

FRANCHISE TAX BOARD  
MINUTES  
DECEMBER 7, 2017 MEETING

The Franchise Tax Board met in open session at 1:30 p.m. at the Franchise Tax Board, 9646 Butterfield Way, Gerald Goldberg Auditorium, Sacramento, California. Present were Controller Betty T. Yee, Deputy Controller Yvette Stowers, Hon. Diane L. Harkey, and Chief Deputy Eraina Ortega, Department of Finance, for Member Cohen.

**Franchise Tax Board**

**Staff Participating:**

Selvi Stanislaus, Jozel Brunett, Bruce Langston, Diane Deatherage, Lee "Red" Gobuty, Brian Werking, Michael Banuelos, Susan Maples, and Dawn Casey

**Others Participating:**

Mark Aprea, California Alliance of Taxpayer Advocates Vickie Mulak, California Society of Enrolled Agents (CSEA), Therese Twomey, California Taxpayers Association (Cal Tax), Lynn Freer, Spidell Publishing Inc.

**Item 1. – Approval of Minutes**

The minutes of the September 7, 2017, Franchise Tax Board meeting were approved 3-0.

**Item 2. – Legislative Update**

The Board received a presentation on six Legislative Proposals.

The Board voted 2-0 (Member Ortega abstaining) to approve all six Legislative Proposals.

**Item 3. – Regulation Matters**

A. 2018 Rulemaking Calendar – The Board voted 3-0 to approve the Rulemaking Calendar.

B. Proposed Regulation 18567 - The Board voted 3-0 to proceed with the formal regulatory process.

**Item 4. – Administrative Matters**

A. Contracts Over \$1 Million – Board Approval

1. EDR2 - Board Approval

The Board voted 3-0 to approve the contract.

2. Security Guard Services - Board Approval

The Board voted 3-0 to approve the contract.

3. IBM Passport Advantage Software Subscription and Support Renewal - Board Approval

The Board voted 3-0 to approve the contract.

B. Facilities Request – Board Approval

1. San Francisco Field Offices Consolidation – Civic Center – Board Approval

The Board voted 3-0 to approve of the request.

2. Additional State Owned Space Assignment – California Town Center – Board Approval

The Board voted 3-0 to approve of the request.

**Item 5. – Resolution Regarding Ex Parte Communication of Petitions Filed Pursuant to R&TC Section 25137 – Board approval**

The Board voted 2-1 (Member Harkey voting against adoption) to adopt the Resolution.

**Item 6. – Taxpayers' Bill of Rights Hearing**

See attached Taxpayers' Bill of Rights Hearing, Franchise Tax Board, Minutes, December 7, 2017.

**Item 7. – Executive Officer's Time**

Selvi Stanislaus thanked Board Member Eraina Ortega for her time on the board and wished her good luck in her new job.

Second, Selvi also thanked Member Harkey for her time on the board as she anticipated rotating out as chair of the Board of Equalization.

Lastly, Selvi thanked the board chair, Controller Betty Yee and her representative, Yvette Stowers for everything they do for FTB and their tireless efforts to serve the people of California.

**Item 8. – Board Members' Time**

The Board members presented a Resolution to Marco Esquivel commending him on the occasion of his retirement and his service at FTB.

The Board members presented Cathy Cleek, retired chief of Technology Services Division and our chief information officer here at the Franchise Tax Board, with a resolution commending her dedication to the Franchise Tax Board.

The Controller announced the Closed Session agenda and the Board convened in Closed Session to commencing at 3:21 p.m. pursuant to Government Code section 11126.3.

The Board adjourned the meeting at 3:37 p.m.

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Board Liaison

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Date

TAXPAYERS' BILL OF RIGHTS HEARING  
FRANCHISE TAX BOARD  
MINUTES  
DECEMBER 7, 2017

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**Franchise Tax Board**

**Staff Participating:** Selvi Stanislaus, Jozel Brunett, Bruce Langston, Susan Maples, and Dawn Casey.

**Others Participating:** Lynn Freer, Spidell Publishing Inc., Vicki Mulak, California Society of Enrolled Agents

**Taxpayers' Bill of Rights Hearing**

Controller Betty T. Yee provided opening remarks describing this annual hearing, which is required by law, and introduced Franchise Tax Board staff members who were present to respond to questions.

Susan Maples, Taxpayers' Rights Advocate, provided opening comments and reviewed issues raised at the last Taxpayer Bill of Rights Hearing. She promised to ensure a written response from the department to all of the issues raised at the hearing by February 1st, 2018.

**Vickie Mulak, California Society of Enrolled Agents (CSEA)**

Ms. Mulak provided oral comment to the Board on four issues:

- The first issue was about the Franchise Tax Board Filing Enforcement program. This program looks at the various occupational and professional licenses that are regulated by the State of California and who has these licenses. She suggested that there should be evidence of income before a proposed assessment is issued.
- The second issue was the Voluntary Disclosure Program. She pointed out that taxpayers that register with the Secretary of State are ineligible for the program. She suggested that the code should be altered to include businesses that register concurrently or simultaneously with their VDP applications.
- The third issue had to do with California's real estate withholding program. She suggested that a lot of taxpayers do not understand their closing statements on their escrow transactions and so do not claim their withholding shown on the statements. Under the law, if no claim is made within four years, the statute of limitations bars a refund. She suggested that FTB should do a better job of notifying taxpayers of unclaimed real estate withholding.

- The fourth item was a California stand-alone tax return, She suggested that due to major changes in the federal tax reform bill, it would be easiest to go back to the pre-'87 practice of not starting the California return with federal AGI.

### **Lynn Freer - Spidell Publishing**

Ms. Freer provided oral comment to the Board on several issues:

- Under the new power of attorney system that's coming out, for certain types of notices, the representative is not given a copy of those notices. She explained that they seem to be notices that have to do with collections and the withholding notices. She pointed out that if there is a notice that comes out with an intent to levy and the taxpayer is out of the country and the taxpayer representative doesn't get the notice, the result is the account gets levied and could be in error.
- The second issue is the Form 1099-G, when someone files a tax return around the extended due date of the return in October, and if there's any identity theft possibility, then a notice goes out to the taxpayer to contact the Franchise Tax Board to make sure that they are who they say they are. By the time this happens, and the return is put back into process, often the refund doesn't come until January. This causes the 1099-G to be issued for the subsequent year, which is a problem for the taxpayer who expects to include the amount in income for the current year. She asked if FTB could work with IRS to resolve this issue.
- The next issue is earned income tax refunds. The IRS postpones processing and sending refunds on EITC returns until February 15th, and, hopefully, at that point, they have all of the wage and withholding information for the taxpayers and are able to process that refund. Since Franchise Tax Board legislatively now will be granting refunds based on self-employment income, she suggested that the Franchise Tax Board institute a policy that would follow the federal policy of waiting another 15 days to get those refunds out.
- The next issue involved the delay in completing audits. She suggested having two people work on an audit at a time, or some other way to prevent these long-time gaps in the completion of the audit.
- Office of Tax Appeals, she suggested that the Franchise Tax Board amend the Publication 985, to include the new name and also contact information, where to send those appeals.
- The final issue she addressed was the "Swart" case. She suggested some sort of guidelines as to when "Swart" applies and when it doesn't apply.

### **Letter from James Garrison – President of Pacific Federal Insurance Company**

- Mr. Garrison was concerned with the language on the FTB billing notices and the amount of the EFT penalty. The billing notices sometimes instruct taxpayers to return a portion of the notice with their payment, which implies mailing a check for the amount due. However, if the taxpayer has a mandatory electronic

payment requirement, FTB will impose a 10 percent penalty because they did not pay electronically. He requested that FTB improve the language on the billing notices and to consider reducing the EFT penalty from 10 percent of the amount paid by check to a fee that is commensurate with the additional processing costs. Suggested amount of \$250.00.

**Letter from Ms. Christina Grab, a personal income taxpayer**

- Ms. Grab's primary issue is that FTB does not apply overpayments from an earlier year to a current year filing enforcement assessment. Instead, FTB bills taxpayers for the entire amount of the assessment and does not apply credits forward until an actual return is filed. She also asked FTB to implement a policy that all FTB notices be sent out with the correct department phone number and not only the general assistance toll-free number. Another item was that the IRS sends a notice annually when a taxpayer is owed a refund but has not yet filed. She would like FTB to consider making its policy in this area more closely aligned with the IRS. Additionally, Ms. Grab's understanding is that FTB will not grant an extension of time to file or abate penalties for married couples filing late, when only one spouse has a qualifying illness. She believes FTB should offer extensions and relief to all caregivers. Finally, she would also like FTB staff to better inform people about our annual Taxpayer Bill of Rights hearings.

The hearing adjourned at approximately 3:38 p.m.

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Board Liaison

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Date