

**TAXPAYERS' BILL OF RIGHTS HEARING
FRANCHISE TAX BOARD
MINUTES
December 1, 2004**

The Franchise Tax Board met in open session at 1:30 p.m. at the State Board of Equalization, 450 N Street, Hearing Room 121, Sacramento, California. Present were Hon. Steve Westly, Betty Yee, representing Hon. Carole Migden, and Hon. Tom Campbell. During the hearing, as noted below, the Controller was represented by Deputy Controller Marcy Jo Mandel.

Franchise Tax Board

Staff Participating: Gerald Goldberg, John W. Davies, Donald Buxton, Brian Putler, and Laureen Philipp, Deputy Taxpayer Advocate.

Others Participating: Mr. Roland Boucher, United Californians for Tax Reform; Lillian Lea, California Society of Enrolled Agents; Lenny Goldberg, Lenny Goldberg and Associates and California Tax Reform Association; Richard E. V. Harris, Attorney at Law; and Gina Rodriguez, Spidell Publishing.

Taxpayers' Bill of Rights Hearing

Chair Westly read the opening statement regarding this annual hearing required by law and introduced Franchise Tax Board staff members who were present and able to respond to questions.

Roland Boucher

Mr. Boucher presented written material and provided oral comment to the Board on the following matters:

FTB should fully implement California Senior Legislature Resolution AP-35 to allow the use of a simplified tax form for senior California taxpayers with income from capital gains and to limit tax rates to 2.5% for gross income of up to \$100,000 for single taxpayers and \$200,000 for married taxpayers.

The FTB should implement a program of tax simplification that would make withholding exactly match a taxpayer's liability, thereby eliminating the necessity to file an annual return.

Lillian Lea

Ms. Lea presented written materials and provided oral comment to the Board on the following six recommendations:

Recommendation #1: Conformity with federal tax treatment of Health Savings Accounts (HSAs).

Recommendation #2: Conformity with federal changes to maximum number of S corporation shareholders.

Recommendation #3: Revise real estate withholding to permit withholding of 9.3% of net gain.

Recommendation #4: Do not require withholding on payments to independent contractors.

Recommendation #5: Allow employers of domestic workers to report and pay payroll taxes on the employer's individual California income tax return.

Recommendation #6: Do not impose a user fee for the FTB Practitioner Hotline.

The hearing was recessed to permit the Board to meet in Closed Session prior to the departure of Mr. Campbell. Following the Closed Session, the hearing was reconvened, with Deputy Controller Marcy Jo Mandel acting as chair.

Lenny Goldberg

Mr. Goldberg provided oral comment to the Board on the following four matters:

The Franchise Tax Board should expand the schedules and returns currently available for free online filing so that virtually all schedules and returns can be filed using the Internet without any charge.

The pilot program to provide taxpayers with a pro forma tax return is a good idea and should become permanent.

While conformity may be a good policy in general, conformity to specific provisions of federal law requires consideration of revenue and the specific policy underlying each provision.

Contrary to the recommendation of the California Performance Review (CPR), the Executive Branch of California should continue to participate in the administration of the income and franchise tax systems.

Richard E. V. Harris

Mr. Harris provided oral comment to the Board on the following two matters:

In an effort to improve transparency, the Litigation Roster on FTB's website should be more current. In addition, prior versions of the Litigation Roster should be accessible on the Web. Chief Counsel Davies indicated that steps would be taken to make prior versions of the Litigation Roster available on the Web.

It appears that the staff has never reported back to the Board with respect to a proposal from Mr. Harris at last year's Taxpayers' Bill of Rights Hearing concerning a 'deemed denial' for a protest pending more than 24 months. Chief Counsel Davies provided information with respect to that proposal and other initiatives related to it.

Gina Rodriguez

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

Recommendation #1: Provide blanket exception from the underpayment penalty for any underpayment attributable to any retroactive tax increase. Perhaps expand LP 05-15.

Recommendation #2: Conform to recent federal changes with respect to Health Savings Accounts (HSAs) and S corporation rules.

Recommendation #3: There is a need for clean-up legislation with respect to the Amnesty program in the following areas: "due and payable", net refunds, and installment agreements for business entities.

Recommendation #4: Simplify the administrative burden for employers of domestic workers.

The hearing adjourned at 3:55 p.m.

Board Secretary

Date