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DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS SECTION IS CURRENT THROUGH THE 2011 SUPPLEMENT ***
(ALL 2010 LEGISLATION)
SPECIAL NOTICE: CHAPTERS ENACTED BETWEEN OCTOBER 20, 2009, AND
NOVEMBER 2, 2010, ARE SUBJECT TO REPEAL BY PROPOSITION 22.

REVENUE AND TAXATION CODE
Division 2. Other Taxes
Part 10.2. Administration of Franchise and Income Tax Laws
Chapter 7. Administration of Tax
Article 2. Disclosure of Information

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Rev & Tax Code § 19542 (2010)

§ 19542. Disclosure of information from filed returns, reports, or documents as misdemeanor

Except as otherwise provided in this article and as required to administer subdivision (b) of Section 19005, it is a misdemeanor for the Franchise Tax Board or any member thereof, or any deputy, agent, clerk, or other officer or employee of the state (including its political subdivisions), or any former officer or employee or other individual, who in the course of his or her employment or duty has or had access to returns, reports, or documents required to be filed under this part, to disclose or make known in any manner information as to the amount of income or any particulars (including the business affairs of a corporation) set forth or disclosed therein.

HISTORY:

Added Stats 1993 ch 31 § 26 (SB 3), effective June 15, 1993, operative January 1, 1994. Amended Stats 1994 ch 91 § 1 (AB 2883); Stats 1997 ch 605 § 40 (AB 1040).

NOTES:

Amendments:

1994 Amendment:

Added "and as required to administer subdivision (b) of Section 19005".

1997 Amendment:

Deleted "bank or" before "corporation".

Historical Derivation:

(a) Former Rev & Tax C § 19282, as added Stats 1943 ch 659 § 1, amended Stats 1951 ch 70 § 1, Stats 1969 ch 980 § 19, Stats 1978 ch 711 § 4.

(b) Former Rev & Tax C § 26451, as added Stats 1949 ch 557 § 1, amended Stats 1951 ch 71 § 1, ch 73 § 39, Stats 1969 ch 603 § 7, Stats 1978 ch 711 § 12.

(c) Stats 1929 ch 13 § 35, as amended Stats 1931 ch 1066 § 8, Stats 1935 ch 275 § 24, Stats 1939 ch 1050 § 20, Stats 1943 ch 37 § 21, ch 352 § 25.

(d) Stats 1935 ch 329 § 33, as amended Stats 1937 ch 668 § 19, Stats 1939 ch 915 § 21, Stats 1941 ch 1226 § 21.

(e) Stats 1937 ch 765 § 29, as amended Stats 1939 ch 1049 § 22, Stats 1943 ch 38 § 21, ch 351 § 23.

Cross References:

Franchise Tax Board: *Gov C §§ 15700 et seq.*

Definition of misdemeanor and penalties: *Pen C §§ 17, 19, 19.2.*

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 191 "Discovery: Privileges And Other Discovery Limitations".

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations," § 81.180.

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations," § 81.190.

Witkin & Epstein, *Criminal Law* (3d ed), Crimes Against Governmental Authority §§ 127, 128, 129, 130, 131.

2 Witkin *Cal. Evidence* (4th ed) Witnesses §§ 255, 256.

Matthew Bender(R) *Practice Guide: Federal Pretrial Civil Procedure in California*, 24.20

Law Review Articles:

Review of Selected 1977 California Legislation. *9 Pacific LJ 381*.

Review of Selected 1978 California Legislation. *10 Pacific LJ 588*.

Governmental privileges as roadblock to effective discovery; application and effect of this section. *7 USF LR 294*.

Attorney General's Opinions:

This statute [former § 19282] as not violated by having state employees make photostatic copies of returns and reports required to be kept confidential. *2 Ops. Cal. Atty. Gen. 502*.

Hierarchy Notes:

Div. 2, Pt. 10.2, Ch. 7, Art. 2 Note

LexisNexis 50 State Surveys, Legislation & Regulations

Income Taxes

NOTES OF DECISIONS

Decisions Under Current Law

Former Rev & Tax C § 19282 implicitly created a privilege against the disclosure of income tax returns, but the privilege could be waived by an intentional relinquishment of it, and it was inapplicable where the gravamen of the lawsuit was inconsistent with claiming the privilege, or where a public policy greater than the purpose of the privilege was involved. *Fortunato v. Superior Court (2003, Cal App 2d Dist) 114 Cal App 4th 475, 8 Cal Rptr 3d 82, 2003 Cal App LEXIS 1868*.

The waiver of both privileges and the constitutional right to privacy must be narrowly rather than expansively construed, in order to protect the purposes of the privilege or right, and the purpose of the tax-return privilege, which is implied by former Rev & Tax C § 19282, is to encourage voluntary filing of tax returns and truthful reporting of income, and thus to facilitate tax collection, which is accomplished by assuring the taxpayer that such voluntary filing and truthful reporting will not result in a loss of confidentiality. Routinely forcing a taxpayer to produce a copy of his or her tax returns in litigation would effectively defeat the legislative purpose; thus, given the well-recognized practice of requiring tax returns as part of a loan application, it follows that forcing a bank to produce those returns routinely in litigation would have the same effect as forcing the taxpayer to produce them directly, and that, too, would effectively defeat the legislative purpose. *Fortunato v. Superior Court (2003, Cal App 2d Dist) 114 Cal App 4th 475, 8 Cal Rptr 3d 82, 2003 Cal App LEXIS 1868*.

The public-policy exception to the tax-return privilege, which is implied by former Rev & Tax C § 19282, is narrow and only applies on the rare occasion when warranted by a legislatively declared compelling public policy; public policy favoring discovery in civil litigation is not, by itself, sufficiently compelling to overcome the privilege because such an exception would swallow the rule. *Fortunato v. Superior Court (2003, Cal App 2d Dist) 114 Cal App*

4th 475, 8 Cal Rptr 3d 82, 2003 Cal App LEXIS 1868.

Decisions Under Former Rev & Tax C § 19282 Copies of income tax reports filed with State and federal government, as best evidence procurable, were competent, in grand jury investigation of lobbying and bribery of State legislators. *Samish v. Superior Court of Sacramento County* (1938, Cal App) 28 Cal App 2d 685, 83 P2d 305, 1938 Cal App LEXIS 611.

"This article" contains exceptions formerly included in § 33 of the *Personal Income Tax Act*. *Franchise Tax Board v. Superior Court of Sacramento County* (1950) 36 Cal 2d 538, 225 P2d 905, 1950 Cal LEXIS 268.

Purpose of this section and *Rev & Tax C § 19283* is to facilitate tax enforcement by encouraging taxpayer to make full and truthful declarations in his return without fear that his statements will be revealed or used for other purposes; such privilege should not be nullified by permitting third parties to obtain information by adopting indirect procedure of demanding copies of the tax returns. *Webb v. Standard Oil Co.* (1957) 49 Cal 2d 509, 319 P2d 621, 1957 Cal LEXIS 287.

In action by buyer of motel against sellers for fraud in inducing sale, sellers, not having objected to producing copies of their income tax returns, or to offer of copies in evidence, on ground that copies were privileged or were inadmissible could not raise such questions on appeal and waived right to claim on appeal that copies were inadmissible or privileged, and it was error to admit copies of returns in evidence. *Vogan v. McLaughlin* (1959, Cal App 2d Dist) 172 Cal App 2d 65, 342 P2d 18, 1959 Cal App LEXIS 1924.

In a suit by a taxpayer against the accountants who had prepared her taxes for 1 year, for negligent preparation of her taxes in that year, the taxpayer waived the privileged status of her tax returns, and thus defendants were entitled to discovery of her state and federal returns over an 8-year period, where her complaint tendered issues as to the existence, content and tax consequences of her returns for several years surrounding that year, and where establishment of all the essential elements of plaintiff's case would be impossible without proof of statements and computations in her tax returns. Clearly, the privileged nature of a communication can be waived. The privilege accorded copies of a taxpayer's returns is not expressly recreated by statute, but was judicially interpolated from *Rev. & Tax. Code, § 19282*, prohibiting disclosure by public employees of state personal income tax returns or their contents. It is for the courts to interpret the meaning and construe the applicability of a judicially created rule. *Wilson v. Superior Court* (1976, 3rd Dist) 63 Cal App 3d 825, 134 Cal Rptr 130, 1976 Cal App LEXIS 2132.

The purpose of *Rev & Tax C § 19282*, prohibiting disclosure by public employees of state personal income tax returns or their contents, is to facilitate tax enforcement by encouraging a taxpayer to make full and truthful declarations in his return without fear that his statements will be revealed or used against him for any other purposes. The effect of the statutory prohibition is to render the returns privileged, and the privilege should not be nullified by permitting third parties to obtain the information by adopting the indirect procedure of demanding copies of the tax returns. Moreover since federal income tax returns contain substantially the same information as state returns, copies of a taxpayer's federal returns are likewise privileged. *Wilson v. Superior Court* (1976, 3rd Dist) 63 Cal App 3d 825, 134 Cal Rptr 130, 1976 Cal App LEXIS 2132.

W-2 forms, which are required to be attached to a taxpayer's state and federal income tax returns, constitute an integral part of the return and qualify as information contained in the return and are thus included within the judicially created privilege against disclosure of tax returns; hence, plaintiff in an action for personal injuries was not required to produce and permit inspection and copying of her W-2 forms, which defendants claimed were relevant to plaintiff's claim of income lost by reason of her injuries. *Brown v. Superior Court* (1977, 1st Dist) 71 Cal App 3d 141, 139 Cal Rptr 327, 1977 Cal App LEXIS 1596.

In a marriage dissolution proceeding in which the husband sought an order modifying the interlocutory decree so as to compel the wife to pay child support, the trial court properly allowed the wife's present husband to assert his spousal

privilege against disclosure of income tax returns filed during the marriage and against being deposed as a witness. *Rev & Tax C, § 19282*, which prohibits disclosure of returns by the Franchise Tax Board or its personnel, is construed to render both state and federal income tax returns privileged, and requiring the present husband to disclose his returns would be contrary to the public policy and interest in preservation of existing marital relationships. Since the purpose of deposing the present husband was to question him concerning his earnings and financial status, the same principle applied in that respect. *In re Marriage of Brown (1979, Cal App 3d Dist) 99 Cal App 3d 702, 160 Cal Rptr 524, 1979 Cal App LEXIS 2365*.

No exception to the judicially created privilege against disclosure of income tax returns was applicable in proceedings to modify an interlocutory judgment of divorce by increasing the wife's spousal support, where there was no indication that the wife intentionally relinquished her privilege of confidentiality, where the nature of the law suit was not inconsistent with the continued assertion of the privilege, and where there were no public policy considerations which would permit discovery of income tax returns in litigation between former spouses in spousal support modification proceedings. *In re Marriage of Sammut (1980, 1st Dist) 103 Cal App 3d 557, 163 Cal Rptr 193, 1980 Cal App LEXIS 1601*.

The purpose of *Rev. & Tax. Code, § 19282*, prohibiting disclosure of personal income tax information by state officials, is to encourage taxpayers to make full and truthful declarations in their returns without fear that such information will be used against them. Therefore, the statute creates a privilege against the disclosure of income tax returns; attempts to avoid the application of this privilege by the indirect means of permitting third parties to obtain copies of tax returns are not tolerated. *King v. Mobile Home Rent Review Bd. (1989, Cal App 2d Dist) 216 Cal App 3d 1532, 265 Cal Rptr 624, 1989 Cal App LEXIS 1347*.

Decedent's brother was entitled to a writ of mandate compelling a superior court to grant his motion for a protective order in a will contest action by the decedent's daughter because the brother did not waive the privilege against the disclosure of income tax returns, implied under former *Rev & Tax C § 19282*, when he submitted returns to a bank in order to obtain a loan, especially in light of the fact that the right to privacy under *Cal. Const. art. I, § 1* also protected private financial documents submitted to a bank by its customers. *Fortunato v. Superior Court (2003, Cal App 2d Dist) 114 Cal App 4th 475, 8 Cal Rptr 3d 82, 2003 Cal App LEXIS 1868*.

Decisions Under Former *Rev & Tax C § 26451*The phrase "except as herein provided" was inserted in the Franchise Tax Act § 35 to give returns of all taxpayers a privileged status by uniform provisions in all statutes administered by the Franchise Tax Commissioner (now the Franchise Tax Board). *Franchise Tax Board v. Superior Court of Sacramento County (1950) 36 Cal 2d 538, 225 P2d 905, 1950 Cal LEXIS 268*.

The phrase "except as otherwise herein provided," contained in the Franchise Tax Act § 35 (§§ 26451-26454 herein), referred only to those exceptions enumerated therein and did not refer to § 4a (§ 23186a herein), which provided for the examination of certain data by taxpayers. *Franchise Tax Board v. Superior Court of Sacramento County (1950) 36 Cal 2d 538, 225 P2d 905, 1950 Cal LEXIS 268*.

The use of tax returns of nonfinancial tax corporations by the Franchise Tax Commissioner in determining tax rates for banks under the Franchise Tax Act does not constitute a use "against" the banks so as to nullify the privileged status of the returns, or as to require that they be made available to the banks in the hearing authorized by § 4a of the act (§ 23186a herein). *Franchise Tax Board v. Superior Court of Sacramento County (1950) 36 Cal 2d 538, 225 P2d 905, 1950 Cal LEXIS 268*.

Although by its language, *Rev & Tax C § 19282* (prohibition against disclosure of tax information), appears to be directed only toward administrative officers, it establishes an implied privilege against forced disclosure in civil discovery proceedings. The purpose of the statute is to facilitate tax enforcement by encouraging a taxpayer to make full and truthful declarations in his or her return, without fear that any statements will be revealed or used against him or her for other purposes. If the information could be secured by forcing the taxpayer to produce a copy of a return, the

primary legislative purpose of the secrecy provisions would be defeated. The effect of the statutory prohibition is to render the returns privileged, and the privilege should not be nullified by permitting third parties to obtain the information by adopting the indirect procedure of demanding copies of the tax returns. This applies equally to federal and state tax returns. Further, this privilege applies to bank and corporate tax information under *Rev & Tax C*, § 26451, and to quarterly payroll tax returns under *Unemp. Ins. Code*, § 1094. *Schnabel v. Superior Court* (1993) 5 Cal 4th 704, 21 Cal Rptr 2d 200, 854 P2d 1117, 1993 Cal LEXIS 3429.