

**FRANCHISE TAX BOARD  
MINUTES  
MARCH 27, 2000**

The Franchise Tax Board met in open session at 10:10 a.m. at the State Board of Equalization, 450 N Street, Hearing Room 121, Sacramento, California. Present were Hon. Kathleen Connell, Hon. Dean Andal, and Hon. B. Timothy Gage.

**Franchise Tax Board**

**Staff Participating:**

Gerald H. Goldberg, Brian W. Toman, Donald L. Buxton, Titus Toyama, Johnnie Lou Rosas, Benjamin F. Miller, Paul Usedom, Craig Swieso, Ed Kline, and Katie Horn.

**Others Participating:**

Richard E.V. Harris representing himself, Chris Micheli representing Carpenter Snodgrass, Greg Turner representing California Taxpayers' Association, Tim Hayes representing Deloitte & Touche, Don Maddy representing George R. Steffes Inc., Dale Gilbert representing HM & HES Electronics Corporation, Thomas H. Steele and Anthony Canini of Morrison & Foerster representing Kerr-McGee, Ron Hartman of Kerr-McGee, Ernest J. Dronenburg, Jr., of Deloitte & Touche representing PacificCorp., Robert A. Tamlyn and Richard H. Gassner of PacificCorp.

**Item 1. - Approval of Board Minutes**

Richard E.V. Harris asked that the Minutes of the December 16, 1999, Taxpayers' Bill of Rights Hearing be modified to reflect his specific comments regarding criticism of state tax agencies in general, and the Franchise Tax Board in particular, that were published in the Congressional Record. Chair Connell asked Gerald Goldberg to have staff insert the missing reference in those minutes. After discussion by Chair Connell and Member Andal, Mr. Goldberg agreed that staff would include in the annual transmittal to the Legislature of the summary of the Taxpayers' Bill of Rights Hearing a statement that if any member of the Legislature so wishes, a copy of the transcript of the Taxpayers' Bill of Rights Hearing would be provided upon request.

Following these discussions, the Minutes of the December 16, 1999, Taxpayers' Bill of Rights Hearing were unanimously approved, as modified.

The Minutes of the February 8, 2000, Franchise Tax Board meeting were unanimously approved.

**Item 2. – Legislative Matters**

Bills for Position were approved on a 2-0 vote (Member Gage abstaining) as follows:

<b><u>Legislative Bill</u></b>	<b><u>Board Position</u></b>	<b><u>Legislative Bill</u></b>	<b><u>Board Position</u></b>
AB 1759	Support	SB 1336	Support
AB 1766	Support	SB 1365	Support
AB 1774	Support	SB 1369	Support
AB 1783	Support	SB 1392	Support
AB 1804	Support	SB 1438	Support
SB 843	Support		

The Board adopted a neutral position on AB 1734 and took no position on SB 1427. SB 1416 and SB 1430 were taken off the calendar by staff.

**Item 3. – Public Records Act Procedures**

Brian Toman told the Board that additional staff has been redirected to the Disclosure Office and overtime has been authorized to eliminate the backlog of requests and to manage future workload growth. Mr. Toman stated that all of the Public Records Act requests received, as of today, have been assigned and are being worked on, that staff has instituted an electronic inventory database tracking system to track and control all requests, and a plan to centralize requests by multistate taxpayers in the Disclosure Office will be in place by June 2001. He also told the Board that frequently requested manuals have been placed on our website, including the Multistate Audit Technique Manual, the General Tax Manual, and the Collections Manual.

Staff will provide a progress report at the next Board meeting.

**Item 4. – Administrative Matters**

- a. FY 2000/01 Budget – Spring Finance Letters.

The Board accepted the staff's status report.

- b. Performance Audit – Status of Vacant Management/Supervisor Positions.

Gerald Goldberg and Titus Toyama provided additional information to the Board regarding the status of vacant managerial and supervisory positions. Mr. Toyama indicated that the 34 vacant positions as of December 31, 1999, were distributed throughout the department, but 4 vacancies of the 34 were for employees who were on leaves of absence. Mr. Goldberg further explained that if those specific positions were eliminated, 4 other positions would have to be reclassified to manager/supervisor because the employees had the right to return to their former positions. After discussion, the Board voted 2-0 (Member Gage abstaining) to eliminate these 4 positions.

- c. Facilities Action Request (Form 9) for Legal Branch Office Construction – Planning and construction of 8 hard-walled offices to accommodate additional staff attorneys to be hired in Fiscal Year 2000/2001.

The Board unanimously approved the staff request.

- d. Annual Renewal of the IBM Mainframe Software License.

The Board unanimously approved the contract renewal.

#### **Item 5. – Report on Aged Docketed Protests**

The Board received the staff report on the current status of the docketed protest inventory. The Board requested additional information from the staff regarding the inventory, including graphic presentations on the age of the inventory at various time intervals and the amount of revenue involved. Staff was also requested to provide information as to the reasons for the delays in closing the older protests.

#### **Item 6. – Report on Aged Multistate Audits**

The Board received the staff report on the current status of the aged multistate audit inventory. Staff was requested to provide the same graphical and other information about this item as was requested for Item 5.

#### **Item 7. – Regulation Matters**

- a. Proposed Regulations 19041 and 19044 (Protests and Protest Hearings) -- Report on Symposium and Board direction on how to proceed.

Statements were received from various members of the public regarding the proposed regulations involving protests and protest hearings. The Board went through each of the various alternatives contained in the decision matrix prepared by staff based upon comments received in conjunction with the symposium conducted by staff. The Board directed staff to prepare new drafts of the proposed regulations based upon the comments by the Board at the meeting and to hold another symposium. The results of that symposium are to be reported back to the Board at its next meeting following the symposium, for further Board direction. Staff was asked to include within any decision matrix a comparison to current practices and to provide commentary on staff's view of the likely consequences of adopting various alternatives.

The Board made changes to items in the matrix as follows:

##### **Proposed Regulation 19041**

Item 1 - Deleted from the matrix, because staff agrees with alternative language.

Item 2 - Alternative language unanimously approved.

Item 3A - Modified to read "the amount assessed in the NPA" and unanimously approved.

Item 3B - Business alternative modified to only include the reference to the Taxpayers' Bill of Rights and the Statement of Principles of Tax Administration and unanimously approved.

Item 4A - Staff to modify per Board instruction to limit information requests to information requested at audit and new issues raised by taxpayer, staff to bring proposed language to next Board meeting.

Item 4B - Staff and Cal-Tax had previously agreed on modified action, so no Board action on this item.

Item 5 - Deleted. Staff's language accepted.

Item 6 - Modified to include an additional sentence and unanimously approved.

Items 7A - Alternative language accepted, with modification to include reference to the department's website without providing a specific "URL," and unanimously approved.

Item 7B- Deleted. Staff's language accepted.

Item 8 - Staff's language unanimously approved.

Item 9 - Deleted. Staff accepted alternative language.

Item 10 - Deleted. Staff accepted alternative language.

Item 11A - Language deleted entirely from regulation 2-0 (Member Gage abstaining).

Item 11B - Effect of action on Item 11A is to delete this item from consideration.

Item 12 - Staff's language approved 2-0 (Member Gage abstaining).

Item 13 - Deleted. Staff accepted alternative language.

Item 14 - Deleted. Staff accepted alternative language.

Item 15 - Staff's language unanimously approved.

Item 16A & B - Staff's language approved, modified to provide that staff would put information requests in writing if requested by the taxpayer, and that staff is limited to additional document requests at protest consistent with Item 4 action.

Item 17A & B - Staff's language unanimously approved.

Item 18- Deleted. Staff's language accepted.

Item 19 - Deleted. Staff's language accepted.

Item 20 - Modified to include requirement that either the Chief Counsel or Assistant Executive Officer of the Audit Branch must approve any extensions of the protest period, and unanimously approved.

Item 21 - Staff's language adopted, with the second sentence deleted (relating to exhaustion of administrative remedies), and unanimously approved.

Item 22 - To be re-formatted consistent with the Board action on Item 21 and brought back to the next Board meeting.

Item 23 - Deleted (staff accepted alternative language with modifications).

Item 24 - Staff's language approved 2-1 (Member Andal voting no).

Item 25 - Member Andal's motion to limit the protest period on a going-forward basis to 24 months unanimously approved, with staff directed to prepare effective-date limitation language to be presented at the next Board meeting.

Item 26A & B - Staff to modify the language and bring it back to the Board for approval.

Item 27 - Language deleted entirely from regulation 2-0 (Member Gage abstaining).

#### Proposed Regulation 19044

Item 1 - Staff's language unanimously approved.

- Item 2A & B - Modified to be consistent with Item 3A under Proposed Regulation 19041 and unanimously approved.
- Item 3 - Alternative language approved 2-0 (Member Gage abstaining).
- Item 4A & B - Staff's language approved 2-0 (Member Gage abstaining).
- Item 5 - Staff's language approved 2-0 (Member Gage abstaining).
- Item 6 - Deleted. Staff accepted alternative proposal.
- Item 7 - Deleted. Staff accepted alternative proposal.
- Item 8 - Deleted. Staff accepted alternative proposal.
- Item 9 - Alternative language approved 2-0 (Member Gage abstaining).
- Item 10 - No action. Staff to gather information regarding weekend and weeknight hours that could possibly be accommodated and then report back to the Board.
- Item 11 - Deleted. Staff accepted alternative language.
- Item 12 - Alternative language approved 2-0 (Member Gage abstaining).
- Item 13 - Deleted. Staff accepted alternative proposal.
- Item 14 - Deleted. Staff accepted alternative proposal.
- Item 15 - Alternative language approved 2-0 (Member Gage abstaining).
- Item 16 - Alternative language modified to require at least 30 days advance notice to FTB if auditor's presence at protest hearing is desired by taxpayer, and unanimously approved.
- Item 17 - Deleted. Staff accepted alternative proposal.
- Item 18A & B - Alternative language modified to delete seventh sentence beginning "In subsequent proceedings," and unanimously approved.
- Item 19 - Alternative language unanimously approved.
- Item 20 - Staff's language approved 2-1 (Member Andal voting no).
- Item 21 - Deleted. Staff accepted alternative proposal.

- b. Report on Proposed Regulations 25106.5 (Mechanics of Combined Reporting) and 25106.5-2 (Capital Gains in a Combined Report), and request for authorization to proceed with adoption of 15-day changes subject to review of comments received.

The Board unanimously approved staff's report and request for authorization to proceed with the adoption of 15-day changes that represent the compromise version. The Board deferred submission of the proposed change to regulation 25106.5-2 to OAL until the end of the legislative session.

### **Item 8. – Section 25137 Petitions**

- a. Kerr-McGee

After hearing arguments from the taxpayer and staff, the Board voted unanimously to deny the taxpayer's request for relief contained in its Section 25137 petition.

- b. PacificCorp

After hearing arguments from the taxpayer and staff, the Board voted unanimously to deny the taxpayer's request for relief contained in its Section 25137 petition.

**Item 9. – Child Support Collection Project Update**

Gerald Goldberg told the Board that (a) staff is moving forward with the charter and hopefully the charter will be largely completed by the end of April, (b) staff has relocated to a new facility which is co-located with the Department of Child Support Services, and (c) the Child Support Collection Project is within 30 days of the original time line.

**Item 10. – Report Regarding Taxation of Medical Organizations**

Chair Connell expressed her opinion that the Internal Revenue Service (IRS) was too slow in auditing health maintenance organizations (HMOs). To illustrate her concerns regarding tax-exempt HMOs, the Chair gave an example of another board she sits on in which that board was asked to approve tax-exempt bonds for a tax-exempt medical organization that later substantiated its ability to repay the bonds by citing its ability to make a profit.

Member Andal mentioned that the standards for tax exemption were so loose that virtually no charity work was required by the tax-exempt organization.

Chair Connell asked that this issue be an agenda item at the next meeting of the Franchise Tax Board, with two specific action items. First, CEOs of tax-exempt HMOs operating in the State of California would be invited to appear before the Board to explain the tax-exempt status of their HMO. Second, there should be a letter to the IRS asking that tax-exempt HMOs be made a priority audit issue.

**Item 11. – Applications for Voluntary Disclosure**

The Board unanimously approved an Application for Voluntary Disclosure pursuant to Revenue and Taxation Code Section 19191.

**Item 12. – Executive Officer's Time**

Gerald Goldberg asked the Board about the schedule for the Protest Regulations (Sections 19041 & 19044).

Member Andal suggested one week to retype the language that had been agreed to, 30 days to have the symposium, 30 days to report back to the Board, and then discussion at the next Board meeting.

Ben Miller asked if staff could have one week to put the agreed changes together and then circulate them to the Board Members to ensure that staff had accurately captured all of the changes the Board had directed staff to make.

The Board agreed.

**Item 13. – Board Members' Time**

Chair Connell asked staff to add an agenda item regarding the department's mailing services to the next Board meeting. She asked staff to report on the problems that it is having with mailing houses and on new contract arrangements for next year.

The Board unanimously approved all Employee Recognition Resolutions. (Robert W. Adams, Shirley M. Almeida, Maybelle C. Bastien, Marlene A. Brooks, Ethelyn C. Campbell, Pi Yun Chen, Mary A. DalPorto, Mary H. Fite, Dorothy Fleming-Brown, Linda H. Francis, Mary Jo A. Hyde, Gerre L. Johnson, Beverley B. Jumper, Linda G. Kammerer, Michael J. Kincaid, John Knox, Airrie Larry, Baldwin T. Lee, Carol A. Lopez, Marion A. Massey, Martha C. McCullough, Patricia G. McMurray, Lupe R. Miranda, Sharon M. Moe, Beverly A. Moore, Rickey A. Morris, John R. Nicholson, Richard D. Peters, Joyce L. Rau, Bridgid A. Reis, Margaret S. Rhode, Linda E. Roe, Donna M. Roth, Peter T. Shek, Ruby K. Shoemaker, Ione Slocum, Violet G. Sykes, Daniel Y. Umeda, Antony E. Williamson.)

**Item 14. – Chair Announcement Regarding Closed Session**

Chair Connell announced the agenda for the Closed Session, pursuant to Government Code Section 11126.3.

The meeting was adjourned at 12:50 p.m.

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Board Secretary

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Date