

# LAW OFFICES OF SANFORD I. MILLAR

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## **BANK SECRECY MAY BE DEAD IN CALIFORNIA!**

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Senate Bill 86 is on its way to the governor's desk and he is likely to sign it in days. Why is this a big deal and how does SB 86 kill bank secrecy, well contained in the bill is new Revenue & Taxation code section 19266. Section 19266 creates the Financial Institution Record Match System which will be administered by the Franchise Tax Board. The new law will create "A structure by which financial institutions, or their designated data processing agents, shall receive from the Franchise Tax Board, the file or files of delinquent debtors that the institution shall match with its own list of accountholders to identify delinquent account holders at the institution". The rules and regulations by which the matching is to be implemented will be developed and implemented by the Franchise Tax Board. This new law will affect administration of trusts and estates, including spendthrift trusts, individuals, couples, partnerships, corporations and others. This is a very big deal! This first information exchange is scheduled to occur in April 2012 allowing time for development of the compliance system and rules and regulations.

The purpose of the legislation is to go after delinquent taxpayers. I don't think that anyone can argue with the purpose or need to collect taxes that are due and owing. It is the approach that may cause some concern. The law will require "financial institutions subject to this section to provide to the Franchise Tax Board on a quarterly basis the name, record address, and other addresses, social security number or taxpayer identification number, and other identifying information for each delinquent debtor, as identified by the Franchise Tax Board by name and social security number or other taxpayer identification number, who maintains an account at the institution."

Financial institutions are expressly prohibited from disclosing to a "depositor or an account holder, or a codepositor or coaccountholder, that the name address, social security number or other taxpayer identification number or other identifying information of that delinquent tax debtor has been received from or furnished to the Franchise Tax Board".

**Law Offices of Sanford I. Millar**

**Office:** 310-556-3007

**Fax:** 310-556-3094

**Address:** 1801 Avenue of the Stars, Suite 600  
Los Angeles, CA. 90067

**Email:** [smillar@millarlaw.net](mailto:smillar@millarlaw.net)

[www.millarlawoffices.com](http://www.millarlawoffices.com)

A delinquent tax debtor is defined to mean “any person liable for any income or franchise tax or other debt referred to the Franchise Tax Board for collection on... including tax, penalties, interest and fees where the tax or debt... remains unpaid after 30 days from a demand for payment by the Franchise Tax Board, and the person is not making current timely payments on the liability under an agreement pursuant to section 19006”

An account means “a demand deposit account, share or share draft account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account, regardless of whether the account bears interest”

Once natural question is who is going to pay for the added costs of compliance mandated upon the financial institutions. The law provides for a one time start-up cost reimbursement of no more than \$2,500 and no more than \$250 per quarter. Ultimately the banking consumer will bear the unreimbursed costs through higher fees and charges associated with enhanced due diligence on opening of accounts.

We can expect that opening accounts will be done with enhanced care. Banks are likely to decline to open accounts for depositors who are on the delinquent tax debtor list. Trust companies and other institutional fiduciaries are likely to have additional administrative burdens when it comes to making distributions to beneficiaries or banks serving the trusts will require full disclosure of the identifiers for all beneficiaries. The same will apply for pension plan administration. Just how a taxpayer will be able to contest being put on the list remains to be seen. The sole criteria to being put on the list seems at this point to be the issuance of a demand for payment which is unsatisfied for 30 days and the absence of an approved complaint installment agreement. Obviously, we need to wait and see what the Franchise Tax Board does to design rules and regulations. Example, if an offer in compromise is pending, but there is no installment agreement, will the delinquent taxpayer be put on the list and if so when?.

I have no issue with the state taking all reasonable measures to collect unpaid taxes. What I am concerned about is how the program will be administered, what remedies will exist to contest being placed on the list of delinquent taxpayers and what additional costs will be spread to consumers.

The ultimate corollary to this new law is found in the Foreign Account Tax Compliance Act, “FATCA” (IRC section 1474-1474) which goes into effect in 2013. FATCA compels foreign financial institutions to make essentially the same disclosures, only the target is foreign financial institutions and U.S. persons with foreign accounts. FATCA does an end around Tax Treaties and Information Exchange Agreements to get at tax evaders and others. R&T section 19266 is an interesting state approach with a similar goal.

If you think that you may be affected by the new law, feel free to contact me. I look forward to hearing from you.

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