staff were required to request payroll records from the taxpayer, as opposed to relying on the EDD information, then the Board would continue to experience greater pressure on limited audit resources to verify reported amounts. To the extent that audit staff can focus their efforts on more cost effective activities, and/or to the extent that the EDD information is the most efficient means to resolve an issue before the Board, then the Board would expect to realize an unquantifiable savings in administrative costs. The use of the EDD information as evidence in "any action or special proceeding" will result in the Board being more effective in its administration of a tax or fee program and improved customer service.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

REVENUE ESTIMATE

This bill would not affect the revenues collected for the state by the Board.

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