

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

PUBLIC MEETING

MONDAY, DECEMBER 10, 2018

1:30 P.M.

GERALD GOLDBERG AUDITORIUM

9646 BUTTERFIELD WAY

SACRAMENTO, CALIFORNIA

REPORTED BY:

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1 APPEARANCES

2 BOARD MEMBERS:

3 YVETTE STOWERS, ACTING CHAIRPERSON

4 JACQUELINE WONG-HERNANDEZ

5 GEORGE RUNNER

6 STAFF:

7 SELVI STANISLAUS, EXECUTIVE OFFICER

8 DAWN CASEY, BOARD LIAISON

9 MICHAEL BANUELOS

10 JAHNA CARLSON

11 DIANE DEATHERAGE

12 RED GOBUTY

13 ALVARO HERNANDEZ

14 SUSAN MAPLES

15 TIPHANIE WEISS

16 COUNSEL:

17 JOZEL L. BRUNETT

18 SHANE HOFELING

19 ALSO PRESENT:

20 FRED CAMPBELL-CRAVEN, FTB

21 LYNN FREER, Spidell Publishing, Inc.

22 CHRISTINE GRAB

23 BRUCE LANGSTON, FTB

24 DENNIS LOPER, Bechtel Group

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APPEARANCES CONTINUED

LAUREEN PHILIPP, FTB

JENNY WETTERMAN, California Association of
Enrolled Agents

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SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 10, 2018 1:30 P.M.

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(The Certified Shorthand Reporter transcribed the proceedings from video and audio recordings of the meeting.)

ACTING CHAIRPERSON STOWERS: Good afternoon.

This is the scheduled time for the meeting of the Franchise Tax Board.

Would the board liaison please call the roll to determine if a quorum is present.

MS. CASEY: Member George Runner.

MEMBER RUNNER: Here.

MS. CASEY: Member Wong-Hernandez.

MEMBER WONG-HERNANDEZ: Here.

MS. CASEY: Deputy-Chair Stowers.

ACTING CHAIRPERSON STOWERS: Here.

At least two members or their designated representative being personally present, there is a quorum, and the Franchise Tax Board is now in session.

At this time, I would like to ask Member Runner to lead us in the Pledge.

MEMBER RUNNER: Okay. Please stand with me.

(Pledge of Allegiance was recited

1 in unison.)

2 ACTING CHAIRPERSON STOWERS: Thank you, Member
3 Runner.

4 The public has a right to comment on each agenda
5 item. If there are members in the public wishing to
6 speak on an item, please come forward when the item is
7 called. You will have five minutes to address the
8 Board.

9 The first item on today's agenda, Members, is the
10 approval of the September 24 -- 25 -- 21st board
11 meeting.

12 Is there a motion?

13 MEMBER RUNNER: Move adoption.

14 MEMBER WONG-HERNANDEZ: Second.

15 ACTING CHAIRPERSON STOWERS: It's been moved.
16 Motion has been made and approved to approve the board
17 meeting.

18 Without objection, that will be the order.

19 The second item on today's agenda is legislative
20 matters. On Item 2A, we have Diane Deatherage to
21 present the 2019 Legislative Proposals. These are
22 action items that can be considered separately or
23 together in a single motion.

24 MS. DEATHERAGE: Good afternoon. I'm presenting
25 our 2019 legislative proposals, or LPs, today for your

1 consideration and approval. With your permission, I
2 plan to briefly cover the two LPs that are included in
3 your binder materials, and then request your approval at
4 the end of my presentation.

5 ACTING CHAIRPERSON STOWERS: Please.

6 MS. DEATHERAGE: The first LP is LP-A that would
7 modify California law for consistent treatment of the
8 federal annual fee imposed under the Patient Protection
9 and Affordable Care Act, or Affordable Care Act, as a
10 nondeductible amount. I will first give some background
11 information on these health care-related fees. In 2009,
12 the Affordable Care Act was enacted by the federal
13 government to provide affordable health care coverage to
14 the public. In order to fund the coverage, fees were
15 imposed on certain health care-related industries.
16 These two fees are nondeductible for federal purposes as
17 they are considered an excise tax.

18 So with -- the first one is an annual fee on
19 branded prescription drug manufacturers and importers
20 under section 9008 of the Affordable Care Act; and the
21 second is a fee on health insurance providers under
22 section 9010 of the Affordable Care Act.

23 In 2010, FTB considered the impact of the
24 Affordable Care Act to California statutes while
25 preparing our summary of Federal Income Tax Changes

1 Report, which is also known as our Conformity Report.

2 As a result, a provision disallowing the
3 deduction of one of the fees imposed under the
4 Affordable Care Act, which is the section 9008, the one
5 dealing with the manufacturers and importers, and that
6 was included in Assembly Bill 154 in 2015. However,
7 there was no similar Revenue and Taxation Code statute
8 enacted to disallow the deduction for the other fee, the
9 Health Insurance Providers Fee, under section 9010. As
10 we presumed that only insurance companies would be
11 subject to this fee and since insurance companies are
12 only subject to the gross premiums tax, we did not make
13 a statute -- a provision for that.

14 So this LP would amend the Revenue and Taxation
15 Code to disallow the deductibility of the Health
16 Insurance Provider Fee.

17 Do you have any questions on this LP before I
18 move to the next one?

19 ACTING CHAIRPERSON STOWERS: Members? Members?

20 Go right ahead, ma'am.

21 MS. DEATHERAGE: Okay. The next LP, LP-B, would
22 modify California law to establish penalty abatement
23 authority, similar to the federal first time abatement
24 program, except that it would apply only to individuals
25 subject to the personal income tax law, and it would be

1 a one-time abatement. The abatement would apply to time
2 limit penalties, which includes a failure to file and
3 the failure to pay timely.

4 This proposal would require the FTB, upon
5 taxpayer request to abate a failure to file or failure
6 to pay penalty when reasonable cause is either absent or
7 the taxpayer chooses to forego a reasonable cause review
8 and at the time the abatement request is made, three
9 conditions must be met: First, the taxpayer is
10 otherwise compliant with their income or franchise tax
11 filing requirements; second, the taxpayer has not
12 previously been granted abatement under this new
13 section; and, third, the taxpayer has paid or is current
14 on an arrangement to pay any tax penalties, fees, and
15 interest currently due.

16 May I answer any questions on this LP?

17 ACTING CHAIRPERSON STOWERS: Any questions?

18 Thank you.

19 May I have a motion, please?

20 MEMBER RUNNER: Move adoption of LP-A and B.

21 (The Motion was seconded.)

22 ACTING CHAIRPERSON STOWERS: Without objection,
23 the motion passed.

24 MS. DEATHERAGE: Okay. Thank you for your
25 support and approval of the proposals.

1 ACTING CHAIRPERSON STOWERS: The next item is on
2 Item 2B, which is a staff report from Jahna Carlson.

3 Go right ahead.

4 MS. CARLSON: Good afternoon, Members. My name
5 is Jahna Carlson, the department's assistant legislative
6 director.

7 It is my pleasure to be here before you to
8 provide a summary of the 2018 Conformity Meeting held on
9 November 15th.

10 The purpose of the 2018 Conformity Meeting was to
11 bring together the department's external stakeholders to
12 obtain input from the practitioner and industry
13 communities on the appetite for conformity to various
14 provisions of the 2017 Federal Tax Cut and Jobs Act.

15 This year, I have three firsts to share with you:

16 This is the first time we used a survey in
17 advance to the meeting to organize the agenda around the
18 areas of greatest interest. As a result, the agenda was
19 split into a business and international session and a
20 personal income tax session, allowing participants the
21 choice of attending either or both sessions based on
22 their area of focus;

23 We also established a dedicated e-mail address at
24 FTB_CA_Conformity@FTB.ca.gov as an additional method of
25 providing feedback specific to conformity matters. And

1 although the comment period for the conformity meeting
2 will close on December 15th, the e-mail will remain
3 available to allow for ongoing input.

4 This year, the meeting was live streamed for the
5 first time to increase and facilitate participation.
6 During the live stream, there were over 300 hits; and in
7 the live audience, there were approximately 30 attendees
8 at the personal income tax session and 50 attendees at
9 the business entities and international tax session.

10 At this time, the agenda, materials, and videos
11 of both sessions are available on the department's
12 public website, and, as mentioned earlier, comments are
13 still being received through December 15th.

14 And then to wrap up this year's conformity
15 meeting, we anticipate completing and posting to the
16 website a summary of the comments by the end of the
17 year.

18 In closing, I would like to thank all of the
19 participants for making time to attend and generously
20 sharing their observations, and all of the staff, both
21 on camera and behind the scenes, that put so many hours
22 in to making this a successful event.

23 Members, are there any questions?

24 ACTING CHAIRPERSON STOWERS: Questions?

25 Comments?

1 Thank you. I appreciate you putting the meeting
2 together. I did attend the live stream app. We have a
3 lot of issues when it comes to conformity. So I'm very
4 grateful that you guys took the time out and you
5 actually reached out to the taxpayers and stakeholders
6 to get their input as well.

7 And I'm sure, as we go through next year's filing
8 season and keeping that e-mail box open, it's going to
9 be full. So best of luck to you both.

10 MS. CARLSON: Thank you.

11 ACTING CHAIRPERSON STOWERS: Okay. Item 3 is
12 regulation matters. Item 3 is an action item, which is
13 the Annual Rulemaking Calendar. This action item is
14 presented by Red Gobuty.

15 Mr. Gobuty.

16 MR. GOBUTY: Good afternoon. Thank you.

17 The 2019 rulemaking calendar, in your materials,
18 shows the regulation projects that FTB staff plans to
19 work on during the 2019 calendar year. As required by
20 Government Code 11017.6, on a yearly basis, FTB delivers
21 a board-approved rulemaking calendar to the Office of
22 Administrative Law, providing required information on
23 regulatory items FTB plans to transmit for review and
24 approval as part of the rulemaking process during the
25 year.

1 As in the past, this board's approval of the
2 calendar and any new items identified on it for which
3 staff has not previously received board approval to
4 begin the informal regulatory process serves as an
5 explicit approval by the Board to allow staff to begin
6 the informal regulatory process and hold interested
7 parties' meetings for all calendared items.

8 And this year, there is only one new item on the
9 calendar, which staff promised to add at the September
10 meeting, and it is the rulemaking project to clarify the
11 statutory term "net income taxes paid to another state"
12 for purposes of the credit for taxes paid to other
13 states, and it is identified on the first page of the
14 materials.

15 And I would now ask for your board's approval of
16 the 2019 Rulemaking Calendar.

17 ACTING CHAIRPERSON STOWERS: Members, questions?

18 MEMBER RUNNER: Move approval.

19 MEMBER WONG-HERNANDEZ: Second.

20 ACTING CHAIRPERSON STOWERS: It's been moved and
21 seconded to approve the calendar.

22 Without objection, it passes.

23 MR. GOBUTY: Thank you very much.

24 ACTING CHAIRPERSON STOWERS: Thank you.

25 Okay. Item 4. Administrative Matters.

1 Okay. We have Tiphonie Weiss -- did I say that
2 right? -- presenting the 2019/20 AB 250 [sic]
3 Administrative Dissolution Budget Change Proposal; and
4 we also have Michael Banuelos presenting contracts over
5 \$1 million.

6 These are action items that require a board
7 approval.

8 MS. WEISS: Thank you.

9 Good afternoon. My name is Tiphonie Weiss. I'm
10 the director of the Financial Management Bureau, and I
11 am here to present for your approval the 2019/20 Budget
12 Change Proposal for costs associated with the
13 implementation of Assembly Bill 2503, Administrative
14 Dissolution.

15 The proposal requests five permanent positions
16 and \$330,000 in the 2019/20 fiscal year; and \$311,000
17 ongoing to administer the provisions of Assembly Bill
18 2503. This bill provides for the administrative
19 dissolution of certain domestic corporations and
20 domestic limited liability companies.

21 Prior to the enactment of Assembly Bill 2503, FTB
22 lacked statutory authority to administratively dissolve
23 business entities that fail to complete the process
24 required to legally dissolve. As a result, these
25 entities remain on the department's accounting system,

1 continuing to accrue taxes, interest, and penalties.

2 This bill provides two options for administrative
3 dissolution of qualified entities when there's unpaid
4 minimum franchise or annual tax.

5 The positions are needed to implement and perform
6 tasks related to the analysis and processing of these
7 administrative dissolutions.

8 At this time, I would like to ask for your
9 approval and I would be happy to answer any questions
10 you may have.

11 ACTING CHAIRPERSON STOWERS: Comments or
12 questions?

13 MEMBER WONG-HERNANDEZ: Only that I will be
14 laying off, as this goes through our process without
15 prejudice, obviously.

16 ACTING CHAIRPERSON STOWERS: Okay. Thank you.

17 MEMBER RUNNER: Move approval. Budget Change
18 Proposal.

19 ACTING CHAIRPERSON STOWERS: I second that
20 motion.

21 It passes 2/0, noting Department of Finance
22 abstaining.

23 MS. WEISS: Thank you.

24 ACTING CHAIRPERSON STOWERS: The second item for
25 us is contracts over \$1 million. We have Michael

1 Banuelos.

2 MR. BANUELOS: Hi. Good afternoon, Board
3 Members. It's very nice to see all of you. The
4 previous topics have gone smoothly. I hope to continue
5 that trend.

6 My name is Michael Banuelos and I'm the director
7 of the Franchise Tax Board's Procurement Bureau.

8 I'm here today to present a proposed contract over
9 \$1 million for your consideration and approval. Similar
10 to many other state departments, the Franchise Tax Board
11 uses the state's master agreement for unarmed security
12 guard services. The state's master agreement, as well
13 as FTB's subsidiary agreement, expires on January 31st,
14 2019.

15 The Department of General Services is currently
16 conducting a bid to establish a new statewide agreement.
17 It's DGS's intent to award multiple agreements for these
18 services; and the estimated term will be three years
19 with four one-year extensions at the option of the
20 state.

21 FTB is requesting approval to leverage the
22 proposed new master agreement to continue contracting
23 were these services. Similar to the proposed master
24 agreement, FTB's subsidiary agreement will be for three
25 years with up to four one-year options. FTB spends

1 approximately \$3.4 million per year, per fiscal year,
2 for these services.

3 And at this time, I am asking for your approval,
4 and I would be happy to answer any questions you may
5 have about this contract.

6 ACTING CHAIRPERSON STOWERS: Any questions?

7 May I have a motion, please?

8 MEMBER RUNNER: Move adoption.

9 MEMBER WONG-HERNANDEZ: Second.

10 ACTING CHAIRPERSON STOWERS: It's been moved and
11 seconded to approve the contract.

12 Without objection, the motion passes.

13 MR. BANUELOS: Thank you all very much.

14 ACTING CHAIRPERSON STOWERS: Thank you.

15 Item 5. This is the Annual Report, Education and
16 Outreach and Taxpayers' Bill of Rights.

17 First we have Susan Maples and Alvaro Hernandez
18 presenting a staff report on education and outreach and
19 2018 accomplishments.

20 Ms. Maples?

21 MS. MAPLES: Thank you, Deputy-Chair Stowers, and
22 good afternoon, Board Members.

23 My name is Susan Maples, and I'm the Taxpayer
24 Rights Advocate. And with me today is Alvaro Hernandez,
25 the manager of our Education and Outreach Program, who,

1 by the way, is also celebrating a milestone birthday
2 today.

3 Ahead of today's Bill of Rights hearing, we would
4 like to share some information with you about the
5 Taxpayers' Rights Advocate Office, what we do, and some
6 of the important products we deliver. Today we plan to
7 share information with you about what's in the
8 department's annual report to the legislature and why
9 it's worth the read; our education and outreach efforts,
10 including who we are talking to and what we're talking
11 about; our online publication, "Tax News," and the
12 information we include, which has helped increase our
13 readership by over 150 percent over the last few years;
14 and finally, some of my office's 2018 accomplishments.

15 The annual report is mandated by the Taxpayer
16 Bill of Rights and must be submitted to the legislature
17 each year by December 1st. My office coordinates the
18 department -- with the department's business areas to
19 write and assemble the report. A copy of the 2018
20 report is in your binder.

21 The report identifies the areas of greatest
22 taxpayer noncompliance and what the agency could do to
23 improve taxpayer behavior in these areas. It also
24 highlights our education and outreach efforts, which
25 Alvaro is going to share with you in a minute, as well

1 as some of the department's more significant initiatives
2 and projects.

3 Today, however, I would like to focus on the
4 section of the report that I write each year, entitled
5 "Advocate's Address." My address -- in my address, I
6 follow up on the Taxpayer Bill of Rights hearing
7 requests; systemic issues we have worked on during the
8 year; and areas where the department has made
9 significant improvements in reducing taxpayer burden,
10 but also places where the agency can do more.

11 In this year's "Advocate Address," I talk about
12 the power of attorney process and how important the
13 taxpayer's right to representation is. Working closely
14 with the department and our external stakeholders, we
15 helped find solutions to speed up POA processing and
16 ensure taxpayers are not adversely affected by our POA
17 processing time frames.

18 Filing enforcement was another area highlighted
19 in my address. At last year's hearing, your Board heard
20 two concerns regarding the Filing Enforcement Program.
21 The first one was the department's policy in accounting
22 for payments held in suspense. In response to this
23 issue, we confirmed that all withholding credits plus
24 any estimate payments associated with a specific
25 taxpayer are applied in calculating the tax due.

1 In addition, the Department undertook a pilot
2 program to notify taxpayers, who haven't filed a return,
3 that they may have unclaimed withholding or estimate
4 payments.

5 The second issue involved using occupational
6 licenses as an economic indicator of a filing
7 requirement. The Filing Enforcement Program is
8 currently studying the performance and effectiveness of
9 occupational licenses, which is scheduled for completion
10 in 2019.

11 Meanwhile, my office has worked with the Filing
12 Enforcement Program to modify procedures for taxpayers
13 who have shown that they do not have a filing
14 requirement -- say, because they have moved outside of
15 California -- so that they are contacted less frequently
16 every three years instead of every year, reducing
17 taxpayer burden.

18 Other areas I touch on in my address include our
19 Offer and Compromise Program, and the work we've done
20 with our Accounts Receivable Management Division to make
21 the process more transparent;

22 A protest update noting that our oldest inventory
23 of cases isn't growing;

24 And, finally, case resolution. While Executive
25 and Advocate Services, which is not part of the

1 Taxpayers' Rights Advocate Office, handles most requests
2 for advocate assistance, my staff does get involved in
3 certain cases where we believe there may be a systemic
4 issue or if there are other procedural or policy changes
5 that should be recommended to business areas to reduce
6 taxpayer burden or protect taxpayer rights. This year,
7 the "Advocate Address" highlights three such cases.

8 And now I will turn it over to Alvaro to talk
9 about education and outreach.

10 MR. HERNANDEZ: Thank you, Susan.

11 And good afternoon, Board Members.

12 Next, we would like to share some information
13 about the education and outreach efforts that we've
14 undertaken. Our education and outreach section works
15 with the department to get valuable information out to
16 taxpayers. We provide information about FTB's programs,
17 processes, services, and other timely information.

18 One of the ways in which we provide this
19 information is by participating in education and
20 outreach events throughout the state.

21 This chart provides you a visual of the number of
22 events that we have participated in over the last six
23 fiscal years. You can see, there's been some ebbs and
24 flows over the last couple years, but, on average, we
25 participate in 130 events. This last year, we did 126.

1 In this next slide, we break up our audience into
2 three categories. The first category is that of the tax
3 practitioner and tax professionals such as tax
4 attorneys; accountants and CPAs; enrolled agents;
5 California Education Council, CTEC; registered tax
6 preparers; and other organizations for tax
7 professionals.

8 We have presented to organizations such as the
9 California Society of CPAs; the Korean-American
10 Association of Accountants; the National Association of
11 Black Accountants; the California Society of Enrolled
12 Agents; and the Latino Tax Professional Association,
13 just to name a few.

14 Last year, we attended a total of 60 tax
15 preparer/tax professional events throughout California,
16 with nearly 5500 attendees.

17 Our next audience category is the small business
18 and industry groups. These groups consist of
19 individuals interested in starting, growing, or closing
20 a business.

21 To reach out to these groups, we partner and
22 participate in small business seminars sponsored by the
23 California Department of Tax and Fee Administration; the
24 IRS; Small Business Administration; the Mexican
25 Consulate, where we have done Spanish seminars, and last

1 year we participated in five Spanish seminars; and the
2 Bureau of Cannabis Control.

3 Given that cannabis laws changed last year, there
4 was a lot of interest from this industry about income
5 taxes for the different entity types. We participated
6 in ten cannabis-related events.

7 Overall, we attended 50 small business and
8 industry group events throughout California with over
9 5,000 attendees.

10 Our last audience category is taxpayer outreach,
11 where we attend a variety of different types of events
12 to provide information and resources directly to
13 taxpayers. We attended financial literacy events;
14 immigrant resource forums; Southern California State
15 Fair; Earned Income Tax Credit events; and we also
16 attended events sponsored by elected officials,
17 including members of Congress and members of the
18 California State Assembly and Senate.

19 We attended a total of 16 of these types of
20 events with just under 1400 attendees.

21 This next slide shows you how we distribute our
22 participation and education and outreach events with
23 the -- with our audience. When we combine the small
24 business and industry groups with the taxpayer outreach,
25 it reflects 53 percent of our education and outreach

1 efforts directly to taxpayers, while 47 percent of our
2 efforts are to the tax practitioner and tax professional
3 community. The information we provide them then extends
4 out to the taxpayers exponentially.

5 Susan will now share with you some of the
6 information or some of the topics that we discuss with
7 tax practitioners and tax professionals.

8 MS. MAPLES: As a frequent speaker at our
9 education and outreach events, I always talk about the
10 Taxpayers' Rights Advocate function and taxpayer rights.
11 My staff and I encourage tax professionals and their
12 clients to contact our office with issues they feel need
13 attention.

14 Other issues we cover include how to obtain
15 advocate assistance for individual account matters by
16 contacting Executive and Advocate Services directly;
17 important information about the annual report and Bill
18 of Rights hearing; as well as the best ways to
19 communicate with FTB.

20 We also encourage taxpayers and tax professionals
21 to consult our online dashboard that displays current
22 call center and chat wait times so that they know the
23 best days and times to contact us.

24 We share relevant information with tax
25 professionals, such as planned changes to the Schedule

1 CA due to federal tax reform; changes to the Form 540
2 amended return, allowing it now to be e-filed; updates
3 to legislation, such as changes to the Earned Income Tax
4 Credit; information on identity theft; and, of course,
5 updates on MyFTB changes; and power of attorney
6 processing.

7 MR. HERNANDEZ: At small business seminars, we
8 share information about the Earned Income Tax Credit and
9 discuss the different forms of ownership and their
10 representative filing requirements. This includes
11 information for sole proprietors, partnerships,
12 corporations, and limited liability companies.

13 We have presented more in-depth seminars on LLCs,
14 where we discuss the difference -- the different
15 classifications of an LLC and their respective filing
16 requirements.

17 And at taxpayer outreach events, we have
18 presented "Understanding Your State Taxes" to share
19 general income tax filing information.

20 Another vehicle that we use to provide education
21 and outreach information is through our "Tax News," our
22 online monthly publication. As Susan mentioned, it has
23 grown over the years, and it has currently over 30,000
24 subscribers. Though our target audience is the tax
25 practitioner and tax professional community, we have

1 extended the -- to include -- expanded to include small
2 business owners, representatives from federal and state
3 agencies, and members of other professional groups.

4 One of the things we have done recently is to
5 leverage our partnerships and include articles from
6 other agencies, including the IRS; the Secretary of
7 State; the California Department of Tax and Fee
8 Administration; Employment Development Department; the
9 Governor's Office of Business and Economic Development;
10 and the State Treasurer's Office.

11 In addition to articles, we have short videos on
12 different topics. The latest "Tax News" live video is
13 on FTB's Offer and Compromise Program. It's a quick
14 video that describes the program and directs the viewers
15 to our website for more information.

16 I'm highlighting one of our other videos on how
17 to close a business entity in California, because it has
18 received over 30,000 views, or nearly 30,000 views, in
19 the last two years, far exceeding views of our other
20 videos. This reflects a large interest in this topic
21 and ties into the recent legislation passed about
22 dissolution and cancellation of a business entity.

23 We will continue to work with our program areas
24 to develop new videos that will provide valuable
25 information to our taxpayers.

1 We have also started doing realtime videos using
2 Facebook -- Facebook Live, I should say. These are
3 short one- to two-minute videos on specific topics,
4 where the Facebook Live video listed there addresses
5 cash-based businesses, such as a cannabis-type business,
6 where we talk about record keeping tips that they can
7 use.

8 Once the video went live on Facebook, we posted
9 it to Twitter and then made it available on YouTube. So
10 as you can see, we use the various social media outlets
11 available to share our information.

12 The chart reflects -- this chart reflects the
13 types of articles that we provide through our "Tax
14 News." As you can see from the chart, our top three are
15 self-service, filing information, and hot topics.

16 Self-service is made up of 16 percent of the
17 articles, which include articles about MyFTB, refunds,
18 electronic payments, and interactive voice response
19 skip-a-payment options.

20 Filing information made up 17 percent of the
21 other articles, and we provided information about forms,
22 due dates, disaster information, extended hours, and
23 filing season updates.

24 And finally, hot topics made up 19 percent of the
25 articles and included articles on cannabis, fraud, power

1 of attorney, tax information authorization, and
2 market-based sourcing.

3 MS. MAPLES: Finally, I would like to wrap up
4 with some 2018 accomplishments:

5 This year, we were able to establish a policy at
6 FTB, outlining the importance of the power of
7 attorney-client relationship, and directing FTB staff to
8 work with a representative on all matters within the
9 scope of the representative's authorization.

10 We also work closely with our partners in the
11 Filing Division, Secretary of State, and GO-Biz, to
12 include the business dissolution/cancellation process.
13 This included education and outreach to improve the
14 consistency of language between the agencies, and a
15 legislative proposal, which is now law.

16 One of the accomplishments that will impact my
17 office directly was the work we did to set up the
18 Taxpayer Appeal Assistance Program, or as we like to
19 call it, TAAP. Beginning January 2019, it will become
20 part of my office because of the independence we have
21 from the rest of the FTB and will ensure the
22 continuation of this vital program for taxpayers.

23 Without TAAP, taxpayers would have to face the
24 Office of Tax Appeals alone, hire representation that
25 they may not be able to afford, or just give up and pay

1 a disputed bill.

2 Another area where our outreach will have a
3 positive impact is the Gig Economy Tax Center webpage.
4 We worked closely with the department's Management
5 Development Team to create and launch content that is
6 now available on the Taxpayer Rights Advocate page.
7 This webpage provides valuable information about the tax
8 aspects of the gig economy to the estimated 25 percent
9 of workers who now have an alternative work arrangement.

10 In closing, I would say that it's definitely been
11 a busy year, and with all of the changes to federal law,
12 I expect 2019 to be the same.

13 And with that, we would be happy to answer any
14 questions you may have before Alvaro heads off to
15 celebrate his birthday, and continue on with the
16 Taxpayer Bill of Rights hearing.

17 ACTING CHAIRPERSON STOWERS: Thank you.

18 Any questions?

19 MEMBER RUNNER: Just a quick comment.

20 I'm glad to see the pick up of the TAAP office.
21 I certainly -- you know, through my experience with the
22 BOE, understood well their help and support they give
23 the taxpayers, I think particularly with the change in
24 OTA and the challenges that are there. I think it's
25 going to be a particularly important opportunity so I

1 think it's very helpful to taxpayers.

2 MS. MAPLES: Thank you.

3 ACTING CHAIRPERSON STOWERS: I want to go back.
4 You talked about a pilot project for notifying taxpayers
5 if they had an estimated tax payment.

6 MS. MAPLES: Yes. We have a couple of different
7 things. I'm sorry, I didn't mean to cut you off.

8 ACTING CHAIRPERSON STOWERS: Yeah. That was -- I
9 was just really curious. Are you guys still evaluating
10 it? Is it something that you are considering to make it
11 permanent?

12 MS. MAPLES: We have a couple of different
13 things: We're sending out letters from our legacy
14 systems for those who have estimated taxes or
15 withholding that they have not claimed and have not
16 filed a return. And then we also have another project,
17 which is a form letter that goes out for nonwage
18 withholding or real estate withholding. And we have
19 sent out, I believe, just under 38,000 letters last
20 year, notifying folks that they have withholding on the
21 books and they have not -- and they have not filed a
22 return to claim it.

23 So it is ongoing, but I can definitely get you
24 more information about that afterwards.

25 ACTING CHAIRPERSON STOWERS: Okay. Thank you.

1 MS. MAPLES: Thank you.

2 ACTING CHAIRPERSON STOWERS: Comments?

3 He can go celebrate his birthday.

4 MS. MAPLES: All right. Happy birthday.

5 MR. HERNANDEZ: Thank you.

6 ACTING CHAIRPERSON STOWERS: Thank you very much.

7 Now, for the annual Taxpayer Bill of Rights
8 hearing. This is the time set aside for the annual
9 Taxpayer Bill of Rights hearing, as required by section
10 21006 of the Revenue and Taxation Code. The purpose of
11 the hearing is to allow taxpayers and tax practitioners
12 the opportunity to present directly to the Board any
13 proposals they may have for changing an existing state
14 income tax law.

15 FTB staff is available to respond to members'
16 questions, which may be raised as a result of the
17 taxpayers' proposals.

18 Present are Selvi Stanislaus, our Executive
19 Officer; Jozel Brunett, Chief Counsel; Shane Hofeling,
20 Assistant Chief Counsel; and Susan Maples, Taxpayer
21 Rights Advocate; we also have Diane Deatherage and Jahna
22 Carlson from our Legislative Services Bureau.

23 Staff will analyze the fiscal and administrative
24 consequences of the proposals.

25 Susan has some introductory comments, and then I

1 will call the names of the individuals who have
2 indicated that they would like to have a presentation --
3 or present. You can come forward when your name is
4 called and present your proposal. Each presenter is
5 allowed five minutes for their presentation in order to
6 ensure that everyone has an opportunity to speak.

7 Susan?

8 MS. MAPLES: Thank you.

9 As you heard in the presentation earlier, we have
10 had a very busy year. A lot of time was spent working
11 on the power of attorney process and ensuring that
12 taxpayers -- ensuring the taxpayers' rights to
13 representation, including laying the foundation to allow
14 a smooth transition of the Taxpayer Appeals Assistance
15 Program to FTB.

16 We have definitely had success but also some
17 challenges along the way and I would like to thank my
18 staff -- Alvaro, Chris, Elinor, Jenny, Lila, Lucius,
19 Mark, and Terri -- for all their hard work. Their
20 dedication and enthusiasm has made this year a
21 successful one, and I cannot thank them enough.

22 I would also like to thank Selvi and your Board
23 for your continued support throughout the year. Your
24 commitment to the balance between the Taxpayer Bill of
25 Rights and the FTB's obligation to collect the proper

1 amount of tax owed is extremely important and very much
2 appreciated.

3 Finally, I would like to thank my partners in the
4 community. Having the support and trust of taxpayers
5 and tax professionals and trade media is key to being an
6 effective advocate.

7 Before we hear from those who have signed up to
8 speak today, I would also like to mention that we have
9 received some written comments without a speaker signed
10 up to address the Board. Those written comments will be
11 provided to the Board for consideration and will receive
12 a written response from FTB.

13 We are here to listen to the concerns raised
14 before the Board, because they truly are important to
15 us, and we are committed to responding in writing to all
16 the issues raised by February 1st, 2019.

17 ACTING CHAIRPERSON STOWERS: Thank you. All
18 right. Thank you, Susan.

19 At this time, for those who have -- would like to
20 speak, please come up and take a seat behind -- they
21 call it the podium, but it's like a small table. Oh,
22 the podium there. Oh, there is a podium there. And I
23 will call your name in order.

24 The first speaker is Jenny Wetterman. Did I get
25 that close?

1 Welcome. You have five minutes to present.

2 Jenny is from the California Association of Enrolled
3 Agents.

4 MS. WETTERMAN: Yes, thank you. Can you hear me?

5 ACTING CHAIRPERSON STOWERS: Yes.

6 MS. WETTERMAN: I think I am on. Oh, perfect.

7 Madam Chair, members of the Franchise Tax Board,
8 and our Taxpayers' Rights Advocate's Office.

9 My name is Jenny Wetterman, and I am the CSEA
10 legislative affairs chair.

11 We sent a two-page letter to Franchise Tax Board
12 earlier, and I am going to present a synopsis of the
13 four issues in that letter.

14 I would like to begin with the conformity with
15 federal TCJA provisions. We want to thank Franchise Tax
16 Board Legislative Bureau for hosting the Conformity
17 Stakeholder Meeting in November.

18 In keeping with that testimony, we believe there
19 are two issues that need to be urgently addressed by the
20 Franchise Tax Board:

21 One is the Schedule CA and the importance of
22 conformity for itemized deductions. The now three-page
23 Schedule CA requires significant amounts of information
24 from taxpayers to complete, and the complexity of
25 California itemized deductions as they now exist may

1 actually discourage taxpayers from deducting certain
2 allowable items.

3 We are recommending that Franchise Tax Board
4 conform to federal law and increase the standard
5 deductions in California to ease the administrative
6 burden on taxpayers.

7 The second conformity issue is simplifying small
8 business accounting methods. TCJA increased the
9 eligibility of small businesses to use the cash method
10 of accounting if their average gross receipts do not
11 exceed 25 million. California does not conform, and the
12 5 million average gross receipts threshold still stands,
13 which will require those businesses that fall in the
14 over-5-million-but-under-25-million threshold to keep
15 two sets of books with -- which would be an incredible
16 burden on California's small businesses. And that is
17 why CSEA is asking that FTB immediate -- that we
18 recommend immediate conformity on this provision for
19 California legislative (verbatim).

20 Our next item is clarification regarding
21 withholding credits from Franchise Tax Board withhold at
22 source programs.

23 In 2017, our members were reporting issues
24 associated with how real estate withholding credits were
25 being applied to a taxpayer's account. These concerns

1 were brought to Franchise Tax Board in 2017, and they
2 committed to sending letters to taxpayers who had
3 nonwage withholding credits about to expire under the
4 statute of limitations.

5 We want to thank the Franchise Tax Board's
6 Taxpayers' Rights Advocate office on getting those
7 letters out. They are good letters, and we really
8 appreciate the effort on their part.

9 We want to add that we would like to ask the
10 amount of the unclaimed withholding credit be included
11 in that letter. We believe including the amount would
12 stimulate taxpayers to claim these credits before the
13 statute expires.

14 In California, real estate withholding can be
15 significant, and with the way we see it, if taxpayers
16 see the amount, they tend to act faster. Those
17 withholding amounts can actually be more than on a W-2
18 withholding.

19 Tying into the withholding issue, we also believe
20 the need for clarification still exists regarding when
21 an amended return is required with -- if the withholding
22 credits have not been claimed on an original return.
23 Our members have reported, they have been advised by a
24 Franchise Tax Board compliance bureau that a manual
25 intervention within their unit is the best means to

1 achieve credit to the account in lieu of an amended
2 return. We would just like some clarification on the
3 process that you guys would ask that we follow.

4 The third area of concern for us is with the
5 taxpayer information authorization, or TIAs. And the
6 power of attorney, POAs, for deceased taxpayers.

7 Our membership reports that it is difficult to
8 secure income and wage or nonwage withholding
9 information to file returns for deceased taxpayers even
10 when executor/administrator to court documents exist.
11 Examples of these documents include letters testamentary
12 or letters of administration will already authorize a
13 person to act as the decedent's fiduciary and sign
14 Franchise Tax Board forms.

15 Please outline Franchise Tax Board's current
16 procedure for assisting representatives in securing this
17 information for fiduciaries and provide some information
18 on the processing times for a TIA or POA for a deceased
19 taxpayer.

20 Our final issue for consideration is with the
21 Franchise Tax Board Voluntary Disclosure Program. There
22 is a glitch in this program due to how the VDP was
23 incorporated into the Revenue and Tax Code. The code
24 renders an entity that is registered with the Secretary
25 Of State's Office ineligible to participate regardless

1 of how long the entity has been registered or qualified.
2 Failed legislation from the last legislative session, SB
3 1508, would have resolved this.

4 As California is looking at new definitions of
5 "economic nexus" --

6 MS. CASEY: Time.

7 MS. WETTERMAN: -- we recommend that Franchise
8 Tax Board, a legislative or administrative -- we
9 recommend that they consider a legislative or
10 administrative remedy to resolve this glitch.

11 We thank Franchise Tax Board for its attention to
12 these issues and look forward to your consideration and
13 responses.

14 ACTING CHAIRPERSON STOWERS: Thank you.

15 Susan, do you have any comments?

16 MS. MAPLES: I do. I would like to address a
17 couple of those issues with just a few comments.

18 MS. WETTERMAN: Oh, I would love to hear.

19 MS. MAPLES: First, I just want to start by
20 saying that FTB generally believes conformity is a good
21 thing for taxpayers, for tax professionals, and for FTB.

22 And I also want to thank CSEA for being an active
23 participant in the Federal Conformity Stakeholder
24 Meeting we had last month. It's really important, so we
25 appreciate the fact that you guys participate.

1 And we're also continuing -- looking forward to
2 continuing working with our partners and external
3 stakeholders to hear your ideas so that we can better
4 focus in on the most important conformity issues as we
5 move forward into the next legislative cycle.

6 As with regards to real estate withholding, I
7 wanted to tell you that I'm also happy about the letters
8 that are now going out, and I think that we can
9 certainly look into the feasibility of including the
10 amounts on those letters, as well as getting some
11 clarification about when it's more appropriate to file
12 an amended return as opposed to working directly with
13 somebody from the withholding section to get those
14 credits applied. So we can definitely look into that.

15 MS. WETTERMAN: Thank you.

16 Any other comments?

17 CHAIRPERSON YEE: Thank you very much.

18 MS. WETTERMAN: Thank you for your time.

19 ACTING CHAIRPERSON STOWERS: Next up, we would
20 like to invite Christine Grab to come to the podium.

21 MS. GRAB: My name is Christine Grab. I am an
22 individual taxpayer, and I have eight policy change
23 requests:

24 One, end the policy of withholding estimated tax
25 payments made via credit elect until the taxpayer files

1 a return. This policy violates R&TC 19363, which states
2 that credit elects must be applied effective
3 April 15th year (verbatim), regardless of filing date.
4 If a taxpayer files late, the FTB then demands payments
5 of monies that would not have been due had the credit
6 elect been applied in compliance with the law, as well
7 as late fees, penalties, and interest. This is the
8 federal crime of racketeering per the RICO Act;

9 Two, end the policy of withholding estimated tax
10 payments made by married couples until the married
11 couple files a return. The tax codes and counsel advice
12 that the FTB uses to justify this policy say the exact
13 opposite of what the FTB claims they say. Therefore,
14 this withholding practice is illegal. If taxpayers file
15 late, the FTB then demands payments of monies that would
16 not have been due had the payments been applied in
17 compliance with the law, as well as late fees,
18 penalties, and interest. This is the federal crime of
19 racketeering per the RICO Act;

20 Three, end the policy of assessing licensees with
21 tax liabilities when there is no proof of income earned.
22 If no evidence exists that a licensee has earned income
23 via said license, the FTB assesses the licensee with a
24 tax liability based on the average income that those
25 types of licensees earn. It is up to the licensee to

1 prove that they didn't earn this money. The FTB has
2 provided no legal basis to justify this policy.
3 Therefore, it should be halted;

4 Four, clearer definitions of what defines an
5 abatement request. My abatement request for the tax
6 years 2013 and '14 were denied before I applied. I
7 asked Ms. Maples how this could possibly be legal. She
8 responded that the FTB sent me a turndown notice because
9 I informed Gov Ops that I was going to submit an
10 abatement request and that the FTB believes this
11 turndown was reasonable, thanks to their loose
12 guidelines of what defines a request.

13 The law says that in order for an abatement
14 request to be approved, the taxpayer must provide
15 credible and competent evidence, but I was turned
16 down -- I was turned down due to lack of evidence before
17 I even had a chance to submit my evidence. This policy
18 of loose guidelines is a tool to deny due process to
19 taxpayers. It must be corrected;

20 Five, having the taxpayer -- having the Tax
21 Appeals Assistance Program, TAAP, overseen by the tax
22 agencies that they are fighting against is a conflict of
23 interest. TAAP provides free student attorneys to
24 taxpayers who are appealing denials of abatement
25 requests from the FTB and CDTFA.

1 On January 1st, 2019, the FTB and CDTFA agencies
2 will be overseeing their respective TAAP programs. This
3 gives these agencies the power to withhold free
4 representation from the taxpayers who are trying to
5 fight them in court. Without free student attorneys, it
6 will be impossible for most taxpayers to recover unfair
7 fees due to prohibitive attorney costs.

8 I am requesting that you restructure the Office
9 of Tax Appeals so they can oversee TAAP or another
10 office so they can oversee TAAP;

11 Six, disclosure of annual Taxpayer Bill of Rights
12 meetings to the general public. This annual Taxpayer
13 Bill of Rights meeting that we are at right now is a
14 California state right. However, the FTB goes to great
15 lengths to hide this right from the general public. FTB
16 representatives are trained to tell taxpayers who
17 complain that there is nothing the FTB can do about
18 changing policies or laws.

19 When the FTB sends out written correspondence,
20 they will frequently include form 4058 called
21 taxpayer -- California Taxpayer Bill of Rights, which
22 omits information about these meetings. If the taxpayer
23 carefully reads 4058, they will discover that there is
24 another brochure, Form 4058C, also called taxpayer Bill
25 of Rights, which has more information. The taxpayer

1 then has to locate Form 4058C to find out these meetings
2 exist. Form 4058C contains no directions on how to
3 submit a request. As far as I could find, there are no
4 instructions anywhere on the FTB's website on how to
5 submit a request.

6 I am asking that the Board implement the
7 following policy changes:

8 A, add information about how to submit a request
9 to the annual Taxpayer Bill of Rights meeting to Form
10 4058C;

11 B, whenever Brochure 4058 is sent, 4058C should
12 also be sent with it;

13 C, Brochure 4058 should be renamed California
14 Taxpayer Bill of Rights --

15 MS. CASEY: Time expired.

16 ACTING CHAIRPERSON STOWERS: Your time has
17 expired. You may have an additional three minutes if
18 you would like to wrap up.

19 MS. GRAB: Oh, awesome. Thank you.

20 C, Brochure 4058 should be renamed California
21 Taxpayer Bill of Rights, part 1 of 2; and 4058C should
22 be renamed California Taxpayer Bill of Rights, parts 2
23 of 2;

24 D, FTB reps should be trained to tell taxpayers
25 who complain about a policy or law that they can submit

1 a change request to the annual Taxpayers Bill of Rights
2 meeting.

3 Seven, acknowledgment of the abatement -- of
4 abatement requests and disclosure of taxpayer rights in
5 the abatement process.

6 I believe there should be a written notice mailed
7 to all taxpayers who file an abatement request, which
8 acknowledges that the request was received and explains
9 their rights:

10 A, that the FTB has six months to respond;

11 B, if you were turned down, you have the right to
12 file an appeal and can possibly access a free TAAP
13 attorney;

14 C, if you do not receive a response within six
15 months, you still have the right to appeal and can
16 possibly access a free TAAP attorney.

17 Eight, move the Taxpayers' Advocate to work under
18 Gov Ops. Having the Taxpayer Advocate employed by the
19 tax agency -- by the tax -- taxation agencies they are
20 supposed to be protecting taxpayers from, is a conflict
21 of interest. Protecting the revenue is the FTB's number
22 one priority. While the Taxpayer Advocate does have the
23 power to make changes to favored taxpayers, doing so
24 would reduce the revenues that her employer generates.
25 It's not fair to her to be in a position of divided

1 loyalties.

2 I understand that this request requires a change
3 in legislature [sic]. I am requesting that Ms. Maples
4 and the FTB Board of Directors work together with my
5 state representatives to put together a bill to propose
6 in the next legislative session that will include the
7 following structural changes:

8 A, instead of one advocate per taxation agency,
9 there should be one advocate per district that works
10 with all the agencies;

11 B, the advocate should work under Gov Ops and
12 have a support staff;

13 C, Gov Ops need to be given real oversight power;

14 D, the advocates must have authority and power to
15 make changes to unfair policies. The assorted advocates
16 would have to regularly meet to discuss potential policy
17 changes and vote on whether to make said changes.

18 Thank you very much.

19 ACTING CHAIRPERSON STOWERS: Thank you.

20 Thank you. FTB, do you have any comments?

21 MS. BRUNETT: Yes. Just quickly, I just want to
22 assure the Board that my staff and I have reviewed the
23 policies and the -- and the procedures that Ms. Grab has
24 mentioned, and that we are in full compliance with the
25 law. But we definitely do thank Ms. Grab for her

1 comments, and the Taxpayer Advocate will take them into
2 consideration in the normal process.

3 ACTING CHAIRPERSON STOWERS: Thank you.

4 Susan, do you have any comments?

5 MS. MAPLES: I do.

6 I wanted to address the disclosure of the annual
7 Taxpayer Bill of Rights meeting.

8 First, I would like to thank Ms. Grab for her
9 suggestion and assure her and this board that the
10 Taxpayers' Advocate Office and FTB do not try to limit,
11 hide, or discourage the citizens of California from
12 participating in the annual Taxpayer Bill of Rights
13 process.

14 The law provides for the annual hearing before
15 the Board where industry representatives and individual
16 taxpayers are allowed to present their proposals on law
17 changes. This is a public meeting held each December.
18 Taxpayers are not required to submit anything in advance
19 and members of the public who wish to speak at the
20 meeting need only to attend, sign up, and speak during
21 their allotted time.

22 As the result of Ms. Grab raising this issue last
23 year, this year we placed a link to the meeting notice
24 on our home page during the ten-day period preceding the
25 meeting, in addition to its normal posting on our "News

1 and Events" tab.

2 In addition, as we mentioned earlier in our
3 education and outreach presentation, the Taxpayer Bill
4 of Rights hearing and its important is something -- and
5 its importance is something that we cover in every
6 presentation that we give.

7 We appreciate Ms. Grab's suggestions for the Form
8 4058 and 4058C, and we will consider her recommendations
9 during the FTB's annual review of its publications.

10 I would also like to address her request to end
11 the policy of assessing tax liabilities with the
12 Occupational Licensing Program and mention that Revenue
13 and Taxation Code section 19087 provides FTB with
14 authority to propose an assessment from any available
15 information which indicates that the taxpayer who fails
16 to file a return has a filing requirement for a
17 particular tax year.

18 Furthermore, the Board of Equalization has held
19 in its decisions that FTB has great latitude in
20 estimating income when a return has not been filed by a
21 taxpayer, including using third party information to
22 estimate income. As such, Revenue and Taxation Code
23 19087 allows FTB to use third party information, such as
24 occupational licenses, to estimate taxpayers' income.

25 In addition, as I mentioned in my "Advocate's

1 Address" of the annual report, the Filing Division is
2 currently studying the overall performance of
3 occupational licenses in an effort to improve the
4 quality of context to potential nonfilers. The
5 estimated date for completion of this study is in 2019,
6 and while we won't have much to share in February, when
7 the hearing responses go out, we should definitely have
8 an update for your Board with the next annual report.

9 Thank you.

10 ACTING CHAIRPERSON STOWERS: Thank you, Susan.

11 Okay. Next, I would like to invite Mr. Dennis
12 Loper up to the podium.

13 MR. LOPER: Thank you. My name is Dennis Loper.
14 I'm here on behalf of the Bechtel Group, a closely held
15 corporation.

16 I'm here today to request that the Board direct
17 staff to develop legislation to bring some certainty to
18 the -- to the other states' tax credit, as applied to
19 California residents who pay the Texas Margins Tax.

20 As you may recall, I've expressed some concern at
21 previous (verbatim) of FTB staff being a little bit
22 inconsistent in views on this issue, and, further, that
23 the staff recently changed its position to the detriment
24 of many California residents who pay the Texas tax.

25 Therefore, I would like to ask the Board to

1 direct staff to develop a legislative proposal on the
2 OSTC to avoid a double tax on California residents under
3 these circumstances.

4 I have given Ms. Maples, on our end, a draft
5 legislation that we suggest and we would say that we're
6 open to any response to that draft legislation, but --
7 and we don't believe you stop the rule making process.
8 I think the two can go hand in hand, and, frankly, we
9 think the legislative proposal will -- may move faster
10 with the rulemaking process behind it.

11 Thank you.

12 ACTING CHAIRPERSON STOWERS: Thank you,
13 Mr. Loper.

14 The Board will consider your proposal and respond
15 through our regular Taxpayer Bill of Rights process.

16 On the 2019 rulemaking calendar, there is a
17 regulation project concerning other state tax credit.

18 FTB, do you have an estimated time frame on when
19 the IP meeting, interested parties meeting, will be
20 held?

21 MS. BRUNETT: Yes. Thank you, Madam Chair.

22 We plan to work toward having our first
23 interested parties meeting in late spring/early summer,
24 of next year.

25 ACTING CHAIRPERSON STOWERS: Thank you, Jozel.

1 Next speaker. Next up, I would like to invite
2 Lynn Freer of Spidell to the podium.

3 MS. FREER: Good afternoon, Board Members, Selvi
4 Stanislaus, and your staff. We appreciate you having
5 this meeting so that people can bring their concerns and
6 questions.

7 And I have just a short -- a fairly short list
8 this year, although I do echo CSEA's comments about
9 conformity.

10 The first item I have here is the "Larsen" case.
11 This was recently decided by the OTA. And it mirrors
12 some questions and concerns we have had from our seminar
13 attendees and subscribers regarding nonresident sole
14 proprietors who have no physical residence in
15 California, and whether or not market-based sourcing
16 would apply to those businesses.

17 Under Revenue and Taxation Code section 17951-4,
18 a nonresident is only taxed on income from a business
19 conducted solely within California in which case all the
20 income is sourced to California; for example, a Nevada
21 resident attorney whose only office is located in
22 California. Or if a nonresident is -- a nonresident's
23 business is conducted -- and underline "conducted" -- is
24 conducted both inside and outside of California, the
25 business is apportioned to California based on the

1 corporate apportionment rules including market-based
2 sourcing.

3 Here's the -- here's the key. It's another
4 situation of an un-defined term and the un-defined term
5 is -- is "conducted."

6 In the "Larsen" case, the Office of Tax Appeals
7 ruled that because the taxpayer was doing business in
8 other states, but never actually was physically present
9 in California, that the market-based sourcing rules did
10 not apply and he was not subject to California tax on
11 income from California customers who benefited from the
12 services in California. It's interesting that this
13 seems to be a bit intertwined with a nonresident
14 withholding, where the publication and the regulations
15 address the fact that a nonresident independent
16 contractor, you only withhold on them based on the
17 number of days worked in California, versus total number
18 of days, which is in direct conflict with the
19 market-based sourcing rules.

20 So what we would like to have is guidance on the
21 issue and an analysis and possibly a change of position,
22 unless there's a change of law, for those nonresident
23 taxpayers providing services to California residents.

24 The next issue we have is -- we brought it up
25 last year; we bring it up again. And it's the audit

1 time frames. During the year the Franchise Tax Board
2 issued a notice regarding the protest timeline and
3 increased the amount of time that they would take to
4 resolve protests, but in the meantime, we're still
5 getting complaints from taxpayers who've been in audit
6 on relatively simple issues for extended periods of
7 time.

8 One of the -- recently, one of our
9 representatives contacted -- there was an audit that
10 began in June of 2017. It was a 1031 exchange audit.
11 The practitioner got the -- all of the information in to
12 the auditor within 30 days. And toward the end of the
13 year, I believe it was, the -- the -- they were
14 contacted by the auditor, I believe, the beginning of
15 2018, who said that he had recommended a no change, that
16 it was going to review. It's still in review, and the
17 last we heard was that the review staff had requested
18 another year because there was a subsequent exchange
19 after that.

20 The auditor is not a new auditor. The auditor
21 was not transferred, was not out on a lengthy time. So
22 all of the typical reasons why audits don't get done
23 don't apply in this situation.

24 And as I said, we do still get letters from --
25 contacts from our clients. So we would really like to

1 see an improvement in this area.

2 That said, we have three things that we're very
3 happy about:

4 First of all, we're pleased that the Franchise
5 Tax Board pushed again and again and finally was able to
6 get legislation for administrative dissolutions. It's
7 going to cut down on the accounts receivable that are on
8 the books, that are really not there at all. They are
9 sort of phantom income that everybody knows is never
10 going to be collected and it's going to take a huge
11 burden off of the taxpayers who only formed an LLC or a
12 corporation because their nephew, Bertie, just got his
13 law degree, and those papers sit in the desk for years
14 and years. So we appreciate that.

15 Also, we commend the Franchise Tax Board on their
16 quick resolution of the power of attorney two-step
17 process disaster. After I talked with Susan Maples and
18 her staff, they quickly got me together with the folks
19 on that project and came up with what I believe is a
20 very good solution to protect the security of the
21 taxpayer, but also make it easy to get help for -- for a
22 representative.

23 Finally, I would specifically like to thank Jahna
24 Carlson and the FTB attorneys who -- who did the
25 conformity meeting. It was very valuable, and we got

1 good information from you folks, and I believe that
2 there was a lot of great information that was put forth
3 in that meeting.

4 And finally, I would like to thank Bruce Langston
5 for all the years and all the great work he's done.
6 We've had a few -- a few set-tos over the years, but I
7 think of him as a very trusted and valuable friend and
8 associate.

9 So good luck to you, Bruce, and thank you for all
10 you have done.

11 I'm done.

12 ACTING CHAIRPERSON STOWERS: Thank you. Thank
13 you very much.

14 MS. FREER: They always say, have a good close.

15 ACTING CHAIRPERSON STOWERS: Susan, do you have
16 any comments?

17 MS. MAPLES: I do.

18 I just wanted to thank Lynn for bringing the
19 first issue on the Appeal of Larsen to the Bill of
20 Rights hearing. I know that market-based sourcing,
21 those issues continue to be ones where we frequently get
22 questions and requests for clarification.

23 And as a result of that, Jozel is going to be
24 putting a "Tax News" article in her Chief Counsel Corner
25 in the next few months, giving some guidance in light of

1 this new decision.

2 And then secondly, with regard to the audit time
3 frames, I know that the goal for audit continues to be
4 closing those cases within two years, and I did ask
5 about that. And they said that 88 percent of those
6 cases are within the two-year time frame. But, you
7 know, recently, as you know, we did get a new Audit
8 Division Chief, and I know both of us appreciate the
9 fact that Spidell is bringing these issues forward. And
10 we look forward to working with you to better that audit
11 experience wherever we possibly can. So thanks, Lynn.
12 Appreciate it.

13 MS. FREER: Thank you. It's always nice to have
14 a good audit experience.

15 ACTING CHAIRPERSON STOWERS: Thank you very much.

16 MS. MAPLES: We do what we can.

17 MS. FREER: Thank you.

18 ACTING CHAIRPERSON STOWERS: Well, that concludes
19 the 2018 Taxpayers' Bill of Rights hearing.

20 Item 6, Executive Officer Time.

21 EXECUTIVE OFFICER STANISLAUS: Thank you, Madam
22 Chair. For my time today, I would like to congratulate
23 our Chair, State Controller Betty Yee, who just won four
24 more years in her post. The voters of California
25 clearly recognize your experience and expertise when it

1 comes to state finance.

2 When endorsing you for reelection, Diversified
3 Press Enterprise called you a competent and forward
4 thinking Controller. And went on to acknowledge your
5 steadfast focus on what can be done today about
6 tomorrow's challenges. We are honored to have you chair
7 this body for another four years and look forward to
8 your continued strong leadership.

9 And now Senator Runner. Senator Runner also has
10 had a distinguished career in elected office. He won a
11 seat on the Lancaster City Council, later serving on --
12 as vice mayor, and then mayor; then went on to win seven
13 different elections that sent him to the state assembly,
14 the senate, and the BOE, the Board of Equalization,
15 which is how he joined us at the FTB this past year.

16 Senator Runner, the voters have clearly shown you
17 support. The taxpayer community also owes you a great
18 deal of thanks. You have been a tireless advocate for
19 taxpayers regardless of their income or the industry
20 they come from. Through your career, you have been a
21 strong public servant. I am quite sure this will
22 continue in some form or fashion long into your
23 retirement years.

24 Congratulations on an exemplary career of
25 service.

1 MEMBER RUNNER: Thank you, Selvi.

2 EXECUTIVE OFFICER STANISLAUS: And then also,
3 finally, Member Jacqueline Wong-Hernandez, thank you for
4 your guidance and support and we look forward to working
5 with you in 2019.

6 On a personal note -- that's from me -- I want to
7 congratulate you on the impending birth of your bundle
8 of joy. Congratulations.

9 ACTING CHAIRPERSON STOWERS: Thank you, Selvi.

10 Now we're moving on to Item 7, Board Member Time.
11 Member Runner.

12 MEMBER RUNNER: I just want to say, I enjoyed my
13 time. Gave me a new glimpse of, certainly, the time
14 spent here with the FTB, especially the time that we
15 were able to do some touring, and certainly the issues
16 before the Board.

17 Thank you.

18 EXECUTIVE OFFICER STANISLAUS: Thank you.

19 MEMBER WONG-HERNANDEZ: I would just say thank
20 you also, to staff, for all the time that you all have
21 spent with me this year, getting me to understand the
22 ins and outs of your issues. New to this area. And
23 looking forward to working with everybody next year.

24 ACTING CHAIRPERSON STOWERS: Thank you.

25 Okay. On behalf of Controller Yee, I too would

1 like to thank Senator Runner for your service to this
2 board and to the State of California. Although it was
3 brief, it was very valuable. Between you and your
4 staff, you guys provided valuable input and thought
5 provoking questions regarding tax policy for this
6 agency. It's been a pleasure working with you and your
7 staff. A shout-out to Sean. It's been a pleasure.
8 Barbara, she's not here. David, not here. Mai, Drew,
9 Tanya, Brian, Lee, and Michelle, who is over at OTA.
10 You have a great staff.

11 MEMBER RUNNER: Thank you.

12 ACTING CHAIRPERSON STOWERS: It's been really
13 fun.

14 I would also like to thank the Department of
15 Finance, especially Jackie, for providing valuable
16 service to this board. I look forward to working with
17 you next year on this board and our other board that we
18 share.

19 And a big thank you to Selvi and your executive
20 team and all of FTB. Throughout the year, you have
21 fulfilled your mission to help taxpayers file their tax
22 returns timely, accurately, and pay the correct amount
23 to fund services important to California. Over the past
24 12 months, you have led with integrity and inspiration,
25 resulting in excellent service in your program areas,

1 including the following: A seamless transition of
2 tactical workload from the BOE to the Office of Tax
3 Appeals; a filing season that included award winning
4 Customer Service's Dashboard; increasing the call center
5 access up to 92 percent; and receiving refunds --
6 92 percent of refunds received in 14 days; very
7 successful litigation in tax cases; successful
8 management of your accounts receivables. And although
9 we just heard that there's some glitches, there has been
10 a "reduce" in your audit and protest time frame. And
11 the new audit chief got you work -- got your work out
12 there; successful implementation of the cannabis as it
13 relates to income tax; modernization of your tax system,
14 moving forward with EDR2; and excellent service from our
15 taxpayer rights advocate and the Executive Advocate
16 Services, with the following superstars: Margarita,
17 Kay, Alex, Eric, Chris, Shelly, Malvero, Brian and Ruth.
18 You guys provide excellent customer service whenever I
19 call. Thank you very much.

20 All right. Still Board Member time, huh?

21 All righty. We have some retirement resolutions.

22 The first resolution is Lauren -- I'm sorry.

23 Lauren Philipp. Come on up.

24 (Applause)

25 ACTING CHAIRPERSON STOWERS: Ms. Philipp has

1 faithfully served the people of the State of California
2 for the past 30 years, most recently as the director of
3 the Field and Compliance Account Collection Bureau for
4 the Franchise Tax Board; and

5 Ms. Philipp, whereas -- can't forget the
6 "whereas."

7 WHEREAS, Ms. Philipp began her career in early
8 1989 as a FTB compliance rep, which she believed would
9 be a short stay, moving on to bigger and better things.
10 But it didn't take her long to realize that she had
11 already landed at the corner of "bigger" and "better";

12 WHEREAS, Ms. Philipp is held in warm esteem by
13 all who -- all who have had the pleasure to work with
14 her and who have benefited from her mentorship that
15 encouraged investing in yourself, to listen more, talk
16 less, to build strong relationships, and to be an
17 exceptional team player; and

18 WHEREAS, Ms. Philipp, one of ten children --
19 Christmas must be special -- never forgot her family's
20 humble beginnings and the life lessons that come from
21 struggles that shape a lifetime of ethics and kindness
22 to others; and

23 WHEREAS, Ms. Philipp strongly encourage all of us
24 to not "retire" -- but rather to "rewire" -- I like that
25 one -- and leave one public servant role and move to

1 another place to serve where your passion and talents
2 collide; and

3 WHEREAS, when Ms. Philipp is not serving, she'll
4 be traveling with best friend and husband, George, while
5 proudly watching her lovely daughter Maya finish high
6 school and move through her college years; and

7 NOW, THEREFORE, LET IT BE RESOLVED, this tenth
8 day of December, two thousand and eighteen, by the
9 Franchise Tax Board, that we recognize Ms. Philipp, on
10 her occasion of retirement, for her professional and
11 personal dedication to the Franchise Tax Board and, most
12 importantly, to the people of the State of California.

13 (Applause)

14 MS. PHILIPP: Thank you.

15 Thank you, Board Members. I am proud of all that
16 I have accomplished in my career, but now it is time to
17 rewire and to experience some new things.

18 It's been an honor to serve Californians through
19 my 30-year career in state service, which has all been
20 here at the Franchise Tax Board.

21 I've had the opportunity to address the Board
22 several times and regardless of who has been sitting in
23 those chairs, I have always felt supported by our board
24 members. Whether I was talking about the Innocent
25 Spouse Program, the Top 500 Program, or discussing the

1 implementation of cannabis laws, I could always look
2 across and see one of you nodding with support and
3 encouragement, and that has always made me feel like you
4 were really on my side, on the side of FTB, cheering me
5 on, willing me to succeed, and I want to thank all of
6 you for that.

7 So Selvi and the Governance Council, thank you
8 for the opportunities you have afforded me over the
9 years. Your trust, encouragement, and mentorship have
10 been invaluable.

11 To the rest of my FTB colleagues, you are some of
12 the smartest, most highly skilled, hardworking, and
13 compassionate people, not only in state government, but
14 anywhere. Thank you for your friendship, teamwork, and
15 the laughs over the years. I wish you all of the best.

16 To my husband, George, I could not have had the
17 career I had without you. You adjusted your own work
18 schedule, did double parent duty when I had to travel
19 for work, and you rubbed my shoulders at the end of long
20 days as I sat silently fretting about things I couldn't
21 discuss, and you kept me grounded in the one thing that
22 is most important in my life, our family. Team Philipp
23 forever.

24 Thank you.

25 (Applause)

1 ACTING CHAIRPERSON STOWERS: Okay. We're going
2 to have another retirement resolution.

3 Fred? Where are you, Fred? Come on down.

4 (Applause)

5 ACTING CHAIRPERSON STOWERS: Fred
6 Campbell-Craven.

7 WHEREAS, Mr. Craven -- Campbell-Craven -- oh,
8 have a seat. Sit down first. I won't push you out so
9 quickly. Comfortable?

10 Fred Campbell-Craven has faithfully served the
11 People of the State of California for the past 23 years,
12 most recently as Deputy Chief Counsel for the Franchise
13 Tax Board Multistate and Business Entity Tax Bureau in
14 the Legal Division;

15 WHEREAS, Mr. Campbell-Craven began his career in
16 1995 working his way up from a bright-eyed tax -- tax
17 counsel to a highly esteemed Deputy Chief Counsel, all
18 the while demonstrating professionalism and excellence
19 at the highest level; and

20 WHEREAS, Mr. Fred Campbell-Craven's dedication as
21 an attorney has benefited us all with his sound judgment
22 in applying the tax law in a fair and unbiased manner
23 for all parties concerned, with his insights, always
24 looking to improve FTB's processes to reach the right
25 result and deliver excellent service to our customers;

1 and

2 WHEREAS, Mr. Fred Campbell-Craven has continually
3 lead by example, and his reputation for being a solid
4 mentor and delivering wise counsel is well-known and
5 appreciated by staff; and

6 WHEREAS, Mr. Fred Campbell-Craven, though he knew
7 the task would be daunting, he rolled up his very long
8 sleeves and contributed significantly to reducing the
9 aged docketed protests, while all the time humming one
10 of his favorite tunes. Do you want to sing a little
11 bit?

12 MR. CAMPBELL-CRAVEN: I'm guessing, "In My Life"?
13 I don't know.

14 ACTING CHAIRPERSON STOWERS: "Copperhead Road"?

15 MR. CAMPBELL-CRAVEN: "Copperhead Road." Okay,
16 that's a better one.

17 (Laughter)

18 ACTING CHAIRPERSON STOWERS: WHEREAS, when
19 Mr. Fred Campbell-Craven isn't doting on his
20 grandchildren, he'll be most likely found rocking out on
21 his electric guitar, herding the farm animals and
22 scouring the internet for the rarest postage stamps to
23 add to his already prestigious collection; and

24 NOW, THEREFORE, LET IT BE RESOLVED, this tenth
25 day of December, two thousand and eighteen, by the

1 Franchise Tax Board, that we recognize and thank Mr.
2 Fred Campbell-Craven, on the occasion of his retirement,
3 for his professional and personal dedication to the
4 Franchise Tax Board and, most importantly, to the People
5 of the State of California.

6 Thank you, Fred.

7 (Applause)

8 MR. CAMPBELL-CRAVEN: Well, I didn't -- I didn't
9 really prepare any remarks. It seems like I have been
10 doing this quite a long time, and enough is enough,
11 probably. I've spent many, many hours on this stage,
12 teaching classes and presenting to you. And it feels
13 rather strange that it's all done.

14 But the two things that I am really left with
15 is -- is, I am -- I am totally filled with gratitude for
16 the career that Franchise Tax Board has allowed me to
17 have. And that's because everybody here, all of us,
18 regardless of division, regardless of what you do,
19 regardless of how much you get paid, regardless of how
20 long you've been here, they are all dedicated to two
21 things: And number one, in my mind, is to do the right
22 thing. And that's a real privilege to have a job where
23 you are allowed to do that and where management backs
24 you up on that.

25 I've been in private practice. I've done a lot

1 of different things, and that's not always the case.

2 It's something very, very precious.

3 And the second thing is, everybody here --
4 everybody I've had the privilege of working with, they
5 are all dedicated to service, to public service, and
6 they -- they have put their brains to work on it, their
7 efforts, their family lives, everything towards serving
8 their fellow Californians. And that -- that is a real
9 privilege to be alongside of them.

10 And that goes to the Board too. I mean, we all
11 know that you have a very tough job and -- and that you
12 serve the people. And -- and that's very much
13 appreciated.

14 And I -- I think it all comes from leadership at
15 Franchise Tax Board and that comes from Selvi. That
16 comes from my favorite boss, the Chief Counsel, who
17 always backed me up and allowed me to do some kind of
18 crazy things.

19 And I want to say something in particular about
20 Legal. I feel very, very good about the staff we have
21 at Legal now. They are -- they are very bright. They
22 are dedicated. They are working really hard. They are
23 learning. And this isn't easy stuff. We all know -- we
24 heard some of the stuff here earlier. And they are all
25 dedicated to doing the best they can for our fellow

1 citizens. So I think it's time for the old guy to get
2 out of the way and let them do their thing.

3 So thank you very much.

4 (Applause)

5 ACTING CHAIRPERSON STOWERS: Thank you, Fred.

6 (Applause)

7 ACTING CHAIRPERSON STOWERS: Okay. We have one
8 more. But before we do that, I need to back up a little
9 bit. Come on, Bruce.

10 But we did Ms. Philipp's resolution. And it's
11 very important to acknowledge family members that help
12 us in our job. So I would like to acknowledge that her
13 husband is here in the audience, George. Her
14 mother-in-law, Suzi, and her nephew, Kevin. Please
15 stand.

16 (Applause)

17 ACTING CHAIRPERSON STOWERS: And for Fred, I
18 believe your wife was in the audience? Hello. Thank
19 you for loaning him to us.

20 (Applause)

21 ACTING CHAIRPERSON STOWERS: Okay. Now we have
22 Bruce. Bruce is here.

23 Joining Bruce today is his son, Steven, and
24 watching via live stream is his wife, Loretta, and their
25 son, Tom. Hello.

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(Applause)

ACTING CHAIRPERSON STOWERS:

WHEREAS, Mr. Bruce Langston faithfully served the people of the State of California for the past 36 years, most recently as Assistant Chief Counsel of the Technical Resources Bureau for the Franchise Tax Board; and

WHEREAS, Bruce's career began at Aerojet in 1982, on a surplus orange metal desk on top of a 4x4 square-foot tile footprint of prime real estate;

WHEREAS, Bruce immediately began making an impression when he slowly, day-by-day, inch-by-inch, scooted his desk into the Aerojet hallway space to increase his perceived importance, as he scratched away on a pink message tablet and yellow legal pads, since this was long before the advent of email or electricity.

(Laughter)

ACTING CHAIRPERSON STOWERS: I didn't write this.

(Laughter)

ACTING CHAIRPERSON STOWERS: WHEREAS, Bruce dedicated long career spans -- two terms of the Brown Administration, "one-time only" Tax Amnesty Program -- one time only, um-hmm. 148 appeals, 51 published legal rulings, dozens of litigated cases, countless briefs, and a partridge in a pear tree;

1 WHEREAS, Bruce is a long standing member of
2 MENSA -- the largest and oldest society for those with
3 freakishly high IQs -- which is a striking contrast to
4 his low-brow taste in movies, which includes titles such
5 as "The Princess Bride";

6 WHEREAS, when Bruce is not succumbing to the
7 utter boredom of retired life, he'll be dabbling in
8 landscape architect (verbatim) -- I could use some
9 help -- traveling to Europe with his wife, Loretta, and
10 playing amateur genealogist as he tracks down -- as he
11 tracks down his long-lost ancestors, who would probably
12 prefer to remain long-lost;

13 NOW, THEREFORE, LET IT BE RESOLVED, this tenth
14 day of December, two thousand and eighteen, by the
15 Franchise Tax Board, that we recognize and thank
16 Mr. Bruce Langston, on the occasion of his retirement,
17 for his professional and personal dedication to the
18 Franchise Tax Board and, most importantly to the people
19 of the State of California.

20 Thank you, Bruce.

21 (Applause)

22 ACTING CHAIRPERSON STOWERS: Would you like to
23 make any comments?

24 MR. LANGSTON: Thank you, everyone.

25 Well, do you know, it's been an interesting and

1 challenging career. You know, I brought my clipboard,
2 which those of you who know me, I always carry a
3 clipboard around, and I get teased about it. But, you
4 know, I had the opportunity to participate in so many
5 projects and have seen so much change in FTB.

6 As Yvette pointed out, when we started, there was
7 no e-mail, we didn't have computers, everything was
8 paper memos, and it's just amazing to me how things have
9 changed. And I would say change for the better, with
10 technology and all of the projects and all of the
11 implementation teams and everything I've been on over
12 the years, battling with Spidell and Lynn about all
13 sorts of issues.

14 And then for the last five years, as you know, I
15 was the board attorney, and my advice to everyone, when
16 they prepared for these meetings, was, keep it short and
17 get to the point, and that's what I will do.

18 So thank you, everyone, for this 36 years.

19 ACTING CHAIRPERSON STOWERS: Thank you, Bruce.

20 (Applause)

21 ACTING CHAIRPERSON STOWERS: Okay. Before we
22 adjourn, do we have any other comments, Members?

23 No?

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Seeing no other business before the Board, we are
adjourned.

(Applause)

(Proceedings concluded at
2:50 p.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter
of the State of California, do hereby certify:

That I am a disinterested person herein; that the
foregoing audio and video proceedings were reported in
shorthand by me, Kathryn S. Swank, a Certified Shorthand
Reporter of the State of California, and thereafter
transcribed into typewriting.

I further certify that I am not of counsel or
attorney for any of the parties to said proceedings nor
in any way interested in the outcome of said
proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand
this 5th day of March 2019.

/s/ Kathryn S. Swank
KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061