

Daily Journal

Is your financial institution ready for the new 'FIRM'?

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Without much fanfare, California enacted legislation (Revenue & Tax Code Section 19266) that will impact virtually every bank, credit union, thrift and brokerage firm doing business in the state. This program will place a new burden on financial institutions in order to help the state collect delinquent taxes.

The FIRM program: Starting in April 2012, account information of global financial institutions must be matched against the list of the Franchise Tax Board's (FTB) delinquent tax debtors on a quarterly basis. The FTB is the agency charged with

enforcement of California corporate and individual income tax laws. Both business entity and individual tax debts are included in the program. The FTB refers to the program as the Financial Institution Record Match (FIRM). A FIRM program administrator will be designated by the FTB to receive the information from the financial institutions. Regulations detailing the FIRM program are expected to be released soon.

The data match process: Each financial institution is required to enter into a FIRM agreement with the FTB as to how that financial institution will comply. The agreement will use one of two data match processes. Under the first method, the financial institution will submit a file of all open accounts to the firm program administrator via a secured Internet file transfer application for the first quarter of participation in a calendar year. For subsequent quarters, the institution can either send an update file containing only accounts opened, closed or changed during a particular quarter or an all accounts file. The FIRM program administrator matches the submitted files against the FTB debtor file. The FTB suggests that financial institutions select this method if they do not have the technical ability to process the data exchange or the ability to employ a third-party data processor.

The second method provides for the financial institution to retrieve a debtor file from the FTB via a secure Internet file transfer application. The financial institution matches the debtor file against all open accounts for a particular quarter and submits a file of matched records to the FIRM program administrator via a secured Internet transfer application. It is expected that most financial institutions will use this method.

All data submitted must be secured and protected against unauthorized access and disclosure while being stored or transmitted between the FTB and the financial institutions or their authorized vendors.

The date by which financial institutions will be required to enter into the FIRM agreement is still being determined. The date of the first data match process will be April 15, 2012.

Costs: The FTB is authorized to reimburse the financial institutions a modest amount of the costs. The maximum amount of reimbursement for a one-time start-up fee is \$2,500. For data matching other than one-time start-up costs, reimbursement is not more than \$250 per quarter.

Exemptions: There is a limited temporary exemption for very small financial institutions; those with less than 250 accounts. However, once the financial institution has 250 or more open accounts, the FTB expects that the financial institution will submit a FIRM agreement to the FIRM program administrator and begin participation in the exchange program.

An exemption is also available if the FTB determines that the financial institution's participation would not generate sufficient revenue to be cost effective for the FTB.

The FTB is authorized to temporarily suspend a financial institution from the requirements of FIRM if the financial institution provides the FTB with written notice from its supervisory banking authority that it the institution is undercapitalized, significantly undercapitalized, or critically undercapitalized. However, once the determination is removed by the supervisory banking authority and no longer applies, the FTB expects the financial institution will submit a FIRM agreement and begin participation in the exchange program.

Privacy: The financial institution may not disclose to a depositor, accountholder, co-depositor or co-acountholder the existence of the data exchange. The financial institution will not incur liability for furnishing the information to the FTB, for not disclosing to the depositor or accountholder the existence of the data exchange, or for taking any other action in good faith to comply with the statute. The California Right to Financial Privacy Act, which governs the disclosure of financial information to government entities, does not apply to the program, but the information may be used by the FTB only for the purposes set forth in the bill.

Financial institutions should start consideration of the FIRM agreement and how to comply with the requirements. Institutions will need to plan for FIRM's technical aspects, including how to send and receive information from the FTB. The FTB will issue detailed specifications as to the format for information to be sent. The form for the FIRM agreement is expected to be released in final form in mid-January 2012. Financial institutions with questions should contact their legal advisors.