chair John Chiang
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State of California
Franchise Tax Board

01.14.2014

Ms. Patricia Kappen
California Society of Enrolled Agents
3200 Ramos Circle
Sacramento, CA 95827-2513

Dear Ms. Kappen:

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

Inability to Dissolve/Cancel Business Entities Formed but not Launched

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 the 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.

Mortgage Relief Nonconformity

FTB staff regularly work 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 property lies with FTB staff because conformity is a legislative function rather than an FTB administrative function. The department feels that the mortgage debt relief legislation (SB 30 or AB 42) is a policy decision that should be made by the Legislature.

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FTB staff continues to provide the Legislature all necessary research and analysis relating to conformity legislation.

Taxpayer Education re; Market-Based Sourcing Rules

FTB understands the complexity of how the market-based sourcing rules when combined with mandatory single-sales factor (SSF) affect the sole-proprietorships, small S corporations, and limited liability companies (LLCs). We are currently working to develop guidance in the form of frequently asked questions (FAQs) with specific examples to address impacts of SSF/market based sourcing to all taxpayers, including small businesses. The FAQs will be published online on the FTB website by March 2014. Go to **ftb.ca.gov** and search for law changes.

If more information is still needed after we post the examples, FTB will provide further guidance. In lieu of creating a separate publication, we will also include these FAQs and specific examples in our forms and instructions, as appropriate.

Small Tax-Exempt Organization Revocations

Tax-exempt organizations with average gross receipts less than the Form 199 filing threshold ($50,000 for tax year 2012 or $25,000 for tax years 2010 and 2011) are required to file the FTB 199N, California e-Postcard. An organization that fails to file the required e-Postcard for three consecutive years will automatically lose its tax-exempt status. The revocation of the organization's tax-exempt status is effective as of the filing due date of the third year.

Currently, FTB mails revocation notices to organizations that have not filed the required FTB 199N, California e-Postcard, for three consecutive years. FTB sent notices to the affected organizations in 2011 and 2012 advising them to file the required FTB 199N or face revocation in 2013. FTB published an article in the November Tax News and has added this information on the front page of FTB's Exempt Organizations webpage.

If an organization loses its California tax-exempt status, it must reapply using FTB 3500, Exemption Application, and have it approved to regain its tax-exempt status. Any income received between the revocation date and renewed exemption date may be taxable.

Relief is available through a reinstatement process. Reinstatement of tax-exempt status may be retroactive if the organization can show that it had reasonable cause for not filing, and show that it was active and operating for its exempt purpose.

Amended Return Processing

Amended returns can be complex in terms of the issues and adjustments included and as such may take additional time to process as compared to an original return. Amended returns that require an audit or are part of an existing audit can easily fall outside of normal processing time frames. For reference, a business entity (BE) amended return that requires an audit can take up to 24 to 30 months to process.

However, most amended returns do not require an audit and are processed much more timely as follows:

For Personal Income Tax (PIT) Amended Returns, we are pleased to share that our processing timeframes are well ahead of the six months pace we have experienced in previous years. Specifically, as of the end of September, 2013, FTB processed approximately 25 percent of amended returns received thus far in 2013 within 75 calendar days of receipt. FTB processed the remaining 75 percent of amended returns received on average within 120 calendar days of receipt (four months).

For BE amended returns, FTB processed approximately 70 percent of these returns within 120 calendar days, which is (four months) on average. The department recognized its deficiency in how it handles PIT amended return payments and that it results in erroneous refunds and balance due notices and further inconveniences taxpayers.

I am happy to report that beginning in January 2014, FTB will implement a fix to the payment issue. As a result, when FTB receives PIT amended payments both via web and paper, the payment will be held in suspense which will allow time for the amended return to be processed and the payment to be applied properly.

We continue to look for ways to improve how we process amended returns. We currently support the ability for BEs to file amended returns electronically. Beginning in 2015, we plan to support the ability for PIT amended returns to be filed electronically. Also, beginning in 2014, we will begin scanning amended returns which will eliminate the need for routing paper and will help streamline the process.

<u>POAs and Implementation Delay of 2014 EDR Enhancements to MyFTB Account</u>
FTB appreciates your concerns regarding our Power of Attorney (POA) process and continually strives to make improvements to our POA procedures and processes.

In regards to requesting taxpayer transcripts, FTB recommends two alternatives which will help expedite this process. First, utilize the self service options on our website, using MyFTB Account. MyFTB Account provides practitioners immediate access to client information for both individuals and business entities. For individuals you will have access to view the following information:

- Account summary and tax year detail, for all tax years on file
- Estimated tax payments
- Recent payments applied to the taxpayer's account.
- CA wage and withholding information
- FTB-issued 1099-G and 1099-INT records

Second, if you are the taxpayer's authorized representative, call the Tax Practitioner Hotline at 916.845.7057 and receive this information over the phone. If you prefer to receive this information in writing, the Hotline can send you a tax computation for the taxpayer, within approximately ten working days.

The following are reasons why FTB send requested tax transcripts to the taxpayer:

- Processing staff did not check the POA data base prior to mailing the transcript. Management identified this as a training issue, and is taking immediate steps to remind staff the importance of checking the POA data base before sending a transcript or tax computation.

- The POA on file does not list the tax year for the information requested. FTB recommends that you or your client use "*Authorization for All Tax Years or Income Periods for a Limited Duration" (aka-Super Box)* instead of listing the tax years in *"Tax Years or Income Periods Covered by the POA"*. By using the Super Box, you ensure that you will be able to help your client regardless of the tax year involved.

- FTB does not have a valid POA on file.

FTB rejects approximately 17 percent of the POA's received because they are incomplete or incorrectly filled out by the taxpayer or their representative. FTB stresses the importance of reviewing the POA prior to submitting them and will continue to do so through our POA Webinars and Tax News articles.

Currently, our top three rejection reasons are:

- Incorrect or no signature title. In the Form 3520 instructions, there is a sample list of officers that have authority to sign the POA. The instructions also cover who can sign for a Partnership, Limited Liability Company or an Estate or Trust.

- Incorrect or overlapping tax periods or income years listed in "*Tax Years or Income Periods Covered by the POA".* To avoid making this error, we again recommend that you or your client use Super Box. If your client does not want to use Super Box, please review the information for tax years or income periods for accuracy.

- The combined use of *"Authorization to Receive Confidential Information Only"* and *"Additional Privileges"*. Form 3520 instructions specifically state that when you check the box for *"Authorization to Receive"* your representative cannot act as your attorney-in-fact. As such, the taxpayer cannot authorize additional privileges for that representative.

When FTB rejects a POA, staff sends a letter to the taxpayer informing them we rejected their POA and the reasons that caused the rejection. Because we cannot enter these POA forms into our system, we cannot contact the representative, but can only notify the taxpayer. It is the taxpayer's responsibility to contact their representative when they receive the rejection letter and correct the matter.

Please know that FTB has taken many steps in the last several years to improve understanding and help reduce the number of rejections. For example, in FTB published an article, "Why We Send Your POA Back To You" in the February 2011 Tax News. In 2012, FTB significantly expanded the instructions for the POA form to ease understanding and use.

In addition, staff presented three POA Webinars in the last three years. Our most current POA Webinar, "FTB 3520, Power of Attorney – What's New" is available on our website under

News and Events. In May 2014, FTB plans for a new POA Webinar titled, *"POA 101"*. Watch for the announcement in Tax News, Facebook, and on Twitter.

Finally, FTB understands and agrees that early implementation of the enhancements originally scheduled for the External Taxpayer Folder in 2014 would help alleviate some of the POA workload issues and while it is necessary, FTB apologizes for the delay. FTB scheduled the deployment of the External Taxpayer Folder (External Folder) to occur in June 2015; however staff will begin internal security testing in September 2014 and then plan to request input from the tax practitioner community in May 2015.

Sincerely,

Steve Sims, EA
Taxpayers' Rights Advocate

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