

TAXPAYERS' BILL OF RIGHTS HEARING  
FRANCHISE TAX BOARD  
MINUTES  
DECEMBER 5, 2012

The Franchise Tax Board met in open session at 1:42 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, Carl Joseph, Patrick Kusiak, Steve Sims, and Colleen Berwick.

**Others Participating:** Dave Doerr, California Taxpayers' Association; Vicki Mulak, CSEA; Lynn Freer, Spidell Publishing; and Therese Twomey, California Taxpayers' Association.

**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, 2013.

**Vicki Mulak, California Society of Enrolled Agents**

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 six items to discuss.
- The first item pertained to the combining of the Secretary of State's Statement of Filing the SI with the Franchise Tax Board return as is done in many states. Ms. Mulak stated that many corporations and LLCs in California are suspended inadvertently due to lack of filing, and the filing is now online, including payments online. If you don't receive your reminder postcard, there is nothing that otherwise triggers you to remember. For a fee of \$20 or \$25, you go suspended, and then add a zero to the amount and that is the penalty for failing to file your annual or biannual filing.
- The second item pertained to the lien filing threshold increase and that until it's completed, it will be kept on radar. These are difficult times for people having tax increases, federal and state, so people are having harder times than ever managing their tax liability. Ms. Mulak commented it would be a very useful thing, especially in view of the Internal Revenue Service's leniency with their fresh start initiative and their enhancement to their offer and compromise program.

- The third item discussed was regarding Franchise Tax Board's interaction in receiving information from the Internal Revenue Service through their automated underreported units (AUR), and how the IRS will machine read a tax return, and if they think there is a discrepancy against information reporting documents, they will issue a notice of proposed assessment, which is basically a heads-up that there is a problem. There is a time limit to straighten out the discrepancy with the IRS and if you miss that, it is communicated electronically to the Franchise Tax Board. Often times, the notice of proposed assessments are reversed with the IRS, but not reported to the Franchise Tax Board.
- The fourth item pertained to the disaster treatment simplification, which is a legislative requirement that our Assembly or Senate have a bill that authorizes the special treatment on tax returns. We've had two bills for eleven disasters this year and there were just minimal dates to get that out.
- Ms. Mulak's fifth and sixth items were that focus is kept on the fact that withhold at source is still an education and outreach problem, as well as their concern that the financial institution records match program that began a year ago are now used by EDD and Board of Equalization and that they want to make sure that everyone is aware that it is possible in a computer world to identify the wrong taxpayer and that there won't be too much assumption that they have found the right person that owes the tax.

### **Lynn Freer, Spidell Publishing**

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

- The first issue pertained to the reasonable cause regulation. The regulation was approved by the Board in 2011, and then was pulled back and that the Franchise Tax Board was going to sponsor legislation. The regulation matched the IRS's first-time offender program that basically provides relief for first-time offenders of late filing penalties. No legislation has been come forward and there is concern that maybe there is some sort of revenue issue involved. Ms. Freer stated that they would encourage the Franchise Tax Board to pursue the legislation or continue with the regulation.
- The second issue was with respect to instructions regarding the *Cutler* decision. Ms. Freer misspoke regarding the write-up on the instructions for the 540 form. They should have said the draft instructions indicated that the *Cutler* decision was final, and that taxpayers could not claim multiple stock exclusions or rollover as a gain. The case has been remanded to the lower court, and Ms. Freer felt that Franchise Tax Board staff was premature in putting that information in the instructions.
- The third issue pertained to the amended return and mandatory electronic payment. If someone is required to e-pay and they file a paper amended return, and they prepay their payment, by the time the return is processed, the electronic payment cycle has gone and the money is refunded back out. Ms. Freer

requested that there be an additional box on the web page to check for amended return.

- Finally, Ms. Freer requested that the Franchise Tax Board continue to be as concerned in the future as they have been in the past on the problems of identity theft.
- Ms. Freer added that they are very excited about the taxpayer folder on the Franchise Tax Board's website and that they appreciate staff for trying to balance the needs of State, the taxpayers, and including the tax professionals in this process.

### **Dave Doerr, California Taxpayers Association**

Mr. Doerr, California Taxpayers Association, provided oral comments to the Board on the following issues:

- Gave kudos to the staff for listening to them, working with them, and finally getting it right on the deductibility of property tax for state income tax purposes.
- Mr. Doerr's first issue addressed the tax code. The tax code is a mess. Mr. Doerr stated he is willing to take, if not full responsibility, partial responsibility; he was chief consultant to the Assembly Revenue and Taxation Committee. They came up with a scheme to regularly conform to federal income tax law by reference, and list only those differences we have with federal income tax; a process that no longer exists. In the name of conformity, he would like to see us restore some kind of process where we can achieve an annual date change. He would like us to resume the process that was successful for many years where the Franchise Tax Board would take the ownership of the conformity bill.
- The second issue pertained to transparency. Mr. Doerr would like to see the Franchise Tax Board put out the material with respect to revenue estimates much like the way the State Board of Equalization does.
- The third issue was a technical issue that related to disregarded entities and tax credits. The amount of credit allowable should be allowed, and not just under the business entities that are disregarded.

### **Therese Twomey, California Taxpayers Association**

Ms. Twomey, California Taxpayers Association, provided oral comment to the Board on the following issues:

- Ms. Twomey stated she had one issue to discuss regarding the erroneous refund penalty. For several years, the Legislature had been trying to pass legislation to impose an erroneous refund penalty, which is a 20% penalty on corporations and on individual taxpayers, personal income taxpayers, and it's a 20% penalty on refund claims that the Franchise Tax Board may determine to be without a legislative basis. The legislation has been very broad and in the past the penalty was targeted more towards noncompliance for those with research and development credits. Ms. Twomey stated they would like to work with the

Franchise Tax Board to address any noncompliance issues. They feel that the legislation last year was overly broad, and it would have discouraged taxpayers with legitimate claims for refund from even filing a refund because taxpayers would not be able to determine whether or not the claims would be deemed reasonable or unreasonable. Ms. Twomey indicated they would like to work with the Franchise Tax Board to get to the root of the problem, understand the scope of the problem, and resolve the issue, and hopefully in the near future.

The hearing adjourned at 2:10 p.m.

---

Board Liaison

---

Date

PENDING BOARD APPROVAL