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FTB NOTICE 2006-5

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SUBJECT: Pilot Project for One-Year Timeline in Processing Docketed Administrative Protests

A taxpayer that receives a Notice of Proposed Deficiency Assessment may request an administrative review by the department of that proposed assessment by filing a "protest" as provided for in Revenue and Taxation Code (RTC) section 19041. Protests are assigned to a hearing officer either in the Audit Division or the Legal Department. Protests assigned to the Legal Department are designated as "docketed protests." In an effort to allow taxpayers and the department to achieve greater efficiency in the processing of docketed protests, this Notice announces a pilot project allowing certain taxpayers to request a one-year timeline for resolving their docketed protest. The one-year period will be the goal for both the taxpayer and the hearing officer, and will commence from the date the protest is filed and will conclude with the issuance of a Notice of Action on the protest under RTC section 19045.

Requests to Participate in the Pilot Project

To participate in this pilot project, the taxpayer or representative should include a request for consideration for participation in the one-year processing project with the initial protest. Protests filed prior to the date of this notice are not eligible for participation in the pilot project.

The department will notify taxpayers or their representatives of whether their protest will be included in the pilot project within one month of the date the protest is received. If a taxpayer or representative has not been notified that the protest has been included within the pilot project within that time period, the taxpayer or representative should assume that it has not been accepted.

Eligibility for Participation in the Pilot Project

This pilot project is intended to reduce the length of time necessary to process certain docketed protests. To be considered for participation, the protest must involve only a legal issue or issues for which the department's litigating position is established in a Legal Ruling, an FTB Notice, a Board of Equalization decision, or a judicial decision. In addition, the protest must be limited to the adjustments made by the department that gave rise to the Notice of Proposed Deficiency Assessment, and the taxpayer must have substantially responded to any requests for information made during the course of the audit with respect to each item protested. If any further factual development is necessary, it will typically be specific and limited in scope.

Taxpayers requesting to participate in this pilot project agree that they will:

- Proceed without requesting a copy of the audit file;
- Not seek to add any issue(s) to the protest after it has been filed;
- Make a good faith effort to respond to any request for information or further explanation of their arguments within 30 days of such request, and will request only one extension of not more than 15 days to respond;
- Agree to the scheduling of a hearing when the protest hearing officer makes his or her initial contact, agree that the hearing be held either in the location of the office of the assigned protest hearing officer or by teleconference, and agree to not seek a postponement of the hearing once scheduled; and
- Not request administrative settlement consideration while the matter is in the pilot program.

Failure to abide by these agreements will result in the protest being processed in a normal manner.

The determination as to whether to include a taxpayer's protest in the pilot project is in the sole discretion of the department. Among the factors that will bear on this decision are the number and complexity of the issues raised in the protest and the resources available to the department to meet the goal of completing the case within one year. Other factors may also be considered.

Staff Action to Complete Docketed Protest Within One Year

To complete a docketed protest accepted into the pilot project within one year, staff will use its best efforts to:

- Seek to have the file assigned to a hearing officer within 60 days of receipt of the protest;
- Have the hearing officer complete his or her initial review and correspond with the taxpayer or representative within 30 days of assignment, and establish a date for the hearing in that initial correspondence;
- Submit any requests for additional information or further explanation of arguments to the taxpayer or representative within 30 days of the initial correspondence;

- Submit any follow-up requests for information or additional explanations within 30 days of receipt of a response from the taxpayer or representative;
- Conduct the hearing within 180 days of filing of the protest; and
- Issue a final determination within 120 days of the hearing.

Additional time will be involved between the issuance of a determination and the actual issuance of a Notice of Action on the protest.

Consequences of Participation in the Pilot Project

Participation in this pilot project is voluntary. As a result, although the pilot project has a goal of completing the docketed protest within one year, if the taxpayer and the department are unable to complete the processing of the case within one year, no procedural or substantive inferences will be drawn, nor will any consequences arise, from the failure to complete the processing of the protest within the one-year period.

Drafting Information

The principal author of this notice is Frederick W. Campbell-Craven of the Franchise Tax Board, Legal Department. For further information regarding this notice, contact Mr. Campbell-Craven at the Franchise Tax Board, Legal Department, P. O. Box 1720, Rancho Cordova, CA 95741-1720.