

chair **John Chiang**
member **Jerome E. Horton**
member **Michael Cohen**



State of California
Franchise Tax Board

01.14.2014

Lynn Freer
Spidell Publishing Inc
P.O. Box 61044
Anaheim, CA 92803

Dear Ms. Freer:

Thank you for your letter submitted for the Taxpayers' Bill of Rights Hearing held on December 4, 2013. I am responding to the proposals you submitted.

Small Tax Bills

The Franchise Tax Board recognizes this issue and prioritizes the need for a remedy. Staff anticipates a fix in place before the 2014 Return Information Notice season in late May.

Regulations for LLCs Doing Business in California

You suggested that FTB consider regulating in the area of the application of the statute defining "doing business" in California, Revenue and Taxation Code Section 23101, to limited liability companies and their members. The department analyzed these issues even before the Taxpayer Bill of Rights Hearing, and determined that long-standing principles of existing law provide adequate guidance to LLCs and their members, so a regulation is not necessary. Instead, the FTB Legal Division is currently drafting an FTB Legal Ruling that will explain these principles and provide guidance to taxpayers, and it expects that this ruling will be issued in the next 60 days.

Ralite-type Corporations

FTB staff is aware of this issue, and provided technical assistance to the Legislature in order to come up with a workable legislative solution. The State Bar Tax Section considered a similar proposal, with discussions about whether a one-time amnesty program or an ongoing process would be advisable to let inactive or suspended business entities dissolve either without going through the revivor process or abating some or all the minimum or annual tax for inactive periods. FTB also considered the idea of automatic dissolution after a period of suspension. It should be pointed out that the annual or minimum tax is imposed in part to address the administrative costs of the state of maintaining records concerning a business entity, and any

legislative proposal may need to address these administrative costs as well as the perceived revenue loss involved in abating the minimum or annual tax in order for the proposal to be successful.

A large percentage of corporations and LLC's that are suspended never take the steps needed to revive and dissolve, creating administrative problems for both FTB and SOS, including the expense of sending notices and letters as well as the necessity of recordkeeping and reporting on these inactive or defunct entities. FTB continues to educate taxpayers about the annual or minimum tax requirement, including information on FTB's forms and website, as well as the inclusion of a caution on SOS formation documents (LP-1, LLC-1, ARTS-GS, etc.) about the ongoing liability for the annual or minimum tax.

Conformity

FTB staff regularly works with the Legislature to provide a thorough analysis of annual federal law changes. This year the FTB proposed two legislative proposals that would conform to federal law or policies with modifications. The department developed these proposals because they would improve administrative functions by reducing the amount of time Audit and Legal spend resolving certain audits and appeals. The FTB has a general policy in favor of conformity, but the department does not believe the process of developing recommended conformity legislation properly lies with FTB staff because conformity is a legislative function rather than an FTB administrative function. FTB staff will continue to provide the Legislature all necessary research and analysis relating to conformity legislation.

Sincerely,

Steve Sims, EA
Taxpayers' Rights Advocate

cc: Hon. John Chiang, Chair
Hon. Jerome E. Horton, Member
Hon. Michael Cohen, Member