

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

PUBLIC MEETING

WEDNESDAY, DECEMBER 4, 2013

GERALD GOLDBERG AUDITORIUM  
9646 BUTTERFIELD WAY  
SACRAMENTO, CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ  
CSR NO. 1564

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ATTENDEES

02

03 BOARD MEMBERS:

04 MARCY JO MANDEL, DEPUTY STATE CONTROLLER

05 JEROME E. HORTON

06 ERAINA ORTEGA

07 STAFF:

08 SELVI STANISLAUS, EXECUTIVE OFFICER

09 CATHY CLEEK

10 GAIL HALL

11 JEANNE HARRIMAN

12 STEVE SIMS

13 COLLEEN BERWICK

14 COUNSEL:

15 JOZEL L. BRUNETT

16 PATRICK KUSIAK

17 AUDIENCE PARTICIPANTS:

18 GINA RODRIQUEZ

19 VICKI L. MULAK

20 TOM HUDSON

21 CARLOS RAMOS

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SACRAMENTO, CALIFORNIA

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WEDNESDAY, DECEMBER 4, 2013, 1:40 P.M.

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MEMBER MANDEL: Good afternoon. This is the scheduled time for the meeting of the Franchise Tax Board.

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Will the secretary please call the roll to determine a quorum is present.

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MS. BERWICK: Member Horton.

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MEMBER HORTON: Here.

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MS. BERWICK: Chief Deputy Eraina Ortega for Michael Cohen.

13

MEMBER ORTEGA: Here.

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MS. BERWICK: Deputy Controller Marcy Jo Mandel for Chairman Chiang.

16

MEMBER MANDEL: Here.

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

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The public has a right to comment on each agenda item. If there are members of the public wishing to speak on an item, please come forward when that item is called, and you will have three minutes to address the Board.

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01           And welcome to our newest member.

02           The first item is approval of minutes. We  
03 have minutes of the September 4th, 2013 Board  
04 meeting.

05           MEMBER HORTON: Move approval of the  
06 minutes.

07           MEMBER ORTEGA: We didn't have a  
08 representative here.

09           MEMBER MANDEL: I will second that. And  
10 it's been moved and seconded, with Finance  
11 abstaining.

12           The minutes are approved.

13           Item 2 is the legislative proposals. Staff  
14 report. And these items are for potential Board  
15 approval. We have Gail Hall, our Legislative  
16 Director, to present.

17           MS. HALL: Madam Chair, Members, I'm Gail  
18 Hall, the Director of the Legislative Services  
19 Bureau. This year we have four legislative  
20 proposals for your approval.

21           We held a stakeholder meeting on November 5th  
22 to discuss the proposals. It was well attended, and  
23 we received excellent suggestions which we  
24 incorporated into these proposals. If you agree, I  
25 will present the legislative proposals and ask for

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01 your approval. And I will answer any questions that  
02 you have during my presentation.

03 MEMBER MANDEL: We do have speakers on the  
04 proposals, so let's hear them one by one so we can  
05 get the speakers up on the ones they are concerned  
06 about.

07 MS. HALL: Proposal A would conform to the  
08 federal methods of calculating research credit. It  
09 would eliminate the alternative incremental method  
10 and adopt the simplified method with modifications.  
11 The California percentage would be 10.5 percent, 75  
12 percent of the federal rate. Only California  
13 research would qualify for this credit. It would be  
14 effective for taxable years beginning on or after  
15 January 1st, 2014. It would provide taxpayers with  
16 a simplified calculation option and reduce record  
17 keeping requirements.

18 I received notification from the Silicon  
19 Valley Leadership Group yesterday, and they are in  
20 support of this proposal.

21 MEMBER MANDEL: Thank you.

22 Gina Rodriquez, did you want to speak on this  
23 one?

24 MS. RODRIQUEZ: Gina Rodriquez with  
25 California Taxpayers Association. We also support

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01 this proposal. It is a conforming proposal that  
02 benefits the State and taxpayers. And we would urge  
03 the Board to continue sponsoring legislation that  
04 conforms to federal law.

05 Thank you.

06 MEMBER MANDEL: Thank you.

07 Do you want to take them one by one?

08 MEMBER HORTON: Please, preferably. Call  
09 upon, Madam Chairman --

10 MEMBER MANDEL: Sure.

11 MEMBER HALL: -- Ms. Hall. On this  
12 proposal, whenever we isolate a credit or reduction  
13 or so forth to California, only California research  
14 development would qualify. These days the Cutter  
15 case comes to mind just automatically. Any concerns  
16 in that regard?

17 MS. HALL: Board Member Horton, our  
18 analysis, that we would have to put in the legal  
19 impact section, that this could be, the research  
20 credit, could be found unconstitutional. There has  
21 been no cases on that. The Cutter case was an  
22 exclusion. It was not a credit.

23 So the research credit, this only revises the  
24 research credit, to make it better for taxpayers and  
25 for the Department. So there still is that concern

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01 out there, but we still think this is important for  
02 taxpayers and for the Department.

03 MEMBER HORTON: I agree. I think it is  
04 very important. I just wanted to make sure we were  
05 sort of cognizant of that. Although by virtue that  
06 it is a credit, I don't think they have the same  
07 issues as we had with Cutter because the credit  
08 theoretically offsets benefits directly to the  
09 state. I think we are okay there. But, you know,  
10 we should be conscious of it or make the  
11 administration conscious of it.

12 Thank you. I'll move adoption.

13 MEMBER MANDEL: Moved by Mr. Horton. I  
14 will second. No objection to that.

15 So that will be the Board's order. And  
16 Finance abstains.

17 Leg proposals.

18 MS. HALL: Next proposal is Proposal B. It  
19 would disallow dependant exemption credit unless the  
20 dependant's taxpayer identification number is  
21 included on the state return. It would be effective  
22 for tax years beginning on or after January 1st,  
23 2015. This proposal would be an effective  
24 enforcement tool, and it is consistent with federal  
25 practices.

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01                   MEMBER MANDEL: Any questions on this one?  
02 I don't have any.

03                   MEMBER HORTON: No questions. I think we  
04 have to add an educational component to this,  
05 primarily because there are certainly cultures that  
06 are concerned about having these ID numbers and so  
07 forth put out there to the general public. If we  
08 want to do this, then we need to be conscious of  
09 that as we take it through the process.

10                   Other than that, I move adoption.

11                   MEMBER MANDEL: It's been moved. I will  
12 second, and no objection.

13                   And that is the Board's order on that one.

14                   And then the third one.

15                   MS. HALL: Proposal C would require a  
16 business entity that prepares the return using tax  
17 preparation software to E-file their state tax  
18 return. A waiver of this requirement may be granted  
19 by the Department if the business entity is unable  
20 to E-file, but due to, but not limited to,  
21 technology constraints, undue financial burden,  
22 reasonable cause and not willful neglect.

23                   A business entity would be subject to a \$500  
24 penalty if it did not qualify waiver and still did  
25 not E-file, unless the failure is due to reasonable

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01 cause. The effective date of the E-filing  
02 requirements would specifically apply to taxable  
03 years beginning on or after January 1st, 2014 and  
04 returns filed on or after January 1st, 2015. The  
05 penalty provision would be delayed one year and  
06 would apply to taxable years beginning on or after  
07 January 1st, 2015.

08 MEMBER MANDEL: And the delay one year is  
09 planning for education and outreach?

10 MS. HALL: Correct.

11 MEMBER MANDEL: I think, Mr. Hudson, you  
12 wanted to speak on this one.

13 MR. HUDSON: I'm Bud Tom Hudson here  
14 representing Board of Equalization Member Michelle  
15 Steel.

16 The concern I want to raise about this - which  
17 was discussed at the interested parties meeting. I  
18 think we had a very good discussion on that - was  
19 because this is a new requirement and a lot of  
20 business entities, because there is a very small  
21 filing requirement, filing threshold, for them to  
22 have a filing requirement. In a lot of cases there  
23 can be very minimal activity, and somebody could get  
24 hit with a very large \$500 penalty.

25 Michelle Steel wanted to make sure that the

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01 warning requirement in the statute itself so this  
02 wouldn't go to a first time filer who, you know,  
03 earns \$300 in their partnership that year in  
04 California and has a filing requirement and suddenly  
05 gets hits with this \$500 penalty they weren't  
06 expecting.

07 I think the proposal would be easier to  
08 support if there was an individual notice  
09 requirement, which I understand the Franchise Tax  
10 Board has actually been very good about doing. I  
11 think this was the intent with this proposal.  
12 They've already done that with E-filing and things  
13 and E-payment. But it would be helpful if the  
14 statute itself contained a requirement that somebody  
15 would need to receive an individualized warning that  
16 said, "You filed a paper return. For this year  
17 California has a requirement that you need to  
18 E-file." And then the penalty would only be imposed  
19 in a subsequent year if the person doesn't listen,  
20 isn't getting the message. But not having somebody  
21 get this very large \$500 penalty on the first  
22 time.

23 MEMBER MANDEL: Could you address that  
24 concern?

25 MS. HALL: Well, I talked to the Department

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01 and to legal, and we would have no problem putting a  
02 warning mechanism in there. There is the one  
03 problem - it's not really a problem - is there  
04 already is a year delay. And then by putting this  
05 warning mechanism, there would be another year  
06 delay. So the penalty really couldn't be imposed  
07 until year three. That to us --

08 MEMBER MANDEL: Or year two, I guess.

09 MS. HALL: Yeah.

10 MEMBER MANDEL: Year two of the actual  
11 penalty being in existence, but year three after the  
12 statutes are passed. But the penalty is already  
13 delayed a year.

14 MS. HALL: Right. So that is correct.

15 MEMBER MANDEL: This would be consistent  
16 with how administratively the Board has handled the  
17 other penalties?

18 MS. HALL: Correct, correct. The  
19 practitioner mandate. It is similar. We really  
20 don't have a problem adding a warning mechanism into  
21 this proposal.

22 MEMBER HORTON: I am supportive of the  
23 concept of transparency. Making sure that the  
24 taxpayer is made aware of their obligation.  
25 Somewhat concerned about penalty being imposed

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01 against smaller taxpayers who don't necessarily rely  
02 on experts to do their tax returns. And the  
03 complexity of E-filing from their perspective, it  
04 may be a conscious complexity as opposed to a  
05 reality of technical and so forth.

06 But to put a warning mechanism in legislation  
07 in and of itself creates somewhat of a burden  
08 approving the negative. That you actually provided  
09 the warning and the warning was received,  
10 acknowledged and so forth. I would be very careful,  
11 I think, how we do that. Certainly, presuming the  
12 majority of taxpayers complying and so forth.  
13 Really educational thing. But don't want it to be  
14 used as an offense, necessarily.

15 Can you share with me the timeline again? Once  
16 the legislation theoretically is enacted, what  
17 happens?

18 MS. HALL: Relating to the penalty?

19 MEMBER HORTON: It's a year before it's  
20 equalitis. So it means if it's enacted 2-14, it  
21 doesn't really take effect until 2-15. Is that what  
22 you're proposing?

23 MS. HALL: Right, right.

24 MEMBER HORTON: During that time,  
25 administratively we would somewhat incorporate this

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01 warning of notification in 2-14 so that by the time  
02 it takes effect, the taxpayer has sort of  
03 constructively been notified. Not necessarily  
04 specifically or directly, but constructively been  
05 notified. Is that the goal?

06 MS. HALL: That's correct. We already have  
07 a draft education and outreach plan for this  
08 proposal to let people know that this requirement,  
09 if you have tax preparation software, and also  
10 explain what the waivers are. And then, again,  
11 explain the penalty for those who can't get a waiver  
12 and still don't E-file using the tax preparation  
13 software. So --

14 MEMBER HORTON: Okay. From the statute  
15 perspective, as long as we are clear as to what type  
16 of notice that we are providing. A notice that was  
17 just a public notice, letting the taxpayers know.  
18 And then maybe in the intent language of the  
19 legislation we can sort of delineate the type of  
20 notification that we intend to provide and direct  
21 the FTB to go to some type of administrative process  
22 of ensuring that the notification takes place.

23 Move adoption.

24 MEMBER MANDEL: It's been moved, and I'll  
25 second it. And no objection.

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01           That is the Board's order.

02           MS. HALL: Just to confirm, you are fine  
03 with adding a warning mechanism?

04           MEMBER MANDEL: The devil's always in the  
05 details. And I think that is what Mr. Horton's  
06 looking at. And some of it is going to be software  
07 providers. I did a return for a state, and they  
08 require you to E-file if you use tax preparation  
09 software. So when it comes up on your screen, it  
10 even tells you that you have to do that.

11           And that first year, it seems more that down  
12 the line newly formed companies who are entities,  
13 who are entities who are filling out their forms by  
14 hand, decide to finally go with software. Those are  
15 the ones that it seems like it would be more where  
16 they wouldn't necessarily be part of the first  
17 round.

18           But it is interesting that for paper returns  
19 filed by business entities I think your numbers were  
20 that 86 percent of the paper returns that are being  
21 filed today are prepared using some approved  
22 software, but they don't E-file them when they print  
23 them out and mail them in. This is really a  
24 requirement for entities who are using tax  
25 preparation software to just take that final step

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01 and E-file.

02           MEMBER HORTON: Madam Chair, that brings  
03 up, sort of reminds me of line items in the approval  
04 process. Sort of classify and approve software.  
05 That we ask them, the vendor, to make sure that they  
06 notify as well and then the ongoing, in addition to  
07 what Member Steel has shared. The ongoing  
08 notification of this requirement.

09           Good thing about the Franchise Tax Board is  
10 that they are consistently educating folks on a  
11 regular basis and so codifying in the legislation  
12 may be somewhat challenging, but the intent language  
13 probably can accomplish that objective. I am not  
14 seeing anything, but the legislation is not going to  
15 say anything. I support Ms. Steel's view.

16           MS. HALL: Thank you.

17           MEMBER MANDEL: Last one we have is  
18 first-time abatement of timeliness penalties.

19           MS. HALL: Proposal D would establish a  
20 penalty abatement program for failure to file and  
21 failure to pay penalties. A taxpayer would qualify  
22 for the first time abatement if, for the calendar  
23 year and four tax years immediately prior to the  
24 request, the taxpayer's compliant with the filing  
25 requirement and the taxpayer has paid or is in a

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01 current arrangement to pay all tax currently due.

02 MEMBER MANDEL: I think I have maybe two  
03 speakers on this. Mr. Hudson.

04 MR. HUDSON: Thank you. Tom Hudson for  
05 Board Member Michelle Steel's office from the Board  
06 of Equalization.

07 I just wanted to say on behalf of Michelle  
08 Steel that this is a top priority for her and her  
09 staff. She thinks it's worked very well at IRS,  
10 having a similar policy. Helps make a favorable  
11 business climate in many ways for somebody who has  
12 been compliant every single year and always has done  
13 the right thing, and suddenly they find they missed  
14 one deadline. And I know from all of our personal  
15 experience with taxpayers and other deadlines, we  
16 see people every year they have an excuse and their  
17 excuse, even if it sounds good on the face, it  
18 doesn't seem all that good if you've had an excuse  
19 for every year and you say, well, this is a person  
20 who isn't complying with the law.

21 But for somebody who's always done the right  
22 thing, even an excuse that we might not accept under  
23 the U.S. versus Boyle standard or whatever some of  
24 the other cases are, if it's something we wouldn't  
25 accept as reasonable cause, but nevertheless it

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01 might sound reasonable from a person who has always  
02 done the right thing year after year, and then  
03 missed a deadline by a day or something.

04       On behalf of Michelle Steel, I want to offer  
05 that she and her staff would to like help in any way  
06 they can to get this passed by Legislature, so let  
07 us know what we can do to help.

08       Thank you.

09               MEMBER MANDEL: Thank you.

10       Gina, it's been a long time. Don't get  
11 excited.

12               MS. RODRIQUEZ: I am. Gina Rodriguez for  
13 Cal Tax. Cal Tax is on record of supporting  
14 conformity to all of the IRS's first start  
15 initiatives, including this one.

16       Again, we urge the Board to continue  
17 sponsoring legislation, conforming legislation,  
18 especially proposals that would help reduce the  
19 FTB's \$8.5 billion accounts receivable and to help  
20 those delinquent taxpayers get back on their feet.

21       Thank you.

22               MEMBER MANDEL: Thank you.

23       Any questions or --

24               MEMBER HORTON: Move adoption.

25               MEMBER MANDEL: Mr. Horton moves adoption.

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01 I will second that. No objection. Finance  
02 abstaining.

03 Thank you very much, Gail.

04 MEMBER HORTON: If I may, this is one of  
05 those areas that on the administrative side we still  
06 need to make sure that we have clarity for the  
07 taxpayer and that there should be judicial  
08 discretion and professional discretion on the part  
09 of the administration as these cases come through.  
10 We see them at the Board of Equalization where our  
11 hands are completely tied by law. And the equity  
12 says that we should be relieving the taxpayer of  
13 this penalty, but we can't. But there are cases  
14 that come through that the reality of the situation  
15 is the penalty is due, you know, and should apply.  
16 That is where I think the professional discretion on  
17 the part of the agency has to continue to be there.  
18 So as it exists at the IRS, I don't think it is an  
19 automatic relief. But any time you can relieve  
20 taxpayers of a penalty every now and then is a good  
21 thing.

22 MS. HALL: Thank you.

23 MEMBER MANDEL: That is it for legislation?

24 MS. HALL: Yes.

25 MEMBER MANDEL: Our next Item 3 is the

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01 annual EDR update, and Cathy Cleek, our CIO, is  
02 going to give us a PowerPoint. We have to move to  
03 the other table. That was the signal for the  
04 screen.

05 MS. CLEEK: Now let's hope the technology  
06 piece works.

07 So thank you very much, Chairman and Members.  
08 I am happy to do -- I am Cathy Cleek, the CIO and  
09 executive sponsor of this project. And I am happy  
10 to give you our annual update.

11 With the annual update, what we would like to  
12 do is, first, look back on what we've accomplished  
13 in 2013, what's going to be on the plate for 2014.  
14 And I think any project you want to look at what the  
15 budget is, what the schedule is and where we are as  
16 far as revenue.

17 Just to put this all in context. This is a  
18 five-and-a-half year modernization effort for  
19 Franchise Tax Board. And we are currently in the  
20 middle; 42 percent of the project is complete. So  
21 we are right towards the middle, so let's look back  
22 to 2013.

23 In July 2013, we implemented the first phase  
24 of our imaging of our correspondence that we receive  
25 at Franchise Tax Board. This isn't a commonly known

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01 fact, but we get 10,000 pieces of correspondence  
02 each and every day in the door. And so we still  
03 deal with that in a paper fashion.

04         That correspondence, we open envelopes and  
05 then we route people and drive little trucks around  
06 the building, and people deliver it to your desk to  
07 do that work. And we said we want to stop that  
08 physical delivery on that mail, and we want to start  
09 delivering it electronically. Letting anyone in the  
10 Department who has a need to know see that  
11 correspondence. And we then respond to the taxpayer  
12 with our new system and mail it out to the taxpayer,  
13 the response to that paper that we received.

14         So we have three phases of this correspondence  
15 roll out in June of this year. We had our first  
16 phase. So we picked 300 folks here at Franchise Tax  
17 Board and three common notices, and we used that for  
18 the first time.

19         And so I'd just want to show it to you.  
20 Because oftentimes I thought it would be a little  
21 more interesting than just a PowerPoint slide. This  
22 is what the system looks like. The left-hand side  
23 you can see red, yellow, green. You can see things  
24 that are red are older than our target that we  
25 wanted to -- many times our target is 20 days to

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01 respond to notices. These are things that are over  
02 20 days. Yellow is coming up on the 20 days. And  
03 green is further out from there. You can get a look  
04 if you're a worker. These are the cases that you  
05 have the skillset to answer. And you can see where  
06 they are.

07       The other thing that we'd like is this section  
08 in the middle that says get most urgent. And what  
09 this does, instead of working down a work list, it  
10 takes your skillset and the cases that are currently  
11 in the system, and even new ones coming in, and we  
12 get most urgent the case that is the oldest with the  
13 skillset that you have to work, that you can work,  
14 comes up next for you to work.

15       So that is a little bit of what it looks like.  
16 This is actually what the correspondence is. This  
17 is a response back to a taxpayer, and this is what  
18 would show back on the screen as you're working it.  
19 The other thing I want to show here is over on the  
20 right-hand side. There's help with the system.  
21 Because we know that people having to work on  
22 something that they are used to paper, we want to  
23 make sure this transition to the electronic is  
24 smooth and not stressful. So we put help on the  
25 system in that right-hand corner, and it is very

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01 specific to this exact page. So if you are on a  
02 different page and you need help, you get help for  
03 that page. Very screen specific help. And here's  
04 an example of what that help might look like.

05       So about a month ago I got an email from one of  
06 the 300 employees who's using this new system for  
07 the first time. And this is the email that he sent  
08 to me. He says, "I love it. It's so efficient.  
09 It's easy to view and route the work. And the  
10 feedback from my supervisor on return work is timely  
11 and thus great." So here is someone actually using  
12 that new system and what he had to say.

13       So let's look forward, what is on the plate for  
14 2014. So here is a happy person ready to move to  
15 the Phase 2 of our imaging of correspondence. We've  
16 gone from 300 people to 1,100 folks getting used to  
17 the new system and from three forms to 33 of our  
18 most common forms. They also have some management  
19 reports as well as we deploy. And that's going to  
20 happen in January 1st of this year.

21       The other thing that we are quite excited about  
22 is we are updating our modeling of how we select  
23 cases in collections. What is the most exciting  
24 thing about what we are doing is we have a system  
25 that we currently have in place that's called

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01 Strata, that we are planning on retiring. It is 15  
02 years old. Once you got a score in Strata, it  
03 stayed that score. And we'd get new data on this  
04 individual and the score would never change. She'd  
05 have that same score for -- you could have it the  
06 whole 15 years.

07 Our new process will be re-evaluating and  
08 looking at data, constantly re-evaluating and  
09 rescoring cases. So we expect to get quite a bit  
10 efficiency out of this rescoring and working. Being  
11 just much smarter, using data to pick the best cases  
12 to take action on. So that's going into affect in  
13 January.

14 And also in January we will be imaging our  
15 business entities, all of those tax returns and our  
16 541 tax returns. 540 tax returns will be the first  
17 time we've imaged those. This really gives us the  
18 image that anyone in the Department with a need to  
19 know can see. People work off of image, collect  
20 things off of images. And we've found a 25 percent  
21 increase in efficiency when people go from working  
22 paper to working evaluations off of imaging, images.  
23 We are also gathering more data for use in our  
24 compliance programs as we do this.

25 I think it's always important to talk about how

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01 we're training staff because the technology is  
02 great, but people have to know how to use it. We  
03 have taken a very extensive training for trainers  
04 approach. So we develop curriculum and then go out  
05 and teach them, the experts in the Department, how  
06 to deliver that training. When you do get this, you  
07 get a lot of credibility because these folks are  
08 respected already in their area, and they become  
09 leaders in this new technology and system that we're  
10 implementing.

11         This training is planned from this November to  
12 January of '14 because we want to just take time.  
13 And 1,100 people will be participating in this  
14 training. So even though it's the holidays, people  
15 think of that is hopping around here because we have  
16 a lot of training going on.

17         So we're going to get through filing season,  
18 and June is going to come around, and we will  
19 implement our third phase of this imaging. And we  
20 will go from a thousand people using it, 1,100, to  
21 4,500 people in the Department will then have access  
22 to the system. And we will be rolling this out for  
23 everyone. So September will quickly arrive. This  
24 is a new deployment and kind of a different  
25 strategy, so I want to take a little bit of time to

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01 talk about it.

02       This is when our taxpayer folder, which we are  
03 rebranding the name MyFTB Account, will be released,  
04 or we will have completed the coding. But because  
05 this is such a big deal, as far as giving taxpayers  
06 access to large amounts of data, we want to do an  
07 extra testing phase before we actually release it to  
08 the public. So September of '14 what we want to  
09 first do is in that fall period we want to bring in  
10 a security expert and have him try, or her try, to  
11 hack into the system and make sure it is as secure  
12 as we've done on our own testing internally. We  
13 want to do that.

14       And then once filing season is over, we want  
15 to release the taxpayer folder and have people  
16 internally use the folder. And then after tax  
17 season, a little bit later in the spring, we want to  
18 have enrolled agents and CPAs come on-site and use  
19 the system with us, and make sure that it's clear  
20 how to use it, and then deploy it in July of 2015.  
21 So this is an extended period of time for testing.  
22 Because of how much data and we're giving taxpayers  
23 access to this, we want to be very thorough and make  
24 sure all of our testing from the security  
25 performance is really well done.

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01           That is what 2014 really looks like. So I want  
02 to now move to schedule budget and revenue.

03           So on the left-hand side, if you look at EDR,  
04 we have 11 releases planned. These are just  
05 deployments of new functionality. The darker blue  
06 on the left-hand side is what we have put, will or  
07 will have put, in production by January of 2014.  
08 That is five of the 11 releases planned, so 45  
09 percent of the work. And the light blue is what's  
10 planned for the rest of the project.

11           So we feel pretty good that we are 42 percent  
12 into the project and we've 45 percent of the  
13 releases deployed. That is basically telling you  
14 what we plan to do is about in sync with the amount  
15 of time that the project has passed.

16           So the budget side of the house. The left-hand  
17 side is what we projected, and the right-hand side  
18 is what we've actually spent. Sine we're in the  
19 middle of the project, I thought I'd give you a  
20 three-year look at those costs.

21           So '11-12, our first year of the project, we  
22 had a budget of 50,000,000 and spent 45,000,000.  
23 Second year, we had a budget of 123,000,000 and  
24 spent 121,000,000. And this last year our budget is  
25 174,000,000. And as of the first quarter, we've

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01 spent 54,000,000.

02       If you look at this last year, I will comment  
03 on it first. That we think we will still stay under  
04 the 174,000,000 and be right about there. There was  
05 a large vendor payment in the first quarter, and  
06 that is why we are over, a little bit over  
07 one-fourth. We believe that we will be under budget  
08 for all three of these years. That's always a good  
09 thing.

10       On the revenue side, here is a three-year  
11 look. First, the first year is the same thing.  
12 It's the target on the left with you the blue; the  
13 actual on the right, the red. So the first year our  
14 target was 63,000,000, and we brought in  
15 116,000,000. The second year is 175,000,000, and we  
16 brought in 338,000,000. And for the first quarter  
17 of this year our target is 62,000,000, and we  
18 brought in 116,000,000. We think this doubling that  
19 we have seen each year, we believe that it will  
20 continue for this '13-14 year. So we're quite proud  
21 of this fact.

22       I just want to close in saying thanks to all  
23 three of you for your support for this project. Big  
24 project really takes a village. And it takes the  
25 support of you. It takes the support of FTB

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01 management team and staff to be willing to take on  
02 new projects. Think about new ways of doing  
03 business. So I just wanted to say thanks for  
04 everyone, for all the hard work that it takes to  
05 bring something big like this. We're not done, but  
06 we're on a great start.

07 I would like to open it up for any  
08 questions.

09 MEMBER MANDEL: Thank you, Cathy. You  
10 know, at the kickoff function for EDR I was so  
11 excited and had a smile bigger than my face and I  
12 love EDR. As it's been going on and with on time,  
13 within budget and exceeding revenue projection, I  
14 just still love EDR.

15 MS. CLEEK: Thank you. We love hearing  
16 that.

17 MEMBER MANDEL: Mr. Horton, Ms. Ortega.

18 MEMBER HORTON: I want to also sort of  
19 thank the Governor as well as the Legislature. They  
20 have been extremely supportive of EDR in various  
21 different conversations and opportunities just to  
22 discuss that. As well as the team. We can be  
23 supportive of you, but without folks like yourself  
24 and all those behind the scenes making this happen,  
25 we wouldn't have all these different successes.

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01           I saw the happy faces. I was wondering where  
02 the frowns were. The one thing that I want to  
03 continue to echo, if you will, is that it's  
04 important that whenever an agency is becoming more  
05 efficient and enhancing the technology, I want to  
06 make sure that no one falls to the wayside as to the  
07 jobs that will be replaced by technology.

08           Want to make sure that we have a training  
09 process. Not only trainings on new technology, but  
10 also provide them additional career paths that are  
11 just changed as a result of the way we handle  
12 information these days. And so we have some of our  
13 team members that are activated in working in the  
14 manual sort of environment of the career with  
15 Franchise Tax Board. Want to make sure they have  
16 the opportunity to matriculate and transition over  
17 in this process, and do everything that we can to  
18 preserve those individuals.

19           MS. CLEEK: I will just on that comment  
20 alone, I would like -- there is one of our managers  
21 here, Kelly Williams. Her job is to move the paper  
22 from one part of the organization to another. And  
23 at one point she had 50 staff. And she is down to  
24 about seven. She personally has taken it upon  
25 herself to have a development plan for those folks.

0030

01 To find new jobs, to get new skills for them. I  
02 think she has been a great example. She is one of  
03 many who take it seriously to get people ready to  
04 what is coming.

05 And we wholeheartedly believe that we need to  
06 get our people ready. Whether it is a new job or  
07 just a different system they are using, it is just  
08 critical as far as having a successful IT.

09 MEMBER HORTON: Thank you.

10 MEMBER MANDEL: Thank you. Thank you,  
11 Cathy. We can go back to the table now.

12 Members, I am going to do a little switcheroo  
13 on the agenda for a minute. I think that is what I  
14 am doing.

15 MR. KUSIAK: Yes, ma'am.

16 MEMBER MANDEL: You had a quizzical look,  
17 Pat. Am I moving to executive officer time or am I  
18 moving to Board Member time?

19 MS. STANISLAUS: My time.

20 MEMBER MANDEL: During your time, you're  
21 going to announce Carlos is here to give you an  
22 award.

23 MR. RAMOS: It was supposed to be a  
24 surprise.

25 MEMBER MANDEL: Carlos is here. He wanted

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01 to say hello. Hi, Carlos.

02 MR. RAMOS: My name is Carlos Ramos. I'm a  
03 CIO for the State of California, the Director of  
04 Technology. And I also love EDR. I have to throw  
05 that in there. If all the projects ran like EDR,  
06 there would be no need for me.

07 So, Madam Chair and Members, thank you for  
08 allowing me the time to be here this afternoon. As  
09 I mentioned, I am responsible for the State's IT  
10 portfolio. I have to tell you, when you're in the  
11 public sector dealing with technology, most of the  
12 time it is a pretty thankless job. You really never  
13 get attention unless something goes wrong. All you  
14 have to do is look at what happened at the federal  
15 level with the roll out of the Obama Healthcare  
16 website and all the attention you get there.

17 Every now and then I do get the opportunity to  
18 acknowledge the accomplishment and leadership and  
19 some of the positive things that the State is doing.  
20 In addition to being CIO for the State of  
21 California, I'm on the executive board for the  
22 National Association of State CIOs. That's an  
23 association of all the different states and  
24 territories. They're CIOs that come together once a  
25 year. Mostly to commiserate about all the problems

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01 we're having back at home, but every now and then to  
02 also recognize excellence in public service.  
03 Especially in public service as it relates to  
04 embracing technology to make government more modern,  
05 more effective, more efficient and more accessible  
06 to consumers.

07           This year we were back in Philadelphia. And  
08 the Association did a nationwide search to  
09 acknowledge two leaders in the public sector out of  
10 the entire country that typify excellence in  
11 leadership and innovation in embracing technology.  
12 I'm very proud to say I was there on behalf of  
13 California to receive the award for Selvi  
14 Stanislaus, your own Executive Officer.

15           So Selvi was recognized for her innovation and  
16 for her leadership, not only for EDR, but for the  
17 long stream of successful projects that the  
18 Franchise Tax Board has developed and deployed, and  
19 also for establishing a culture of innovation and  
20 leadership within the organization.

21           Now, I know Selvi is pretty humble, so I  
22 really had to talk her in to letting me come here  
23 before you and present the award to her here. And I  
24 know that she would acknowledge it wasn't just her;  
25 it was a team, that leadership team of the agency as

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01 well as the technology team within the organization.  
02 And I certainly agree with that. But somebody has  
03 to lead. Somebody has to set the stage. Somebody  
04 has to be the one that says it's okay to innovate,  
05 it's okay to take a chance and see if there is a  
06 better way of doing things.

07 For that reason, I think Selvi deserves to be  
08 acknowledged. I'm proud and pleased to present her  
09 with the award on behalf of the National Association  
10 of State CIOs.

11 MEMBER MANDEL: Thank you, Carlos.

12 MR. RAMOS: They want me to come up there.  
13 Better lighting.

14 MEMBER MANDEL: Congratulations, Selvi.

15 MS. STANISLAUS: Thank you.

16 MEMBER MANDEL: You're welcome. I tried to  
17 talk you in to going to Philly. This is more fun.  
18 We are all here together.

19 Okay.

20 MEMBER HORTON: Congratulations. Well  
21 done.

22 Carlos, thank you very much for your  
23 leadership as well.

24 The Franchise Tax Board continues to step  
25 outside of the box to accomplish extraordinary

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01 things under your leadership. We certainly  
02 appreciate that. Hopefully, one day we can express  
03 our appreciation beyond trophies. Looking forward  
04 to those opportunities.

05 Thank you so very much, again to the staff  
06 that stands behind the executive team that is here.  
07 The Franchise Tax Board team members, thank you as  
08 well, each of you, for contributing in your own way  
09 to just making California just a better state under  
10 your leadership Selvi. Had a lot of successes.

11 MR. RAMOS: I want to say one other thing  
12 that I neglected to mention. I'm going to be  
13 showing up at one of your Board meetings as well,  
14 Mr. Horton, because the Board of Equalization was  
15 also recipient of an award at the National  
16 Association of CIOs, but don't spoil the surprise.

17 MEMBER MANDEL: Let's go back then to Item  
18 4, regulation matters. We have 2014 rulemaking  
19 calendar. And is that Pat or Bill?

20 MR. KUSIAK: Yes. Again, on the agenda for  
21 this year, as is always the practice at this time of  
22 year, the Board approval of the rulemaking calendar  
23 for 2014. This rule making calendar includes  
24 regulation projects we've been working on for some  
25 period of time and some new projects. As in the

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01 past, Board approval of the calendar and the new  
02 items that are identified on it is also explicit  
03 approval by the Board to conduct interested party  
04 meetings for those who want it.

05       As the Board is aware, over the last several  
06 years we issued a notice in advance of this meeting  
07 encouraging members of the public, practitioners and  
08 taxpayers to submit recommendations for additions to  
09 our rulemaking calendar. This year we had two  
10 recommendations. One is included in the calendar.  
11 One is not. I will address the one that is not  
12 after I conclude this discussion.

13       New items on the calendar for this year are  
14 identified in first page of the item materials  
15 behind Item 4. The first one is dealing with  
16 nonresident withholding for domestic pass-through  
17 entities.

18       The second one is dealing with regulation for  
19 release of liens filed in error.

20       The third one is not a new item, but an  
21 expanded item, dealing with mechanics for assigning  
22 credits amongst members of a combined reporting  
23 group. We're expending this regulatory effort to  
24 include the scope of clarification for which  
25 corporation of members of a combined reporting group

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01 for purposes of assignment.

02       The fourth new item is a regulation addressing  
03 when a taxpayer is actual in another state.

04       The final item, one based on a recommendation  
05 from a practitioner taxpayer, to add a calendar item  
06 is a new regulation expanding the regulations on  
07 25137-10 dealing with combinations of general, that  
08 is non-financial corporations and financial  
09 corporations.

10       And the one item that is not being added is  
11 the recommendation received from a practitioner  
12 asking us to modify our regulation regarding what is  
13 known euphemistically as check the box.

14       Those regulations are issued under a statute  
15 23038, I believe, (B), that specifically references,  
16 give us direction to issue regulations consistent  
17 with federal regulations in effect January 1st,  
18 1997. Recommendations to modify those regs would be  
19 to pick up modifications that have been made to the  
20 federal regulations since January 1 of 1997.

21       We feel it would be a statutory change to do  
22 that. The statute itself would be a rather modest  
23 technical change. Either update that date or  
24 eliminate the date and allow us to issue regulations  
25 that will be compatible with the existing federal

0037

01 regulations. Once we were to achieve that  
02 legislative technical change, we would pursue this  
03 regulation and add it to the calendar and proceed  
04 with interested parties.

05 I ask for the Board's approval and the  
06 recommendation to seek a technical change to address  
07 that recommendation.

08 MEMBER HORTON: So moved.

09 MEMBER MANDEL: It's been moved and  
10 seconded. No objection.

11 So your recommendation has been approved.

12 MR. KUSIAK: Thank you.

13 MEMBER MANDEL: Item 5 is administrative  
14 matters. We have three sub items. Jeanne Harriman  
15 is here to present.

16 MS. HARRIMAN: Good afternoon. I am Jeanne  
17 Harriman of the Financial Management Bureau. I will  
18 be presenting some items for your approval today  
19 under administrative issues, Item 5.

20 The first item under 5(a) is the budget change  
21 proposal for Enterprise Data to Revenue Project,  
22 often referred to as EDR. Leveraging off of Ms.  
23 Cleek's earlier PowerPoint presentation and in an  
24 effort to continue this smiling face forward, I'm  
25 asking for approval of our BCP for the fourth year

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01 of the project, the BCP for '14-15. It was \$79.5  
02 million of which 68.5 of that is vendor  
03 compensation. Within that we are also requesting 48  
04 permanent positions, 35 limited term positions, as  
05 well as 88 temporary staff positions. These staff  
06 members will primarily be addressing increased  
07 workloads within our filing and audit business areas  
08 as a result of EDR.

09 To the extent the permanent positions are  
10 related to our staff and would accommodate upward  
11 mobility, we have plans in place to make sure that  
12 our staff has the ability to take advantage of those  
13 positions. 68.5 million of this funding request is  
14 related to the vendor payment. Recall that this  
15 contract is based on the fact that vendor payment is  
16 due only to the extent revenues are generated by the  
17 project. Estimated revenue generated for fiscal  
18 year '14-15 is anticipated to be between 519- and  
19 684,000,000.

20 At this point I solicit your approval for this  
21 budget change proposal, and I'm happy to answer any  
22 questions.

23 MEMBER MANDEL: Mr. Horton.

24 MEMBER HORTON: Move approval. Qualify. I  
25 think I have discussed, relative to the limited term

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01 positions. We always want to, when those positions  
02 exist, do what we can to make them permanent. To be  
03 operating in a limited term environment is a little  
04 uncomfortable for individuals.

05         The other concern was I don't know if this  
06 holds at the FTB, but my understanding is that, if  
07 you're in a limited term position and you have no  
08 previous state time in, if you will, that you can't  
09 take a promotion. I'm not asking that question now  
10 because it is a new question. If you can look into  
11 that and if we can sort of work together to figure  
12 out a way that individuals, who are classified as  
13 "limited term" and that they have no previous time  
14 in with the State or positions and so forth, if they  
15 are not allowed to take a promotion or exam, that  
16 they are in a position to do so, they should -- the  
17 fact that they are limited term shouldn't impede  
18 their promotional activity.

19         MS. STANISLAUS: They tell me that may not  
20 be quite correct.

21         MEMBER HORTON: It may not. I sort of say  
22 it sort of qualifying. But at the Board of  
23 Equalization where HR says it was the case. So we  
24 are now trying to work with HR to figure out a way  
25 that these individuals that fall into the category

0040

01 limited term, they have no previous state  
02 experience, because they're classified as limited  
03 term, is a little quirk, if you will, and the  
04 employment or whatever that prohibits them from  
05 taking a promotional exam, I just don't think that  
06 it's fair. Not saying that we are doing it. To the  
07 extent that it does exist, we can possibly look at  
08 it.

09                   MEMBER MANDEL: I'll second on the BCP and  
10 Finance is off the BCP because it is a BCP. So it  
11 is now officially approved.

12                   MS. HARRIMAN: Thank you. I hope the  
13 smiles continue. See we have them already.

14                   The next item is under 5(b), relates to a  
15 contract facilities item. This is also presented  
16 for your approval.

17                   We are looking for approval to begin work  
18 with, partnering with, Department of General  
19 Services and Sacramento Regional Transit to  
20 negotiate a lease on the vacant park and ride lot  
21 close to our campus, to provide additional parking  
22 spaces for our staff.

23                   By July of 2014 we are anticipating that we  
24 will have staff and vendors and non-FTB on our  
25 campus approaching about 6,100 individuals, of which

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01 we have 4,000 parking spaces. We are doing a study  
02 looking for additional avenues to address those  
03 concerns. The primary one continues to be our  
04 effort to get folks to take advantage of alternative  
05 transportation. But to the extent that we want to  
06 make sure that staff that does drive to campus has a  
07 place to park so that no work disruption occurs, we  
08 are looking to negotiate this lease as an  
09 opportunity to provide additional parking spaces.  
10 Contract is submitted for your approval and happy to  
11 answer any questions you have.

12 MEMBER HORTON: Move approval as  
13 recommended. Also add a caveat, if you will, to  
14 work with DGS to get an agreement to cut the grass  
15 out here.

16 MEMBER MANDEL: Still the grass.

17 MEMBER ORTEGA: I will second cutting the  
18 grass.

19 MEMBER MANDEL: It's moved and seconded.  
20 No objection.

21 That is the Board's order.

22 Thank you.

23 MS. HARRIMAN: The last item involves two  
24 contracts over a million dollars. I will be  
25 presenting them separately for your consideration.

0042

01 The first contract is security services for the  
02 Franchise Tax Board campus. We in the past have  
03 submitted this annually for your consideration. The  
04 current contract expires December 31st of 2013. FTB  
05 has begun working with Department of General  
06 Services to extend the existing contract for a  
07 one-year period beginning January 2014 and  
08 terminating December of '14. Estimated cost for the  
09 single year period is \$3.1 million.

10 At this point I'm submitting this for your  
11 approval and happy to answer any questions you  
12 have.

13 MEMBER HORTON: Move approval.

14 MEMBER MANDEL: Been moved and seconded.

15 No objection.

16 That is the Board order.

17 Mr. Horton, would you do the honor of the next  
18 item. I have a functional conflict with Microsoft  
19 stock ownership, so I'm not participating. Turn the  
20 meeting over to you.

21 MEMBER HORTON: Thank you, Madam Chair.

22 Members, we are now on Microsoft software  
23 maintenance renewal project. The staff present.

24 MS. HARRIMAN: Thank you. This contract is  
25 with Microsoft. It is a renewal of our longstanding

0043

01 license agreements that we have had in place with  
02 Microsoft that expires January 31st, 2014. The  
03 actual cost has not been determined, but we are  
04 estimating about \$1.2 million contract for a  
05 three-year period, beginning in February of '14  
06 through January of 2017. This license agreement  
07 provides the ability of FTB to upgrade those  
08 licenses, provides technical support and various  
09 other rights to manage existing licenses we have  
10 that support our compliance activities.

11 At this time I am presenting this contract for  
12 approval and am happy to answer any questions you  
13 have.

14 MEMBER HORTON: Thank you.

15 Discussion? No. Moved and seconded.

16 Such would be the order.

17 MS. HARRIMAN: Thank you for your time. --

18 MEMBER MANDEL: We are now on Item 6, which  
19 is the Taxpayers' Bill of Rights hearing. This is  
20 the time set for the Board's annual Taxpayers' Bill  
21 of Rights hearing as required by Section 21006 of  
22 the Revenue and Taxation Code. The purpose of this  
23 hearing is to allow taxpayers and tax practitioners  
24 the opportunity to present directly to the Board any  
25 proposals they may have for changes in existing

0044

01 State income tax law or for improvements in FTB  
02 publications or services to the public. FTB staff  
03 is available to respond to questions which may be  
04 raised as a result of taxpayer proposals.

05 Present are Selvi Stanislaus, our Executive  
06 Officer, Jozel Brunett, Chief Counsel, and Gail Hall  
07 - we don't have enough chairs - Director of the  
08 Legislative Services Bureau, and Steve Sims, our  
09 taxpayers' right advocate. Staff will analyze the  
10 fiscal and administrative consequences of the  
11 proposal.

12 I think Steve has some introductory comments.  
13 And then I will call the names of the individuals  
14 who have indicated that they want to make a  
15 presentation. And you can come forward when your  
16 name is called and present your proposals. We  
17 usually give three to five minutes.

18 So, Steve, what's on for intro?

19 MR. SIMS: Thank you, Madam Chair.

20 First, I would like to start by thanking those  
21 practitioner organizations, practitioner groups,  
22 business owners, taxpayers, that do take the  
23 opportunity to come forward and raise issues at the  
24 Taxpayers' Bill of Rights hearing. Having said  
25 that, those issues that are raised here today, our

0045

01 goal is to respond in writing to the actual request.  
02 Plus, they will be published on our website. Our  
03 target date is normally February 1st of the  
04 following year. But it will be the third because  
05 the first is on a Saturday. Responses will be  
06 posted to the website.

07 At this point we would just like to welcome  
08 you and have you come on up. I would also add that  
09 we received some other letters, one or two, where  
10 people aren't present here today, but our responses  
11 to their questions will be put on the website,  
12 also.

13 MEMBER MANDEL: Thank you.

14 I have Vicki Mulak from the California Society  
15 of Enrolled Agents and Gina Rodriguez of Cal Tax.  
16 So come on down. Then if there is anyone else, you  
17 can come on down, too. That's just the ones I have  
18 signed up.

19 MS. MULAK: Good afternoon and thank you  
20 for having us again for the annual Taxpayers' Bill  
21 of Rights hearing. We have submitted our comments  
22 in writing. I will go over them briefly here.

23 First, the kudos. We want to thank Selvi and  
24 her whole team, especially Steve Sims and Susan  
25 Maples who are constantly working with us. We want

0046

01 to thank you for the lien increase, 1,000 to a big  
02 whopping 2,000. That is phenomenal work on your  
03 part there.

04 THE COURT REPORT: Please state your name  
05 for the record.

06 MS. MULAK: Introduce myself. Vicki Mulak,  
07 enrolled agent, California Society of Enrolled  
08 Agents. Thank you.

09 But I had a surprise today as I came into the  
10 FTB cafeteria. There was a big enrolled agent  
11 ornament hanging on tree. And I hope you all notice  
12 it as you exit today. If you walk up close to it,  
13 it does say Enterprise Architecture. To us it's an  
14 EA ornament. We just want you to know that.

15 Now, we have six items. I figure that gives  
16 me about 30 seconds on each item. The first one is  
17 our, you know, complaint list. Kudos are over now.

18 To solve canceling - of course, I use the word  
19 to my clients "killing" - a California business  
20 entity before those 800's just keeping racking up --  
21 we get this all the time. Our clients come to us.  
22 We explain the reviver process. We explain the cost  
23 associated with it. Most of them do not need  
24 contract voidability. They just would like to close  
25 and exit in a professional manner. And there is

0047

01 just no real answer to them if they don't want to  
02 fork over several thousand dollars that it takes to  
03 clean that up.

04       They don't recognize when they form their  
05 entities -- of course, there's a movement now to  
06 make formation easier so California is seen as a  
07 business friendly state. So we think that the  
08 problem will get worse as more and more businesses  
09 form things, don't use things and realize that you  
10 can't just take the silver out on Thanksgiving. You  
11 got to use it.

12       The second item on our list is mortgage relief,  
13 nonconformity, now for this final year of federal  
14 conformity for principal residence indebtedness.  
15 Now we are happy that there is a more positive  
16 approach being taken on short sales, that recourse  
17 debt is now non-recourse debt. But that leaves our  
18 foreclosure people, who if not in bankruptcy or  
19 insolvent, they pretty much got taxable COD for  
20 2013. So that was one issue we brought.

21       We're not exactly clear why one of those  
22 bills, Assembly or Senate, didn't get through, but  
23 it didn't get through, so we think that's a problem.  
24 We were hoping that you all might propose something  
25 to fix that, but we see that that did not happen.

0048

01           The taxpayer education that we think is needed  
02 for market-based sourcing rules, although Prop 39  
03 was touted as the big corporation loophole loser, we  
04 know that it's going to create some problems for  
05 small business taxpayers. I have been in practice  
06 for over 25 years, and what I'm noticing is that my  
07 little, small business clients, some of them, are  
08 getting into the apportioning world. I've lost a  
09 few clients over that issue who will not file any  
10 more than one state tax return.

11           So I think what we are asking for in our  
12 letter is for a publication with examples, similar  
13 to what you do for your nonresident and residency  
14 rules. As you know, California's residency, once  
15 you've been a resident, it's as if you've always  
16 been a resident. Once you're a nonresident, it's as  
17 if you've always been a nonresident for a lot of  
18 your carryovers. It's something that people have to  
19 get their heads around. They have to understand how  
20 it affects their small S corporations and their sole  
21 proprietorship. So we would ask for a publication  
22 that would show them clearly how you think it  
23 affects the small business. The cost of performance  
24 rule is going away and market-based sourcing  
25 with a single sales factor apply.

0049

01           Our fourth item was about small tax exempts  
02 that had to file the e-postcard for three years.  
03 California was two years behind on conforming to  
04 federal for that. So the federal revocations  
05 happened, and IRS came up transition rules and  
06 helped get some of those small nonprofits back into  
07 the fold again. So now we're requesting that maybe  
08 State of California should consider the same thing.  
09 2012 would have been year three, and California  
10 didn't always even have the same gross receipts  
11 thresholds because the 25,000 was raised in two  
12 years to 50,000.

13           So we would ask that maybe some relief would  
14 be in place with the tax exempt revocations for not  
15 filing 199N.

16           Our fifth item has to do with amended tax  
17 returns. And I have Cal Tax's letter, and I think  
18 it very match pairs nicely with one of their items.  
19 Amended returns are taking so long that clients are  
20 actually getting refunds returned to them because  
21 they can't get their tax assessments up that would  
22 match to their payments. And I think they're  
23 running six months or longer. We think that is  
24 completely unworkable.

25           The reason why I think it pairs quite nicely

0050

01 with Cal Tax is they mention the way returns are  
02 filed when the LCUP penalty is involved. We don't  
03 deal with that so much with our clients, but the  
04 amended returns are just impossible. We are hoping  
05 that EDR has some solution to that because it's  
06 really creating a lot of representation work and  
07 giving cases to the Taxpayer Advocates' office that  
08 all which would be resolved with an amended return  
09 that would just simply process.

10 I would say the IRS is running around 60 to 90  
11 days on their amended returns. So it is a big, big  
12 disparity.

13 And our final item, and sixth item, has to do  
14 with EDR, which has been, you know, very much  
15 celebrated here today. But, you know, there was an  
16 implementation delay that was recently announced due  
17 to security reasons. It impacts us greatly because  
18 the biggest problem we're facing is getting our  
19 power of attorneys recognized so that we can get  
20 taxpayer information to resolve cases.

21 So, as I explained in there, that there are  
22 POA rejects, POA processing delays and requested  
23 copies of transcripts which is the thing we need the  
24 most when helping a nonfiler. They're not just that  
25 easy to get or things that are mailed to the

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01 taxpayer.

02       The IRS functions in a very different manner  
03 with us. We actually can get things within 24 to 48  
04 hours faxed to us, if they're not too large. And  
05 they recognize our POAs right away. They copy us on  
06 all their correspondence to our taxpayers, which  
07 makes representation a lot easier. So, I think in  
08 their most recent webinar they said there are 16,00  
09 POA rejects by Franchise Tax Board that were either  
10 incomplete or incorrect.

11       We think that's a staggering number of people  
12 that did not get served by their practitioner. We  
13 think that area needs to be addressed in the next  
14 year, especially since some of the things we were  
15 going to view online are not going to be ready for  
16 us to view online.

17       That completes a checklist of little, annoying  
18 things that we deal with from day-to-day out here.

19       Thank you for your attention. We look  
20 forward to your comments.

21       MEMBER MANDEL: Thank you, Vicki. What's  
22 the rejected power of attorney?

23       MR. SIMS: The figure that was given was  
24 16,000 rejects, but I will add that that doesn't  
25 mean that they didn't reserve service. It just

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01 means that they are rejected. Some of them  
02 eventually did get put through. So those 16,000,  
03 most of them probably ended up getting help. It was  
04 just delay in getting help.

05 MEMBER MANDEL: Does that mean that there  
06 was something --

07 MR. SIMS: It could be a number of things.  
08 The reasons that I've been given or why it can  
09 happen: Sometimes it's filled out incorrectly.  
10 Sometimes the power of attorney will have the wrong  
11 signature. Sometimes, you know, it can have the  
12 wrong year. There is a number of reasons as to why  
13 they get rejected. It's not necessarily a  
14 processing problem, although there is a processing  
15 problem that she is referring to.

16 MS. MULAK: This one pretty much came from  
17 multiple members. I had one member that does a lot  
18 of nonfiler returns. What I do now is that I get  
19 the IRS transcripts and I just do a big guess on FTB  
20 return because I can't get the information I need.

21 MR. SIMS: One of the things we do want to  
22 add is that MyFTB is starting to populate with more  
23 and more information that they can get regarding  
24 taxpayer's history and account information.  
25 Although I am right there with Vicki and CSEA. I'm

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01 glad that you guys brought that up as an issue.

02 MS. MULAK: Thank you.

03 MEMBER MANDEL: Thank you.

04 Gina.

05 MS. RODRIQUEZ: They gave me this.

06 MEMBER MANDEL: Are we in Vegas?

07 MS. RODRIQUEZ: I'm on the Voice right now.

08 I can tell.

09 Thank you. Gina Rodriguez for California  
10 Taxpayers Association. Thank you very much to Steve  
11 Sims and Susan Maples who, throughout the year, work  
12 tirelessly and help us on the side of our  
13 membership. We get calls from taxpayers. And by  
14 the time they call us, they are in dire straits.  
15 And I turn those cases over to Steve and Susan. And  
16 they take very good care of these taxpayers.

17 Thank you very much. Thank you for allowing  
18 me to testify.

19 This year Cal Tax would like to focus on the  
20 FTB's forward resolution of its compliance  
21 endeavors, including refund claims, audit protests  
22 and appeals. Resolution times are simply  
23 unacceptable. I think Vicki used the word  
24 "unworkable." The compliance backlog violates the  
25 standard of the Taxpayer's Bill of Rights. In fact,

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01 Section 21010 of the Bill of Rights addresses the  
02 need for the FTB to reduce the time required to  
03 resolve refund claims, protests and appeals by  
04 developing a plan that includes standard time  
05 frames.

06 The intent, of course, is to avoid any  
07 conflict between the taxing revenue and providing  
08 due process to taxpayers. The FTB seems to operate  
09 with the lack of urgency with respect to assisting  
10 taxpayers with their refund claims, taking an  
11 average of 24 to 30 months to audit a claim. This  
12 disregard for taxpayer's rights is not only  
13 evidenced by the FTB delay in resolving the refund  
14 claims, but also by its lack of inventory controls.  
15 In fact, the FTB is unaware of the number of letter  
16 claims inventory.

17 Because the FTB does not have a complete  
18 picture of its refund claims inventory, it is unable  
19 to tell us whether the inventory has increased since  
20 the 2008 enactment of the large corporate under  
21 payment penalty. Also known as the LCUP. Cal Tax  
22 believes there is a correlation between the LCUP and  
23 the increased number of refund claims being filed.  
24 Mr. Sims apparently agrees with our suspicion. The  
25 statement in his 2013 report to the Legislature

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01 where he states that due to the LCUP taxpayers  
02 appear to be taking a conservative approach of the  
03 original tax returns and are filing for refunds  
04 reverse or alter the positions taken on the original  
05 return.

06         Mr. Sims also states in his 2013 report that  
07 apportioning corporations, those are mostly likely  
08 to be subject to the LCUP. We have 82 percent of  
09 the open refund claims in audits and cites a 33  
10 percent increase in resolving corporate refund  
11 claims with a 19 percent increase in the dollar  
12 amounts. Again, this number does not include letter  
13 claims because the FTB doesn't know the level of  
14 that inventory. Corporate refund claims are likely  
15 on the rise due to the LCUP, but 2013 is the first  
16 taxable year that it is not offering the lost  
17 carryback may be claimed. So that we expect the  
18 refund claim inventory to continue to rise in light  
19 of this provision.

20         Delay audits have lead to unfair audit  
21 practices. FTB is not completing many audits in a  
22 timely manner. When this happens, the FTB demands a  
23 waiver to extend the statute of limitations.  
24 Sometimes the FTB requests a second waiver when the  
25 auditor fails to complete the audit under the

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01 original waiver. Audits of pass-through entities  
02 are especially problematic. A pass-through audit  
03 may be just one item, but the FTB refuses to accept  
04 a ruling limited to that one item. The FTB issues  
05 punitive MPAs to the owners, many of whom are  
06 individuals, and then issues -- and these entities  
07 generally don't explain the reason for the MPA.

08         With respect to protests, FTB staff reported  
09 to the Board at its September meeting that they are  
10 taking an average of 42 months to close dockets in  
11 protest, despite the 24-month guideline set forth in  
12 the FTB notice 2006-6.

13         Incoming protests have increased 35 percent in  
14 the past three years, and those require docketing  
15 have increased 28 percent. Additional staff may  
16 help a little with the increased inventory, but FTB  
17 management should look at some of the underlying  
18 issues, like lack of auditor training, lack of  
19 coordination between legal and audits, lack  
20 inventory controls and pursuit sometimes of  
21 unsubstantiated positions.

22         And finally, taxpayers fail to have their  
23 appeals heard within reasonable time frames. As  
24 years pass with pending appeal, interest accrues,  
25 the audit file becomes stale, taxpayers die, FTB

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01 staff retries and key witnesses move. But maybe  
02 most importantly taxpayers lack any guidance for  
03 years subsequent to the years under appeal.

04 I would like to say I love EDR as well, but  
05 I'm not sure it is going to address these very  
06 problematic issues. But I think that for the  
07 duration we look forward to working with you in  
08 2014.

09 Thank you.

10 MR. SIMS: Well, first of all, thank you,  
11 Gina. And for the portion of the taxpayer advocate  
12 annual report to the Board, Gina is definitely  
13 correct. However, I do want to break it down a  
14 little more specifically because a lot of the  
15 statistics in question only apply to a certain group  
16 of taxpayers.

17 The biggest complaint that arguably we can  
18 meet, with regard to claims for refunds within the  
19 annual report, relates to corporate taxpayers.  
20 Primarily, the basis behind that is the fact that  
21 they are not receiving interest when it takes a long  
22 time. She is correct; it could take 24, 30 months  
23 to process a claim. But I also want to add that  
24 that is not your standard claim. Those are claims  
25 that may be subject to examination. And that also

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01 depends on the nature the claim. These could be  
02 apportioning taxpayers that have very complicated  
03 issues that relate to them.

04 I do want to express that most taxpayers don't  
05 take 24 to 30 months. But those taxpayers that it  
06 does take that much, there is a significant amount  
07 of money that is at stake. The issue that I'm  
08 raising with is in conjunction with the need to do  
09 something about interest being paid for corporate  
10 overpayments.

11 Having said that, thank you.

12 MS. RODRIQUEZ: Thank you.

13 MEMBER MANDEL: Thank you.

14 Anything?

15 MEMBER HORTON: The inherent nature of the  
16 LCUP is going to cause overpayments, and those are  
17 going to be complex in nature. Just because of the  
18 statutes and the reason that they occur. There is  
19 some commonality and some consistency there. To the  
20 extent that we can address those, we probably might  
21 want to come up with some strategy that allows us to  
22 address it.

23 But, Madam Chair, we could possibly -- maybe  
24 staff can kind of take a look at these items and  
25 come back with a report so that we have a more

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01 comprehensive understanding of what the individual  
02 items are. To the extent that there is some  
03 commonality, we can categorize these and develop  
04 some special training or put some specialist on  
05 those to accelerate the process. Not to say that we  
06 were not. But to the extent that we can handle it,  
07 we should take a look at it.

08         But I think this is one of the things that I  
09 believe staff is going to take a look at and then  
10 come back to us, with a report to the Board, as to  
11 what management strategy they believe would be  
12 necessary to address this category of challenged  
13 issues.

14         The one thing that I want for the general  
15 public is -- I think you've done a good job of doing  
16 that. It is not reflective of the whole. These are  
17 individual items which is a good thing because we  
18 can focus on those and see if there is a way to  
19 accelerate them. In addition to additional  
20 staffing, because given the freezes that the  
21 Franchise Tax Board has experienced over the years,  
22 the transition as well, the other thing that  
23 concerns me is the -- not specifically to this, but  
24 our transition plan, the need. The fact that a  
25 significant number of our individuals are going to

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01 be retiring is going to cause a brain drain on our  
02 organization.

03         So to the extent that we can, we might begin  
04 to have conversations with the administration about  
05 developing a plan that allows us to retain some of  
06 this historical knowledge that will be retiring in  
07 our organization. The current requirement or  
08 impediment of not being able to bring back retired  
09 annuitants for a six-month period of time could  
10 create a whole lot of backlog for the organization.  
11 One of the ways that we can accelerate some of this  
12 is bring back a retired annuitant. Bring that  
13 experience back. Have it engage and have it  
14 facilitate that. There are a number of solutions we  
15 can begin to consider. And I would only ask the  
16 staff to take a look at and come back and report to  
17 the Board, with approval of Madam Chair.

18                 MEMBER MANDEL: Thank you. I know I had  
19 asked about the LCUP refund, and there wasn't any  
20 kind of specific way that they were identified, that  
21 that's what they were. Unlike when we have a  
22 disaster, so they are not -- they're not  
23 necessarily, as I understand, sort of segregable in  
24 the system, to know which ones people are filing  
25 protective and then didn't. LCUP.

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01                   MR. SIMS: Gina raises a good point about  
02 the letter claims. Letter claims are not always  
03 specific enough for us to be able to identify  
04 whether LCUP had to do with it or not. So there is  
05 some challenging issues that face us. We've already  
06 begun to form a team of representatives from audit,  
07 legal and from my shop to kind of take a closer look  
08 at this.

09                   MEMBER MANDEL: That is good. I think as  
10 we get into that period where people are able or  
11 companies there with the NOL carrybacks. I'm sure  
12 you guys are all looking at how that will be  
13 administered on the refund claims.

14                   MR. SIMS: I did want to add that Debbie  
15 Langsea has taken significant steps with regard to  
16 her audit staff in developing a training program.  
17 And actually a training -- what is it called? Who  
18 knows? Susan, what is it? Never mind. But it is  
19 -- it used to be something else.

20                   [Inaudible audience comment.]

21                   MR. SIMS: There we go. Bottom line, we're  
22 on track of the training of all the highest staff to  
23 make sure they're getting training on the types of  
24 stuff being faced by the taxpayers.

25                   Thanks, Susan. I appreciate you bailing me

0062

01 out on that. You, too, Brenda.

02 MEMBER MANDEL: Your staff is here, right?

03 MR. SIMS: They are. I would like to give  
04 my staff a big hand, too. I was going to do that at  
05 the end. Brenda and Ernest who just joined, and  
06 probably going to quit in about a week. Terri,  
07 especially Terri. Where is Terri? Sorry.

08 MEMBER MANDEL: Someone has to be upstairs  
09 working.

10 MEMBER HORTON: Madam Chair, part of that  
11 has to also -- the taxpayers are very cooperative,  
12 generally speaking. There are times that delays are  
13 attributed to receiving information timely and so  
14 forth. To the extent we can include them in the  
15 process, I think it is important.

16 As it relates to the loss of historical  
17 knowledge, I want to share with people, like Pat,  
18 that I am introducing legislation prohibiting them  
19 from retiring.

20 MEMBER MANDEL: Broad-based support to that  
21 motion.

22 Is there anyone else that would like to  
23 address the Board on the Taxpayer Bill of Rights?

24 Seeing no one leaping up at the podium, I will  
25 move to -- yes, Steve, you have closing comments.

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01 MR. SIMS: I just want to close by just  
02 thanking California Society of Enrolled Agents. I'm  
03 also one of those agents. I thank them first  
04 because -- anyways. Cal CPA, California Bar. I  
05 also want to take time to thank you, the trade  
06 organizations such as Cal Tax, BMA. Lori over here.  
07 She never says nothing. Thank you for that. And  
08 Spydell [phonetic] who is not here today. I just  
09 want to take time because they do work very closely  
10 with us to identify some of these issues up front  
11 and get a jump start on coming up with solutions.

12 Thank you.

13 MEMBER MANDEL: Thank you. Thank you,  
14 Steve.

15 So, Selvi, I went through the executive  
16 officer time so fast with Carlos here I didn't ask  
17 if you had anything else that you want to do or say  
18 in your executive officer time.

19 MS. STANISLAUS: Very briefly. I want to  
20 do both. Steve also will retire next year.

21 MEMBER MANDEL: Pass that law really fast.

22 MR. SIMS: You definitely have one more of  
23 these.

24 MEMBER HORTON: One more?

25 MR. SIMS: Well, maybe.

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01                   MEMBER HORTON: I like your tie.  
02                   MR. SIMS: Thank you. Maybe not one more.  
03                   MS. STANISLAUS: Thank you, Madam Chair.  
04                   MEMBER MANDEL: We are on Item 8, Board  
05 Member's time, which is Member's opportunity to  
06 raise other matters of interest. It is not an  
07 action item. I don't know if anyone else has  
08 anything, but I have a giant thing here in front of  
09 me, which I am going to present. See, once again, I  
10 was going to do it upside-down, as if you can all  
11 read or we are on video. Here you go.  
12                   This is for Pat. Pat is, as you know,  
13 Assistant Chief Counsel of the Technical Resources  
14 Bureau and the Franchise Tax Board. And this, you  
15 know, it looks beautiful. Colleen will make sure  
16 you have one that has signatures on it.  
17                   Whereas, Patrick Kusiak has loyally  
18 served the people of the United States  
19 and the State of California for 45  
20 years, serving in the United States  
21 Navy for 25 years and then 20 years at  
22 the Franchise Tax Board, currently, as  
23 I already told you, he is Director of  
24 the Legal division Technical resources  
25 Bureau.                   (Reading)

0065

01           That is the official thing. We like to call  
02 you Assistance Chief Counsel. Cal HR, I guess, has  
03 this official thing; and --

04           Whereas, Mr. Kusiak began his FTB  
05 career in January 1993 as a Tax Counsel  
06 III, in the general tax law technical  
07 bureau and shortly thereafter was  
08 promoted to Tax Counsel III; he  
09 transferred to the former Legal Affairs  
10 Bureau where he found his true calling,  
11 drafting and reviewing legislation,  
12 policy and regulations. He was  
13 promoted to Tax Counsel IV in June  
14 2000, and in August 2007, after serving  
15 almost two years as Acting Bureau  
16 Director of the Legal Affairs Bureau,  
17 he was officially appointed to the  
18 position of Assistant Chief Counsel;  
19 and

20           Whereas, Mr. Kusiak has shown the  
21 extraordinary dedication to his work,  
22 where he devoted countless nights and  
23 weekends during some of the most  
24 challenging legislative years  
25 California has experienced, personally

0066

01 drafting and revising statutory  
02 language; training and educating staff  
03 on the fine points of legislative  
04 drafting and analysis, as well as the  
05 structure and content of California and  
06 federal tax law; always taking the time  
07 to explain every point in detail at  
08 least once; and as Counsel to the Board  
09 for many years, offering guidance and  
10 structure for Board meetings and Board  
11 matters; and

12 Pat, we thank you for your years of  
13 outstanding service, and we wish you  
14 all the best in your retirement.

15 So the Board has resolved we are  
16 recognizing you and thanking you on the  
17 occasion of your retirement for your  
18 professional and personal dedication to  
19 the Franchise Tax Board and, most  
20 importantly, to the people of the State  
21 of California.

22 Pat.

23 MR. KUSIAK: Thank you.

24 MEMBER MANDEL: He says he is not going to  
25 say a word. Pat, say two words.

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01                   MR. KUSIAK: Thank you. I'm not going to  
02 say -- as many of you know, and I think as  
03 illustrated in that resolution, I have tendency to  
04 sometimes give people a lot more detail than they  
05 thought they were going to get.

06                   Can you hear me in the back?

07                   MEMBER MANDEL: We are audiocast, Pat.

08                   MR. KUSIAK: As many of you know, it is  
09 difficult for me to give a simple answer to a simple  
10 question because there is no simple question. But  
11 my years as service here, as well as in the Navy, in  
12 doing the people's business has been gratifying and  
13 satisfying. It's what I think all of us share. You  
14 may not know we share it, but when you do the  
15 people's business, you have the best clients in the  
16 world.

17                   Thank you for allowing me to work with you.  
18 Thank you for your indulgence when sometimes I run  
19 on a bit and maybe go down the rabbit hole whenever  
20 you go into my office.

21                   Thank you again. It's been a pleasure, and  
22 thank you for the resolution.

23                   MEMBER MANDEL: You're welcome.

24                   MEMBER HORTON: Madam Chair, what is the  
25 date of that retirement? I think I can get

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01 emergency legislation.

02 MEMBER MANDEL: Governor's Executive Order.

03 MEMBER HORTON: Yes, let's work on that.

04 In all seriousness, thank you so very much for  
05 your service to this country. It's admirable. I  
06 remember for the first time, when I read your  
07 background, I was so impressed. You have the type  
08 of experience over the years that should be codified  
09 in a book and set up as an example for our children  
10 to learn from.

11 Thank you so very much for all your service  
12 over the years.

13 MEMBER MANDEL: Anything else for Board  
14 Members' time?

15 Thank you.

16 At this time the Board is going into closed  
17 session to discuss pending litigation.

18 (Board in closed session off the record.)

19 MEMBER MANDEL: The Board met in closed  
20 session and discussed pending litigation. We are  
21 adjourned.

22 Thank you, Members.

23 (Hearing concluded at 3:09 a.m.)

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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 68 herein constitute a complete, true and correct record of the proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 9th day of December, 2013.

---

ESTHER F. SCHWARTZ  
CSR NO. 1564