

STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

PUBLIC MEETING

THURSDAY, DECEMBER 4, 2014  
GERALD GOLDBERG AUDITORIUM  
9646 BUTTERFIELD WAY  
SACRAMENTO, CALIFORNIA

REPORTED BY:

KATHRYN S. SWANK, CSR NO. 13061

## INDEX

ITEM NO.		PAGE
1.	Approval of Minutes	4
2.	Annual EDR Update	5
3.	Legislative Matters	16
4.	Regulation Matters	
	a. 2015 Rulemaking Calendar	22
	b. Proposed Regulation 23663	23
	(Assignment of Credits Among	
	Affiliated Members - Definitions)	
	c. Proposed Regulation 25136-2	27
	(Market-Based Rules for Sales Factor)	
5.	Administrative Matters	
	Contracts Over \$1 million	
	Security Analysis Audit Logging Tool	30
	(SAALT) Replacement	
	IBM Passport Advantage Software	33
	Subscription and Support Renewal	
6.	Taxpayer's Bill of Rights	35

7.	Executive Officer's Time	70
8.	Board Members' Time	61
	Closed Session	74
	Adjournment	75
	Reporter's Certificate	76

## ATTENDEES

### BOARD MEMBERS:

MARCY JO MANDEL

JEROME E. HORTON

ERAINA ORTEGA

### STAFF:

SELVI STANISLAUS, EXECUTIVE OFFICER

MICHAEL BANUELOS

COLLEEN BERWICK

CATHY CLEEK

GAIL HALL

CIRO IMMORDINO

STEVE SIMS

MELISSA WILLIAMS

### COUNSEL:

JOZEL L. BRUNETT

BRUCE LANGSTON

### PUBLIC SPEAKERS:

Lynn Freer, Spidell

Vicki Mulak, CSEA

Gina Rodriguez, Cal Tax

SACRAMENTO, CALIFORNIA

THURSDAY, DECEMBER 4, 2014, 10:31 A.M.

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MEMBER MANDEL: Good morning, everybody. Good morning. Are we ready? Okay. Thank you.

This is the scheduled time for the meeting of the Franchise Tax Board. Would the secretary please call the roll to determine a quorum is present.

MS. BERWICK: Member Horton?

MEMBER HORTON: Present.

MS. BERWICK: Member Ortega?

MEMBER ORTEGA: Here.

MS. BERWICK: Chair Deputy Controller Marcy Jo Mandel?

MEMBER MANDEL: Here.

At least two members or their designated representatives being personally present, there is a quorum and the Franchise Tax Board is now in session.

The public has a right to comment on each agenda item. If there are any members of the public wishing to speak on an item, please come forward when that item is called, and you will have three minutes to address the board.

The first item, Members, is the approval of the minutes. We have the minutes of the September 30th, 2014, board meeting.

MEMBER ORTEGA: Move.

MEMBER HORTON: Second.

MEMBER MANDEL: It's been moved and seconded.

Without objection, that will be the board's order.

Item 2 is our annual EDR update. We have, excuse me, Cathy Cleek, our CIO, is going to present it. And it's a PowerPoint, right?

MS. CLEEK: Yes, it is.

MEMBER MANDEL: So the magic screen has to come down and we'll go over there.

MS. CLEEK: Now let's hope all the technology works. (Laughter)

We're off to a good start. Good morning, Madam Chair, Member Horton, and Member Ortega. This is our third annual -- annual EDR project update, and I'm happy to be talking to you today about what we've accomplished and what we're doing in the coming year.

So what I always like to start out is, talk about scheduled budget and revenue. Especially being from an accounting background, people always like to talk about these things first, and then we'll talk about functionality and a look back on what we implemented in 2014 -- this is calendar year 2014 -- and what we have to look forward to in the calendar year 2015.

So, you know, you are going to see pictures of folks here at Franchise Tax Board throughout this PowerPoint, and I've included those because projects like this don't get done without the support of so many people. It starts with you, as members of the board, supporting the project, Selvi's leadership on the EDR project, and basically everyone in this room, and more, are tax practitioners so you are going to see pictures throughout.

So on schedule, I have -- I am happy to tell you, we are on schedule. This project has ten major deliverables and the seven of them in the darker blue have been completed and completed on time, and we have three remaining deliverables for this project.

So you are going to hear about all three of those later in the schedule, or in the presentation. But I'm just happy to tell you that we are on schedule.

We also -- I'm very, very happy to say, we're within budget. This gives you three years' worth of view of where we've been. You can see, the left is what has been projected and the red has been the actual cost, and you can see that each year we've ended up exactly as we have planned, and spent the money that we had budgeted for the project. We have spent \$300 million to date of the \$640 million the project will cost.

This -- 14/15, if you look at it, there's a big vendor payment, but -- in this, so even though the year is about half over, the red chart doesn't show us halfway up there, we do think we will end the year spending exactly what we had budgeted.

I think the most exciting part about the project is the revenue picture, and here's a three-year revenue picture, and we've been able to exceed our revenue target each and every year. And this year, for the first quarter, we are there as well.

The one thing that we have -- are very happy to announce, this is as of the end of October and our November numbers, we've made over a hundred million dollars there. So we're well on our way to having a very successful 14/15. We reached our first billion dollars on the project in July, ten months ahead of schedule, and we're currently at \$1.1 billion for the project.

So let's look forward -- or look back and talk about calendar year 2014, and I talked about some of the new functionality that we've delivered. 2014, we really started off with taking our modeling approach, which is how we select which cases, we send notices to, which ones we call people, which ones we go out and have a visit with. And we've used really enhanced modeling techniques and deployed predictive

modeling for both our personal income tax and business income tax collection program. This results in better case prioritization in allowing us to work the most productive cases.

We were also able to retire a 15-year-old tool called Strata that we had in-house.

So June came along and we deployed our case management system to automate correspondence. We get 10,000 pieces of correspondence a day, and now we scan that correspondence and electronically route it around the department. What's really great about this is, when someone calls, no matter who they are in the department, they can pull up the piece of correspondence and we can respond to the taxpayer and give them better service than we could before.

We also have inventory tracking that allows us to move things to the most efficient place within the department and keep track of how much correspondence we have where. So this has been a major accomplishment for the department.

So October came around, and we deployed what we call MyFTB in test mode only. MyFTB is going to be our functionality that we deliver to taxpayers, that they can go online and self-service much more information than they have today on our external website. But -- because when you start to put people's tax return, all of the notices they get, the security around that is paramount. And so this release gives us the code as we will put it into production and allows us to very rigorously test against this code.

And in the security arena, we have a vendor, two external vendors coming in, looking at, making sure this site is extremely secure. And our public release is planned for mid 2015. And the reason why we don't give an exact date on this is, we are absolutely committed to it being rock solid before we deploy it, but we hope this will be in July of 2015.

So internally, we have a taxpayer folder and we have many systems that people can view to get data, but we said, instead of making people go to four or five systems, we want them to be able to go to one system and get all the information. So what we've deployed is a taxpayer folder that gives a snapshot of the individual's and organization's account, including images of the tax return, payment information, current and past address information, and the ability to add comments to the accounts. And this has enhanced our customer service.

So looking forward, to 2015 -- so which is just a month away -- we're going to have a new system for processing our personal income tax returns. So most of the manual processing, we've automated a bunch of the manual processes. Our fraud detection, we're taking predictive modeling that we learned how to do with collections and are now applying it to fraud to find more fraud cases. We've planned to automate or work planning and improve the user experience, being able to tell people more exact where the return is in the process if people call.

The one thing in January, we are starting with the prior year, just to give us a smaller volume of work to work on.

So in the -- what I talked about in July was actually releasing the MyFTB account to the public. And so that will give returns, notices, payment information, W-2s, notices, correspondence, and account activity for people to view online.

I've been asking questions recently from folks, and I just wanted to add in, the withholding credits from our nonresident withholding program will be part of this view in July. You will also be able to file protests and initiate online chats in secure e-mail at this time.

So that's through the summer. And then this next time, this year, we will be planning our return analysis system for business entities to allow for better processing of business returns that are filed for us. And this will complete the project for us.

So I just wanted to end by saying thank you to all of you, especially Marcy. I want to call you out because I think you've been one of the biggest supporters. You have always known a lot about the project and always had a lot of questions for me, and I think you are the biggest supporter on our data warehouse, but -- so thank you so much. And Member Horton and Ortega, just great questions you have asked along the way and thank you for supporting this, and we just look forward to delivering another year of success on EDR for you, and taxpayers in California.

MEMBER MANDEL: Thank you, Cathy.

So now I have to say it, I love EDR. (Laughter) I know my parents would wish I'd love something else, but I love EDR. I'm looking forward to the taxpayer folder and the MyFTB and I think it's a great project too. You guys said, when we did the kick-off, someone said I had a smile that was bigger than my face. So I guess I've always loved the whole concept of using the information effectively and being able to get the information that was somewhere in the FTB systems and use it effectively, and all of the customer service improvements that are coming along with EDR and the internal processing improvements. It's really not just a computer system. It's a reengineering at FTB and how FTB relates to the public in the modern age with the taxpayer information.

So, yes, I love EDR. Thanks for running it.

MS. CLEEK: Thank you.

MEMBER ORTEGA: I just had a couple follow-up questions.

On page 6, the revenue target discussion, can you say a little bit more about what you attribute the differences between, kind of, what your assumptions were in the planning stage versus what you have seen in reality that gets to such a big difference in the revenue?

MS. CLEEK: There's a couple things that come to mind. We implemented the FIRM project, which was the Financial Institution Record Match. And what it has done, instead of collectors always having to say, where can I find a bank account, once a quarter, we get kind of a big report from the financial industry that says, here's where someone banks. So number one, what it does is, it allows us to quickly identify a place to get additional assets.

And then what it does, secondarily, that I think people sometimes forget about is the time that you used to spend to find all these people, you can direct to other accounts and generate revenue in that way.

MEMBER ORTEGA: Okay. And one more --

MS. CLEEK: Let me give you one more quick example. When you work something in an electronic way and you don't -- just think, we have people open up mail, route it to the -- deliver it to the correct person. And when you can free up those resources and not be doing those manual kind of tasks, and the computer does it for you, it gets it to the right person, you can save resources that way, and that has been very helpful and is more effective than even I thought it would.

I'm always a big pusher of what -- let's do something electronic, but, like, in one small area, they were able to increase their production rate 25 percent, not having to get up, go get a return, find it in a truck, and come back to their desk and work it. They can just pull it up immediately at their desk. And just small things like that, when you have 15 million returns, adds up to a lot of time.

MEMBER ORTEGA: Great.

And then the collections modeling slide, I just was curious about the -- one of the bullets said deployed enhanced predictive models. What is EDR telling you, that you didn't get before, that's helping in that area?

MS. CLEEK: You know, you have over a million accounts that you are needing to collect from, and it's just telling us which ones are the best ones or when we use --

MEMBER ORTEGA: What are the characteristics? I'm just trying to --

MS. CLEEK: Could we have an offline conversation about that? (Laughter) We don't like to talk about some of that.

MEMBER ORTEGA: Okay.

MS. CLEEK: But would love to talk to you, because it's really helpful in picking out the best fraud case, audit case --

MEMBER ORTEGA: Okay. So it's data within the case --

MS. CLEEK: Yes.

MEMBER ORTEGA: I don't need to know the specifics.

MS. CLEEK: In other data we have, we're bringing in much more data. What we did is, we took our best cases and said, here's our best cases, let's look at that profile, and then let's apply it to our universe, and which ones should we take action on.

MEMBER ORTEGA: Got it.

MS. CLEEK: And which one is like our fraudulent -- we kind of did the same thing and what are the things that make them look really unusual.

MEMBER ORTEGA: Got it.

MEMBER HORTON: Thank you, Madam Chair.

One of the things we might want to sort of point out in the process of sharing this information, possibly with the legislature at some point, is that the Franchise Tax Board has -- does not audit the entire universe which I think is somewhat of the presumption, is that we look at the entire universe when, in fact, we look at a very, very small percentage. And so the more effective we can be in selecting that universe, it's kind of like picking the low hanging fruit, the strategies in picking the low hanging fruit.

MS. CLEEK: Absolutely right.

MEMBER HORTON: The other thing I wanted to do is just thank you, Cathy, for your work, as well as Madam Chair for her leadership on this project. It has been very, very effective.

One of my concerns, though it's not with the project itself, but with the understanding that may exist in the office of the LAO. We received an analysis of the projected income and it didn't seem to include the efficiencies and the effectiveness of the Franchise Tax Board. Some of the income is attributed to Proposition 30; the other is attributed to an enhanced economy. But it would be nice for a little recognition that the efficiencies of the Franchise Tax Board has generated X amount of additional dollars for the State of California. And so maybe we send them a little note or something. (Laughter)

MS. CLEEK: We meet with them regularly and we would be happy to dialogue with them on that.

MEMBER HORTON: Thank you.

MEMBER MANDEL: Thank you. Thank you, Cathy.

I think that was our last PowerPoint for now. So the screen can go up and we'll go back to our usual seats.

We're now on Item 3, which is Legislative Matters. We have Gail Hall -- yeah. It's Gail. Gail is here, our legislative director.

And you are not participating in this, are you? So Finance is not participating.

We have some legislative proposals, right?

MS. HALL: Right.

Madam Chair, Members, this year we have two department proposals for your approval. We distributed these proposals to various stakeholders and we hosted a stakeholder meeting on November 5th, and we have not received any negative comments about these proposals. If it please the Chair, I would like to present these proposals separately and then ask if you have any questions.

MEMBER MANDEL: All right.

MS. HALL: Okay?

Proposal A would simply clarify a definitional ambiguity in California law that relates to the nonadmitted insurance tax that's administered by the department. If a California policyholder purchases insurance from a nonadmitted insurer, then that policy holder files a return and pays gross premiums tax to the department. And this is just a clarification of the definition.

So I would be happy to answer any questions you have about this proposal.

MEMBER MANDEL: Do you have any questions?

MEMBER HORTON: No. Move approval.

Thank you.

MEMBER MANDEL: Okay. I will second that.

And so that will be the Board's order with Finance not participating on that one.

MS. HALL: Great. Thank you.

MEMBER MANDEL: Thank you.

MS. HALL: Proposal B would remove a sunset date from the Taxpayer Rights Advocate Relief law and make the provision permanent.

Now, under current law, the taxpayer advocate has discretion to grant relief of interest, penalties, and fees that are attributable to erroneous action and inaction by the department, unreasonable delay caused by the department, or erroneous written advice from the department.

And again, I would be happy to answer any questions you may have.

MEMBER MANDEL: Okay. Thanks.

Any questions?

MEMBER HORTON: Yeah. Well, not really, Madam Chair, but I want to share with the department a concern, and possibly we can work on it as it goes through the process. I'm supportive of the concept of relieving the penalty and interest, whenever possible, and particularly when it is -- when it's derived from an act of the organization.

I'm a little concerned about the additional layer of having the taxpayer's advocate -- having to go to the taxpayer's advocate, as well as back to legal counsel, in order to receive that relief.

I believe that it should be possible for the agency to provide that relief as soon as we identify that all of the components that are required, in order to receive that relief, exist. And so we should be able to solve this particular problem at the lowest and earliest possible opportunity that we have.

And so what I would encourage us to do is to work on this, as it goes through the process, and allow the agency itself to provide the relief without having to go through a third party, even though that third party happens to be part of the family. But, yet, still, the taxpayer's advocate is presumed to be separate, somewhat, from the agency in representing the taxpayer, which adds another layer to the approval process.

MS. HALL: No. We can do that, Board Member Horton. That seems reasonable.

MEMBER HORTON: Thank you.

MS. HALL: Madam Chair?

MEMBER MANDEL: This was -- was this modeled on federal provisions originally?

MS. HALL: No.

MEMBER MANDEL: Okay. And I think part of the purpose, too, of the advocate having this specific discretionary authority was that then the advocate would see where certain problem areas might have been cropping up too, and be able to take appropriate action, or ask the agency to take appropriate action.

So -- but you would have to maybe speak with the advocate to see what types of circumstances -- it's been very few -- where this relief was viewed as appropriate and granted by the advocate. Because I wouldn't want the advocates -- if there is a way -- this is specific. There are a lot of different interest relief provisions that the Franchise Tax Board applies. This is just one of them.

And if this was in there so that the advocate -- to handle very specific types of things that were -- didn't fall under the usual interest provisions, which I think the usual ones do include unreasonable delay --

MS. HALL: That's true.

MEMBER MANDEL: Right.

There might have been some -- it might have been perceived that it was put in the advocate's office just because it was the unusual types of situations. But I wouldn't want the advocate to not have access to the information in case the reason that this one got some special relief is because there was -- I can't think of a good word. The word squirrely keeps coming to mind -- (Laughter) -- but there's something happening in the system that maybe this was a one-off but that maybe, there's something that would fall in the advocate's purview to try to reach a broader resolution.

CHIEF COUNSEL BRUNETT: I think you are thinking of systemic. If there's something systemic going on.

MEMBER MANDEL: That's right. The system we named after Steve, right? (Laughter) Okay.

MEMBER HORTON: I would agree with -- I mean, notifying the advocate that, just in case there's a systemic issue and, although, quite frankly, I think the organization -- if this is a systemic issue, the organization is probably the first one to recognize it. The advocate generally engages when there is some dispute in an effort to streamline the process and address the concerns of the taxpayer.

And my concern, actually, goes back to the actual legislation, wherein the interest is not abated until such time that the taxpayer is notified, which, in and of itself, creates an inequity, I think, in the law so we would like to sort of address that as well.

With that consideration on behalf of the department, I move adoption.

MEMBER MANDEL: Okay.

You are okay with it?

EXECUTIVE OFFICER STANISLAUS: Yes, we are.

MEMBER MANDEL: Okay. Second.

And you can go forward with that one.

MS. HALL: Thank you.

MEMBER MANDEL: Okay. That was quick.

We're now on Item 4, Regulation Matters.

MEMBER HORTON: Madam Chair?

Thank you, Gail. We really appreciate your service over the years. Happy holidays, Gail. (Laughter)

MEMBER MANDEL: I left my manners at the other table. (Laughter)

Okay. We're on Item 4, Regulation Matters. We have three subitems. The first is the rulemaking calendar. That's you, Bruce, right?

MR. LANGSTON: Yes. Thank you.

The 2015 rulemaking calendar in your materials shows what regulation projects FTB staff plans to work on during the year.

If you don't have any questions or comments, we ask for your approval to proceed on these.

MEMBER MANDEL: Okay. And then my understanding is the motion to approve the rulemaking calendar. The way that we do it is also to approve them going forward with our interested parties process on any ones that come forward.

MR. LANGSTON: Yes.

MEMBER MANDEL: Right. Okay. Thank you.

MEMBER HORTON: So move.

MEMBER ORTEGA: Second.

MEMBER MANDEL: Okay. It's been moved and seconded. And with no objection, that will be the Board's order.

Okay. The "B," or the second one, is the proposed regulation, 23663, which is assignment of credits among affiliated members, definitions.

And Ciro Immordino is here.

MR. IMMORDINO: Good morning.

MEMBER MANDEL: Is it Ciro?

MR. IMMORDINO: I am here to request permission to proceed with the formal regulatory process for regulations under Revenue and Taxation Code section 23663. I will briefly discuss our meetings with the public in developing the regulations and also briefly explain what the regulations do.

Section 23663 permits the assignment of credits amongst members in the same combined recording group. Sometimes taxpayers' attempts to assign credits are defective, such as when a taxpayer assigns more credits than they have, or taxpayer assigns credits to someone who's not in the same group. When these effective assignments occur, taxpayers are left with uncertainty as to what happens to the credits being assigned.

The goal of the regulation project was to give taxpayer certainty as to what happens with the credits and also flexibility in dealing with the defective assignment.

At the first interested parties meeting in October of 2012, the FTB staff met with the attendees and discussed the scope and structure of the future regulation, starting with the basic question of what is the definition of a defective assignment?

Based on these discussions with the public, at the second interested parties meeting, in December of 2013, FTB staff presented a PowerPoint presentation which explained the proposed framework for the regulations. The proposed framework received positive feedback from attendees and other interested parties.

At the third interested parties meeting in June of this year, staff presented draft regulations. Accompanying the draft regulations was an explanation document which explained how the regulation worked. In addition, the explanation document often provided the reasoning for why the regulations were drafted the way they were.

Again, FTB staff received positive comments from attendees as well as a few constructive comments for minor improvements to the language.

Based on these comments, in August of this year, FTB staff released revised regulations. Staff has not received any further comments or proposed changes to the regulatory language.

And now I will give a quick overview of what the regulation does. As I stated, the goal of the regulation project was to give taxpayers certainty, and so the regulation contains standard mechanical rules which tell taxpayers exactly how credits are allocated when there's a defective assignment. The standard rules also provide taxpayers with final credit allocations that they can rely upon and use to make future decisions.

As we structured the regulations, we wanted to give effect to the assignor's intent to assign credits. And so whenever possible, the regulations allocate credits to the intended assignee.

And this leads to the flexibility portion of the regulations. We recognize that any set allocation rule can produce an undesirable result for some taxpayers. And so the regulations provide that when the parties to a defective assignment are in agreement, then, in many instances, they can choose the allocation credits as opposed to being limited to the stated allocations.

And finally, the regulations also allow taxpayers to correct defective assignments in many cases. These correction rules incentivize taxpayers to discover income forward with the defective assignments as soon as possible, and they give more flexibility to taxpayers who rarely request a correction.

In summary, we've had three interested parties meetings, and the regulations have received positive feedback from the public. Therefore, I am requesting permission to proceed with the formal regulatory process for these regulations.

Thank you for your time this afternoon, and I'm happy to answer any questions.

MEMBER MANDEL: Okay. Thank you, Ciro.

This is, I think, one of those examples where the interested parties process really proved a boon, and I'm really glad you ran those meetings because a defective election is not something anybody really wants to see happen, and being able to make it all work out afterwards. It's something that people can live with and know how it's going to work is a good thing.

Any questions?

A motion?

MEMBER HORTON: Move approval as requested.

MEMBER ORTEGA: Second.

MEMBER MANDEL: Okay. It's been moved and seconded.

And without objection, that will be the board's order.

Thank you.

The third one, number -- letter C, proposed regulation 25136-2, Market Based Rules for Sales Factor. Melissa Williams is here.

MS. WILLIAMS: Good morning. Good morning, Madam Chair, Member Ortega, and Member Horton.

I am Melissa Williams and we are seeking the Board's permission to move forward with the formal regulatory process to amend Regulation 25136-2. Regulation section 25136-2 provides detailed market-based sourcing rules for the sales factor numerator for sales other than sales of tangible personal property. It interprets and makes specific the basic market sourcing rules contained in Revenue and Taxation Code section 25136.

The reason for the amendment is that taxpayers wanted guidance on how to assign certain receipts which were not addressed in the underlying original regulation.

For example, Revenue and Taxation Code section 25136 provides that marketable securities are to be assigned to a location of the customer. Taxpayers asked, what are marketable securities? Where is the location of the customer? We did not address these questions in the original regulation, and, thus, we are now seeking to amend that regulation.

The six major amendments include, Number 1, the addition of a definition of "marketable securities";

Number 2, the addition of a standalone definition of "marketable securities" for broker-dealer-type taxpayers;

Number 3, the addition of examples of how to assign asset management fees;

Number 4, the addition of assignment rules for interest, dividends, and good will;

Number 5, the addition of assignment rules for marketable securities;

Number 6, the addition of an example mirroring the reasoning of chief counsel ruling 2011-1, whereby if the taxpayer cannot readily determine the commercial domicile of its business entity customers, then the taxpayer can assign the sale to the customer's billing address.

And then there are miscellaneous clean-up fixes.

We have had three interested parties meetings, and there have been four drafts of proposed language circulated to the public, the last of which was posted on our website on November 7th.

The marketable securities industry folks have been very proactive in the process of drafting language in the definition of "marketable securities" for broker-dealers as well as the assignment rules for marketable securities, and assignment rules for interest. We have had a lot of feedback from many taxpayers and many representatives, all of it positive and constructive.

Again, we are seeking permission from the Board to proceed with the formal regulatory process to amend regulation section 25136-2.

I am happy to answer any questions you may have.

MEMBER MANDEL: Okay. Thank you. Questions?

MEMBER HORTON: No. Thank you. Appreciate it.

I mean, there was a lot of confusion out there. I believe these will clear up the majority of them. Thank you very much. Very well done.

MEMBER MANDEL: Motion?

MEMBER HORTON: Move adoption -- approval.

MEMBER ORTEGA: Second.

MEMBER MANDEL: Right. It's been moved and seconded.

And without objection, that will be the Board's order.

Thank you.

MS. WILLIAMS: Thank you.

MEMBER MANDEL: Item 5, Administrative Matters. This is contracts over a million dollars, and as Cirio clears the way, coming up is Michael Banuelos, our new director of the Procurement Bureau. He's hiding behind -- there he is. Hello, Michael. What have you got for us?

MR. BANUELOS: I cannot hide today.

Thank you, Madam Chair and Board Members Ortega and Horton. It's a pleasure to be here with you today. My name is Michael Banuelos.

I am the director of the Franchise Tax Board's Procurement Bureau, and I'm here today to present two contracts, estimated at over \$1 million, for your approval. Those two contracts being the Security Analysis Audit Logging Tool, otherwise known as SAALT, and also the IBM Passport Advantage Software Subscription and Support Renewal. Both of those are a mouthful.

With your permission, I will go over each contract individually, and I would be happy to answer any questions you have at that time.

So we'll go ahead and start with the SAALT contract. SAALT is a tool that is used by our information security staff to meet audit log management and system monitoring compliance requirements.

The existing SAALT application that we are currently using will no longer be supported after December of 2015. Without the SAALT tool, we would be unable to meet the National Institute of Standards and Technology and internal service requirements for use of their data.

The estimated cost to replace the SAALT tool is 1.2 million. And at this point in time, we anticipate using an approved DGS contract or conducting a competitive bid.

So at this time, I would like to ask, are there any questions you have about the SAALT contract?

MEMBER HORTON: Madam Chair?

MEMBER MANDEL: Yes, Mr. Horton.

MEMBER HORTON: Michael, is this your first time before the Board?

MR. BANUELOS: It is, sir. It is.

MEMBER HORTON: Did you get the list of questions that I had? (Laughter)

MR. BANUELOS: I was lucky enough to attend the board meeting a few months ago, and I'm going to say, no, I didn't receive the questions. But I would be happy to look into that for you, sir, and get back to you with those responses.

MEMBER HORTON: Please do.

Did you notice that you misspelled "SAALT"?

MR. BANUELOS: I did not notice that, sir.

MEMBER HORTON: And you know, I actually prefer pepper. Why did you use the term SAALT? (Laughter)

MR. BANUELOS: I've been told to stay away from salt; it's bad for my health. Probably why I don't know how to spell it. (Laughter)

MEMBER HORTON: How far over a million dollars are we talking?

MR. BANUELOS: At this point in time, we're estimating about \$1.2 million.

MEMBER HORTON: 1.2?

MR. BANUELOS: Yes.

MEMBER HORTON: Has the governor approved that extra 2 percent (sic)? Is he okay with that? I like him a lot. One of my favorite guys. Shall I call him? (Laughter)

"JB. I've got a guy named Michael over here. Wants an extra \$200,000 out of us." (Laughter)

Thank you very much. Well, done.

MR. BANUELOS: Thank you, Mr. Horton. I appreciate that.

Are there any other questions about the SAALT contract?

MEMBER MANDEL: No. I don't have any questions about the SAALT. I can't follow that act.

MR. BANUELOS: So I'm going to move on to the second contract, the IBM Passport --

MEMBER HORTON: Don't you want this to approve this first?

MR. BANUELOS: Oh, yes, please. (Laughter)

MEMBER MANDEL: Or we can take them as one, when he's done.

MEMBER HORTON: Would that be your preference, Madam Chair?

MEMBER MANDEL: Yeah. Why don't we do that.

MEMBER HORTON: That would only extend the time that you are up here. (Laughter)

MR. BANUELOS: I would be happy to do whatever the Board so desires.

MEMBER MANDEL: Would you like to make a motion?

MEMBER HORTON: I want to hear the other half.

MEMBER MANDEL: All right. Let's hear the other half.

MR. BANUELOS: So the second contract that I am presenting you to do today is the IBM Passport Advantage Software Subscription and Support Renewal.

This is an annual software maintenance contract, which covers both subscription and technical support for IBM software used to run FTB's various systems, including our accounts receivable collection system, our integrated nonfiler compliance system, and our professional audit support system.

Our current maintenance contract for these tools expires on June 30th, 2015. The estimated cost for this contract is \$1 million, and we anticipate conducting a competitive bid.

Are there any questions I may answer about this contract?

MEMBER MANDEL: You know, he didn't really want to ask that. (Laughter)

MEMBER HORTON: No. No questions from me.

MEMBER MANDEL: Okay.

MEMBER HORTON: Move approval of both items, Madam Chair.

MEMBER MANDEL: Okay. Thank you.

They've been moved and seconded. And without objection, that will be the Board's order. Thank you very much.

MR. BANUELOS: Thank you very much for your time today.

MEMBER HORTON: Well done. Watch that first step, Michael.

MEMBER MANDEL: Okay. We're now going to move to the Taxpayer Bill of Rights hearing, which is Item 6. This is the time set for the Board's annual Taxpayer Bill of Rights Hearing, as required by section 21006 of the Revenue and Taxation Code. The purpose of this hearing is to allow taxpayers and tax practitioners the opportunity to present directly to the Board any proposals they may have for changes in existing state, income tax law, or for improvements in FTB publications or services to the public.

FTB staff is available to respond to questions which may be raised as a result of taxpayer proposals. Present are Selvi Stanislaus, our executive officer; Jozel Brunett, chief counsel; Gail Hall is still here, somewhere in the audience. There she is, director of Legislative Services Bureau; and -- I need a drum roll. Steve Sims, our taxpayer rights advocate.

Staff will analyze the fiscal and administrative consequences of the proposals. Steve, did you have introductory comments to share? Usually I -- but maybe you don't. Maybe you have so many comments for later.

MR. SIMS: Yeah. I am going to give them all later.

MEMBER MANDEL: Okay. I'm going to call the names of the individuals who have indicated they want to make a presentation. Of course, anyone else can also --

MR. SIMS: Oh, Marcy.

MEMBER MANDEL: Yep.

MR. SIMS: I did want to say, welcome, Madam Chair and Board Member Ortega and Board Member Horton.

MEMBER MANDEL: You sound nervous, Steve.

MR. SIMS: I have a cold.

MEMBER MANDEL: Oh, okay.

MR. SIMS: But this is not my first barbecue, although it is my last. (Laughter) I might show up for a sniff every now and then, you know, in the future.

MEMBER HORTON: Is that why you sort of forgot us? (Laughter)

MR. SIMS: I just didn't want to give you an opportunity to mess with me, like you did Michael. (Laughter)

MEMBER HORTON: Okay.

MEMBER MANDEL: All right. So I'm going to call the people who have signed up and basically give you three to five minutes. We'll see where you are. And if there's anyone else, when we're done with the ones who have signed up, then we can have you approach the podium if there's anything else. So I have Vicki Mulak from CSEA.

MR. SIMS: While she's walking up, are we supposed to drink out of the same water -- me, Michael, Gail? I'm just curious.

MEMBER MANDEL: I don't know who provides you that water. But you do have a cold.

MEMBER HORTON: It's holy water. (Laughter)

MR. SIMS: Maybe you better take a sip. (Laughter) Hey, I'm retired. I can do that. All right? Go ahead. Get mad at me.

MEMBER MANDEL: Hey, that's why they give me this thing. (Rap gavel)

MEMBER HORTON: We have to approve that retirement.

MEMBER MANDEL: Vicki.

MS. MULAK: These are the serious problems of the taxpayers of California.

My name is Vicki L. Mulak. I'm an enrolled agent and a Certified Financial Planner. I'm a tax practitioner from Tustin, California. And I'm representing the California Society of Enrolled Agents today.

I want to address you, Madam Chair, members of the Board, although, Member Horton, I do not have a boss you can call today and I didn't get the memo. Okay? But you are welcome to e-mail me any time.

MEMBER HORTON: I will.

MS. MULAK: And department staff and guests in attendance.

We have submitted a four-page letter. We have three items we wanted to bring forth, and I think I will start with the middle item because it's a little -- probably the thorniest of all of them, and it has to do with the Withhold at Source Program.

California manages -- Franchise Tax Board does several other withholding programs: Back-up withholding, resident withholding, and real estate withholding. And it is our opinion that these programs don't run quite as smoothly as wage withholding does.

And so I have a two-part in the letter about real estate withholding in general. We're told that there isn't any widespread issues, but our members are constantly reporting issues in being able to just claim real estate withholding on a 540 return and to just have it smoothly processed. We did get some numbers, though, from the Franchise Tax Board that there's 2300 taxpayers with \$6 million in unclaimed real estate withholding. Maybe some of our members are in that group, their taxpayers, I should say. And I guess there's 11,000 taxpayers with 12 million in unclaimed real estate withholding, but I say that

the common thing that happens is, you file the return, you have your 593 document, you claim the withholding, and then it just doesn't process. You get everything processing except the real estate withholding, and it requires contacting the advocate's office or contacting the withholding source unit. So that's one issue.

The issue that gets a little thornier is how the Franchise Tax Board would like us to manage withholding on pass-through entities. And I know they are in the process of doing regulations on this. But what happens is, there's a 593 in the FEIN of the entity, and then the entity is supposed to pass the withholding through if they are passing the income through, and it has to be done in a perfect manner. If you are an S corporation, you can only allocate to the S corp the portion that would pay your 1.5 tax; the rest of it would go out to the shareholders.

And we think a better approach, which we posture in our letter, as a solution, would be to allocate, before escrow closes, how much will go to the entity itself and how much of a withholding will be allocated to the participants of the passthrough, rather than using the 592 series to allocate the 593 withholding to the participants. It just is not a smooth process.

And we would just request that that be looked at in the regulation process, that after escrow is not working as well as if we could do it before escrow, to allocate to the folks that will actually be claiming withholding on their tax returns, rather than the 592 and the K-1 with the line item, recapping the 592 passthrough. So that's one point.

Our other two points have to do with getting entities that were formed, and never launched, dissolved. And we had some legislation that would have assisted certain groups this year. We had Assembly Bill 1529, which would have allowed for an administrative dissolution of nonprofits, and they don't have the taxation problem, but that one didn't make it through.

And then we had Assembly Bill 2244 -- would have reduced the minimum annual tax for businesses that were dormant or inactive.

We had our own bill AB 2180, CSEA did, which was not successful. Didn't get out of the house of origin. And that one would have helped existing businesses that get suspended inadvertently for not filing their statements of information.

So we would just propose that something be done about this. In our comments last year, we got a written response back from the department, which said that the annual minimum taxes imposed to address the administrative costs for the state to maintain the records of these business entities. We would posture, why not even have the administrative costs by just, after some period of time, with no response, these entities are just administratively dissolved. So that's our solution there.

And our third one isn't anything new, and I think my friend here, Gina, has brought this one forth before. But I think what makes it important this year is, it's happened again. How California manages disaster declarations. We had a Napa earthquake. We still do not have the legislation for. And folks could take their disaster losses on their prior year returns, but they weren't able to do that because they didn't

know they could do that. No legislation by the time they had to file October 15th -- 14th. IRS responded right away. They had until January of '15 to do this. And we just think California should follow suit.

This is a group of taxpayers that should be assisted, and we just think that the process is kind of not real workable, that we have the governor declaration followed by the legislation that's required. So we bring it up again just because Napa is just a real recent event.

And that concludes my comments and a lot of details in the four-page letter. And we appreciate your time.

MEMBER MANDEL: Thank you. Thank you, Vicki.

I can't remember if it was here or at Board of Equalization; I think we had this discussion before about the disaster declarations in the legislation. And I can't remember if we had a leg proposal and it didn't go anywhere. But it's a legislative requirement. And I think there are people at the agencies who have shared that same concern.

MS. MULAK: Well, one of the biggest problems is, they will have to amend their '13 returns and there are not good statistics as to how quickly Franchise Tax Board does amended returns. It's about a six-month processing time, so therein lies another problem, that's exacerbated by this.

MEMBER MANDEL: On the withholding, the mismatch of withholding that's --

MR. SIMS: That issue that Vicki has brought up is an issue that we are very much aware of. And I'm 100 percent agreement in regards to what Vicki said, in what it causes taxpayers in terms of not being able to get that withholding applied to their tax return or getting a bill instead of a refund.

So I will add that the withholding unit is working very closely, in different ways. First of all, they are working with escrow companies. In the beginning, initially, a lot of the problems that were occurring were the result of the 590 -- I mean, the -- what is it. 563? 593. The 593 not being completed correctly. However, I think a lot of that has been -- some of it has been corrected through education and outreach. More needs to be done. But we're also starting to hear of examples where it was completed correctly, but it wasn't necessarily received.

So we do acknowledge that there are some problems within our process, but we are working to improve those processes. Am I correct? Where is my -- is that accurate?

UNIDENTIFIED SPEAKER: Yes, we are.

MS. MULAK: Okay. We hope they will consider the passthrough withholding. I think that thing has become nightmarish.

MR. SIMS: I like your idea of putting the box on the actual 541 -- on the K-1, the K-1.

MS. MULAK: The thing of it is, when people open escrow, they get the 593 series given to them. The first person they turn to is us. Escrow gave me this. We could say, okay, you are a passthrough. Let's get it ultimately allocated to who's going to claim it.

MR. SIMS: Right.

And finally, I do want to add that the problem with corporations not being able to shut down faster and having the \$800 continue to go and go into our accounts -- you know, that goes into our accounts receivable. You know, every year that \$800 -- it's just an artificial amount that should not be there.

MS. MULAK: It's artificial.

And we have taxpayers -- it's hard to sit across the desk from someone and tell them, there's nothing I can do to help you, unless you can cough up, 5, 6, 7, 8 thousand dollars, you must just let this thing go and see what's going to happen to you.

But they want closure. That's what they want.

MEMBER MANDEL: Right.

MS. MULAK: Thank you.

MEMBER MANDEL: Okay. Thank you.

I also have Kara Watson from CSEA.

MS. MULAK: She was with me. She just signed in on the log-in.

MEMBER MANDEL: Gina Rodriguez, Cal Tax.

MS. RODRIGUEZ: Thank you, Madam Chair, Members.

Gina Rodriguez with California Taxpayers Association. Before I address this year's Bill of Rights issues, Cal Tax would like to thank you, Steve, for your more than three decades of service and congratulate you --

MR. SIMS: Thank you.

MS. RODRIGUEZ: -- on your retirement. I personally enjoyed working with you for the last, I want to say, 33 years. Is that about right?

MR. SIMS: Yeah. I was like 14 when I started --

MS. RODRIGUEZ: And I was 15. That's right.

As for this year's Bill of Rights issues, Cal Tax would like to bring to your attention, once again, the problems associated with the FTB's seemingly high compliance inventory of protests, refund claims, audits, and appeals.

Cal Tax brought this issue to your attention last year. However, the FTB seemed to fall a bit short in addressing our concerns. I want to go through this with you again this year.

Taxpayers' liabilities should be determined within a reasonable time frame. Once determined, any overpayment should be returned to them as quickly as possible. The FTB's high compliance backlog seems to violate the spirit of the Taxpayer Bill of Rights, and FTB must do more to avoid any conflict between protecting revenue and providing due process to taxpayers.

In discussions this week with the FTB's audit and legal managers -- thank you, Jozel, for meeting with us - Cal Tax expressed again its desire to move forward with a workable solution, and we do stand ready to assist in any way we can, in addressing these poor workload problems:

Number 1 is protest. In 2013 FTB was taking an average of 44 months to close a docketed protest despite the 24-month published guidelines that we have. Since then, there has been an overall improvement. You have heard Jozel in these meetings talk about increased workloads and addressing those. We do acknowledge that improvement.

However, Steve, as you correctly pointed out in your 2014 annual report to the legislature, the additional time and resources required to resolve these protest cases does remain a concern.

Claims for refund. The FTB does not have a complete picture of its refund claim inventory, and staff is unable to tell Cal Tax whether the inventory has increased since the 2008 enactment of the large corporate underpayment penalty, also known as the LCUP. The 20 percent LCUP is quite punitive. So punitive, in fact, that taxpayers are forced to file their original returns with an overpayment to avoid the imposition of the penalty, and then they subsequently have to file refund claims for legitimate issues. The LCUP does ultimately increase government and taxpayer costs due to the increased workloads in the returns.

The legislative purpose of enacting the LCUP in the 2008 budget negotiations was to raise revenue, and I ask, has that goal been reached?

FTB has in its inventory more than 500 refund claims that are more than three years old. This is an unacceptable number, as it means hundreds of millions of dollars, and maybe more. We don't have a really good handle on the dollar amount. But that does remain under the taxpayer's working capital, stifling the economic advancement.

Further, the State is not required to pay any interest to corporations on these overpayments, so the state has use of this money for years and no interest payment is given to the taxpayer upon resolution.

FTB's response to the high inventory levels, compared to what the IRS does -- and Vicki mentioned, you know, you worked the PIT claims within six months. We're talking three to four years for high level claims. But the IRS does work their claims much quicker, and Jozel pointed out, and Bruce likes to point out, that they have a dedicated staff to work those refund claims.

I asked them, why can't the FTB have a dedicated staff to work refund claims? We know we have a problem. Let's address it with some resources.

Third, audits. Delayed audits have led to unfair audit practices. FTB is not completing many multistate and high level audits in a timely manner. In addition, Cal Tax members have reported a growing trend among auditors not to process overpayment issues before the audit closes. Some auditors request that taxpayers file a claim for refund to address the overpayment issue for the same year that it's under audit. This not only violates the published audit guidelines but it worsens the high inventory problem we have with refund claims.

And finally, appeals. Taxpayers deserve to have their appeals heard within a reasonable time frame. As years pass, a pending appeal -- with a pending appeal, interest accrues. The audit file becomes stale. Taxpayers die. Key witnesses move on or become unavailable. Additionally, taxpayers lack any guidance for years subsequent to the years under appeal.

Certainly, we understand that the Board of Equalization has the jurisdiction for the appeals workload. However, the FTB should be prudent in its audit selection and give great discretion when deciding whether to move forward with an appeal. Further, the FTB should work closely with its sister agency to ensure that appeals are processed in a timely manner.

And, again, Cal Tax is more than happy to assist with any of these problems, and thank you very much for your consideration.

MEMBER MANDEL: Thank you, Gina.

Steve.

MR. SIMS: Well, I want to thank her too.

MEMBER MANDEL: Okay. You may.

MR. SIMS: I also want to take a moment just to kind of address some of the issues she's raised. She's very correct, that many of those issues have been raised in my annual report to the legislature. But I also want to talk to the efforts that the department have made in terms of trying to fix some of the problems.

I've been working with our audit and legal division on this issue for more than the two or three years that it's been being raised -- more like five years. And I do want to say, a lot has been done in terms of improving the process.

One of the problems, you know, regarding the protest inventory -- she's correct -- it's taking too long, in my opinion, but, at the same time, they have reduced the volume of protests. And I don't know that we would have been able to do both at the same time because of the limited resources. Resources are somewhat limited. So I do want to take time -- although I mention those as particular problem areas, that there is a resource issue that really needs to be addressed. You know, when you talk about audit

staff, audit retention is something I've spoken to for a number of years. We keep getting auditors taken by people like Gina. Well, look -- I'm next month. (Laughter) But anyway, that's another story.

Audit resources, you know, that's going to be some of the things that are going to prolong the process. In addition to that, the types of claims that are coming through taxpayers are becoming a lot more sophisticated. You know, the issues that are getting filed on these claims, they are full blown audit-type issues. They require experienced resources. The department is taking certain steps in terms of involving attorneys in the process a lot of earlier to try to assist in handling some of these issues.

So while I do believe we have a lot of work to do, some work to do, I do want to commend both legal and audit on some of the steps that they have taken. So I didn't want it to go without being said.

MEMBER MANDEL: Thank you. Thank you, Steve.

Mr. Horton? You don't have to take me up on it. I know you too well.

MEMBER HORTON: Madam Chair, why don't we set up a meeting so I can have an opportunity to take a look at these in a little more detail.

What I would like to see is, I would like to have the department delineate those items that are systemic, those that are institutional, and then those that are resource-type issues. If we're having a resource issue, we should consider requesting additional resources to be able to address those.

And Gina, can you elaborate on the offset of the debit and credit during the audit process?

MS. RODRIGUEZ: Sure. So --

MEMBER HORTON: Is that -- from your perspective, is that just a policy or --

MS. RODRIGUEZ: It is a policy. And the feds, don't -- the IRS does not have this problem. We've addressed this with the advocate in prior years.

But if I have a taxpayer filing an amended refund claim, and I happen to have taxpayers say, hey, I have an amended return filed. It's an \$8 million claim. But I am forced to pay my \$9 million estimated tax payment. What am I supposed to tell my CEO?

And the feds don't have this problem because they allow the taxpayer to apply that \$8 million refund claim to the estimate, before the claim is worked. We can't get through that workload with the FTB.

MEMBER HORTON: So in your example, are these two distinct transactions? Has the audit occurred, and then there's a separate claim for refund that has yet to be resolved? Or have they --

MS. RODRIGUEZ: Yeah.

MEMBER HORTON: Is it during the process of an audit, a refund occurs, a liability occurs, and instead of offsetting in that same audit, the claim for refund is pulled out and requested that they file it separately.

MS. RODRIGUEZ: Yeah, Member Horton. That is a separate problem. So if I'm in the middle of an audit and the auditor identifies an overpayment issue or the taxpayer identifies an overpayment issue, that overpayment issue should be incorporated into the audit.

Oftentimes, the auditors are up against deadlines; we know they are under a tremendous amount of pressure, and sometimes waivers have to be requested.

But that refund -- that overpayment issue needs to be worked during the audit, and close the audit year as a whole. That's what we're asking.

MEMBER HORTON: Madam Chair, I would like to hear from legal counsel, Chief Counsel.

CHIEF COUNSEL BRUNETT: Ms. Rodriguez is actually talking about two different things, and I'll start with the latter thing she talked about first.

We do, generally, try to work claims in process of an audit or a protest. I mean, there's times when we can't because it's maybe late in the audit process or late in the protest process; we're about to close and we will handle them separately. There's exceptions, once in a while, but that's not a norm not for us to handle the claim at the same time.

The other issue she was talking about was, she's asked for a check-the-box on an amended return, allowing us to -- allowing the taxpayer to request that that overpayment be applied to the next estimated tax, right? And the issue with that is depending upon when the claim gets worked right, it may be after the time that the estimated tax is due, and so that way the taxpayer would incur a penalty. So the use of that on a widespread basis, right now, would not be to the taxpayer's benefit.

MEMBER HORTON: Okay. I concur with that. I totally agree.

I mean, when they are two separate transactions that require, and particularly when they require extensive examination and review, it's actually in the taxpayer's best interest that we allow that time to assure that all the elements are actually looked at and reviewed.

However, when it's within the same audit period, and during the same time that we're conducting the audit, it should not be a policy that we separate those out, in my view. They should be offset. And I would have some legal concerns, if that is the case, whether or not it's appropriate for us to do that.

CHIEF COUNSEL BRUNETT: Yeah. It's not my understanding that we do that on a widespread basis, that we separate them out.

MEMBER HORTON: Yeah. The exception is to the rule -- they are only important to those who are affected by the rule. So we need to take a look at it -- of those as well. I would like to see where that does exist.

I mean, I fully understand the workforce issue, the timing issues, and so forth. But from my perspective, refunds, liabilities, they are all the same, you know? The credit is due. We want to work that to the same efficiency and effectiveness that we do as a debt.

Thank you.

MS. RODRIGUEZ: Thank you, Member Horton.

MEMBER MANDEL: And the last person I have signed up is Lynn Freer from Spidell.

MS. FREER: Good morning, Board Members, staff, visitors, guests. It's my pleasure to be here and present this year's suggestions for improvement for taxpayers and the administration of the Franchise Tax Board.

I am the president of Spidell Publishing and have a couple of items that have already been discussed by Vicki, but I have a few others that were not.

The first item is something that came up fairly recently, and it has to do with California nonconformity to the ACA, the Affordable Care Act, which we are now calling the Accountants' Crying Act.

Although it would seem that there aren't conformity problems, the problem arises when you have a self-employed individual who has health insurance. A self-employed individual deducts their health insurance on page 1 as an adjustment to income. If this individual is getting a premium credit or has to pay a premium penalty, their self-employed health insurance deduction for federal purposes is going to be adjusted or limited.

For California, we don't conform to the ACA, so we would use the old rules. I'm not going to get into how the feds compute it, because it's a circular calculation, which makes your head spin round and round and round.

So what I do suggest is, first of all, for the upcoming year we need to have some guidance from the Franchise Tax Board as to how to handle this. At first, it seemed easy, but what happens is, if I have a premium credit that I get in advance, I'm going to pay a lesser amount in insurance. If I have to pay that credit back, then I'm paying more in insurance for federal, but I'm paying it back in the following year. And these taxpayers are typically going to be cash basis taxpayers so there are all kinds of technical issues involved.

We don't need to know how the IRS is going to do their calculation and -- although it's been addressed in the regulation. What we need to figure out is, what is the appropriate amount for California since the amounts paid are going to sometimes be added on to the tax return paid in the following year or paid in advance, and be refunded on the tax return the following year.

So first of all, we would like to request guidance as soon as possible. I have been working with Steve's staff, the advocate staff, and with program people. Just wanted to bring this up that we appreciate the concern and would like a rapid resolution.

But going one step further, it would seem that it would be nice to have conformity, that we do have a few things in the law where we automatically conform to federal law. If we were to automatically conform to federal law in this area, it would make it much easier for these taxpayers. We let the feds

figure out how to figure it out, and we just take whatever they used. And that would be simpler, because, unfortunately, folks who are involved in this premium credit in the ACA, in the credits, are lower -- typically going to be lower income taxpayers. They are people who can least afford to pay fees to folks to figure something out or least able to handle problems when they arise later.

So we are happy to work with the legislative folks or any of you in terms of how that legislation might be drafted and what other possible problems could arise from it. But that would be our suggestion there.

The second item on my written list that I sent is a real estate withholding that Vicki discussed. And I just wanted to tell you, Monday, Tuesday, and Wednesday of this week, I gave seminars in three different cities. Each location had approximately 350 people at it. And I asked for a show of hands of how many people had real estate withholding amount credit on their clients' returns. In Monterey there were approximately 50 people -- and I had staff in there to try to get a count. Fifty people who said they had problems. Ten people who said they had situations where they did not have a problem.

In Rohnert Park we had 60 people who had problems and two who said they did not.

In San Francisco, yesterday, we had approximately 85 people who said they had problems, and three people who said they did not.

So it is a serious problem. I think that EDR has done wonderful things for administration of Franchise Tax Board. Maybe EDR could step in and work on the system. It seems to me like there's some kind of problem with the information coming over from the escrow company to the taxpayer.

In the area of trusts, where I have a living trust and the living trust -- the 593 comes out in the name Lynn Freer Trust, dated whatever. They can't seem to match that to my return, to my Lynn Freer return, even though the Social Security number, the tax ID number matches. They can't match it. Now, if they can do it through EDR, they can collect on my bank account under the name Lynn Freer Trust. It has my Social Security number. I think that we need to find out what the problem is. This can't happen.

So I have all those addressed in much more detail in my letter that I sent in.

Vicki talked about the legislation, and I agree with that. But I would look at, since this is something that's possibly going to be problematic -- there are a lot of other issues involved here -- that we might look at a way to expedite those taxpayers who would qualify for relief under the Ralite case. As it is now, what happens is, we have to do a demand for the return, the NPA, then the assessment of the tax, attempt a collection against the entity, the corporation, or the LLC, and then, finally, somewhere down the line, we end up with the Ralite where the vendor or the corporate shareholder is not liable. Many, many of these are situations where the person formed their organization, the corporation or LLC, because their nephew Chad just graduated from law school and has decided everybody should have an LLC.

I support Steve and thank him for the article he did in the tax news about what are you doing getting an LLC when you don't need one. And I support that. But maybe there could be some way we could shorten that process.

The final item on my list is an interesting one. I've had many people come in and talk to me about this. Why do we have to a five-page 540? I mean, really. The IRS form is two pages and they have lots more on it than we do. We have an entire page involving contributions, and that's political hot button. But in the interest of saving paper, maybe we can consider putting a line for the voluntary contributions with information in the instructions about them or -- and/or reformat that return in a more condensed version like the IRS has.

I don't know with the standing implications, but I am bringing forth something that many of my customers are saying to me. So those are my issues, and I would be happy to answer any questions.

MEMBER MANDEL: Thank you, Lynn. Thank you.

MS. FREER: Okay. Great. Thank you.

MR. SIMS: Thank you, Lynn, also.

I want to take a moment, since this is my last one, to especially thank you and Spidell for always having been there to bring the issues to my attention as well as provide me with information. You know, even when it's not the Taxpayer Bill of Rights, especially when it's not the Taxpayer Bill of Rights Hearing. But thank you for all you have done.

Should I thank everybody now or should I --

MEMBER MANDEL: Well, I'm going to ask you to stay just a little bit longer.

MR. SIMS: Oh, okay.

MEMBER MANDEL: Is there anyone else who would like to address the board on Taxpayer Bill of Rights?

Nobody's moving.

Okay. I'm going to change things up and move to Item 8 for right now, Board Member Time. And I didn't sing it -- which you are all thankful for. I did ask Steve to stay a little bit longer because we have a resolution for him.

MR. SIMS: Very cool.

MEMBER HORTON: Very cool. So Steve Sims, Taxpayer Rights Advocate, Franchise Tax Board.

Whereas Mr. Steve Sims faithfully served the people of the state of California for the past 35 years, most recently as taxpayer rights advocate;

And whereas, Mr. Sims, a slender, young student, commenced working as a Department of Finance student assistant in 1980 --

MR. SIMS: Wow.

MEMBER MANDEL: -- the same year we all pondered who shot J.R. and moved and grooved to the sounds of "Funky Town";

And, whereas, Mr. Sims, still young, and still slender, instituted his black belt prowess, leaping to FTB as an auditor, sweeping in through audit and nontax debt, then launching from the school's partnership program to the Communications Services Bureau, and, finally, scaling with cat-like grace as FTB's taxpayer rights advocate, tirelessly representing millions of California's individuals and business taxpayers;

And whereas, Mr. Sims utilized his affable personality, sometimes questionable humor -- (Laughter) --

MR. SIMS: That must be John Barrett. Where is he?

MEMBER MANDEL: -- and enviable public speaking skills to meet with tax professional groups to gain firsthand knowledge on issues, concerns, and challenges faced and taxpayers and practitioners trying to comply with California's tax code;

And whereas, Mr. Sims now takes his first step toward an exciting new journey managing his daughter's promising high school basketball career, while seeking a post-retirement position flying throughout California, talking taxes with insight and humor, which, oddly, sounds a lot like his current career. (Laughter)

Now, therefore, let it be resolved, this 4th day of December 2014 by the Franchise Tax Board, that we recognize and thank the still-young-in-spirit and eternally-slim Mr. Steve Sims on the occasion of his retirement for his professional and personal dedication to the Franchise Tax Board, the tax professional community, and, most importantly, to the people of the state of California;

And we ask, one more time, one last time, Steve, "How are you?" so we can hear it one last time, "Just happy to have a job." (Laughter)

MR. SIMS: That is true. (Applause)

Testing. All right. First of all, thank you -- what do I call you again? Madam Board Member. Thank you, Board Member Ortega, Board Member Horton.

I do want to take a moment. First of all, to thank all FTB employees that work here. I'm going to start with you guys, because I go out, I speak a lot, and while I am out, I come back, I bring issues, I bring issues especially to, like, the Executive Advocate Services. They one time held a meeting and called me in and said, "Steve, we have concerns because your friends keep calling and expecting special favors." And I told them, they are all my friends so that's why everyone that calls, they kind of want a special favor. But they don't. Right, Margarita? Right.

Where's my staff too? My staff that's here. My actual staff -- Terry. Who's here? Stand up. (Applause) Alvaro. Certain people can stand up real quick. Maples. Brenda's not in. I would like to especially thank my staff Lila and Terri, my right hand. Thank them.

And my students, that -- I only have one student, right? She's not here. I also want to take time to acknowledge my family right here. There's my mom. There she is right there. (Applause) My father. Especially my wife that people didn't think I had. I actually rented her from an agency. She has to go back to work. I'm joking. (Laughter)

And of course my two brothers that you guys probably see walking around here every once in a while.

Selvi, I want to take the time to really take an opportunity to thank you for giving me the opportunity. You know, my career here has been a little bumpy, a little ups and downs, and around the corner. But you basically -- you gave me an opportunity, you stood behind me. Even when I made you mad and you threatened to fire me. That was pretty messed up. (Applause) But I didn't. I understand. You had to do it. You had to reel me in a little bit. (Laughter)

I will be back around, and, again, I'm not too good at standing up here talking. Okay. I don't mind it at all. (Laughter) I figured I would say that so I would seem a little humble. (Laughter)

That's pretty much all I have to say. I will continue to be around. You guys will see me around. I am kind of looking forward -- for those that don't know, I will be working downtown for KPMG, part of their new SAALT practice. They spell it right though, S-A-L-T. All right? All right. Thank you. (Applause)

Oh, no. No. Wait. Wait. I forgot. I want to thank my trade media folks. Where's Gina, Lynn again, Laura. Did Laura make it? There she is over here. I talk about that because trade media is very effective as an advocate tool. They pretty much -- I pretty much look into the issues they bring to my attention. Whoever takes the job after I do, take time to value those trade media relationships, those practitioner relationships. And be really nice to me. When I call up, whoever you are going to be, because I could tell you some tips to, you know -- never mind. We'll talk about that later. (Laughter)

All right. Thank you.

I will take my cup.

MEMBER MANDEL: Mr. Horton.

MEMBER HORTON: Madam Chair, I just wanted to add my congratulations to Steve. He has done an exceptional job. His compassion, his commitment to the people of the state of California, at all times. I've seen him travel throughout the state and his staff, in particular, we've worked with Lila and a number of the other staff members. And typically, you know, the fruit doesn't fall far from the tree. Steve, when you can embody your compassion for people in others that work for you, it's indicative of your leadership and people's willingness to follow you.

So thank you so very much for just an exceptional job over the last 33 years. I commend you. I'm proud of the work that you have done and look forward to your efforts in your retirement.

MR. SIMS: Thank you. Thank you, Board Member Horton. (Applause)

MEMBER HORTON: I'm just kidding. He paid me to say that. (Laughter)

MEMBER MANDEL: Okay. We actually have also some business on Board Member Time. We have two resolutions, one appointing Dawn Casey as the new board liaison and the other commending Colleen Berwick, who's been the board liaison for the last nine years. And so we need a motion on these, and then we all get to sign them, I guess.

MEMBER HORTON: So move, Madam Chair.

MEMBER ORTEGA: Second.

MEMBER MANDEL: Okay. Moved and seconded.

Without objection, we will -- the resolutions are approved, and then we will sign them. And we have to do that right now?

EXECUTIVE OFFICER STANISLAUS: Yes.

MEMBER MANDEL: Okay. Okay. It's official.

Dawn, where are you? There she is. (Applause)

But we won't make you switch chairs yet. You can still watch the rest of the meeting.

MEMBER HORTON: Dawn, is this your first time? (Laughter) Welcome.

MEMBER MANDEL: Colleen, we have a resolution for you. So I don't know if you are taking notes. But let me do your resolution.

Colleen Berwick is our regulations coordinator and board liaison here at the Franchise Tax Board.

And whereas, Ms. Colleen Berwick, our board liaison, deserves an extra special resolution that recognizes her faithful service to the people of the state of California.

Please stroll with me and other members down memory lane to the year 1975, in the era of Linda Carter, pet rocks, and mood rings, where a fresh faced high school graduate began her career as -- get ready for real FTB nostalgia, a brown pencil person, perfecting tax returns;

And whereas, Ms. Berwick transferred to collections which then employed a staggering 80 staff members, where she utilized her typing skills, created liens and OTWs;

And whereas, Ms. Berwick's career travels followed a long and winding road from the computer room to the ATS unit, an acronym so ancient no one recalls what it means; on to Spain, where her husband was stationed; then back to FTB to serve in collections, receiving, and, her last stop, in legal.

And whereas, Ms. Berwick's professionalism, dedication, and service to this board will be deeply missed;

And whereas, Ms. Berwick now embarks on the most important part of her career, as grandmother to three adorable grandkids, traveling with her parents to visit all the nooks and crannies of California, and adding interior designer to her expanding bag of craft tricks.

Now, therefore, let it be resolved this 4th day of December 2014, by the Franchise Tax Board that we most sincerely recognize and thank Ms. Colleen Berwick on the occasion of her retirement for her professional and personal dedication to the Franchise Tax Board, and, most importantly, to the people of the state of California. (Applause)

MS. BERWICK: I am losing my voice. I've been pretty sick this week, but I just want to thank the board members and all of my FTB family for 35 wonderful years. And it's just meant so much to me.

And I want to introduce my family. My mom, Betty Urias, my dad, John Urias, my uncle, Pat Evans. It's wonderful to have you here.

Thank you. (Applause)

MEMBER HORTON: Madam Chair.

MEMBER MANDEL: Mr. Horton.

MEMBER HORTON: Thank you as well.

She has a personal touch that -- kind of like a quiet way of just making you feel relaxed. I've often walked into this room in a rush and trying to, you know, take my place so Madam Chair doesn't scold me.

And to see Colleen there, I know that everything will have already been taken care of as it relates to facilitating our ability to do what we do. You know, there is a -- there's an old saying about a person walking down the street, and all of a sudden, you see this 10-foot pole, and on top of the pole, there's a tortoise. And you wonder, how in the blank did the tortoise get there? You realize that it didn't get there alone.

And so for all that we're able to do, we're able to do because of Colleen. And thank you for your personal touch. We appreciate it, going that extra. Thank you so much.

MS. BERWICK: Thank you so much, Member Horton. (Applause)

MEMBER MANDEL: That's everything I had for Board Member Time.

Anything else, Members? No?

Okay. Let's go back to Item 7, which is Executive Officer's Time.

Selvi, do you have anything to raise on Executive Officer's Time?

EXECUTIVE OFFICER STANISLAUS: Yes, I do. I've saved the best for last, so it seems there's going to be a short video presentation. Board Members, would you please indulge me by moving to the side table?

So for all those here in the auditorium and listening or watching online, including Chairman Chiang, who's also streaming this video this morning, this is his last board meeting. We have some special

mementos to share, but before we do, I want to publicly state how much FTB, from our Manhattan office to our Sacramento campus, appreciate all Chairman Chiang has done for us.

He has been on our board for ten straight years -- two during his Board of Equalization terms and eight more as State Controller.

Through it all, he has remained a steadfast friend and a champion for all our efforts from VITA to supporting our employees during furloughs, to our current EDR project.

He has touched many hearts. From gamely working a Tingle Table during a live TV interview, and not doing it very well, to shaking many hands. As we reviewed files of photographs documenting his many visits, searching for just the right ones, you will see in a few moments, it was very apparent how much he enjoyed meeting our precious FTB employees and how much they enjoyed meeting him. The smiles captured in those photographs prove a picture is worth a thousand words.

So Chairman Chiang, know you will be missed here and the FTB halls will be a little less cheery without your presence.

And I must also acknowledge, very briefly, Deputy Controller Marcy Jo Mandel, another steadfast friend of FTB for many, many years, too many to count, her counsel, her judgment, her friendship are very appreciated by all of us, especially me. Thank you, Marcy, for your services.

And now we have two presentations for Chairman Chiang, one being a video, which I hope you share with your new staff at the Treasurer's office so they can know, as we do, what a treasure they have in you.

So the resolution, which I will give it over to Marcy to be given to Chairman Chiang, and it reads -- and it reads very briefly:

Whereas, Controller John Chiang has faithfully served California's taxpayers, the tax professional community, and Franchise Tax Board employees for ten straight years -- two as the Board of Equalization Chairman and FTB Board Member, and eight years as State Controller and FTB Chairman; and

Whereas, Controller Chiang is as familiar a face on our FTB campus as any other long-time employee, we gratefully acknowledge your many contributions to improve customer service and reduce taxpayers' filing burden that includes:

Unwavering VITA support, from YouTube videos showcasing your good humor; hosting VITA sites in your headquarters and satellite offices; speeches and media interviews touting VITA's value; frequent excursions visiting, shaking hands, sharing smiles with FTB volunteers; and

Tireless e-services cheerleading CalFile's convenience, ReadyReturn's relief, Direct Deposit's dependability, Web Pay's wisdom, or our website, [ftb.ca.gov](http://ftb.ca.gov), 24 hours a day, seven days a week convenience; and

Standing strong during the darkest days of the budget crisis and refusing to pay state workers, including me, minimum wage;

Whereas, Controller Chiang transitions from the world of bank accounts, investments, numbers, formulas, and managing financial records as State Controller for a new world of bank accounts, investments, numbers, formulas, and managing financial records as State Treasurer;

Now, therefore, let it be resolved, this Fourth Day of December, 2014, by the employees of the Franchise Tax Board that we recognize and thank John Chiang, on the occasion of the end of his term as State Controller and FTB Chairman, for his professional and personal dedication to the employees, the tax professional community, and most importantly, to the People of the state of California.

Thank you, Chairman. (Applause)

(PowerPoint presentation) (Applause)

MEMBER MANDEL: Well, on the Controller's behalf, thank you, Selvi. That was really beautiful, and you made me cry and it wasn't even about me. (Laughter) It's been an honor and a pleasure to represent such a fabulous guy. Okay.

Members, at this time -- what? All right. I got to call him Mr. Horton. Mr. Horton.

MEMBER HORTON: Yes, please.

John, you have been just a fabulous leader for the state of California. I think it was Martin Luther King who once said, it is during our darkest hours that our stars shine the brightest. And you stood up for California taxpayers again and again to protect them, and you also stood up for state employees when, you know, in tough times, as it relates to our salaries, relates to our promotional opportunities and so forth. So as a 36-year state employee, I want to thank you for all you have done, and I look forward to your leadership as the treasurer of the state of California. Thank you, John. (Applause)

MEMBER MANDEL: Okay. At this time, the Board is going into closed session to discuss pending litigation.

(The Board met in closed session from 12:08 p.m. to 12:40 p.m.)

MEMBER MANDEL: The board met in closed session and discussed pending litigation.

We are adjourned.

(Proceedings concluded at 12:40 p.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Franchise Tax Board meeting was reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December 2014.

/s/ Kathryn S. Swank

KATHRYN S. SWANK, CSR

Certified Shorthand Reporter

License No. 13061