



Legislative Bill Analysis

[Senate Bill 518](#) (Laird)

Date: August 8, 2022 (Amended)

Program: Alcoholic Beverage Tax

Revenue and Taxation Code sections 32251 and 32457

Effective: January 1, 2023

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Summary: Requires the State Board of Equalization (BOE) to release confidential taxpayer information upon request contained in the winegrower returns and schedules filed by Alcoholic Beverage Tax (ABT) program taxpayers on or after January 1, 2023, including the names and addresses of all taxpayers filing a return except if that taxpayer is a natural person or opts out of disclosing any information. The bill would additionally require the BOE to amend the winegrower return to include a brief description of how the wine industry has historically used the data and requires the winegrower return be electronically filed.

Summary of Amendments: The **August 8, 2022**, amendments apply the bill's provisions to winegrower returns and schedules filed on or after January 1, 2023, require the BOE to amend the winegrower return to include a designated line or checkbox where the taxpayer may elect to prohibit the disclosure of their confidential information and additionally require winegrower returns and schedules to be electronically filed.

Fiscal Impact Summary: Indeterminable.

Existing Law: RTC section 32251 requires a taxpayer to file a tax return on or before the 15th day of each month for the preceding calendar month, in the form as prescribed by the BOE, which may include, the amount of beer or wine or distilled spirits sold in the state, the amount of tax for the period covered in the return, or any other information the BOE deems necessary.¹ Winegrowers may be assigned a monthly, quarterly or annual reporting basis. Tax returns can be filed electronically or as paper returns.

RTC section 32455 of the RTC protects the confidentiality of any report regarding the names of the purchasers and the amounts of individual sales. Government Code (GC) section 15619 also provides, in pertinent part, that the BOE and its employees may not divulge any information, other than the assessment and the amount of taxes levied, obtained by the Board in accordance with law, from any company other than one concerning which such information is required by law to be made public.

RTC section 32457 states all information contained in the Vendor's Report of Beer Shipments into California may be made public.

Proposed Law: Releases Confidential Taxpayer Information with "Opt-Out". The **June 13, 2022**, amendments would require the BOE, upon request, to release the names and addresses of taxpayers filing a winegrower return, as well as any information contained in a winegrower return and schedule. The amendments make an exception to the requirement or disclosure of names and addresses in the case of taxpayers that are natural persons. Currently, personal identifiable information contained in the winegrower return and schedule is confidential. The **June 29, 2022**, amendments require the BOE to provide an "opt-out" for taxpayers to not have their return, or any information contained therein, made public. The **August 8, 2022**, amendments require the BOE to amend the returns to include a designated line or checkbox where the taxpayer may prohibit the release of their confidential information.

¹ The current Winegrower Tax Return Form is [CDTFA-501-WG](#). The tax return form can be accessed at the link.

Electronic Returns. The **August 8, 2022**, amendments require each taxpayer to file winegrower returns and schedules electronically.

Amends Returns. The **August 8, 2022**, amendments remove the requirement that a website be created to contain information regarding how confidential taxpayer information has been used. Instead, the Board shall update the return to include information describing how the wine industry has historically used data for market analysis and an explanation of the taxpayer's right to elect to prohibit the disclosure of their confidential taxpayer information.

No Retroactivity. The **August 8, 2022**, amendments specify the bill's provisions only apply to returns and schedules filed on or after January 1, 2023, thus preventing requestors from receiving confidential taxpayer information from returns and schedules filed before January 1, 2023.

Findings and Declarations. The **June 13, 2022**, amendments add findings and declarations relating to the justification for why the legislative change is necessary. The **June 29, 2022**, amendments remove one declaration stating the Legislature, in passing this act, intends to authorize the BOE to release winegrower tax information in accordance with their past practices.

In General: Article 20, section 22 of the California Constitution charges the BOE to administer the ABT and is constitutionally responsible for the program.

Through an Interagency Agreement (IAA), the California Department of Tax and Fee Administration (CDTFA) collects the ABT and administers the program in cooperation with the BOE. In accordance with the IAA, the CDTFA administers the day-to-day operations of the ABT, including collecting revenues, processing reports and returns, issuing determinations and providing taxpayer technical assistance while the Board handles any legal functions (including Public Records Act (PRA) requests), petitions for redeterminations and any taxpayer appeals.

If the CDTFA receives any PRAs regarding ABT, those PRA requests are promptly sent to the BOE Disclosure Office for review and determination as to what is legally considered public information.

Background: Winegrowers are required to file returns under RTC section 32251 showing the amount of wine sold in the state, the amount of tax for the period covered in the return, and any other information the BOE deems necessary.

The BOE has one primary confidential statute in GC section 15619, subdivision (b) which provides that the "Board is prohibited from disclosing any information other than the assessment and amount of taxes levied obtained by the Board in accordance with the law from any company other than the one concerning which that information is required by law to be made public."

Historically, BOE provided monthly Alcohol Returns Reports (Alcohol Reports) to a small email group. The Alcohol Reports contained verified information provided by taxpayers in their 501-WG (Winegrower Return). Additionally, in 2019 the BOE Disclosure Office was forwarded a PRA from the CDTFA Disclosure Office requesting all Winegrower Return information, specifically the information contained in the Winegrower Schedule (Schedule). Upon review of the request, the BOE legal department determined it was not legally appropriate to release some of the information, including information that had previously been released to the requestor. This determination was shared with the requestor, and the requestor disputed the result.

The BOE Legal Department then sought legal advice from the Attorney General (AG) and were advised that not only was the Schedule data not subject to disclosure, but the entire Winegrower Return was exempt from disclosure under the PRA based on a statutory prohibition in GC section 15619 subdivision (b).

In general, if an agency discloses a public record that is exempt from the PRA to a member of the public, “this disclosure shall constitute a waiver of” the PRA exemptions.² This exemption was evidenced in *Black Panther Party v. Kehoe*³, where the Court found that information that was previously disclosed had to continue to be disclosed, consistent with longstanding practice. However, *Black Panther Party* is inapposite to the disclosure of information in the Winegrower Return. In *Black Panther Party*, no statutory disclosure prohibition was asserted as the basis for a disclosure exemption. Whereas the BOE is asserting a statutory disclosure prohibition under GC section 15619.

Once the BOE received the AG advice, BOE continued the practice of releasing information contained in the Alcohol Reports but removed all the identifying taxpayer information as advised by the AG. To receive the data, an individual must be on the email list maintained by BOE or request the information from the BOE.

Currently, the BOE releases some ABT information on the BOE’s [Open Data Portal](#) (ODP) including alcohol consumption per capita, consumption per fiscal year and the alcohol tax collected.

Commentary:

1. **Summary of Amendments.** The **August 8, 2022**, amendments require the BOE to update the winegrower return form to include a description of how the wine industry has traditionally used the data and a designated line or checkbox where the taxpayer may “opt-out” to not have their confidential information be made public. Additionally, the amendments require all winegrower returns and schedules to be electronically filed and apply the bill’s provisions for returns filed on or after January 1, 2023.
2. **“Opt-In” Rather than “Opt-Out.”** The **June 29, 2022**, amendments provide taxpayers an option to “opt-out” which would allow taxpayers to prohibit their return, or any information contained therein, from being made public. While an “opt-out” provides taxpayers an avenue to ensure their confidential information isn’t made public, taxpayers must still take an extra step to protect their data that is already statutorily protected.

Under current statutory law and the informal advice provided by the AG, confidential taxpayer information shall remain confidential and not be improperly released. An “opt-in” stays in accordance with statutory law as taxpayers would, by default, have their information protected. Taxpayers who wish to have their information public would then “opt-in” to the program. Taxpayers should not have to take an extra step to protect their confidential information when it is already statutorily protected. This would inconvenience compliant taxpayers and possibly result in those taxpayers not realizing they need to “opt-out” in order to protect their data. Additionally, if a taxpayer has a third-party file their returns, like an attorney or certified public accountant, can those individuals opt-out on behalf of their client? How can the BOE ensure taxpayers themselves opted out?

3. **Taxpayer Information.** An integral part of California’s taxation system is the protection of personal identifiable information from being improperly released or exposed. Taxpayers trust that agencies who receive their taxpayer information handle it properly and prevent their confidential information from being improperly shared. Should confidential taxpayer information be shared publicly, would this cause taxpayers to falsely report information if they are concerned with their information being made public?

² GC section 6254.5.

³ *Black Panther Party v. Kehoe*, (1974) 42 Cal.App.3d 645, 656.

4. **No Retroactivity.** The **August 8, 2022**, amendments remove a previous concern regarding retroactive confidential taxpayer information requests. These amendments only allow requestors to receive confidential taxpayer information, should a taxpayer not opt-out, for returns filed on or after January 1, 2023.
5. **Electronic Returns.** The **August 8, 2022**, amendments remove a previous concern for taxpayers that file paper returns by requiring that all winegrower returns and schedules be electronically filed.
6. **Internet Website.** The **August 8, 2022**, amendments remove the requirement that winegrower returns include a link to an internet website and instead requires the BOE to amend the winegrower return to include a brief description of how the wine industry has historically used data in the winegrower return and provide taxpayers an option to “opt-out” from having their information public.
7. **What is Confidential?** On the current Winegrower Return, there are 60 items of data that may be filled out on the return. For the information provided in the Alcohol Reports, the BOE only redacts six pieces of data that are identifying taxpayer information: the taxpayers name and address, the account number, penalty due, interest due, and the total amount due and payable or refund claimed. Data not redacted includes: transfers of bulk and bottled wines within and outside California, wine imported into California, federal tax due, taxable transactions on which tax applies, and tax due.
8. **Beer Shipper Vendor Reports.** RTC section 32457 states all information contained in the Vendor’s Report of Beer Shipments into California may be made public. Businesses that import beer into California must fill out [Form CDTFA-1056](#) by the 10th of each month and must disclose all shipments of beer made into California for the preceding month. The form lists the name of the licensed importer, importer’s CDTFA account number, the destination city, transportation method, the waybill, bill of lading, or freight number and date, the invoice number of the shipment and the total gallons shipped. Additionally, the form contains the shipper’s account number, business name and mailing address. In contrast to the winegrower tax return, it does not contain currently confidential tax information like penalty, interest, or total amount due and payable. It does not include any calculation of tax.
9. **Other ABT programs.** ABT includes programs other than Winegrowers, how would the beer and distilled spirits returns be treated?
10. **Processing.** Processing returns and verifying they are free of calculation errors can be time consuming, sometimes requiring contacting the taxpayer. Would this bill require any return to be released even if it has not been verified error free? Additionally, is there a specific time frame for when the information must be released, or is it a case-by-case basis to allow for the verification of data?

Costs: The administrative costs to the BOE and CDTFA are minor and absorbable as there are currently procedures in place to provide public data release.

Revenue Impact: Indeterminable since it is unknown on how taxpayer compliance behavior may change due to their confidential information becoming public.