chair John Chiang
member Betty T. Yee
member Ana J. Matosantos

State of California
Franchise Tax Board

02.01.10

Gina Rodriquez
Spidell Publishing, Inc
PO Box 61044
Anaheim, CA 92803-6144

Dear Ms. Rodriquez,

Thank you for your presentation at the Taxpayers' Bill of Rights Hearing held on December 3, 2009. I am responding to the proposals you submitted.

<u>Automatic Disaster Tax Relief</u>
When the President declares a federal disaster, federal disaster loss tax relief is provided under Internal Revenue Code section 165(i). The taxpayer can immediately claim a disaster loss on a federal income tax return for the year in which the disaster occurred or file an amended federal return for the prior year to expedite a refund. No additional federal legislation is needed.

In the case of a presidentially declared disaster occurring in California, the taxpayer can elect to file an amended income tax return for the prior year so that the refund is expedited. Specific legislation is required for each disaster both to allow taxpayers to carry excess loss forward for 15 years and, in some instances, to permit an extension to file a return for the year in which the disaster occurred.

For disasters that receive only a Governor's proclamation, legislation is required to provide all of the disaster loss tax relief described above. Occasionally, disaster loss tax relief legislation is enacted shortly before the deadline to file a prior year's state return, which could preclude some taxpayers from taking advantage of the relief.

To provide automatic disaster loss tax relief for "Governor-only" proclaimed disasters, as suggested by this proposal, would require legislation. Enacting legislation for automatic disaster loss tax relief would improve efficiency by eliminating the need for legislation on each disaster and would mitigate instances where taxpayers are unable to claim the relief due to missed filing deadlines. Further, this proposal would simplify the tax code by eliminating the lengthy list of disasters that must be reviewed to determine if a loss qualifies for treatment. However, you should be aware that past experience demonstrates that legislators want to maintain opportunities to enact legislation that demonstrates action in response to disasters and supports their constituents.

It is recommended that FTB forward this proposal to the FTBs three member board for consideration.

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Web Services Enhancements

Notification about changes to our FTB web content:
We are researching using RSS feeds. This allows interested parties to subscribe to the feed and receive alerts about changes to the website automatically. We need to verify that there are no associated costs or security issues. If not, we plan to implement after the filing season.

Forms and Publications Tab on FTB website:
We are working on the feasibility of adding the word "Pubs" or "Publications" to the Forms tab on the homepage. To add this additional text requires us to revise our website template to display at 1024x760, rather than the current display of 800x600. Otherwise, the pages will render with a horizontal scroll bar, which is not recommended for best web design. Currently, we are working through the issues and plan to implement the tab changes after the filing season. Please note that the title of the "Forms" landing page is "Forms and Publications."

Additionally, with the recent implementation of the new forms locator function, we are striving to improve issues associated with finding or accessing forms and publications. Search results are categorized as forms, instructions, schedules, booklets, and publications. By using a specific category, for instance "publication" as a keyword, users can view all publications available. The form locator was released in December, and as with any new product, we continue to make modifications for continued improvement. Improvements we are currently addressing include number sequencing, identifying missing products, add an "all forms" button, and include additional instruction on specific searches. In addition, we will also look at creating uniform naming conventions for publications, informational brochures and other types of products listed using the forms locator function. Going forward this should help with the identification of publications, for example, by including the word publication in the title. We appreciate your assistance with any additional suggestions you may have.

Statement of Information Coordination

California law requires corporations, limited liability companies, and common interest development associations to update the records of the California Secretary of State (SOS) on an annual or biennial basis by filing a statement of information (SI). To address the questions specifically:

(1) Taxpayers can e-file their SI to SOS for most corporations. From a business perspective, we are extremely disinclined to see SIs filed with income tax returns because of the experience we have had allowing taxpayers to report Board of Equalization (BOE) use tax on Business Entity (BE) returns. The SI would be even more complicated than use tax because we would need to receive and capture information from an entire schedule. The information would have to be transferred to SOS so they could update their files and not issue the penalty fee of $250. The BOE use tax was seemingly less complicated as it was the addition of a single line on the BE return and receipt of associated funds. Despite this, the BOE use tax has become a 100 percent fallout workload that causes delays in return processing. If taxpayers

filed the SI with their income tax return, we fear the fallout and delays would be similar if not worse.

(2) We could, feasibly, add a line on the return to collect the SI filing fee. We would also need to process the information from the SI and provide it to the SOS. Due to issues addressed above, we do not recommend including the SI with the income tax return.

(3) Currently, FTB and SOS do share certain information. When business entities initially register with SOS, the information is sent to FTB. However, if an entity subsequently files a tax return with a different address than what was received from SOS, FTB uses the address from the return, but the information is not sent to SOS to update their records. The main reason is that FTB wouldn't know if the address should update SOS. The address on the tax return may be the address the entity wants FTB to use for billing, refund, correspondence, etc., but it may not be the actual address of record they want with SOS. The same could be true when the entity files their required SI with SOS. The entity may want to change the address of record they want SOS to use, but not necessarily FTB.

When SOS imposes the $250 penalty for failure to file the SI, address information is again sent to FTB, but FTB doesn't necessarily update its records because the address that FTB has may or may not be the better address. When FTB collects the $250, it does not notify SOS of the collection and therefore does not send information to SOS. Although FTB may have had a different address that was used to successfully bill and collect from the entity, that doesn't necessarily mean that it is the actual address of record for the entity that should be used for SOS purposes, so again, FTB does not send the information to SOS.

SOS and FTB also exchange information when one of the agencies changes the status of an entity (e.g., suspends, removes suspension, etc.). While every effort is made to keep each agency updated, there could be times when each agency may not have the most current information. This is generally caused through manual intervention of changes.

While there could be some benefit for FTB and SOS to share more information, it becomes problematic to know which information would be appropriate for each respective agency to share and use, as well as what the entity intends each agency to use as its address. The information (e.g., address) provided to each agency may be different, and intentionally different because of who the entity wants each agency to contact.

<u>Interest Calculation on NOL Carrybacks</u>

Issue #1 – Interest Calculation on NOL Carrybacks.

Internal Revenue Code (IRC) section 6611(f)(1) provides that when an NOL carryback creates an overpayment in the year to which an NOL is carried back, interest is computed from the original due date of the return for the year creating the NOL carryback, not the year to which the carryback is made. IRC section 6601(d)(1) provides rules for the computation of interest on underpayments reduced by NOLs carrybacks.

For many years, California did not allow NOL carrybacks, and California law never conformed to IRC section 6611(f)(1) or IRC section 6601(d)(1). (See RTC sections 19340-19341 and RTC sections 19101-19114.)

However, in 2008, AB 1452 (Stats. 2008, Ch. 763) amended RTC sections 17526 and 24416.9 to allow NOL carrybacks beginning in 2011.Therefore, as Spidell correctly suggests, California law is out of conformity in this area with respect to the computation of interest on overpayments that would result from the application of an NOL carryback.
It appears that the proposal is suggesting that legislation should be pursued conforming to the federal interest rules in IRC section 6611(f) and, presumably IRC section 6601(d), with respect to NOL carrybacks.

Issue #2 – Other State Tax Credit Adjustments
California allows a credit for taxes paid to other states (OSTC) on income taxed by both states. See RTC section 18001 and 18002.

When the tax for which a credit was allowed is reduced or changed by the other state, California requires a corresponding adjustment to "recapture" the California credit. See RTC sections 18007-18009. Specifically, section 18009 requires interest to be charged on this recapture of the previously-allowed OSTC back to the date that the credit was originally allowed (usually the original due date of the return claiming the original OSTC amount).

It is recommended that FTB forward this proposal to the FTBs three member board for consideration.

<u>Final Federal Determination Definition</u>

See attached.

<u>Use Tax Look-Up Tables</u>
Use tax reporting on the state income tax return is provided for in Revenue and Taxation Code section 18510. This section has a sunset provision of 12/31/2009. Accordingly, legislation is needed to continue use tax reporting on the state income tax return. On 11/19/09, the BOE Board approved a legislative proposal to eliminate the sunset date of 12/31/09, in order to continue to require the FTB to provide a line for payment of use tax on the state income tax returns. BOE staff is aware of this proposal to include use tax look-up tables with the individual tax returns in order to ease the filing burden for taxpayers. FTB defers to BOE in regards to the inclusion of use tax look-up tables as part of the above discussed legislative proposal.

Sincerely,

Steve Sims, EA
Taxpayers' Rights Advocate

cc: Hon. John Chiang, Chair
Hon. Betty T. Yee, Member
Hon. Ana J. Matosantos, Member