

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

MEETING

THURSDAY, DECEMBER 3, 2009

FRANCHISE TAX BOARD

9646 BUTTERFIELD WAY

TOWN CENTER, GERALD GOLDBERG AUDITORIUM

SACRAMENTO, CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ
CSR NO. 1564

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ATTENDEES

FRANCHISE TAX BOARD:

- MARCY JO MANDEL
- MICHAEL C. GENEST
- BETTY T. YEE

STAFF:

- SELVI STANISLAUS
- BRIAN PUTLER
- JEANNE HARRIMAN
- STEVE SIMS

COUNSEL:

- GEOFFREY WAY
- PATRICK J. KUSIAK

PUBLIC SPEAKERS:

- VICKI L. MULAK
- GINA RIDRUQUEZ

---oOo---

1 SACRAMENTO, CALIFORNIA

2 THURSDAY, DECEMBER 3, 2009, 1:30 P.M.

3 ---oOo---

4 CHAIR MANDEL: We are going to go ahead and
5 get started. We are expecting Mr. Genest any
6 minute. This is the scheduled time for the meeting
7 of the Franchise Tax Board.

8 Would the secretary please call the roll to
9 determine if a quorum is present?

10 MS. BERWICK: Member Yee.

11 MEMBER YEE: Here.

12 MS. BERWICK: Member Genest.

13 Deputy Controller Mandel.

14 CHAIR MANDEL: Here.

15 At least two members or designated
16 representatives being personally present, there is a
17 quorum and the Franchise Tax Board is now in
18 session.

19 The public has a right to comment on each
20 agenda item. If there are any members wishing to
21 speak on an item, please come forward when the item
22 is called and, generally, you have three minutes to
23 address the Board.

24 The first item that we have is the approval of
25 minutes.

1 MEMBER YEE: I move approval of the minutes
2 from the September 9th Board meeting.

3 CHAIR MANDEL: I will second and that will
4 be -- there is no objection. So the minutes are
5 approved.

6 Now we are on Item 2, the legislative matters.
7 Brian Putler will present.

8 MR. PUTLER: Thank you. For the Court
9 Reporter, I am Brian Putler, Franchise Tax Board.
10 And today I have legislative proposals for the
11 Board's consideration. I would like to initially
12 point out that the fifth proposal, which is
13 designated as E in the binder, is being withdrawn by
14 staff. So that leaves four proposals, and the staff
15 request is that the Board approve the proposals to
16 be placed in bills as FTB sponsored legislation.

17 I am not expecting there will be controversy
18 about any of these today. So it may be the Board's
19 wish to take them as a consent calendar altogether,
20 but I am also happy to go through and give a brief
21 summary of each.

22 CHAIR MANDEL: What is your pleasure?

23 MEMBER YEE: I think, Mr. Putler, if you
24 don't mind, if you can summarize the proposals for
25 the record.

1 MR. PUTLER: I'd be happy to do that.

2 A, at the taxpayer's option would allow
3 taxpayers to receive notices, statements and bills
4 electronically using a limited access security
5 folder. Presently these communications can only be
6 sent by U.S. mail. This would start in 2013 or
7 upon the successful completion of the enterprise
8 data revenue project.

9 B would make clear FTB restitution orders are
10 to be collected as if they were tax debts. This
11 would allow administrative tax collection tools to
12 be used to collect these debts. Restitution orders
13 are damage awards in cases where the state is a
14 victim. They include things such as tax evasion or
15 embezzlement cases where the perpetrator failed to
16 report the income. These awards also include
17 investigation costs.

18 C makes permanent the provisions from SB 285
19 which was a Spear bill from 2003. It would require
20 the FTB to follow IRS innocent spouse findings.

21 Finally, D. With the existing law having to
22 do with voluntary disclosure agreements, this
23 proposal simply fixes some of the rough edges with
24 the agreement statutes which has to do with returns
25 for current year that may be required by the

1 federal, before the federal return is required.
2 Situations where the underpayment of estimated tax
3 penalties were imposed where the voluntary
4 disclosure agreement is entered into after quarterly
5 payments are due, and would also coordinate
6 voluntary disclosure agreements with the department
7 installment agreements.

8 And that is the summary.

9 CHAIR MANDEL: I have one speaker signed
10 up. Michelle --

11 No. Thank you.

12 Any questions or comments on the four LPS?

13 MEMBER YEE: Just a comment on just how
14 happy I am to see the proposal, the innocent spouse
15 law conformity. I support that and I would move
16 approval of all four proposals.

17 CHAIR MANDEL: I will second that. And so
18 that will be the Board's order for the Department of
19 Finance.

20 MR. PUTLER: Thank you.

21 CHAIR MANDEL: The next item is Item 3,
22 regulation matters for the 2010 rule making
23 calendar. Pat.

24 MR. KUSIAK: Madam chair, Board Members.
25 The rulemaking calendar in the materials for this

1 meeting is essentially the annual rulemaking
2 calendar which provides to the Office of
3 Administrative Law. It also identifies those new
4 regulatory projects that we have not taken to the
5 Board before for the commission to proceed. Those
6 particular regulations, there are six of them in
7 number, most of them come from or relate to recently
8 enacted legislation. It becomes operative in 2011.
9 So the 2010 calendar year is an excellent time for
10 us to initiate regulatory action to proceed.

11 With your approval, we would also be inferring
12 with your permission approval of -- permission to
13 proceed with interested parties for those new
14 regulatory projects.

15 Chair MANDEL: Any questions or comments?

16 A motion.

17 MEMBER YEE: I will move to approve the
18 2010 calendar.

19 CHAIR MANDEL: Second by Mr. Genest.

20 And without objection, that will be the
21 Board's order.

22 Item 4 is administrative matters, and Jeanne
23 Harriman from our financial services bureau.

24 MS. HARRIMAN: Good Afternoon. My name is
25 Jeanne Harriman, Director of the Financial

1 Management Bureau. Today I am presenting for your
2 approval administrative items related to two budget
3 change proposals and two contracts over \$1,000,000.

4 The first item for discussion relates to two
5 budget change proposals. We're requesting your
6 approval to move forward on the first of those two
7 budget change proposals. Deals with FTB requesting
8 an exemption from any state furlough program in
9 budget year 2010-11 if one were to be ordered by the
10 administration. Currently, the department is on a
11 self-directed furlough program. If furloughs were
12 to be extended in 2010-11, furloughs for both years
13 could exceed \$1,000,000,000. When comparing revenue
14 loss over one billion dollars to the cost savings of
15 \$107,000,000, the overall impact to the general fund
16 is negative. The CCB is also requesting overtime
17 funding of 14.7 million to address some of the
18 backlog generated in the compliance and processing
19 areas.

20 The second budget change proposal deals with
21 the continued growth in our accounts receivable
22 area. Currently, we are doing all we can with the
23 backlog with the staff that we have. But we need
24 augmentation in our staffing levels to continue
25 addressing the growth in our accounts receivable.

1 As noted in the BCPs, additional staff will bring in
2 revenues of 52,000,000 in '10-11 and 111,000,000 in
3 '11-12 for California. However, it is important to
4 note that these revenue streams are dependent on FTB
5 staff being exempt from furloughs and being able to
6 work fulltime.

7 At this time do you have any questions?

8 CHAIR MANDEL: Questions of both BCPs?

9 MS. HARRIMAN: The BCPs are currently and
10 tentatively approved by DOR and being worked on.

11 CHAIR MANDEL: Any questions or comments?

12 Is there a motion on the BCPs?

13 MR. GENEST: I'll move approval.

14 CHAIR MANDEL: I'll second.

15 MS. HARRIMAN: The remaining administrative
16 matters relate to two contracts over \$1,000,000,
17 which also have an approval request put on. The
18 first two contracts deal with the withhold at source
19 project. We are currently seeking the services of a
20 consultant to help us design and implement a new
21 source program with increased efficiency and
22 reliability to secure the availability. Currently
23 the withhold source program assists us in processing
24 of 2,000,000,000 in annual receipts. That contract
25 is to begin January 2010. And the contract cannot

1 exceed \$1,267,856 and is subject to OCIO final
2 approval.

3 The second contract deals with the need to
4 purchase roll paper used to print our bills and
5 letters. That contract is for a three-year period,
6 scheduled to begin in March 2010 in an estimated
7 amount of \$1,285,000.

8 Do you have any questions of those contracts?

9 CHAIR MANDEL: Any questions?

10 Is there a motion on the contracts?

11 MEMBER YEE: I will move approval of the
12 contracts.

13 MR. GENEST: Second.

14 CHAIR MANDEL: Without objection that will
15 be the Board's order.

16 MS. HARRIMAN: Thank you.

17 CHAIR MANDEL: Thank you, Jeanne.

18 This is the time set for the Board's annual
19 taxpayer bill of rights hearing as required by
20 Section 21006 of the Revenue and Taxation Code. The
21 purpose of this hearing is to allow taxpayers and
22 tax practitioners the opportunity to present
23 directly to the Board any proposals they may have
24 for changes in existing state income tax law or for
25 improvements in FTB publications or services to the

1 public. FTB staff is available to respond to
2 questions which may be raised as a result of
3 taxpayer proposals.

4 Present are Selvi Stanislaus, our Executive
5 Officer; Jeff Way, Chief Counsel, Brian Putler, down
6 there, Director for Legislative Services Bureau;
7 Steve Sims, our taxpayers'rights advocate.

8 Staff will analyze the fiscal consequences of
9 the proposals. Now Steve, I believe, has
10 introductory comments. Then I will call the names
11 of the individuals who have indicated that they wish
12 to make presentation. And, of course, if there is
13 anyone else who wants to make a presentation, come
14 forward, but I will call those individuals first and
15 then when your name is called come on up and make
16 your proposal.

17 Steve.

18 MR. SIMS: I just want to add that we did
19 receive written submissions in advance. Although
20 everyone won't be here to make a presentation, we
21 will -- our goal is to respond to those written
22 submissions by February 1st of 2010. The Board
23 Members, of course, have received copies and we've
24 also posted them on the Internet.

25 CHAIR MANDEL: Okay. Great. Ready to

1 roll?

2 MR. SIMS: Yes.

3 CHAIR MANDEL: I have two people who have
4 signed up, Vicki Mulak from Enrolled Agents, Society
5 of Enrolled Agents. And Gina from Spidell. Come
6 forward. Gina Rodriguez from Spidell.

7 MS. MULAK: Good afternoon, Members of the
8 Board, attendees. We did make a written submission
9 and I notice it was on the front tables, so
10 hopefully everyone has had a chance to review our
11 comments. I know we need to be brief. I am just
12 going to touch on what was in there.

13 And we started with the general economic
14 downturn, malaise, that we are in and the fact that
15 so many things are hitting taxpayers at once: their
16 loss of jobs, foreclosures on the increase.
17 California has no more mortgage relief provisions
18 starting in 2009, that they have a tax increase that
19 is double when you consider the .25 eminent loss of
20 the dependency exemption or two-thirds of it. We
21 mentioned the annual use tax return and the fact
22 that companies will have to come into compliance
23 with this. But, also, we audited the letters that
24 we are seeing out in the field say that the prior
25 years will be audited, whether that will actually

1 happen or not.

2 And then, of course, the failure of
3 conformity. Now I did notice today that the
4 December tax news was just released this morning
5 before I climbed on the airplane. It said that one
6 of the top ten tax return errors is an incorrectly
7 calculated AGI. I think that also supports our very
8 first point, that a stand alone California tax
9 return might be in order if we cannot have
10 conformity. And I mentioned on Page 2 of the letter
11 some of the more glaring, I think, issues for
12 taxpayers, personal income taxpayers: The lack of
13 conformity in disaster losses. The expired mortgage
14 relief provisions. S-Corp issues. Kiddie tax.
15 Husband and wife joint ventures, which might be one
16 that wouldn't even cause the state a loss of revenue
17 if we did conform. And health savings accounts.

18 We touched upon the fact that California has
19 their own distinctive penalties, and we couldn't
20 find an easy place to locate what all of those
21 penalties were, the code sections that authorized
22 them and when abatement was available and what the
23 procedures and the reasonable causes were. We
24 mentioned maybe a slight item of the debit and
25 credit card convenience fees. I did notice in the

1 tax news today and with the request for exemption
2 for furloughs that FTB is requesting that the
3 accounts receivable inventory is only increasing.
4 Not only on taxpayers but corporation taxpayers. We
5 think that the 2009 tax return, the filing season
6 intent is going to bring more balance due terms
7 because of issues involved that we mentioned.

8 The retroactive tax increase and the three
9 sets of withholding tables, which made it very
10 difficult for people to manage the liabilities this
11 year. We touched upon the 10 percent willful
12 increase that began November 1, which I think might
13 be helpful for them. But the 2009 year. But we are
14 finding out in the field that the taxpayers are
15 reticent to calculate correct withholding allowances
16 because they are so afraid of refunds that will
17 result in IOUs and their inability to get their cash
18 when they need their cash.

19 And that is kind of a quick rundown. And we
20 did applaud you for the proposals regarding the
21 innocent spouse program, the voluntary disclosure
22 program. We think they are very, very well drafted.

23 Thank you for your attention.

24 CHAIR MANDEL: Thank you, Vicki. I don't
25 know if we have -- I guess we don't have a sort of

1 penalty handbook. IRS has, at least for their audit
2 manual, they have a penalty handbook. I know at
3 BOE, I don't know if anyone uses them anymore, but
4 at every BOE meeting, the members get a little red
5 binder, red three-ring binder, thing which is
6 penalties that lists out what all the code sections
7 are. It's all the code sections, what the penalty
8 is and what the standard is for abatement of the
9 penalty or if there is none, because we used to get
10 a lot of penalty cases and the members wanted which
11 kind of penalty is it, what applies. And it sounds
12 like that is the kind of thing you are thinking
13 would be a handy-dandy publication.

14 MS. MULAK: The other thing I want to touch
15 upon, we mentioned the inability to easily find
16 things on the website. I noticed that was in the
17 tax news, also. With the mortgage relief
18 provisions, we always felt that California, when it
19 comes to Form 982 that the feds have, needs
20 something similar. I noticed also on tax news this
21 morning that that form number is going to be
22 assigned to a publication on how to correctly select
23 a tax preparer. I was thinking this morning if that
24 wasn't in concrete and you would even look at a form
25 for, because California taxpayers basically have the

1 bankruptcy exclusions and the insolvency exclusions
2 still available to them for COD relief, cancellation
3 of indebtedness income. Maybe that 982 could be for
4 something else. I'm not sure. I thought I would
5 put it out there.

6 Thank you.

7 MR. SIMS: I did want to add that back in
8 April or May we began a project within my section to
9 catalogue all the penalties; and that's been
10 underway, actually almost complete. As a result of
11 the resources reallocation, we kind of had to put
12 that to the side for now, but it is nearly complete,
13 but has to go through a review. There's been some
14 law changes, like the frivolous admission penalty
15 has come in. I don't think that is on there yet.
16 We have taken steps on that particular front. And
17 we knew that you were coming. That is why we waited
18 for today.

19 MS. MULAK: That's what I thought when I
20 read it.

21 Thank you.

22 CHAIR MANDEL: Gina.

23 MS. RODRIQUEZ: Thank you. Madam Chair,
24 Members, Gina Rodriguez, southern staff editor for
25 Spidell Publishing. I know we are short on time in

1 our presentation, but I do want to take a minute to
2 thank three people for their extraordinary
3 dedication to public. That is Steve Sims, Susan
4 Maples and Patrick Kusiak. We throw so many issues
5 at them throughout the year and they're not only
6 responsive, but they keep in mind the goal is always
7 fair tax administration.

8 This year we have six proposals. I don't have
9 time to go through all six. They are in the
10 material. I do want to touch upon three. The first
11 of which is proposal number one on Page 2 of the
12 material. The FTB should sponsor legislation to
13 replace specified disasters with a generic overall
14 position to allow the free standard relief position,
15 that's 100 percent disaster loss carryover, to
16 California only throwback election and the extension
17 to make the throwback election.

18 These three standards of the relief provision
19 are eventually enacted into law when the governor
20 declares a disaster in California. However, the
21 relief that is enacted is often untimely. For
22 example, AB 1568, which provided relief for three
23 separate disasters in 2008 and one in 2009, was not
24 enacted until October 11th, 2009. So this provided
25 calendar year individual taxpayers only four extra

1 days to make the throwback election if their
2 disaster occurred in 2008. On the property tax side
3 of things relief is also provided in allowing
4 individuals and homeowners property tax exemption.
5 And that is at the November 19th meeting, the five
6 member Board of Equalization unanimously approved
7 LP1-3 to amend Section 218 to replace the specified
8 disaster through a generic bill.

9 If those Spidell proposal and these proposals
10 were enacted into law, then each time the governor
11 declared a disaster, taxpayers would automatically
12 be granted relief without having to go through the
13 legislative process. It would eliminate the need
14 for special purpose legislation and expressly codify
15 existing relief measures. It would improve
16 efficiency and save on legislative bill printing
17 cost. It would save on staff time as well. And one
18 might note that individual legislators still carry
19 their own individual bills for their districts so
20 that property tax revenue tax bill.

21 That is my fist issue. May I continue?

22 CHAIR MANDEL: Go ahead.

23 MS. RODRIQUEZ: Proposal number four on
24 Page 6 of your material is the fairly technical
25 interest calculation on NOL carryback. I think the

1 FTB should address the inequities with respect to
2 interest assessment involving NOL carrybacks. We
3 need to do this with both respect to the federal
4 carrybacks and other state NOL carrybacks. We need
5 to pay attention to California NOL carrybacks which
6 is going to begin with the 2011 tax year.

7 The current calculation is contrary to the way
8 the federal law carryback rules work. And while
9 California is not currently in conformity with the
10 federal statute, it is nonetheless inequitable and
11 it is unfair. I provided you an example of why it
12 is unfair in the material.

13 For example, a California resident has
14 Colorado loss carryback in 2007 as a result of a
15 Colorado mining partnership. Colorado does allow
16 for the two-year loss carryback. So the taxpayer
17 carryback, Colorado loss back to 2005, reducing the
18 Colorado tax in 2005. That carryback in turn leads
19 to an increase in California tax in 2005. Taxpayer
20 properly amended return, reported the additional
21 tax, but the FTB began to total interest on the
22 increased California tax to 2005 when the return
23 became due.

24 This is statutory. It is the nature of the
25 law. I think, again, we need to pay attention to

1 what is going to happen with our NOL kicking in in
2 2011.

3 CHAIR MANDEL: Gina is the federal interest
4 calculation based on a federal provision in the
5 federal interest or is it something IRS?

6 MS. RODRIQUEZ: I believe it is a federal
7 interest provision.

8 CHAIR MANDEL: When California picked up
9 carrybacks --

10 MS. RODRIQUEZ: I couldn't find it. If
11 Mr. Kusiak has it tucked in there somewhere, I
12 missed it. But I couldn't find where we are going
13 to address the interest assessment rules in our
14 carrybacks, again. I thought we maybe need to take
15 a look at it.

16 MR. KUSIAK: The legislation authorizing a
17 two-year carryback, which begins in June of 2011,
18 simply provided for a two-year carryback and did not
19 address anything beyond the carryback.

20 MS. RODRIQUEZ: I think we missed that part
21 of it.

22 And the last proposal, proposal number six,
23 use tax lookup tables. The FTB along with the BOE
24 should try again to sponsor legislation to provide
25 the optional lookup tables, whereby individual

1 taxpayers can determine their use tax liability
2 based on their income. The BOE did sponsor
3 legislation in 1957 and last year, 2008, and it
4 would have provided the optional lookup tables.
5 That is a bill that failed in policy committee, and
6 I think for a reason other than lookup tables.

7 But of the 45 states with sale use tax, 38
8 also have individual income taxes. Of these 38
9 states, 22 provide for tax purposes to report use
10 tax on individual returns. Just like California.
11 There are nine states that provide lookup tables for
12 estimating these tax liabilities, and those
13 particular states report higher levels of
14 compliance. I got my statistics from the site
15 quoted from the Department of -- Research
16 Department, Minnesota House of Representative. We
17 feel that the lookup tables would make use tax
18 compliance more convenient for taxpayers who happen
19 to know they made untaxed purchases. And we would
20 like to pursue that as well.

21 CHAIR MANDEL: Thank you.

22 Anyone else on the Taxpayers' Bill of Rights
23 hearing?

24 Wrap up statements?

25 MR. SIMS: I just wanted to add to Gina.

1 First of all, thank you for thinking of us. Susan
2 and I both would agree that -- I would like to thank
3 FTB staff because I would like for them to believe
4 that that was me going around looking up all that
5 stuff. I thank FTB staff pretty much for assigning
6 the priorities for the requests that come in from
7 the advocate's office.

8 At the same time I did want to shed some light
9 on those that are familiar with the Spidell
10 submission two years ago regarding extending the
11 notice for mail dates. That started as a pilot, and
12 as a result, the results from this past year, it's
13 going to become permanent. What it's going to do is
14 it is going to reduce the number of calls that come
15 in during that critical part of the year.

16 We want to thank Lynn, Gina, and Spidell for
17 pushing that.

18 CHAIR MANDEL: That is an electronic file
19 where the check comes in the mail?

20 MR. SIMS: That's both for E-files,
21 statement taxes, paper statement tax due and E-file
22 return information notices. We kind of flagged the
23 delays across the board.

24 CHAIR MANDEL: Thank you.

25 We are on executive officer's time. Selvi.

1 MS. STANISLAUS: Thank you. Before we move
2 to the next agenda item, I want to take a few
3 moments to recognize a special occasion. This is
4 the Franchise Tax Board's 80th year in serving
5 California taxpayers. In honor, we have produced a
6 short video. I would like to share with the Board
7 in appreciation of their leadership over the last
8 four years. I also want to share with my employees
9 and everyone here today because without my
10 employees' hard work our legacy of success and
11 service would not exist.

12 Lastly, I would like to thank also all the
13 taxpayers who are here today because no one likes
14 paying taxes. For sure, I don't like to pay taxes.
15 But our taxpayers are the ones who truly fund the
16 Golden State.

17 CHAIR MANDEL: We will go to our little
18 viewing.

19 (Video shown.)

20 MS. STANISLAUS: Thank you to staff for
21 working so hard on this video. And it is a
22 wonderful video and they really worked very hard to
23 make this happen.

24 Thank you, staff.

25 CHAIR MANDEL: Do you have anything else?

1 MS. STANISLAUS: That's it.

2 CHAIR MANDEL: We are now on Board Member
3 time. And as many of you here today know, and if
4 you don't, I guess you haven't been reading the
5 newspaper. After four years as Director of the
6 Department of Finance, Mike Genest has decided it is
7 time to move on and to pursue other interests.
8 Today is Mike's last meeting as a Member of the
9 Franchise Tax Board. And John Chiang asked me to
10 say a few remarks about Mike.

11 Four years with Finance is a remarkable run.
12 And he's had a similar history here. Mike and John
13 have served together on the Franchise Tax Board
14 during five calendar years. It's been five years,
15 but since he started with the December 2005
16 Franchise Tax Board meeting, we count him on five
17 calendar years.

18 I think The Grateful Dead said it best when
19 they said what a long, strange trip it's been.
20 Together this Board has seen deficits, record
21 breaking budget delays and IOUs. But on the
22 positive side of the ledger, this Board approved
23 numerous legislative proposals with several aimed at
24 easing the financial burden for California
25 taxpayers, authorized several tax system

1 modernization projects, including seeing the
2 successful introduction of the California Child
3 Support Automation System, heard hours of public
4 testimony from industry and private citizens alike,
5 and witnessed many retiring FTB employees receive
6 proclamations thanking them for their public
7 service.

8 Now it's Mike's turn to receive a proclamation
9 thanking him for his service. But before I present
10 it, let me highlight a bit of his career.

11 From 1981 to 1991 Mike worked in various
12 analytical capacities at the Legislative Analyst's
13 office. From there he wore several deputy director
14 hats at the Department of Social Services.
15 Recognizing his financial expertise, in 1999 the
16 Senate Republicans tapped Mike to be their chief
17 fiscal advisor when they named him Director of the
18 California State Senate Republican Fiscal Office. I
19 still have ten more years to cover. Let me conclude
20 by simply stating Mike is respected by both sides of
21 the aisle for policy acumen, strategic instincts and
22 political skills. California is not only losing a
23 dedicated public servant; it is also losing Mike's
24 firsthand knowledge of California's challenging
25 budget process and its complex finance situation.

1 The loss of these skills will not be easily
2 replaced.

3 And I know John will miss your input during
4 these meetings, and there are undoubtedly many in
5 this room who will join me, actually everyone in
6 this room will join me, in wishing you well as you
7 step back from the day-to-day fray of things. And I
8 have, as we always do, the great work of FTB, a
9 little proclamation resolution - upside-down, good
10 thing it is not a camera. So let me present it to
11 Mike, the resolution:

12 Whereas, today's Franchise Tax Board meeting
13 marks the last Board meeting for the Honorable
14 Michael C. Genest, Director of the Department of
15 Finance, and

16 Whereas, Mr. Genest has faithfully served on
17 the Board since his appointment in December 2005,
18 and

19 Whereas, California is losing a dedicated
20 public servant with extensive knowledge of the
21 labyrinth of California government and its budget
22 process, and

23 Whereas, this rich background made Mr. Genest
24 an invaluable resource to the Board and California
25 taxpayers, and

1 Whereas, Mr. Genest has helped steer the State
2 and the Franchise Tax Board through some of the most
3 tumultuous budgets in California history, including
4 enduring the 85-day budget delay of 2008, and

5 Whereas, Mr. Genest has deftly balanced on the
6 budgetary tightrope between the conflicting forces
7 of the public's demand for services versus
8 California's record-setting deficits, and

9 Whereas, Mr. Genest accomplished all of this,
10 and more, while loving and encouraging his two sons
11 who are proudly serving our State and our nation in
12 the armed forces, and

13 Whereas, Mr. Genest plans to stay involved in
14 public policy issues, but for now will primarily
15 focus on annoying his wife, Katherine, by trying to
16 run the house as he did the State.

17 Now, therefore, let it be resolved, this 3rd
18 day of December 2009, by the Franchise Tax Board
19 that we recognize and thank Michael C. Genest on the
20 occasion of his retirement from the Department of
21 Finance, for his professional and personal
22 dedication to the Department of Finance, the
23 Franchise Tax Board, and most importantly, the
24 people of California.

25 MEMBER YEE: Madam Chair, if I may take an

1 opportunity to add some personal words. I have had
2 the privilege of serving with Mike for a couple
3 years on the Franchise Tax Board, but more
4 importantly our relationship dates back many years
5 in terms of working on the state budget. And I just
6 really have to take this opportunity to thank him
7 for his service.

8 We do these jobs, and I think we all have to
9 be eternal optimists when we do them. What I found
10 about Mike and, particularly, when we've not always
11 been on the same side of the issue, is that at the
12 end of the day he really approaches everything with
13 such grace and just steady leadership. And I think
14 that it is what we will remember about you, Mike,
15 your approach to the job and your integrity. And
16 what I admired about you is just your deep
17 commitment to, obviously, the process.

18 So for your career, I know you have seen a lot
19 during your long service to the State of California.
20 You have seen some boom times and bust times. I
21 think now that you will be missed because of the way
22 that you have conducted yourself and always have the
23 interest of the people of the State of California at
24 heart. You will not be forgotten.

25 Thank you very much.

1 MR. GENEST: Thank you.

2 Well, first I need to clear up one thing. I
3 did talk to my wife about running the household.
4 She's seen how the State has been run, and she
5 prohibited that from occurring.

6 Well, I would like to say a few things about
7 the Franchise Tax Board. I'm really proud of my
8 association with the Board. I've tried to attend
9 almost all of the meetings that have happened. Of
10 course, a lot more happens that doesn't really
11 happen in a meeting. You may all have noticed that
12 I have abstained from BCPs and legislative
13 proposals, but you may also know that when the end
14 of the day comes, the Department of Finance has been
15 supportive of those BCPs and most of those
16 legislative proposals. I'm particularly happy with
17 what you all have accomplished with ready return and
18 its successor. I forget the name, whatever it is
19 called. I think public service is a key thing here,
20 and that is an example of great public service. I
21 hope you continue that tradition.

22 It was fun to watch the video and see all the
23 people who have been here. I had a hand, as others
24 did, in selecting Selvi for this job, but we always
25 have to remember, and I am remembering especially as

1 I move on, it is not about the individual who sits
2 in the chair. We try to serve with honor. We try
3 to serve with integrity. It is really about the
4 entire organization.

5 And your organization, like the rest of the
6 state, is facing real challenges right now. I noted
7 that there was a statement that the Department of
8 Finance was so far supportive of the BCP about the
9 furloughs. Let me say something about the
10 furloughs. Because, whether or not we continue with
11 furloughs in some future year, they're still going
12 to be in effect this year, obviously, unless we lose
13 the lawsuits. They're a very unfortunate thing, but
14 I think you have to step back from the furloughs.

15 All of us who are state employees, I know we
16 can feel resentful and we have a reason to be upset
17 and dismayed. The organizations all suffer, not
18 just the Franchise Tax Board. But not being able to
19 collect as much as it should, it's all the other
20 organizations in state service, and I'm very mindful
21 of that. But I will have to say that we face such a
22 terrible fiscal situation. Maybe the best way to
23 put it is we are going to do a lot of really bad
24 things. We have done some; we are going to have to
25 do more to get this budget in order. It's really

1 unfortunate. I think one of the nicest things said
2 about me was when Betty said I approached the job
3 with honesty.

4 I think we have to be honest. Furloughs are
5 costing money in the department. I made it clear
6 inside the administration that I am not interested
7 in pretending that they are not. On the other hand,
8 furloughs statewide are saving a lot of money at
9 great expense to employees and great expense to the
10 mission. But absolutely necessary to be done. So I
11 hope you can all get your minds around that. I know
12 it's been hard for me seeing the paycheck go down,
13 and I know it's hard for all of you. We are going
14 to face some more tough times. We are not at all
15 through the worst of the budgets crisis. I don't
16 know when it is going to be back to some sort of
17 form of normalcy. But I can tell eventually it will
18 be. And this organization will still be here and
19 you will be doing great public service. Maybe we
20 will be glad when these days are passed, which I
21 hope we can also look back with pride that you got
22 through them and still served the public as best you
23 could under these difficult circumstances.

24 I hope that continues and I know it will
25 without regard to who is sitting in this chair the

1 next time. Thank you for all those kind words.

2 CHAIR MANDEL: Anything else for Board
3 Member Genest?

4 At this time the Board is going into closed
5 session to discuss the items listed on the public
6 agenda.

7 (Board in closed session.)

8 CHAIR MANDEL: The Board met in closed
9 session and discussed pending litigation of
10 personnel matters.

11 We are adjourned.

12 (Board meeting adjourned at 3:10 p.m.)

13 ---oOo---

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, ESTHER F. SCHWARTZ, certify that I was the official Court Reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing those proceedings;

That I thereafter caused my shorthand writing to be reduced to printed format, and the pages numbered 3 through 32 herein constitute a complete, true and correct record of the proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 12th day of December, 2009.

ESTHER F. SCHWARTZ
CSR NO. 1564