

chair **Betty T. Yee**
member **Jerome E. Horton**
member **Michael Cohen**



State of California
Franchise Tax Board

02.04.2015

Patricia Kappen
CA 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. *Below is my response to the proposals.*

Inability to Dissolve/Cancel Business Entities Formed but not Launched

Our staff will be expanding the scope of the departmental team that was formed as a result of AB 1529, to review the dissolution, surrender, and termination processes for all business entities. The team will continue to look at ways to streamline these processes, which could include possible administrative dissolution, surrender, and termination processes, and develop a legislative proposal if necessary. Changes to these processes would involve other state agencies and therefore may need to wait until the obsolescent computer system, as mentioned in the governor's veto message for AB 1529, is replaced.

In the interim, we continue to educate taxpayers about their annual or minimum tax requirements, including information on our forms and website. In addition, the Secretary of State continues to include caution language on formation documents (LP-1, LLC-1, ARTS-GS, etc.) about the ongoing liabilities for the annual or minimum tax.

Real Estate Withholding

We agree that including real estate and nonresident withholding information in MyFTB Account would be beneficial by allowing the taxpayers to verify the withholding available prior to filing their tax return. Because of this, we are planning to have Individual nonwage withholding information, which includes real estate withholding, viewable on MyFTB Account with the summer 2015 Enterprise Data to Revenue release. We are still evaluating this option for Business Entity information.

When a Form 593 is filed, it is automatically compared to the withholding payments received. Issues are often encountered because the Form 593 is either incomplete or includes incorrect information, which prevents us from assigning the withholding credit to the taxpayer. Currently, we are looking at ways to identify these situations earlier in the process in order to minimize the impact to the taxpayers. Our goal is to credit taxpayers with their complete withholding amount.

In addition to the issue mentioned above, there are other reasons why unclaimed withholding amounts are not automatically credited to the taxpayer's account when a return has been filed. The numbers reported during the CSEA 2014 State Tax Agency Liaison

Meeting were for all unclaimed withholding credits (real estate, back-up, and nonresident), not just real estate withholding credits. Some primary reasons are the taxpayer not reporting the income associated to the withholding, or the withholding being claimed on an incorrect line on the return. These accounts require manual intervention to determine the appropriate withholding amounts to credit to a taxpayer's account. During the past year, we have formed a team to review taxpayer accounts and resolve unclaimed withholding credits. In October 2014, we began notifying taxpayers of their unclaimed credits and their options to claim their credits.

Withholding on Pass-Through Entities

We are in the process of working towards new pass-through entity withholding regulations. We have shared your comments with Legal to be included in the feedback received at the recent Interested Parties Meeting.

Disaster Declaration vs. Legislation

California law is similar to federal law and allows a taxpayer that suffers a disaster loss to elect to deduct the loss in the year immediately preceding the year the disaster occurred if it is a federally declared disaster loss. However, there is no automatic state disaster tax treatment for Governor-declared disasters. The issue of automatic disaster loss treatment has been raised before. AB 1782, introduced in 2010 by Assembly Member Harkey, would have added a general provision to the current list of specified disasters to provide automatic disaster loss treatment for all gubernatorial-declared disasters. The bill failed to pass out of the Assembly Revenue and Taxation Committee. The committee analysis stated that although the bill would streamline the process for providing tax relief to disaster-stricken areas, it would eliminate Legislative discretion concerning the scope of California relief provided in California-declared disasters. The department believes the decision to adopt automatic disaster loss treatment is a policy decision that should be made by the Legislature.

Sincerely,

Susan Maples, CPA
Taxpayers' Rights Advocate

cc: Hon. Betty T. Yee, Chair
Hon. Jerome E. Horton, Member
Hon. Michael Cohen, Member