

Summary of Interested Parties Meeting

Revenue and Taxation Code Section 21019

- I. **Administration:** On February 14, 2014, at 10:00 a.m., members of the public attended an interested parties meeting at the Franchise Tax Board office in Sacramento. Parties attended in person and by telephone. Those physically present were asked to register at the entrance and all participants introduced themselves.

The IPM panel was comprised of Melody Scullary, an attorney with FTB's Litigation Bureau, and Doug Powers, an attorney with FTB's Technical Resources Bureau.

- II. **Background:** Revenue and Taxation Code (RTC) section 21019 provides, in pertinent part, that Franchise Tax Board (FTB) "may release a lien under any circumstances to facilitate the collection of the tax liability or, if that release is in the best interest of the taxpayer and the state, and take any action associate with the release of that lien it deems appropriate." FTB is considering the adoption of a new regulation that would authorize and establish specific procedures under which FTB staff could release a lien under the discretionary language in RTC section 21019, subdivision (f), together with a statement that the released lien should be treated as though it was filed or recorded in error.
- III. **Purpose:** To elicit public input on a proposed regulation that would authorize and establish specific procedures under which FTB staff would be able to release a lien under the discretionary language in RTC section 21019, subdivision (f), together with a statement that the released lien should be treated as though it was filed or recorded in error, and identify general principles and standards that should be used by FTB staff to determine whether to use such a release under RTC section 21019, subdivision (f). In particular, staff sought input on examples of situations where a lien should or should not generally be released under RTC section 21019, subdivision (f), together with a statement that the released lien should be treated as though it was filed or recorded in error.
- IV. **Discussion:** A participant commented that it was good to hear that FTB is considering such a regulation in light of recent and past economic downturns. A question was asked whether FTB will follow Internal Revenue Service's authority to issue a lien withdrawal. Another participant stated that a lien withdrawal needs statutory authority. Staff responded that FTB does not have statutory authority to issue a lien withdrawal.

A question was asked as to whether staff expects that this regulation might be a "major regulation" in light of the "Cost Impacts of Proposed Rulemaking" provisions included in the Notice for the Interested Parties Meeting under the provisions of SB 617, which modified the Administrative Procedure Act rules governing the regulation process and added new rules governing so-called "major regulations." Staff responded that, while FTB does not anticipate this regulation will be treated as a "major regulation," staff is still in the initial stages of gathering information in consideration of the possible regulation. So staff has not made any determination yet on whether this might be a "major regulation" under SB 617. The consequence of a regulation being treated as a "major regulation" under SB 617 is that a much more detailed economic impact analysis would be required.

Staff was asked to provide additional information regarding the intended purpose and use of the regulation to try and generate specific questions and dialogue. Staff responded that FTB would like to receive specific scenarios and reasons that the public needs relief or assistance regarding lien releases under the discretionary authority of RTC section 21019, subdivision (f).

A comment was made that sometimes a lien can prevent a taxpayer's case from moving forward. While a lien protects the state's interests, it can prevent a collector from facilitating collection and FTB needs to be able to release liens when it is in the best interest of the taxpayer and the state. Staff responded that specific case examples, scenarios and reasons for discretionary lien releases are the types of information that FTB seeks for consideration of this regulation.

A comment was made that the discretionary release authority needs to define the limits of FTB's discretion under RTC section 21019, subdivision (f). Staff responded that they would take such comment under consideration.

A comment was made that there is a reported rise in the number of erroneous liens being filed. Staff responded that to the extent liens are being filed or recorded in error, such releases are addressed under the mandatory release provisions of RTC section 21019, subdivisions (c) and (d), but that staff would also welcome more specific, detailed descriptions of the fact patterns in which such erroneous liens are being filed.

- V. **Future Action**: Staff thanked all the parties for their attendance and input, and indicated that comments will be taken through March 14, 2014. If staff decides to proceed with the rulemaking action, staff will draft proposed regulation language and another IPM will be scheduled to discuss such language.