

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

PUBLIC MEETING

FRIDAY, DECEMBER 18, 2020

1:30 P.M.

HELD VIA VIDEOCONFERENCE

AND

VIA TELECONFERENCE

REPORTED BY:

KATHRYN S. SWANK
CSR NO. 13061

KATHRYN S. SWANK, CSR (916) 390-7731

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APPEARANCES

(All participants appeared via
videoconference and
teleconference.)

BOARD MEMBERS

BETTY YEE
State Controller
(Chairperson of the Board)

ANTONIO VAZQUEZ
Chairperson
Board of Equalization

GAYLE MILLER
Representative for Keely Bosler, Director
Department of Finance

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STAFF

SELVI STANISLAUS
Executive Director

DAWN CASEY
Board Liaison

JOZEL L. BRUNETT
Chief Counsel

SHANE HOFELING
Deputy Chief Counsel

MICHAEL BANUELOS

JEANNE HARRIMAN

ANNETTE KUNZE

CHRIS SMITH

ADAM SUSZ

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APPEARANCES CONTINUED

PUBLIC PARTICIPANTS

JOYCE CHENG
California Society of Enrolled Agents

LYNN FREER
Spidell Publishing

CHRISTINE GRAB

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1 SACRAMENTO, CALIFORNIA

2 FRIDAY, DECEMBER 18, 2020 1:30 P.M.

3 ---o0o---

4 CHAIRPERSON YEE: Good afternoon. The time of
5 1:30 p.m. having arrived on Friday, December 18th, 2020,
6 this is the scheduled time for the meeting of the
7 California Franchise Tax Board, and I ask the board
8 liaison to please call the roll to determine if a quorum
9 is present.

10 MS. CASEY: Member Vazquez.

11 MEMBER VAZQUEZ: Present.

12 MS. CASEY: Member Miller.

13 MEMBER MILLER: Present.

14 MS. CASEY: Chair-Controller Betty T. Yee.

15 CHAIRPERSON YEE: Here. Thank you.

16 At least two members having -- being personally
17 present, there is a quorum, and the Franchise Tax Board
18 is now in session.

19 At this time, I ask that you please stand if you
20 are able and join me in the Pledge of Allegiance.

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

23 CHAIRPERSON YEE: Thank you. Good afternoon
24 again, and welcome to the Franchise Tax Board's virtual
25 board meeting. As the FTB continues to follow all

1 appropriate federal, state, and local guidance for
2 public gatherings, my fellow board members and I are
3 attending the board meeting remotely, and FTB staff is
4 following social distancing best practices.

5 The public has a right to comment on each agenda
6 item for today. For today's meeting, members of the
7 public may comment via telephone at (877) 336-4440 with
8 the access code of 6683081.

9 Please be aware that there is a short delay
10 between the web live stream and the live event. If
11 there are any members of the public wishing to speak on
12 an item, you may speak when that item is called, and you
13 will have three minutes to address the Board. You will
14 be asked to identify yourself for the record.

15 Let's proceed to the first item, Members, which
16 is the approval of the minutes. We have before us the
17 minutes of the September 18, 2020, board meeting.

18 First, let me see if there's any member of the
19 public wishing to speak on this item, on the
20 teleconference line.

21 PHONE MODERATOR: Ladies and gentlemen, if you
22 wish to queue up on the phone lines for public comment,
23 you may press 1 and then 0 on your telephone keypad.
24 You may withdraw your question at any time by repeating
25 the 1 and 0 command. If you are using a speakerphone,

1 we ask that you please pick up the handset before
2 pressing the numbers. Once again, if you have a
3 question, you may press 1, then 0 at this time.

4 (No verbal response.)

5 PHONE MODERATOR: And there is no one queuing up
6 on this topic at this time. Please continue.

7 CHAIRPERSON YEE: Great. Thank you very much.
8 Do I have a motion for approval of the minutes.

9 MEMBER MILLER: I move approval.

10 MEMBER VAZQUEZ: So moved.

11 CHAIRPERSON YEE: Okay. I have a motion by
12 Member Miller, seconded by Member Vazquez.

13 Without objection, such will be the Board's
14 order. Thank you.

15 Let's move on to Item Number 2, which is our
16 legislative matters. And we'll have Annette Kunze
17 present the 2021 legislative proposals. These are
18 action items that can be considered separately or
19 together in a single motion.

20 And I believe, Member Miller, you will be
21 abstaining from any action on these matters, because
22 they are legislative items; is that correct?

23 (No verbal response.)

24 CHAIRPERSON YEE: Great. Thank you.

25 Annette, good afternoon.

1 MS. KUNZE: Good afternoon. As mentioned, my
2 name is Annette Kunze, and I'm the legislative director
3 for the Franchise Tax Board.

4 On an ongoing basis, FTB identifies possible
5 ideas for legislative proposals that can ease tax
6 administration, including the ones presented before you
7 today.

8 Today I will present five legislative proposals
9 for your consideration. From here on out, I will refer
10 to these proposals at LP-A through LP-E. In addition to
11 presenting to you today, we also recently held a
12 stakeholder meeting on November 10th to present these
13 ideas to the public for input, and ideas seem to be well
14 received.

15 I will begin with LP-A, which relates to the
16 California Research Credit. LP-A proposes additional
17 modified conformities to the federal tax law for
18 calculating the California Research Credit. Current
19 California code provides two methods to compute the
20 California Research Credit: The regular method and the
21 incremental method.

22 The regular method requires taxpayers to use
23 documents from the 1980s to calculate their research
24 credit. If the taxpayer isn't able to provide documents
25 or otherwise substantiate the credits, FTB generally has

1 no option but to deny the claimed credit.

2 By modifying conformity to the federal
3 Alternative Simplified Credit, or ASC, method,
4 California taxpayers will have a simplified way to
5 calculate and substantiate their research credit. The
6 ASC method factors in the three most recent taxable
7 years' research expenses to calculate the credit,
8 instead of relying on documents from the 1980s.

9 LP-A also proposes conformity to the Internal
10 Revenue Code to eliminate the incremental method. As
11 some background, FTB has pursued research credit
12 conformity before. In addition, conformity to the ASC
13 method has been introduced in bills twice before, in the
14 last decade: Assembly Bill 544 in 2015, and Assembly
15 Bill 2330 in 2014.

16 Neither of these bills made it into the second
17 house. These bills entered -- included a credit rate
18 that would have resulted in a larger revenue loss than
19 this proposal.

20 LP-A proposes a smaller ASC credit rate and
21 results in a smaller estimated revenue loss. The credit
22 rates could be subject to change if this proposal were
23 ultimately entered into a bill.

24 In summary, conforming to the ASC method would
25 provide business and individuals conducting research in

1 California with a simplified calculation option,
2 eliminate differences between federal and state law, and
3 reduce recordkeeping requirements. It would also reduce
4 the administrative burden on the FTB and taxpayers with
5 respect to audits of the California research credit.

6 Next is LP-B relating to the real estate
7 withholding on like-kind exchanges.

8 I wanted to start with a quick introduction on
9 withholding as it relates to this proposal. California
10 requires withholding on the sale of real estate unless
11 an exception applies. Generally withholding is the
12 obligation of the buyer or the real estate escrow
13 company.

14 In a deferred exchange, the obligation to
15 withhold shifts to the qualified intermediary or
16 accommodator, which is a person or business who enters
17 into a written exchange agreement with a taxpayer to
18 facilitate a deferred like-kind exchange. Throughout
19 this LP, the abbreviation "QI" is used for qualified
20 intermediary or accommodator. This proposal would
21 modify the real estate withholding requirements related
22 to the deferred like-kind exchange of California real
23 property.

24 Turning to the problem addressed by the
25 legislative proposal, the department has determined, and

1 others have told us, that QIs may have difficulty
2 meeting with withholding obligations in those situations
3 where a QI does not have sufficient funds in an exchange
4 account to fully satisfy the withholding obligation.

5 And these are commonly referred to as cash poor
6 exchanges.

7 The LP proposed solution would retain the basic
8 withholding structure requiring a QI to withhold, but
9 the QI withholding would be limited to funds being
10 available in the exchange account. FTB would be
11 authorized to prescribe regulations to clarify
12 disbursements for the exchange.

13 In addition, under the proposal, the QI would
14 continue to submit the Form 593, Real Estate Withholding
15 Statement, which would identify the seller and the
16 withholding information, including that it's a cash poor
17 exchange. The LP would not change the overall actual
18 amount of tax liabilities.

19 In summary, the benefits of this proposal include
20 promoting fairness and reducing administrative burden on
21 QIs, and providing clear guidance on withholding for
22 deferred exchanges while retaining the overall
23 withholding structure.

24 Next I will move to LP-C, and this relates to
25 taxation of income of an Incomplete Gift Non-Grantor

1 Trust, which I will refer to as an ING trust. This LP
2 discusses grantors, trusts, and trustees. And so for
3 some context, I want to provide a few definitions.

4 A grantor is simply an individual that moves
5 assets into a trust, a separate legal entity.

6 A trustee is a company, also a separately legal
7 entity, which maintains the trust.

8 ING trusts are generally treated as taxable
9 trusts.

10 California generally conforms to the federal
11 trust rules. And for California purposes, the ING trust
12 net taxable income is sourced to the state, based on the
13 commercial domicile of the trustee.

14 For federal purposes, the ING trust is taxed and
15 has a filing status based on where the trustee is
16 domiciled and located. And turning to the particular
17 problem, currently California law allows the California
18 taxpayer to move assets into an ING trust with an
19 out-of-state trustee, and the impact is to shift assets
20 and income away from California, even though the
21 taxpayer has not changed their state of residency.

22 This situation impacts taxpayers primarily
23 residing in California and New York, and New York has
24 identified the same issue and the enacted legislation --
25 legislation effective for tax years beginning in 2014.

1 Our proposed solution would amend the personal
2 income tax laws to parallel the approach adopted by New
3 York. That is, the proposed change would treat all
4 grantors of trust in the same manner and provide
5 consistent and fair treatment of ING trust net taxable
6 income for similarly situated taxpayers.

7 Next is LP-D, and this relates to a change in the
8 due date of Taxpayers' Bill of Rights report. This
9 proposal would change the Taxpayers' Bill of Rights
10 report from December 1st to January 10th of each year,
11 the due day. The date change will provide FTB staff
12 sufficient time to include current year proposals in the
13 report.

14 The board meeting where the current year
15 proposals are heard and voted on is in December, as
16 one -- as is today. However, because the Taxpayers'
17 Bill of Rights report is due December 1st, only
18 prior-year proposals are eligible to be included in the
19 report.

20 Changing the due date to January 15th will allow
21 the Legislature to be informed on the most current
22 issues and allows the opportunity to begin discussion on
23 these issues.

24 Lastly is LP-E, and this relates to an item to
25 assist with providing information to the State

1 Controller's office for purposes of unclaimed property.

2 In the Budget Act of 2019 (Senate Bill 109), the
3 Joint Legislative Budget Committee tasked the FTB with
4 researching the feasibility of providing a check box
5 question on -- regarding unclaimed property on business
6 entity returns. FTB worked in conjunction with the
7 State Controller's Office, or SCO, to identify questions
8 to include on the business entity returns that could
9 increase the awareness of, and compliance with, the
10 unclaimed property reporting requirements.

11 Currently, FTB has such authority limited to
12 specific information that we may share with the SCO.
13 This proposal would allow FTB to be able to share
14 certain data with the SCO for purposes of the unclaimed
15 property program, including the three questions being
16 added to the business entity returns.

17 Thank you for your time today and for listening
18 to our proposals, and we respectfully request the board
19 approval of our legislative proposals, and I'm happy to
20 answer any questions.

21 CHAIRPERSON YEE: Thank you, Annette, very much
22 for the presentation.

23 Let me just check in with Member Vasquez. Any
24 questions on the proposals? Or comments?

25 MEMBER VAZQUEZ: Yes. I had just a couple of

1 questions. Let me start with 2-A first. And just my
2 opening remarks on this: Will this credit be
3 retroactive for the -- for more than three years on the
4 2-A proposal?

5 MS. KUNZE: So on the credit, it will be computed
6 using information from the last three years. It will
7 actually be -- the election will be -- once the law is
8 enacted, than taxpayers can begin to elect this method.
9 However, instead of looking at information from the
10 1980s, it would actually look at -- it would look at the
11 last three years. So it's actually not retroactive.
12 The credit -- it just uses information from the prior
13 three years, most recent years.

14 MEMBER VAZQUEZ: Okay. I guess my question was
15 really, in other words, you know, I would hate to see
16 the credit wasted that was available to the taxpayer,
17 but did not have enough time to come back, you know,
18 with their records. That was my concern, I guess.

19 CHAIRPERSON YEE: I think, Ms. Kunze, the -- with
20 respect to the two methods that are a part of LP-A, so
21 the one that we're proposing to eliminate, so that we
22 can conform to the ASC method, this probably wasn't
23 utilized at this point, right?

24 MS. KUNZE: Yes. That is correct. It's lesser
25 utilized, and, actually, they would still be able to use

1 the regular method, but they would be able to elect this
2 new method, and then by eliminating the incremental
3 method, it doesn't affect as many taxpayers, and it
4 actually puts us in closer conformity with the federal
5 research credit.

6 MEMBER VAZQUEZ: Okay. And then my second
7 question is -- it relates to Item 2-D. It's actually
8 the last one we got into.

9 And, first of all, I just wanted to commend FTB,
10 as well as the Controller's Office, on their due
11 diligence in locating owners of unclaimed property.

12 But I'm wondering, moving forward -- I support
13 this. You know, I would just fear that -- (audio
14 malfunction; unintelligible). For example, I guess, for
15 a tax return or any other statewide form, there should
16 be a voluntary disclosure box identified for the
17 beneficiary of any unclaimed money or property of an
18 individual. And I was wondering if that's -- if you
19 looking at that, or is that going to be included
20 somewhere?

21 MS. KUNZE: So my understanding is that we are
22 adding three questions regarding the unclaimed property.
23 However, there are other education efforts ongoing that
24 aren't necessarily related specific to the tax return,
25 but we're hoping that by adding these questions, that

1 will help increase awareness and compliance. But there
2 are other methods, and we'll be including information in
3 our instructions as well, to direct taxpayers and
4 businesses to those resources, to be able to know what
5 the rules are and how to comply and that they are aware
6 of them.

7 CHAIRPERSON YEE: I would like to comment on
8 this, Member Vasquez. The -- there are, as Ms. Kunze
9 stated, a number of different outreach and educational
10 strategies that we do use, including involving all of
11 our legislative colleagues as well as members of the
12 Board of Equalization to educate the public about the
13 properties that are ready to be returned by my team.

14 You know, that database of property is public,
15 and so it can be consulted at any time. And I will just
16 give a plug here, at ClaimIt.ca.gov. What we're trying
17 to accomplish here is to be sure that businesses or
18 holders of property are filing their property reports,
19 and wanted to be sure that they are current in that
20 activity, and also identifying the amounts of property
21 that they are going to be remitting to the State.

22 So that's really the purpose of this particular
23 proposal. And as I said, there are many other
24 strategies. We're getting the word out. We agree with
25 you. We want to return that property to the rightful

1 owners in the most efficient way possible.

2 So that's the nature of this proposal. And I did
3 pose the question as to whether the addition of these
4 questions to the Board would result in any additional
5 costs, and those costs will be -- (audio malfunction;
6 unintelligible).

7 MEMBER VAZQUEZ: Okay. I'm good with that.

8 Thank you.

9 CHAIRPERSON YEE: Great. Thank you.

10 And then, Ms. Kunze, I just wanted to confirm on
11 LP-B that the revenue impact is really going to be --
12 it's not really a revenue impact, but, really, more as
13 it relates to a timing issue, right? Because the -- due
14 to the extent that the withholding is a prepayment of
15 the liability, that there's just going to be a slight
16 change in the timing. And so we expect that if the
17 payment, that there could be timing -- (audio
18 malfunction; unintelligible).

19 MS. KUNZE: Yes, that's correct.

20 CHAIRPERSON YEE: Okay. Great.

21 So the actual liabilities -- the amount of
22 liabilities won't -- (audio malfunction;
23 unintelligible).

24 Okay. Very good.

25 If there are no other questions, I'm going to

1 turn to the public now. Is there any member of the
2 public wishing to speak on any of these legislative
3 proposal items?

4 PHONE MODERATOR: Ladies and gentlemen on the
5 phone lines, if you would like to place yourself in the
6 queue for public comment, as a reminder, you may press
7 1, then 0 at this time.

8 (No verbal response.)

9 PHONE MODERATOR: No members of the public are
10 queuing up at this time.

11 Please continue.

12 CHAIRPERSON YEE: Thank you very much.

13 So seeing no public speakers, Member Vazquez, do
14 you wish to move the item?

15 MEMBER VAZQUEZ: Yes. I will move the item.

16 CHAIRPERSON YEE: Great. Thank you very much.

17 And I will second that item, noting that Member
18 Miller is not participating in this item.

19 And without objection, the motion is carried.

20 Thank you very much.

21 MS. KUNZE: Thank you.

22 CHAIRPERSON YEE: Thank you, Ms. Kunze.

23 MS. KUNZE: Thank you.

24 CHAIRPERSON YEE: Now we'll move on to Item

25 Number 3, and I want to make sure Member Miller is back

1 for this one. It does pertain to the regulation
2 matters, and this is the adoption of the annual
3 Rulemaking Calendar. This is an action item that will
4 be presented by Adam Susz. Good afternoon.

5 MR. SUSZ: Thank you. Good afternoon, Board
6 Members. My name is Adam Susz. I'm an Attorney V with
7 the Legal Division's Technical Resources Bureau.

8 The 2021 Rulemaking Calendar, in your materials,
9 details the regulations projects in which FTB staff will
10 work on during the 2021 calendar year.

11 As required by Government Code section 11017.6,
12 on a yearly basis, FTB delivers a Board-approved
13 Rulemaking Calendar to the Office of Administrative Law,
14 or OAL, to provide the required information on
15 regulatory items FTB plans to transmit for review and
16 approval by OAL during the year.

17 As in the past, this Board's approval of the
18 Rulemaking Calendar will also serve as an explicit
19 approval by the Board to allow FTB staff to begin the
20 informal regulatory process and hold interested parties
21 meetings for all calendared items, which includes new
22 items identified for which staff has not previously
23 received Board approval.

24 This year, there is one new item on the calendar.
25 This item is identified on the first page of the

1 materials and is a project to draft regulations setting
2 forth the requirements as to when the CalSavers
3 Retirement Savings Board may refer a penalty it imposed
4 on noncompliant eligible employers to FTB for
5 collection.

6 The project will also include regulations setting
7 forth procedures for employers to appeal those penalties
8 imposed by the CalSavers Retirement Savings Board to the
9 FTB.

10 I respectfully ask for the Board's approval of
11 the 2021 Rulemaking Calendar, and I'm happy to answer
12 any questions that you may have. Thank you.

13 CHAIRPERSON YEE: Thank you very much, Mr. Susz.
14 Members, any comments or questions?

15 (No verbal response.)

16 CHAIRPERSON YEE: Okay. Seeing none, let me just
17 see if there's any member of the public who wishes to
18 speak on this item, on the conference line.

19 PHONE MODERATOR: If you would like to queue up
20 to have your public comment known, please press 1, then
21 0 at this time.

22 (No verbal response.)

23 PHONE MODERATOR: There is no one queuing up for
24 this topic at this time. Please continue.

25 CHAIRPERSON YEE: Great. Thank you very much.

1 Very well. Do we have a motion on this item?

2 MEMBER MILLER: I will move, Madam Chair.

3 CHAIRPERSON YEE: Thank you very much, Member
4 Miller. We have a motion by Member Miller.

5 Second --

6 MEMBER VAZQUEZ: I will second.

7 CHAIRPERSON YEE: Member Vazquez.

8 Without objection, such will be the motion.

9 Thank you very much, Mr. Susz.

10 MR. SUSZ: Thank you.

11 CHAIRPERSON YEE: All right, Members.

12 We are now moving on to Item Number 4. These are
13 administrative matters. And first we will have Jeanne
14 Harriman presenting the 2021/22 Budget Change Proposals,
15 which is an action for Board approval. And Member
16 Miller, I know, will not be participating in this
17 particular item.

18 And then we'll have Michael Banuelos present the
19 contracts over \$1 million. Also an action item for
20 Board approval.

21 Jeanne, do you want to begin?

22 MS. HARRIMAN: Thank you.

23 Good afternoon. As mentioned, my name is Jeanne
24 Harriman, Chief Financial Officer for Franchise Tax
25 Board.

1 Today I will be discussing to you Budget Change
2 Proposals and presenting them for your approval. Both
3 of these proposals are related to legislation that was
4 recently enacted in the prior session.

5 The first proposal relates to Senate Bill 1447.
6 Franchise Tax Board is requesting four two-year limited
7 term positions with associated funding for 2021/22 and
8 22/23 fiscal years. The governor signed Senate Bill
9 1447 into law on September 9th, 2020. This legislation
10 created the Main Street Small Business Tax Credit, which
11 is a hiring credit for small business employers where,
12 in certain conditions, they are eligible to receive a
13 hiring credit that they can elect to be applied against
14 qualified sales, use, or income taxes.

15 The credit is allowed, as mentioned, to small
16 businesses suffering negative impacts as a result of
17 COVID. Beginning December 1st, 2020, small business
18 employers can receive a tentative credit reservation,
19 equal to \$1,000 for each employee hired during the
20 period July 1st, 2020, to November 30th, 2020, and that
21 ultimately resulted in a net increase of employees.

22 These requested resources will ensure FTB will
23 timely process tax returns claiming the Main Street
24 Small Business Tax Credit. Resources were funded for
25 the current year, but a Budget Change Proposal was

1 required to obtain approval of these limited term
2 resources for 2021/22 and 22/23.

3 The second proposal relates to resources
4 requested to administer the new expansion of the
5 California Earned Income Tax Credit to taxpayers with
6 the federal tax identification number, most frequently
7 referred to as an ITIN. Franchise Tax Board is
8 requesting 17 permanent positions and one permanent
9 intermittent position to accommodate this new law.

10 AB 1876 was signed into law on September 18th of
11 2020, and provides that for taxable years that begin on
12 or after January 1st of 2020, eligible individuals,
13 spouses, or qualifying children that have an ITIN now
14 can receive the California Earned Income Tax Credit.

15 The CalEITC is a key component of the Legislature
16 and the administration's commitment to assist California
17 families living below the poverty level. An estimated
18 200,000 families will qualify for this expanded credit.
19 Because of the larger numbers, and then because of the
20 complexities on these returns, FTB is requesting
21 additional resources to ensure that we are able to
22 process these returns timely, issue the refunds timely,
23 as well as also ensure that any improper payments are
24 captured and not refunded.

25 FTB is asking these resources for these various

1 programs.

2 Again, thank you for your time today. Your
3 approval for these Budget Change Proposals is requested,
4 and I'm happy to answer any questions you may have.

5 Thank you, Jeanne, very much for the
6 presentations.

7 Member Vasquez, questions or comments?

8 MEMBER VAZQUEZ: I'm good. Actually, I had some
9 comments that were answered earlier, and I'm comfortable
10 with it.

11 CHAIRPERSON YEE: Okay. Very good.

12 I think what I would like to do is to take these
13 up maybe -- Member Vasquez, would you mind if we act on
14 the Budget Change Proposals first, before we move on to
15 the contracts?

16 MEMBER VAZQUEZ: Sure.

17 CHAIRPERSON YEE: We will bring Member Miller
18 back for the second discussion.

19 So is there a motion?

20 MEMBER VAZQUEZ: I will move it.

21 CHAIRPERSON YEE: Great. Thank you.

22 We have a motion by Member Vazquez to approve the
23 two Budget Change Proposals. As presented, I will
24 second that motion, with Member Miller not
25 participating.

1 Without objection, such will be the order.

2 All right. Thank you.

3 And next we'll have Michael Banuelos present the
4 contracts for approval.

5 MR. BANUELOS: Okay. Good morning, Madam Chair
6 and fellow Board Members.

7 CHAIRPERSON YEE: Michael, I hope it's afternoon.
8 Not morning.

9 MR. BANUELOS: Oh, I should update my notes,
10 ma'am.

11 Good afternoon, Madam Chair and fellow Board
12 Members. It's really nice to see you again. I hope you
13 are all having a nice holiday season here.

14 My name is Michael Banuelos, and I'm the Director
15 of the Franchise Tax Board's Procurement Bureau. I'm
16 here today to request the Board's approval for two
17 proposed procurements that will result in contracts over
18 \$1 million.

19 With your approval, I will present the two
20 procurements and then I would be happy to answer any
21 questions you may have.

22 The first request is related to our scanner
23 refresh effort. So currently, FTB uses 10 scanners to
24 image documents, capture data, and to electronically
25 route tax returns and correspondence. Another critical

1 function of the scanners is to scan checks in order to
2 deposit payments to the banks as expeditiously as
3 possible. Our scanners are a critical component of our
4 operations. And to highlight this, I offer the
5 following: In the last three calendar years -- 2017
6 through 2019 -- we have scanned an average of 77 million
7 pages of documents. In calendar year 2019, FTB
8 deposited approximately \$15 billion in paper deposits
9 via our scanners.

10 While our scanners have served us well,
11 unfortunately, they are coming to the point where they
12 can no longer be supported and need to be replaced. We
13 anticipate procuring nine scanners at an estimated cost
14 of \$3.7 million, and FTB will be conducting a
15 competitive bid to procure these scanners.

16 As part of the competitive bidding process, FTB
17 will be following established procurement guidelines as
18 set forth by statute, as well as by the California
19 Department of General Services. This includes multiple
20 statutory preference and incentives intended to promote
21 socioeconomic programs within California: This includes
22 the California Small Business Preference; the Non-Small
23 Business Subcontractor Preference; the Disabled Veteran
24 Enterprise Incentive; and the Target Area Contract
25 Preference Act.

1 And that one is a mouthful. So that's the first
2 one.

3 The second procurement I'm presenting for the
4 Board's approval is for consulting services to support
5 our eTime project. The FTB has the need to procure
6 services to assist in the development and implementation
7 of an enterprise-wide time recording and work activity
8 tracking application. This application is call eTime
9 and will replace our existing system, which is called
10 TimePortal. TimePortal is a system used by FTB's
11 employee population of over 6,000 people for the purpose
12 of time keeping and work activity tracking.

13 The 20-year-old legacy system is written using
14 obsolete technology, some of which is no longer
15 supported, which makes it more difficult for us to use
16 and enhance.

17 In order to complete this effort, contractor
18 support is needed for assistance with design, analysis,
19 coding, testing, and implementation.

20 The total amount of the procurement is estimated
21 at \$1.35 million, and we intend on using the Department
22 of General Services' Master Services Agreement to
23 conduct the procurement.

24 With respect to the preferences and incentives,
25 the Master Services Agreement is a little bit of a

1 different type of procurement vehicle than what I talked
2 about for the scanners. It's a stream-lined procurement
3 vehicle offered through DGS, but it's still competitive
4 in nature.

5 We are in the planning phase for this
6 procurement, but we do intend on including criteria to
7 encourage participation from small businesses as well as
8 Disabled Veteran Business Enterprises. At this time,
9 I'm asking for your approval to move forward with these
10 procurements, and I would be happy to answer any
11 questions that you may have.

12 CHAIRPERSON YEE: Thank you very much, Michael.
13 Let me turn to our members.

14 Member Vazquez and Miller, are there any
15 questions or comments?

16 Member Vazquez.

17 MEMBER VAZQUEZ: Just a quick one. And I asked
18 this during the briefing as well. And maybe -- I don't
19 know if this is a question directed to staff or maybe to
20 Madam Chair, here. I know we have certain restrictions
21 in terms of limiting, you know, where we can purchase
22 things, and I was wondering, you know, given COVID, how
23 much more we can do to really try to make sure that
24 we're purchasing as much as possible locally, or at
25 least within the state of California. And I don't know

1 if that's even a possibility to the extreme we could.

2 CHAIRPERSON YEE: Actually, Michael -- we're
3 going to be following the DGS, you know, guidelines with
4 respect to this procurement. And I think, you know,
5 certainly as it relates to looking at, you know,
6 reaching out to small businesses, the -- you know, those
7 businesses that are under the second proposal, who are
8 part of the Master Services Agreement, there still are
9 going to be criteria for that to be competitively bid.
10 So I've got to think that DGS is going to be pretty
11 extensive, given the way it's looked at reaching out to
12 -- (audio malfunction; unintelligible).

13 But any thoughts here?

14 MR. BANUELOS: Yes. I would respectfully submit,
15 there's two really different ways that we do try and
16 promote. For us, keeping things local really equates to
17 keeping things within California --

18 CHAIRPERSON YEE: Yes.

19 MR. BANUELOS: -- and there's two different ways
20 that we do it.

21 So all of those preferences that I named off that
22 are in statute -- the Small Business preference, the
23 Non-small Business preference, the Disabled Veteran
24 Enterprise Business Incentive, or the TACPA -- those are
25 all benefits that companies that are either domiciled or

1 have their main headquarters here in California can get
2 extra bonus points, so to speak.

3 So depends on the way we structure the bid.
4 Sometimes they are low cost. Sometimes they are with
5 points. But we do give added bonuses for California
6 corporations that are either a Certified Small Business
7 or a Certified Disabled Veteran Business.

8 There's a couple of other things we do that may
9 be of interest to you. So, like, with the Master
10 Services Agreement that I talked about, that's a little
11 bit more of a discretionary program, right? So DGS has
12 put together many of these contracts, whether you want
13 to call them procurements or, kind of, prequalified
14 lists. Whenever we use those lists, to the extent
15 possible, we are targeting small businesses or disabled
16 veteran businesses there.

17 Unfortunately, due to the magnitude of some of
18 the dollar amounts, they can't carry some of these
19 larger contracts. So what we do, if we don't think they
20 could be valid prime contractors is we try, as much as
21 we can, to establish them as subcontractors or work with
22 the prime contractors to see if they can give some
23 businesses to locals here in California.

24 Does that make sense?

25 MEMBER VAZQUEZ: I appreciate that.

1 CHAIRPERSON YEE: Thank you, Mr. Vazquez. That's
2 a great question particularly during these times, where
3 so many of our businesses are being hit very hard.

4 Are there other comments or questions?

5 (No verbal response.)

6 CHAIRPERSON YEE: Michael, I have a question on
7 the scanners. Do you happen to know how many scanners
8 we have in total?

9 MR. BANUELOS: So, currently, we have ten. And I
10 believe five of them, we've had probably prior to 2005,
11 so they came in with an older project.

12 CHAIRPERSON YEE: Okay.

13 MR. BANUELOS: I think, at one point, they were
14 refurbished, so I think we've gotten pretty good --
15 pretty good useful life out of them. So that was five.

16 And then we obtained the other five, I believe,
17 in 2012, and those came in with the EDR project.

18 CHAIRPERSON YEE: Okay. Got it. Got it. Okay.

19 So I suspect that you will be replacing them kind
20 of almost on a staggered basis, depending on how -- how
21 worked over they are.

22 MR. BANUELOS: Right now -- the bid should be
23 coming out, you know, hopefully soon. I don't know if
24 it will be next week, but when we have the schedule on
25 there, we are doing -- we are suggesting we do it in

1 phases. It's three different phases staggered over one
2 or possibly even two fiscal years. So, yes, we are
3 planning on staggering it out, but once we release the
4 bids, and we're able to talk with the vendors a little
5 bit more about what the solutions may look like, we'll
6 know more in the future.

7 CHAIRPERSON YEE: Okay. Appreciate that.

8 Just for the public's information, we work these
9 scanners very hard. Very hard. That's quite a sight to
10 see.

11 All right. Let's see. No other questions from
12 members.

13 Let me turn and see if there are any members of
14 the public who wish to speak on this item, from the
15 teleconference line.

16 PHONE MODERATOR: Yes. Ladies and gentlemen from
17 the public, if you wish to queue up and give your
18 comment, please press 1, then zero at this time.

19 (No verbal response.)

20 PHONE MODERATOR: And there is no one queuing up
21 on this item at this time.

22 Please continue.

23 CHAIRPERSON YEE: Thank you very much.

24 Is there a motion for approval of the contract?

25 MEMBER VAZQUEZ: I so move.

1 MEMBER MILLER: Second.

2 CHAIRPERSON YEE: Motion by Member Vazquez;
3 second by Member Miller.

4 Without objection, such will be the order.

5 Thank you, Michael, very much.

6 MR. BANUELOS: Thank you all for your support.
7 We really appreciate it.

8 CHAIRPERSON YEE: Thank you.

9 All right, Members. Next we are turning to Item
10 Number 5. This is the Annual Taxpayers' Bill of Rights
11 Hearing. This is the time set for the Board's Annual
12 Taxpayers' Bill of Rights Hearing, as required by
13 section 21006 of the Revenue and Taxation Code.

14 The purpose of this hearing is to allow taxpayers
15 and tax practitioners the opportunity to present
16 directly to the Board any proposals they may have for
17 changes in existing state income tax law. FTB staff is
18 available to respond to member questions, which may be
19 raised as a result of taxpayer proposals.

20 Present for this portion of our -- for this
21 hearing are Selvi Stanislaus, our Executive Officer;
22 Jozel Brunett, our Chief Counsel; Shane Hofeling, our
23 Deputy Chief Counsel; Annette Kunze, our Legislative
24 Services Bureau Director; and Chris Smith, our Taxpayer'
25 Rights Advocate.

1 Staff will analyze the fiscal administrative
2 consequences of the proposals. Chris, I know you have
3 some introductory comments, and then I will call the
4 names of the individuals who have indicated that they
5 want to make a presentation before the Board.

6 And let me turn to you for those introductory
7 comments at this time. Good afternoon.

8 MR. SMITH: Good afternoon, and thank you, Madam
9 Chair, and good afternoon, Board Members.

10 My name is Chris Smith, and I'm the Acting
11 Taxpayers' Rights Advocate. So much has happened
12 between last year's hearing and today. I am confident
13 there are many more changes coming, hopefully for the
14 better, by the time we meet again for next year's
15 hearing.

16 2020 has definitely been a challenging year for
17 both FTB and tax professionals. Thankfully, everyone
18 has risen to the occasion and has adapted well to the
19 changes in how we conduct our business. I'm especially
20 proud of everything that FTB has done to ensure the
21 health and wellbeing of our more than 6,000 hardworking,
22 dedicated employees.

23 I want to thank you, Selvi, and this Board for
24 your support throughout the year. I would also like to
25 thank the many tax professionals, external stakeholders,

1 and other partners who worked alongside us this year.
2 The successes we would have had would not have been
3 possible without this collaboration, and I'm truly
4 grateful for that.

5 For the speakers calling in to today's hearing, I
6 want to let them know that FTB will review their
7 comments and concerns presented and respond in writing
8 by February 1st of 2021.

9 The responses will also be posted on FTB's
10 website. You can go to FTB.ca.gov and search for "your
11 taxpayer rights" and this will take you to where the
12 responses will be posted.

13 If you would also like our response mailed to
14 you, and if you did not submit a formal letter prior to
15 the hearing, then all you need to do is provide us with
16 your name and address. You can e-mail this to us at
17 FTBAdvocate@ftb.ca.gov. This e-mail address can also be
18 found on our website by searching for "taxpayer advocate
19 services."

20 Thank you, Madam Chair.

21 CHAIRPERSON YEE: Thank you, Chris, very much.

22 First, we will hear from Lynn Freer from Spidell;
23 followed by Joyce Cheng from the California Society of
24 Enrolled Agents. Then we will open it up for any
25 additional commenters. And we would like to request

1 that you limit your comments to five minutes each to
2 ensure everyone has time to speak.

3 So, Lynn, good afternoon. You may proceed when
4 you are ready.

5 MS. FREER: Okay. Can you hear me? I think I
6 did it right.

7 CHAIRPERSON YEE: Yes. Yes. Hi, Lynn.

8 MS. FREER: Okay, good. Good afternoon, Madam
9 Chair, Board Members, FTB staff, and other individuals
10 attending the meeting today.

11 My name is Lynn Freer, and I'm the president of
12 Spidell Publishing. We specialize in California tax and
13 have for more years than I can remember.

14 Anyway, in any event, before I start with my two
15 issues, I would just like to commend the Franchise Tax
16 Board staff this year for their active assistance with
17 all of the COVID-19 pandemic issues. I have not ever
18 seen the FTB be more proactive about coming up with
19 solutions and frequently asked questions and trying to
20 help taxpayers and tax professionals to work through all
21 of the changes that had to be made.

22 And, you know, I have a lot of respect for all of
23 you to begin with this year, in particular. I think you
24 did a fabulous job.

25 My issue -- the first one really has to do in

1 part with the payment of the estimated taxes. And the
2 electronic -- the e-pay penalty for California taxpayers
3 who may have made a first and second quarter estimated
4 payment, or a first and second quarter estimated payment
5 and a prior year payment, on July 15th, when they make
6 the payment in one payment, oftentimes this can be that
7 the amount of the payment exceeds the \$20,000 threshold,
8 which results in the FTB requiring a -- requiring a
9 taxpayer to make all future payments electronically.

10 Now, I personally wouldn't consider mailing a
11 check anymore. I have gotten -- it's just so much
12 easier, but there are a lot of folks who either, A,
13 don't want to; B, can't; or, C, don't realize that this
14 is a problem.

15 So what we are concerned about is, for example,
16 let's say I had a first and second quarter estimated
17 payment of \$15,000 each. If I made them in two separate
18 transactions, then the e-pay penalty wouldn't be
19 invoked. But if I make them as one payment, that makes
20 \$30,000; puts them over the limit.

21 So my recommendation is that the FTB notify
22 that -- well, taxpayers have been notified. But because
23 they will not be sent a penalty until January, when the
24 next payment is due, we would request that the FTB issue
25 a blanket waiver from the penalty, if a penalty is

1 imposed, solely due to a unique situation present in
2 July 2020. In other words, anyone who made a payment
3 over the \$20,000 in 2020, that they be allowed -- that
4 they be exempt from the imposition of that future
5 penalty.

6 Short of that, we would like to have the FTB
7 issue a policy that would require FTB staff to abate the
8 penalty whenever a taxpayer or representative calls, to
9 have the penalty abated, to ensure that it doesn't get
10 forgotten later on.

11 And I guess that's part of my concern is that
12 although the FTB did send -- in a timely manner, send
13 the notices out -- I know because I got one -- they did
14 send -- you guys did send the notices out. In many
15 cases, it was around, you know, October 15th,
16 September 15th, when people are, again, trying to make
17 payments, and that the notices could easily be -- have
18 been ignored. So that it's our first -- our first
19 issue.

20 The second issue is a little bit more
21 interesting, because it had to do with written
22 information that was provided to the California Society
23 of Enrolled Agents regarding an LLC from another state
24 that has California members.

25 And at the liaison meeting in October, they asked

1 the question: A taxpayer who is a California resident
2 sets up an LLC in Missouri to manage rental properties
3 in Missouri. The California resident does not have any
4 rental properties in California. Is there a requirement
5 to report the minimum franchise tax of \$800 based on the
6 activity of the Missouri LLC?

7 And the answer that was provided by the FTB was
8 very misleading. And basically it just says that there
9 are several factors you have to look at and whether they
10 are engaged in doing business; are they doing business
11 in California; and it's done on a case-by-case basis.

12 And the problem is that 99 percent of these
13 people are managing rental properties and they are doing
14 business in California, because they are hiring the
15 rentals. They are the managing members. They are
16 hiring the renters. There's a number of cases. And,
17 particularly, the Mockingbird case. In the Mockingbird
18 case, it was exactly that scenario with California
19 residents -- members who hired a manager in another
20 state to manage their rental property. And the -- at
21 the time, the Board of Equalization that was hearing
22 appeals, they ruled that, in fact, that Mockingbird was
23 a California LLC.

24 And I think by going into detail of, yes, we all
25 know there are situations where that California LLC

1 isn't doing business, the FTB is very, very aggressive
2 going after those folks. And that I believe there
3 should have been a much more in-depth discussion about
4 Mockingbird.

5 And after I questioned the response, saying they
6 responded with the appeal of Mockingbird LLC, is only
7 one of those cases. Appeal of Mockingbird is a
8 nonprecedential BOE summary decision.

9 MS. CASEY: You are at your five minutes.

10 MS. FREER: Hello? Am I over the five minutes?
11 Hello?

12 CHAIRPERSON YEE: Lynn, you are up to your five
13 minutes. So if you could summarize the rest of your
14 comments. And we do have your comments in writing as
15 well, yes.

16 MS. FREER: Okay. Yes, you do. You do.

17 So anyway, that is -- that is my second issue and
18 I really appreciate your attention and giving us some
19 answers on these. Thank you.

20 CHAIRPERSON YEE: Thank you very much. Really
21 appreciate Spidell always coming forward with issues of
22 concern.

23 Up next we have Joyce Cheng from the California
24 Society of Enrolled Agents. Joyce?

25 PHONE MODERATOR: Ms. Cheng, your line is open.

1 MS. CHENG: Thank you. Good afternoon, Madam
2 Chair, Board Members, Mr. Smith, and everyone in
3 attendance.

4 First I want to ditto Lynn Freer's comments about
5 the excellent response from the FTB this past year. It
6 has not gone unnoticed, and we are gratefully --
7 gratefully appreciative.

8 Today, CSEA's participation in the Taxpayers'
9 Bill of Rights Hearing is a high priority for our
10 membership. We've been bringing items of concern to
11 this venue for more than ten years, and we certainly
12 appreciate the attention given. We commend everybody at
13 the FTB for all the continued assistance to the tax
14 professional community and their clients.

15 The issue we want to bring this year is the
16 California Individual Health Insurance Mandate
17 penalties. With the passage of SB 78, California's
18 penalty for failure to maintain monthly health insurance
19 coverage became effective on January 1 of 2020.

20 CSEA understands that the California penalty will
21 be calculated on Form 540, including taxpayer disclosure
22 of available exemptions and that premium subsidies will
23 be available for California taxpayers whose income is
24 below 600 percent of the federal poverty level.

25 Our members are concerned that many individuals

1 who lost their jobs as a result of COVID-19 may also
2 lose their employer-based health insurance coverage.
3 And it is reasonable to suspect that a large percentage
4 of taxpayers may experience a period of time without
5 health insurance and may not qualify for a subsidy under
6 covered California.

7 CSEA's concerns with this issue are twofold:
8 First, we appreciate the FTB's commitment to working
9 with Covered California to disseminate information to
10 taxpayers regarding penalties and the subsidies
11 available to them.

12 However, CSEA requests that the FTB continue to
13 work with the tax practitioner organizations to
14 expeditiously disseminate additional information about
15 how these rules will impact taxpayers who have recently
16 lost their health insurance, whether or not a taxpayer
17 qualifies for a subsidy and how a taxpayer can go about
18 obtaining new coverage.

19 Additional information is necessary for ensuring
20 that individual taxpayers comply with the new law and
21 will help minimize return errors.

22 Second, due to COVID-19, many taxpayers are
23 experiencing additional economic hardships, and the
24 imposition of the health care penalties may compound an
25 issue in which some taxpayers cannot afford to pay their

1 tax liability.

2 More resources that help explain to taxpayers
3 what to do if they cannot pay their tax liabilities are
4 needed, both in print and on the FTB website. CSEA is
5 committed to working with the FTB to help disseminate
6 this information and looks forward to future discussions
7 about how to help taxpayers through these difficult and
8 unprecedented times.

9 That's my formal presentation.

10 I would like to add that a wish list would be if
11 the FTB could come up with a policy or some sort of
12 waiver for 2020 regarding this penalty, or some way to
13 help minimize or alleviate any impact. This was an
14 unprecedented year, and CSEA stands committed to helping
15 get the word out and helping return preparers in the tax
16 practitioner community be informed of all the
17 information necessary.

18 We thank the Franchise Tax Board for its
19 attention to the issues presented.

20 Thank you very much.

21 CHAIRPERSON YEE: Thank you very much, Joyce, for
22 coming forward and for the written comment as well.

23 Let me, before I turn to public speakers, just
24 check back in with Chris Smith, with any comments on
25 either the comments provided by Ms. Freer or Ms. Cheng.

1 MR. SMITH: Yes. I would just say that, again,
2 we appreciate working with Spidell, and we're thankful
3 they brought these issues up. We will look into both of
4 them.

5 And regarding out-of-state LLCs, I would like to
6 apologize if our earlier response to this question was
7 unclear. I know that we will work to get some -- or
8 provide you with some additional clarification on that.

9 And, for CSEA, I would like to thank CSEA for
10 everything they have done in helping FTB and Covered
11 California get information out to tax professionals
12 about the health care mandate.

13 We look forward to continuing to partner with
14 them and Covered California/CSEA to generate awareness
15 about the individual mandate. For those who are unable
16 to pay the health care mandate penalty, we're going to
17 have some information on our website that provides
18 options on what to do if they cannot pay. We have that
19 information out there now.

20 We're also going to add a link to our health care
21 mandate page that will take taxpayers over to, you know,
22 information -- if-you-cannot-pay information, so that we
23 can work with them there. And I think the biggest thing
24 is if someone cannot pay, or they are having a billing
25 issue or problem paying, that they just -- they or their

1 representative contact us as soon as we can so we can
2 work with them to resolve their issues.

3 We do have a lot of options, but, really, the
4 most important thing is that they do contact us as soon
5 as possible.

6 Thank you, Madam Chair.

7 CHAIRPERSON YEE: Thank you, Chris, very much.

8 Let me now turn to see if there are any members
9 of the public who wish to speak during this Taxpayers'
10 Bill of Rights hearing item.

11 PHONE MODERATOR: Yes. If you would like to
12 place yourself in the queue for public comment, please
13 press 1 and then 0 at this time.

14 We're going to go to the line of Christine Grab.
15 Please go ahead.

16 CHAIRPERSON YEE: Okay. Good afternoon.

17 MS. GRAB: My name is Christine Grab.

18 I have 11 requests:

19 One, send the policy of withholding estimated tax
20 payments via credit elect until the taxpayer files a
21 return. This policy violates Revenue and Tax Code
22 19363, which says that no matter what date you file the
23 previous year's return, the credit elect must be applied
24 on Tax Day, which is usually April 15th.

25 FTB did not apply these payments in accordance

1 with the law. Instead, FTB puts the credit elect money
2 into suspense, which is a fancy word for the general
3 slush fund. The credit elect money does not get moved
4 from the slush fund until the taxpayer files that year's
5 return. FTB claims this policy is in line with federal
6 practices, but that is a lie. The IRS does not withhold
7 payments made via credit elect.

8 I believe that FTB's practice of keeping the
9 taxpayer's money, instead of timely applying it to the
10 taxpayer's account, is the federal crime of embezzlement
11 per US Federal Code 18 section 654.

12 Demand notices are only sent to taxpayers whom
13 FTB believes have underpaid their tax liability. The
14 accompanying demand penalty is a crippling 25 percent of
15 extra, additional taxes beyond what the taxpayer
16 actually owes.

17 By temporarily embezzling the credit elect
18 payment, FTB falsely makes it appear that the taxpayer's
19 account was underfunded, and, thus, a demand penalty is
20 falsely imposed.

21 The false imposition of penalties as a result of
22 FTB's own unlawful embezzlement is the federal crime of
23 racketeering, per the RICO Act, 18 USC section 1961, et
24 seq., 1970.

25 If a taxpayer is single, FTB will apply the

1 credit elect to the taxpayer's account after the demand
2 notice has gone out, but they are still on the hook for
3 the false penalty. However, married taxpayers are
4 double-racketeered. FTB refuses to apply monies to
5 married people's account until the return is filed.

6 In addition to the false penalty, FTB demands
7 overpayment of estimated tax monies that would not have
8 been due had the original estimated tax payments been
9 applied in accordance with the law.

10 The second ploy to collect extra funds from
11 married people is also the federal crime of
12 racketeering.

13 In my OTA appeal, FTB never denied its
14 withholding practice is unlawful. FTB has yet to deny
15 it in the case pending now in Superior Court. FTB's
16 Disclosure Department denies this practice exists.

17 I would like an explanation as to why different
18 departments give me conflicting information.

19 Two: End the policy of withholding estimated tax
20 payments from married couples. It is not only credit
21 elects that are withheld from married couples; all
22 estimated tax payments made by married couples are
23 withheld. If a married couple files late, they are
24 double-racketeered, as I just described.

25 FTB claims this policy is in line with federal

1 payments, but that -- practices, but that is a lie. The
2 IRS does not withhold estimated tax payments made by a
3 married couple. The taxpayer says that joint estimated
4 tax payments can be apportioned in any manner that the
5 spouses agree upon. By not giving the spouses the
6 opportunity to designate how much money is to be applied
7 to each spouse, and, instead, withholding the payment
8 altogether, FTB is committing the federal crime of
9 embezzlement. Falsely making the taxpayer's account
10 appear underfunded in order to falsely impose penalties
11 is the federal crime of racketeering.

12 FTB's Disclosure Department also denies that this
13 practice exists.

14 I would like an explanation as to why different
15 departments give me conflicting information.

16 Three: Put amortization schedules on each bill
17 showing how the interest for the billing period was
18 calculated. In the documents that have come out through
19 my court cases, I have caught FTB overcharging me
20 interest nine times via four different mechanisms.

21 If FTB stands by their principles of operating
22 transparency, then FTB will start putting complete
23 amortization schedules on bills, including the interest
24 rate and the dates that interest began accruing. This
25 way, the taxpayer can check accuracy for themselves.

1 Four: Fix flaws in the software which facilitate
2 accounting irregularities. I have caught a third
3 racketeering scheme. In a California Supreme Court
4 accusation that I filed against FTB employee Eric Yadao,
5 I documented that three of my estimated tax payments
6 were applied to bills that never existed on previous tax
7 years, that had already been zeroed out and closed. The
8 money was then refunded to me, leaving the years the
9 payments had intended for underfunded.

10 Penalties were imposed for underpaying, even
11 though my account would not have been underfunded, had
12 FTB not breached its duty to accurately apply payments.

13 FTB software should not allow payments to be made
14 on bills that don't exist. The interest overcharges
15 that I mentioned earlier seem to be facilitated by
16 similar flaws in the software.

17 I am requesting that FTB immediately correct the
18 flaws that I have identified, as well as any other
19 software flaws that facilitate accounting
20 irregularities.

21 If FTB stands by their principles of managing
22 taxpayer accounts with accuracy and financial integrity,
23 then FTB will immediately make the proper modification.

24 MS. CASEY: You have reached five minutes.

25 CHAIRPERSON YEE: Ms. Grab, your --

1 (unintelligible cross-talk).

2 MS. GRAB: Last year, I asked FTB to ends its
3 practice --

4 CHAIRPERSON YEE: Thank you for your comments. I
5 will say for the record, we have your requests in
6 writing, and your time has expired.

7 We are going to move on. Thank you.

8 Our next public commenter.

9 PHONE MODERATOR: There are no other public
10 commenters in queue.

11 CHAIRPERSON YEE: Thank you very much.

12 Members, any questions or comments? And before I
13 have Mr. Smith conclude this portion of our meeting.

14 (No verbal response.)

15 CHAIRPERSON YEE: Okay. Seeing none, Chris, do
16 you want to close it out?

17 MR. SMITH: Yes. I would just like to thank
18 everyone for participating in this year's Bill of Rights
19 Hearing.

20 We will get the responses out by February 1st.
21 We will also have them posted on our website for
22 everyone. And I'd also like to wish everyone a happy
23 and very safe holiday season. Thank you, Madam Chair.

24 CHAIRPERSON YEE: Thank you very much, Chris.
25 All the best to you, too. All right. Thank you very

1 much, Members.

2 Our next item is Item Number 6. This is the
3 Executive Officer's time.

4 Let me turn it over to Selvi Stanislaus.

5 EXECUTIVE OFFICER STANISLAUS: Can you hear me?

6 CHAIRPERSON YEE: Yes. We can hear you.

7 EXECUTIVE OFFICER STANISLAUS: Okay. All right.

8 Thank you, Madam Chair, and good afternoon, Board
9 Members.

10 I want to start by thanking our Board and my FTB
11 family and recognize the great work, guidance, and
12 partnership that have made our year successful.

13 2020 has been one of the most challenging and
14 unique years in my tenure here. So as the year comes to
15 a close, I just want to share how much I've been
16 inspired by what my staff has done to help one another,
17 our community, and our taxpayers.

18 So in spite of the many challenges and changes we
19 have faced because of the pandemic, our employees
20 continue to adapt and persevere. It has not been easy
21 adapting to a new lifestyle of social distancing,
22 distance learning, and shifting the majority of our
23 staff to telework. But we managed to do so while also
24 continuing to provide our statewide customers with what
25 FTB is known for: An excellent experience and

1 taxpayer-centric service.

2 So I would like to thank my staff again for all
3 they do.

4 In addition, I would like to extend a heartfelt
5 thank you to the taxpayer community. Our partners in
6 the taxpayer community have continued to be a valued
7 resource, as we have changed some processes in our
8 efforts to protect the health and safety of our
9 taxpayers and our employees.

10 FTB worked early with taxpayers, taxpayer
11 professionals, and trade groups to find remote solutions
12 that would be able to accomplish everyone's needs by
13 ensuring taxpayers and FTB safety standards. We could
14 not have been successful in this transition without the
15 continued support and guidance from the taxpayer
16 community.

17 And, last, but certainly not least, I want to
18 express my gratitude to you, our Board members, who
19 always provide valuable perspective and experience.
20 FTB's success, despite many obstacles this year, is due
21 largely to the outstanding leadership and forward
22 thinking that each of you has provided.

23 Thank you, Board, for your time.

24 CHAIRPERSON YEE: Thank you, Selvi, very much.
25 And very much appreciate your leadership during this

1 extraordinary time and the ongoing dedication of the FTB
2 family and team.

3 It is really quite remarkable in terms of not
4 missing a beat to continue to serve the taxpayers of
5 California, and just really appreciate your leadership
6 at the helm during this very, very difficult,
7 challenging time.

8 Thank you.

9 Members, Item Number 7 is Board Members' Time.

10 Let me turn it over to Members Vasquez and Miller
11 for any comments.

12 MEMBER VAZQUEZ: Yes. I would just like to close
13 and thanking also Selvi for, you know, all your
14 wonderful advice and support this year for me. And
15 especially your staff -- you know, you mentioned them
16 already -- they have really -- their hospitality and
17 their professionalism has been really -- for me, has
18 been very helpful.

19 The only thing I would ask -- and I probably
20 should have asked it while we were into the Bill of
21 Rights Hearing -- and it's just a question -- as we move
22 forward, you know, in light of everything that's
23 happened around COVID, with the filing -- I guess the
24 tax filing season fastly approaching us, are we going to
25 be doing any kind of, like, notice of a Q&A or some kind

1 of outreach dealing with the whole COVID-19 tax issues
2 that are going to be upon us?

3 I guess the one thing that kind of hits me, as I
4 look around with my local businesses here, in my
5 district, here in L.A., especially in the County of
6 L.A., there's so many of them that went out the -- well,
7 they had to go out of their way to try to survive, you
8 know, with the whole outdoor dining situation, because
9 they couldn't dine inside. And many of them made some
10 huge expenditures to try to accommodate them, and they,
11 in that whole process, you know, the County -- we ended
12 up closing many of them, where they couldn't even use
13 it -- those facilities; it was strictly limited to just
14 takeout.

15 So I know they are pretty much out quite a bit
16 right now, until we get hopefully, you know, moving a
17 little bit quicker with this vaccine and start allowing
18 them to open up a little bit more with outdoor dining
19 and, hopefully, at some point, indoor dining.

20 So I was wondering what we can do on our end of
21 it to try to help our businesses so they can survive.

22 EXECUTIVE OFFICER STANISLAUS: Thank you for your
23 question, Member Vasquez.

24 So we already have FAQs on our website. We have
25 done things about, you know, working with taxpayers.

1 We, at FTB, we do have a heart. We try to understand
2 what taxpayers are going through and we are working with
3 them on collections and all those matters.

4 So looking -- going forward, we will be working
5 with the Governor's Office to see what other things the
6 Governor's Office will be doing and following their
7 direction and also the Board's direction.

8 However, the filing season, as we know, is moving
9 forward. It's going to be -- as far as we know, it's
10 going to be April 15th, 2021, and we are working towards
11 that goal.

12 Thank you.

13 MEMBER VAZQUEZ: Thank you. I appreciate that.

14 And then moving forward, again, I really
15 appreciate working with, especially, our Controller,
16 Betty Yee, and Member Miller, and other staff members
17 this year. And looking forward to continuing working
18 with you all for the next year, in 2021. As -- I just
19 got reelected to the chair again, so I will be
20 participating with you another year. And really
21 appreciate and looking forward to see what we can do to
22 hopefully make it a little bit easier on, especially, a
23 lot of our small businesses moving forward.

24 Thank you.

25 CHAIRPERSON YEE: Thank you, Member Vasquez. And

1 congratulations on your reelection as chair. I very
2 much look forward to working together on some of these
3 issues.

4 Member Miller, any comments?

5 MEMBER MILLER: Thank you, Madam Chair.

6 Just to Mr. Vazquez's point about the supporting
7 small businesses, I think you have seen the governor, in
8 collaboration with the FTB and the Controller and
9 others, really try and put a lot of resources and help
10 in those efforts. The State will be launching the
11 \$500 million grant program for small businesses.

12 So we would love to make sure that you have that
13 information, Mr. Vazquez, and we can make sure to
14 amplify that.

15 Madam Chair, it's always truly a pleasure to get
16 to work with you and your leadership. And, obviously,
17 the compassion that Selvi, you and your team bring to
18 some really complicated issues is really second to none.
19 And I'm really grateful that the taxpayers of California
20 have that in extraordinary times, when things really are
21 so difficult. And so very, very grateful for all of the
22 work.

23 And Mr. Vazquez, we're always here to answer
24 questions and to make sure that we know how to serve so
25 many in California that are -- that really need our help

1 right now.

2 So thank you, everyone.

3 CHAIRPERSON YEE: Thank you, Member Miller, very
4 much, for being at the helm of bringing forth the
5 administration's perspectives and programs of assistance
6 to so many of our businesses that are hurting in
7 California.

8 Let me just add my thanks to the FTB staff, to
9 Selvi, and, really, to our taxpaying community and our
10 tax practitioners. And this has been an extraordinary
11 year. And without the collaboration and, really, the
12 partnerships that we have enjoyed in the past years, I'm
13 not so sure that we could have continued proceeding this
14 year without providing as much flexibility as we ended
15 up providing to our taxpayers.

16 Certainly, the filing deadlines, you know, moving
17 as they did -- and we don't anticipate that will be the
18 case for next year, at least not at this point in time,
19 but to be able to get that word out and to be sure that
20 we had real-time information around all of that. It was
21 very, very critical.

22 But I also wanted to just say that to be able to
23 convene virtually like this is very important, and to be
24 able to hear from the public, and I just really
25 appreciate so many of the State's bodies, the boards and

1 commissions, being able to conduct business in this way.
2 It really has not only allowed us to continue to do our
3 business, but has broadened our reach in terms of
4 members of the public who can access us during this very
5 critical time.

6 So very appreciative of the team who are putting
7 these meetings together and making it possible for us to
8 do our business.

9 And then, what I think to Member Vazquez's point
10 and to Member Miller's highlights of what this
11 administration is doing for small businesses, I think
12 all of us have an opportunity to do our part in terms of
13 the outreach around the assistance that is available.

14 And I -- Selvi, I will be working with you. But
15 I think just making it very easy to access FAQs to be
16 sure that we are providing a bit of face time in terms
17 of orientation to some of the industry groups that are
18 going to be most heavily affected by what's been
19 happening with the COVID situation, I think, would be
20 well received. And so I definitely want to work with
21 you on a program around that.

22 But I think, you know, one of the things, as
23 we're approaching this holiday season, that gives me
24 hope is, I think all of us are ready to chock up 2020 as
25 a year to hopefully just be behind us.

1 But I also would like us to just take stock about
2 what we've been able to accomplish, and it is nothing
3 short of remarkable. And I think, for many -- and I
4 hear this from time to time, but, increasingly so, just
5 how much the public has been very appreciative of
6 government. We have stepped up. We have stepped in.

7 And I know that between the Franchise Tax Board,
8 our State Controller's Office, this administration has
9 had, really, the experiences of Californians and,
10 frankly, the health and safety of Californians, as the
11 paramount concern. And that continues to be the
12 paramount concern, including our state workforce.

13 And so as we are working very hard to get to the
14 other side of this pandemic, I think the lesson that I
15 will carry away from this, and I hope will be the lesson
16 and will be the experience that we all can look back to
17 is how we got through this difficult chapter, is that we
18 all have recognized that we are each essential to the
19 other, and that for all of us to remain healthy and
20 safe.

21 We do take care of ourselves, first and foremost,
22 by wearing masks and practicing social distancing;
23 proven guidelines that can really help put a curve on
24 the spread of the virus.

25 And so, in that spirit, and certainly, in this

1 time of the holidays, we've just finished observing
2 Hanukkah, the Festival of Lights, and lights are always
3 a very hopeful sign that there is just hope and much
4 good to come in the future.

5 And in that spirit, I just wish everyone a very
6 healthy and safe and meaningful holiday season. And,
7 again, a tremendous -- just a tremendous thanks for the
8 ongoing work, not missing a beat, and just being
9 accessible, and the reliable service that's been
10 provided during this very, very difficult year.

11 Thank you, everyone.

12 Let me see if there are any members of the public
13 who wish to speak during this time, during Board
14 Members' Time.

15 PHONE MODERATOR: As a reminder, you may place
16 yourself in the queue by pressing 1, then 0, on your
17 telephone keypad for public comment.

18 (No verbal response.)

19 PHONE MODERATOR: And there is no one queuing up
20 for public comment at this time.

21 Please continue.

22 CHAIRPERSON YEE: Thank you very much. Okay.
23 Members, any other business to come before the Board
24 today?

25 MEMBER VAZQUEZ: Just -- just, finally, I also

1 wanted to just wish everybody a happy holiday season and
2 a happy New Year, and I'm looking forward --
3 (video/audio malfunction).

4 CHAIRPERSON YEE: All right. Member Vazquez, it
5 looks like you froze a little bit. But thank you for
6 your holiday wishes.

7 Seeing no other business to come before this
8 Board -- there are go. You are back.

9 Member Vazquez, you froze out of my screen a
10 little bit. So do you want to repeat your message? You
11 are on mute.

12 MEMBER VAZQUEZ: Are you able to hear me now?

13 CHAIRPERSON YEE: Yes.

14 MEMBER VAZQUEZ: Yeah. I was just trying to
15 close it out on my end of it. Just wishing everybody a
16 Happy Holidays and a Happy New Year and to stay safe and
17 healthy and looking forward to working with you all,
18 hopefully in a healthier 2021. Thank you, all.

19 CHAIRPERSON YEE: Thank you all very much. Thank
20 you.

21 And if I could, I would like to just adjourn
22 today's meeting in honor of those who have lost loved
23 ones during this pandemic, and to our courageous
24 frontline health care workers who are doing everything
25 they can to keep us safe, as well as all other essential

1 workers.

2 Thank you, Members. Happy Holidays and Happy New
3 Year. Take care. This meeting is adjourned.

4 (Proceedings concluded at 2:43 p.m.)

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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 were 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 4th day of January 2021.

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