



## Legislative Bill Analysis

Senate Bill 388 (Archuleta)  
Date: February 9, 2023 (Introduced)  
Program: Alcoholic Beverage Tax  
Revenue and Taxation Code section 32457.2  
Effective: January 1, 2024

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**Summary:** Requires the State Board of Equalization (BOE) to release confidential taxpayer information upon request contained in the beer returns filed by Alcoholic Beverage Tax (ABT) program taxpayers on or after January 1, 2024, 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 beer manufacturer return to include a designated line or checkbox where the taxpayer may elect to prohibit disclosure, and a brief description of how the beer industry has historically used information contained in beer manufacturer returns.

**Fiscal Impact Summary:** Indeterminable.

**Existing Law:** RTC section 32251 requires a taxpayer to file a tax return on or before the 15<sup>th</sup> 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.<sup>1</sup> Beer manufacturers may be assigned a monthly, quarterly or annual reporting basis. All tax returns are required to be filed electronically.

RTC section 32455 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. In 2022 the legislature added RTC section 32457.1, which states that any information contained in the returns and accompanying schedules of a winegrower, filed on or after January 1, 2023, shall be made public upon request, including the names and addresses of all taxpayers filing a winegrower return. The exception being the names and addresses of any taxpayer that is a natural person. Further, a taxpayer may elect to prohibit the disclosure of any information contained in that taxpayer's winegrower return and accompanying schedules.

**Proposed Law:** SB 388 adds RTC section 32457.2, which mirrors RTC 32457.1, and requires any information contained in a beer manufacturer return and schedules filed on or after January 1, 2024, to be made public upon request, including the names and addresses of beer manufacturers filing a return, as specified, unless prohibited. The bill prohibits the disclosure of the name and address of any taxpayer that is a natural person and any taxpayer information when the taxpayer has elected to prohibit such disclosure. BOE is required to amend the beer manufacturer return to include a designated line or checkbox to allow a taxpayer to elect to prohibit disclosure of taxpayer information contained in the beer manufacturer return and schedules. Further, it requires BOE to conspicuously display information within

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<sup>1</sup> The current Beer Manufacturer Tax Return Form is [CDTFA-501-BM](#). The tax return form can be accessed at the link.

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the return describing how the beer industry has historically used beer manufacturer return information for market analysis and the taxpayer's right to opt-out of public disclosure.

**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 taxpayer appeals.

**Background:** Beer manufacturers are required to file returns under RTC section 32251 showing the amount of beer 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 tax returns. In 2019 the BOE's Disclosure Office reevaluated their policies and sought guidance from the Attorney General (AG) to determine what information could be made public. The AG advised that the information contained in the Alcohol Returns was not exempt from disclosure under the PRA based on a statutory prohibition in GC section 15619 subdivision (b). Additionally, upon review of prior practices and in light of the advice received from the AG, it was determined that it was not legally appropriate to release some of the information that had previously been released to the public. BOE then released information contained in the Alcohol Reports but removed all the identifying taxpayer information as advised by the AG.

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.<sup>2</sup> This exemption was evidenced in *Black Panther Party v. Kehoe*<sup>3</sup>, 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 ABT Returns. 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.

Currently, the BOE releases aggregate ABT information on the BOE's [Open Data Portal](#) (ODP) including alcohol consumption per capita, consumption per fiscal year, and the alcohol tax collected. The following aggregate tax return data is also provided: beer and wine importer tax return, beer manufacturer tax return, distilled spirits tax return, and winegrower tax return.

### Commentary:

1. **"Opt-In" Rather than "Opt-Out."** SB 388 provides taxpayers an option to "opt-out" which would allow taxpayers to prohibit their return, or any information contained therein, from being made

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<sup>2</sup> GC section 6254.5.

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

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?

2. **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 governmental 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?
3. **Beer Shipper Vendor Reports.** Businesses that import beer into California must fill out [Form CDTFA-1056](#) by the 10<sup>th</sup> 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.
4. **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?
5. **Prior Legislation.** SB 518 (Laird) was approved by the Governor and chaptered on September 28, 2022, to make public upon request any information contained in a winegrower’s alcoholic beverage tax return and accompanying schedule.
6. **SB 518 Winegrower Impact.** Preliminary monthly winegrower returns filed in January 2023 and February 2023 indicates that an estimated sixty-three percent of winegrowers elected or opted to prohibit disclosure of any return or accompanying schedule information. BOE staff assume that beer manufacturers may also exhibit similar taxpayer behavior in relation to information disclosure.
7. **Other program tax returns.** Other ABT program returns would remain confidential as they are not addressed in this bill.
8. **Historical Use of Data.** The industry has yet to contact the BOE to describe how they have

historically used the data, to date, BOE is unaware if the industry uses the tax data for any market analysis.

**Costs:** The BOE would incur costs of approximately \$58,000 for fiscal year (FY) 2023-24, \$55,000 for FY 2024-25, and \$22,000 for FY 2025-26 and ongoing.

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