
THIRD READING

Bill No: SB 1327
Author: Glazer (D), et al.
Amended: 5/16/24
Vote: 27 - Urgency

SENATE REVENUE AND TAXATION COMMITTEE: 4-1, 5/8/24
AYES: Glazer, Blakespear, Dodd, Skinner
NOES: Dahle
NO VOTE RECORDED: Bradford, Padilla

SENATE APPROPRIATIONS COMMITTEE: 4-2, 5/16/24
AYES: Caballero, Ashby, Bradford, Wahab
NOES: Jones, Seyarto
NO VOTE RECORDED: Becker

SUBJECT: Income taxation: credits: local news media: data extraction
transactions

SOURCE: Author

DIGEST: This bill imposes a Data Extraction Mitigation Fee; enacts credits against the Personal Income and Corporation taxes for news media entities that pay wages for current or newly employed journalists, or acquire freelance content; and directs fee revenue to specified purposes, including to reimburse foregone General Fund revenue resulting from the credits.

ANALYSIS:

Existing law:

- 1) Enacts the Corporation Tax Law, which among other provisions, imposes a tax on the apportioned business income and allocated net nonbusiness income of corporations doing business in California at a rate of 8.84%, or imposes the \$800 minimum tax, whichever is greater.

- 2) Enacts the Sales and Use Tax Law, which among other provisions imposes the sales tax on every retailer “engaged in business in this state” that sells tangible personal property, and requires them to register with the California Department of Fee & Tax Administration (CDTFA), and remit taxes collected from purchasers to CDTFA.
- 3) Sets the statewide Sales and Use Tax rate at 7.25%, and allows cities, counties, and specified special districts may increase the sales and use tax, also known as district or transactions and use taxes, with voter approval.
- 4) Allows various income tax credits, deductions, exemptions, and exclusions.

This bill:

- 1) Enacts the Data Mitigation Fee Law, which imposes a data extraction mitigation fee on persons engaged in data extraction transactions, commencing in an unspecified taxable year.
- 2) Defines “data extraction transaction” as one that does not include web hosting services, but instead meets both of the following requirements:
 - a) Where a taxpayer sells user information or access to users to advertisers, and,
 - b) The taxpayer engages in barter by providing services to a user in full or partial exchange for the ability to display advertisements to the user, or collect data about the user.
- 3) Provides that if the person engages in data extraction transactions as defined above, requires them to pay a tax equal to 7.25% of the gross receipts derived from the transactions in this state each year.
- 4) Exempts from the fee persons deriving less than \$2.5 billion annually in such gross receipts, or a news media organization, as defined.
- 5) Deems gross receipts to be derived from data extraction transactions if they are derived from the sales of advertising services on a digital interface, as defined.
- 6) Deems gross receipts to be in California if the user, as defined, is in the state.
- 7) Allows the Franchise Tax Board (FTB) to adopt necessary and appropriate regulations to apply presumptions, default rules, and formulas to ensure apportionment results fairly reflect data extraction transactions in this state.

- 8) States that a user is in this state based on data associated with the user, including billing, delivery, or shipping addresses; phone number area code; global satellite positioning data; or internet protocol address data.
- 9) Directs taxpayers to apportion gross receipts derived from advertisements not generated by a display to or interaction with a specific user in California using the same fraction the person uses to apportion gross receipts from advertisements generated by a specific instance of a displayed targeted advertisement, or one generated by a specific interaction where the user is located in the state.
- 10) Directs taxpayers to apportion revenues to California using a fraction, where the numerator is gross receipts derived from data extraction transaction in the state and the denominator is the gross receipts derived from data extraction transactions in the United States.
- 11) Defines annual gross receipts to include gross receipts of all members of the unitary group, or any partnership or limited liability company doing business in the state and required to file a return, in which the person owns more than a 10% capital or profit interest.
- 12) Provides that all unitary group members are jointly and severally liable for the fee.
- 13) Directs FTB to administer the Data Extraction Mitigation Fee using the same laws that guide collection of the Personal Income and Corporation Tax, and allows FTB to issue regulations necessary and appropriate to implement the bill, including emergency regulations.
- 14) Provides a deduction against the Personal Income and Corporation Tax equal to the amount of the Data Extraction Mitigation Fee paid by a taxpayer
- 15) Enacts credits against the Personal Income and Corporation Taxes for wages paid by eligible news organizations or qualified broadcast stations for currently employed or newly hired journalists, as defined.
- 16) Varies credit percentages based on whether the news media entity has fewer than five full-time employees throughout the taxable year, fewer than 10 full-time employees on the first day of the taxable year when they claim the credit, and whether they provide the employee both group health insurance and retirement or pension benefits, with ranges between 25% and 55% of wages paid.

- 17) Requires taxpayers claiming the credit for wages paid to new employees to have a net increase in statewide employment, according to a formula set by the bill.
- 18) Provides that if a taxpayer with more than 10 employees claims the credit, they cannot subsequently qualify for the credit for taxpayers with fewer than 10 employees.
- 19) Makes a person with primary circulation or distribution in the state eligible to claim the credit, if they:
 - a) Publish at least twenty four qualifying publications distributed in the state during the taxable year, have as its primary purpose to serve a local community by providing local news, are published in both the current and previous taxable year, and are covered by media liability insurance, or
 - b) Own or operate a broadcast station as defined in the federal Communications Act, and
 - c) Are not, or will not receive more than 50% of its gross receipts from, a “disqualified organization,” defined as one that is exempt from Corporation Tax, a political organization, or an entity directly owner or controlled by either a non-charity tax-exempt entity or political organization.
- 20) Requires employees to be employed for an average of at least 35 hours per week and provide qualified services, as defined, in the local community, which is defined as the geographically contiguous area where the broadcaster has an FCC license, or where the publication is primarily distributed or consumed, to be eligible for the credit. However, for a news media entity with fewer than five full-time employees throughout the taxable year, the employee need only work 30 hours per week to qualify their employer for the credit.
- 21) Allows a similar credit equal to 20% of the costs incurred to acquire freelance content subsequently published or broadcast by the taxpayer.
- 22) Commences the bill’s tax credits in the 2024 taxable year, ends them after the 2028 taxable year, and repeals its provisions on December 1, 2029, except when a taxpayer continues to pay wages to a journalist hired before January 1, 2029; in which case, the taxpayer can generate credit through the 2033 taxable year.

- 23) Provides its credit is refundable, meaning to the extent the value of the credit exceeds the taxpayer's tax liability for the year, the state pays the taxpayer a refund equal to the difference from the Tax Relief and Refund Account.
- 24) Caps the aggregate amount of tax credit at an unspecified amount each year and requires taxpayers to request a credit reservation from the FTB, in a form and manner prescribed by FTB.
- 25) Allows FTB to require any information it deems necessary to approve a tentative credit reservation.
- 26) States that if credit reservations exceed the annual aggregate cap, FTB must reduce the amount of credit on a proportional basis, and notify taxpayers of the reductions; however, FTB cannot reduce credits for a news media entity with fewer than five full-time employees throughout the taxable year unless credit reservation requests from those entities exceed the overall cap.
- 27) Incorporates standard provisions found in other tax credits, such as rules for related parties, combined groups of corporations, and denying a business expense deduction or any other credit when the same costs generate a credit under the bill.
- 28) Creates the Data Extraction Mitigation Fee Fund in the State Treasury, and deposits the revenues, interest, and penalties from the fee into the fund, less refunds and reimbursement to FTB for the costs of administration and collection.
- 29) Allocates revenue from the Fund in the following order:
 - a) Satisfy Proposition 98 requirements for K-14 education, and the Proposition 2 Budget Reserve,
 - b) \$10 million for the University of California Berkeley California Local News Fellowship Program, and \$5 million to establish a program to provide fellowships for hiring, training, and career progression for journalists and media professionals from historically underrepresented and disadvantaged backgrounds, as specified,
 - c) To the General Fund in an amount estimated by FTB to reimburse any deductions against the Personal Income and Corporation Tax authorized by the bill,

- d) To the General Fund in an amount estimated by FTB to reimburse foregone revenues due to the measure's tax credits,
 - e) Upon appropriation by the Legislature, to FTB to administer a grant program for non-profit eligible news organizations, of at least \$25 million annually, or at most 5% of total annual revenues derived from the fee, with half of the amount reserved for organizations with fewer than ten employees,
- 30) Requires FTB to make grants to nonprofits in an amount equal to the amount derived under the bill's tax credit provisions.
 - 31) Requires organizations to request a grant reservation from FTB in a form and manner prescribed by FTB.
 - 32) Allows FTB to require any information it deems necessary to approve a tentative grant reservation.
 - 33) Provides that if grant reservations exceed the amount set aside by the bill for grants, FTB must reduce the amount of credit on a proportional basis, and notify taxpayers of the reduction. However, FTB cannot reduce grants for a news media entity with fewer than five full-time employees throughout the taxable year unless credit reservation requests from those entities exceed the overall cap.
 - 34) Makes legislative findings and declarations supporting its purposes, stating that the fellowship programs funded by the measure are not gifts of public funds for purposes of the California Constitution, as well as others to comply with Section 41 of the Revenue and Taxation Code.
 - 35) Contains an urgency clause.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- The Franchise Tax Board (FTB) estimates that, for every \$1 million in qualified wages paid, revenue loss to the General Fund would be \$440,000.
- FTB estimates that for every \$5 billion in gross receipts derived from data extractions transactions nationally, the estimated state revenue gain would be \$50 million.

- FTB's annual costs to administer the bill have yet to be determined, but minimally would be in the hundreds of thousands of dollars (General Fund).

SUPPORT: (Verified 5/15/24)

California Federation of Teachers Afl-cio
 Cityside Journalism Initiative
 Embarcadero Media Foundation
 FresnoLand
 News Guild Local Media Guild of The West
 News Guild local Pacific Media Workers Guild
 Ojai Media LLC DbA Ojai Valley News
 Presidents, Publishers, Editors, Executive Directors, CEOs of 25 California
 Newspapers
 Rebuild Local News Coalition
 The News Guild-CWA

OPPOSITION: (Verified 5/15/24)

Fold Communications
 American Advertising Federation (AAF)
 American Association of Advertising Agencies (4A's)
 Americans for Digital Opportunity (ADO)
 Antelope Valley Chambers of Commerce
 Association of National Advertisers
 California Association of Realtors
 California Attractions and Parks Association
 California Black Chamber of Commerce
 California Broadband & Video Association
 California Business Roundtable
 California Chamber of Commerce
 California Hispanic Chamber of Commerce
 California Hispanic Chambers of Commerce
 California Retailers Association
 California Taxpayers Association
 Carlsbad Chamber of Commerce
 Chamber of Progress
 Computer & Communications Industry Association
 Connecticut Broadcasters Association
 Consumer Choice Center
 Corona Chamber of Commerce
 Council on State Taxation
 CTIA

Cupertino Chamber of Commerce
Dana Point Chamber of Commerce
Danville Area Chamber of Commerce
Family Business Association of California
Garden Grove Chamber of Commerce
Gateway Chambers Alliance
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Irvine Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Huntington Beach Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
Internet Coalition
LA Canada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Morgan Hill Chamber of Commerce
Motion Picture Association
Murrieta Wildomar Chamber of Commerce
National Taxpayers Union
Ncta- the Internet and Television Association
Newport Beach Chamber of Commerce
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Taxpayers Association
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Chamber of Commerce
Redondo Beach Chamber of Commerce
Sacramento Taxpayers Association
San Juan Capistrano Chamber of Commerce
San Pedro Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce
Solano County Taxpayers Association
South Bay Association of Chambers of Commerce
Southern California Legislative Council
Southwest California Legislative Council
Technet
Templeton Chamber of Commerce

Tri County Chamber Alliance
Tulare Chamber of Commerce
West Ventura County Business Alliance

ARGUMENTS IN SUPPORT: According to the author, “SB 1327 creates a modern financial framework to ensure that newsrooms keep our citizens informed and democracy accountable to the people. The data extraction mitigation fee closes a loophole that allows online platforms to avoid taxation on the value of the barter in which they engage with customers who, in effect, trade access to their personal data for the opportunity to use a website. While this kind of economic relationship has helped fuel innovation and access to information, it has also created what economists call “negative externalities” – or harm to third parties who are not directly a part of that exchange. Unfortunately, the crucial role of local news in upholding democracy is in danger. Since 2005, the number of California journalists has decreased by 68%, and in the last 10 years, advertising revenue has plummeted by 66%. The closure of many local newspapers and the decline of most others has left wide swaths of “news deserts” where virtually no local coverage remains. As local newsrooms face challenges, digital advertising thrives. In 2022, Meta, Google, and Amazon collectively earned \$163 billion from digital advertising in the US. California already imposes mitigation fees on companies that put chemicals into the environment to make their products or develop projects that end up burdening our roads and schools. In the same way, the fee in my bill assigns the cost of reviving local journalism to those firms whose data extraction and economic activity is causing the news industry’s decline. The fee mitigation revenue proposed in SB 1327 would largely be used to finance an employee hiring and retention tax credit available to all qualifying news organizations, free from any government involvement in their news content. A vibrant local press that informs the public and acts as a government watchdog is vital to the survival of American democracy.”

ARGUMENTS IN OPPOSITION: According to the California Taxpayers Association and other business organizations, “A tax on digital advertising will increase costs for California advertisers and consumers, will be met with legal challenges, and will negatively impact California’s business climate. While framed as a ‘mitigation fee’ on large advertising providers, the economic burden of the digital advertising tax will fall squarely on California purchasers because it is limited to revenue from advertising services in California. Advertising service providers subject to the tax would immediately raise prices for California advertisers or add the tax to their invoices, like a sales tax. The tax would make otherwise affordable and effective digital advertising channels prohibitively

expensive, pricing small California businesses, nonprofits, places of worship, civic organizations, and others that advertise on digital platforms out of the market in an already inflationary economy. In addition, the tax would raise costs for small businesses buying digital advertising services, causing them to raise prices for consumers, where the ultimate burden of any tax always falls. SB 1327 is similar to Maryland's first-in-the-nation digital advertising tax, enacted in 2020, which has been the subject of litigation since its passage. Maryland's elected comptroller at that time, the defendant in several of the suits concerning the digital advertising tax, has publicly stated he believes the state should no longer expend resources 'to defend a law that was constitutionally questionable at the time of enactment.' SB 1327 would be met with legal challenges similar to those being litigated in Maryland. Federal law expressly prohibits states or political subdivisions from imposing 'discriminatory taxes on electronic commerce.' SB 1327 would impose a tax on only digital advertising, in clear violation of the Internet Tax Freedom Act."

Prepared by: Colin Grinnell / REV. & TAX. / (916) 651-4117
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