

TAXPAYERS' BILL OF RIGHTS HEARING  
FRANCHISE TAX BOARD  
MINUTES  
DECEMBER 4, 2008

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 Hon. John Chiang, Deputy Controller Marcy Jo Mandel, Hon. Judy Chu, Ph.D., and Hon. Michael C. Genest.

**Franchise Tax Board**

**Staff Participating:** Selvi Stanislaus, Geoffrey S. Way, Patrick Kusiak, Steve Sims, Brian Putler, and Colleen Berwick.

**Others Participating:** David Shaw, California Society of Enrolled Agents; Gina Rodriguez, Spidell Publishing, Inc.; Lenny Goldberg, California Tax Reform Association; Roland Boucher, United Californians for Tax Reform; Michelle Ferreira, Holme Roberts & Owen; and John Woodford, California CPA Society.

**Taxpayers' Bill of Rights Hearing**

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

**David Shaw**

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

- Expressed his concern on the state's failure to conform to federal tax law and the confusions and errors being caused by the lack of conformity or in some cases partial conformity, which he feels can be worse. Mr. Shaw mentioned in particular the nonconformity between the Mortgage Forgiveness Act of 2007 and SB 1055, and the nonconformity to the Tax Increase and Prevention Act of 2005, the Small Business and Work Opportunity Act of 2007, and recent federal changes regarding the preparer penalty.
- Stated that since FTB does not discipline unethical tax preparers except by the imposition of penalties, the disciplinary actions of sanctions or disbarments does not affect the CTEC registered preparers. CTEC preparers should be impacted just as licensed preparers.

### **Gina Rodriguez**

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

- Impact of Underpayment Penalty on New, Accelerated Estimated Tax Requirement (30/30/20/20 issue).
- Practitioners want to be able to allow the refunds from claim for refunds to be applied to estimated tax payments for the next year.
- FTB should issue guidance immediately to address whether taxpayers qualify for the California Other State Tax Credit for franchise taxes paid to Texas in order to prepare their 2007 and 2008 California returns.

### **Lenny Goldberg**

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

- Praised FTB for the great job with regard to "My Account" in the area of the transparent relationship between FTB and the taxpayer online. Indicated it was under-utilized because the IRS does not have a similar process and people start with IRS; urged FTB to work with IRS to bring them aboard as well.
- Reiterated comments made by Gina Rodriguez pertaining to allowing refunds from claim for refunds to be applied to estimated tax payments for the next year.

### **Roland Boucher**

Mr. Boucher provided oral comment to the Board on the following issue:

- Commented on the 540EZ short form; likes the downloadable PDF form that does the addition and subtraction for you, but would like to get the \$5,000 standard deduction to match with the IRS.

### **Michelle Ferreira**

Ms. Ferreira provided written materials and provided oral comment to the Board on the following issue:

- Expressed concern about the disparity in California's penalties and penalties which may apply to the same taxpayer at the federal level. The penalties mentioned were: noneconomic substance penalty pursuant to Rev. & Tax. Code section 19774, the post-amnesty penalty pursuant to Rev. & Tax. Code section 19777.5, and the interest-based-only penalty pursuant to Rev. & Tax. Code section 19777. There is no effective administrative or judicial forum to contest these penalties.

**John Woodford**

Mr. Woodford provided oral comment to the Board on the following issue:

- Addressed concerns with recent legislation, SB 28, and the changes to Rev. & Tax. Code section 19136-3 which affects tax year beginning 01/01/09 and uses the current year's exception for avoiding underpayment of estimated tax penalties for taxpayers with AGI in excess of one million dollars. Would like to see legislation that would use the AGI from the previous year to create the phase-out of the exemption.

Member Genest asked the Board to clarify the process after the Taxpayers' Bill of Rights Hearings; what the process is to address the issues raised and requested a report from staff regarding the outcome.

Taxpayer Rights Advocate indicated written responses, including analyses where appropriate, with respect to each item raised during the hearing would be provided to person that raised the matter and to Board members for their consideration.

The hearing adjourned at 2:41 p.m.

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Board Liaison

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Date