

TAXPAYERS' BILL OF RIGHTS HEARING
FRANCHISE TAX BOARD
MINUTES
DECEMBER 1, 2011

The Franchise Tax Board met in open session at 1:30 p.m. at the Franchise Tax Board, 9646 Butterfield Way, Gerald Goldberg Auditorium, Sacramento, CA. Present were Deputy Controller Marcy Jo Mandel for Hon. John Chiang, Hon. Jerome E. Horton, and Chief Deputy Director Pedro Reyes for Hon. Ana J. Matosantos.

Franchise Tax Board

Staff Participating: Selvi Stanislaus, Geoffrey R. Way, Patrick Kusiak, Steve Sims, and Colleen Berwick.

Others Participating: David Feldman, ZF Micro Solutions; Lee Snortland, ZF Micro Solutions; David Arthur, ZF Micro Solutions; Marsha Armstrong, ZF Micro Solutions; Vicki Mulak, CCEA; Gina Rodriguez, California Taxpayers Association, and Lynn Freer, Spidell Publishing.

Taxpayers' Bill of Rights Hearing

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

Steve Sims, Taxpayers' Rights Advocate, provided opening remarks advising that we received several written submissions in advance, and that our goal is to respond to the written submissions by February 1, 2012.

David Feldman

Mr. Feldman presented written materials and provided oral comment to the Board on the following issues:

- Stated that he is CEO of a company that is current in its filings and taxes; attended the 2010 Taxpayer Bill of Rights Hearing to propose a change in state law that would require the courts to demand evidence of good standing before a lawsuit could be filed or maintained; asked FTB for assistance in dealing with three venture capital firms operating unlawfully in California for more than ten years; provided FTB with over 1,000 pages of evidence.
- Claimed he has contacted numerous individuals at FTB and has received no response; discussed Revenue and Taxation Code sections 19452 and 19282; has had to lay off 45 employees.
- Mr. Feldman requested an opinion letter.

Steve Sims indicated he would confer with Mr. Feldman on the impediments that exist in his case.

Marsha Armstrong

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

- Ms. Armstrong introduced herself as Mr. David Feldman's sister; provided a background of her education and the years she has lived in California.
- Reiterated some of the issues brought forward by her brother; asked questions regarding the confidentiality of releasing information that was never given by the three firms since the firms have never filed tax returns and have never registered with the Secretary of State.
- Asked the Franchise Tax Board for an opinion letter.

David Arthur

- Mr. Arthur identified himself as a former employee of Mr. Feldman; lost his job and entire life savings as a result of the fraudulent lawsuit brought against ZF Micro Solutions; discussed his hardship further.

Lee Snorteland

- Mr. Snorteland identified himself as a former employee of Mr. Feldman; stated he was laid off.
- Indicated that the group that filed a lawsuit against ZF Micro Solutions has not filed FTB Form 3500.

Vicki Mulak

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

- Ms. Mulak indicated the California Society of Enrolled Agents (CSEA) had eight recommendations.
- The first four proposals pertained to collection issue items; 1) modification to FTB's system so practitioners can be notified on all pending collection actions; 2) using virtual hold technology – thanked FTB for using the practitioner hot line, but indicated it would be helpful and streamline cases if practitioner knew whether to hold or get a call back; 3) would like an increase in the lien filing threshold ; and 4) requested FTB maintain system of consistency in FTB's installment agreement and collection processes; requested that FTB maintain a manual where things are somewhat straightforward; especially now with EDR and FIRM.
- CSEA will bring the use tax back continuously; with a three-agency state they are bounced back and forth being told something belongs to FTB when it really belongs to BOE and vice-versa; requested that the sales tax be streamlined.
- Ms. Mulak mentioned disaster treatment; requested it be clear to taxpayers to figure out which disasters are federal and which are California declared.

- Ms. Mulak discussed withhold at source, backup withholding, nonresident withholding, Forms 592 and 8987; taxpayers need more outreach on the new 1099s.
- Finally, Ms. Mulak requested better relationship between IRS and FTB concerning continuing professional education requirements, FTB work with IRS because the education on California tax is not going to give federal hours anymore for a tax professional; keep the quality of tax preparation where it should be.

Lynn Freer

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

- Ms. Freer thanked the Board for taking the time to listen to tax professionals and taxpayers.
- Indicated that the first issue to add a disability waiver for the mandatory e-payment requirement has been taken in hand by FTB and FTB has proceeded with it; recommended that it is taken care of before the upcoming filing season and suggested to place it on the 4107.
- The second issue involved property tax deduction on Schedule CA; regarding the Mello-Roos tax "may" be deductible, not that it "is" deductible. Requested that FTB get a written ruling from IRS regarding deductibility of Mello-Roos.

Gina Rodriguez

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

- Ms. Rodriguez discussed her first issue which related to conformity, specifically dealing with charitable trust and charitable remainder trust conformity. With SB 401, which generally updated California's Code to match the Internal Revenue Code as it read January 1, 2009, FTB should have picked up that provision, but it was specifically carved out which is causing a problem; now, for California purposes, a charitable remainder trust with UBTI will lose its tax-exempt status but yet retain its tax-exempt status for federal purposes and pay the excise tax. The problem is causing extreme hardship for charitable remainder trusts because they're losing their tax-exempt status for state and not federal purposes. On behalf of Cal-Tax, Ms. Rodriguez requested the Board to sponsor legislation to impose additional tax on UBTI of charitable remainder trusts to retain their tax-exempt status.
- The second issue dealt further on conformity; an issue came up at the Eagle's Lodge West in 2011 that Cal-Tax looked at before; to explore legislative support for expanding areas of automatic conformity to precisely identify certain segments, certain subchapters.

- The third issue related to property tax; Ms. Rodriguez repeated what Ms. Freer discussed and indicated that Cal-Tax would be happy to work with FTB to fix the property tax statements so they can identify what is deductible and what's not.
- Finally, Ms. Rodriguez mentioned an issue that Ms. Mulak had discussed pertaining to how FTB's \$8.5 billion accounts receivable should be addressed in light of the economic downturn and indicated Cal-Tax would be happy to work with FTB regarding this issue.

The hearing adjourned at 2:32 p.m.

Board Liaison

Date

PENDING BOARD APPROVAL