STATE OF CALIFORNIA
FRANCHISE TAX BOARD
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KATHLEEN CONNELL
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Member

March 22, 2001 Information Letter 200803

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Re: **********

Dear **********:

Your letter of **********, has been referred to me for response. In that letter, you explained that you frequently prepare amended income tax returns and claims for refund for corporate clients. You then forward the completed documents to your clients for their consideration as to whether they will ultimately file the documents. In such a situation, you asked the following questions regarding the Franchise Tax Board's policy pertaining to signatures in the "Paid Preparer's Use Only" section on corporate franchise and income tax returns:

- Whether you are obligated to sign amended returns and claims for refund that you prepare and then forward to your corporate clients for filing;
- If you are obligated to sign the documents, are you required to comply with California Business and Professions Code section 22250 et seq.;
- May any tax professional who is not an attorney or CPA sign the documents?

The following is our response to these respective questions.

1. <u>Preparer signatures on amended corporate franchise and income tax returns and claims for refund</u>

The corporate franchise and income tax forms prescribed by the Franchise Tax Board expressly require the tax preparer's signature and identifying number. Also, California law conforms to Internal Revenue Code section 6109, which similarly requires that tax preparers include their identifying number on claims for refund and returns that they have prepared. A signature verifies that the number was placed on the form by the preparer.

Section 18601 of the California Revenue and Taxation Code states in pertinent part:

> (a) . . . every taxpayer . . . shall, on or before the 15th day of the third month following the close of its taxable year, transmit to the Franchise Tax Board a return in a form prescribed by it . . . .

Revenue and Taxation Code section 18624 incorporates by reference Internal Revenue Code section 6109. Section 6109(a)(4) of the Internal Revenue Code provides:

> (4) Any return or claim for refund **prepared** by an income tax return preparer shall bear such identifying number for securing proper identification of such preparer, his employer, or both, as may be prescribed. (Emphasis added.)

The Franchise Tax Board forms for the 2000 taxable year specifically require the tax preparer's signature. For example, Form 100, "California Corporation Franchise or Income Tax Return," and Form 100X, "Amended Corporate Franchise or Income Tax Return," both require the tax preparer to sign the return and to provide an identifying number. The instructions to these forms explain that the identifying number may be either the tax preparer's social security number or a Preparer Tax Identification Number that the tax preparer obtained from the Internal Revenue Service.

Based upon the foregoing authorities, the Franchise Tax Board requires that tax preparers sign their client's corporate franchise and income tax returns, amended returns and claims for refund, and include their identifying number in the signature block of such returns.

2. <u>Compliance with Business and Professions Code section 22250 et seq</u>.

Sections 22250 through 22259 of the Business and Professions Code pertain to California tax preparer ethics and professional conduct. California tax preparers are required, among other things, to post a bond and to complete annually 20 hours of continuing education from approved curriculum providers. (Bus. & Prof. Code §§ 22250, 22255.) Tax preparers are also required to provide their clients with evidence that they have complied with the bonding requirements prior to offering tax preparation services. (Bus. & Prof. Code § 22252.)

Those statutes generally exempt from their provisions currently licensed public accountants, active members of the State Bar of California, employees of certain trust companies, financial institutions regulated by the state or federal government, and enrolled agents who practice before the Internal Revenue Service. (Bus. & Prof. Code § 22258.)

You have asked specifically whether you must comply with section 22250 et seq. of the Business and Professions Code in situations where you are required to sign your clients' amended returns and claims for refund filed in California. We are unable to offer any definitive opinion on this matter because the Franchise Tax Board does not administer these provisions relating to California tax preparers. Instead, you should contact the California Tax Education Council at (877) 850-2832 for information relating to this particular question.

3. <u>May any tax professional who is not a CPA or attorney sign a return?</u>

Business and Professions Code section 22251, subdivision (a)(1)(A), defines a tax preparer as a "person who, for a fee, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who holds himself or herself out as offering those services." Also included in the definition of a tax preparer is a corporation, partnership or other entity that has associated with it persons not otherwise exempt from the requirements imposed on tax preparers who prepare tax return data and have ultimate signatory authority on tax returns or holds itself out as offering those services or having that authority. Nowhere in Business and Professions Code section 22251 does it state that the tax preparer must be either a CPA or attorney.

In the case of federal tax returns, the Treasury Regulations similarly define an income tax preparer as "any person who prepares for compensation, or who employs (or engages) one or more persons to prepare for compensation, other than for the person, all or a substantial portion of any return of tax under Subtitle A of the Internal Revenue Code of 1954 or of any claim for refund of tax under Subtitle A of the Internal Revenue Code of 1954." (26 C.F.R. 301.7701-15(a).) Treasury Regulation section 301.7701-15(a)(3) further explains that "[a] person may be an income tax return preparer without regard to educational qualifications and professional status requirements." However, California does not conform to section 7701(a)(36) of the Internal Revenue Code, under which the above-referenced Treasury Regulations were issued, so this federal authority is not specifically applicable for California purposes.

Based upon these definitions, it does not appear that your firm's tax professionals who sign your clients' corporate amended returns and claims for refund must be CPA's or attorneys. However, as previously noted, the Franchise Tax Board does not administer these provisions of the Business and Professions Code, so no definitive answer can be offered on this question either.

I hope that this information is responsive to your questions. If you need additional information, please contact me at the above number.

Sincerely,

Craig L. Scott
Tax Counsel