

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



State of California  
**Franchise Tax Board**

01.29.16

Lynn Freer, EA  
Spidell Publishing, Inc  
PO Box 61044  
Anaheim, CA 92803-6144

Dear Ms Freer:

Thank you for your proposal presented at the Taxpayers' Bill of Rights hearing last December. As the Taxpayers' Rights Advocate, your concerns are important to me. I am always interested to hear your concerns and to partner with you to help resolve them. Please note my response to your proposal from the hearing below:

Expedited Processing

In 2014, FTB issued 26 transferee liability assessments holding shareholders or members liable for the tax, penalty and interest that remained unpaid from a business entity that met the requirements specified in the Ralite decision. The requirements for transferee liability include the following:

- The transfer of assets must have occurred.
- The transferor must be liable for the tax at the time of transfer and at the time the transferee liability is assessed.
- The transfer must have been made without full and adequate compensation.
- The transferor must have been left without assets sufficient to pay the tax because of the transfer.
- The transfer of assets must have been to actual beneficial owners.

The timeframes under which FTB must issue a transferee Notice of Proposed Assessment (NPA) is generally the normal period for assessment of additional tax, plus one year. Taxpayers are afforded protest rights to an NPA issued due to a transferee basis. These timeframes are statutorily set and we must adhere to the limitations. We are required to exhaust available collection remedies against the business entity before we can pursue a transferee for the unpaid liability.

FTB does not view Ralite as a "protection" for the taxpayer as the law that makes a business entity a separate entity from the shareholder provides that protection to the shareholder, unless transferee liability can be established. The best way for a shareholder or member to prevent being held liable for the debt of the entity is to

correctly dissolve the entity, which includes filing all returns and paying all tax due. If the shareholder or member chooses to abandon the business entity, without dissolving, they will not be held liable, unless the requirements for transferee liability are satisfied

Our Offer in Compromise (OIC) program is for individuals or business entities that do not have the income, assets, or means to pay their tax liability now or in the foreseeable future. In general, we accept an OIC when the amount offered represents the most we can expect to collect within a reasonable period of time. In evaluating an offer, we consider all relevant facts and circumstances which may include the taxpayer's ability to pay, present and future income and expenses, equity in the taxpayer's assets, and other considerations. For a corporation, we may consider the Board of Equalization's decision in the Ralite case, if applicable.

The department is reviewing the administrative dissolution process to find a way to provide some level of relief. We continue to analyze the impact of inactive business entities and are hopeful the end result will ease the burden for taxpayers in dissolving their business entity correctly. We would like to take you up on your offer to meet to discuss your ideas on how we might improve efficiencies related to how we apply transferee liability to business entities. Please contact Deborah Barrett at (916) 845-4301 to arrange a meeting. We look forward to hearing your ideas.

Sincerely,

Susan Maples  
Taxpayers' Rights Advocate

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