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Assembly
California Legislature

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AGENDA

10:00 a.m. – July 27, 2020
State Capitol, Room 4202

Item	Bill No. & Author	Consultant	Summary
	REGULAR ORDER OF BUSINESS		
1.	SB 38 (Hill)	Mr. Ruff	Sales and use taxes: consumer designation: all volunteer fire department. (Tax Levy)
2.	SB 364 (Mitchell)	Ms. Kinnee	Change in ownership: nonresidential active solar energy systems: initiative. (Tax Levy)
3.	SB 587 (Monning)	Ms. Kinnee	California Sea Otter Voluntary Tax Contribution Fund.
4.	SB 934 (Bates)	Ms. Kinnee	Corporate taxes: exempt organizations: filing fees.
5.	SB 972 (Skinner)	Mr. Anguiano	Corporation taxes: disclosure
6.	SB 1409 (Caballero)	Mr. Anguiano	Franchise Tax Board: California earned income tax credit: non-filer: report.
7.	SB 1441 (McGuire)	Ms. Kinnee	Local Prepaid Mobile Telephony Services Collection Act.

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Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

SB 38 (Hill) – As Amended June 18, 2020

Majority vote. Tax levy. Fiscal committee.

SENATE VOTE: 37-0

SUBJECT: Sales and use taxes: consumer designation: all volunteer fire department

SUMMARY: Extends, from January 1, 2021, to January 1, 2026, the provisions of the Sales and Use Tax (SUT) Law that confer consumer status on certain all volunteer fire departments (AVFDs) that sell tangible personal property (TPP) for fundraising purposes. Specifically, **this bill**:

1) Provides that, for purposes of complying with Revenue and Taxation Code (R&TC) Section 41, the Legislature finds and declares as follows:

   a) The specific goals, purposes, and objectives of this tax expenditure are to:

      i) Ensure that the entire gross amount of fundraisers continues to stay with AVFDs and helps provide critically needed equipment and services;

      ii) Help AVFDs through this critical time; and,

      iii) Ensure AVFDs can afford necessary equipment during fire season.

   b) For purposes of aiding the Legislature in determining whether this expenditure meets the goals, purposes, and objectives listed above, the California Department of Tax and Fee Administration (CDTFA) shall annually estimate the revenue loss associated with the tax expenditure; and,

   c) CDTFA shall report this information to the Legislature before each year beginning on or after January 1, 2023, and before January 1, 2026. The report shall comply with Government Code Section 9795.

2) Provides that, notwithstanding existing law, the state shall not reimburse any local agency for lost SUT revenues.

3) Takes immediate effect as a tax levy.

EXISTING LAW:

1) Imposes a sales tax on retailers for the privilege of selling TPP, absent a specific exemption. The tax is based upon the retailer's gross receipts from TPP sales in this state.

2) Imposes a complimentary use tax on the storage, use, or other consumption of TPP generally purchased out-of-state and brought into California. The use tax is imposed on the purchaser; and unless the purchaser pays the use tax to an entity registered to collect California's use tax, the purchaser remains liable for the tax. The use tax is set at the same rate as the state's sales tax and must generally be remitted to the CDTFA.

3) Designates the following entities as consumers, and not retailers, of specified TPP they use or furnish in the performance of their professional services:

    a) Licensed optometrists, physicians, pharmacists, and registered dispensing opticians (R&TC Section 6018);

    b) Licensed veterinarians (R&TC Section 6018);

    c) Licensed chiropractors (R&TC Section 6018.4);

    d) Specified garment cleaning establishments that received no more than 20% of their total gross receipts from the alteration of garments during the preceding calendar year (R&TC Section 6018.6);

    e) Licensed hearing aid dispensers (R&TC Section 6018.7); and,

    f) Producers of X-ray films or photographs used to diagnose human medical or dental conditions (R&TC Section 6020).

4) Provides that an AVFD is considered the consumer, and not the retailer, of all TPP its sells, including hot prepared food products and clothing, if the profits are used solely and exclusively in furtherance of the AVFD's purposes. (R&TC Section 6018.10).

5) Provides a property tax exemption for the property of a volunteer fire department that is used exclusively for volunteer fire department purposes, provided the department qualifies for exemption under R&TC Section 23701d or 23701f or under Internal Revenue Code Section 501(c)(3) or 501(c)(4). (R&TC Section 213.7).

6) Requires any bill introduced on or after January 1, 2020, that authorizes a SUT exemption, to contain all of the following:

    a) Specific goals, purposes, and objectives that the tax expenditure will achieve;

    b) Detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets the goals, purposes, and objectives stated in the bill; and,

    c) Specified data collection requirements to enable the Legislature to determine whether the tax expenditure is meeting, failing to meet, or exceeding those specific goals, purposes, and objectives.

FISCAL EFFECT: The annual SUT revenue loss would be approximately $48,207.

COMMENTS:

1) The author has provided the following statement in support of this bill:

   Prior to September 2015, California's All-Volunteer Fire Departments (AVFDs) had to pay sales tax for fundraising activities like pancake breakfasts, barbeques and T-shirt sales. Fundraising income was cut down by critical dollars, diminishing the departments' primary mission to protect Californian lives and property. SB 598 (Hill, Chapter 248, Statutes of 2015) exempts AVFDs from sales tax liability on income from fundraising activities. Additionally, the exemption does not apply if an all-volunteer fire department has receipts from the sale of tangible personal property of $100,000 or more. The law will sunset on January 1, 2021.

   As a primary source of revenue, these fundraisers allow AVFDs to make needed building improvements, and purchase lifesaving apparatuses. For example, La Honda's All-Volunteer Fire Department used fundraising events to purchase a new $500,000 fire engine and a $30,000 fire station roof. AVFDs also continually need to purchase breathing apparatuses, fire fighter suits and other expensive equipment.

   California's estimated 250 AVFDs and the lifesaving services they provide deserve a continued exemption on fundraisers. These organizations rely primarily on membership drives and fundraising activities to support their operational budgets and public mission.

2) This bill is supported by the California State Firefighters Association, which notes the following:

   All-Volunteer Fire Departments (AVFDs) rely primarily on membership drives and fundraising events in order to support their large operational budgets and mission of public support. SB 598 (Hill) was a success in helping AVFDs better utilize scarce resources by exempting them from sales tax liability on income including but not limited to, hot prepared food products and clothing sold in fundraising activities.

3) Committee Staff Comments:

   a) *What is a "tax expenditure"*? Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, U.S. Treasury officials began arguing that these features of the tax law should be referred to as "expenditures" since they are generally enacted to accomplish some governmental purpose and there is a determinable cost associated with each (in the form of foregone revenues).

      As the Department of Finance notes in its annual Tax Expenditure Report, there are several key differences between tax expenditures and direct expenditures. First, tax expenditures are reviewed less frequently than direct expenditures. Second, there is generally no control over the amount of revenue losses associated with any given tax expenditure. Finally, it should also be noted that, once enacted, it takes a two-thirds vote to rescind an existing tax expenditure absent a sunset date. This effectively results in a "one-way ratchet" whereby tax expenditures can be conferred by majority vote, but cannot be rescinded, irrespective of their efficacy or cost, without a supermajority vote.

b) *An overview of the SUT Law*: The SUT represents the state's second largest source of General Fund (GF) revenues. Nevertheless, the past 70 years have seen a dramatic reduction in the state's reliance on the SUT and a corresponding increase in its reliance on personal income tax revenues. In Fiscal Year (FY) 2020-21, SUT revenues are estimated to comprise only 18.4% of the state's GF revenues, down from nearly 60% in FY 1950-51.

c) *What accounts for the state's reduced reliance on SUT revenues*? The SUT Law was enacted in a very different era. In the 1930s, California's economy was largely dominated by manufacturing, and residents mostly bought and sold tangible goods. Thus, in establishing the base for a new consumption tax, it made sense to impose the tax on sales of TPP, defined as personal property that may be "seen, weighed, measured, felt, or touched." Over the past 80 years, however, California's economy has seen dramatic growth in the service and information sectors, resulting in a significant erosion of the SUT base. For example, the Commission on the 21st Century Economy noted that spending on taxable goods represented 34.6% of personal income in 2008, down from 55.4% in 1980. As a result, tax experts and economists from across the political spectrum argue that California should expand its SUT base.

   It could be argued that, while well-intentioned, additional SUT exemptions further erode an already shrinking SUT base. This, in turn, increases fiscal pressures to maintain or even increase California's relatively high SUT rate. High rates arguably promote non-compliance and encourage out-of-state purchases, placing California retailers at a competitive disadvantage. High rates also risk impacting consumer decision-making, which runs counter to widely accepted principles of sound tax policy.

d) *How does the SUT Law generally apply to nonprofit organizations*? The law does not generally exempt from the SUT sales by nonprofit organizations, persons engaged in charitable work, or those who enjoy certain income or property tax benefits. Therefore, nonprofit organizations' TPP sales are generally subject to tax to the same extent as any other retailer's sales. Generally, persons engaged in the business of selling TPP must obtain a seller's permit and report SUT on a CDTFA-prescribed return.

   California law does, however, designate certain charitable organizations as consumers, rather than retailers, under the SUT Law. Statutorily, this is done on a case-by-case basis. For example, R&TC Section 6359.3 confers consumer status on nonprofit veterans' organizations with respect to United States flags sold, provided the profits are used exclusively in furtherance of the organization's purposes. R&TC Section 6360, in turn, confers consumer status on specified charities with respect to bracelets distributed to commemorate American prisoners of war. Once again, any profits must be used solely and exclusively in furtherance of the organization's purposes. As one last example, R&TC Section 6361.1 confers consumer status on qualified organizations that sell handcrafted items made by individuals with developmental disabilities or children with severe emotional disturbances. The price of each item sold must not exceed $20.

e) *AVFDs*: There are numerous AVFDs throughout California. These entities, which primarily serve rural areas, protect lives and property by fighting fires and responding to other emergency incidents. These organizations often operate on limited budgets, with funds obtained through public financial support, fundraising activities, and grants.

SB 598 (Hill), Chapter 248, Statutes of 2015, provided that AVFDs shall be deemed consumers, and not retailers, of all TPP they sell if the profits are used solely and exclusively for fundraising purposes. This preferential treatment does not apply if an AVFD, in each of the two preceding calendar years, has gross receipts from the sale of TPP of $100,000 or more. Absent a statutory extension, this tax expenditure program is set to expire on January 1, 2021.

f) *What would this bill do*? This bill would extend the sunset date for the current AVFD tax expenditure program from January 1, 2021, to January 1, 2026. This bill would also include data collection and reporting requirements to comply with R&TC Section 41.

g) *Policy on tax expenditures*: Both R&TC Section 41 and Committee policy require any tax expenditure bill to outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. A tax expenditure bill will not be eligible for a Committee vote unless it has complied with these requirements. This bill, in turn, has been amended to comply with R&TC Section 41.

   In addition to the R&TC Section 41 requirements, this Committee's policy also requires that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote. According to the new policy, an "appropriate sunset provision" shall mean five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" shall mean 10 years. This bill has been amended to include a five-year sunset extension.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Firefighters Association

Opposition

None on file

Analysis Prepared by: M. David Ruff / REV. & TAX. / (916) 319-2098

Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

SB 364 (Mitchell) – As Amended July 27, 2020

2/3 vote. Tax levy. Fiscal committee.

SENATE VOTE: Not relevant

SUBJECT: Change in ownership: nonresidential active solar energy systems: initiative

SUMMARY: Changes the classification of nonresidential active solar energy systems from real property to personal property and creates a property tax exemption for systems constructed prior to January 1, 2025 if voters approve Proposition 15, an initiative constitutional amendment to require fair market value based property tax assessments for certain commercial and industrial real property. Specifically, **this bill**:

1) Changes the classification of a "nonresidential" active solar energy system from real property to personal property by statutorily redefining terms. Specifically:

   a) Defines "personal property" as including a nonresidential active solar energy system; and,

   b) Defines "improvements" as excluding a nonresidential active solar energy system.

2) Creates a personal property tax exemption for a nonresidential active solar energy system.

3) Makes the existing real property new construction exclusion for active solar energy systems inapplicable to a nonresidential active solar energy system.

4) Exempts a nonresidential active solar energy system constructed or installed prior to January 1, 2025, from property taxation as personal property, as specified.

5) Limits, with respect to a system constructed or installed prior to this bill's operative date, the above personal property exemption to a nonresidential active solar energy system that was receiving the new construction exclusion on this bill's operative date.

6) Allows the personal property exemption to continue until there is a subsequent change in ownership of the nonresidential active solar energy system.

7) Provides that a change in ownership of a nonresidential active solar energy system occurs if it would have met the parameters for a change in ownership applicable to real property had the system been considered real property instead of personal property.

8) Defines a "nonresidential active solar energy system" as a system that uses solar devices to provide for the collection, storage, or distribution of solar energy, and that is not constructed or installed in or on residential property.

9) Defines a "residential property" as real property used as residential property, including both single-family and multiunit structures, and the land on which those structures are constructed or placed.

10) Provides that the above provisions in this bill would become operative if voters approve Proposition 15, an initiative measure adding Section 2.5 to Article XIII A of the California Constitution at the November 3, 2020, statewide general election, which would require fair market value based property tax assessments for certain commercial and industrial real property

11) Provides that in the event Proposition 15 is not approved, provisions in this bill will remain inoperative and effectively repealed on January 1, 2021.

12) Makes a legislative finding and declaration that it is the intent of the Legislature, in enacting this chapter [Chapter 4.5], to ensure active solar energy systems that would have been exempt from taxation because of the new construction exclusion continue to be exempt from taxation until there is a subsequent change in ownership of the active solar energy system.

13) States the provisions of Chapter 4.5 are to be liberally construed so as to effectuate their intent, policy, and purposes.

14) Includes severability language that states that if any provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

15) Makes other conforming changes.

EXISTING LAW:

1) Provides that all property is taxable unless otherwise provided by the California Constitution or federal law. (Section 1 of Article XIII of the California Constitution.)

2) Authorizes the Legislature with a 2/3 vote to classify personal property for differential taxation or for exemption. (Section 2 of Article XIII of the California Constitution.)

3) Limits *ad valorem* taxes on real property to 1% of the full cash value of that property as set forth in the California Constitution based on the county assessor's determination of property value when purchased, newly constructed, or a change in ownership has occurred. This value, known as the "base year value," may reflect the yearly inflation rate, not to exceed 2% for any given year. In contrast, personal property is valued each year at its market value.

4) Requires the assessor to increase a property's assessment to reflect the full cash value of "new construction" when substantial additions or alterations occur. New construction is assigned its own distinct base year value, and the remainder of the property's base year value is unaffected.

5) Allows a new construction exclusion in the case of the construction or addition of an active solar energy system that is real property.

6) Provides the exclusion on the basis that the system is a real property.

7) Excludes the value added by the system from property taxation, until there is a subsequent change in ownership.

8) Sunsets the new construction exclusion for active solar energy systems on January 1, 2025.

9) Specifies that after the exclusion's sunset date, active solar energy systems that qualify for the new construction exclusion prior to January 1, 2025, continue to be excluded, until there is a subsequent change in ownership.

FISCAL EFFECT: The State Board of Equalization (BOE) states that the revenue impact of this bill is indeterminable.

COMMENTS:

1) The author has provided the following statement in support of this bill:

> Since the 1980s, California voters and the Legislature have provided tax exemption to residential and commercial projects for solar energy projects to incentivize the state's transition to renewable energy and help reduce the upfront cost of solar energy system installation. Existing law provides exemption from taxation to nonresidential active solar energy systems constructed or installed prior to January 1, 2025 under the 'newly construction' exclusion, until there is subsequent change in ownership. Unfortunately, the Schools and Communities First (SCF) split-roll initiative, currently on the November 3rd ballot, removes this definition, inadvertently causing full value re-assessment of nonresidential solar energy systems that are exempt under current law.
>
> SB 364 seeks to preemptively correct the unintended impact of the upcoming SCF split-roll initiative on nonresidential solar energy systems in the state. SB 364 ensures that nonresidential active solar energy systems in the state constructed or installed prior to January 1, 2025, as already provided in current law, continue to be exempted from taxation by reclassifying them as personal property. In the event the split-roll initiative passes, SB 364 will ensure preservation of the existing exemption as intended. If, however, the split-roll ballot initiative is not approved at the statewide general election, SB 364 becomes inoperative preserving the existing law exemption for nonresidential solar energy generation systems.

2) This bill is supported by Tenaska, Inc., which notes:

> Since 1980, commercial and utility-scale solar projects have been partially excluded from annual property tax assessments per voter-approved Proposition 7. Proposition 15 on the November 2020 ballot would inadvertently repeal the solar tax exclusion, making utility-scale and commercial solar systems taxable at their full fair market value as of January 1, 2022.
>
> Current tax treatment for these solar projects has aided California's transition to renewable energy by lowering projects' costs to ratepayers. The tax exclusion is passed through to ratepayers in direct cost savings. Should Proposition 15 pass without this fix, existing solar projects and contracts will face potential default, and projects with signed contracts that haven't been built will be delayed, forestalling much needed new job

creation, creating additional ratepayer burdens, and delaying progress toward our clean energy and climate goals at the worst possible time.

SB 364 ensures that the existing tax treatment for larger solar projects remains intact and clarifies that projects that have already changed ownership and are paying property taxes cannot be "re-exempted" under the new law. Importantly, the language in SB 364 is tied to passage of Proposition 15 – if voters approve the measure, the SB 364 language goes into effect. If the measure is not approved SB 364's language does not go into effect, effectively leaving status quo in place, which is the goal of the legislation.

Passage of SB 364 is crucial to maintaining both progress toward our climate goals and investor confidence in California's electricity market.

3) This bill is opposed by the California Assessors' Association (CAA), in part, on the basis that this bill is unconstitutional. The CAA states:

   Active solar systems have always been considered by assessors, the Board of Equalization and the Legislature to be real property subject to the property tax imposed by the state constitution. After the passage of Proposition 13 in 1978, the Legislature passed SCA 28 (Proposition 7 of 1980) to allow a limited exclusion from the term "new construction" for "active solar systems" added by homeowners and businesses. The ballot materials clearly identified such systems as "real property"; indeed, there would have been no need to amend the constitution had such systems not been improvements to real property. [...]

   It is well settled that the Constitution imposes the property tax on real property and the Legislature has no authority to exempt *real* property from taxation. At the same time, the Constitution allows the Legislature, with a 2/3's vote of both houses, to exempt *personal* property from property taxes. The courts have closely guarded against the legislative temptation to evade the prohibition against exemptions from the property tax by reclassifying "real property" as something else.

4) Committee Staff Comments:

   a) *California's Constitution allows the addition of an active solar energy system to a property to be "excluded" from property tax assessment on the basis that it is real property*: When a substantial addition to real property occurs, the law requires the assessor to increase the assessment to reflect the value of the "newly constructed" property. However, California's Constitution provides certain new construction exclusions. Any value added by additions where a new construction exclusion is available is not subject to property tax until there is a subsequent change in ownership of the property.

   In 1980, Proposition 7 (SCA 28) amended the Constitution to create a new construction exclusion for the construction or addition of an active solar energy system. For the last 40 years, these active solar energy systems have been classified and treated as real property. The solar exclusion applies to both residential and nonresidential systems equally and applies to a wide range of systems from a utility-scale solar project to a rooftop installation on a home.

b) *Proposition 15, the "split roll" initiative to require fair market value based assessments of commercial and industrial real property, will be before California voters at the November 3, 2020 general election*: California has an acquisition value based property taxation system for real property. Existing law generally limits a property's assessed value to its market value when first acquired with a maximum annual 2% inflation adjustment thereafter plus an addition for any new construction that subsequently occurs. If approved by voters, Proposition 15 [Initiative 1870 (19-0008A1)], would transition the assessment of certain commercial and industrial real property to a fair market value standard. Proposition 15 is commonly described as creating a "split roll" since it establishes a different value standard for commercial and industrial property than for residential property. Residential property would retain existing law's acquisition value based standard and is not impacted by Proposition 15. After the initial reassessment of commercial and industrial property to fair market value, which is phased in with a start date of January 1, 2022, Proposition 15 requires periodic reassessments at least every three years thereafter. Proposition 15 is estimated to increase annual property tax revenues by $7.5 billion to $12 billion.

c) *The property tax incentive for the installation of an active solar energy system is in the form of an exclusion, it is not an exemption*: If voters approve Proposition 15, then an active solar energy system currently excluded from assessment under the new construction exclusion that is located on a commercial and industrial property would effectively become subject to property tax. This is because an "exclusion" from property tax is not the same thing as an "exemption" from property tax. Generally, for commercial and industrial property that transition to a fair market value standard, the new construction and change in ownership provisions that limit when real property values are increased (for new construction) or reset to fair market value (for a change in ownership) would no longer apply. Consequently, the solar new construction exclusion no longer applies and the active solar energy system would become subject to property tax as the entire property, including the solar system, would be valued at its fair market value.

d) *California's Constitution allows the Legislature to exempt personal property from property taxation*: Section 2 of Article XIII of the California Constitution authorizes the Legislature, with a 2/3 vote, to classify personal property for differential taxation or for exemption. This bill seeks to use this provision of the Constitution to classify nonresidential active solar energy systems as personal property and create a property tax exemption on this basis. This bill is keyed with a 2/3 vote consistent with the Constitution's requirement.

e) *What is the problem*? If Proposition 15 passes, then solar systems currently excluded from property tax would become taxable at fair market value. This applies to both active solar energy systems installed at a business or industrial property and major freestanding solar energy facilities selling renewable energy to utilities. Solar industry organizations state that the resulting unexpected tax increase would jeopardize the financial viability of existing solar projects and make certain planned solar projects economically unviable and un-financeable, which would, in turn, impact state clean energy and climate goals. A published Fact Sheet by the Solar Energy Industries Association states:

> This [initiative] will jeopardize the equity interests in existing solar power plants. These plants sell their power under long-term power purchase agreements (PPAs), the

pricing of which was contractually agreed to on the basis that property taxes would not be imposed. Existing power plants simply cannot absorb this added cost based on their fixed PPAs.

It will similarly jeopardize yet-to-be-built solar power plants, particularly those for which PPAs have already been entered into. The PPA price does not reflect the materially increased property tax cost. Such projects will not be able to get adequate financing and may have to be abandoned. Future solar projects would have to build the cost of the property tax into their PPA bids, increasing the cost of energy to California's consumers.

f) *What does this bill do*? To preserve the tax benefits currently bestowed on active solar energy systems via the new construction exclusion if Proposition 15 passes, this bill seeks to preemptively reclassify nonresidential active solar energy systems from real property to personal property and create a property tax exemption for this property. The personal property tax exemption would apply to systems constructed or installed before January 1, 2025, and allows the exemption to continue to apply on and after this date, until there is a subsequent change in ownership of the system. However, systems constructed or installed before Proposition 15's operative date, would be eligible for this exemption only if that system was excluded from assessment on Proposition 15's operative date.

   Residential active solar energy systems would continue to be classified as real property and remain eligible for the new construction exclusion, while nonresidential active solar energy systems would become ineligible for the new construction exclusion. This bill also provides that if voters do not approve Proposition 15, then its provisions are inoperative and will be effectively repealed on January 1, 2021.

   Together, these provisions serve to transition a pre-existing property tax incentive from an "exclusion" to an "exemption" to maintain the status quo for nonresidential active solar energy systems and continue to encourage and to provide incentives for the development of solar energy.

g) *Setting a precedent*: If Proposition 15 is approved, other commercial and industrial property owners will also incur unanticipated property tax increases. This bill could set a precedent of redefining specific items of real property improvements as personal property and creating an exemption to minimize the impact of fair market value based assessments that other commercial and industrial property owners adversely impacted by the initiative would similarly seek.

h) *Related legislation*: AB 105 (Ting) includes similar provisions to classify and exempt nonresidential active solar energy systems from property tax as personal property if Proposition 15 passes. These provisions were amended into AB 105 in the Senate on June 22, 2020, and passed the Senate on June 25, 2020. Because the Senate amendments deleted the version of AB 105 passed by the Assembly, AB 105 was referred to this Committee pursuant to Rule 77.2. Subsequently, AB 105's provisions were amended into this bill with a modification to address an unintended consequence of exempting currently taxable systems consistent with this bill's intent to ensure the continued property tax benefit provided to a particular system should Proposition 15 be approved. In the case of a pre-existing active solar energy system, this bill requires the system to be receiving the benefit of the new construction exclusion on the day that Proposition 15 becomes operative. Additionally, this bill makes related findings and declarations which AB 105 lacked.

REGISTERED SUPPORT / OPPOSITION:

Support

American Wind Energy Association*
Berkshire Hathaway Energy
BHE Renewables
California Calls
California Community Choice Association*
California League of Conservation Voters
California Solar & Storage Association
Capital Dynamics, Inc.*
Clearway Energy Group
Coalition for Clean Air*
De Shaw Renewable Investments*
EDF Renewables*
Evolve California
First Solar, Inc.*
Idemitsu Renewables*
Independent Energy Producers Association
Large-scale Solar Association
League of Women Voters of California
National Electrical Contractors Association*
Natural Resources Defense Council*
RWE Renewables Americas, LLC*
Recurrent Energy, LLC*
SEIU California
Spower*
Silicon Valley Clean Energy
Solar Energy Industries Association
State Building & Construction Trades Council of California*
Sunpower Corporation*
Tenaska
Union of Concerned Scientists*
Vote Solar*

*Support letter submitted for AB 105 (Ting)

Opposition

California Assessors' Association
California Business Roundtable

Analysis Prepared by: Rose Marie Kinnee / REV. & TAX. / (916) 319-2098

Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

SB 587 (Monning) – As Amended June 24, 2020

Majority vote. Fiscal committee.

SENATE VOTE: 37-0

SUBJECT: California Sea Otter Voluntary Tax Contribution Fund

SUMMARY: Extends the sunset date and revises the statutory provisions for the existing voluntary contribution fund (VCF) dedicated to California sea otters on the state Personal Income Tax (PIT) return. Specifically, **this bill**:

1) Changes the existing VCF name from the "California Sea Otter Fund" to the "California Sea Otter Voluntary Tax Contribution Fund" (Fund).

2) Extends the Fund's sunset date from January 1, 2021, to January 1, 2028.

3) Provides that all moneys transferred to the Fund shall be continuously appropriated.

4) Requires the Department of Fish and Wildlife (DFW) and the California State Coastal Conservancy (SCC) to post on its internet website information regarding the process for awarding money from the Fund, the amount spent on administration, and an itemization of how program funds were awarded.

5) Sets the Fund's minimum contribution amount to $250,000, and removes the requirement that this amount be adjusted for inflation.

EXISTING LAW:

1) Allows taxpayers to contribute to one or more of 21 VCFs on the 2019 PIT return.

2) Provides a specific sunset date for each VCF, except for the California Senior Citizen Advocacy Voluntary Tax Contribution Fund and the State Parks Protection Fund.

3) Requires each VCF to meet an annual minimum contribution amount to remain in effect, except for the California Firefighters' Memorial Fund, the California Peace Officer Memorial Foundation Fund, and the California Senior Citizen Advocacy Voluntary Tax Contribution Fund.

4) Allows an individual, until specified conditions are met, or until January 1, 2021, to designate on the individual's PIT return that a specified amount in excess of the individual's tax liability be contributed to the California Sea Otter Fund.

5) Provides that all money transferred to the California Sea Otter Fund, upon appropriation by the Legislature, shall first be allocated to the Franchise Tax Board (FTB) and the State Controller for reimbursement of all costs incurred in administering the Fund. The remaining moneys are divided equally between the:

   a) DFW to establish a sea otter fund used for sea otter conservation, including for increased investigation, prevention, and enforcement actions related to sea otter mortality, and for public outreach activities that encourage taxpayers to make contributions to the Fund; and,

   b) SCC for competitive grants and contracts to public agencies and nonprofit organizations for research, science, protection, projects, or programs related to the Federal Sea Otter Recovery Plan or improving the nearshore ocean ecosystem, including program activities to reduce sea otter mortality, and for public outreach activities that encourage taxpayers to make contributions to the Fund.

FISCAL EFFECT: The FTB estimates General Fund revenue losses of $5,000 in fiscal year (FY) 2021-22 and $5,000 in FY 2022-23.

COMMENTS:

1) The author has provided the following statement in support of this bill:

> Given that the sea otter population remains in trouble, it is important to extend the voluntary tax contribution option on the state income tax form in order for Californians to be able to assist in helping to protect this keystone species. The reauthorization of the California Sea Otter Voluntary Tax Contribution Fund will ensure that support for research to protect the sea otter population will continue uninterrupted.

2) The organizations in support of this bill state:

> The southern sea otter [is a] "keystone" species, which means that they are critical to the health of our kelp forests and thriving ocean ecosystem. Without sea otters, sea urchin populations can explode, decimating kelp forests. At one time, it seemed as if the sea otter had been erased from our shores due to excessive hunting for the fur trade. But, in 1938, an alcove of 50 otters were discovered in Big Sur and from there, the population has grown to more than 3,000 otters that live along our coast between Point Conception and San Mateo County. Though the population is rebounding, it is not recovered. Sea otters still face many threats including shark predation, oil spills, plastic and fishing line entanglement, toxic algal blooms, loss of kelp forests, and boat strikes.
>
> The California Sea Otter Fund, which was established in 2006, allows taxpayers to donate to the protection and restoration of sea otter populations along our coast, by simply checking a box on their tax forms. Since its creation, the California Sea Otter Fund has provided critical funding for sea otter conservation, collecting nearly $3.7 million, with an average annual donation of $306,494.
>
> Grants awarded from the fund by the California Coastal Conservancy and the Department of Fish and Wildlife have gone toward research and projects that help us understand causes of sea otter deaths, identify factors that limit population growth, reduce water

pollutants toxic to otters, develop wetland management and restoration guidance to aid in otter recovery, and educate the public how they can prevent disturbance of wild otters. Further, the Department of Fish and Wildlife relies on funding from this program to conduct sea otter conservation science, yearly population counts, and investigations into the causes of sea otter deaths. In addition, the funds from this program are an important source of matching funds to leverage federal funding. This funding program is set to expire January 2021 unless the Legislature acts to extend its sunset date.

The extension of the sunset on the Sea Otter Fund is essential to continuing with current and ongoing sea otter conservation and recovery efforts at a time when this species is making progress towards recovery. Without this critical funding source, much of the sea otter conservation and research work will be curtailed at a time in which additional funding sources are difficult to replace due to the current economic downturn.

3) Committee Staff Comments:

   a) *California's sea otters*: According to the DFW, California's southern sea otters (*Enhydra lutris nereis*) were thought to be extinct from the late 19th century until 1938, when a small population was discovered near Big Sur. Given legal protection, their numbers slowly increased and they were listed as "threatened" under the federal Endangered Species Act in 1977. They are also protected by the federal Marine Mammal Protection Act and have fully protected species status under state law. The sea otter population has increased in fits and starts, and currently hovers around 3,000 individuals. Population growth continues to be limited by a high mortality rate.

   b) *Fund history*: This Fund has consistently raised more than the minimum amount necessary to remain listed on the PIT return. The Fund first appeared on the 2006 PIT return with the enactment of AB 2485 (Jones), Chapter 296, Statutes of 2006. The original legislation provided for the Fund provisions' automatic repeal on January 1 of the fifth taxable year following the Fund's first appearance on the tax return. As such, the original Fund provisions were repealed by their own terms on January 1, 2011. AB 971 (Monning), Chapter 209, Statutes of 2011, then reauthorized the addition of the Fund checkoff to the PIT form beginning with the 2011 return and included a January 1, 2016 sunset. SB 17 (Monning), Chapter 136, Statutes of 2015, extended this sunset date to January 1, 2021.

   c) *What would this bill do*? This bill extends the Fund sunset date from January 1, 2021, to January 1, 2028, which would allow this VCF to remain listed on the PIT return. This bill also makes several changes so that the Fund will be in compliance with new VCF requirements enacted since the last sunset date extension.

   d) *Complying with new requirements*: In an effort to promote a fair playing field, the Legislature enacted a series of requirements for new and extended VCFs to establish best practices. Specifically, Revenue and Taxation Code (R&TC) Section 18873 was added by SB 1476 (Committee on Governance and Finance), Chapter 597, Statutes of 2016, to bring a degree of uniformity and improvement to the disparate VCF statutes. Among other things, R&TC Section 18873 establishes the following general provisions for new and extended VCFs:

i) The words "voluntary tax contribution" shall be included as part of the name of the fund;

ii) The internet website of the fund's administering agency shall report the process for awarding money, the amount of money spent on administration, and an itemization of how program funds were awarded, as specified;

iii) The minimum contribution amount that must be received for the fund to continue appearing on the tax return is $250,000, without subsequent inflation adjustments;

iv) The statutory provisions establishing a VCF shall remain in effect only until January 1 of the seventh calendar year following the VCF's first appearance on the return; and,

v) Contributions shall be continuously appropriated from the fund to the administering agency.

This bill, in turn, brings the existing VCF for California sea otters into alignment with the above-described best practices.

REGISTERED SUPPORT / OPPOSITION:

Support

Audubon California
Azul
California Coastkeeper Alliance
Clean Water Action
Defenders of Wildlife
Environmental Defense Center
Environmental Defense Fund
Environment California
Monterey Bay Aquarium
Natural Resources Defense Council
Planning and Conservation League
Sierra Club California
Surfrider Foundation
Sea Otter Foundation & Trust
The Nature Conservancy

Opposition

None on file

Analysis Prepared by: Rose Marie Kinnee / REV. & TAX. / (916) 319-2098

Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

SB 934 (Bates) – As Amended June 18, 2020

Majority vote. Fiscal committee.

SENATE VOTE: 39-0

SUBJECT: Corporate taxes: exempt organizations: filing fees

SUMMARY: Eliminates, under the Corporation Tax Law (CTL), the $25 filing fee to submit a tax-exempt application to the Franchise Tax Board (FTB) and the $10 annual information return filing fee applicable to tax-exempt organizations. Specifically, **this bill**:

1) Eliminates a $25 fee some organizations are required to submit when applying for California tax-exempt status with the FTB.

2) Eliminates a $10 fee for those tax-exempt organizations that must file an annual information return with the FTB.

3) Makes conforming amendments and updates cross references in the Health and Safety Code and Vehicle Code.

EXISTING LAW:

1) Exempts the income of various types of nonprofit organizations from the corporation tax.

2) Requires nonprofit organizations to submit an application to the FTB to obtain California "tax-exempt status."

3) Requires the FTB to review the application and issue a determination.

4) Requires some types of organizations that apply for tax-exempt status to include a $25 filing fee with their application.

5) Provides a streamlined method for specified nonprofit organizations that have obtained a ruling, determination, or specified letter from the Internal Revenue Service (IRS) regarding the organization's federal tax-exempt status to obtain state tax-exempt status by attaching their federal determination letter to their application to the FTB without the $25 filing fee.

6) Allows the streamlined method without the $25 fee only for organizations described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), (c)(7) or (c)(19) of the Internal Revenue Code (IRC).

7) Requires nonprofit organizations organized under any other part in IRC Section 501(c) to file their application to the FTB with the $25 filing fee.

8) Requires certain organizations that have been granted state tax-exempt status to file an annual information return to the FTB and pay a $10 filing fee.

FISCAL EFFECT: The FTB estimates that this bill will result in a revenue loss of $600,000 in fiscal year (FY) 2020-21, $900,000 in FY 2021-22, and $900,000 in FY 2022-23.

COMMENTS:

1) The author has provided the following statement in support of this bill:

    SB 934 will help non-profits save money, reduce paperwork, and make more efficient use of state resources. According to the FTB, it costs more for them to collect these fees from nonprofit organizations than the amount of revenue they bring in to the state. Due to their small cost, application filing fees for state tax exemptions are not captured in, or cost effective to be added to, FTB automated accounting systems and must be manually tracked, thereby increasing the department's costs. These fees are both insignificant to the general fund and unnecessarily time-consuming for the FTB.

    My legislation will enable the FTB to devote additional resources on more urgent matters, such as processing tax refunds for families. Elimination of the annual information return Form 199 filing fee would result in equitable and fair tax administration for exempt organizations and be consistent with federal and other state tax laws. We must ensure that our tax-dollars are being used equitably and efficiently, and this bill provides a simple way to do just that.

2) This bill is supported by the California Association of Nonprofits, which notes:

    [T]he current fee structure for filing annual information returns requires tax-exempt, but not other, organizations to pay a fee with the required return. As a result, current law creates disparate treatment between tax-exempt and other entities with regard to this filing fee.

    SB 934 will simplify, for nonprofits and the FTB, the tax-exemption application process, eliminate existing inequities in the fee structure for filing annual information returns, and help support a robust nonprofit sector in California.

    Although the bill may seem to create state revenue losses, when one takes into account the administrative costs of processing the fees, the potential fee revenue and administrative costs of processing the fees cancel each other out, with no loss to the state. And there is a net gain to nonprofits of not having to pay the fees, which is particularly appreciated during these difficult economic times.

3) Committee Staff Comments:

    a) *Tax-exempt application filing fee background*: In California, nonprofit corporations are not necessarily tax-exempt ones, regardless of federal tax-exempt status. All nonprofits must apply to the FTB for tax-exempt status, but some nonprofits are allowed to use a simplified method by providing the FTB with a copy of the IRS's determination that the organization is tax-exempt under certain provisions of the IRC. The IRS charges a user fee for its application to receive federal tax-exempt status, which is generally $275 for IRC Section 501(c)(3) organizations and $600 for others.

California requires a $25 filing fee to be submitted with the state tax-exempt application (FTB Form 3500) to reimburse the state's general fund for the FTB's processing costs. However, nonprofits organized under the following IRC Section 501(c) provisions may submit a different application (Form 3500A) to the FTB without the $25 fee to obtain state tax-exempt status under the simplified method:

i) IRC Section 501(c)(3), governing organizations operated exclusively for religious, charitable, scientific, or other specified purposes;

ii) IRC Section 501(c)(4), governing specified civic leagues and local employee associations;

iii) IRC Section 501(c)(5), governing labor, agricultural, or horticultural organizations;

iv) IRC Section 501(c)(6), governing business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues;

v) IRC Section 501(c)(7), governing clubs organized for pleasure, recreation, and other nonprofitable purposes; or,

vi) IRC Section 501(c)(19), governing veterans organizations.

All other nonprofit organizations organized under any other part in IRC Section 501(c) must file an application to receive state tax-exempt status with the $25 filing fee.

In addition to the simplified application filings, in FY 2018-19, the FTB received approximately 5,700 tax-exempt applications. The FTB states that some organizations fail to include the application fee, requiring additional correspondence and tracking. The $25 fee paid with the tax-exempt application is not captured in, or cost effective to add to, the FTB's automated accounting systems and must be manually tracked. Moreover, the FTB states that general fund recovery fees require additional manual processing to credit the payments appropriately, which increases the department's costs to process the payments.

b) *Annual information return filing fee background*: After receiving state tax-exempt status, nonprofit organizations are required to file an annual information return (Form 199) and pay a $10 filing fee, unless specifically exempted. Smaller organizations with normal annual gross receipts of less than $50,000 can provide their information electronically, and, if they do so, no filing fee applies (Form 199N). Federal law also requires a tax-exempt organization to file an annual information return or notice with the IRS, unless an exception applies, and no filing fee applies.

In the 2017 tax year, the FTB states that 60,000 entities were subject to the $10 filing fee. No other entities, such as taxable corporations or individuals are required to pay a fee to file a state income tax return with the FTB.

c) *What does this bill do*? This bill eliminates the $25 filing fee to submit a tax-exempt application to the FTB and the $10 annual information return filing fee applicable to tax-exempt organizations. Eliminating these fees, in turn, allows the FTB to discontinue its manual processing and tracking of the payments for accounting purposes.

REGISTERED SUPPORT / OPPOSITION:

Support

Franchise Tax Board (Sponsor)
California Association of Nonprofits

Opposition

None on file

Analysis Prepared by: Rose Marie Kinnee / REV. & TAX. / (916) 319-2098

Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

SB 972 (Skinner) – As Amended June 15, 2020

Majority vote. Fiscal committee.

SENATE VOTE: 25-12

SUBJECT: Corporation taxes: disclosure

SUMMARY: Requires the Franchise Tax Board (FTB) to compile a list of taxpayers that are subject to the Corporation Tax (CT) Law, with gross receipts of $5 billion or more, and to disclose the taxpayer's name, the tax liability owed by the taxpayer, and the total amount of credits claimed by the taxpayer. Specifically, **this bill**:

1) Requires the FTB, on or before April 1, 2021, and on or before April 1 thereafter, to compile a list of all taxpayers subject to the CT Law, with gross receipts, less returns and allowances, of $5 billion or more, for the taxable year reported on a return in the previous calendar year.

2) Requires the list to include the name and tax liability of each taxpayer, the taxable year for which the return is filed, the total gross receipts for that taxable year, and the amount of credits claimed for that taxable year.

3) Requires the FTB to post the information on its internet website by May 1, 2021, and each May 1 thereafter, in a list that includes the following information:

   a) The taxpayer's name listed on the tax return;

   b) The amount of tax liability of the taxpayer for the taxable year reported on a return in the previous calendar year; and,

   c) The total amount of credits claimed by the taxpayer for the taxable year reported on a return in the previous calendar year.

4) Provides that the determination to include a taxpayer that is part of a combined reporting group shall be based on the gross receipts, less returns and allowances, of the combined reporting group.

5) Defines "credits claimed" as the amount of credits allowed under the CT Law that are applied on the return for the taxable year used to offset the tax liability.

6) Defines "tax liability" as the amount of tax owed, in a taxable year, as a result of the taxes imposed under the CT Law, and excluding overpayments, estimated tax payments, withholdings, and any other amount paid.

7) Defines "gross receipts" in the same manner as defined under Revenue and Taxation Code Section 25120.

EXISTING LAW:

1) Prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Generally, disclosure is authorized to other state tax agencies, federal tax agencies, and the Multistate Tax Commission solely for tax administration purposes.

2) Authorizes the FTB to publish statistical data related to taxpayer information so long as no individually identifiable information is revealed. Unauthorized disclosure of state tax information is a misdemeanor and unauthorized disclosure of federal tax information is a felony.

3) Requires the FTB to compile and make publically available an annual list that identifies the largest 500 tax debtors whose delinquencies exceed $100,000. The debtors are selected from both the Personal Income Tax and CT records.

4) Requires the Department of Finance (DOF) to provide an annual report to the Legislature on tax expenditures providing details on individual categories of the expenditures and historical information on the enactment and repeal of the expenditures.

FISCAL EFFECT: According to the FTB, this bill would not impact state income or franchise tax revenues.

COMMENTS:

1) The author has provided the following statement in support of this bill:

   With California facing a $54 billion deficit as a result of the COVID-19 pandemic, expenditures the state makes or forgoes merit thorough scrutiny to ensure that the budget enacted meets its intended goal. One area that policymakers and the public have little ability to assess is the over $70 billion a year California gives in tax credits, deductions, exclusions, exemptions, or other tax benefits.

   California does not collect or make available data on the state tax breaks that a particular corporation takes or the amount of state taxes an individual corporation pays. In contrast Florida, Indiana, Iowa, Maine, Maryland, Minnesota, Mississippi, Nebraska, Oklahoma, and Washington all require companies to disclose varying levels of information on the state specific tax credits taken by those companies and the amount of taxes the companies pay to the state. Federally, all publicly traded companies must annually disclose to the Securities Exchange Commission data on the amount of federal taxes paid by the corporation, federal tax deductions taken, CEO and median employee pay, and other info. This publicly available data provides policymakers and the public the ability to evaluate the benefits of various tax policies that can guide future policy recommendations, and ensure appropriate oversight.

   By creating a database of corporations with $5 billion or more in gross receipts and requiring those corporations to disclose any state tax subsidies taken and the amount of state taxes paid, SB 972 provides a tool that policymakers and the public can access. SB

972 does not eliminate any tax benefit and does not raise any taxes, it simply provides transparency and access to information on how California spends its taxpayers' dollars.

2) Supporters argue that "[i]n a time when corporate profits are at record highs while governments around the world are facing unprecedented fiscal crises, it is more important than ever to have a complete understanding of the full scope of the taxes paid and tax credits claimed by these large corporations. Tax revenues have plunged to historic lows, and even before the pandemic spurred an economic downturn, corporations were paying the lowest proportion of tax revenue in decades." Additionally, supporters state that "[p]roviding this information publicly will allow for the state and tax agencies to ensure that tax credits are being claimed by the intended recipients and being put to the use for which they were created."

3) Opponents state that SB 972 "would require the [FTB] to violate taxpayers' right to confidentiality by producing annual reports on corporate taxpayers with gross receipts of $5 billion or more. The mandated reports would include the name and tax liability of each taxpayer, the taxable year for which the return was filed, and the amount of credits claimed for the taxable year." Specifically, opponents argue that this bill "arbitrarily sets a threshold of $5 billion annually in gross receipts for businesses whose confidential information must be shared with the public" and will violate "the fundamental principle of taxpayer confidentiality." Opponents also state that lawmakers already "have access to the anonymized aggregate data from the FTB and do not need taxpayer information to make policy decisions."

4) Committee Staff Comments:

   a) *Background*: Tax expenditure programs are special tax provisions that reduce the amount of revenues the tax system would otherwise collect in order to provide benefits to certain groups of taxpayers and/or to encourage certain types of behavior and activities. Specifically, current law provides for, among other things, various income and corporation tax credits and deductions, as well as exemptions from the sales and use tax.

   State law generally prohibits the unlawful disclosure or inspection of any income tax return information, except as specifically authorized in statute. Generally, disclosure is authorized to other state agencies, federal tax agencies, and the Multistate Tax Commission solely for tax administration purposes. FTB may also publish statistical data related to taxpayer information so long as nothing specific to a single taxpayer is disclosed. Notwithstanding these provisions, the Legislature directed FTB to publish a list of the top 250 tax delinquencies over $100,000. This list was later expanded to the top 500.

   Additionally, the State publishes two related reports. First, DOF is required to report tax expenditures on an annual basis. DOF's "Tax Expenditure Report" is a list of all tax expenditures, with revenue estimates. Second, FTB's "California Income Tax Expenditures: Compendium of Individual Provisions" describes and discusses each item in addition to providing foregone revenue totals and number of tax returns affected.

   b) *What does this bill do?* This bill would require the FTB to publish a list of taxpayer names with gross receipts, less returns and allowances, of $5 billion or more. The list shall be compiled on April of each year, beginning with 2021, and the list shall be published by May of each year. The publication shall include the taxpayer's name listed on the tax return, the amount of tax liability for the taxable year reported on a return in the previous calendar year, and the total amount of credits claimed by the taxpayer for the taxable year reported on a return in the previous calendar year.

c) *Is there a benefit to having taxpayer-specific disclosure*? According to Michael Mazerov, taxpayer-specific information could be valuable in evaluating the effectiveness of certain tax provisions that are intended to stimulate job creation, investment, and other desired behavior[1]. There are a number of studies that have attempted to quantify the benefits of certain government tax programs intended to produce specific outcomes. However, these studies have produced a wide range of conclusions. Mazerov argues that taxpayer-specific information may provide additional information to evaluate specific subsidies. Mazerov also makes the argument that there is a strong justification for taxpayer-specific information of state tax incentives. According to Mazerov, "[i]f state revenues are deliberately being forgone to provide incentives for corporations to create jobs, conduct R&D activities, or invest in the state, then the public arguably has a right to know specifically which corporations are benefiting from such provisions and what the state is gaining in return."

Tax credit programs that have been added in recent history tend to follow the model mentioned above. For example, the California Competes Tax Credit, which was created in 2013 to attract or retain businesses considering a significant new investment in California, requires businesses to fill out an application that is then evaluated by the Governor's Office of Business and Economic Development (GO-Biz). The application requires specific information such as the amount of new investments, the number of new employees, and the average wage paid to those employees. Another similar program that requires specific taxpayer information is the Film Tax Credit, which was adopted in 2009 to encourage the production of qualified film and television shows in the state. Similar to the California Competes Tax Credit program, the Film Tax Credit requires specific taxpayer and project information, and an approval process before the tax credit can be utilized. Over the years, both programs have been updated. In fact, California is currently on its third version of the Film Tax Credit. Moreover, changes to these programs have been informed, in part, by the specific taxpayer information that is received during the application process.

Despite the value of receiving specific taxpayer information, the posting of that information on FTB's internet Web site may appear to be a kind of public shaming. The Committee may wish to instead have the compiled list of taxpayers sent to the Assembly Committee on Revenue and Taxation and the Senate Governance and Finance Committee. Additionally, public policy may be better served if the Legislature were informed of the types of credits claimed by each taxpayer, and not just the total amount.

REGISTERED SUPPORT / OPPOSITION:

Support

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[1] Michael Mazerov, *State Corporate Tax Disclosure: The Next Step in Corporate Tax Reform*, Center on Budget and Policy Priorities, February 2007.

American Civil Liberties Union/northern California/southern California/San Diego and Imperial Counties
California Professional Firefighters
California State Council of Service Employees International Union (SEIU California)
Evolve California
Pico California
UDW/AFSCME Local 3930

Opposition

Bay Area Council
Biocom
Calaveras County Taxpayers Association
California Bankers Association
California Business Properties Association
California Business Roundtable
California Cable & Telecommunications Association
California Chamber of Commerce
California Life Sciences Association
California Manufacturers and Technology Association
California Retailers Association
California Taxpayers Association
CompTIA
Council on State Taxation
Family Business Association of California
Inland Action
Kern County Taxpayers Association
Orange County Taxpayers Association
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Silicon Valley Leadership Group
Solano County Taxpayers Association
Sutter County Taxpayers Association
TechNet
Western States Petroleum Association

Analysis Prepared by: Carlos Anguiano / REV. & TAX. / (916) 319-2098

Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

SB 1409 (Caballero) – As Amended June 22, 2020

Majority vote. Fiscal committee.

SENATE VOTE: 36-0

SUBJECT: Franchise Tax Board: California earned income tax credit: non-filer: report

SUMMARY: Requires the Franchise Tax Board (FTB) to analyze and develop a plan to implement a "no return" tax filing pilot program with the goal of increasing the number of California Earned Income Tax Credit (EITC) claims. Specifically, **this bill**:

1) Makes findings and declarations, and provides that the Legislature intends to do the following:

   a) Improve California's tax system by removing barriers to tax filing for low– and very low–income families to increase the number of state EITC claims; and,

   b) Develop methods of collaboration and coordination between state agencies that achieve the goal of removing barriers to tax filing for low– and very low–income families.

2) Requires the FTB to analyze and develop a plan to implement a "no return" tax filing pilot program with the goal of increasing state EITC claims.

3) Requires the analysis to include, but not be limited to, an overview of the changes needed to the income tax system that would reduce barriers for non-filers who are eligible for the state EITC and an outline of the necessary changes needed to increase collaboration and coordination among state agencies to reach the greatest number of individuals eligible for the state EITC.

4) Requires the FTB to engage any state agency task force that exists to reduce poverty and allows the FTB to engage any group and other stakeholders that work to reduce poverty.

5) Requires the FTB to report to the Legislature on or before January 1, 2022, in compliance with Government Code Section 9795.

EXISTING FEDERAL LAW requires individuals that are eligible for the federal EITC to file a federal personal income tax return with the Internal Revenue Service (IRS). The IRS does not offer a "no return" filing program.

EXISTING STATE LAW:

1) Requires individuals who are eligible for the state EITC to file a California personal income tax return to claim the state EITC. California does not provide a "no return" filing option.

2) Allows, for taxable year 2019, a refundable state EITC to households making $30,000 or less regardless of whether the eligible individual has a qualifying child. State law also allows a refundable Young Child Tax Credit for a qualified taxpayer, who has at least one qualifying child younger than six years of age as of the last day of the taxable year. The credit is limited to $1,000 per taxable year, and phases out as the qualified taxpayer's earned income exceeds the threshold amount.

3) Requires individuals to file a California personal income tax return if the individual's gross income or adjusted gross income (AGI) meet specified thresholds.

FISCAL EFFECT: According to FTB's analysis, this bill "would not impact the calculation of state income or franchise tax revenue."

COMMENTS:

1) The author has provided the following statement in support of this bill:

> The California [EITC] is one of California's most important anti-poverty tools by improving the economic security of working families that struggle to make ends meet. California has made important investments in the credit and educational outreach to ensure eligible families become aware that they qualify for the CalEITC. Many eligible families still fail to claim the credit. The COVID-19 pandemic and extreme economic downturn has highlighted the need for our hard working families to receive economic supports as efficiently and rapidly as possible. SB 1409 will help ensure all eligible working families receive the credit they have earned.

2) Proponents state that "[t]he [EITC] has been hailed as one of the most effective tools for addressing the needs of people who are working but struggling to make ends meet. In 2015, California established a state earned income tax credit -- the CalEITC -- which targeted support to California's lowest income households." According to proponents, "[u]nfortunately, many of California's most economically fragile households do not receive the credits they are eligible to receive. In fact, an estimated one in five eligible California households does not receive the credit -- leaving about $2 billion in unclaimed state and federal credits each year. Often this is because the household income is below the filing threshold, but not always -- an estimated 50,000 households file taxes but do not claim the credits they have earned." Finally, proponents state that "[i]n light of COVID-19, more Californians than ever need help with income supports. As millions of Californians lose jobs or return to work at reduced hours, tax credits that boost low earnings could make the difference between having sufficient money to pay the bills, stay housed and be able to put food on the table -- or not."

3) Committee Staff Comments:

   a) *EITC*: In 2015 (SB 80, Committee on Budget and Fiscal Review), the Legislature enacted a California EITC. The California EITC is a refundable Personal Income Tax credit allowed to eligible individuals determined in accordance with the federal EITC, except as modified for California. The California EITC is only operative for taxable years for which resources are authorized in the annual Budget Act for the FTB to oversee and audit returns associated with the credit. The Legislature also must establish the

California EITC adjustment factor for each taxable year; otherwise, the California EITC adjustment factor is zero.

b) *Income thresholds*: State law allows individuals with income below a certain threshold to not file a tax return for state purposes. For 2019, these thresholds are $18,241 in gross income or $14,593 in AGI for single taxpayers (under 65 years of age with no dependents) and $36,485 in gross income or $29,190 in AGI for married individuals filing jointly (under 65 years of age with no dependents). These thresholds are increased based on the number of dependents claimed, or if the taxpayer(s) are over the age of 65, and are increased annually for inflation.

   The thresholds for filing a return at the federal level are lower than the thresholds for a California tax return. For 2019, the federal thresholds are $12,200 in gross income for single taxpayers (under 65 years of age with no dependents) and $24,400 in gross income for married individuals filing jointly (under 65 years of age with no dependents) and $5 for married filing separately. Because many households may have income that is lower than the filing thresholds, it is possible that eligible families do not file a tax return and thus do not claim the EITC.

c) *What does this bill do*? This bill would require the FTB to analyze and develop a plan to implement a "no return" tax filing pilot program with the goal of increasing the number of California EITC claims. The bill would also require the analysis to include, but not be limited to, an overview of the changes needed to the income tax system that would reduce barriers for non-filers who are eligible for the state EITC, and an outline of the necessary changes needed to increase collaboration and coordination among state agencies to reach the greatest number of individuals eligible for the state EITC.

d) *Multifaceted problem*: There are a number of reasons why individuals may not file a tax return or claim the EITC. According to the Legislative Analyst's Office (LAO), taxpayers may be unaware of the credit, some may have a general distrust of government, while others may be deterred by filing costs. Creating a "no return" pilot program, in addition to the existing outreach efforts of the state, would likely increase EITC claims since a large share of the administrative burden would be shifted to the state. Barriers such as cost, awareness of the EITC, and income filing thresholds would no longer be a factor. Unfortunately, creating a state "no return" pilot program requires the FTB to address a number of issues. The information required on FTB form 3514 (California Earned Income Tax Credit) includes, among other items, the taxpayer's federal AGI and the number of qualifying children, which the FTB may or may not be able to obtain. Additionally, even if the FTB were able to develop a "no return" filing program that dramatically increases state EITC claims, as noted in FTB's analysis, "individuals would still need to file a federal personal income tax return as the IRS does not offer a 'no return' filing option." As currently drafted, this bill appears to ignore the federal filing requirement and the federal EITC. The author may wish to broaden the scope of the bill to include changes beyond the "no return" tax filing system and also consider changes that may increase federal EITC claims.

   There are also several types of "no return" or "return free" income tax systems; but, in general, these systems task the government with withholding taxes owed and performing the accounting at the end of the year without much help from taxpayers. "No return" tax systems tend to reduce the tax compliance burden, but likely do so because the tax systems themselves are generally simpler to implement. Although not exactly a "no return" system, the author's office and advocates have raised the possibility of analyzing a prepopulated return similar to the ReadyReturn Pilot Program established in 2005. Under the ReadyReturn program, the FTB would send out prepopulated returns to taxpayers who met specified criteria. Taxpayers could file the ReadyReturn as prepared, correct the ReadyReturn, use the ReadyReturn as a starting point for determining their tax liability, give the ReadyReturn to their preparer, or simply throw the document away. However, it is not clear to Committee staff if a ReadyReturn type of filing system will be the focus of this study. The author's office and proponents have expressed the possibility of analyzing all forms of "no return" filing systems where the state initiates the process and does most, if not all, of the administrative work. It is also not clear if the FTB is expected to analyze all types of "no return" filing systems. To reduce the potential workload, the author may wish to provide additional guidance. Additional guidance may also help the FTB meet the author's expectations for this bill.

To create a "no return" filing system that increases state EITC claims, the FTB would also need to determine whether it can gain access to a number of specific taxpayer information sources. As mentioned earlier, two pieces of information that are needed to calculate the state EITC are the taxpayer's federal AGI and the number of qualifying children. The FTB and the IRS generally have tax sharing agreements, but it is unclear if the federal AGI is among those items of information. Even if the information is available, it is not clear if that information will be obtained in a timely fashion since there can be a significant delay between the time tax returns are filed with the IRS and when that information is provided to the FTB. Additionally, the FTB may have access to information on a taxpayer's dependents, but dependents are not always qualifying children for EITC purposes. To acquire the age and relation of each dependent would likely require the FTB to collaborate with other state agencies. The FTB has specifically asked for an amendment requiring the Department of Social Services to share data upon request for purposes of this study. The author's office has, however, expressed concerns with this amendment since it already presumes that the Department of Social Services has part of the information needed to calculate the state EITC. According to the author's office, the purpose of this bill is to determine which agencies have the needed information, not to require any one agency to provide information.

e) *Proposed amendment*: As mentioned earlier, a state "no return" tax filing system would do little for federal EITC claims since individuals would still need to file a federal personal income tax return. The Committee has proposed the following amendment to ensure that FTB also considers changes that may increase federal EITC claims:

> Sec 2(a) The Franchise Tax Board shall analyze and develop a plan to ~~implement a "no return" tax filing pilot program with the goal of increasing~~ <u>increase</u> the number of claims of the California Earned Income Tax Credit (CalEITC) allowed pursuant to Section 17052 of the Revenue and Taxation Code, <u>and the Federal Earned Income Tax Credit, including alternative filing systems.</u>

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Boys and Men of Color
Asian Americans Advancing Justice
California Alternative Payment Program Association
California Association of Food Banks
California Lulac
Catholic Charities East Bay
Catholic Charities of Santa Clara County
Chicano Federation of San Diego County
Child Action INC
Children Now
Children's Defense Fund - CA
Children's Institute, INC.
Daughters of Charity of St. Vincent De Paul Province of The West
Dolores Huerta Foundation
Economic Security Project Action (UNREG)
Friends Committee on Legislation of California
Gardner Family Health Network
Golden State Opportunity
Grace Institute - End Child Poverty in Ca
Head Start California
Jewish Family Services of San Francisco
John Burton Advocates for Youth
Los Angeles Regional Food Bank
Martin Luther King Jr Freedom Center
National Association of Social Workers, California Chapter
National Foster Youth Institute
San Diego for Every Child
Shields for Families
Small Business California
South Bay Community Services
The Children's Movement of Fresno
The Children's Partnership
Tipping Point Community
United Way, Fresno Madera Counties
United Ways of California
Western Center on Law and Poverty

Opposition

None on file

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Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

SB 1441 (McGuire) – As Introduced February 21, 2020

Majority vote. Fiscal committee.

SENATE VOTE: 39-0

SUBJECT: Local Prepaid Mobile Telephony Services Collection Act

SUMMARY: Extends the Local Prepaid Mobile Telephony Services[1] (MTS) Collection Act[2] indefinitely and imports into this Act the necessary administrative provisions from the interrelated and now-repealed Prepaid MTS Surcharge Collection Act, with some modifications. Specifically, **this bill**:

1) Deletes the January 1, 2021, sunset date on the Local Prepaid MTS Collection Act (Local Collection Act or Local Prepaid MTS Charges), extending this Act indefinitely.

2) Allows the continued collection of Local Prepaid MTS Charges (Local Charges), which consist of local governments' utility user taxes (UUTs), local emergency telephone charges (local 911), and any other local charge imposed on consumers that purchase prepaid MTS using the collection mechanism of the Local Collection Act.

3) Requires Local Charges to be collected from a prepaid MTS consumer by a seller at the time of sale, as specified.

4) Imports into the Local Collection Act the definitions and administrative collection and remittance procedures previously included in the related and now-repealed Prepaid MTS Surcharge Collection Act[3] (State Collection Act or State Prepaid MTS Surcharge), to re-establish within the Local Collection Act those provisions necessary to ensure its effective administration.

5) Requires the California Department of Tax and Fee Administration (CDTFA) to continue to perform all functions incident to the collection of a city or county's local charges under the Local Collection Act.

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[1] Typically, this includes prepaid wireless minutes or plans, prepaid wireless cards or refill/top-off cards, among other services or products.

[2] The Local Prepaid Mobile Telephony Services Collection Act (Part 21.1) commencing with Revenue & Taxation Code (R&TC) Section 42100.

[3] The former Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21) commencing with R&TC Section 42001. The Prepaid MTS Surcharge Collection Act sunset on January 1, 2020. However, prior to its repeal, portions of this Act were held unconstitutional by a federal court and state agencies were preempted from using the State Collection Act. *MetroPCS v. Picker, et al*, 348 F. Supp.3d 948 (2018).

6) Requires the CDTFA to post, for each local jurisdiction, the rate or rates of the local charges on its internet website, as specified.

7) Allows sellers collecting local charges to rely upon the accuracy of the information posted in collecting and remitting all amounts of local charges, as specified.

8) Requires sellers that are direct sellers (wireless service providers) to remit local charges to the local agency imposing the local charge, as specified.

9) Requires sellers that are not direct sellers (third-party sellers) to remit local charges collected to the CDTFA, as specified.

10) Allows sellers that are not direct sellers to deduct and retain 2% of the amounts collected by the seller from prepaid consumers for local charges.

11) Requires the amount of the local charges to be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid consumer of MTS by the seller, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction.

12) Provides that local charges collected are debts to the state, as specified.

13) Allows excess local charges collected to be refunded to the prepaid consumer, as specified.

14) Provides prepaid consumers are liable for the local charge unless payment is made to the seller, as specified.

15) Allows a credit against local charges to the extent that the prepaid consumer paid local charges to another state, as specified.

16) Relieves a seller's liability for worthless accounts that have been charged off for income tax purposes, as specified.

17) Provides that a retail transaction occurs in this state when the prepaid consumer makes a purchase in person at a business location in the state, referred to as a point-of-sale transaction, or, the prepaid consumer's address is in the state, referred to as a known-address transaction.

18) Defines "in this state" as within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

19) Provides a known-address transaction occurs in the state under any of the following circumstances:

   a) The retail sale involves shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state;

   b) The prepaid consumer's address is known by the seller to be in the state, including if the seller's records maintained in the ordinary course of business indicate that the prepaid consumer's address is in the state and the records are not made or kept in bad faith;

c) The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the payment instrument, if no other address is available and the address is not given in bad faith; or,

d) The mobile telephone number is associated with a location in this state and the address is not otherwise available to the seller.

20) Provides that a retail transaction shall occur at only one location for purposes of determining local charges.

21) Provides that if the retail transaction is a point-of-sale transaction, the consumption of, use of, or access to the prepaid MTS shall be presumed to be at that location.

22) Specifies that if the retail transaction is a known-address transaction, the consumption of, use of, or access to the prepaid MTS shall be presumed to be at the known address, and requires the location of the known address to be determined consistent with the descending order of the four transaction circumstances described above.

23) Clarifies the application of local charges in a single price bundled sale transaction by including an explicit reference to prepaid MTS sold with mobile data services. Provides as follows:

a) If prepaid MTS is sold in combination with mobile data services or any other services or products that are not subject to the local charges for a single price, then the local charges shall apply to the entire price unless the seller can identify the mobile data services and other services or products from its books and records kept in the ordinary course of business;

b) If prepaid MTS is sold with a mobile telephone service communication device, commonly termed a cellular telephone, for a single, nonitemized price, then the local charges shall apply to the entire nonitemized price, except if the purchase price for the cellular telephone component of the bundled charge is disclosed to the prepaid consumer on a receipt, invoice, or other written or electronic documentation provided to the prepaid consumer, the local charges may be calculated excluding the separately stated price of the cellular telephone; or,

c) If a minimal amount of prepaid MTS is sold for a single, nonitemized price with a MTS communications device, then the seller shall not apply the local charges to the transaction. For these purposes, a service allotment denominated as 10 minutes or less, or $5 or less, is a minimal amount.

24) Requires the CDTFA to collect and administer the local charges pursuant to the Fee Collection Procedures Law, as specified.

25) Requires persons that remit Sales and Use Taxes by electronic funds transfer (EFT) to remit local charges by EFT, as specified.

26) Provides the CDTFA with emergency regulatory authority to implement this Act, as specified.

27) Requires the CDTFA to establish procedures for sellers to use to document sales that are not retail transactions, as specified.

28) Requires the CDTFA to establish remittance schedules using existing Sales and Use Tax methods, as specified.

29) Provides payments and returns are due on a quarterly basis, as specified.

30) Requires sellers to register with the CDTFA, as specified.

31) Makes other technical and conforming changes, including updating references from "board" to "department" throughout, as the Board of Equalization, CDTFA's predecessor, administered the Local Collection Act when initially enacted.

EXISTING LAW:

1) Established two prepaid MTS-related Collection Acts:

   a) The Local Prepaid MTS Collection Act (Local Collection Act for Local Charges) for use between January 1, 2016, and before January 1, 2021[4]; and,

   b) The Prepaid MTS Surcharge Collection Act (State Collection Act for the State Surcharge), which was used between January 1, 2016, until December 14, 2018.

2) Required, under both Collection Acts, sellers to collect from consumers who purchased prepaid MTS both Local Charges and the State Surcharge. Sellers, in turn, were required to remit the Local Charges and the State Surcharge to the CDTFA.

3) Provided that the State Surcharge was *in lieu of* the charges previously imposed on prepaid MTS for all of the following:

   a) The Emergency Telephone Users Surcharge Act (State 911) imposed on telecommunications services in an amount determined by the Office of Emergency Services (OES) to fund the State's 911 emergency response system; and,

   b) Six California Public Utilities Commission (CPUC) telecommunications universal service surcharges and its user fee surcharge, as specified.

4) Preempted state agencies from using the State Collection Act for the State-related surcharges under a Federal Court Injunction Order, after a finding that a portion thereof, the CPUC-related portion, required the CPUC to calculate its surcharge using a mandatory intrastate allocation factor that the Federal Court found unconstitutional.

5) Allowed state agencies, the CPUC and the CDTFA, to return to their prior collection methods applicable to prepaid MTS sellers that are direct sellers (wireless service providers) previously in effect prior to the State Collection Act. Specifically:

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[4] SB 344 (McGuire) Chapter 642, Statutes of 2019, extended the sunset date for the Local Collection Act for one year from January 1, 2020, to January 1, 2021.

a) Allows the CPUC to collect prepaid MTS related surcharges from wireless carriers. Effective January 1, 2019, intrastate prepaid wireless services that were subject to the State Collection Act became assessed the same as CPUC adopted surcharge and user fee rates applicable to all other telecommunications services. Prepaid wireless carriers are responsible for collecting, reporting, and remitting surcharges and user fees due on all wireless services, including indirect sales of prepaid wireless services, consistent with existing state laws and CPUC directives prior to January 1, 2016; and,

b) Allowed the CDTFA to collect prepaid MTS related State 911 charges under the State 911 Act,[5] as they had prior to January 1, 2016. Subsequent legislation, operative January 1, 2020, modified the manner and method of collecting the State 911 surcharge with a revised surcharge rate structure.[6]

6) Suspended with the enactment of the Local Collection Act both of the following:

a) All city and county UUTs on the consumption of prepaid MTS in the city and county at the rate specified in its ordinance, and converted to a tiered tax rate percentage as set forth in the Local Collection Act; and,

b) All local 911 charges and any other local charges imposed on consumers that purchase prepaid MTS, and instead converted any charges, as specified, in the Local Collection Act.

7) Requires that the Local Collection Act be the exclusive collection method for Local Charges.

8) Requires the CDFTA to perform all functions incident to the collection of a city or county's Local Charges under the Local Collection Act, including:

a) Depositing the Local Charges remitted by sellers into a specified fund in the State Treasury, which are held in trust for the city or county;

b) Periodically transmitting the funds to cities and counties at least quarterly; and,

c) Furnishing a quarterly statement to the city or county indicating the amounts paid and withheld.

9) Requires cities and counties that impose Local Charges to reimburse the CDTFA for its collection and administrative costs.

10) Defines terms for use in the Local Collection Act by cross-reference to the State Collection Act as it read on January 1, 2017.

11) Repealed the State Collection Act on January 1, 2020.

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[5] See CDTFA notice to Telecommunication Service Suppliers instructing that, beginning on January 1, 2019, they must collect the State 911 Emergency Telephone Users Surcharge (commencing with R&TC Section 41001) on charges for *prepaid* and postpaid intr*a*state telecommunications in the same manner as they did prior to January 1, 2016. Additionally, this allows service suppliers to choose "books and records used in the course of business" as a method to calculate charges not subject to the State 911 surcharge (exempt int*er*state revenue).

[6] SB 96 (Committee on Budget and Fiscal Review), Chapter 54, Statutes of 2019.

12) Repeals the Local Collection Act on January 1, 2021.

13) Imposes the Local Charges based on a percentage of the sales price of each retail transaction for prepaid MTS, as specified.

14) Requires, on and after January 1, 2016, and before January 1, 2021, the Local Charges imposed on prepaid consumers to be collected by the seller from each prepaid consumer at the time of each retail transaction, as specified.

15) Replaces the previous State 911 surcharge with a new charge to fund the State's 911 emergency response system (SB 96, Committee on Budget and Fiscal Review, Chapter 54, Statutes of 2019), effective on January 1, 2020, which:

a) Maintains OES's role determining the amount of the charge;

b) Changes the measure of the charge to up to $0.80 per access line per month, instead of the previous cap of 1% of charges for services; and,

c) Also applies the State 911 surcharge to sellers of prepaid MTS at the rate of up to $0.80 per retail transaction in California, paid by the consumer at the time of purchase.

16) Declares and finds that it is a matter of statewide concern that the Local Charges for prepaid MTS be collected in a uniform manner in order for the collection to be fair and uniform on a statewide basis.

FISCAL EFFECT: Unknown

COMMENTS:

1) The author has provided the following statement in support of this bill:

> Due to the unprecedented coronavirus pandemic, cities and counties are facing crippling budget deficits for years to come. SB 1441 will preserve local jurisdictions' ability to collect Utility User Taxes (UUTs) from retail sales of prepaid wireless telecommunication products and services. Over 100 cities and counties rely on this locally imposed, voter-approved revenue stream to provide important services like public safety and road repair. Without SB 1441, these local governments will lose their ability to collect this revenue at the end of the year. As we face disastrous economic uncertainty, SB 1441 is crucial to ensuring locals maintain the ability to collect on revenue they have relied on since 2016.

2) CTIA, the trade association for the wireless communications industry, which includes AT&T, Verizon, Tracfone and TMobile, in support of this bill, notes:

> In 2014, the legislature, with overwhelming bi-partisan support, passed AB 1717 (Perea), to create a statewide system for retail point-of-sale collection of state and local taxes and fees imposed on prepaid wireless services. The existing provisions from AB 1717 expire on January 1, 2021. More than 40 states have enacted prepaid wireless point-of-sale collection statutes in recognition of their importance to funding state and local programs. SB 1441 ensures that the prepaid sector of the communications market will continue to

equitably share in the responsibility of funding local 911 fees and providing critical revenue to cities and counties generated by local UUTs.

Prepaid wireless services are offered on a "pay-as-you-go" basis with no required contracts, term or volume commitments, early termination penalties, overage charges, or credit checks. These important factors make prepaid services available to those consumers to whom the security and convenience of mobile telephone service might not be available. This business model offers reliable service and affordable pricing. However, the fact that the service is not billed to consumers on a monthly basis creates challenges for some sellers regarding the collection of end user fees to fund programs such as local 911 fees and local UUTs. SB 1441 would ensure continued collection of local 911 fees and UUTs without interruption by removing the sunset and making permanent the point-of-sale collection mechanism.

3) Committee Staff Comments:

   a) *What are prepaid Mobile Telephony Services*? MTS include prepaid wireless minutes or plans, prepaid wireless cards or refill/top-off cards, among other services or products. These services may be purchased directly from a wireless service provider or indirectly through a retailer, like a grocery store or Target.

   b) *The Local Collection Act for prepaid MTS has been in use since January 1, 2016*: In 2014, the Legislature enacted AB 1717 (Perea), Chapter 885, Statutes of 2014, creating the Local Collection Act to require city or county UUTs and local 911 charges imposed on prepaid consumers to be collected by the seller from each prepaid consumer at the time of each retail transaction. This collection mechanism for cities and counties has been in operation since January 1, 2016, and will sunset on January 1, 2021, absent this bill.

   c) *A federal court ended the use of the State Collections Act for prepaid MTS with MetroPCS v. Picker*: In addition to the Local Collection Act, AB 1717 enacted a State Collection Act for state-imposed charges on prepaid MTS. These charges were for State 911 purposes and certain CPUC-related surcharges. However, in November 2018, a Federal Court halted the State Collection Act after a finding that one part, the CPUC-related portion, required the CPUC to calculate its surcharge using a mandatory intrastate allocation factor that the Federal Court found unconstitutional. After the court ruling, the CDTFA and CPUC remained able to collect these state-imposed charges by returning to pre-AB 1717 collection provisions. While AB 1717 also enacted the Local Collection Act, the court's ruling had no impact on this Act.

   d) *What does this bill do*? This bill serves two functions. First, it deletes the sunset date of the Local Collection Act making permanent the point-of-sale collection mechanism for Local Charges on behalf of local governments. Second, it makes non-substantive changes to eliminate cross-references to the now-repealed State Collection Act and import from that repealed Act necessary administrative provisions.

   e) *Last year, the Legislature extended the Local Collection Act for one-year to provide time to modify this Act into a stand-alone measure and unwind it from the State Collection Act*: As noted, AB 1717 created the State and Local Collection Acts at the same time. While the two Acts were separate, many provisions in the Local Collection Act were intertwined with the State Collection Act. In 2019, SB 344 (McGuire) extended the sunset date for the Local Collection Act by one year and used cross-references to the now-repealed State Collection Act. SB 344 (McGuire), Chapter 642, Statutes of 2019, represented a short-term solution while work was undertaken to fully develop the Local Collection Act as a stand-alone measure, which this bill's provisions would accomplish. This bill adds into the Local Collection Act the definitions and administrative collection and remittance procedures that were previously included in the State Collection Act. These non-substantive changes re-establish within the Local Collection Act those provisions necessary to ensure its effective administration.

f) *State 911 Surcharge changes and seller recordkeeping*: Beginning on January 1, 2020, SB 96 (Committee on Budget and Fiscal Review), Chapter 54, Statutes of 2019, replaced the previous state 911 surcharge with a new monthly charge to fund the state's 911 emergency response system. The surcharge also applies to sellers of prepaid MTS at the rate of up to $0.80 per retail transaction in California, paid by the consumer at the time of purchase. Thus, retailers are required to collect a state and local prepaid MTS charge using different rate structures: (i) a flat rate for the state 911 surcharge, and (ii) a percentage-based rate for local charges. The law requires sellers to separately state both the state 911 surcharge and local charges on receipts provided to the prepaid MTS consumer. Differing tax rate structures for prepaid MTS complicates seller recordkeeping and reporting. Although two different tax rate structures would be burdensome for retailers, this bill continues to allow indirect sellers to keep 2% of the Local Charges collected to compensate these indirect sellers, which are typically retailers, for their administrative costs.

g) *Prior legislation*:

   i) SB 344 (McGuire), Chapter 642, Statutes of 2019, extended the sunset date for the Local Prepaid MTS Collection Act for one year from January 1, 2020, to January 1, 2021. SB 344 also included provisions to address the application of local charges in the case of a bundled sale transaction.

   ii) SB 96 (Committee on Budget and Fiscal Review), Chapter 54, Statutes of 2019, changed the pre-existing State 911 surcharge method of calculation from a percentage of the sales price to a flat rate.

   iii) AB 1717 (Perea), Chapter 885, Statutes of 2014, created both prepaid MTS collection acts: (1) the Local Prepaid MTS Collection Act, and (2) the Prepaid MTS Surcharge Collection Act.

REGISTERED SUPPORT / OPPOSITION:

Support

California Retailers Association
California State Association of Counties
City of El Segundo
City of Culver City
City of Glendale
City of Modesto

City of Pasadena
City of Redwood City
City of Sacramento
City of Santa Ana
City of Thousand Oaks
City of Torrance
CTIA
League of California Cities
Muniservices

Opposition

None on file

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