

**Amend Unemployment Insurance Code Section 1088.5 to allow the BOE to use the new employee registry information maintained by the Employment Development Department for tax enforcement purposes.**

**Source: Sales and Use Tax Department**

**Existing Law**

Under existing law, Section 1088.5 of the Unemployment Insurance Code requires all employers to report information on newly hired or rehired employees who work in this state to the Employment Development Department (EDD) within 20 days following the date the employee is hired. The information to be reported includes the employee's full name, address, social security number, and first date the employee worked. Employers are also required to report the business name and address, state employer identification number, and federal employer identification number. This EDD report is generally referenced as the "new employee registry."

Under Section 1088.5, the new employee registry information may only be used for programs administered by the EDD, Franchise Tax Board (FTB), public assistance programs, worker's compensation programs, and enforcement of child support obligations. Under current law, the Board of Equalization (BOE) is not authorized to use the new employee registry. Rather, the BOE uses the EDD's online wage and employment information which is based on quarterly employment returns filed by employers. Even though this information is available to the BOE shortly after the end of each quarter, this information is relatively old when compared to the new employee registry information (four to six months more current).

**Legislative History**

In 1996, the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was signed into law. The primary purpose of PRWORA is to provide a strengthened child support enforcement program that locates non-custodial parents and enforces child support orders. One key provision of PRWORA related to child support orders is a requirement that all states have a program to report information about newly hired and rehired employees timely.

In 1997, pursuant to the federal PRWORA legislation, California enacted legislation (Ch. 606, AB 67, operative July 1, 1998) to establish a new employee registry. The purpose was to aid in the collection of debts of individuals who were able to avoid collection because the employer quarterly return information reported to EDD was received too late to be used as an effective collection information resource.

As previously stated, the new employee registry is to be used for child support enforcement purposes, administering workers' compensation programs, verifying eligibility for public assistance, and for income tax enforcement purposes. According to the FTB, the new employee registry has been a valuable

enforcement resource in allowing them to identify delinquent taxpayers and begin collection action shortly after those taxpayers have started a new job.

Because of the effectiveness of the new employee registry, in 2003, FTB sponsored legislation to use the registry for its non-tax debt collection programs. AB 1742 (Ch. 455, Stats. 2003, Committee on Revenue and Taxation) authorizes FTB to use the registry when pursuing non-tax debt collection such as, vehicle registration dishonored check collection, delinquent fines imposed for labor law violations, and court-ordered debt collection.

In its 2006 list of Frequently Asked Questions to provide the public an understanding of the tax gap (the difference between what is legally owed and what is voluntarily paid), the FTB explains how it relies on a combination of programs to help decrease the tax gap, including technology, new data sources, and information sharing with other governmental agencies to increase compliance of the tax laws. The FTB cites the “New Employee Registry” as one example of how sharing information with another state agency has assisted them in identifying and garnishing wages of delinquent taxpayers.

### **Background - Information Sharing**

In 2007, at the direction of the Legislature, the Legislative Analyst Office (LAO), in consultation with the Department of Finance, prepared a report on the challenges facing California’s three tax agencies and the need to engage in information and data sharing to effectively and efficiently administer the overall tax system. This report titled, *A Report on Tax Agency Information and Data Exchange*, focuses on how increased cooperation and information sharing among the tax agencies can serve to improve tax compliance and enforcement activities.

The report points out how compliance and enforcement issues have become of increasing concern to California due to a number of different trends and factors. For example, the growth of the Internet and other forms of remote sales has led to the noncompliance with the state’s use tax. These factors, coupled with other features of today’s economy such as new and different business ownership structures and the large cash economy, have led to increased concern about the tax gap. The report goes on to say that the collection, sharing, and accessibility of tax-related information among agencies are seen as primary methods of dealing with the tax gap.

In addition, the report describes how the state’s tax agencies currently exchange data and information. However, despite the information sharing that already occurs, each of the tax agencies have identified additional information now collected, but not shared, that would be useful for tax compliance purposes.

## **This Proposal**

This proposal is a duplicate of Proposal 3-4, which was adopted by a 3-2 vote by the BOE's Legislative Committee on November 17, 2009. It was one of three BOE-sponsored proposals that were incorporated in AB 2676 (Ma) during the 2010 Legislative Session. Although approved by the Legislature, Governor Schwarzenegger vetoed AB 2676, stating that the most significant provisions of this bill have already been addressed by the Budget Conference Committee, and that the bill was unnecessary (the veto message was referring to the provisions eliminating the sunset date of the use tax line on the FTB returns).

Similar to Proposal 3-4, this proposal would amend Section 1088.5 to authorize the BOE to use the new employee registry for tax collection and enforcement purposes. Access to this information will enhance the BOE's ability to locate missing taxpayers and to collect delinquent taxes.

*Section 1088.5 of the Unemployment Insurance Code is amended to read:*

1088.5. (a) In addition to information reported in accordance with Section 1088, effective July 1, 1998, each employer shall file, with the department, the information provided for in subdivision (b) on new employees.

(b) Each employer shall report the hiring of any employee who works in this state and to whom the employer anticipates paying wages.

(c) (1) This section shall not apply to any department, agency, or instrumentality of the United States.

(2) State agency employers shall not be required to report employees performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting pursuant to this section would endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) (1) Employers shall submit a report as described in paragraph

(4) within 20 days of hiring any employee whom the employer is required to report pursuant to this section.

(2) Notwithstanding subdivision (a), employers transmitting reports magnetically or electronically shall submit the report by two monthly transmissions not less than 12 days no more than 16 days apart.

(3) For purposes of this section, an employer that has employees in two or more states and that transmits reports magnetically or electronically may designate one state in which the employer has employees to which the employer will transmit the report described in paragraph

(4). Any employer that transmits reports pursuant to this paragraph shall notify the Secretary of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(4) The report shall contain the following:

(A) The name, address, and social security number of the employees.

(B) The employer's name, address, state employer identification number (if one has been issued), and identifying number assigned to the employer under Section 6109 of the Internal Revenue Code of 1986.

(C) The first date the employee worked.

(5) Employers may report pursuant to this section by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document transmitted by first-class mail, magnetically, or electronically.

(e) For each failure to report the hiring of an employee, as required and within the time required by this section, unless the failure is due to good cause, the department may assess a penalty of twenty-four dollars (\$24), or four hundred ninety dollars (\$490) if the failure is the result of conspiracy between the employer and employee not to supply the required report or to supply a false or incomplete report.

(f) Information collected pursuant to this section may be used for the following purposes:

(1) Administration of this code.

(2) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(3) Administration of employment security and workers' compensation programs.

(4) Providing employer or employee information to the Franchise Tax Board and the Board of Equalization for the purpose of tax or fee enforcement.

(5) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(g) For purposes of this section, "employer" includes a labor union hiring hall.

(h) This section shall become operative on July 1, 1998.