

FRANCHISE TAX BOARD
MINUTES
DECEMBER 8, 2015 MEETING

The Franchise Tax Board met in open session at 1:30 p.m. at the Franchise Tax Board, 9646 Butterfield Way, Gerald Goldberg Auditorium, Sacramento, California. Present were Controller Betty T. Yee, Deputy Controller Yvette Stowers, Hon. Jerome E. Horton, and Chief Deputy Eraina Ortega, Department of Finance, for Member Cohen.

Franchise Tax Board

Staff Participating: Selvi Stanislaus, Pat Bittner, Bruce Langston, Cathy Cleek, Michael Banuelos, Michelle Fallon, Susan Maples, Jacob Roper and Dawn Casey

Others Participating: Mario Guerrero, Local 1000, Vickie Mulak, CSEA, Gina Rodriguez, Cal Tax, Kathryn Zdan, Spidell Publishing Inc.

The Controller announced the Board was going into closed session to discuss pending litigation.

The Board convened in Closed Session commencing at 1:35 p.m. pursuant to Government Code section 11126.3.

The Board reconvened in open session at 1:46 p.m.

Item 1. – Approval of Minutes

The minutes of the September 22, 2015, Franchise Tax Board meeting were approved 3-0.

As Item 2 was previously removed from the agenda, the Board proceeded to Item 3.

Item 3. – Cal EITC Update

The Board received a PowerPoint presentation on the Cal EITC program.

Item 4. – Annual EDR Update

The Board received a PowerPoint presentation on what features the Enterprise Data to Revenue (EDR) project implemented in calendar year 2015 and what to look forward to in calendar year 2016.

Item 5. – Regulation Matters

a. 2016 Rulemaking Calendar – The Board voted 3-0 to approve the Rulemaking Calendar.

Item 6. – Board Consideration of Resolution regarding Use of State Employees for Security Guard Services

The Board voted 2-0 to adopt the resolution (Member Ortega abstaining).

Item 7. – Administrative Matters

Contracts Over \$1 Million

- Security Guard Services – Board approval.

The Board voted 3-0 to approve the contract.

Facility Action Item

- FTB Data Center Door Alterations – Board Approval

The Board voted 3-0 to approve the Facility Action Item.

- San Jose Field Office lease and Conference Room – Board Approval

The Board voted 3-0 to approve the Facility Action Item.

Item 8. – Taxpayers' Bill of Rights Hearing

See attached Taxpayers' Bill of Rights Hearing, Franchise Tax Board, Minutes, December 8, 2015.

Item 9. – Executive Officer's Time

Selvi Stanislaus stated that she had nothing to report.

Item 10. – Board Members' Time

The Controller expressed her appreciation and thanks to the entire Franchise Tax Board staff for the tremendous commitment to excellence under Selvi's leadership and that of the executive team and the Governance Council.

The Board adjourned the meeting at 2:55 p.m.

Board Liaison

Date

TAXPAYERS' BILL OF RIGHTS HEARING
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Franchise Tax Board

Staff Participating: Selvi Stanislaus, Pat Bittner, Bruce Langston, Gail Hall, Susan Maples, and Dawn Casey.

Others Participating: Vickie Mulak, CSEA, Gina Rodriguez, Cal Tax, Kathryn Zdan, Spidell Publishing Inc.

Taxpayers' Bill of Rights Hearing

Controller Betty T. Yee provided opening remarks describing this annual hearing which is required by law, and introduced Franchise Tax Board staff members who were present to respond to questions.

Susan Maples, Taxpayers' Rights Advocate, provided opening comments acknowledging staff and thanking the Board and Selvi for their support during her first year as Taxpayer Advocate. She advised that the external stakeholders were there to present any issues they have to the Board, and that her commitment is to respond to all of the issues in writing, and to ensure that the responses are posted to the FTB website no later than February 1, 2016.

Kathryn Zdan – Spidell Publishing Inc

Ms. Zdan provided oral comment to the Board on one issue:

- The issue has to do with the time that it takes between when a taxpayer walks away from an entity and when they are able to invoke "Ralite" to avoid transferee liability. Ms. Zdan stated that there are statutory timeframes involved at certain points of the process, but it takes a very long time. Ms. Zdan hopes the board would consider some options to expedite the process for taxpayers who cannot be held liable under "Ralite". She would like a taxpayer to be able to contact the Franchise Tax Board, if they know for certain that they cannot be held liable under the provisions of "Ralite," to get them into an expedited program to verify that they would not be subject to transferee liability.

Vicki Mulak – CSEA

Ms. Mulak presented written materials and provided oral comment to the Board on the following three issues:

- The first item related to a previously-discussed issue of administrative dissolution of a never-launched entity. While they can always consider an offer and compromise, from a practitioner perspective, that's an expensive way. She urged a statutory change that would be a permanent solution to this problem. The second item was about single member LLCs, that don't have a business entity filing requirement with the federal government, but have a filing requirement with the state of California. Ms. Mulak stated that the standalone 568 form is commonly missed, even when the taxpayer is using a tax practitioner. She suggested that the individual could complete their form 568 filing requirement concurrently, or simultaneously, with a schedule attached to the Form 540 individual income tax return. The third item was related to information on the tax benefits for California disasters. Ms. Mulak stated that there was a discrepancy in that the Federal government was reporting on the IRS website that both the Valley fire and the Butte fire were eligible for federal disaster law treatment, but the Franchise Tax Board reported in their publication that just one of the fires was eligible for the loss throwback election.

Gina Rodriguez – Cal Tax

Ms. Rodriguez provided oral comment to the Board on the following issues:

- The first issue was the backlog of audits, protests, refund claims, and appeals. Ms. Rodriguez stated that CalTax appreciates the efforts the Franchise Tax Board (FTB) staff has made so far in reducing the inventory levels. However the slow resolution of the compliance inventory, especially refund claims, remains the number one complaint from CalTax members. CalTax would like for the board to move forward with a workable solution to reduce the compliance inventory level, especially refund claims.
- Secondly, earlier this year, CalTax met with FTB management to make them aware of the agency's miscalculation of interest that caused thousands of taxpayers to be overcharged for at least two decades. FTB is in the process of releasing refunds to affected taxpayers whose statute of limitations has not expired. CalTax requests that refunds be made to all taxpayers who were overcharged interest, whether or not the statute of limitations has expired.
- The third issue was the per partner/ per shareholder penalty. Failure to timely file a California pass-through entity return not only results in the imposition of a late filing penalty, but also the per partner or per shareholder penalty. And for pass-through entities with many owners, the penalty is significant, CalTax requested that the FTB seek legislation to revise and amend the per partner/ per shareholder penalty, and to develop written policies to assist pass-through entities and their owners with meeting the reasonable cause exception.
- The final issue was the Revenue and Taxation Code section 23036(i) credit limitation. In 1997, California conformed to the federal LLC classification rules, known as the check-the-box conformity. At the time of the check-the-box conformity, corporate credits could be utilized only by the entity that generated the credit. Ms. Rodriguez stated that subsequent legislation in 2008 allows

unitary affiliates to assign corporation franchise tax credits among unitary group members. Since a C corporation subsidiary can assign its credits to an affiliate, she asserted that it is inconsistent policy to not also allow a disregarded LLC subsidiary to do the same. CalTax requests that the FTB review its credit limitation policy and take appropriate steps to address and resolve this discrepancy.

The hearing adjourned at approximately 2:55 p.m.

Board Liaison

Date

PENDING BOARD APPROVAL