

FRANCHISE TAX BOARD
MINUTES
DECEMBER 4, 2014 MEETING

The Franchise Tax Board met in open session at 10:30 a.m. at the Franchise Tax Board, 9646 Butterfield Way, Gerald Goldberg Auditorium, Sacramento, California. Present were Deputy Controller Marcy Jo Mandel for Chair Chiang, Hon. Jerome E. Horton, and Chief Deputy Eraina Ortega, Department of Finance, for Member Cohen.

Franchise Tax Board

Staff Participating: Selvi Stanislaus, Jozel L. Brunett, Bruce Langston, Michael Banuelos, Cathy Cleek, Gail Hall, Ciro Immordino, Steve Sims, Melissa Williams, and Colleen Berwick.

Others Participating: Lynn Freer, Spidell, Vickie Mulak, CSEA, and Gina Rodriguez, Cal Tax

Item 1. – Approval of Minutes

The minutes of the September 30, 2014, Franchise Tax Board meeting were approved 3-0.

Item 2. – Annual EDR Update

The Board received a PowerPoint presentation on what EDR implemented in calendar year 2014 and what to look forward to in the calendar year 2015.

Item 3. – Legislative Matters

Legislative Proposals – Staff report and Board approval.

Legislative Proposal A – Nonadmitted Insurance Tax Clarification.

The Board voted 2-0 (Member Ortega abstaining) to approve the proposal.

Legislative Proposal B – Taxpayers' Right Advocate Equity Relief.

The Board voted 2-0 (Member Ortega abstaining) to approve the proposal with a direction to FTB staff to notify the Taxpayers' Advocate of systemic issues.

Item 4. – Regulation Matters

a. 2015 Rulemaking Calendar – The Board voted 3-0 approve.

b. Regulation 23663 – (Assignment of Credits Among Affiliated members - Definitions)

The Board voted 3-0 to proceed with the formal regulatory process.

c. Regulation 25136-2 – (Market Based Rules for Sales Factor)

The Board voted 3-0 to proceed with the formal regulatory process.

Item 5. – Administrative Matters

Contracts Over \$1 Million – Board approval.

- Security Analysis Audit Logging Tool (SAALT) Replacement – Board approval.

The Board voted 3-0 to approve the contract.

- IBM Passport Advantage Software Subscription and Support Renewal – Board approval.

The Board voted 3-0 to approve the contract.

Item 6. – Taxpayers' Bill of Rights Hearing

See attached Taxpayers' Bill of Rights Hearing, Franchise Tax Board, Minutes, December 4, 2014.

Item 7. – Executive Officer's Time

Selvi Stanislaus presented a Resolution for Controller Chiang and a Power Point presentation for his service as Controller for the State.

Item 7. – Board Members' Time

The Board members presented a Resolution to Steve Sims and Colleen Berwick commending each of them on the occasion of their individual retirement and their service at FTB.

The Board members presented a Resolution appointing new Board Liaison, Dawn Casey, and commending prior Board Liaison, Colleen Berwick.
The Board members approved 3-0.

The Deputy Controller announced the agenda for and the Board convened in Closed Session commencing at 12:08 p.m. pursuant to Government Code section 11126.3.

The Board reconvened in open session and adjourned the meeting at 12:40 p.m.

TAXPAYERS' BILL OF RIGHTS HEARING
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Taxpayers' Bill of Rights Hearing

Deputy Controller Marcy Jo Mandel provided opening remarks regarding this annual hearing required by law and introduced Franchise Tax Board staff members who were present to respond to questions.

Steve Sims, Taxpayers' Rights Advocate, provided opening remarks advising that we received several written submissions in advance, and that our goal is to respond to the written submissions by February 1, 2015.

Vicki Mulak – CSEA

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

Ms. Mulak had three items to discuss.

- The first item pertained to the Withhold at Source Program. Ms. Mulak stated the opinion that back-up withholding, resident withholding, and real estate withholding do not run as smoothly as wage withholding does. Ms. Mulak requested that various issues related to processing withholding payments be considered and reviewed during the regulation process.
- The second item pertained to dissolution of business entities that were formed and never launched. Ms. Mulak stated there was legislation that would have helped certain groups this year: AB 1529, AB 2244 and AB 2180 (CSEA created) that were not successful or didn't get out of the house of origin. Ms. Mulak suggested legislation that would provide that after some period of time with no response to notices from the state, inactive or never-launched entities be administratively dissolved. She also asked FTB staff to explore ways to expedite transferee liability determinations for these entities.
- The third issue was how California manages disaster declarations. Ms. Mulak described problems that taxpayers had after the Napa earthquake, and suggested that legislation be enacted to expedite relief in this type of situation.

Gina Rodriguez – Cal Tax

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

- Ms. Rodriguez thanked Steve Sims for more than three decades of service and congratulated him on his retirement.
- Ms. Rodriguez stated Cal Tax's concern about FTB's seemingly high compliance inventory of protests, refund claims, audits, and appeals. Ms. Rodriguez addressed Chief Counsel Jozel Brunett to thank her for meeting with Cal Tax and expressed again its desire to move forward with a workable solution, and to assist in any way it can.
- Regarding protests, Caltex acknowledged that there has been an overall improvement in resolution timeframes since 2013. Regarding claims for refund, Ms. Rodriguez had various concerns about the length of time it takes FTB to act on refund claims and urged FTB staff to act more quickly on claims.
- Regarding audits, Ms Rodriguez stated that delayed audits have led to unfair audit practices and she offered the opinion that FTB is not completing many multistate and high level audits in a timely manner. She raised a concern about auditors who request that taxpayers file a separate claim for refund to address a different overpayment issue for the same year that is under audit. Ms. Rodriguez's final issue concerned appeals to the State Board of Equalization. She argued that taxpayers deserve to have their appeals heard within a reasonable time frame, and asked that FTB work more closely with the Board of Equalization to ensure that appeals are processed in a timely manner.

Lynn Freer – Spidell

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

- The first item pertained to the California nonconformity to the ACA, the Affordable Care Act, and the California adjustment that is required where a federal deduction is limited due to the application of a federal credit. Ms. Freer is requesting guidance from FTB on what the appropriate California adjustment amounts should be in this situation.
- The second item related to problems with credits for real estate withholding not being available when the client's tax return was processed. In addition, she stated that this is a special problem where the property is held in the name of a living trust but the income and withholding is reported directly by the individual taxpayer.
- The final item was a question why California has a five-page 540. She noted that the IRS form is two pages while FTB has an entire page involving contributions. In the interest of saving paper, she suggested that FTB could reformat that return into a more condensed version like the IRS.

The hearing adjourned at approximately 12:40 p.m.

Board Liaison

Date