

AMENDED IN ASSEMBLY AUGUST 13, 2013

AMENDED IN SENATE MAY 8, 2013

SENATE BILL

No. 211

Introduced by Senator ~~Price~~ *Hernandez*

February 11, 2013

An act to amend Sections 19551, 19551.1, and 19551.5 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 211, as amended, ~~Price~~ *Hernandez*. Tax administration: disclosure of information: Franchise Tax Board and cities.

Existing law authorizes, until December 31, 2013, a city that has entered into a reciprocal agreement, as defined, with the Franchise Tax Board, to exchange tax information, as provided. Existing law limits the use of the tax data received from the Franchise Tax Board for business tax administration purposes and provides that any other use or disclosure of the information is punishable as a misdemeanor.

This bill would extend the authorization until January 1, 2019, and extend the repeal date of the provisions relating to the reciprocal agreements between the Franchise Tax Board and cities. This bill would add an additional limitation on the use of the tax data to require the data to be utilized in a form and manner to safeguard the tax information, as prescribed.

Because this bill would continue the operation of the reciprocal agreement exchange, and the unauthorized use of such information would be a crime, it would impose a state-mandated local program.

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.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 19551 of the Revenue and Taxation Code,
2 as amended by Section 1 of Chapter 345 of the Statutes of 2008,
3 is amended to read:

4 19551. (a) The Franchise Tax Board may permit the
5 Commissioner of Internal Revenue of the United States, other tax
6 officials of this state, the Multistate Tax Commission, the proper
7 officer of any state imposing an income tax or a tax measured by
8 income or the authorized representative of that officer, or the tax
9 officials of Mexico, if a reciprocal agreement exists, to inspect the
10 income tax returns of any taxpayer, or may furnish to the
11 commission, or the officer or the authorized representative thereof
12 an abstract of the return or supply thereto information concerning
13 any item of income contained in any return or disclosed by the
14 report of any investigation of the income or return. The information
15 shall be furnished to the Multistate Tax Commission, the federal
16 or state officer or his or her representative, or the officials of
17 Mexico for tax purposes only. ~~Except when~~ *If* furnished pursuant
18 to a written agreement, information furnished pursuant to this
19 section shall be furnished only if the request is in the form of an
20 affidavit under penalty of perjury stating that the purpose for the
21 request relates to an investigation of the tax specified in the request
22 and that the information will be used in the ordinary performance
23 of the applicant's official duties.

24 (b) Notwithstanding subdivision (a) and except as otherwise
25 provided in Section 19551.1, tax officials of political subdivisions
26 of this state shall request information from the Franchise Tax Board
27 by affidavit only. At the time a tax official makes the request, he
28 or she shall provide the affected person with a copy of the affidavit
29 and, upon request, make the information obtained available to that
30 person.

31 (c) For purposes of this section, "reciprocal agreement" means
32 a formal agreement to exchange information between national
33 taxing officials of Mexico and taxing authorities of the State Board

1 of Equalization, the Franchise Tax Board, and the Employment
2 Development Department. Furthermore, the reciprocal agreement
3 shall be limited to the exchange of information that is essential for
4 tax administration purposes only. Taxing authorities of the State
5 of California shall be granted tax information only on California
6 residents. Taxing authorities of Mexico shall be granted tax
7 information only on Mexican nationals.

8 (d) This section shall remain in effect only until January 1, 2019,
9 and as of that date, is repealed.

10 SEC. 2. Section 19551 of the Revenue and Taxation Code, as
11 added by Section 2 of Chapter 345 of the Statutes of 2008, is
12 amended to read:

13 19551. (a) The Franchise Tax Board may permit the
14 Commissioner of Internal Revenue of the United States, other tax
15 officials of this state, the Multistate Tax Commission, the proper
16 officer of any state imposing an income tax or a tax measured by
17 income or the authorized representative of that officer, or the tax
18 officials of Mexico, if a reciprocal agreement exists, to inspect the
19 income tax returns of any taxpayer, or may furnish to the
20 commission, or the officer or the authorized representative thereof
21 an abstract of the return or supply thereto information concerning
22 any item of income contained in any return or disclosed by the
23 report of any investigation of the income or return. The information
24 shall be furnished to the Multistate Tax Commission, the federal
25 or state officer or his or her representative, or the officials of
26 Mexico for tax purposes only. Except when furnished pursuant to
27 a written agreement, information furnished pursuant to this section
28 shall be furnished only if the request is in the form of an affidavit
29 under penalty of perjury stating that the purpose for the request
30 relates to an investigation of the tax specified in the request and
31 that the information will be used in the ordinary performance of
32 the applicant's official duties.

33 (b) Notwithstanding subdivision (a), tax officials of political
34 subdivisions of this state shall request information from the
35 Franchise Tax Board by affidavit only. At the time a tax official
36 makes the request, he or she shall provide the affected person with
37 a copy of the affidavit and, upon request, make the information
38 obtained available to that person.

39 (c) For purposes of this section, "reciprocal agreement" means
40 a formal agreement to exchange information between national

1 taxing officials of Mexico and taxing authorities of the State Board
2 of Equalization, the Franchise Tax Board, and the Employment
3 Development Department. Furthermore, the reciprocal agreement
4 shall be limited to the exchange of information that is essential for
5 tax administration purposes only. Taxing authorities of the State
6 of California shall be granted tax information only on California
7 residents. Taxing authorities of Mexico shall be granted tax
8 information only on Mexican nationals.

9 (d) This section shall become operative on January 1, 2019.

10 SEC. 3. Section 19551.1 of the Revenue and Taxation Code
11 is amended to read:

12 19551.1. (a) (1) The Franchise Tax Board may permit the tax
13 officials of any city to enter into a reciprocal agreement with the
14 Franchise Tax Board to obtain tax information from the Franchise
15 Tax Board, as specified in subdivision (b).

16 (2) For purposes of this section, “reciprocal agreement” means
17 a formal agreement to exchange information for tax administration
18 purposes between tax officials of a city and the Franchise Tax
19 Board.

20 (b) The information furnished to tax officials of a city under
21 this section shall be limited as follows:

22 (1) The tax officials of a city are authorized to receive
23 information only with respect to taxpayers with an address as
24 reflected on the Franchise Tax Board’s records within the
25 jurisdictional boundaries of the city who report income from a
26 trade or business to the Franchise Tax Board.

27 (2) The tax information that may be provided by the Franchise
28 Tax Board to a city is limited to a taxpayer’s name, address, social
29 security or taxpayer identification number, and business activity
30 code.

31 (3) Tax information provided to the taxing authority of a city
32 may not be furnished to, or used by, any person other than an
33 employee or agent of that taxing authority and shall be utilized in
34 a form and manner to safeguard the tax information as required
35 by the Franchise Tax Board, including, but not limited to:

36 (A) The completion of a data exchange security questionnaire
37 provided by the Franchise Tax Board prior to approval of a data
38 exchange by the Franchise Tax Board.

39 (B) The tax official or agent of a city shall allow for an onsite
40 safeguard review conducted by the Franchise Tax Board.

1 (C) The completion of disclosure training provided by the
2 Franchise Tax Board and a confidentiality statement signed by all
3 employees or agents with access to information provided by the
4 Franchise Tax Board confirming the requirement of data security
5 with respect to that information and acknowledging awareness of
6 penalties for unauthorized access or disclosure under Sections
7 19542 and 19552 and Section 502 of the Penal Code.

8 (D) The tax official or agent of a city shall notify the Franchise
9 Tax Board within 24 hours upon discovery of any incident of
10 unauthorized or suspected unauthorized access or disclosure of
11 the tax information and provide a detailed report of the incident
12 and the parties involved.

13 (E) All records received by the tax officials of a city or its agents
14 shall be destroyed in a manner to make them unusable or
15 unreadable so an individual record may no longer be ascertained
16 in a timeframe specified by the Franchise Tax Board.

17 (4) The information provided to the tax officials of the city by
18 the Franchise Tax Board under this section is subject to Section
19 19542, and may not be used for any purpose other than the city's
20 tax enforcement, or as otherwise authorized by state or federal
21 law.

22 (5) Section 19542.1 applies to this section.

23 (c) The Franchise Tax Board may not provide any information
24 pursuant to this section until all of the following have occurred:

25 (1) An agreement has been executed between a city and the
26 Franchise Tax Board, that provides that an amount equal to all
27 first year costs necessary to furnish the city information pursuant
28 to this section shall be received by the Franchise Tax Board before
29 the Franchise Tax Board incurs any costs associated with the
30 activity permitted by this section. For purposes of this section, first
31 year costs include costs associated with, but not limited to, the
32 purchasing of equipment, the development of processes, and labor.

33 (2) An agreement has been executed between a city and the
34 Franchise Tax Board, that provides that the annual costs incurred
35 by the Franchise Tax Board, as a result of the activity permitted
36 by this section, shall be reimbursed by the city to the Franchise
37 Tax Board.

38 (3) Pursuant to the agreement described in paragraph (1), the
39 Franchise Tax Board has received an amount equal to the first year
40 costs.

1 (d) Any information, other than the type of tax information
2 specified in subdivision (b), may be requested by the tax officials
3 of a city from the Franchise Tax Board by affidavit. At the time a
4 tax official makes the request, he or she shall provide the person
5 whose information is the subject of the request, with a copy of the
6 affidavit and, upon request, make the information obtained
7 available to that person.

8 (e) This section does not invalidate any other law. This section
9 does not preclude any city or county from obtaining information
10 about individual taxpayers, including those taxpayers not subject
11 to this section, by any other means permitted by state or federal
12 law.

13 (f) Nothing in this section shall be construed to affect any
14 obligations, rights, or remedies regarding personal information
15 provided under state or federal law.

16 (g) Notwithstanding subdivision (c), the Franchise Tax Board
17 shall waive a city's reimbursement of the Franchise Tax Board's
18 cost if a city enters into a reciprocal agreement as defined in
19 paragraph (2) of subdivision (a). The reciprocal agreement shall
20 specify that each party shall bear its own costs to furnish the data
21 involved in the exchange authorized by this section and Section
22 19551.5, and a city shall be precluded from obtaining
23 reimbursement as specified under Section 5 of the act adding this
24 subdivision.

25 (h) This section shall remain in effect only until January 1, 2019,
26 and as of that date, is repealed.

27 SEC. 4. Section 19551.5 of the Revenue and Taxation Code
28 is amended to read:

29 19551.5. (a) Notwithstanding any other law, each city that
30 assesses a city business tax or requires a city business license shall,
31 upon the request of the Franchise Tax Board, annually submit to
32 the Franchise Tax Board the information that is collected in the
33 course of administration of the city's business tax program, as
34 described in subdivision (b).

35 (b) Information, collected in the course of administration of the
36 city's business tax program, shall be limited to the following:

37 (1) Name of the business, if the business is a corporation,
38 partnership, or limited liability company, or the owner's name if
39 the business is a sole proprietorship.

40 (2) Business mailing address.

1 (3) Federal employer identification number, if applicable, or
2 the business owner's social security number.

3 (4) Standard Industrial Classification (SIC) Code or North
4 American Industry Classification System (NAICS) Code.

5 (5) Business start date.

6 (6) Business cease date.

7 (7) City number.

8 (8) Ownership type.

9 (c) The reports required under this section shall be filed on
10 magnetic media such as tapes or compact discs, through a secure
11 electronic process, or in other machine-readable form, according
12 to standards prescribed by regulations promulgated by the
13 Franchise Tax Board.

14 (d) Cities that receive a request from the Franchise Tax Board
15 shall begin providing to the Franchise Tax Board the information
16 required by this section as soon as economically feasible, but no
17 later than December 31, 2009. The information shall be furnished
18 annually at a time and in the form that the Franchise Tax Board
19 may prescribe by regulation.

20 (e) The city data provided to the Franchise Tax Board under
21 this section is subject to Section 19542, and may not be used for
22 any purpose other than state tax enforcement or as otherwise
23 authorized by law.

24 (f) If a city enters into a reciprocal agreement with the Franchise
25 Tax Board pursuant to subdivision (a) of Section 19551.1, the city
26 shall also waive reimbursement for costs incurred to provide
27 information required under this section and shall be precluded
28 from obtaining reimbursement as specified under Section 5 of
29 Chapter 345 of the Statutes of 2008. The reciprocal agreement
30 shall specify that each party shall bear its own costs to furnish the
31 data involved in the exchange authorized by Section 19551.1 and
32 this section, and the Franchise Tax Board shall be precluded from
33 obtaining reimbursement as specified under subdivision (c) of
34 Section 19551.1.

35 (g) A city shall not be required to provide information to the
36 Franchise Tax Board pursuant to this section if the Franchise Tax
37 Board fails to provide tax information to the city pursuant to a
38 reciprocal agreement entered into pursuant to subdivision (a) of
39 Section 19551.1 for reasons other than concerns related to
40 confidentiality of tax information provided to the city.

1 (h) This section shall remain in effect only until January 1, 2019,
2 and as of that date, is repealed.

3 SEC. 5. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.