chair John Chiang
member Jerome E. Horton
member Ana J. Matosantos

State of California
Franchise Tax Board

02.16.12

Jean Nelson
California Society of Enrolled Agents
3200 Ramos Circle
Sacramento, CA 95827-2513

Dear Ms Nelson,

Thank you for your proposals submitted for the Taxpayers' Bill of Rights Hearing as presented by Vicki Mulak. I am responding to the proposals.

Power of Attorney Notification on all Taxpayer Correspondence
As we mentioned in last year's response, our present POA system does not allow us to automate the noticing process and it would be cost prohibitive in most cases to provide duplicate notices to the taxpayer and their representative. When the Enterprise Data to Revenue-Taxpayer Folder becomes available, representatives will have the ability to view their client's account including account status, FTB actions, an online view of notices issued electronic images of Tax Returns and associated correspondence.

It is very important to FTB to maintain a cooperative working relationship with the tax professional community. We understand your concerns and to that extent, we are sending your comments to the EDR Project, so that these concerns can be considered during the requirement development process.

Implementation of Virtual Hold Technology (VHT) Service on Practitioner Hotline
Virtual Hold (VH) systems are designed for call centers with high call volumes and large staffing levels. Risks are involved when implementing VH into a small call center; therefore, the vendor recommended that the Practitioner Hotline not offer this tool.

The Practitioner Hotline consists of 20 Customer Service Representatives (CSRs). Staffing levels regularly fluctuate between 12 to 17 CSRs due to start and end of shifts, breaks, lunch, planned vacation, and absenteeism. Low staffing levels in call centers utilizing VH may result in:

- Inaccurate Estimated Wait Times for customers electing to hold or receive a call back.
    - The VH system uses an algorithm which includes the number of available staff and estimated wait time for the last 70 calls. In a small call center, the calculation does not work well due to the lower volume of calls and staffing fluctuations throughout the day.
- Callbacks being returned outside return call parameters (10percent before and 20percent after estimated call back time).

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- Unexpected, additional wait times for customers in the "waiting queue", after the callback is made.
- Difficulties managing Level of Access/Service, due to large VH call back queues, resulting in higher deflection rates and possible system purges.

In addition to the technical aspects, the following issues exist:

- We currently use VH on toll-free numbers. The Hotline is a toll number, and therefore FTB would be incurring toll charges for the callbacks. FTB is not budgeted for these outgoing calls.
- When a callback is made to a tax professional, it may travel through a company switchboard or a secretary. This could result in CSRs having to hold until the switchboard/secretary can connect the appropriate party, which would increase the call time and impact other practitioners trying to get to a CSR.

FTB tried VH on a small toll free call center and has found it extremely difficult, if not impossible, to manage effectively.

We value our relationship with the practitioner community. Although VH is not feasible for the Hotline, FTB is committed to providing excellent service to tax practitioners.

Update Requested on Increase to Lien Filing Threshold

FTB continues to evaluate and review the effectiveness of the lien program including the impact of our current dollar threshold for filing liens. During our ongoing review we identified improvements to current lien practices and procedures, and the need for taxpayer focused education. We expect to enhance lien information available on our public website in March 2012, and also plan for future enhancements to our Interactive Voice Response (IVR) and collection notices to better educate taxpayers on the impacts of a lien.

Collection Process Inconsistencies Remedied

The FTB strives to provide consistent and equitable treatment to all of our customers. We are committed to following our mission to administer and enforce California's tax laws effectively with fairness and integrity.

Collection staff evaluates taxpayer's information in order to determine whether a financial hardship exists and warrants a release or modification of an outstanding levy or other collection action. Staff may evaluate disposable income from a financial statement review; analyze assets available to resolve the balance due and other information available to make their decision. While each case is unique based on the information provided and available, our expectation is that staff treat each customer fairly and professionally.

We appreciate the suggestion to provide further guidance for our staff and value your concerns. In preparation for an expected increase in collection notices and actions and resulting assertions of financial hardship review, we have made a concerted effort to emphasize the need to be consistent and treat all our customers with courtesy and respect. Specifically, we have revisited our practices in addressing hardship review as related to requests for modification or release of levies to establish an installment agreement. We have reemphasized the need to objectively evaluate financial and other information provided

to us and to rely on resources available including leads and supervisors to make appropriate decisions. We will continue to look for additional opportunities to clarify expectations and collection policies.

Cessation of Use Tax Collection on Income and Franchise Tax Returns

Your letter requested FTB's assistance in working with the Board of Equalization (BOE) and the Legislature to end collection of the use tax on income and franchise tax returns. While FTB would be happy to provide technical assistance to the BOE or to any legislator in drafting this proposal, the staff is unable to recommend that the FTB sponsor this legislative idea. Because administration of the sales and use tax is the responsibility of the BOE, we feel that any proposed changes in collection practices should originate with the BOE.

Remedy Needed for Disaster Treatment Confusion

Your letter raised concerns about the timing of disaster assistance legislation. It is unfortunate that taxpayers affected by the San Bruno explosion had to file amended returns to benefit from ABX6 11 (2010 Ex. Sess. 2010, Ch. 2), but it was inevitable given the timing of the disaster and of the subsequent disaster legislation. ABX6 11, which dealt with the September 9, 2010 San Bruno explosion, was both introduced and passed by both houses of the Legislature on October 8. The bill was enrolled on October 13 and signed by the Governor on October 19. Apparently, there had been the expectation the President would declare this area a disaster, triggering federal tax treatment to which California has generally conformed. When that didn't happen, legislation was introduced.

It has been suggested that tax benefits like those in ABX6 11 be made available in all disasters without the need for specific bills, but legislation to provide this general treatment has not been successful. For this reason, staff is not able to recommend that the FTB sponsor such a proposal.

See specific state disaster loss rules, and FTB Publication 1034, *Disaster Loss How to Claim a State Tax Deduction*, available on the FTB website. It provides a chart detailing both state and federal disaster loss provisions for California disasters.

Improved Outreach Needed on Withhold-at-Source Requirements

FTB is continually looking to improve our education and outreach efforts related to withholding. Based on feedback we have received this year related to the lack of awareness of withholding requirements, particularly among small businesses, the Withholding Services and Compliance Section (WSCS) is exploring additional outreach efforts. These efforts include:

- Incorporating withholding information in small business conferences and events attended by the FTB Advocate Office.
- Developing a small business tool available on our website for downloading.
- Providing easier access to the withholding link from the individual, business, and tax professionals tabs on our website.
- Exploring the opportunity to collaborate with industry associations to include articles in their publications to educate their members about withholding requirements, specifically when they would be required to withhold and how to comply.
- Exploring the use of social media to provide quick withholding tips.
- Enhancing existing webinars to include examples that will help clarify:

- When an individual or entity meets the definition of a withholding agent and is required to withhold.
- How to withhold, including what forms to submit.
- How to request reduced withholding or a waiver from withholding, including associated timeframes.

As WSCS explores the outreach efforts, actual implementation will depend on the availability of departmental resources.

While FTB continues to focus on education and outreach, we will not extend penalty leniency for backup withholding. Backup withholding was enacted by Assembly Bill X4 18, beginning January 1, 2010. FTB granted penalty leniency for two years to provide education and outreach and to provide industries the opportunity to come into compliance. However, the IRS has postponed the requirements for 1099-K reporting for one year. Backup withholding requirements on 6050W payment (merchant reporting) will begin after 12/31/2012. Thus, backup withholding will be required on section 6050W payments made after December 31, 2012. Although FTB will not formally grant extended penalty leniency for all backup withholding, FTB will follow IRS and extend leniency for merchant reporting. FTB's overarching goal continues to be self compliance. In this spirit, WSCS will continue to assist withholding agents with self compliance.

Assistance Needed with IRS-Approved Continuing Education Regulations

While we recognized that there may be some Enrolled Agents and PTIN holders that are not in need of continuing education regarding California tax matters for IRS purposes, the majority of California tax practitioners do need this type of education to meet requirements for their professional classification or membership in professional organizations.

Although receiving RPO approval for California only tax issues such as residency and enterprise zone credits does not seem likely, it appears RPO approval could be received under the new "80 percent rule" by using a comparison approach format. According to the IRS, an education program that covers state tax law issues will not qualify for IRS continuing education credit unless at least 80 percent of the program material consists of a comparison between federal and state tax laws. Accordingly, we will request clarification and examples from the IRS of how to meet the new "80 percent rule."

Just a reminder, these IRS changes do not affect the present California continuing education process.

Sincerely,

Steve Sims, EA
Taxpayers' Rights Advocate

cc: Hon. John Chiang, Chair
Hon. Jerome E. Horton, Member
Hon. Ana J. Matosantos, Member