

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

PUBLIC MEETING

FRIDAY, SEPTEMBER 21, 2018

GERALD GOLDBERG AUDITORIUM

9646 BUTTERFIELD WAY

SACRAMENTO, CALIFORNIA

REPORTED BY:

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1 APPEARANCES

2 BOARD MEMBERS:

3 BETTY YEE, CHAIRPERSON

4 YVETTE STOWERS

5 JACQUELINE WONG-HERNANDEZ

6 GEORGE RUNNER

7 STAFF:

8 SELVI STANISLAUS, EXECUTIVE OFFICER

9 DAWN CASEY, BOARD LIAISON

10 ALEX ESCOBAR

11 DIANE DEATHERAGE

12 JEANNE HARRIMAN

13 SHANE HOFELING

14 JONATHAN LUNARDINI

15 ROSITA MINDERMAN

16 JENNIFER ROUSSEL

17 MELISSA STONE

18 RICHARD TAY

19 TIPHANIE WEISS

20 COUNSEL:

21 JOZEL L. BRUNETT

22 BRUCE LANGSTON

23 ALSO PRESENT:

24 DENNIS L. LOPER, Capitol Strategies Group

25 ---o0o---

1 SACRAMENTO, CALIFORNIA

2 FRIDAY, SEPTEMBER 21, 2018 2:30 P.M.

3 ---o0o---

4 CHAIRPERSON YEE: Good afternoon. This is the  
5 scheduled time for the meeting of the Franchise Tax  
6 Board.

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

9 MS. CASEY: Member George Runner?

10 MEMBER RUNNER: Here.

11 MS. CASEY: Member Wong-Hernandez?

12 MEMBER WONG-HERNANDEZ: Here.

13 MS. CASEY: Chair-Controller Betty T. Yee?

14 CHAIRPERSON YEE: Here.

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

18 At this time, I would ask that you join me in  
19 standing and -- join me in the Pledge of Allegiance.

20 (Pledge of Allegiance was recited  
21 in unison.)

22 CHAIRPERSON YEE: Thank you.

23 I want to welcome everyone and let you know, the  
24 public has a right to comment on each agenda item before  
25 the board. If there are members of the public wishing

1 to speak on an item, please come forward when that item  
2 is called, and you will have three minutes to address  
3 the board.

4 The first item, Members, is approval of the  
5 minutes. We have the minutes of the June 5th, 2018,  
6 board meeting before us.

7 Any comments on the minutes at this point?

8 Hearing none --

9 MEMBER WONG-HERNANDEZ: Move adoption.

10 CHAIRPERSON YEE: I'd entertain a motion.

11 MEMBER RUNNER: Move adoption.

12 (No audible "second.")

13 CHAIRPERSON YEE: Okay. Motion by Member Runner;  
14 second by Member Wong-Hernandez.

15 Without objection, the minutes are approved.

16 Item number 2 is a Presentation on Operational  
17 Excellence in Action, related to Business Process  
18 Improvement.

19 And we have Melissa Stone here to present this  
20 item. This is an informational item.

21 Good afternoon, Melissa.

22 MS. STONE: Good afternoon. My name is Melissa  
23 Stone, and I am excited to share with you how we are  
24 actively working towards our goal of operational  
25 excellence here at FTB.

1           As you are all aware, operational excellence is  
2 our fourth strategic goal. We define operational  
3 excellence as the optimization of processes, products,  
4 services, and resources to better serve our customers.

5           I want to highlight a key part of this  
6 definition, optimization, as it relates to what we are  
7 talking about today.

8           The root of optimization is "optimize," which  
9 simply means to make the best or most effective use of  
10 something. So if we break down our strategic goal, what  
11 we are really saying is that we want to make the best or  
12 most effective use of our processes, products, services,  
13 and resources. When we do this, we are able to better  
14 serve our customers and fulfill our mission.

15           We have been recognized as a leader amongst  
16 governmental agencies, and we do not take this lightly.  
17 We actively strive to identify opportunities to go from  
18 good to great.

19           I would like to talk for a moment about what I  
20 mean by going from good to great. I think one of the  
21 easiest ways to grasp this concept is through a real  
22 world example.

23           Remember Henry Ford? He is credited with  
24 revolutionizing the automobile manufacturing process  
25 with his Model T assembly line. He did not invent the

1 first car, nor was he the first to produce them. What  
2 set Henry Ford apart is that he understood something  
3 very important: Business is about customers. He looked  
4 for a way to improve his process to meet customer  
5 demands while still delivering a high quality project.  
6 And, boy, did he meet that goal; his improved process  
7 was faster, better, and cheaper. The assembly line  
8 reduced processing from 12 hours to just over one hour  
9 and decreased the cost per car from \$825 down to \$300.

10           These improvements drove sales, which allowed  
11 Ford to increase his employees' wages, invent new  
12 features for the car, and develop other areas of his  
13 business.

14           I think you would all agree that Henry Ford took  
15 his processes from good to great. This is what it means  
16 to optimize processes, products, services, and resources  
17 to better serve one's customers.

18           Now, I'm not suggesting that we go into the car  
19 manufacturing business. I think we have plenty of work  
20 on our plate here at FTB already. However, I believe as  
21 many of us do, that we can apply similar thinking --  
22 faster, better, cheaper -- to what we do here at FTB.

23           Let's take a look at how this fits into how we  
24 manage our processes:

25           As managers and supervisors, we view our

1 processes as valuable resources and manage them based on  
2 the type of work that needs to be completed.

3 We use technical management for our routine,  
4 day-to-day functional work and adaptive management when  
5 we are faced with a changing environment. At FTB, we  
6 excel at our technical work. We know what we do, how we  
7 do it, can easily identify when something isn't going as  
8 planned, and know how to get it back on track.

9 Our adaptive work is quite different in that it  
10 often requires new learning to determine workable  
11 solutions. Factors driving the changing environment can  
12 be hard to identify or not clearly understood, such as  
13 new legislation, new issues, or technologies.

14 Adaptation of our processes, products, services,  
15 and resources is necessary in these situations to  
16 optimize our operations. We adapt to survive and, more  
17 importantly, to thrive.

18 So how do we do this?

19 We do it through adaptive leadership. We  
20 proactively step out of our day-to-day work, scan the  
21 environment for changes, and identify opportunities for  
22 growth. As leaders, we work collaboratively across the  
23 enterprise to adapt and thrive in challenging our new  
24 situations.

25 We embrace the process of change and strive to

1 get the most out of every one of our processes. And our  
2 leaders don't have to reinvent the wheel to do this. We  
3 have an established business -- business process  
4 improvement methodology they can employ when going from  
5 good to great.

6         There are many popular business process  
7 improvement methodologies available today that provide a  
8 structured approach for adaptive leaders to follow when  
9 they face a changing environment or simply want to  
10 proactively take their processes from good to great.

11         Some of the more common methodologies include Six  
12 Sigma, which focuses on reducing variants; Lean, which  
13 focuses on reducing waste; Lean Six Sigma, which, as its  
14 name applies, combines Lean and Six Sigma; and Business  
15 Process Management, which focuses on human processes and  
16 interactions. While each of these can exist  
17 independently, business process improvement programs  
18 frequently combine components from various methodologies  
19 to meet their department's demands.

20         This is what we have done here at FTB.

21         FTB was first introduced to the Business Process  
22 Management methodology through the EDR project and  
23 quickly recognized how valuable this methodology could  
24 be. Since that time, we have established our formal  
25 process improvement life cycle, created a departmental

1 team to aid our leaders in our process optimization  
2 efforts, and applied the methodology across the  
3 enterprise. We have established enterprise processes  
4 and created our Business Process Owners Committee  
5 through our governance model.

6 More recently, we have updated our process  
7 improvement life cycle by incorporating Lean Six Sigma  
8 principles into our established methodology. When we  
9 apply this life cycle, which I will share with you in a  
10 moment, program managers, process improvement analysts,  
11 and subject matter experts collaborate to build improved  
12 processes.

13 In addition, we have recently begun to  
14 incorporate the customer experience co-creation  
15 methodology that was shared with you at the last board  
16 meeting, into our life cycle. And this is proving to be  
17 an excellent addition.

18 It allows us to leverage customer input to ensure  
19 that we are providing the best possible -- possible  
20 customer experience through our improved processes.

21 As I mentioned a moment ago, I want to share a  
22 process improvement life cycle with you. This is one of  
23 the premier tools FTB's leaders are using to achieve  
24 operational excellence. When we, as an organization,  
25 follow the eight steps of the life cycle, we are able to

1 understand and manage our existing business processes,  
2 identify areas for improvement, and introduce changes or  
3 processes that enhance the customer experience.

4 For example, we use the life cycle to help us  
5 understand and improve the multi-payments process. A  
6 multi-payment is when one check is submitted for a group  
7 of taxpayers or tax years. After three unsuccessful  
8 previous attempts to deliver a solution that worked for  
9 all business areas, we use our business process modeling  
10 that is part of the life cycle to accurately document  
11 the existing business processes.

12 This was a huge turning point for the team in  
13 that it helped them to understand that the process was  
14 significantly more complex than anyone had previously  
15 understood.

16 Once the models were complete, the team was able  
17 to build an improved process that worked for all  
18 impacted business areas. We have successfully  
19 implemented the improved multi-payments process for our  
20 individual taxpayers, also called our personal income  
21 taxpayers, and are using a similar process for other  
22 multi-payment types.

23 Another example that shows the usefulness of this  
24 methodology is implementation of the new FI\$Cal  
25 processes. Our business partners in the finance and

1 executive services divisions reached out to our process  
2 improvement team for help in understanding the many new  
3 processes that came with the FI\$Cal implementation. We  
4 were able to use our business process modeling to create  
5 visual flows of the new processes that could easily be  
6 understood by our many staff that would be responsible  
7 for them upon implementation.

8           These examples demonstrate our commitment to  
9 continuous improvement and how we strive to go from good  
10 to great.

11           So what's next? We have established many best  
12 practices already but know we are never done. As new  
13 technologies continue to emerge, our environments  
14 continue to change and customer demands and expectations  
15 continue to grow, so will our quest for operational  
16 excellence.

17           With support from our executive management, we  
18 are actively working to mature our business process  
19 improvement program. I personally have had the  
20 opportunity to work with industry leaders and other  
21 state agencies to learn about their best practices. As  
22 an organization, we are committed to promoting a culture  
23 of change and continuous improvement. We want to avoid  
24 a fixed mindset and continue to build a growth mindset.

25           We are also in the process of developing metrics

1 to quantify and track the value of our many process  
2 improvement efforts that are occurring all over our  
3 department under the leadership of many talented  
4 managers and supervisors.

5 I began this presentation today by mentioning the  
6 fourth goal of our strategic plan, operational  
7 excellence. Like Henry Ford, we are committed to  
8 getting the most out of our processes while providing  
9 the best possible service for our customers. We are  
10 committed to meeting taxpayer expectations in the  
11 present as we also strategize and plan to meet those  
12 expectations in the future.

13 Thank you for allowing me to present this topic  
14 to you today and for your support of our strategic  
15 goals, which continually push us forward.

16 I now welcome any questions you may have.

17 CHAIRPERSON YEE: Thank you very much for the  
18 presentation.

19 Questions or comments, Members?

20 Great.

21 Thank you for the presentation.

22 MS. STONE: Thank you very much.

23 CHAIRPERSON YEE: Thank you.

24 Let's move on to item number 3, which is the  
25 Management Development Program Project, and this is

1 relating to the gig economy. It's another informational  
2 item. We do have a video and PowerPoint and we are  
3 asking Rosita Minderman and Alex Escobar to present this  
4 item.

5 Good afternoon to both of you. Good afternoon.

6 MS. MINDERMAN: Good afternoon, Members of the  
7 Board. My name is Rosita, and this is my co-presenter,  
8 Alex.

9 We are here to talk to you about the gig economy.  
10 The information we are sharing with you originated from  
11 a project assigned to us as part of our participation in  
12 last year's Management Development Program, and we want  
13 to acknowledge our other team members joining us today  
14 who helped us develop the analysis and action items we  
15 will be sharing with you.

16 This project supports our department's strategic  
17 goal of providing taxpayer-centric services to the  
18 citizens of California in order to help them fulfill  
19 their tax obligations.

20 We would like to share a brief video we developed  
21 as part of our project. It will help level-set the rest  
22 of our presentation by defining the gig economy, how it  
23 works, and why FTB is looking at this rapidly growing  
24 facet of the economy.

25 (Video presentation.)

1 MS. MINDERMAN: So from the video, we introduced  
2 you to some common terminology used by participants in  
3 this industry. But whether it's called the digital,  
4 gig, or sharing economy, the impact is significant.

5 So the gig industry typically includes three  
6 players:

7 First is the user of the service, or the  
8 customer. This is the person wanting to purchase a  
9 ride, food delivery, or the use of a home for their next  
10 vacation.

11 Next is a service platform, usually a mobile app.  
12 The service platform connects the customers with the  
13 people who are providing those services.

14 Finally, there is the service provider, or the  
15 independent contractor. They are the individuals who  
16 provide the ride, deliver the food, or host the rental  
17 house.

18 FTB's role in this relationship is to help the  
19 service providers understand their tax obligations as  
20 they earn income from their customers that may be  
21 reportable on their tax returns.

22 The gig economy is clearly a growing economic  
23 trend. It started back in the 1990s with eBay and  
24 Amazon. While some thought this might be a short-lived  
25 fad, statistics seem to show these types of services are

1 growing and won't be going anywhere in the foreseeable  
2 future.

3         According to a report by PricewaterhouseCoopers,  
4 global gig economy revenues were up \$15 billion in 2014,  
5 and they project that figure to grow to an astounding  
6 \$335 billion by 2025. The significant driver for the  
7 growth is attributable to the new and increasing ways  
8 people are participating in the gig economy.

9         Unfortunately, statistics are showing that even  
10 at the existing participation levels, service providers  
11 are already challenged understanding their tax  
12 obligations that come with this new way to generate  
13 income.

14         A 2016 survey of members of the National  
15 Association of the Self-Employed showed that 70 percent  
16 of service providers did not receive any tax information  
17 from the service platform they use to earn their income.  
18 35 percent of those service providers were unclear  
19 regarding the records they would need to keep to  
20 properly identify and report taxable income on the  
21 returns.

22         Independent contractors who provide services in  
23 the gig economy and meet the minimum requirements should  
24 receive a Form 1099-K. These IRS forms must be provided  
25 by the service platform to an independent contractor

1 when the independent contractor gross payments exceed  
2 \$20,000 and they have more than 200 transactions in a  
3 calendar year.

4 When the 1099-K was introduced in 2011, it was  
5 created in part for people who ran their businesses  
6 through online marketplaces such as eBay and Amazon.  
7 The thresholds were set high to account for business  
8 expenses, such as storage and cost of goods sold, that  
9 was normally associated with these types of businesses.

10 In other words, they wanted to make sure that  
11 these tax forms were only required when there was likely  
12 to be a taxable income after considering business income  
13 and expense.

14 And as the online economy has evolved, businesses  
15 that are more service oriented have negligible expenses,  
16 making more of their gross income subject to taxes.

17 So the challenge here is really twofold:  
18 Educating service providers that tax documents such as  
19 the 1099-K and that the lack of a 1099-K does not always  
20 mean a lack of taxable income.

21 So now I would like to hand this presentation off  
22 to Alex, who is going to share some of our gig economy  
23 trends that we looked at as we worked through our  
24 project.

25 MR. ESCOBAR: Good afternoon.

1           Our team looked at multiple sources of data to  
2 determine whether there was a compliance gap in this  
3 industry. We would like to share just a couple of  
4 findings with you next.

5           We looked at the top 100 gig platforms in 2016 to  
6 see which provided 1099-Ks to service providers. We  
7 found that only 12 percent of them submitted 1099-Ks to  
8 FTB. Within that 12 percent, half issued less than 55  
9 to service providers. The vast majority of these  
10 service platforms, or 88 percent, in our sampling did  
11 not issue any 1099-Ks.

12           Honestly, our team expected that a larger number  
13 of platforms would have issued these tax forms. But as  
14 we looked through the requirements, we realized that  
15 it's possible only the 12 percent had a requirement to  
16 issue 1099-Ks.

17           As Rosita mentioned on the last slide, the  
18 requirements were purposely set on the higher end at a  
19 time when cost of goods sold was much greater for  
20 digital online markets. But this assumption doesn't  
21 address the need for service providers to accurately  
22 calculate their taxable income in the absence of a  
23 1099-K.

24           We then decided to take a deeper dive into the  
25 1099-K data. This form is used to report payment card

1 and third party network transactions. The issuer of the  
2 form must check one of these two boxes in the area  
3 highlighted on the screen. The gig economy falls into  
4 the third party network box. Unfortunately, for the  
5 purposes of our project, we couldn't isolate information  
6 associated only with the service providers.

7 But looking at the data in total, we did see some  
8 interesting trends:

9 Between 2011 and 2016, the number of companies  
10 issuing 1099-Ks grew by 163 percent. For that same  
11 period, the number of independent contractors receiving  
12 1099-Ks grew by only 26 percent. While we would not  
13 expect to see exactly the same kind of growth, we do  
14 think it should be somewhere in the ballpark.

15 So all this data validates the need to educate  
16 service providers on their tax obligations because the  
17 service providers may not yet be educated on their  
18 reporting requirement, and regardless of whether a  
19 1099-K is issued, services providers need to understand  
20 how to calculate their taxable income and what records  
21 to keep. As Rosita mentioned, not receiving a 1099-K  
22 doesn't mean income earned is not taxable.

23 To bring awareness to this growing issue and to  
24 provide better services to our taxpayers, our  
25 recommendation focuses on education and outreach

1 efforts. Many gig economy independent contractors don't  
2 understand what is required of them and are confused  
3 about whether their income is taxable or not. Many  
4 don't think of themselves as conducting a business at  
5 all. Most view these activities or gigs as side jobs,  
6 quick, under-the-table money, or simply a hobby.

7 To further reach the gig economy participants, we  
8 recently created a California Gig Economy Tax Center Web  
9 page, similar to this Web page on the screen.

10 This Web page will be a resource for independent  
11 contractors to provide them information on how they  
12 should account for earnings from their gig work and  
13 contracts, as well as include educational videos,  
14 frequently asked questions, and links to other helpful  
15 sites.

16 Other efforts to increase awareness include  
17 developing materials for distribution through tax news  
18 articles; FTB social media outlets, such as YouTube,  
19 Facebook, Twitter and Instagram; and we would also  
20 leverage new or existing partnerships with field offices  
21 and other state and local departments, such as the DMV,  
22 to show videos and display messages on their TV screens.

23 In summary, the gig economy isn't just a buzz  
24 word anymore; it's a growing segment of the modern  
25 market.

1           The Bureau of Labor Statistics estimated, for  
2 2016, that nearly 53 million Americans, or 34 percent of  
3 the workforce, participated in this relatively new way  
4 of earning. They project that figure to grow to  
5 43 percent by 2020.

6           So our job, here at FTB, is to help make filing a  
7 tax return easier for this rapidly growing group of  
8 taxpayers.

9           Thank you for allowing us to present this topic.  
10 We would be happy to answer any questions.

11           CHAIRPERSON YEE: Thank you very much for the  
12 presentations.

13           A very important presentation as we see this  
14 segment of the economy continue to grow.

15           Questions or comments, Members?

16           Yes. Member Wong-Hernandez.

17           MEMBER WONG-HERNANDEZ: Thank you for the  
18 presentation.

19           I think it's great that you all are looking into  
20 this and looking at ways to reach out to people, because  
21 I think that you are right in sort of thinking that  
22 people just don't know. They are not necessarily sure.

23           And so I look forward to hearing updates about  
24 the creative ways you are finding to reach people and  
25 participating in the gig economy.

1 Thank you for this.

2 CHAIRPERSON YEE: Yes, Member Runner.

3 MEMBER RUNNER: Just a quick question.

4 Some of the -- some of the -- I know some of the  
5 cities and counties, I believe, are requiring some kind  
6 of registration at times for people who are providing  
7 these kind of services.

8 What kind of interaction do we have with those  
9 local governments to identify registrations that they  
10 may be having and awareness of those individuals?

11 MS. MINDERMAN: So that's one of the action items  
12 for us to continue to follow up on is, we do plan on  
13 reaching out to the cities and locals to kind of work  
14 with them, to provide education, to see what they are  
15 doing. And we're working closely with our Taxpayer  
16 Right Advocates Office, who has connections with those  
17 cities and counties as well.

18 CHAIRPERSON YEE: Okay. Thank you.

19 Let me -- I have a couple questions.

20 So these service platforms, are they all  
21 identifiable? I mean, is there a source that tells us  
22 how many there are in realtime and how many are getting  
23 established?

24 MR. ESCOBAR: We know who the common ones are,  
25 the larger ones. But no, there's no true way to

1 identify the new ones that are coming out.

2 CHAIRPERSON YEE: And in some ways, I would also  
3 think that existing employers might be a good place of  
4 outreach, to the extent that the way they are going to  
5 be looking to have work conducted and fulfilled might be  
6 through -- through more, you know, contract-related work  
7 or platform-based work. So I think certainly continuing  
8 to work with them.

9 I am just trying to think about other interfaces  
10 that the service providers would have, that might be --  
11 where they would be met with information that continues  
12 to remind them about -- about their requirements and  
13 responsibilities.

14 Okay. All right. Good.

15 Obviously it's perplexing. It reminds me of the  
16 use tax compliance issue in some ways.

17 All right. Thank you for the presentation.

18 I think I would like to just kind of continue to  
19 hear updates about this, and, particularly, I would  
20 imagine with the next economic downturn, we're going to  
21 see much more prominence with respect to growth in this  
22 sector. So if there are updates that can be provided on  
23 a regular basis, we would entertain that.

24 MS. MINDERMAN: For sure.

25 MEMBER RUNNER: Thank you.

1 CHAIRPERSON YEE: Thank you. Thank you both.

2 MR. ESCOBAR: Thank you.

3 CHAIRPERSON YEE: Okay. Now on to item number 4,  
4 which is the Fraud Update. This is another information  
5 item and PowerPoint to be presented by Jonathan  
6 Lunardini and Jennifer Roussel.

7 Good afternoon.

8 MR. LUNARDINI: Good afternoon. My name is John  
9 Lunardini and I manage our fraud and identify theft  
10 programs here at FTB. To my right is Jennifer Roussel  
11 and very recently became FTB's EDR2 business director.  
12 Prior to that role, she managed the fraud and identity  
13 theft programs for over eight years and played a pivotal  
14 role in building the program into what it is today.  
15 Jennifer is here to answer any questions you may have at  
16 the end of the presentation.

17 As you know, identify theft happens when personal  
18 information is stolen and used to commit fraud. There  
19 are various ways that stolen identities and illegally  
20 obtained data is used to commit fraud in the tax world.  
21 The most common form of fraud we see here at FTB is  
22 refund fraud. But as fraudsters have become more  
23 resourceful and creative, we're starting to see other  
24 ways their actions intersect with our world.

25 For example, returns filed by individuals working

1 under an alias when the fraudster has no Social Security  
2 number; setting up a completely fictitious business with  
3 fake employees and fake W-2s, which are then used to  
4 file fake returns; and then there's the hybrid of some  
5 or all of the above, which we refer to as synthetic  
6 identity theft. But, trust me, we have seen just about  
7 everything.

8 Now I would like to show you some national and  
9 state trends:

10 In 2015, the Federal Trade Commission reported an  
11 all-time high volume of identity theft cases, resulting  
12 in a 47 percent increase from the prior year. As you  
13 can see from the chart, this number has been steadily  
14 decreasing over the last two years, and that's a trend  
15 that we hope continues.

16 This next slide shows the volume of confirmed  
17 identity theft tax returns identified by the IRS. They  
18 have also been turning down identify theft attempts over  
19 the last two years, dropping from 1.4 million fraudulent  
20 returns filed to 597,000, which represents a 57 percent  
21 decrease.

22 Similar to the FTC and IRS data, California has  
23 also seen a significant decrease in identity theft over  
24 the last two years, dropping from approximately 21,000  
25 fraudulent returns stopped in '15, which resulted in

1 just over \$70 million in fraudulent refunds being  
2 stopped; to 4600 returns in 2017, or \$11 million in  
3 fraudulent refunds stopped.

4 This decrease is a credit to our diligent and  
5 hard working fraud staff and our national efforts and  
6 partnerships, which I will discuss in a moment.

7 Even though we have seen a decrease in identity  
8 theft, the impacts to the victims of identity theft is  
9 not diminished. These criminals and syndicates are more  
10 organized than ever in running fraud schemes like a  
11 business in order to maximize their profits. Their  
12 agenda doesn't stop with tax refund fraud. It extends  
13 to every area of the victim's finances. They commit  
14 credit card fraud; they use their medical benefits; they  
15 use stolen identity information to steal from other  
16 government benefit programs; and even commit tax refund  
17 fraud in other states.

18 For taxpayers, the effort to resolve these issues  
19 can be really overwhelming. The taxpayer may have to  
20 prove they did not file a fictitious return or receive  
21 the refund in question by sending in documentation to  
22 prove that -- prove their identity and the source of the  
23 income.

24 And if they are expecting a refund, they have to  
25 resolve the identity theft first in order to process the

1 real return, which causes more delays.

2 This can be a very frustrating situation for the  
3 taxpayer and we continuously evaluate our processes for  
4 areas we can improve to alleviate the understandable  
5 anxiety felt when you discover someone has stolen your  
6 identity.

7 For example, this past season, we revamped our  
8 identity theft notice, asking the taxpayers simply to  
9 call us directly, rather than providing documentation  
10 via correspondence. This has proven to be much more  
11 efficient and resulting in very positive feedback from  
12 our taxpayers.

13 The impact of identity theft is not only felt by  
14 the taxpayer but by FTB and California as well.

15 With the dramatic increase in data loss via  
16 corporate fishing, tax preparer takeovers, coupled with  
17 mega breaches, such as Equifax, OPM, and Yahoo, it's  
18 getting more difficult to distinguish a good return from  
19 a fraudulent return due to the highly consistent data  
20 available to the fraudsters.

21 As the schemes grow in complexity, FTB continues  
22 to dedicate our staff to the detection of identity theft  
23 and the prevention of refund fraud. This, however,  
24 requires us to spend more time examining the returns and  
25 looking for the smallest discrepancies in order to

1 protect our taxpayers and the general fund. This not  
2 only increases processing times of returns, but  
3 increases our operating costs as well, in spite of  
4 reduced volumes of fraud ultimately found.

5 In addition, there's an impact to California's  
6 General Fund. Unfortunately, there is a small  
7 percentage of fraudulent funds slipping past our net  
8 that are not identified in time to stop the refund from  
9 being paid, despite our best efforts to do so. These  
10 funds, once released, are nearly 100 percent  
11 uncollectible because identifying the criminals and  
12 collecting from them is extremely difficult. This is  
13 why FTB focuses on detecting and stopping refunds before  
14 they are issued.

15 Two of FTB's foundational principles are  
16 protecting taxpayer information and privacy and carrying  
17 out our fiduciary responsibilities for taxpayers by  
18 managing their accounts with accuracy and financial  
19 integrity. We make protecting taxpayers in California  
20 our top priority. This is why FTB has developed a  
21 strategic approach to combating fraud, which includes a  
22 dedicated call center directly supporting taxpayers  
23 victimized by this crime.

24 All of our call center staff are very committed  
25 to protecting California and our taxpayers. Last year,

1 our call center received roughly 200,000 calls, manually  
2 reviewed 340,000 accounts, and worked 180,000 pieces of  
3 correspondence.

4 We also applied predictive models and utilized  
5 our new case management system for our refund fraud and  
6 identity theft programs. This automated system reviews  
7 all refund returns for potential fraud and identifies  
8 suspicious returns for manual examination by our staff.

9 We are currently in the process of updating our  
10 external identity theft Web page to provide more helpful  
11 information as a source of education and outreach. We  
12 have also partnered with the Federal Trade Commission so  
13 that victims who visit their Web page can link directly  
14 to our website as well. This is just one of the  
15 nationwide partnering efforts that we are exploring.

16 Other nationwide efforts we are pursuing to  
17 combat identity theft refund fraud include participating  
18 in the IRS Security Summit. By early 2015, the levels  
19 of identity theft/tax refund fraud had reached alarming  
20 levels nationwide. To address this, the IRS convened a  
21 security summit in March of 2015. The summit was  
22 composed of the IRS, multiple states, tax software  
23 industry leaders, and financial institutions.  
24 California has been a participant in the security summit  
25 from the start.

1           The participants immediately recognized that to  
2 combat this epidemic, a coordinated and multi-layer  
3 effort by all impacted organizations was needed. The  
4 summit formed work groups around authentication,  
5 information sharing, strategic threats, financial  
6 services, and tax professional groups. This was an  
7 unprecedented step which opened up partnerships and  
8 information sharing across the entire tax ecosystem.

9           FTB is active across the summit groups and has  
10 taken a leadership role in a newly created Information  
11 Sharing and Analysis Center, otherwise known as the  
12 ISAC. The ISAC is a one-stop shop for aggregated  
13 identity theft data and leads across the nation.  
14 Through the ISAC, FTB shares and receives fraud lead  
15 information daily. The ISAC also provides for our rapid  
16 response team that elevates and shares information  
17 regarding emerging threats with our partners.  
18 California is one of three state members on this team.

19           FTB has also worked on pilots with the IRS and  
20 financial institutions in identifying fraud and  
21 information sharing. We also receive leads from other  
22 states, our tax software partners, and financial  
23 institutions as well.

24           As I mentioned earlier, the IRS announced a  
25 57 percent decrease in identity theft since 2015 and

1 attribute it to the security summit. This alone  
2 demonstrates the significant value of this  
3 public-private collaboration to fight refund fraud.

4 Our efforts with the security summit and the ISAC  
5 is paying huge dividends for California, as we have seen  
6 similar decrease in identity theft returns since 2015 as  
7 well.

8 As you can see from these trends, our efforts are  
9 working as attempts to file fraudulent returns are down  
10 in California and across the nation.

11 As we look to the future, however, we must  
12 continue to monitor trends and strengthen our defenses  
13 as fraud schemes change. These criminals have been  
14 upping their game, stealing more detailed information,  
15 to better impersonate legitimate taxpayers and continue  
16 to develop more sophisticated schemes. These criminals  
17 are smart, organized, nimble, and well-funded, which  
18 requires us to stay vigilant and never let our guard  
19 down.

20 I have shared a lot of information and wanted to  
21 mention one last point: Here at FTB, we all understand  
22 that this kind of crime feels very personal to the  
23 taxpayers we help. We hear the stress and confusion in  
24 their voice when we talk to them. Often we need to  
25 spend time explaining and reexplaining what happened and

1 how -- how we'll help them get through this difficult  
2 time. Because we see the personal side of this, I want  
3 you to know that every one of us is very dedicated to  
4 what we do and having an executive team and board that  
5 cares about how identity theft impacts taxpayers is  
6 invaluable.

7 So, again, thank you for your support. It really  
8 does make a difference. And I would be happy to answer  
9 any questions you may have.

10 CHAIRPERSON YEE: Thank you very much for the  
11 presentation, Jonathan.

12 Questions or comments, Members?

13 Yes. Member Runner, please.

14 MEMBER RUNNER: I have a quick question. And  
15 again, I think it's important, and I appreciate that --  
16 what we're doing to aggressively deal with this.

17 I have a tangent, and it's not so much a fraud  
18 that affects the state in terms of payment, but it  
19 certainly is a fraud that is perpetrated on the  
20 taxpayer. And I don't know if we've all received --  
21 maybe I get more than others -- this phone call that  
22 says, hey, the IRS is calling and you have -- you have a  
23 payment due or you have -- you know, they are looking  
24 for you for a payment, call us quickly.

25 And I -- for a lot of people, I'm sure that's

1 quite a panicked phone call.

2 Do we hear -- do we hear much from taxpayers?  
3 It's usually about the IRS. I don't hear anything about  
4 state income tax. But do we hear much from taxpayers  
5 about getting those calls and inquiries about what  
6 they -- about where that came from or what they should  
7 do?

8 MS. ROUSSEL: We do have calls that come in on  
9 occasion, but, most often, it is IRS-generated calls.  
10 But our staff are definitely prepared to answer those  
11 questions and help assure them of what's going on with  
12 their taxes here in California as well as where they can  
13 call with the IRS to confirm that everything is okay.

14 MEMBER RUNNER: Do you know if anything is -- is  
15 there anything that we do with the partner -- or if the  
16 IRS partners with other states in regards to trying to  
17 communicate to the taxpayer, you know, if you got a  
18 problem, here's how we will communicate with you; we  
19 don't do -- communicate to you this way --

20 MS. ROUSSEL: Yes.

21 MEMBER RUNNER: -- in order to help relieve that?

22 MS. ROUSSEL: Yes. There's a ton of actual  
23 outreach that the IRS is doing. We partner with them,  
24 obviously, through the security summit as well, so we  
25 share that information with our Public Affairs Office

1 that finds ways and avenues in order to get that into  
2 the media's hands.

3 IRS, though, does a very good job of doing that.  
4 So you will see articles and so forth, TV news programs,  
5 that will come out, especially when those efforts seem  
6 to pick up. There are certain times of the year that  
7 they do seem to start doing it a little bit more often.

8 MEMBER RUNNER: I talk to them and see how  
9 quickly they hang up when I start requesting.

10 MS. ROUSSEL: Yes. Exactly. Exactly.

11 So the more we can put that information out there  
12 as a nation, as well as a state, we'll do a good service  
13 for our customers.

14 MEMBER RUNNER: Thank you.

15 CHAIRPERSON YEE: Other questions?

16 Yes, Member Wong-Hernandez.

17 MEMBER WONG-HERNANDEZ: Quick question: I don't  
18 know if you all know the answer to this. I know that  
19 you are doing a lot to prevent, you know, returns from  
20 being filed fraudulently.

21 Who is -- I mean, what -- where -- do you give  
22 the information to some sort of law enforcement or  
23 investigative entity? I know you said that it's really  
24 difficult to investigate these things. But are you  
25 working -- are you working either with other states or

1 as part of your -- your collaboration, ISAC -- was  
2 that? --

3 MS. ROUSSEL: Yeah.

4 MEMBER WONG-HERNANDEZ: -- to kind of talk about  
5 going -- I don't know if they are task forces. I don't  
6 know. I'm just kind of curious what the enforcement is.

7 MS. ROUSSEL: So, thankfully, Franchise Tax Board  
8 has our own Criminal Investigations Bureau, and we  
9 partner incredibly closely with them on every scheme  
10 that's pretty much coming through, especially on some of  
11 the larger ones. We share information very openly with  
12 them, do a lot of research to prepare those cases, so  
13 that they can pursue.

14 And then they also partner across the nation to  
15 ensure that we are trying to find the culprits and put a  
16 stop to it.

17 CHAIRPERSON YEE: Good. Thank you.

18 I have a couple questions.

19 So the -- I know the Department of Consumer  
20 Affairs also has quite a bit of presence in terms of  
21 identity theft prevention.

22 Do we coordinate any of our efforts with, just,  
23 their general outreach?

24 MS. ROUSSEL: Yes. So, at this point, I believe  
25 that we do have some communication through our Public

1 Affairs Office.

2 CHAIRPERSON YEE: Okay.

3 MS. ROUSSEL: But in addition, there is an  
4 initiative that FTB is pursuing, which is a statewide  
5 identity theft communication, per se, effort, to get the  
6 state -- California's departments together, that are  
7 impacted by identity theft, to see how we can share  
8 information more openly.

9 CHAIRPERSON YEE: Okay. Great.

10 And then I'm -- as you were speaking, I was  
11 thinking about situations such as those who are trying  
12 to rebuild their lives, particularly after disasters,  
13 where records have been lost or, you know, not a lot of  
14 documentation. And it just seems, to me, that's a ripe  
15 recipe for a lot of information getting crossed.

16 So are we enhancing our efforts there,  
17 particularly in those disaster areas?

18 MS. ROUSSEL: I know that FTB has our efforts  
19 where we go out and help our disaster victims. We end  
20 up -- we are part of the process of manning some of the  
21 stations. So we're there helping to try and get  
22 information into the taxpayers' hands, so that they can  
23 get the information from us that they need, to be able  
24 to rebuild their financial situation and their tax  
25 situation.

1           CHAIRPERSON YEE: So can you talk a little bit  
2 more about that? Because I know, for probably an  
3 average Californian, they are trying to rebuild. And  
4 maybe this is a typical situation, where they have lost  
5 all their personal identification. Any kind of, I don't  
6 know, whether it's credit cards, everything is just  
7 gone.

8           Is there kind of a coordinated effort in terms of  
9 any one victim of a disaster, in terms of just helping  
10 them just connect, so that they are not providing their  
11 Social Security number 10 times, 12 times?

12          MS. ROUSSEL: You know, that is something I don't  
13 have information I'm knowledgeable on.

14          EXECUTIVE OFFICER STANISLAUS: Laureen do you  
15 want to come forward and address that issue?

16          CHAIRPERSON YEE: So I imagine that they'd  
17 interface with, perhaps, the tax agencies, certainly the  
18 DMV, financial institutions.

19          MS. PHILIPP: Good afternoon. My name is -- good  
20 afternoon. My name is Laureen Philipp. I am the  
21 director of the Field and Complex Account Collection  
22 Bureau, and staff in my area coordinate our response to  
23 the Local Assistance Centers.

24          Every time we go out, there are news coordination  
25 by OES or by FEMA, depending on the status of the

1 disaster. And there's efforts there to make sure that  
2 every agency is represented and that we are all helping  
3 the taxpayers to recreate their documentation that they  
4 need. There's information that refers them to law  
5 enforcement and helps to protect the taxpayers if they  
6 are approached by scam -- scam artists.

7 CHAIRPERSON YEE: Okay. All right. That's a  
8 lot. Unfortunately, those who are looking to commit  
9 identity theft crime seem to be many steps ahead of us.  
10 Continue to be vigilant. Thank you for your report.

11 All right. No other questions or comments,  
12 Members, we'll move on to the next item.

13 Thank you very much for the presentation.

14 MR. LUNARDINI: Thank you.

15 CHAIRPERSON YEE: On to item number 5, which is  
16 the legislative update, and this will be an  
17 informational item presentation by Diane Deatherage.

18 Diane.

19 MS. DEATHERAGE: Good afternoon and happy Friday.

20 I'm Diane Deatherage, and I will be giving the  
21 legislative update today. I would like to start by  
22 saying that a few bills have been signed since the  
23 binders were prepared, so I may mention some bills that  
24 are not included in your binder materials.

25 So let's get started with the budget trailer

1 language bills. I'm only going to talk about the  
2 relevant provisions that impact our department.  
3 Otherwise, we would have to get somebody from the gig  
4 economy to deliver some DoorDash dinner.

5 First, AB 110 is a technical clean-up bill that  
6 clarifies the additional recording fees on certain real  
7 estate transactions required under the Building Homes  
8 and Job Act from 2017 are not applicable to federal,  
9 state, and local government recordings.

10 Next, under the trailer bills is SB 855. This --  
11 this bill impacts FTB in a few different areas:

12 The first area is the California EITC. The age  
13 and income thresholds were expanded to allow more  
14 taxpayers to qualify for this credit;

15 SB 855 also included provisions that extend the  
16 existing New Employment Credit and the California  
17 Competes Hiring Credit;

18 The next was a provision relating to tribal  
19 earned income, which excludes income from -- for tax  
20 purposes for tribal members, depending on where the  
21 income is earned;

22 The final relevant part of SB 855 is the deletion  
23 of the sunset date related to the tax data sharing  
24 agreement between FTB and cities and counties.

25 Now I would like to cover other enacted bills

1 that impact FTB.

2 AB 3143 allows FTB to be reimbursed by the  
3 California Tax Education Council, or CTEC, for  
4 enforcement activities consistent with the Tax  
5 Preparation Act. This bill also extended the sunset  
6 date of this existing statute.

7 Next, there were a few voluntary contribution  
8 funds added this year. They relate to Organ and Tissue  
9 Donor Registry Fund; Schools, Not Prisons fund; National  
10 Alliance on Mental Illness Fund.

11 Also, one voluntary contribution fund was renamed  
12 and extended, and that one relates to Alzheimer's  
13 Disease.

14 Now I would like to highlight a few bills that  
15 are before the governor for his signature or veto by the  
16 September 30th deadline:

17 The first one is AB 2503 for Administrative  
18 Dissolution of Domestic Corporations and LLCs. You may  
19 recall this bill was an FTB-sponsored bill approved by  
20 you all last December. The idea of administrative  
21 dissolution has been brought forward in a Taxpayer Bill  
22 of Rights Hearing at least a couple of times.

23 AB 2503 would provide administrative dissolution  
24 for certain domestic corporations and domestic LLCs. It  
25 would be very similar to the process that was put into

1 place for nonprofit corporations back in 2016.

2 The next bill is SB 274 and that relates to the  
3 Partnership Audit Rules for the Federal Audit Reports.  
4 This bill started out as an FTB-sponsored bill approved  
5 by the board during December also. For background  
6 information, at the federal level, the IRS may now issue  
7 audit adjustments directly to the partnership instead of  
8 flowing the adjustments through to all of its partners.  
9 SB 274 would give the department the necessary authority  
10 to issue our Revenue Agent Report, RAR, adjustments  
11 based on these federal audit adjustments to those  
12 partnerships.

13 The last enrolled bill that I will mention is SB  
14 539, covering the College Access Tax Credit. This bill  
15 would modify existing law to increase the credit  
16 percentage allowed from 50 percent to 75 percent and the  
17 total amount of credits allocated would increase to  
18 \$1 billion.

19 This bill is of interest because of the proposed  
20 IRS regulations, that were issued in late August, due to  
21 various states' legislation, created in response to the  
22 SALT, or State and Local Tax deduction cap of \$10,000,  
23 which was put in place under the federal Tax Cuts and  
24 Jobs Act.

25 The proposed regulations would reduce the

1 deductions for charitable contributions for which a  
2 state tax credit is claimed. We have updated our public  
3 website with the IRS -- or sorry, to the IRS page  
4 describing their draft regulations that address how  
5 donations with state tax credits should be reported on  
6 the federal return. That was just updated very  
7 recently.

8           Finally, on to the topic of tax conformity. We  
9 want to let you know that we scheduled a meeting on  
10 November 15th, which will allow us to meet with our  
11 stakeholders to find out what areas of conformity are  
12 important to them in the event that this becomes an item  
13 of interest for the legislature, so more information  
14 will be coming soon on that.

15           Thank you for allowing me to share this update  
16 with you today, and, at this time, I am happy to answer  
17 any questions you may have.

18           CHAIRPERSON YEE: Great. Thank you, Diane, for  
19 the updates.

20           Questions or comments, Members?

21           Okay. Thank you very much.

22           MS. DEATHERAGE: Thank you.

23           CHAIRPERSON YEE: All right. Members, we will  
24 move to item number 6. This is the item related to  
25 regulation matters. This is an action item. And let me

1 ask Ciro Immordino and Richard Tay to come speak on this  
2 item.

3 Good afternoon, gentlemen.

4 MR. IMMORDINO: Good afternoon. My name is Ciro  
5 Immordino, and I'm with Richard Tay, and we worked on  
6 the proposed regulation. We are both tax counsel in the  
7 legal division.

8 We are here to request permission to proceed with  
9 a formal regulatory process under the Administrative  
10 Procedure Act for proposed regulation 23663-6. I will  
11 briefly discuss why there was a need for the regulation,  
12 what the regulation does, and our process of working  
13 with the public in developing the regulation.

14 As background, Revenue and Taxation Code section  
15 23663 permits the assignment of credits amongst members  
16 in the same combined reporting group. The statute  
17 includes a number of limitations though, including that  
18 corporations involved in a credit assignment must be in  
19 the same combined reporting group on certain key dates.

20 This leads to our regulation project. When  
21 corporate reorganizations have occurred, such as  
22 liquidations and mergers, the corporation holding  
23 credits often changes. The result is that taxpayers  
24 have uncertainty as to whether they meet the requirement  
25 of being in the same combined reporting group on the

1 required dates.

2 For example, in the case of a merger, do  
3 taxpayers look at the group of the old corporation,  
4 which held the credits before the merger, or the group  
5 of the new corporation that survived the merger?

6 We began this regulation project after we were  
7 contacted by taxpayers asking for clarification on these  
8 questions. Therefore, pursuant to authorities  
9 specifically authorized by the credit assignment  
10 statute, we began this regulation project.

11 The goal of this regulation is to give taxpayers  
12 certainty so they can structure a corporate  
13 reorganization with full knowledge of how it will impact  
14 their ability to assign credits.

15 On June 12th, 2014, we held the first interested  
16 parties meeting for this regulation. On that date, we  
17 also held the final interested parties meeting for our  
18 defective assignment regulations, which were the  
19 department's first major regulations.

20 We focused our efforts on getting the defective  
21 assignment regulations through the formal regulatory  
22 process, as there was a strong need to provide  
23 clarification to taxpayers and because the project took  
24 significant staff efforts, given its classification as a  
25 major regulation.

1           Very good news we have received this week is that  
2 the defective assignment regulations were approved by  
3 the Office of Administrative Law and are now available  
4 to give clarification to taxpayers. As the defective  
5 assignment regulations approached completion, we were  
6 able to again focus on this regulatory project.

7           Using practitioner feedback from the first  
8 interested parties meeting, we drafted proposed  
9 regulatory language, which we presented at a second  
10 interested parties meeting on June 12th of this year.  
11 At the second interested parties meeting, we also  
12 provided a companion document, which gives a detailed  
13 explanation of each provision in the proposed  
14 regulation. So if taxpayers have questions about the  
15 draft regulatory language, they can look at the  
16 companion document to understand why we drafted the  
17 regulation the way we did.

18           The proposed regulatory language contains clear  
19 rules, which gives taxpayers certainty for exactly how a  
20 corporate reorganization will impact future credit  
21 assignments.

22           We have not received any concerns or suggested  
23 changes to the proposed regulatory language.

24           We are also requesting permission to proceed with  
25 a formal regulatory process to amend Regulation 23636-1

1 so that the definitions contained therein will also  
2 apply to the proposed regulation. This is simply done  
3 for efficiency so that the terms do not need to be  
4 redefined in a new regulation.

5 Finally, we note that we made minor formatting  
6 changes to the drafts submitted in your materials. We  
7 made these changes based on feedback we received from  
8 the Office of Administrative Law last week, based on the  
9 companion regulation.

10 Importantly, the language in the proposed  
11 regulation remains unchanged.

12 We believe that the proposed regulations provide  
13 important clarity to taxpayers. Therefore, we  
14 respectfully request permission to commence the formal  
15 regulatory process under the Administrative Procedure  
16 Act.

17 Thank you very much for your time and  
18 consideration. And Richard and I are available to  
19 answer any questions you have.

20 CHAIRPERSON YEE: Thank you very much, Ciro.

21 Questions, Members?

22 Okay. Thank you for elaborating on the gap  
23 between the two interested parties meetings. Appreciate  
24 the clarification.

25 Members, this is an action item to approve the

1 commencement of the formal rulemaking process.

2 Is there a motion?

3 MEMBER WONG-HERNANDEZ: Move approval.

4 MEMBER RUNNER: Second.

5 CHAIRPERSON YEE: Motion by Member

6 Wong-Hernandez; second by Member Runner.

7 Without objection, that motion carries.

8 Thank you very much.

9 MR. IMMORDINO: Thank you very much.

10 CHAIRPERSON YEE: Thank you. Very well.

11 Next item is item number 7. These are  
12 administrative matters and we have Tiphonie Weiss and  
13 Jeanne Harriman, who will present the 2019/20 Budget  
14 Change Proposal, as well as contracts over a million  
15 dollars and action items for approval.

16 Good afternoon.

17 MS. WEISS: Good afternoon. Thank you. My name  
18 is Tiphonie Weiss. I'm the director of the Financial  
19 Management Bureau and I'm here with our chief financial  
20 officer, Jeanne Harriman, to present for your approval  
21 our 2019/20 Budget Change Proposals.

22 With your permission, we'll provide an overview  
23 of each of the proposals and then answer any questions  
24 you may have.

25 CHAIRPERSON YEE: Yes, please.

1 MS. WEISS: We have a total of seven proposals  
2 and I will go ahead and turn the time over to Jeanne.  
3 She will be providing the overviews for Proposals 1, 2,  
4 and 5.

5 MS. HARRIMAN: Thank you, Tiphannie.

6 FTB's first BCP request is for resources for  
7 human resource activities. FTB is requesting  
8 \$3.3 million and the conversion of 18 permanent  
9 intermittent staff to permanent staff positions and an  
10 additional 19 new positions to accommodate workload  
11 growth as well as new workloads.

12 In our work developing this proposal, two primary  
13 drivers were identified as really triggering the needs  
14 for these positions.

15 The first was, over the last 24 years -- 25  
16 years, basically FTB's staff has doubled and there has  
17 been little growth for positions, actually, in our HR  
18 staff. So comparing that to 2500 additional staff  
19 members within FTB, compared to four additional HR  
20 staff. So the growth in the HR staff was not  
21 comparable.

22 The other is externally driven, and that is  
23 related to substantial changes that continue to occur,  
24 whether it's existing laws being amended and expanded,  
25 new laws being adopted that impact the HR world, or the

1 adoption of new statewide programs related to  
2 classification structures and requirements.

3         These additional resources will allow FTB to do  
4 the following: Decrease the related time to hire new  
5 staff, meet mandated task and time frames, align our  
6 classifications to new standards, ensure application of  
7 rules and procedures for the numerous bodies of laws and  
8 regulations to human resources, adequately engage in  
9 succession and workforce planning activities, and avoid  
10 unnecessary risk to the state as FTB is unable to  
11 accommodate these workloads.

12         Human resource activities are a foundational  
13 activity for any entity. Without adequate resources in  
14 this business area, the entire operations at FTB can be  
15 unduly jeopardized.

16         The second proposal deals with our customer  
17 service channels. This proposal has two components.  
18 The first component deals with requests for converting  
19 61 permanent intermittent staff to permanent positions  
20 that are used in the customer contact center related to  
21 taxpayer services.

22         FTB has always historically had a large volume of  
23 perm staff to permanent intermittent staff in this  
24 business area. However, a recent review of ours showed  
25 that for the last five years, at least a large number of

1 our permanent intermittent staff have been working in  
2 excess of hours typically associated with a permanent  
3 intermittent employee, and the workloads have stabilized  
4 more so than usual, and the workload is presenting  
5 fairly stable throughout the year.

6 That's not to suggest there's still not peaks and  
7 valleys in the workload. Filing season obviously  
8 presents peaks and challenges associated with it.  
9 However, there is less valleys that we are dealing with,  
10 and these resources will help us fill in that gap.

11 These resources will allow us to continue to  
12 focus a level of service consistent with what you  
13 experience -- what we experience today, in the call  
14 center. By converting these permanent intermittent  
15 staff to permanent allows us to avoid retention issues  
16 that are most commonly associated with permanent  
17 intermittent staff and avoid running afoul of rules  
18 associated with permanent intermittent staff engaging in  
19 permanent work, rather than work that is seasonal in  
20 nature or limited durations.

21 The second component of this request seeks an  
22 additional 16 members of staff to adequately staff the  
23 Tax Practitioner Hotline, where we service tax  
24 practitioners and their questions. These additional  
25 staff members will allow us to reach the 75 percent

1 level of access, which is fairly consistent with what  
2 we've been able to do to date, primarily because FTB has  
3 been funding these positions in the last two years, but  
4 we can no longer continue to do so.

5 This proposal also asks for increased postage  
6 funding to allow FTB to begin mailing out information  
7 letters to certain taxpayers regarding their estimate  
8 payments. We found in our study that a significant  
9 amount of the calls coming into the Tax Professional --  
10 Practitioner Hotline are related to requests of what is  
11 my estimate payments that were made, or what is my  
12 client's estimate payments that were made.

13 So we're hoping that by mailing out this  
14 information, that will calm the call center, and then  
15 these additional resources will further calm the call  
16 center as well.

17 The third component of this request is that as  
18 this mailing of the estimate payment letters matures,  
19 there may be a necessity for FTB to go back and request  
20 additional working staff to wait for full maturity of  
21 that but still offer the 75 percent level of access. So  
22 we put in some provisional language to accomplish that,  
23 working directly with Finance to establish these  
24 positions.

25 Customer service is a backbone of the work that

1 we do here at FTB. Good customer service allows  
2 resolutions of issues sooner and avoids taxpayer  
3 frustration and avoids increased costs for FTB if this  
4 issue remains unresolved.

5 I will now turn it back over to Tiphannie to  
6 discuss the third and fourth proposals.

7 MS. WEISS: Thank you.

8 The third proposal is the Local Area Network, or  
9 LAN, infrastructure refresh. It requests \$6 million in  
10 the 2019/2020 fiscal year and \$12,000 ongoing to address  
11 the refresh of the aging components that are reaching  
12 end of life and end of support within the LAN  
13 infrastructure. The LAN infrastructure is the heart of  
14 the Enterprise Network, supporting FTB's  
15 mission-critical operations.

16 The overall result of this refresh will reduce  
17 the risk that LAN infrastructure components will either  
18 fail or be compromised.

19 The next proposal is the Mainframe Enterprise  
20 Tape Library Refresh. It requests \$7.2 million in the  
21 2019/20 fiscal year to address the replacement of FTB's  
22 Mainframe Enterprise Tape Library and Direct Access  
23 Storage Device, or what we call DASD. The Mainframe  
24 Enterprise Tape Library and DASD provide the storage  
25 infrastructure that is essential to FTB's multiple

1 mission-critical tax and nontax systems. Manufacturers  
2 for FTB's current Mainframe Enterprise Tape Library and  
3 DASD systems announced an end-of-market and  
4 end-of-support dates.

5 Purchasing these systems allows FTB to meet  
6 current and future mainframe storage back-up and  
7 recovery needs and mitigates risks associated with  
8 running a system past an impending end-of-market and  
9 end-of-support date.

10 I will turn the time back over to Jeanne for  
11 proposal 5.

12 MS. HARRIMAN: Thank you.

13 The fifth proposal that we have seeks staff for  
14 Withholding Services and Compliance Program. This BCP  
15 requests 20 positions and 1.8 million. The Withhold at  
16 Source business area assists withholding agents  
17 responsible for paying nonwage withholdings, as well as  
18 taxpayers who have remitted nonwage withholding.

19 The nonwage withholding you are most likely  
20 familiar with is that associated with sales proceeds  
21 related to real estate sales and withholding due from  
22 professional athletes or performing artists who perform  
23 services in California.

24 Annually, this program brings in over \$2 billion  
25 to the State of California.

1 FTB is under resourced in this business area and  
2 has not been able to perform key functions necessary to  
3 effectively manage this program. In addition, 17 of  
4 those 20 positions FTB has been dedicating funding for  
5 this program in order to at least provide some level of  
6 service, but we are no longer able to do so.

7 This proposal, as well as the 17, is also asking  
8 for three new, to do a bit of expansions in some areas  
9 where we haven't been able to do so.

10 This request overall will allow FTB to  
11 appropriately fund -- be funded for education and  
12 outreach efforts focusing on providing quality data so  
13 that we can correctly match these payments to the  
14 taxpayers' accounts, engage in audit activities, work  
15 with withholding agents that have failed to remit the  
16 un- -- the withholding that they have withheld, conduct  
17 mailing of annual notifications, timely assistance in  
18 error resolution identified during return processing,  
19 and answer the phone calls from the withholding agents  
20 or taxpayers who need assistance to resolve their  
21 issues.

22 With these additional resources, FTB will be able  
23 to conduct both proactive and reactive workloads in a  
24 manner sufficient to support this very important  
25 program.

1 Tiphonie will now discuss the final two  
2 proposals.

3 MS. WEISS: Thank you.

4 The next proposals are requests for a technical  
5 appropriation adjustment to transfer the franchise and  
6 income tax component of the Tax Appeals Assistance  
7 Program from the California Department of Tax and Fee  
8 Administration to the Franchise Tax Board.

9 The Tax Appeals Assistance Program was originally  
10 established by the Board of Equalization. And with the  
11 restructuring of the board and the transfer of the  
12 appeals process to the new California Office of Tax  
13 Appeals, this program moved to the California Department  
14 of Tax and Fee Administration. There's not a suitable  
15 alignment for franchise and income tax appeal cases to  
16 be handled by the California Department of Tax and Fee  
17 Administration.

18 This proposal requests the authorization for two  
19 positions and \$378,000 to transfer the franchise and  
20 income tax component of the program to the Franchise Tax  
21 Board.

22 Our final proposal is the Earned Income Tax  
23 Credit Age and Income Expansion. It requests 7.5  
24 positions and \$575,000 in fiscal year 2019/20 and  
25 \$535,000 ongoing to implement the Earned Income Tax

1 Credit expansion included in the governor's budget.

2           These positions are needed for prevention of  
3 improper payments, responding to taxpayer contacts, and  
4 receiving and keying additional documents anticipated as  
5 a result of the expansion.

6           We would be happy to answer any questions that  
7 you may have.

8           CHAIRPERSON YEE: Thank you very much.

9           Questions, Members?

10          Thanks.

11          Yes.

12          MS. STOWERS: A quick clarification and comment  
13 regarding item 6.

14          It's just to move over the income tax appeals,  
15 correct?

16          MS. WEISS: Correct. The franchise and income  
17 tax, the sales and use tax, would remain with California  
18 Department of Tax and Fee.

19          MS. STOWERS: And I realize that you were asking  
20 for two positions, but the individuals that will provide  
21 the services will be students that will not be employees  
22 of the Franchise Tax Board?

23          MS. WEISS: Yes, that is correct.

24          MS. STOWERS: But the direct report would be to  
25 the Taxpayer Rights Advocate?

1 MS. WEISS: Yes, that is correct.

2 MS. STOWERS: And if we do not do this --

3 MS. WEISS: The attorney, the tax counsel, and  
4 the support staff reports to the Taxpayer Right  
5 Advocate. The students are completely independent.

6 MS. STOWERS: They are independent.

7 MS. WEISS: Yes.

8 MS. STOWERS: If we do not do this, this program  
9 will go away, that CDTFA will not -- no longer have us  
10 there.

11 MS. WEISS: That is our understanding.

12 MS. STOWERS: Okay. Great. Thank you.

13 MS. WEISS: Thank you.

14 CHAIRPERSON YEE: Thank you. Member  
15 Wong-Hernandez, I think you are going to be refraining  
16 from --

17 MEMBER WONG-HERNANDEZ: Yes. (Unreportable  
18 cross-talk.)

19 CHAIRPERSON YEE: Thank you.

20 Any questions on this?

21 Okay. I have a few.

22 Regarding BCP number 1 and -- I got to think that  
23 some of these elements, with respect to enhancing our HR  
24 capacity to deal with these various elements aren't  
25 necessarily a new thing to the Franchise Tax Board.

1 Some are and some aren't.

2 And I guess my question is, is there kind of a  
3 statewide effort to look at some of these elements? And  
4 not -- if you don't know the answer, that's fine. But I  
5 am just curious if you can kind of flesh these out  
6 further to see whether there's broader attention to some  
7 of these -- some of these elements in the proposal?

8 MS. HARRIMAN: Yes. That's a great question.

9 So -- and one that we've been working with  
10 Finance on as well as CalHR --

11 CHAIRPERSON YEE: CalHR.

12 MS. HARRIMAN: -- and our discussions in regards  
13 to this BCP.

14 So CalHR has indicated in our discussions with  
15 them that there are some areas where they have, in fact,  
16 with the new policies adopted, that have presented  
17 numerous benefits to the State of California and  
18 employees, but they have, in fact, created additional  
19 workloads for the HR staffs.

20 CHAIRPERSON YEE: Right.

21 MS. HARRIMAN: And so there, I think, if I could  
22 suggest what they are saying, is they are aware of that  
23 and they may be engaging with Finance in later  
24 discussions, later on.

25 So one of the things that we found that was

1 perhaps unique to FTB, in our discussions between those  
2 entities, was that -- the related and correlating growth  
3 in our staff; the fact that our staffing levels have  
4 doubled almost in the last 25 years, but our growth in  
5 HR had only grown by four. And that was considered a  
6 fairly unique pattern compared to most state  
7 departments. And if you think, that growth didn't  
8 happen overnight. So we have been able to absorb quite  
9 an amount of work associated with new policies, new  
10 procedures, new laws, and so forth.

11 But in the last three years, in 13/14, we found  
12 that we needed to start augmenting these workloads with  
13 temp help funding. We have not been able to cease doing  
14 that. So it was kind of in 13/14, I would say, that we  
15 hit that tipping point. We tried to automate some  
16 things, which we successfully did. Tried to reduce that  
17 footprint on our own. And the BCP presented before you  
18 is kind of the leftovers that we just don't feel we're  
19 going to be able to -- to overcome --

20 CHAIRPERSON YEE: Sure.

21 MS. HARRIMAN: -- without being able to curtail  
22 workloads that really need to be accomplished.

23 CHAIRPERSON YEE: Right. Right. Okay. No, I  
24 appreciate that.

25 And I'm glad that you are involved in

1 conversations with Finance and CalHR, because I do think  
2 this is becoming more apparent in other parts of state  
3 government as well.

4 So -- okay. Good.

5 And then with respect to the -- the Cal EITC  
6 expansion, is there any need for current funding in  
7 terms of getting the expansion?

8 MS. WEISS: We believe that we will be able to  
9 absorb the current year.

10 CHAIRPERSON YEE: Okay. Yes. Okay. Quite an  
11 expansion.

12 MS. WEISS: It is. It is, yes. So we are  
13 evaluating that right now, but we believe we will be  
14 okay for current year.

15 CHAIRPERSON YEE: Great. Okay. Thank you.

16 All right. And let's see. Let me -- I know you  
17 have got some contracts for us as well.

18 Members, do you want to approve the BCPs first or  
19 do you want a single motion on everything?

20 MEMBER RUNNER: I will make a motion to approve  
21 the BCPs.

22 CHAIRPERSON YEE: Okay. Great. Motion by Member  
23 Runner to approve the BCPs before us.

24 I will second that motion, with Member  
25 Wong-Hernandez not participating.

1 Without objection, the BCPs for 2019/20 are --  
2 proposals are approved.

3 Thank you.

4 On to the contracts.

5 MS. WEISS: The contracts? Thank you.

6 We're seeking your approval to renew our software  
7 subscription and support contract for IBM software that  
8 is used to run multiple mission-critical Franchise Tax  
9 Board systems.

10 The current contract is set to expire  
11 December 31st, 2018, and the estimated one-year renewal  
12 is \$7.5 million. If approved, we would work under  
13 Department of General Services rules to conduct a  
14 competitive bid.

15 Do you have any questions regarding the contract?

16 CHAIRPERSON YEE: I don't.

17 MS. WEISS: Thank you.

18 CHAIRPERSON YEE: Okay.

19 Hearing none, this is also an action item. Is  
20 there a motion?

21 MEMBER RUNNER: Move approval.

22 MEMBER WONG-HERNANDEZ: Second.

23 CHAIRPERSON YEE: Motion by Member Runner; second  
24 by Member Wong-Hernandez.

25 Without objection, the contract is approved.

1 Thank you.

2 MS. WEISS: Thank you.

3 CHAIRPERSON YEE: Thank you both very much.

4 Members, we have item number 8, and this is a  
5 resolution for coverage for FTB volunteers. And we'll  
6 have Shane Hofeling present this item.

7 Good afternoon.

8 MR. HOFELING: Thank you.

9 Good afternoon, Board Members. My name is Shane  
10 Hofeling, and I am an assistant chief counsel of the  
11 Litigation Bureau of the FTB's Legal Division.

12 During our scope of the review of the FTB's  
13 workers' compensation coverage policy, we discovered  
14 that our coverage does not extend to the FTB volunteers,  
15 who directly perform services to the FTB, such as our  
16 unpaid student interns.

17 Under Labor Code section 3363.5, in order for  
18 these volunteers to be covered under FTB's workers'  
19 compensation coverage policy, our governing body needs  
20 to -- needs to adopt a resolution in order for these  
21 volunteers to be covered.

22 This coverage would only extend to volunteers who  
23 perform services directly to the FTB. As such, it does  
24 not extend to volunteers who provide services to  
25 taxpayers, such as our VITA volunteers.

1           Currently, some state agencies and boards, such  
2 as the Board of Equalization, currently include their  
3 volunteers under their workers' compensation coverage  
4 plan.

5           Furthermore, adding these volunteers under the  
6 FTB's workers' compensation coverage does not result in  
7 any significant additional costs to the department.

8           It goes without saying that the FTB's volunteers  
9 are an integral part of our family and they provide  
10 amazing services to the FTB and the citizens of  
11 California. As such, we're recommending that the Board  
12 adopt the resolution to provide coverage to these  
13 volunteers.

14           Thank you, and I'm happy to answer any questions  
15 you may have.

16           CHAIRPERSON YEE: Great. Thank you.

17           Questions, Members?

18           Hearing none, may I have a motion?

19           MEMBER WONG-HERNANDEZ: Move approval.

20           CHAIRPERSON YEE: Motion by Member Wong-Hernandez  
21 to approve the resolution.

22           (No audible "second.")

23           CHAIRPERSON YEE: Second by Member Runner.

24           Without objection, the resolution is adopted.

25           Thank you.

1 MR. HOFELING: Thank you.

2 CHAIRPERSON YEE: Okay. Let's see. Let's -- I  
3 believe we're on to item number 9, and this is the  
4 Executive Officer's Time, and I will look to Selvi  
5 Stanislaus.

6 EXECUTIVE OFFICER STANISLAUS: Nothing to report  
7 at this time.

8 CHAIRPERSON YEE: Nothing to report?

9 Okay. Very well.

10 Then we'll move to item number 10, and this is  
11 the Board Members' Time.

12 And let me just acknowledge that we do have a  
13 speaker for this item, and that is Dennis Loper, who has  
14 signed up to speak. Let me have him address the Board  
15 first, before I turn it over to Members.

16 MR. LOPER: Thank you, Chairman -- Chairwoman  
17 Yee. Good afternoon. My name is Dennis Loper. And I'm  
18 here speaking on behalf of Bechtel Corporation, a  
19 closely held corporation.

20 I last spoke to the board at the June board  
21 meeting and I asked that the board direct staff to allow  
22 public comment on a possible regulatory effort to bring  
23 some certainty that another state tax credit is applied  
24 to California residents who pay the Texas margins tax.  
25 At that time, I expressed concern that the staff has

1 been somewhat inconsistent in its use on the issue and,  
2 further, that staff recently changed its position to the  
3 detriment of any California residents who pay the Texas  
4 tax. We believe that the legislature intended the  
5 California residents to be allowed to qualify for the  
6 tax credit based on that used to calculate tax by each  
7 taxpayer.

8 In contrast, the staff's recent guidance declares  
9 a general rule, which does not take into account the  
10 application of the law to individual taxpayers.

11 Unfortunately, under the staff position, some  
12 taxpayers who would otherwise qualify for the tax credit  
13 will be denied the benefit intended by statute and pay  
14 the tax.

15 We believe this result is contrary to the plain  
16 language of the statute and the underlying legislative  
17 intent. While I appreciate that the Board is proceeding  
18 down the path for a regulatory solution, I would also  
19 ask that the Board consider supporting legislation  
20 designed to avoid double tax on California residents  
21 under these circumstances.

22 I am glad to answer any questions.

23 CHAIRPERSON YEE: Thank you, Mr. Loper.

24 Maybe just kind of a procedural question to  
25 legal.

1           And I understand, this is an issue that we are  
2 entertaining with respect to the rulemaking regulation  
3 calendar. But just in terms of the legislature matters  
4 that generally are before this Board for support or  
5 sponsorship, what's generally been the --

6           MR. LANGSTON: Thank you, Chair.

7           Typically at the December board meeting, we have  
8 a Taxpayer Bill of Rights Hearing. And part of that  
9 hearing is where industry representatives and individual  
10 taxpayers present their proposals for changes to the  
11 personal income tax and corporation tax law. That's  
12 part of the December meeting, we do that.

13           And as you point out, this week, staff will be  
14 including this on the rulemaking calendar, which we'll  
15 bring before your board on the December meeting.

16           So at that time, as you know, the rulemaking  
17 calendar is the beginning of the formal -- the informal  
18 regulatory process. We hold interested parties meetings  
19 so we can get input from industries on all sides, you  
20 know, about what the regulation -- what the regulation  
21 should say.

22           So those -- those are the two staff  
23 recommendations.

24           And I would point out that today, because this is  
25 not been noticed as an action item, it would simply be

1 an information item today.

2 CHAIRPERSON YEE: Okay. All right.

3 MEMBER RUNNER: I have a question.

4 CHAIRPERSON YEE: Member Runner, please.

5 MEMBER RUNNER: It -- just, again, process-wise,  
6 can -- again, if these come before us or items come  
7 before us in December, is there a difference for this --  
8 for the FTB when they decide to sponsor a bill versus  
9 support a bill? Is there a process for that?

10 MR. LANGSTON: I can answer a little bit.

11 Historically, FTB will approve a legislative  
12 proposal, and if that legislative proposal becomes a  
13 bill without change, then it will be shown as supported  
14 by Franchise Tax Board.

15 In recent years, Franchise Tax Board has  
16 generally not voted to support specific bills as they go  
17 through the process, partly because of concerns about  
18 later amendments to those bills.

19 But in the -- in the somewhat distant past, the  
20 Board used to support bills at -- at board meetings  
21 with -- with legislative resolutions.

22 MEMBER RUNNER: So the bills that come before us  
23 in December will be those that are actually, then,  
24 sponsored by the Board.

25 MR. LANGSTON: There will be legislative

1 proposals that come before, that aren't bills yet.

2 MEMBER RUNNER: Right. Right.

3 MR. LANGSTON: If the Board approves them, then  
4 our legislative staff will try to find authors for those  
5 bills.

6 MEMBER RUNNER: But those would be bills that are  
7 actually, then, sponsored by.

8 MR. LANGSTON: Correct. Yes.

9 CHAIRPERSON YEE: Yes. And then, generally, they  
10 have to do with the operations of the Board, rather than  
11 anything that's -- that's more policy or tax  
12 expenditure-driven.

13 So -- and I think those have been just easier to  
14 track through the legislative process because they  
15 generally are more well-embraced. But -- but I don't  
16 think that precludes, Member Runner, any of us as  
17 members.

18 MEMBER RUNNER: Individually.

19 CHAIRPERSON YEE: Exactly.

20 MEMBER RUNNER: Okay. Thank you.

21 Okay. Other comments on this from staff?

22 I think, Mr. Loper, I'm going to ask you to do  
23 one thing. I know, in terms of your interest in  
24 pursuing legislation, perhaps maybe a little bit more  
25 development on your part. And I would welcome you

1 bringing back a proposal to the Taxpayer Rights -- Bill  
2 of Rights Hearing in December to see what shape that  
3 proposal is, and we can determine whether that's  
4 appropriate.

5 MR. LOPER: Certainly. We already have language  
6 that's --

7 CHAIRPERSON YEE: Submit it to the staff. But we  
8 would hope that you can bring it and present it at the  
9 Taxpayer Bill of Rights Hearing.

10 MR. LOPER: We will be glad to do that.

11 CHAIRPERSON YEE: And we will look at what the  
12 appropriate avenues are for pursuing that.

13 MR. LOPER: Thank you.

14 CHAIRPERSON YEE: Thank you.

15 Let's see.

16 So other -- other Board Member comments during  
17 Board Member Time?

18 Okay. And -- making history today. No closed  
19 session. Okay.

20 Any other members of the public who wish to  
21 address the board?

22 Hearing none, this meeting is adjourned.

23 Thank you very much.

24 (Proceedings concluded at 3:52 p.m.)

25 ----o0o----

1 CERTIFICATE OF REPORTER

2  
3 I, KATHRYN S. SWANK, a Certified Shorthand Reporter  
4 of the State of California, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing proceedings was reported in shorthand by me,  
7 Kathryn S. Swank, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

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

14 IN WITNESS WHEREOF, I have hereunto set my hand  
15 this 10th day of December 2018.

16  
17  
18  
19  
20 /s/ Kathryn S. Swank  
21 KATHRYN S. SWANK, CSR  
22 Certified Shorthand Reporter  
23 License No. 13061  
24  
25