



State of California  
**Franchise Tax Board**

02.11.13

Gina Rodriquez  
California Taxpayers Association  
1215 K St, Ste 1250  
Sacramento, CA 95814

Dear Ms. Rodriquez,

Thank you for your proposals submitted for the Taxpayers' Bill of Rights Hearing as presented by Dave Doerr and Therese Twomey. I am responding to the proposals.

Conformity

The FTB has a general policy in favor of conformity, and FTB staff regularly work with the Legislature to provide a thorough analysis of annual federal law changes. The department does not believe that the process for developing recommended conformity legislation properly lies with FTB staff because conformity is a legislative function rather than an administrative function of the FTB. FTB staff will continue to provide the Legislature all necessary research and analysis relating to conformity legislation.

Revenue Estimates

Prior to 2010, in addition to providing the estimated revenue impact, FTB's legislative bill analyses also included a narrative discussion of the revenue estimate and described in some detail the methodology and assumptions used in developing the estimate. The development and publication of the narrative discussion required a great deal of staff time as it required the translation of complex assumptions, methodologies and calculations into easily understood prose for its target audiences.

By 2010, employee furloughs, position reductions, and increased workload demands required FTB to prioritize and limit its workload to only its core functions. It was determined that the resources available were not sufficient to continue the practice and the decision was made to devote FTB's limited resources to maintaining the integrity of the revenue estimates rather than to continue the development and publication of the more detailed narrative descriptions.

It is important to note that this change in 2010 did not impact the rigor of the underlying analyses conducted and FTB continues to provide detailed explanations, both verbally and in written form, upon request by our Board, the Legislature, and Executive Branch. In addition, FTB publishes personal contact information in every bill analyses for anyone seeking clarification or additional information concerning revenue estimates and these analyses and contact numbers are readily available on FTB's website. In this regard, FTB has retained its commitment to transparency and deployed its limited resources as efficiently as possible.

While it may be desirable to resume the prior practice of publishing detailed narrative descriptions of revenue estimates for each proposal it considers, doing so at this time would compromise FTB's ability to timely produce revenue estimates for its customers and

jeopardize other critical activities that are necessary for the development and production of revenue estimates. FTB intends to continue its practice of providing detailed descriptions of its assumptions and methodology upon request and will continue to publish contact information on all its legislative bill analyses. In addition, the Economic and Statistical Research Bureau will develop and publish on FTB's website by April 30, 2013 a narrative description, with examples, of how it generally develops revenue estimates in an effort to promote enhanced transparency about the tools and methodologies used in its work.

Further, FTB staff currently participates in a statewide one day per month furlough program that is scheduled to terminate at the end of June 2013. The end of the furlough program may provide an opportunity for further examination of resuming the publication of the narrative descriptions in some limited fashion and FTB welcomes any and all suggestions to increase transparency while maintaining the highest quality work products utilizing existing resources.

#### 23036(i) Credit Limitation

The Legislature has modified Revenue and Taxation Code Section 23036 five times since the enactment of AB 1234 in 1997 and has not made a change to the credit limitation rules included under the section. Additionally, the Legislature specifically did not amend Section 23036 to modify or remove the credit limitation for disregarded entities when it enacted legislation to allow members of a combined report to share credits in 2009. It appears that the Legislature does not believe there is a general policy argument for deviating from the statutory treatment of the credit limitation rules in Section 23036. This is a substantive tax policy issue rather than a tax administration issue. The FTB has traditionally deferred to the Legislature and other tax officials for substantive tax policy matters. For these reasons, the department is unable to sponsor this proposal and would suggest instead that this proposal be provided to a legislative representative for consideration.

#### Erroneous Refund Penalty

The department is always looking to improve compliance, including efforts to reduce erroneous claims for refund, and we welcome your suggestions. FTB staff will also continue to provide all necessary research and analysis to assist the Legislature if it chooses to further consider conforming to the penalty on erroneous refund claims or enact alternative remedies.

Sincerely,

Steve Sims, EA  
Taxpayers' Rights Advocate

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