

12-01-11 FTB MEETING.txt

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

QUARTERLY MEETING

THURSDAY, DECEMBER 1, 2011

FRANCHISE TAX BOARD
9646 BUTTERFIELD WAY
TOWN CENTER, GERALD GOLDBERG AUDITORIUM
SACRAMENTO, CALIFORNIA

1:30 P.M.

REPORTED BY:

SANDRA VON HAENEL
CSR NUMBER 11407

□

1

APPEARANCES

2 FRANCHISE TAX BOARD:

3 Deputy Controller Marcy Jo Mandel for Chair Chiang
4 Hon. Jerome E. Horton
5 Pedro Reyes for Member Ana J. Matosantos

5

6 FRANCHISE TAX BOARD STAFF:

7 Colleen Berwick
Jeanne Harriman
8 Patrick Kusiak
Anne Maitland
9 Benjamin J. Miller
Melissa Potter
10 Steve Sims
Selvi Stanislaus
11 Geoffrey S. Way

12

13 PUBLIC SPEAKERS:

14 Marsha Armstrong
David Arthur
15 David Feldman
Lynn Freer - Spidell Publishing
16 Eric Miethke - Nielsen Merksamer
Vicki Mulack - California Society of Enrolled Agents
17 Gina Rodriguez - California Taxpayers Association
Lee Snorteland

18

19

20 AWARD PRESENTATION:

21 Paul Benedetto - NASCIO

22

23 ----oOo----

24

25

□

1 SACRAMENTO, CALIFORNIA

2

2 THURSDAY, DECEMBER 1, 2011, 1:30 P.M.

3 ----oOo----

4 ACTING CHAIR MANDEL: Good afternoon. This is the
5 scheduled time for the meeting of the Franchise Tax Board.

6 would the secretary call the roll to determine a
7 quorum is present.

8 MS. BERWICK: Member Horton?

9 MEMBER HORTON: Here.

10 MS. BERWICK: Chief Deputy Director Pedro Reyes for
11 Member Matosantos?

12 MR. REYES: Present.

13 MS. BERWICK: Deputy Controller Marcy Jo Mandel for
14 Chair Chiang?

15 ACTING CHAIR MANDEL: Here.

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

19 The public has a right to comment on each agenda item.
20 If there are any members of the public wishing to speak on
21 an item, please come forward when that item is called to the
22 podium here in the front. You will have three minutes to
23 address the Board.

24 The first item is approval of the minutes. We have
25 the minutes of the September 8, 2011, Board meeting.

3

□ 1 MR. REYES: Move approval.

2 MEMBER HORTON: Second.

3 ACTING CHAIR MANDEL: And I'll join in.

4 That will be the order of the Board. Minutes are
5 approved.

6 The next item we have is the legislature proposals as
7 a staff report and items for Board approval. And we have
8 Anne Maitland here who is our acting legislative director to
9 present the item.

10 And I do have a speaker on three of the items.

11 MS. MAITLAND: Madam Chair and Members, we have four
12 legislative proposals for your review and approval. If you
13 approve these measures, we will look for authors for these
14 proposals.

15 Would you like me to go through all of them before you
16 entertain a motion, or what's your preference?

17 ACTING CHAIR MANDEL: Do members have questions on any
18 of them?

19 No.
20 Gina Rodriguez, do you want to speak?
21 You're near the podium. Okay.
22 Can you maybe just give a really brief on them for the
23 public.
24 MS. MAITLAND: Sure.
25 ACTING CHAIR MANDEL: And then we'll have Gina come

4

□

1 back up.
2 MS. MAITLAND: We have four legislative proposals.
3 The first one treats regular corporations and LLCs the same
4 in terms of penalties and fees that are imposed on them when
5 they are suspended.
6 The second proposal gives us statutory authority to
7 have the same due date when there is a federal holiday,
8 Emancipation Day, that is going to occur in eight of the
9 next nineteen years. So we are seeking legislative
10 authority so we're not different.
11 The third proposal re-enacts the provision that allows
12 the taxpayer advocate to provide relief to taxpayers. That
13 provision has been in effect from 2009 to 2011. We're
14 looking to reinstate that.
15 And the last proposal deals with primarily small
16 charitable corporations who go out of compliance with the
17 Attorney General's Office and find themselves faced with
18 minimum tax. We are trying to alleviate that and treat them
19 the same as if they had difficulty in filing with the FTB.
20 So those are the four proposals.
21 ACTING CHAIR MANDEL: Thank you.
22 Gina.
23 MS. RODRIQUEZ: Thank you, Madam Chair and Members.
24 Gina Rodriguez with CalTax.

25 First of all, thank you to Anne and her staff for

5

□ 1 their transparency. We did hold an interested parties
2 meeting as part of that. And thank you very much for
3 inviting me.

4 Secondly, CalTax would like to lend its support to the
5 three bottom proposals: conforming to the federal holiday,
6 the enactment of the advocate relief, and relief from the
7 imposition of the franchise tax for charitable corporations.

8 CalTax actually supported the advocate equity relief
9 bill back in 2008, and we will continue our support.

10 Thank you.

11 ACTING CHAIR MANDEL: Okay. Thank you.

12 And I would also note that we did receive a written
13 comment. I think it came in through the Bill of Rights, but
14 a written comment on Legislative Proposal A. So you may
15 just want to coordinate with Steve Sims to make sure you
16 have a copy of that written comment.

17 Thank you.

18 If there are no questions from the members on any of
19 the proposals, can I have a motion. That would be --

20 MEMBER HORTON: Move adoption of all items.

21 ACTING CHAIR MANDEL: Thank you.

22 And I'll second that. That will be the Board's order.
23 Department of Finance is abstaining?

24 MR. REYES: Abstaining.

25 ACTING CHAIR MANDEL: Thank you.

6

□ 1 We are now on Item 3, which is regulation matters. We
2 have three subitems under this. The first is the Rulemaking
3 Calendar for Board approval for 2012.

4 MR. WAY: Madam Chair, Members, I'm Geoff Way, chief
5 counsel for the FTB on the annual review matters.

6 The first item on the rulemaking calendar for 2012 --
7 we do this every year. It's transmitted to AOL to give them
8 an idea of the types of items we'll be transmitting to them
9 for consideration.

10 The calendar contains four new items. The rest of the
11 items we've previously considered and are currently in the
12 process of drafting regulations for those items.

13 Page 4 and 5 pertain to two administrative matters.
14 One is the alternative method of providing notice, which is
15 really a placeholder for EDR, to allow us to provide notice
16 in certain circumstances. We will not know the scope of
17 that until specifications are provided through EDR, but we
18 wanted to have that ready to go when that is ready.

19 On page 5 is the time for filing returns. That's
20 really a placeholder in the event something happens with the
21 legislative proposal conformed with the ED holidays. We
22 still want a backup if we need that. So that's on there for
23 possible consideration.

24 And then on page 14 and 19 there is two separate
25 different proposals. They both dovetail off some of these

□ 1 other regulations that are on the list today and are moving⁷
2 for adoption. The items were identified during the comment
3 process, and for both of those, members of the public and
4 representatives did not want to hold up the formal
5 regulatory process to consider those issues, so we'll use
6 these as placeholders to deal with those items in the
7 future.

8 By placing these items on calendar, it allows us to
9 hold interested parties meetings without coming back to the
10 Board for specific approval. So we're asking you to approve
11 the calendar in part and in whole.

12 ACTING CHAIR MANDEL: Okay. Thank you.

13 MEMBER HORTON: So moved.

14 ACTING CHAIR MANDEL: Thank you.

15 MR. REYES: Second.

16 ACTING CHAIR MANDEL: It's been moved and seconded.

17 Any objection?

18 Without objection, that will be the Board's order.

19 The next item is b. on Regulations. We have, I think,

20 it's six regulations --

21 MR. WAY: Correct.

22 ACTING CHAIR MANDEL: -- to begin the OAL process.

23 MR. WAY: Now, these have all had interested parties

24 meetings, language has been developed. Again, we are just

25 asking for approval to go forward with the formal process.

□ 1 They all have public hearings, and the public can still have⁸
2 the opportunity to comment on each of those hearings, and we
3 will be required under the process to respond to those
4 comments.

5 Some of these may come back to the Board for approval;
6 some of them may not. There are a couple of these we really
7 have had no comments at all on them. We feel those will
8 probably go right through.

9 We bring regulations back to the Board that have
10 significant comments about, the ones we feel you need to
11 consider. And then any member of the public can ask for a
12 regulation to be actually approved by the Board, and we
13 would bring that back to the Board if that request is made.

14 I would just kind of move these on the consent
15 calendar all at once because, again, the public will have an
16 opportunity to comment on these in the public comment
17 process.

18 MR. REYES: So moved.

19 MEMBER HORTON: Madam Chair, we may have members of
20 the audience who would be interested in providing some
21 points of insight into some of them.

22 ACTING CHAIR MANDEL: Does anybody have any comments?
23 If so, move forward.

24 I don't have any sign-ups for this one. Okay.

25 MEMBER HORTON: Second.

9

□ 1 In that case, second the motion.

2 ACTING CHAIR MANDEL: It's been moved and seconded to
3 approve the six items to begin the AOL process.

4 Any objection? No objection.

5 That's the Board's order. Thank you.

6 MR. WAY: Thank you, Madam Chair.

7 ACTING CHAIR MANDEL: Now we are on 3 c. which is
8 Regulations for Board Approval/Adoption. There are two.
9 And I do have a speaker on the second one.

10 So the first one, Melissa Potter is going to present
11 on Proposed Regulation 25136-2, Sales Other Than Sales of
12 Tangibles.

13 MS. POTTER: Good afternoon. My name is
14 Melissa Potter. I am an attorney assigned to this
15 regulation project.

16 Staff is requesting that the Board adopt amendments to
17 Regulation Section 25136. These amendments provide guidance
18 as to how to assign sales other than sales of tangible
19 personal property pursuant to the market-based rules of
20 Revenue and Taxation Code Section 25136 subsection (b)
21 offered January this year.

22 The final draft language for which staff is asking
23 adoption of the Board has two main issues: sales of services

24 and sales of intangible property.

25 Sales of services are assigned to where the benefit of

10

□ 1 the services was received.

2 Sales of intangible property are assigned to the
3 location of the use of the intangible property.

4 Sales are assigned to California on a pro rata basis
5 based on cascading rules. The cascading rules set down in
6 order of the best evidence available which is most likely to
7 reflect a taxpayers' market, taking into consideration there
8 are different levels and information available to different
9 taxpayers large and small, sophisticated and less
10 sophisticated.

11 These rules are written so that a taxpayer and the
12 Franchise Tax Board must overcome the presumption of the
13 first rule to get to the second rule, and then overcome the
14 second to get to the third and so on. This was done to
15 avoid cherry-picking a rule by either taxpayers or the
16 Franchise Tax Board. Also, the cascading rules avoid
17 "nowhere" sales.

18 The regulation is crafted as follows. In connection
19 with sales and services, there are two categories: sales and
20 services to individuals, and sales and services to business
21 entities.

22 For sales of intangible property there are also two
23 categories: one, where there has been a complete transfer of
24 property rights, and, two, where there has been a licensing
25 of intangible property.

11

□ 1 where there has been a licensing of intangible

2 property, there are three categories: marketing intangibles,
3 non-marketing manufacturing intangibles, and, finally, mixed

4 intangibles.

5 There are three special rules in this regulation.
6 Number one, reasonable approximation is acceptable where
7 cost and burden to the taxpayer for the taxpayer to comply
8 with this regulation is unreasonable.

9 Number two, if a taxpayer uses or the Franchise Tax
10 Board accepts a reasonable approximation, that method must
11 continue to be used for subsequent years absent a change of
12 material facts.

13 Number three, the 25137 rules are incorporated except
14 for any provision for throw-backs, throw-outs, or income
15 producing activity assignment language.

16 Staff has conducted three interested parties meetings,
17 all of which have been well attended. In addition, staff
18 has met with numerous taxpayers and/or tax practitioners to
19 discuss various situations with respect to various language
20 provisions of this particular regulation. It also accounts
21 for numerous emails and telephone conversations.

22 The formal regulatory hearing was held on August 10th
23 of this year. We received fifteen oral and written
24 comments, and based on some of these comments as well as
25 staff recommendations for additional clarification, changes

□ 1 were made to the regulation language. As a result, a 15-day¹²
2 notice and new draft language was mailed and posted on
3 October 7. In response to that notice we received nine
4 comments, the majority of which requested clarification of
5 one particular provision and one particular example.

6 As a result, we made a few more changes, and a second
7 15-day notice and draft language was issued and mailed and
8 posted on October 27. In response to this notice we
9 received six comments from one tax practitioner, and most of

10 these were requesting clarification or definition of
11 commonly used legal and accounting terms.

12 Staff has spoken with tax practitioners and taxpayers
13 regarding final adoption of this regulation by the Board,
14 and staff can report that everyone to whom staff has spoken
15 is enthusiastic that this regulation become law, providing
16 taxpayers with certainty in connection with assigning sales
17 other than sales of tangible personal property under Revenue
18 and Taxation Code Section 25136 subsection (b).

19 Staff respectively request that the Board adopt this
20 regulation.

21 ACTING CHAIR MANDEL: Thank you.

22 Any questions from the members?

23 MEMBER HORTON: So moved.

24 MR. REYES: Second.

25 ACTING CHAIR MANDEL: It's been moved and seconded.

13

□ 1 No objection.

2 That will be the Board's order.

3 Thank you.

4 The next regulation is Proposed Regulation 25137-8.1
5 and 25137-8.2, Motion Pictures. And we have Ben Miller
6 coming up to present on this item, and I do have a speaker
7 on this item.

8 MR. MILLER: Thank you, Madam Chair and Members of the
9 Board. Benjamin F. Miller, retired annuitant with staff.

10 The Franchise Tax Board has had a long history with
11 respect to regulating the motion picture industry and
12 television networks.

13 We started out prior to the adoption with certain
14 standards and guidelines with respect to this. FTB staff
15 went through the regulatory process and adopted regulations.

16 We have updated them several times.

17 There were concerns that became apparent over the last
18 several years. We held interested parties meetings on
19 January 8th, 2008, and May 15th, 2009. On June 16th, 2009,
20 we brought forth a proposed change regulation to the Board.

21 At the time of that meeting, the Board expressed
22 certain concerns. There were several areas where the staff
23 had a position which taxpayers weren't necessarily in
24 agreement with. Staff, in order to amend the regulation,
25 had made clear its position be the one adopted.

14

□ 1 Board members expressed concern about those, that they
2 should not have it retroactive. As a result of that, we
3 redrafted the regulation and broke it into two parts. So
4 the existing regulation continues to a certain day with the
5 new regulation taking over after that date expires.

6 We have gone through the formal hearing process. On
7 September 13, 2011, we had a formal hearing on that. At the
8 time of that hearing, staff presented a number of amendments
9 that were nonsubstantive in nature which they proposed,
10 asked for comments with respect to those. None were
11 received with respect to those changes.

12 There were several comments. We did issue 15-day
13 notices with respect to staff-proposed changes, responded to
14 all the comments. No further comments were received with
15 respect to the 15-day notice. However, an additional
16 comment was received. Again, this comment related to the
17 effective date of the regulation.

18 The way it was drafted, the staff proposed that the
19 changeover date was January 1st, 2010. There were
20 objections to that. Staff had discussions with parties. An
21 agreement has been reached with respect to that. So the

22 regulation, the changeover date will be January 1st, 2011.

23 we believe all parties are in agreement with respect
24 to that at this point. That will require a 15-day notice,
25 which, if the Board approves that date, that change, staff

□ 1 will initiate that process and then be prepared to file with¹⁵
2 AOL, and request the Board's direction.

3 ACTING CHAIR MANDEL: Thank you.

4 Let's hear from Mr. Eric Miethke on this item.

5 MR. MIETHKE: Thank you very much, Madam Chair and
6 members. Eric Miethke with Nielsen Merksamer here in
7 Sacramento, representing the Motion Picture Association of
8 America.

9 I'd like to endorse what Mr. Miller's characterization
10 was of the process. It was a long process but a very good
11 one. Ultimately, after a very frank and open discussion
12 over a long period of time, we have reached an agreement
13 with staff.

14 we support the regulation going forward with the
15 1/1/11 date, and wish to thank the staff for all the hard
16 work on it.

17 Thank you.

18 MEMBER HORTON: Move adoption.

19 MR. REYES: Second.

20 ACTING CHAIR MANDEL: It has been moved and seconded.

21 No objection.

22 That is the Board's order.

23 Thank you.

24 We are now on Item 4, Administrative Matters, and
25 Jeanne Harriman, the director of our Financial Management

□ 1 Bureau, is coming up to present -- we have got one BCP and¹⁶
2 then we'll have a contract; right?

3 MS. HARRIMAN: That's correct.

4 Thank you.

5 Good afternoon. My name is Jeanne Harriman. I'm with
6 the Financial Management Bureau. Today I will be providing
7 information on two items of administrative issues, both
8 presented for your approval to move forward.

9 The first item includes a discussion on a Budget
10 Change Proposal we'll be submitting for resource dates
11 beginning in fiscal year 12/13.

12 The recent Budget Change Proposal was a result of
13 recent legislation that was just passed in regards to the
14 top 500 debtor tools that we had sought enhancement on and
15 enacted new tools for us to proceed forward with.

16 We are requesting 7 permanent staff positions as well
17 as some overtime in the first year for 12/13. Revenue
18 anticipated is \$19 million for fiscal year 11/12, and
19 \$24 million in fiscal year 12/13.

20 If anyone has any questions, I'd be happy to answer
21 questions.

22 ACTING CHAIR MANDEL: Any questions or comments?

23 No.

24 Is there a motion?

25 MEMBER HORTON: Move adoption.

17

□ 1 ACTING CHAIR MANDEL: And I'll second.

2 MR. REYES: Thank you.

3 ACTING CHAIR MANDEL: That will be the Board's order,
4 with Finance abstaining.

5 MR. REYES: Thank you.

6 MS. HARRIMAN: The second item is a contract over a
7 million dollars, also presented for your approval. This is
8 a maintenance contract for a three-year period beginning in

9 February of 2012, for a total of \$1,552,608, for supporting
10 our telephone network system.

11 In 1984, FTB went out for competitive bid to
12 re-engineer our telephone network system. That bid, once
13 the successful vendor came in -- and it's common in the
14 industry -- it included its proprietary software that would
15 need to be managed and maintained by that vendor.

16 So this is a noncompetitive bid moving forward for
17 that reason, and we ask for your approval to move forward
18 with that.

19 ACTING CHAIR MANDEL: Okay. Thank you.

20 MEMBER HORTON: Move adoption.

21 MR. REYES: Second.

22 ACTING CHAIR MANDEL: It's been moved and seconded.

23 No objection.

24 That will be the Board's order.

25 Thank you.

18

□ 1 MS. HARRIMAN: Thank you.

2 ACTING CHAIR MANDEL: We are now on Item 5, which is
3 the Taxpayer Bill of Rights hearing. This is the time set
4 for the Board's annual Taxpayer Bill of Rights hearing as
5 required by Section 21006 of the Revenue and Taxation Code.

6 The purpose of this hearing is to allow taxpayers and
7 tax practitioners the opportunity to present directly to the
8 Board any proposals they may have for changes in existing
9 state income tax law or for improvement in FTB publications
10 or services to the public.

11 FTB staff is available to respond to questions which
12 may be raised as a result of taxpayers' proposals. Present
13 are Selvi Stanislaus, our executive officer; Geoff Way,
14 chief counsel; Anne Maitland is still here, acting director

15 of Legislative Services Bureau; and Steve Sims, our Taxpayer
16 Rights advocate.

17 Staff will analyze the fiscal and administrative
18 consequences of the proposal.

19 And, Steve, I'm assuming you have some introductory
20 comments maybe?

21 MR. SIMS: Yeah.

22 ACTING CHAIR MANDEL: Okay. Then I'll call the names
23 of the people who are standing up.

24 I'll hand you the microphone so you can at least say
25 hello, and then I'll call the names of the individuals who

□ 1 have indicated that they would like to make a presentation,¹⁹
2 and then I'll have you come forward to the podium at that
3 time.

4 And initially everybody will have about three minutes.
5 And I know that I have one speaker who has asked for
6 additional time, and that's fine.

7 Steve, say hello.

8 MR. SIMS: Thank you, Madam Board Member and all other
9 Board members.

10 First of all, I just kind of want to summarize the
11 process. Thanks again to once again those who have showed
12 up to make a presentation at the Taxpayer Bill of Rights
13 hearing.

14 The process kind of works like this. What we will do
15 is hear the presentations, some are oral, some are in
16 writing. And what we do is we prepare written responses
17 that will be mailed to those that have submitted responses
18 and will also be posted on the FTB external website. So
19 there will be follow-up to where you can go and find out the
20 resolution to some of these issues.

21 And having said that, we are going to proceed.

22 ACTING CHAIR MANDEL: We're ready to go.

23 I have a number of individuals who've signed up.

24 David Feldman.

25 Thank you. Please proceed.

20

□ 1 MR. FELDMAN: Thank you. Good afternoon.

2 My name is David Feldman. I'm a taxpayer in good
3 standing, I'm also the CEO of ZF Micro Solutions, a company
4 that is current in its filings and taxes.

5 I appeared here one year ago to propose a change in
6 state law that would require the courts to demand evidence
7 of good standing before a lawsuit could be filed or
8 maintained. That has not happened.

9 I also asked the FTB for assistance in dealing with
10 three venture capital firms that have operated unlawfully in
11 California for more than ten years, maintained California
12 offices, paid high-level California employees, and hired
13 services of California attorneys and other California
14 professionals to transact their business within the state.
15 I am a percipient witness to these activities and would
16 testify as to those facts.

17 I first reported the entities to the FTB in September
18 of 2007. Over the course of four years, I provided FTB
19 investigators with over a thousand pages -- I'm sorry.

20 ACTING CHAIR MANDEL: That's all right. Take your
21 time.

22 MR. FELDMAN: -- over a thousand pages of evidence,
23 including the entities' own sworn testimony documenting
24 their activities in the state. To date, no action has been
25 taken against any of them. Either there is no interest in

□ 1 enforcing the law, or the FTB does not have the tools to do
2 so. In either case, neither justice nor the interests of
3 the citizens of California are being served by this
4 inaction.

5 Unless the Sixth District Court of Appeal sees past
6 the perjury and deceit perpetrated on the State and the
7 courts before April of 2012, my sister and I will lose the
8 homes --

9 ACTING CHAIR MANDEL: Mr. Feldman, we do have your
10 written statement, I think, that you're reading. If it's
11 easier for you, we can take your written statement. If you
12 want to keep reading, that's fine.

13 MR. FELDMAN: Sorry.

14 ACTING CHAIR MANDEL: No, no. No problem.

15 MR. FELDMAN: -- will lose the homes we have lived in
16 for more than 40 years, our company will close its doors,
17 and as much as \$10 million will flow out of this state
18 forever.

19 The mission of the FTB as stated on the website says:
20 "The purpose of the Franchise Tax Board" -- I won't read it
21 all, but the paragraph ends -- "in a manner warranting the
22 highest degree of public confidence in our integrity,
23 efficiency and fairness."

24 Honest taxpaying citizens should not have to appear
25 before this Board to beg their government to enforce the

□ 1 laws equally and fairly.

2 Our company and its 36 shareholders have been attacked
3 by unlawful activities of these entities that have availed
4 themselves of the benefits of the society that honest
5 taxpayers have funded.

6 How does the failure to prosecute criminals warrant a

22

7 public confidence, show efficiency, or promote fairness?

8 The last sentence on that page says, "It should,
9 however, be vigorous in requiring compliance with law and it
10 should be relentless in its attack on unreal tax devices and
11 fraud."

12 I've contacted numerous individuals at the FTB to ask
13 if any further evidence is required. I've received no
14 response.

15 Every attempt I've made to assist the FTB in bringing
16 willful tax evaders to justice has been rejected, citing
17 taxpayer privacy concerns related to RTC 19452.

18 FTB staff either does not understand the constraints
19 contemplated by 19452 or is just using it as a shield to
20 avoid dealing with the activities of tax evaders.

21 19452 is concise and clear. It speaks only about
22 returns, reports, or documents required to be filed. These
23 people have filed nothing.

24 Former R&TC 19282, upon which 19452 is based,
25 implicitly created privilege against disclosure of income

□ 1 tax returns, but as stated in *Fortunato v. Superior Court*,²³
2 2003 Cal.App.2d, quote, "it was inapplicable where the
3 gravamen of the lawsuit was inconsistent with claiming the
4 privilege or where a public policy greater than the purpose
5 of the privilege was involved."

6 Here, the loss of revenue and other costs to the State
7 could well exceed \$15 million. A once thriving company has
8 been destroyed, its 45 California employees laid off, and
9 honest taxpayers' lives are being destroyed. It is time for
10 the FTB to contact us and proceed with prosecution.

11 Our state is in a financial crisis. In the coming
12 days, I plan to send a proposal to every member of the

13 California Legislature, proposing an emergency amendment to
14 Assembly Bill 1424, that would require every state, county,
15 and city agency in California to require evidence that an
16 individual or business is current in the payment of all
17 taxes before any service may be rendered or any license or
18 permit issued.

19 I ask the FTB to support this proposal as it would
20 provide the leverage this agency needs to collect the taxes
21 that are owed by more than 900,000 individuals and 36,000
22 businesses that are delinquent, according to your own
23 published statistics.

24 Finally, I ask the Office of the Chief Counsel to
25 urgently provide the opinion letters we have requested,

□ 1 stating that these VC entities were transacting business in ²⁴
2 California unlawfully and did not have the rights and
3 privileges to use the courts that conforming corporations
4 have.

5 Thank you.

6 MEMBER HORTON: I believe staff response of some sort
7 is in order to respond to the concerns specified of the
8 taxpayer.

9 MR. SIMS: Board Member Horton, I do want to add that
10 I am definitely, as advocate, in support of the requirements
11 that Mr. Feldman has stated regarding corporations and
12 taxpayers being paid up on taxes.

13 You know, the problem goes beyond that. Those
14 taxpayers, where they have never filed with us, so therefore
15 we don't know if they have a basis to even be here, those
16 weren't necessarily covered. So additional steps may need
17 to be taken with the court system, having people prove that
18 they have a right to act, to use the court system.

19 I'm not sure what he's saying goes far enough for
20 those taxpayers who have never ever filed in this state or
21 have shown that they have presence in this state. So I just
22 want to make that distinction with regards to what
23 Mr. Feldman says.

24 And he's right about us not being able to respond
25 because of confidentiality and privacy concerns regarding

25

□ 1 any information that has been submitted regarding another
2 taxpayer or a potential taxpayer. We are not in a position
3 and we cannot respond accordingly.

4 MEMBER HORTON: I can appreciate the confidentiality,
5 but it doesn't bind us from reacting and taking affirmative
6 action based on information that we have been provided, and
7 I am certainly presuming that we are.

8 MR. SIMS: Yes, sir.

9 MEMBER HORTON: Maybe you can provide some clarity in
10 a general sort of sense of when a taxpayer provides us
11 information about what they believe to be a fraudulent or
12 inappropriate act, what is the course of action that can be
13 taken by the Franchise Tax Board.

14 MR. SIMS: Yes, sir.

15 Are you asking me that question?

16 MEMBER HORTON: Yes.

17 MR. SIMS: Actually, when we receive what we call
18 "tips" from taxpayers, other taxpayers regarding the
19 noncompliance of other taxpayers, steps are taken to verify
20 and look into -- first of all, you have to look at, you
21 know, the information that's available to determine if the
22 claim is valid. And if the claim may be valid, we have to
23 look at the potential in terms of cost, in terms of how much
24 revenue is at stake, a number of considerations that are

25 considered.

26

□ 1 But claims generally do get reviewed in some capacity.
2 They don't fall upon deaf ears. But we can't say what we
3 have done in relation to following up on these claims.

4 MS. STANISLAUS: And, Board members, the tips that we
5 get, we do take the steps and through the Office of
6 Investigations. As Steve Sims has stated, we cannot share
7 information with other taxpayers.

8 MEMBER HORTON: In this particular case, it sounds
9 that, without getting into the detail, which we will have to
10 spend just a little more time in just trying to get into
11 details, but this is an issue of nexus. And the problem is
12 lack of nexus, and because there is a lack of nexus, it
13 could impede the Franchise Tax Board from engaging, and
14 that's an issue that --

15 MR. SIMS: There are various factors. Even if a
16 business has nexus, it doesn't mean that there is
17 necessarily a tax consequence from being here. There is a
18 number of factors that get considered because of the
19 different factors involved in determining how much business
20 income and tax on property, payroll, sales, business income,
21 nonbusiness income. There is a number of factors that get
22 considered. It's not just the question of nexus.

23 MEMBER HORTON: In this particular case, what is the
24 question?

25 MR. SIMS: Well, we can't actually say.

27

□ 1 MEMBER HORTON: All right. Let me do it this way.
2 Let me first assure the taxpayer. My experience, which is
3 some 30 years' experience, including time spent in the
4 Legislature, the Franchise Tax Board and the other taxing
5 agencies are extremely aggressive in protecting the finances

6 of the State of California and assuring that every taxpayer
7 is provided fairness and equity, and those who are just
8 violating the law, blatantly violating the law, that these
9 agencies are extremely aggressive.

10 There are some impediments, some legal impediments
11 that may prohibit us and challenges that we face. We
12 certainly want to thank you for bringing forth your
13 recommendation on potential legislative changes. And the
14 Board, I would recommend to the Board that we conduct an
15 entire process, just send it around, a general statement of
16 what are those impediments and how can we address the
17 concerns that you've expressed here today. And I think
18 through that process we may come up with legislation that
19 may give us the authority, given that the Legislature and
20 the government agrees with the recommendation of the
21 Franchise Tax board and other taxing agencies. We should
22 probably join forces, all the taxing agencies, to begin to
23 look at that.

24 I will also share that, from my vantage point, we are
25 looking at introducing legislation that allows, essentially

28

□ 1 allows a centralized intelligence and the development or
2 establishment of a centralized department or agency in order
3 to begin to look at this from an intellectual perspective so
4 that there is synergy, so that the challenges that one
5 agency faces as far as fraud or an attempt to evade paying
6 taxes, we're able to share information and we are able to
7 identify a strategy, if you will, and marshall the resources
8 to be able to address those issues collectively.

9 So one particular taxpayer may not be paying their
10 income taxes, but then there are the other issues that we
11 can certainly consider and that from a premise that if

12 someone is violating the law -- and I'm not speaking of the
13 taxpayers who make human errors because they just happen to
14 be human beings, which is indicative of the majority of our
15 taxpayers -- but there are those who intentionally
16 fraudulently evade taxes, and there is a whole criminal
17 element in the state of California, estimated by Internal
18 Revenue and many others, to be upwards of \$60 billion in
19 revenue that is being lost to this conglomerate that's been
20 kind of categorized as the underground economy.

21 And I can assure you the Franchise Tax Board and the
22 other taxing authorities are very, very concerned about
23 that, and we're moving expeditiously to begin to put
24 together the legislative, staffing, components necessary in
25 order to address this criminal element that seems to be

29

□ 1 growing and growing in this economic environment that we are
2 faced with currently.

3 And I know that's not an assurance relative to your
4 immediate concern, but I will encourage legal counsel to
5 establish a time line as it relates to responding to the
6 questions posed by the taxpayer or taxpayer's advocate to
7 have a more in-depth conversation with the taxpayer as it
8 relates to the impediments. Not the specifics of the case,
9 just the impediments that exist there.

10 And you seem to have a pretty good handle on the
11 things that we need to do legislatively, and maybe confer
12 with the taxpayer and others to bring forth a legislative
13 agenda that helps us address these concerns.

14 MR. SIMS: Yes, sir.

15 ACTING CHAIR MANDEL: Thank you.

16 we have several speakers. The next speaker is
17 Marsha Armstrong.

18 MS. ARMSTRONG: Good afternoon.

19 My name is Marsha Armstrong. I'm David Feldman's
20 sister. I just want to say who I am.

21 I moved to California in 1961 to attend Stanford
22 Medical School, and except for two years of postgraduate
23 training in 1967 and 1968, I have lived in the state ever
24 since. I've practiced medicine in Los Gatos since finishing
25 my postgraduate studies in 1972.

□ 1 Naively, I have always filed my tax returns and paid³⁰
2 my taxes in a timely manner. I am here today also to ask
3 the Franchise Tax Board help me save my home of 40 years by
4 doing what I, apparently erroneously, believed was their
5 job -- to prosecute tax evaders.

6 I have prepared a summary, which is similar to some of
7 the things my brother said, and I really don't understand
8 why, after four years of documentation that these people
9 have never filed, have never registered, why you can't
10 prosecute them. I mean, that you couldn't tell us if you
11 were prosecuting them makes little sense, because they
12 aren't taxpayers, they have never filed, so you couldn't
13 possibly be releasing anything that they have given you
14 because they haven't given you anything. So how could you
15 be? There is no confidentiality if they've never given you
16 information.

17 You can only break confidentiality if you release
18 information that they gave you. They never gave you
19 anything, so you can't. All you can do is release
20 information that my brother has given you, so how could
21 there be a release of confidential information?

22 I understand confidentiality. I'm a doctor. If I
23 release information a patient has given me, then I'm

24 breaking their confidentially. It's not confidential
25 information if you tell me something about somebody and I

□ 1 tell it to somebody else. That person isn't my patient and³¹
2 therefore I have no obligation to not pass the information
3 on.

4 We have given the Franchise Tax Board information.
5 It's not breaking confidentiality to release what we have
6 given you. So I don't understand that argument at all.

7 And I'm about to lose my house because people who are
8 not registered, doing business in this state, have sued us
9 on unethical grounds. And, you know, these people are
10 predatory, unethical, and performing illegitimate actions in
11 the state of California, and nobody is doing anything about
12 it.

13 And I can only ask that the Franchise Tax Board at
14 least give us an opinion that, yes, these three foreign
15 entities are registered with the Secretary of State, they
16 are doing business in the state of California; therefore,
17 they are required to register and file California tax
18 returns annually, and to pay at least the minimum annual
19 tax.

20 They have been in business, two of them, since 1999,
21 and the other one since 1997. They owe you a lot of money
22 if you would choose to collect it.

23 Thank you very much.

24 ACTING CHAIR MANDEL: Thank you, Ms. Armstrong.

25 The next speaker is David Arthur.

□ 1 MR. ARTHUR: Good afternoon. My name is David Arthur.³²
2 I live in Mountain View, California. I have lived and
3 worked in California since 1957. I'm a Vietnam veteran and

4 a California taxpayer. I am current on all my taxes.

5 I was an employee of ZF Micro Solutions but was laid
6 off because of a six-year legal battle against the company,
7 and I'm also a shareholder of ZF Micro Solutions.

8 I've lost my job and I've lost my entire life savings
9 as a result of the fraudulent lawsuit brought against ZF
10 Micro and its shareholders by venture capital firms that
11 have operated illegally in California for more than ten
12 years.

13 I have personal knowledge that they maintained
14 offices, paid employees, and hired services of California
15 attorneys to transact their business here. I saw their
16 employees attend board meetings at ZF Micro. While
17 reviewing discovery documents, I read emails they produced
18 that show that those VCs made many attempts to take over the
19 company and to directly manage its staff and its business.

20 I also saw the loan documents made by them to ZF Micro
21 in California, and for those reasons I know they were doing
22 business here, and I would be willing to testify to that.

23 Our case is being appealed in the California Sixth
24 District Court of Appeal. I used almost all of my life
25 savings to post a bond for the full amount of the judgment

□ 1 against me plus 50 percent required by law. Even though I³³
2 posted my bond, these VC companies used the Santa Clara
3 County Sheriff's Department to go beyond the statutory
4 limits of the security that they are entitled to and they
5 stole the remaining \$27,000 out of my checking and savings
6 account after putting up that bond, which amounted to about
7 \$207,000.

8 I have asked them to return the excess money that they
9 had seized from me, but they have refused. Actually, they

10 have refused to even talk to me. I need to hire an attorney
11 at several hundred dollars an hour, and I don't have any
12 money.

13 This action is further proof that they have no regard
14 for the law. I believe they have already taken my money out
15 of state. And it doesn't matter what happens with the
16 appeal, they won't give it back.

17 I was forced to apply for California unemployment
18 insurance because ZF had to lay me off a year and a half
19 ago. I finally had to apply for social security early
20 retirement just to meet my needs. I know other individuals
21 who are involved in this case had to do the same.

22 In 2005, I received income from a lawsuit settlement
23 that later became the subject of the lawsuit filed by the VC
24 corporations who sued ZF shareholders. I paid 40 percent of
25 that money in taxes to California and the Franchise Tax

34

□ 1 Board and the federal government, but neither will refund
2 that money to me because the period during which I can
3 request a refund has passed. Now the remainder of the funds
4 that I received, plus all my other savings, are at risk
5 because of inaction by the Franchise Tax Board.

6 I hope that the Franchise Tax board will take a look
7 at the evidence we have provided and prosecute the criminals
8 who have destroyed our company and are attempting to take my
9 life savings.

10 Thank you.

11 ACTING CHAIR MANDEL: Thank you, Mr. Arthur.

12 Mr. Sims?

13 MR. SIMS: No, nothing.

14 ACTING CHAIR MANDEL: The next speaker is
15 Lee Snorteland.

16 MR. SNORTELAND: That would be me.

17 Greetings, Madam Chair and Board members. My name is
18 Lee Snorteland, and I've lived in California since 1978. I
19 recently have had the good fortune of being able to move to
20 Folsom. I hope everybody had a pleasant Thanksgiving.

21 I did. My dream came true when my wife and I were
22 able to finally locate from San José to Folsom to be near
23 our grandchildren. It was a process that took ten years,
24 prompted by the birth of our first grandchild.

25 while I was in San José, where I had lived for 30

□ 1 years, I found a company that would allow me to telecommute,³⁵
2 and now I could finally relocate fully to Folsom. But when
3 the company fell on hard times, they had to lay me off.

4 I suspect you've heard of the company. It is ZF Micro
5 Solutions. And you've heard from Dave Feldman as to what
6 precipitated that layoff.

7 This group, TAT Capital Partners, that has filed this
8 lawsuit, I claim has not been entitled to use the courts
9 here in California because they have not filed a Franchise
10 Tax Board form 3500. This form is a form that all entities
11 need to file in California. And if I may recite just a
12 small portion where it goes on to say, "All the corporations
13 and unincorporated associations, even if organized on a
14 nonprofit basis, are subject to California corporation
15 franchise or income tax until the Franchise Tax Board grants
16 tax-exempt status to the organization. The fact that the
17 organization is exempt from federal income tax does not
18 automatically exempt it from California tax."

19 So to date there is no evidence that the Franchise Tax
20 Board has one of these forms on file from this organization,
21 TAT Capital Partners. This omission goes against California

22 law as mentioned elsewhere in this form.

23 Last week, Governor Brown issued a proclamation on the
24 23rd, declaring the 24th Thanksgiving Day. And if I may,
25 there is a small segment in there that I'd like to read that

36

□ 1 I think is appropriate.

2 "It is most fitting that we set aside a special day
3 for gratitude. As Americans, we have every reason to give
4 thanks for this wonderful bounty of our land, the strength
5 of our fellow citizens, and our system of government that
6 protects our basic freedoms."

7 Ladies and gentlemen, David and Jackie Feldman,
8 Dave Arthur, Marsha Armstrong are your fellow citizens and
9 they deserve your protection. You would be proud to have
10 them as a friend or a neighbor. I know I am.

11 I ask that you please execute the duties of your
12 office by enforcing TAT Capital Partners' obligation to fill
13 out form FTB 3500.

14 Thank you very much for your time.

15 ACTING CHAIR MANDEL: Thank you for your comments,
16 Mr. Snorteland.

17 The next speaker is Vicki Mulack from California
18 Society of Enrolled Agents.

19 MS. MULACK: Good Afternoon, members of the Board,
20 Franchise Tax Board. I'm sorry for this voice, but you only
21 have to endure it for three minutes.

22 My name is Vicki Mulack and I am representing
23 California Society of Enrolled Agents. I know we are no
24 stranger to the Franchise Tax Board, and we do have our
25 comments in writing, a five-page letter. There are eight

□ 1 recommendation concerns. With a three-minute time frame, I
2 think that's about 20 seconds per recommendation.

37

3 The first four are collection issue items. One has to
4 do with a modification to your system so that we, as
5 practitioners, can be notified on all pending collection
6 actions similar to the manner that the IRS notifies us when
7 we have a power of attorney on file for our clients.

8 The second recommendation has to do with using virtual
9 hold technology, a technology that Franchise Tax Board is
10 already utilizing on other 800 numbers, on our practitioner
11 hotline. We do thank the Franchise Tax Board for the
12 practitioner hotline. It has been a saving grace for many
13 of us in practice, but it would be helpful and streamline
14 cases for us if we knew if we should hold or get a call back
15 and like type things that work with virtual hold technology.

16 We would ask for an increase in the lien filing
17 threshold in California. This was on, I think, our list
18 last year as well. These are bad times for California,
19 crisis for California as it's been called, and its a
20 trickledown effect to the practitioner community. We all
21 have lots of collection cases and people with collection
22 problems.

23 And the last one has to do with maintaining a system
24 of consistency in your collection process with your
25 collection actions, with installment agreements, and who is

38

□ 1 given them and who is not, because our members report
2 inconsistent treatment, all of which is detailed in our
3 letter.

4 And Franchise Tax Board doesn't quite operate like IRS
5 does with an Internal Revenue manual where things are
6 somewhat straightforward, although they have inconsistencies
7 too. But we would ask for that, especially now with your
8 implementation of FIRM and your EDR, and I think we will

9 have more collection activity down the road.

10 I think Franchise Tax Board has reported that,
11 possibly by April, there will be 50,000 more levies as a
12 result of improved technologies and programs. So those were
13 our first four recommendations of collection issues.

14 we will bring the use tax probably continuously back
15 and how it's collected right now. I know we're a
16 three-agency state, and if we bring something to FTB, we
17 hear it belongs to BOE, and if we bring it to BOE, we hear
18 it belongs to FTB. It's a system that works quite well for
19 you, but it can only bounce the ball so far. Other states
20 are doing things differently than California. Twenty-four
21 states participate right now in a streamlined sales tax
22 project.

23 And we do thank you for the look-up table that the
24 Legislature just gave us, but we believe that sales tax,
25 which is later collected as use tax if it's not collected up

□ 1 front, should be collected at the point of purchase. Now, ³⁹
2 whatever it takes for us in our system to allow for that --
3 I know California has a very complex system of revenue
4 collection and that a portion of the sales tax goes a bunch
5 of different places, but we really still need to work on it.
6 And qualified purchasers and a look-up table is not exactly
7 a final solution to these problems. So that's detailed in
8 our letter.

9 we do also mention disaster treatment. We live in an
10 age where there is a lot of disasters, and some are
11 presidentially declared and some are California declared and
12 some are both, and it's very difficult, the information
13 coming out of federal and the state, for taxpayers to figure
14 out what they should do when.

15 For instance, the San Bruno explosion was finally a
16 California disaster only, but it was declared after the
17 filing of the tax return that would allow them to carry
18 their loss back. So these are just practical problems that
19 taxpayers face. That's also detailed in our letter.

20 We mentioned the withhold at source --

21 MS. BERWICK: Time.

22 MS. MULACK: Am I out of time?

23 ACTING CHAIR MANDEL: Well, it's soft.

24 MS. MULACK: I am drawing it to a close.

25 withhold at source, backup withholding, nonresident

40

□ 1 withholding, form 592, 89, 87, and all of the above,
2 although you've had your webinars for two years on the
3 street, and with a small-business taxpayer, they do not
4 understand withhold at source and they do not understand
5 their triggers. I have been spending a lot of time
6 informing my clients. And so between the IRS and all of the
7 repeal and initiation of the new 1099s, we really need more
8 outreach on this. And that's mentioned in our letter.

9 And, lastly, something to help the enrolled agents and
10 the CPAs out would be if, in your relationship with IRS, you
11 would work with them, because the education on California
12 tax is not going to give federal hours anymore for a tax
13 professional. And so that's detailed in our letter as well.

14 As you know, California doesn't conform to much of
15 federal tax law, and although practitioners, in their heart,
16 should know to attend California sessions, they will be
17 disincentivized very soon with regulations coming out for
18 every return preparer office. So we would ask you to
19 consider that, and we can keep the quality of tax
20 preparation where it should be in California.

21 And I think I am now concluded. Thank you for your
22 attention.

23 ACTING CHAIR MANDEL: Thank you.

24 Now, I know the power of attorney issue has been an
25 ongoing one because of the system, and EDR will hopefully

41

□ 1 take care of that. Right?

2 MS. STANISLAUS: (Nodding assent.)

3 ACTING CHAIR MANDEL: And we have virtual hold for the
4 taxpayers.

5 Do you know what the hold time is on the practitioner
6 hotline?

7 MR. SIMS: It varies, depending on what time of year.
8 It varies, depending on whether you are talking to Vicki or
9 anyone else. But right now -- I think Vicki makes a good
10 point -- but you have to keep in mind that in this time of
11 budget shortfall, to expand that to our tax practitioner
12 hotline has its own constraints, and that is getting into
13 the dollars and cents of it. But it works perfectly, and a
14 lot of us use it anyway even though it's for the taxpayers,
15 and even though I've told them they are not supposed to,
16 they still call up.

17 It's okay, Vicki.

18 ACTING CHAIR MANDEL: She's in the middle.

19 MR. SIMS: I do want to take the time to thank CSEA
20 first of all for their continued contribution to the
21 Taxpayer Bill of Rights each and every year and the work
22 that they do in terms of canvassing their members to bring
23 issues to my attention as advocate, and they come to these
24 hearings as well as my annual report to the Legislature.

25 So thank you very much CSEA and all of you that are

42

□

1 part of the CSEA organization.

2 ACTING CHAIR MANDEL: Okay.

3 And, Steve, on the withhold at source outreach, is
4 there something that we should be incorporating in seminars
5 that we put on or we need to put on if that's something that
6 needs more?

7 MR. SIMS: Since you brought that up, I actually
8 started conducting meetings with new managers, two or three
9 of them, and we are looking to do additional outreach with
10 regards to the withhold at source program as well as
11 changing up the webinars. So that is something we have
12 begun to work on. So that's already a work in progress.

13 ACTING CHAIR MANDEL: Okay.

14 And all of these things, they'll be addressed?

15 MR. SIMS: They will.

16 ACTING CHAIR MANDEL: Okay. Thank you.

17 The next speaker we have -- there is something from
18 Mr. Horton.

19 MEMBER HORTON: I just wanted to sort of touch on the
20 disaster treatment. If I understand it correctly, it's a
21 timing issue as articulated by the speaker.

22 I want to encourage the taxpayers that are impacted by
23 a disaster and the associations that work with the
24 taxpayers, if you can notify particularly the Office of the
25 Governor, not to burden it, but the Governor is the one that

□

1 calls a disaster. He also has the authority to relieve the⁴³
2 penalties in the same process and any interest attributed to
3 that, which often occurs.

4 So if a disaster occurs and the Executive Order comes
5 out subsequent to the disaster, all of that can be backdated
6 within the same Executive Order. And the agencies

7 historically have been sensitive to that as well, and we
8 seek to internally administratively provide the relief
9 whenever there is a time difference.

10 But, here again, that's the reason for this particular
11 hearing, why it's so valuable to hear from the taxpayer. I
12 just encourage you to let us know when that occurs and if
13 there is anything we can do that would accomplish that part
14 of it, that whenever a disaster is declared, that we engage
15 and make a motion to advise. We serve in an advisory
16 capacity to the Office of the Governor, and in that capacity
17 we can provide them the benefit of our knowledge as to
18 filing dates and so forth.

19 The California taxing system, as everyone knows and
20 will attest to, is a very complicated process in that there
21 are dates to file for this, dates to file for this, dates to
22 file for this, and we can't expect the different branch to
23 necessarily be aware, but we can assist by supplying that
24 information. So we can assist in that relatively easily.

25 ACTING CHAIR MANDEL: Okay. Sure.

44

□ 1 And, again, I would note at the end of the Cal Society
2 letter there are notations on the four legislative
3 proposals. So I assume that you've seen those, just in case
4 you haven't.

5 The next speaker is Lynn Freer from Spidell
6 Publishing.

7 MS. FREER: I'd like to thank the Board for taking the
8 time to listen to us tax professionals and taxpayers. It's
9 great to know that you are there and listening.

10 I have two proposals, and you have them in writing.
11 We suggested to the Franchise Tax Board to add a disability
12 waiver for the e-payment requirement, and that suggestion

13 has been taken in hand by the FTB, and my understanding is
14 that they are proceeding forward with it.

15 The only thing I wanted to do here is, number one,
16 thank them for their assistance, and, number two, to
17 recommend that we get this taken care of before the upcoming
18 filing season, and suggest maybe a place on the 44107.

19 As I say in my seminars, this disability waiver is not
20 for old, cranky taxpayers who hate computers. It is for
21 sight-impaired or other taxpayers who have trouble
22 participating electronically because of their disability.

23 My second issue is the property tax deduction on
24 Schedule CA. I note it was quite a riotous time that we had
25 between practitioners and the Franchise Tax Board. I

□ 1 appreciate the FTB listening to our suggestion that we wait⁴⁵
2 one year while attempting to vet the whole process, and I am
3 pleased to discover that the FTB has been working with it.
4 There is a website available where I can go, and by, looks
5 like the end of January, almost every county will have a
6 sample property tax bill to tell me what is generally
7 deductible and what is generally not deductible, and I
8 salute you for doing that with the counties.

9 That said, however, "generally" is the key word. And
10 Geoff and I have discussed the IRS's written memo that they
11 sent out to the Sacramento office that says that a portion
12 of the Mello-Roos tax "may" be deductible, not that it is,
13 not that all of it is, but that it "may" be deductible.

14 I believe the Franchise Tax Board should get a written
15 ruling from the Internal Revenue Service regarding
16 Mello-Roos, so that taxpayers have something that they have
17 in writing that they can follow.

18 As a political aside, no matter what we say about

19 Prop 13, one of the unfortunate side effects of Prop 13 is
20 that, in most states, they don't have Mello-Roos districts
21 where special taxes are assessed that may be used to pay for
22 things that ordinarily would have been deductible, and so we
23 are saddled now with this burden.

24 So our suggestion in this area is that we would like
25 to see the Franchise Tax Board seek and receive a formal

46

□ 1 written ruling from the Internal Revenue Service regarding
2 deductibility of Mello-Roos.

3 Thank you.

4 ACTING CHAIR MANDEL: Thank you.

5 Mr. Horton, you have that look.

6 MEMBER HORTON: Yes. You know, the whole Mello-Roos
7 tax, Prop 13, is quite interesting. She brings up a good
8 point. You know, the shifting of the taxes to in this
9 case -- not in this case, but in many cases -- to the
10 homeowner.

11 Mello-Roos is quite interesting. If there is an
12 entitlement to some sort of deduction for whatever reason,
13 it could be a number of different things, who actually
14 receives that benefit from the tax perspective?

15 I would very much like to -- I don't want to say work
16 with you because that, in fact, takes on another burden --
17 encourage you to let's flush that one out.

18 Here in California, and California is very unique as
19 it relates to the whole Mello-Roos concept, but in these
20 difficult times, that is certainly one of the strategies
21 that many cities are now considering. And if in fact there
22 is some tax advantage to individuals impacted by Mello-Roos,
23 that in and of itself might be a benefit to the cities.
24 Because right now it's very challenging to get city councils

25 to support a Mello-Roos bond and Mello-Roos anything.

47

□

1 All right, Geoff.

2 ACTING CHAIR MANDEL: You are always thinking.

3 MEMBER HORTON: Let's see if we can work with that.

4 ACTING CHAIR MANDEL: Okay.

5 The last speaker that I have signed up is

6 Gina Rodriguez from CalTax.

7 MS. RODRIQUEZ: Thank you, Madam Chair, members.

8 Gina Rodriguez with the California Taxpayers Association.

9 Thank you very much for holding this hearing, and
10 thank you and your staff for all your hard work throughout
11 the year.

12 I have a few proposals for you to consider. The first
13 one is highly technical in nature, so I have a package for
14 you. I don't expect you to go all through it, but I just
15 want to give you the highlights.

16 It deals with an issue related to conformity,
17 specifically dealing with charitable trust and charitable
18 remainder trust conformity. Congress amended their
19 charitable remainder trust rules in 2006 to state that, if a
20 charitable remainder trust has unrelated business taxable
21 income, also known as UBTI, they would be taxed -- they
22 would retain their tax-exempt status. So instead of losing
23 it, they would retain it, but then they would be taxed as an
24 excise tax on a hundred percent of their UBTI.

25 when SB 401 came into play, which generally updated

48

□

1 California's Code to match the Internal Revenue Code as it
2 read on January 1st, 2009, we should have picked up that
3 provision, but we specifically carved it out, and it's the
4 carve-out that's causing a problem. Because now, for
5 California purposes, a charitable remainder trust with UBTI

6 will lose its tax-exempt status but yet retain its
7 tax-exempt status for federal purposes and pay the excise
8 tax.

9 We believe that the nonconforming provision may have
10 been inadvertent. First of all, in the FTB's analysis --
11 and we were all part of the conforming team, so I take blame
12 just as much as anybody else -- it's identified as a
13 modification of federal provisions, identified as a
14 modification of excise tax with UBTI. Well, it truly wasn't
15 a modification. They didn't have an excise tax prior to
16 2006. It didn't appear to be a revenue issue. That's the
17 other thing we consider when we are working on conformity
18 bills. It didn't appear to be a revenue issue since the
19 analysis shows -- I think that's Attachment C -- analysis
20 shows as negligible.

21 So now that we have this nonconformity, it is causing
22 extreme hardship for charitable remainder trusts because
23 they're losing their tax-exempt status for state and not
24 federal purposes.

25 And so specifically for this proposal we are

□ 1 requesting the Board to sponsor legislation -- CalTax would⁴⁹
2 be supportive of it -- to impose an additional tax on UBTI
3 of charitable remainder trusts to retain their tax-exempt
4 status. That's my first issue. That was the hard one.

5 The second issue deals further on conformity. And at
6 Eagle Watch West this year there was an issue that came up,
7 and it's an issue CalTax has looked at repeatedly, to
8 explore legislative support for expanding areas of automatic
9 conformity to precisely certain segments, certain
10 subchapters. I know it would take a long process to go
11 through this, but it might be beneficial in light of Prop 26

12 and the fact that we had three conformity bills go through
13 this year and one had just one provision in it. So we ran
14 three conformity bills with very limited provisions.

15 I haven't done the tally on how much a bill costs to
16 run, but last time, if I recall, it was at least a hundred
17 thousand dollars to run a bill.

18 So, rather than continue to run minor conformity
19 bills, maybe we should be looking at automatic conformity.
20 We do have it in some areas, so we do have precedent for it.
21 For example, we have it with pensions. And CalTax would be
22 happy to work with interested parties on that issue.

23 MS. BERWICK: Time.

24 ACTING CHAIR MANDEL: Thank you.

25 I know you have another one. One more. Property tax

50

□ 1 maybe.

2 MS. RODRIQUEZ: Property tax. Well, I want to ditto
3 what Lynn said. We're very happy with the FTB's decision to
4 slow down, to roll back a little bit on the property tax
5 deduction compliance program. I'd be remiss if I didn't say
6 Dave Doerr is very passionate about this issue, specifically
7 the Mello-Roos issue. We'd be happy to work with the
8 Franchise Tax Board. We have already started conversations
9 with the county recorders, because that should be the
10 ultimate goal. Let's get the recorders to fix the property
11 tax statements so we can read them and identify what's
12 deductible and what's not.

13 Finally, I want to mention something about a couple of
14 issues Vicki addressed, and that is how do we address the
15 FTB's \$8.5 billion accounts receivable in light of the
16 economic downturn. And Vicki did mention a few provisions,
17 and CalTax would certainly be supportive of most of those.

18 The IRS actually announced a series of steps to help people
19 get a fresh start. We should be looking at doing that. Not
20 be behind -- I know we've conformed to a few of them, a few
21 of the procedural issues -- we should probably be out in
22 front on this issue.

23 ACTING CHAIR MANDEL: With respect to that last point,
24 I know when it was first published what IRS was talking
25 about earlier this year, we did ask that FTB -- and I think

51

□ 1 the same questions probably actually went to other agencies
2 as well -- where they were, and there were a number of
3 things that IRS announced that I thought we were up on
4 anyway. But I know that we have looked at those. Right?

5 MR. SIMS: Yes, we have. We have actually taken steps
6 that we will be increasing our lien special in two to three
7 years, but not right away.

8 ACTING CHAIR MANDEL: Okay.

9 MS. RODRIQUEZ: How future? We have hurting taxpayers
10 now.

11 MR. SIMS: I am in support of it as soon as possible.
12 Unfortunately, I don't make the decisions. It's just one of
13 those things that we haven't determined exactly when in the
14 future, but it's not going to be this year or next year.

15 MS. RODRIQUEZ: And, again, CalTax would be happy to
16 work with the Franchise Tax Board.

17 We certainly do thank Steve and all the staff that
18 work very hard at this board. And that's it for my
19 comments.

20 Thank you.

21 ACTING CHAIR MANDEL: Okay. Hang on a second because
22 I think Mr. Horton has a question for you.

23 MEMBER HORTON: Not a question, but I do want to -- I

24 did have a question since you asked, Madam Chair.

25 ACTING CHAIR MANDEL: Okay.

52

1 MEMBER HORTON: A recommendation.

2 well, first, let me ask the question. You indicated
3 that it was a hundred thousand dollars to run a bill. Can
4 you --

5 MS. RODRIQUEZ: Pedro, can you help me out there?

6 That was the last time I looked, and that was probably
7 ten years ago.

8 MR. REYES: I have never done that calculation.

9 MS. RODRIQUEZ: It's expensive.

10 MEMBER HORTON: What's the background? Is that the
11 cost to the State or --

12 MS. RODRIQUEZ: To the State.

13 MEMBER HORTON: -- for the Legislature, the process
14 and so forth?

15 MS. RODRIQUEZ: Ms. Maitland is in the audience. She
16 may have a newer figure than I do.

17 MEMBER HORTON: Or is that the cost to the FTB?

18 MS. STANISLAUS: No.

19 Ms. Maitland?

20 MS. MAITLAND: I think that's the figure that's shown
21 for what it costs for a bill to go through the legislative
22 process. But a hundred thousand seems a bit on the high
23 side to me, even taking into account counsel salaries and
24 the other things. You're going to have 120 members of the
25 Legislature, and you pay those salaries whether or not you

53

1 have one bill or a thousand bills. So you have a fixed
2 cost.

3 It is that there is a cost, both in time and effort,

4 in running separate bills, so we are happy to work with
5 CalTax with conformity, but a hundred thousand seems a
6 little high by my estimation.

7 MS. RODRIQUEZ: Thank you.

8 MEMBER HORTON: There is a -- I was about to say a
9 point of diminishing return, but I shouldn't say that.

10 I think, as pointed out, for the most part, the
11 Legislature has increased in its legislative activities,
12 both in evaluating the various needs for legislation and is
13 trying to determine how to come about with a fix for many of
14 these problems that exist here in California, and over the
15 last, at least six years to my knowledge, has been
16 increasing significantly but yet still the cost of the
17 operations has not increased.

18 And so I was a little alarmed to hear that the cost
19 per bill, a new introduction, would be any more, because
20 they've reached a point of where any additional cost -- and
21 that's the point of diminishing return -- of the cost of any
22 additional bills -- and this goes to a certain point in time
23 as far as number of bills -- there is no additional cost,
24 because you're not adding any other fixed costs, but there
25 are some variable costs to the taxpayers.

54

□ 1 To the extent that we can be helpful as an agency in
2 processing and analyzing and coming up with legislative
3 language, we certainly want to be helpful in that regard
4 because it's helpful to the agency.

5 And that takes me to the point or the recommendation
6 that I was going to make. The legislative process for the
7 FTB -- maybe it will take some time to go through our
8 legislative process which includes interested parties
9 hearings and the like. So the recommendation is maybe

10 CalTax identifies an author, and the author places the
11 bill -- January 5th, I think, is the first time they can put
12 legislation across, introduce legislation -- we parallel
13 that process here at the Franchise Tax Board. And to the
14 extent that we can be supportive, we can support the process
15 through the legislative process. That might be a little
16 more expeditious than waiting on the Franchise Tax Board to
17 filter the legislation, if you will.

18 And as it relates to the charitable trusts, there are
19 a number of issues that I know Congress is taking under
20 consideration, and so I anticipate some changes in the whole
21 charitable trust matter.

22 So I would ask them to take those under consideration
23 as we begin to sort of look at that.

24 MS. RODRIQUEZ: Thank you, Mr. Horton.

25 MEMBER HORTON: Not that you have a crystal ball, but

55

□ 1 they are telegraphing some changes.

2 ACTING CHAIR MANDEL: Thank you.

3 Thank you, Gina.

4 Do we have any other individuals who would like to
5 address the Board on the Taxpayer Bill of Rights hearing?

6 Okay. Seeing none, we'll move on.

7 MEMBER HORTON: Madam Chair, if I may.

8 You know, I just wanted to thank the Taxpayer Bill of
9 Rights, all of them, for the Franchise Tax Board. During
10 this last year, somehow the public got my email, my personal
11 email, and I've received quite a few questions and concerns
12 and so forth. And the Franchise Tax Board, and particularly
13 the Taxpayer Bill of Rights Advocate's Office has been
14 extremely responsive and accountable to California
15 taxpayers, and I just wanted to thank you for your sincerity

16 in your approach.

17 oftentimes we're looked at as a bureaucracy, just a
18 machine, and it's good to know that you are human beings
19 there, individuals who genuinely care and who may be
20 prohibited by virtue of the law or some regulatory process.
21 But any impediment that is in the way of serving California
22 taxpayers, I can assure that the employees at the Board of
23 Equalization and the leadership here have demonstrated time
24 and time again a passion for California taxpayers. And I
25 just want to thank you for that.

56

□ 1 ACTING CHAIR MANDEL: Thank you, Mr. Horton.

2 MR. REYES: I'd like to add to that. As former staff
3 of the Speaker, I received a number of phone calls, and they
4 were always very helpful in taking care of their duties and
5 consistently following through with regular channels. So
6 thank you on behalf of all of us.

7 MR. SIMS: I'd like to give all that thanks to
8 Margarita and Doug. They do all the work. Fortunately, I
9 get to take all the credit.

10 To the staff, thank you, and thank my staff too.

11 So thank you, sir.

12 MR. REYES: Well, Steve, I want you to know that I
13 take it all back.

14 MR. SIMS: Are Margarita and Doug in the audience?

15 MS. STANISLAUS: Yes, they are.

16 MR. SIMS: Could you please stand.

17 All right. Everybody give them a round of applause.

18 Thank you so much for your work.

19 We have taxpayers that come before us that still need
20 our assistance. And in some cases, I just want to add the
21 caveat, if you will, as a means in which to address some of

22 the issues of some of the taxpayers who have come before us
23 today. Oftentimes it is not divulging confidential
24 information. Oftentimes it is just speaking in generalities
25 about the process and having a better understanding of the

57

□ 1 process, and sometimes that helps.

2 And so to the extent that we certainly can, because we
3 can't always give advice, because then it exposes the
4 agency, to give out advice that it is not in a position to
5 do, but we can provide some direction. And I think this is
6 where it's going to be helpful as we begin to collaborate
7 with the various different agencies that are out there,
8 including the AG's Office, Board of Equalization, Franchise
9 Tax Board. The greater the collaboration that we have, the
10 less limitation that we will have to be able to serve.

11 So, again, let me just codify it and thank you. I
12 think you guys have done a superior job considering that we
13 have, at least in my district, I have the BOE district, we
14 have somewhere around 9 million constituents -- 9 million
15 constituents -- and before I would have had about 150 emails
16 to respond to.

17 And I'm excited about doing it. I mean, it's a
18 wonderful opportunity to be helpful. And I couldn't be more
19 satisfied with the work you guys have done, considering the
20 challenges that California faces and the challenges that you
21 face in work stoppage, furloughs, budget challenges and so
22 forth and all the challenges that our staff and the staff of
23 the Franchise Tax Board have been facing. I want you to
24 know, as a member here, I'm extremely proud of each and
25 every one of you.

58

□ 1 And I say it quite often. Every time I have an
2 opportunity, I make sure that the world knows how much we

3 appreciate the work you are doing.

4 ACTING CHAIR MANDEL: Thank you.

5 MR. SIMS: Thank you.

6 ACTING CHAIR MANDEL: And thank you, Steve.

7 Our next item is Executive Officer's time.

8 Selvi, what do you have for us?

9 MS. STANISLAUS: Thank you, Madam Chair and Board
10 members.

11 MEMBER HORTON: Move adoption.

12 ACTING CHAIR MANDEL: This is not an action item. It
13 says that right here, no action required.

14 But she does, I think, have something to say.

15 MS. STANISLAUS: I do. I have three items of interest
16 to report.

17 The first is an award presentation to FTB by the
18 OCIO's office.

19 Paul, please come to the podium.

20 MR. BENEDETTO: Good afternoon.

21 Thank you, Selvi. Thank you, Board members. And
22 thank you, staff.

23 You know, it's a pleasure to be here, and I'm glad
24 that I'm able to deliver some great news. Each year, the
25 National Association of State Chief Information Officers,

59

□ 1 NASCIO, honors outstanding information technology
2 achievements in the public sector. They've received more
3 than a hundred award nominations for IT projects, and
4 selected a winner and two finalists for each of their ten
5 categories. The NASCIO recognizes these information
6 technology initiatives as exemplifying best practices which
7 are innovative and provide cost-effective services.

8 At NASCIO this year, the conference that we have in
Page 48

9 October, the FTB was recognized as one of the two finalists
10 in the risk management initiatives category for its
11 E-Commerce Portal Infrastructure TI project. The FTB was
12 the only -- and I repeat, because this is huge -- the only
13 tax agency in the United States to be recognized with an
14 award in any of the categories.

15 You guys can clap.

16 I had to take a little liberty there.

17 The risk management initiative category incorporates
18 IT security and privacy as strategic state initiatives, as
19 well as disaster recovery planning and continuity of
20 government operations, for example, initiatives that help
21 states prepare for major incidents, such as natural
22 disasters, cyber attack, pandemics, or major infrastructure
23 failures.

24 FTB was the first state organization in the nation to
25 implement a network infrastructure of this magnitude,

60

□ 1 providing a model for other states with critical data
2 security needs. Because of your vision, your leadership,
3 this project allows the FTB network to remain secure and
4 available. It also increases protection of confidential
5 information, giving taxpayers comfort that the transactions
6 are reliable and secure.

7 So on behalf of the California Technology Agency and
8 Secretary Ramos, I am honored to present the Franchise Tax
9 Board with the NASCIO Finalist Certificate for this
10 outstanding project, for your exemplary service to the state
11 of California.

12 We are so fortunate to have you as a partner, and we
13 thank you and we congratulate you on this great
14 accomplishment.

15 ACTING CHAIR MANDEL: Thank you. Thank you.

16 MR. BENEDETTO: You know, I've always wanted to do
17 this.

18 ACTING CHAIR MANDEL: Thank you.

19 Guys, you got a plaque.

20 Thank you so much. I'll put it in the care of our
21 executive officer.

22 MS. STANISLAUS: Thank you, Paul.

23 Next, I am pleased to announce to the Board our 2012
24 to 2016 Strategic Plan. I want to thank the Board for its
25 input and support during the development of this document.

61

□ 1 For more than 80 years, FTB has proudly served
2 California. But a strategic plan is not about the past, but
3 it is about the future, and we look to the future, and we
4 are doing so optimistically. The plan builds on its
5 predecessors, but it is unlike any previous strategic plan
6 in three distinctive ways.

7 Firstly, our employees. We acknowledge something that
8 we've known all along in this plan -- our employees -- who
9 are engaged, well trained, and enthusiastic about the work
10 they do, strengthen and improve our organization. So this
11 plan celebrates the unique strengths each employee brings to
12 the table.

13 The second distinct way the plan is different from our
14 previous plan is the taxpayers. We have different kinds of
15 taxpayers as customers. Now, there may be a few eyebrows
16 raised when I say this, but the plan does refer to taxpayers
17 as our customers. And let me assure you, this is truly the
18 way we feel, and we might as well use the correct word that
19 backs up this relationship. They are our customers. They
20 fund all that is good in California -- not the FTB. We

21 understand and respect that role, and acknowledge that our
22 part is to support them by being a customer-centric
23 organization.

24 And the third way the plan is different is our
25 stakeholders. And, finally, unlike any other strategic

62

□ 1 planning process, we asked for input from a broad
2 cross-section of our stakeholders, and some of them are here
3 today. Leveraging their perspective and expertise was
4 invaluable and made for some very lively discussions.

5 By incorporating the majority of their comments, we
6 were able to further define, strengthen, and focus our goals
7 and strategies through 2016. We are very proud and pleased
8 with this document and are anxious to begin. I personally
9 look forward to reporting back to you on all the progress we
10 have made.

11 So finally, yesterday, one of the articles in Forbes
12 Magazine was titled "Offshore Tax Amnesty Strikes Gold for
13 California," so I would like to share with you some "gold"
14 numbers.

15 Our VCI 2 raised \$350 million, with \$293 million
16 received in cash, and an additional \$57 million expected by
17 June 15, 2012, from the installment payment plan. This
18 initiative was estimated to raise \$270 million from
19 taxpayers who had unreported offshore income or who
20 participated in abusive tax avoidance transactions.

21 The VCI 2 program ended October 31st, 2011, and more
22 than one thousand taxpayers participated, and 90 percent of
23 the participants were individual taxpayers. The business
24 taxpayers paid more than \$100 million in additional tax.

25 So, once again, I want to thank the Board members for

□

1 the compliments we received. Like Steve said, it's our
2 employees who make it happen.
3 So, thank you.
4 ACTING CHAIR MANDEL: Thank you.
5 Thank you, Selvi.
6 We are on Item 7, Board Members' time.
7 This is the members' opportunity to raise other
8 matters of interest. This is also not an action item.
9 I don't know if the members have anything.
10 MR. REYES: No, thank you.
11 ACTING CHAIR MANDEL: Thank you.
12 At this time the Board is going into closed session to
13 discuss the items listed on the public agenda.
14 (Closed session.)
15 ACTING CHAIR MANDEL: The Board met in closed session
16 and discussed pending litigation.
17 we are adjourned.
18 Thank you.
19 (Proceedings adjourned at 3:19 p.m.)
20 ---oOo---
21
22
23
24
25

□

1 REPORTER'S CERTIFICATE
2
3
4 STATE OF CALIFORNIA)
5 COUNTY OF SACRAMENTO) ss.
6

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, SANDRA VON HAENEL, certify that I was the official Court Reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing the named proceedings;

That I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 64, inclusive, constitute a complete, true, and correct record of said proceedings:

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on the 18th day of December, 2011.

SANDRA VON HAENEL
CSR No. 11407