2015 Legislative Proposals

LP Number	Title
LP A	Nonadmitted Insurance Tax Clarification
LP B	Taxpayers' Rights Advocate Equity Relief

LEGISLATIVE PROPOSAL A
EXECUTIVE SUMMARY

- **Title:** Nonadmitted Insurance Tax Clarification

- **Problem:** Recent legislation created a statutory definitional ambiguity that has resulted in taxpayer confusion and some policyholders claiming they are no longer subject to the gross-premiums tax imposed on directly-procured nonadmitted insurance.

- **Proposed Solution:** Modify California law to clarify that any person whose home state is California who purchases nonadmitted insurance is subject to the gross-premiums tax.

- **Major Concerns/Issues:** None.

- **Fiscal Impact:** This proposal would not significantly impact the department's costs.

- **Revenue:** This proposal would not impact state income tax revenue because it would not constitute a change in, but would be declaratory of, existing law.

Title

Nonadmitted Insurance Tax Clarification

Introduction

The purpose of this proposal is to clarify a statutory definitional ambiguity created by recently-enacted legislation that has resulted in some policyholders claiming they are no longer subject to the gross-premiums tax imposed on certain insurance policies.

Background

Insurance Companies Doing Business in California (Admitted Insurers)

Insurance companies must be admitted to do business in California.[1] Once admitted, insurance companies do not pay California income or franchise tax, but instead pay a tax based on a percentage of net premiums received;[2] this tax is generally referred to as the gross-premiums tax, and is administered by the Department of Insurance.[3]

Insurance Companies Not Doing Business in California (Nonadmitted Insurers)

A surplus line insurer, also referred to as a nonadmitted insurer, is not licensed (i.e., not admitted) to do business in California, but is licensed in another state or country.[4] California licensed surplus line brokers may place coverage with a nonadmitted insurer if insurance for the risk is not available from a California-licensed insurer and other specified criteria are satisfied. Licensed surplus line brokers are required to pay a nonadmitted insurance gross-premiums tax of three percent of net premiums charged to California policyholders, and such brokers pay this tax to the Department of Insurance.

In addition, policyholders who directly purchase or renew an insurance contract from an insurance company that is not licensed (i.e., not admitted) to do business in California are responsible for paying the nonadmitted insurance gross-premiums tax, and this tax is paid to the Franchise Tax Board (FTB). The tax is three percent of net premiums paid or to be paid to nonadmitted insurers by California policyholders, and is imposed on any corporation, partnership, limited liability company, individual, bank, society, association, organization, governmental or

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[1] The term “admitted insurer” means, with respect to a state, an insurer licensed to engage in the business of insurance in such state.

[2] Section 28 of Article XIII of the California Constitution, which imposes a tax of 2.35 percent on the amount of gross premiums, less return premiums, received by insurance companies doing business in California, other than premiums received for reinsurance and for ocean marine insurance. This tax is in lieu of all other taxes and licenses, state, county, and municipal, upon insurers and their property, except taxes upon their real estate.

[3] Insurance tax returns from admitted insurance companies are filed with the Department of Insurance. The Department of Insurance forwards the tax payments to the State Controller’s Office for posting to insurers’ accounts. The Department of Insurance also forwards copies of insurance tax returns to the Board of Equalization. From these return copies, Board of Equalization staff prepares a schedule of tax by insurer. These schedules, which are distributed to the Department of Insurance and the State Controller’s Office, are considered to be the initial assessment of tax, as required by R&TC section 12412.

[4] The term “nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus line broker with a nonadmitted insurer eligible to accept such insurance.

quasi-governmental entity, joint-stock company, estate or trust, receiver, trustee, assignee, referee, or any other person acting in a fiduciary capacity, that directly purchases (i.e., directly procures) nonadmitted insurance.[5]

Thus, an insured party may either utilize a surplus line broker to obtain nonadmitted insurance, in which case the broker pays the gross-premiums tax to the Department of Insurance, or they may directly purchase nonadmitted insurance, in which case the insured party pays the gross-premiums tax to the FTB.[6]

Current Federal Law

The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA)[7] reforms and modernizes the federal rules for two important sectors of the commercial insurance marketplace, nonadmitted insurance and reinsurance. The NRRA creates a uniform system for nonadmitted insurance premium tax payments based upon the home state of the policyholder, encourages the states to develop a compact or other procedural mechanism for uniform tax allocation, and establishes regulatory deference for the home state of the insured. The NRRA adopts uniform eligibility requirements for nonadmitted insurers, and allows direct access to the nonadmitted insurance markets for certain sophisticated commercial purchasers. The NRRA preempts state law that is incompatible with it.

The preemptive provisions of the NRRA went into effect on July 21, 2011.

Current State Law

Because the NRRA preempts any state law that is incompatible with it, states responded by modifying their laws accordingly. In California, Assembly Bill (AB) 315[8] was enacted to make California laws compatible with the NRRA; however, that legislation inadvertently resulted in the statutory definitional ambiguity described in this proposal.

Specifically, AB 315 changed the section of the Revenue and Taxation Code[9] that imposes the gross-premiums tax on directly-procured nonadmitted insurance from imposing that tax on "every person who effects insurance governed by Chapter 6 (commencing with Section 1760) of Part 2 of Division 1 of the Insurance Code" to *instead* impose the tax on "every home state insured as defined by subdivision (f) of Section 1760.1 of the Insurance Code." The ambiguity is that

[5] R&TC section 13210. Not all directly-procured nonadmitted insurance contracts are subject to this gross-premiums tax; exceptions include (1) reinsurance of the liability of an admitted insurer, (2) insurance of ship-owner interests, (3) aircraft insurance, (4) insurance on interstate motor transit operation, and (5) life insurance.

[6] The tax is paid to the FTB by filing Form 570, the Nonadmitted Insurance Tax Return.

[7] Public Law 111-203, July 21, 1010. Prior to the NRRA, surplus line brokers were required to allocate risks in every state where any portion of risk exposures were located, and were required to file returns in multiple states that often had inconsistent laws that complicated determining the risk allocation. The purpose of the NRRA is to create a more simplified and efficient allocation method by limiting regulatory authority to the home state of the insured; that is, only the insured's home state is permitted to collect premium taxes for nonadmitted insurance, and all other states are preempted from collecting such taxes.

[8] Chapter 83 of the Statutes of 2011 (AB 315), operative as of July 21, 2011.

[9] R&TC section 13210.

subdivision (f) of Section 1760.1 of the Insurance Code only describes nonadmitted insurance placed by surplus line brokers, and does not refer to directly-procured nonadmitted insurance, and this is the argument some policyholders of directly-procured nonadmitted insurance are using to claim they are no longer subject to the gross-premiums tax.

Problem

Recent legislation created a statutory definitional ambiguity that has resulted in taxpayer confusion and some policyholders claiming they are no longer subject to the gross-premiums tax imposed on directly-procured nonadmitted insurance.

Proposed Solution

Modify California law to clarify that any person whose home state is California who purchases nonadmitted insurance is subject to the three-percent gross-premiums tax.

Effective/Operative Date of Solution

If enacted during the 2015 legislative session, this proposal would be effective January 1, 2016, and would not constitute a change in, but would be declaratory of, existing law.

Justification

The purpose of this proposal is to correct a drafting error. There are no indications that the intent of AB 315 was to repeal the gross-premiums tax on directly-procured nonadmitted insurance. The author's stated purpose of AB 315 was to make California law compatible with the NRRA. Legislative committee analyses for AB 315 similarly describe its purpose as intending to conform to the provisions of the NRRA; they do not describe any change to the gross-premiums tax on directly-procured nonadmitted insurance.[10]

Implementation

Implementing this proposal would not significantly impact the department's programs or operations.

Fiscal Impact

This proposal would not significantly impact the department's costs.

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[10] Another indication that this is a drafting error is found in Section 1774(a)(2) of the Insurance Code; that section generally requires that any person whose home state is California that directly procures nonadmitted insurance pursuant to Section 1760 of the Insurance Code to annually file with the Insurance Commissioner a sworn statement of all business done during the last calendar year. However, AB 315 created the same definitional ambiguity in the interaction of those two sections that is the basis of this proposal, meaning Section 1774(a)(2) of the Insurance Code is requiring information about directly-procured nonadmitted insurance, but it does so by referring to a definition that only applies to nonadmitted insurance purchased through a surplus line broker.

Economic Impact

This proposal would not impact state income tax revenues because it would not constitute a change in, but would be declaratory of, existing law.

Policy Considerations

None.

Other Agency/Industry Impacted

Department of Insurance

Pro & Con Arguments

Pro: Those in support of this proposal may argue that it is needed to prevent confusion for policyholders that directly-procure nonadmitted insurance.

Con: Those in opposition to this proposal may argue that the definitional ambiguity in the statute should be litigated before a legislative change is made.

Other States

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York*. These states were selected due to their similarities to *California's* economy, business entity types, and tax laws. A review of these states' laws found that they have all enacted legislation in response to the NRRA, but none were found to have an issue of having policyholders claim that directly-procured nonadmitted insurance is no longer subject to tax as a result of such legislation.

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FRANCHISE TAX BOARD'S
LP A PROPOSED AMENDMENTS

SECTION 1. Section 1760.1 of the Insurance Code is amended to read:

1760.1. For the purposes of this chapter, the following terms have the following definitions: (a) "Certified" means an originally signed or sealed statement, dated not more than 60 days before submission, made by a public official or other person, attached to a copy of a document, that attests that the copy is a true copy of the original, and that the original is in the custody of the person making the statement.

(b) "Commercial insured" means any person purchasing commercial insurance that, at the time of placement, meets all of the following requirements:

(1) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(2) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars ($100,000) in the immediately preceding 12 months.

(3)(A) The person meets at least one of the following criteria:

(i) The person possesses a net worth in excess of twenty million dollars ($20,000,000), as that amount is adjusted pursuant to subparagraph (B).

(ii) The person generates annual revenues in excess of fifty million dollars ($50,000,000), as that amount is adjusted pursuant to subparagraph (B).

(iii) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(iv) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars ($30,000,000), as that amount is adjusted pursuant to subparagraph (B).

(v) The person is a municipality with a population in excess of 50,000 persons.

(B) Effective on January 1, 2015, and each fifth January 1 occurring thereafter, the dollar amounts in subparagraph (A) shall be adjusted to reflect the percentage change for that five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The commissioner shall issue a bulletin to all surplus line brokers advising of any adjustments and may adopt the calculations of the NAIC or other entity in doing so.

(c) "Domiciliary jurisdiction" means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(d) "Domiciliary state of the syndicate's trust" means the state in which the syndicate's trust fund is principally maintained and administered for the benefit of the syndicate's policyholders in the United States.

(e) "Home state" means, except as provided in paragraphs (2) to (4), inclusive, any of the following, with respect to an insured or applicant:

(1) (A) The state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence.

(B) If 100 percent of the insured risk is located outside the state referred to in subparagraph (A), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(2) "Principal place of business" means, with respect to subparagraph (A) of paragraph (1) determining the home state of the insured, (A) the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities; or (B) if the insured's high-level officers direct, control, and coordinate the business activities in more than one state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or (C) if the insured maintains its headquarters or the insured's high-level officers direct, control, and coordinate the business activities outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(3) "Principal residence" means, with respect to determining the home state of the insured, (A) the state where the insured resides for the greatest number of days during a calendar year; or (B) if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(4) Affiliated groups. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subparagraph (A) of paragraph (1), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(f) "Home state insured" or "home state insured applicant" means a person whose home state is California and who has received a certificate or evidence of coverage as set forth in Section 1764 or a policy as issued by an eligible surplus line insurer, or a person who is an applicant therefor. For purposes of this subdivision, an "eligible surplus line insurer" includes a nonadmitted insurer that sells nonadmitted insurance.

(g) "IID" means the International Insurers Department of the National Association of Insurance Commissioners.

(h) "Insurer" means, unless the context indicates otherwise, "nonadmitted" insurers that are either "foreign" or "alien" insurers, as those terms are defined in Sections 25, 27, and 1580, and syndicates whose members consist of individual incorporated insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary regulator. The term "insurer" includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1991 (Chapter 1.5 (commencing with Section 125) of Part 1), except insurers that are risk retention groups as defined by those acts.

(i) "ISI" means Insurance Solvency International.

(j) "Licensee" means a surplus line broker as defined in Section 47.

(k) "Multistate risk" means a risk covered by a nonadmitted insurer with insured exposures in more than one state.

(l) "NAIC" means the National Association of Insurance Commissioners or its successor organization.

(m) "Nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus line broker with a nonadmitted insurer eligible to accept ~~such~~ that insurance.

(n) “Nonadmitted insurer” means an insurer not licensed or admitted to engage in the business of insurance in this state in conformity with Section 700; but does not include a risk retention group, as that term is defined in Sections 130(k) and 2(a)(4) of the federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901(a)(4)).

(o) “Qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(1) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(2) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(3) The person has any of the following:

(A) A bachelor’s degree or higher degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management and satisfies either of the following:

(i) Has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance.

(ii) Has one of the following:

(I) A designation as a Chartered Property and Casualty Underwriter (CPCU) issued by the American Institute for CPCU and Insurance Institute of America.

(II) A designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU and Insurance Institute of America.

(III) A designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education and Research.

(IV) A designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute.

(V) Any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management.

(B) At least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance, and has any one of the designations specified in subclauses (I) to (V), inclusive, of clause (ii) of subparagraph (A).

(C) At least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.

(D) A graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

(p) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(q) “Verified” means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under the penalty of perjury under California law, that the assertions made in the document are true.

SEC. 2. The Legislature finds and declares that the changes made to Section 1760.1 of the Insurance Code by this act do not constitute a change in, but are declaratory of, existing law.

LEGISLATIVE PROPOSAL B
EXECUTIVE SUMMARY

- **Title:** Taxpayers' Rights Advocate Equity Relief
- **Problem:** Allowing the Advocate's relief provisions to expire would eliminate the remedy of last resort available to taxpayers assessed amounts as a result of a Franchise Tax Board (FTB) administrative error or delay that are otherwise legally due.
- **Proposed Solution:** Amend the Revenue and Taxation Code[1] to remove the sunset date, the limit on the amount of relief that may be granted, and the indexing provisions; specify the retention period to be at least one year for records of relief granted by the Advocate,[2] and make a minor technical correction to clarify administration provisions.
- **Major Concerns/Issues:** None.
- **Fiscal Impact:** Although the FTB is unable to quantify the volume or amount of future relief that would be granted under the Advocate's relief provisions, this proposal could generate cost savings by reducing the number of cases going to appeal, litigation, or both, if the current statutory relief expires.
- **Revenue:** Cases of erroneous departmental action or guidance brought to the Advocate's office for resolution are infrequent. To determine the magnitude of the potential penalty and interest abatement, both the frequency of erroneous actions and the dollar amount of those errors must be known. Because it is difficult to predict the frequency and the value of future FTB errors, the amount of penalties and interest that could be abated under this proposal is unknown.

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[1] R&TC section 21004.
[2] Similar to Offer in Compromise, R&TC section 19443(g).

Title

Taxpayers' Rights Advocate Equity Relief

Introduction

This proposal would modify the Franchise Tax Board's (FTB's) Taxpayers' Rights Advocate (the Advocate) relief provisions.

Current Federal Law

The Internal Revenue Service (IRS) is authorized to abate any unpaid portion of tax or any liability related to tax assessed erroneously. The IRS also has discretion to abate any interest assessed that is attributable to any unreasonable error or delay by the IRS when performing a managerial or ministerial act, but only if no significant aspect of the error or delay can be attributed to the taxpayer involved. The error or delay must not have occurred before the taxpayer was contacted in writing about the deficiency or payment. There is no limit on the amount of relief the IRS may grant and the federal relief provision is permanent.

Current State Law

Under current state law, the Advocate has the discretionary authority to grant relief from penalties, fees, or interest attributable to any of the following:

- Erroneous action or erroneous inaction by the FTB in processing documents filed or payments made by taxpayers.
- Unreasonable delay caused by the FTB.
- Erroneous written advice that does not qualify for relief under the Chief Counsel's authority.

Relief may be granted only in situations where no significant aspect of the error is attributable to the taxpayer and relief is unavailable under any other statute or regulation.

The total amount of relief that may be granted under the Advocate's discretionary authority and the threshold for approval are indexed annually for inflation. For tax year 2013, total relief granted under the Advocate's discretionary authority may not exceed $7,600 and relief in excess of $509 must be approved by the FTB's Executive Officer.[3]

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[3] These amounts are indexed annually for inflation based on the percentage change in the California Consumer Price Index for All Urban Consumers.

Relief at any level requires a public record to be placed in the office of the FTB's Executive Officer that includes the following information:

- The taxpayer's name,
- The total amount involved,
- The amount payable or refundable due to the error or delay, and
- A summary of why the relief is warranted.

A refund may be paid as a result of the relief granted only if the written claim for relief is received by the Advocate within the applicable statute of limitations. Any decision for relief is not subject to review in any administrative or judicial proceeding and no other entity may participate in the grant or denial of relief.

The Advocate relief provisions will be repealed on January 1, 2016, unless an enacted statute extends this date.

Program Background

Since the enactment of the law on January 1, 2009, there have been three occurrences where the Advocate exercised its authority and provided relief to taxpayers. These occurrences are described below:

1. Interest was abated in the amount of $2,100 for a taxpayer because of an erroneous action of processing the taxpayer's return.
2. Interest was abated in the amount of $1,800 for a taxpayer because of an unreasonable delay in issuing a bill because of a technology upgrade.
3. Interest totaling $1.1 million was abated for a group of 50 taxpayers including multiple years because of erroneous written advice contained in the California Fiduciary tax form instructions. The relief granted to each taxpayer was below the statutory limit.

Problem

Allowing the Advocate's relief provisions to expire would eliminate the remedy of last resort available to taxpayers assessed amounts as a result of an FTB administrative error or delay that are otherwise legally due.

Proposed Solution

Amend the Revenue and Taxation Code[4] to remove the sunset date, the limit on the amount of relief that may be granted, and the indexing provisions; specify the retention period to be at least one year for records of relief granted by the Advocate,[5] and make a minor technical correction to clarify administration provisions.

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[4] R&TC section 21004.
[5] Similar to Offer in Compromise, R&TC section 19443(g).

Effective/Operative Date of Solution

If enacted in the 2015 legislative session, this proposal would be effective and operative beginning January 1, 2016.

Justification

Sunset provisions are generally created to allow the Legislature time to review whether a statute is meeting its objective. The Advocate has prudently applied the granting of relief to taxpayers since 2009. Removing the sunset provision and the maximum amount that may be relieved would reduce taxpayer burden, allow the FTB to administratively "make taxpayers whole" upon discovery of an internal administrative error in perpetuity, and eliminate the costs associated with future legislation extending the sunset date. In addition, this proposal would retain the safeguard that requires the FTB's Executive Officer to approve relief in excess of $500.

Implementation

Implementing this proposal would not impact the department's programs and operations.

Fiscal Impact

Although the FTB is unable to quantify the volume or amount of future relief that would be granted under the Advocate's relief provisions, this proposal could generate cost savings by reducing the number of cases going to appeal, litigation, or both, if the current statutory relief expires.

Economic Impact

Cases of erroneous departmental action or guidance brought to the Advocate's office for resolution are infrequent. To determine the magnitude of the potential penalty and interest abatement, both the frequency of erroneous actions and the dollar amount of those errors must be known. Because it is difficult to predict the frequency and the value of future FTB errors, the amount of penalties, fees, and interest that could be abated under this proposal is unknown.

Pro & Con Arguments

Pro: Extending the Advocate's relief provisions allows the FTB to "make taxpayers whole" upon discovery of an internal administrative error and is an appropriate, efficient, and effective method for addressing situations where no other relief is available.

Con: Extending the Advocate's relief provisions in perpetuity and eliminating the cap on the amount of relief would remove the legislative review mechanism that increases transparency.

<u>Other States</u>

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. These states have interest waiver and reasonable-cause exceptions to certain penalty provisions that are similar to the existing California provisions. However, research found no statutes similar to current law or this proposal.

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FRANCHISE TAX BOARD'S
LP B PROPOSED AMENDMENTS

Section 21004 of the Revenue and Taxation Code is amended to read:

21004. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for coordinating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees. The advocate shall report directly to the executive officer of the board.

(b) The advocate or his or her designee shall give highest priority to reviewing and taking prompt and appropriate action, including staying actions where taxpayers have suffered or will suffer irreparable loss as the result of board action. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

(c) (1) On and after January 1, 2013, the advocate may review any application for relief pursuant to this subdivision and abate any penalties, fees, additions to tax, or interest assessed on a taxpayer, if it is determined by the advocate that the penalties, fees, additions to tax, or interest that have been assessed, or any part thereof, is attributable to any of the following:

(A) Erroneous action or erroneous inaction by the board in processing documents filed or payments made by taxpayers.

(B) Unreasonable delay caused by the board.

(C) Erroneous written advice that does not qualify for relief under Section 21012.

(2) Relief may be granted pursuant to this subdivision only if no significant aspect of that error or delay can be attributed to the taxpayer involved and relief is not available under any other provision of this part, Part 10 (commencing with Section 17001), <u>Part 10.2 (commencing with Section 18401)</u>, or Part 11 (commencing with Section 23001), including any relief granted under any regulation or other administrative pronouncement of the board.

(3) (A) ~~(i)~~ Any relief granted pursuant to this subdivision in which the total reduction in penalties, fees, additions to tax, or interest exceeds five hundred dollars ($500) shall be submitted to the executive officer for concurrence.

~~(ii) The total relief granted pursuant to this subdivision may not exceed seven thousand five hundred dollars ($7,500).~~

(B) Whenever relief is granted under this subdivision, there shall be placed on file <u>for at least one year</u> in the office of the executive officer of the board a public record with respect to that relief. The public record shall include the following:

(i) The taxpayer's name.

(ii) The total amount involved.

(iii) The amount payable or refundable due to the error or delay.

(iv) A summary of why the relief is warranted.

(4) A refund may be paid as a result of relief granted under this subdivision only if the applicable statute of limitations, with respect to filing a claim for refund, remains open as of the date that the basis for providing relief, as authorized in subparagraphs (A) to (C), inclusive, of paragraph (1), as reflected in a written communication received by the advocate.

(d) No other entity may participate in the grant or denial of relief pursuant to this section.

~~(e) On January 1 of each calendar year beginning on or after January 1, 2009, the board shall increase the amount specified in subparagraph (A) of paragraph (3) of subdivision (c) to the amount computed under this subdivision. That adjustment shall be made as follows:~~

~~(1) The Department of Industrial Relations shall transmit annually to the board the percentage change in the California Consumer Price Index for All Urban Consumers, as modified for rental equivalent home ownership for all items, from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.~~

~~(2) The board shall then:~~

~~(A) Compute the percentage change in the California Consumer Price Index for All Urban Consumers from the later of June 2008 or June of the calendar year prior to the last increase in the amount specified in paragraph (1).~~

~~(B) Compute the inflation adjustment factor by adding 100 percent to the percentage change so computed, and converting the resulting percentage to the decimal equivalent.~~

~~(C) Multiply the amount specified in paragraph (1) for the immediately preceding calendar year, as adjusted under this subparagraph, by the inflation adjustment factor determined in subparagraph (B), and round off the resulting product to the nearest one hundred dollars ($100).~~

~~(f)~~ (e) Notwithstanding any other law or rule of law, all determinations made under paragraph (1) of subdivision (c) shall not be subject to review in any administrative or judicial proceeding.

~~(g)~~ (f)(1) The amendments made by Section 1 of Chapter 349 of the Statutes of 2012 ~~the act adding this subdivision~~ shall become operative on January 1, 2013.

(2)The amendments made by the act adding this paragraph shall become operative on January 1, 2016.

~~(h) This section shall remain in effect only until January 1, 2016, and as of that date is repealed.~~