

**TAXPAYERS' BILL OF RIGHTS HEARING
DECEMBER 13, 2001
FRANCHISE TAX BOARD MINUTES**

The Franchise Tax Board gathered in public session at 9:00 a.m. at the State Board of Equalization, 5901 Green Valley Circle, Room 207, Culver City, California, to conduct the annual Taxpayers' Bill of Rights hearing. Present were Hon. Kathleen Connell, Marcus Frishman, representing Hon. Claude Parrish, and Annette Porini, representing Hon. B. Timothy Gage.

Franchise Tax Board

Staff Participating: Gerald Goldberg, Brian Toman, Debbie Newcomb, Donald Buxton and Claudette Romo.

Others Participating: Kate Jaques, representing herself, Richard Harris representing a coalition called Complete Audit File Access (CAFA), Roland Boucher, representing Senior Taxpayers, Marvin Klotz, representing himself, Albert Shifberg-Mencher, representing the California Society of Enrolled agents and Spidell Publishing (Gina Rodriguez), and Maria Morrison, representing Ernst & Young.

Taxpayers' Bill of Rights Hearing

Chair Connell read the opening statement as required by law, and introduced Franchise Tax Board staff members who were present and able to respond to questions.

Kathryn Jaques, Representing Herself

Ms. Jaques' concerns were two-fold. First, has FTB taken steps to ensure that its automated system that issues NPAs associate the taxpayer's name and SSN with the most current address in its files, and second, an NPA or other official notice mailed to an old address, when FTB has a more recent address in its own records, should be invalid.

Mr. Goldberg responded to Ms. Jaques' first concern by stating that with FTB's new INC System now in place, that the misrouting of mail should become less and less of a problem in the future. Ms. Jaques was satisfied with Mr. Goldberg's explanation.

Mr. Toman addressed her second concern with regard to FTB's Legal staff advising her that the NPAs were valid even though they had sent the NPAs to the wrong address when they had the correct address, causing the Statute of Limitations to run before they could respond. Mr. Toman responded that this was the first instance that he had heard about her issue and stated that he would be happy to look into it. Ms. Jaques told Mr. Toman that she would email him a couple of other Tax Court Decisions dealing with that issue.

Richard Harris, representing CAFA.

Mr. Harris submitted written testimony seeking a directive from the Board to direct FTB, that upon request by a taxpayer, provide the taxpayer with a complete copy of the taxpayer's audit file (including any review notes or reports), excluding only such material as the FTB is statutorily prohibited from releasing.

After discussion of the legal aspects of this issue, Mr. Goldberg explained to Mr. Harris that with the exception of material protected by law, FTB is moving toward providing the taxpayer with all the contents of their file.

Mr. Harris also called attention to his written testimony submitted at the December 18, 2000 Taxpayers' Bill of Rights Hearing, regarding the Public Records Act and his request for FTB to stop abusing privileges. Mr. Harris stated that despite Dr. Connell's helpful comments from last year's hearing to FTB staff that if they are going to withhold documents under the Public Records Act, that Dr. Connell expects FTB to tell the taxpayers exactly why they are withholding them. Mr. Harris stated that FTB staff is not totally doing that. Mr. Harris stated that he's still experiencing problems in this area.

Dr. Connell asked Mr. Harris if he thought we were making any progress in this regard.

Mr. Harris said we have made some progress in that he believes that there are some people who want a change, both in the audit file area and with respect to the Public Records Act.

Dr. Connell asked Mr. Goldberg why there was still staff with an attitude toward this directive and why wouldn't everyone be unanimous in following the directive of the Board.

Mr. Goldberg explained that he believes it's not because people don't want to follow the directive, but because people can differ in how they interpret an edict. After some more discussion, Dr. Connell asked Mr. Goldberg what he can do to assure the Board that he is making every possible effort to review his staff's activities and find those who choose not to follow the rules and possible discipline them.

Mr. Goldberg explained to Dr. Connell that FTB is currently in the process of doing a review of FTB's entire disclosure process. Mr. Goldberg further stated that as a result of that process FTB would have some specific recommendations that would be made to senior management. Mr. Goldberg went on to say that if staff were deliberately not following a directive, then FTB would have to take appropriate adverse action. Mr. Goldberg said that he suspected that is was a combination of things.

Dr. Connell asked Mr. Goldberg to update the Board next year as to what he has done to achieve progress in this area. Dr. Connell told Mr. Harris that it was still her intent to resolve these problems.

Roland Boucher, representing Senior Taxpayers

Mr. Boucher appeared before the Board to ask that they consider the plight of the senior taxpayers who are confused and afraid and are forced to use a very complex tax form. Mr. Boucher would like the Board to allow seniors to use the short tax form. Mr. Boucher stated that he was pleased with the way that Chair Connell had changed the form, but thinks that it is still too restrictive. He would like to see some of the restrictions on the back of the form be taken off.

Mr. Goldberg responded to Mr. Boucher stating that FTB wants to accommodate the needs of senior taxpayers and that FTB will meet with them again to see what FTB can do about the form to make things easier for them.

Dr. Connell stated that she would like to remedy this problem and she would put in on her "to do" list.

Albert Shifberg-Mencher representing the California Society of Enrolled Agents.

Mr. Mencher's first issue before the Board dealt with the lack of conformity at the California level to the new federal legislation dealing with retirement issues.

Dr. Connell stated that she was informed that the legislative committees, the Revenue and Taxation committee and the Senate and Assembly would be holding a joint hearing in January to deal with this issue.

Mr. Mencher raised three concerns with the nonconformities. First, in the constitution limits plans, second, in the portability, and third, the lack of conformity for the education items, such as the Section 529 plans and what used to be the old education IRAs. After lengthy discussion, Dr. Connell asked Mr. Goldberg to respond to Mr. Mencher's concerns.

Mr. Goldberg stated that FTB shared many of Mr. Mencher's concerns and that FTB is tracking that legislation very closely. Mr. Goldberg stated that FTB would be working with the legislative committees that are examining these issues. Mr. Goldberg also stated that with the administrative and taxpayer concerns, he thinks that the Legislature will enact some conformity measures.

Mr. Mencher representing Spidell.

Mr. Mencher's issues for Spidell dealt with revenue. Mr. Mencher said that the revenue recommended by Spidell would not be able to be implemented for this coming tax season if it were adopted, because the 540 form had already been printed for the 2001 tax year. Mr. Mencher suggested that a line be added on the 540 which would enable the taxpayer to declare and pay use taxes which are not being handled anywhere else, and the assumption that Spidell is making that that more people would pay it if there was a good vehicle for them to do so.

Dr. Connell stated that that was an optimistic attitude and that we should certainly try that out. Mr. Goldberg's response to this issue was that in the early 90's the Board took the position of support for this move and after working with the Board of Equalization decided not to go forward with having the line on the tax return, but that FTB would re-examine this issue.

Dr. Connell asked Mr. Goldberg to bring that issue back and let the Board know why they decided against it. Dr. Connell stated that that was prior to any of the present Board's service and she would like to know the reason.

Mr. Mencher's second issue for Spidell was basically a housekeeping issue that dealt with the Teacher Retention Credit. After lengthy discussion, it was agreeable to the Board and FTB that it was simply a housekeeping issue and that it will require some legislative action.

Ms. Maria Morrison representing Ernst and Young.

Ms. Morrison's concerns before the Board dealt with administrative relief for taxpayers affected by the September 11 attacks. Ms. Morrison stated that FTB indicated that this relief would appear to apply to calendar year taxpayers, and orally, the FTB staff indicated that such relief would apply to fiscal year taxpayers as well, and that such relief will be applied liberally. Ms. Morris asked if FTB could confirm or clarify that. Ms. Morrison also asked if there was anything more definitive, such as legislative proposals regarding this sort of administrative relief. Ms. Morrison also wanted to know if a fiscal year taxpayer who was housed or was headquartered at the World Trade Center, if they would be granted the same sort of relief as to extensions as the IRS is extending to them, as well as an additional month.

Dr. Connell stated that she hoped that FTB would be matching the IRS. It was her understanding that FTB is moving in that direction.

Mr. Goldberg stated that FTB is trying to be as accommodating as possible to all taxpayers who were impacted by the events of September 11th.

The meeting adjourned at 10:30 a.m.

Board Secretary

Date