

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

QUARTERLY MEETING

WEDNESDAY, DECEMBER 5, 2012

FRANCHISE TAX BOARD

9646 BUTTERFIELD WAY

TOWN CENTER, GERALD GOLDBERG AUDITORIUM

SACRAMENTO, CALIFORNIA

1:30 P.M.

HAENEL

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REPORTED BY:

SANDRA VON

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APPEARANCES

FRANCHISE TAX BOARD:

Chiang

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

FRANCHISE TAX BOARD STAFF:

Colleen Berwick
Cathy Cleek
Lisa Garrison
Gail Hall
Carl Joseph
Patrick Kusiak
Steve Sims
Selvi Stanislaus
Titus Toyama

PUBLIC COMMENT:

Barry Weissman - Chevron Corporation

TAXPAYERS' BILL OF RIGHTS PRESENTATIONS:

Association

Enrolled

Association

Dave Doerr - California Taxpayers
Lynn Freer - Spidell Publishing, Inc.
Vicki Mulak - California Association of
Agents
Therese Twomey - California Taxpayers

---oOo---

1 SACRAMENTO, CALIFORNIA
2 WEDNESDAY, DECEMBER 5, 2012, 1:30 P.M.

3 ---oOo---

4 ACTING CHAIR MANDEL: Good afternoon.

5 This is the scheduled time for the meeting of the
6 Franchise Tax Board.

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

9 MS. BERWICK: Mr. Horton?

10 MR. HORTON: Here.

11 CENTER: Chief Deputy Pedro Reyes for Member
12 Matosantos?

13 MR. REYES: Present.

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

16 ACTING CHAIR MANDEL: Present.

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

20 The public has a right to comment on each agenda
item.

21 If there are any members of the public wishing to speak on
22 an item, please come forward when that item is called.
23 You'll have three minutes to address the Board.

cobble

24 And our podium is over there because we had to
25 together a bunch of stuff for our Internet. We almost

3

1 didn't have Internet. We have Internet, so the podium is
2 over there. So it's over there.

3 The first item is approval of the minutes. We have
4 the minutes of the September 5, 2012, meeting.

5 MR. HORTON: Move adoption of the minutes.

6 MR. REYES: Second.

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

8 Any objection?

9 No objection.

10 The minutes are approved.

11 Our second item is the annual EDR update, that's our
12 Enterprise Data to Revenue project. And we have
13 Cathy Cleek, our Chief Information Officer to present.

14 We have a PowerPoint coming down, so we'll go to the
15 other location.

16 MS. CLEEK: Good afternoon.

17 This is a good start. The technology is working,
18 Internet and all. And I would like to give you the annual
19 update on our EDR, Enterprise Data to Revenue project.

I

20 On large projects and managing these large projects,
21 get typically asked three questions. They are: Are you on
22 schedule? Are you on budget? And are you meeting the

23 revenue projected?

24 And I am very pleased to be able to tell you today,
25 the short answer is yes, yes, and yes, but I thought you'd

4

1 be interested in a bit more detail on how we were doing.

date

effort,

2 So to answer the question: are we on schedule? And,
3 like I told you, the answer is yes; and the project to
4 is 22 percent complete. It's a five-and-a-half year
5 and to date we have put into production seventeen early
6 initiatives and one release this September. And this
7 December, December 28th, in fact, we will be releasing
8 another release that we call Release 1.0.1.

plan

and

9 So we have met all of our scheduled dates, and we
10 on having a release every six months for the next three
11 a half years.

And

12 So let me tell you a little bit about what we did in
13 September. We are now imaging tax returns, the entire tax
14 return for any paper tax return that comes in the door.
15 currently we get 82 percent of our personal income tax
16 returns electronic, but that still leaves, this year,
17 2.7 million paper returns coming in the door.

18 So, in September, we took the 2011 tax returns, we
19 scanned them, we scanned the entire 540, any attachments,

and 20 payments or checks that came in with those tax returns,
21 W2s.

22 Prior to this release, we would just scan the first
23 three pages of the tax return and the check or payment.
So 24 we're capturing more data that we can use at subsequent
25 times in the project. So 43 percent more data than we've

5
1 ever captured before we are capturing with this September
2 release.

3 The other thing that I think is really exciting is
4 we're using what's called Check 21 or Image Cash Letter.
5 And what this allows us to do is to take an image of the
6 check and electronically deposit it. Before this
7 implementation, we would have someone come and pick up all
8 of the paper checks we'd received. At 1 o'clock, a person
9 showed up and picked up all of our checks and drove them
to 10 San Francisco every day. So that will be something of the
11 past.

12 And what also is really nice about this is we can
13 deposit multiple times during the day to get additional
14 interest for the State.

15 The picture that I included here is actual FTB
staff.

16 And after we've imaged the check, and we hold them for a
17 certain number of days, we actually shred those checks.

And

18 this is the first day we shredded our checks. The lady in
19 the blue is our internal auditor, making sure that we've
20 done a procedurally correct process.

add
21 So, what's new for December? We are now going to
22 to the 2011 tax returns we are processing, we are going to
it
23 add the 2012 tax returns. And the most exciting part of
Instead
24 is we're going to use 2D bar codes to gather data.
to
25 of having key data operators key in data, we will be able

6

1 get additional data off of tax returns from these 2D bar
2 codes.

3 If you can see what is at the bottom, that's what
4 we've used in the past, and what we will be using with the
data
5 2D bar codes at the top. And seven thousand times more
6 can be included in that 2D bar code than the one at the
7 bottom.

for
8 For this January we are doing the 2012 tax returns
9 personal income tax returns. And in January 2014, we'll
10 start doing business entity tax returns. So that was on
11 schedule.

give
12 Now let's talk about within budget, and I want to
13 you a two-year perspective.

14 Last year, in 11/12, our budget was 50 million, and
15 we've spent 45 million. This year, our budget is 123
16 million, and we've spent 55 million as of the end of
17 October. We feel confident we will stay within budget for
18 the 2012/13 year as well.

19 So now I'd like to talk about the revenue goals.

For

20 11/12, our revenue goal was 65 million, and we brought in
21 116 million. For the first quarter, so up to October
22 our target was 49 million, and we brought in 62 million.

30th,

23 Our goal for this year, the whole entire year 12/13,
24 is 187 million. And as of the end of November, we were at
25 107 million. So we feel very confident we will exceed our

7

1 revenue target for 2012/13.

2 So the other question that I get asked a lot is why
3 did you name this project the Enterprise Data to Revenue
4 project? The marketing people hate the name, and other
5 people just think why did you come up with this name? And
6 why we chose this name is really data is really at the
7 center of this project we are doing for the department.

8 If any of you have seen the movie Moneyball, or read
9 the book, you saw how data was used to pick which players
10 get winning baseball teams. And that's what we are
11 is with better use of data, we are able to do a better job

to

finding,

12 at Franchise.

using 13 And I'd like to share with you two examples. By

14 additional data in our nonfiler program, with the same
manually 15 number of staff, and just choosing better cases to

16 work, we have been able to bring in \$300,000 with the same
17 number of staff in the last three months.

we 18 Our collection program, we've taken data that said
19 want to use additional data to select cases, which ones to
20 be assigned to a manual person, which ones should get
21 notices earlier or later. And just these few changes and
22 using data in a much more intelligent manner in our
23 collection program, we have brought in \$80 million.

lots 24 So, data can be very powerful, and I would just like
25 to sum up the presentation. Edwards Demming, that did

8

1 and lots of work in the management field, he is quoted as
2 saying: "In God we trust; all others, bring data." And we
3 would agree.

4 So, any questions?

5 ACTING CHAIR MANDEL: Thank you.

6 Any questions? No.

7 Thanks. You already know I love EDR.

8 MS. CLEEK: We appreciate your support greatly.

9 ACTING CHAIR MANDEL: All right. Thank you, Cathy.

10 We can go back to our seats.

11 We're on Item 3, Legislative Proposals. We have a
12 staff report and proposals for Board approval.

13 Gail Hall is our legislative director. This is her
14 first Board meeting sitting up here.

15 MS. HALL: This year we have five proposals for your
16 review and approval. If you approve these measures, we
will
17 seek authors for these proposals.

18 Would you like me to address --

19 ACTING CHAIR MANDEL: Do you want to hear a little
20 thing on each? Or have you reviewed them?

21 MR. HORTON: You know, I would really like to have
22 some detail on what was the genesis of each one and the
23 probability of them passing and the governor signing them.

24 MS. HALL: You know, Mr. Horton --

25 MR. REYES: I'm drinking Coke. What are you
drinking?

9

1 MS. HALL: You just calmed me down. I'm having
heart
2 thrust up here.

3 ACTING CHAIR MANDEL: For the benefit of time --

4 MR. HORTON: I would move adoption of all the items.

5 ACTING CHAIR MANDEL: Of what part?

6 MR. HORTON: I would move adoption of all of them,
A,
7 B, C, D, and E.

8 ACTING CHAIR MANDEL: Okay.

9 I will second that. So that motion is passed.

10 Mr. Reyes is abstaining. Finance, you know, they do
11 it later.

12 MS. HALL: Yes.

13 ACTING CHAIR MANDEL: We'll be hearing from them
14 later.

15 No questions from the public on them? Okay.

16 Thank you.

17 MS. HALL: Thank you.

18 ACTING CHAIR MANDEL: Excellent first meeting.

19 We're now on Item 4, Regulation Matters. This is
the
20 2013 Rulemaking Calendar with Pat Kusiak.

21 MR. KUSIAK: Madam Chair, Members of the Board, this
22 calendar is the annual calendar. We're asking for Board
23 approval.

24 Unlike calendars in the past, we have no new items
on
25 it which, as a result of Board approval, would include

10
1 permission to have interested parties meetings.

2 MR. REYES: Move the item.

3 MR. HORTON: Second.

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

5 Any objection?

6 No objection from me.

happens

7 Oh, I've got a person. Hold on. That's what

8 now we've moved the podium. I need an eye over here.

9 Barry Weissman. Yes, sir.

10 MR. WEISSMAN: Barry Weissman, Chevron.

11 Thank you.

Rules

12 Point of clarification question on one of the items
13 listed under the Rulemaking Calendar, specifically on page
14 17, dealing with the Regulation 25136-2, Market Based

15 for Sales other than Sales of Tangible Personal Property.

16 Reading the write-up, it's a little confusing as to
17 what's happening or going to happen or may not happen, so
18 let me explain.

the

some

19 It notes that earlier this year there was an
20 interested parties meeting where the public provided
21 comments to staff. Staff indicated at the conclusion of
22 meeting that they would consider the comments and draft
23 legislation of proposed language and have a second
24 interested parties meeting.

11

regulation

interested

25 When you look at the write-up on page 17 and you

1 compare it to the write-up on page 10, where the

2 dealing with the credit assignments also notes an

3 parties meeting being held, but there, the second sentence

4 says, "A second interested parties meeting will be held in
5 the spring or summer of 2013."

6 Then on page 17, it goes on to say, "No further
action
7 has been scheduled"?

8 So it's not clear whether the intent of staff is to
in
9 fact fix a second interested parties meeting or not.

10 My question is what is meant by "No further action
has
11 been scheduled."

12 MR. KUSIAK: I can go ahead and comment, if I could.

13 ACTING CHAIR MANDEL: Yes, Pat, would you please
14 respond.

15 MR. KUSIAK: The calendar itself indicates we have
not
16 formally scheduled anything yet, and we don't have a date
or
17 time frame, but I'll let Carl fill in some blanks to help
18 you understand. We are moving forward with this reg.

19 MR. JOSEPH: Barry, we do intend to have another
20 interested parties meeting on this issue. There have been
21 extraneous circumstances for the person involved in this
22 matter personally, so that's kept us from moving very
23 quickly. But it is fully our intention to move on this
24 project in the new year, absolutely.

25 MR. WEISSMAN: No, I understand that.

12

1 ACTING CHAIR MANDEL: It's a question about what has

2 to go on the Rulemaking Calendar and the apparent lack of
3 specificity in how things are described.

4 And, Pat, sounds like what you're saying is, unless
we
5 know for sure, or is it just two different people wrote
the
6 pages?

7 MR. KUSIAK: No. It's really a combination of
several
8 things.

9 As the Chair points out, the calendar itself is a
10 planning document for Office of Administrative Law. The
11 language that's in it is what we know at the time it was
put
12 together, which was some time ago. And since then, we've
13 discovered -- not discovered, but knew we were going to do
14 something, but we didn't know exactly when. So the
language
15 about nothing further being scheduled doesn't prevent us
16 from scheduling something from now on.

17 MR. WEISSMAN: Okay. But as I pointed out, you
18 indicated you anticipate having something in the summer or
19 spring, it doesn't say exactly when, but at least when
there
20 is public notice, something will come. We didn't see that
21 kind of language.

22 MR. JOSEPH: I understand.

23 ACTING CHAIR MANDEL: Is there -- I don't know if
this
24 would apply, but if you are anticipating one in the
future.

25 MR. KUSIAK: Well, if you look more closely at the

13

1 item --

2 ACTING CHAIR MANDEL: I'm not saying -- I know, you

3 know, we read all these things, and we read them more

that's

4 carefully, but when people are just flipping through,

5 when he had the question, he was just flipping through.

difference,

6 So what I'm wondering is, if it makes any

7 if there is just an addition there that just says a second

8 interested parties meeting is anticipated in the future.

right?

9 I mean, that's all you're really talking about;

10 MR. WEISSMAN: Exactly.

11 MR. KUSIAK: That's not a problem.

12 ACTING CHAIR MANDEL: That's not a problem?

do

13 MR. KUSIAK: We can certainly amend the calendar to

14 that if you want.

15 ACTING CHAIR MANDEL: Thanks, Barry.

16 MR. REYES: Should we move to approve it as the

17 proposed amendment, then?

18 ACTING CHAIR MANDEL: Why don't we do that.

be

19 MR. REYES: I will move the calendar as proposed to

20 amended, recognizing that there will be a subsequent

21 interested parties meeting.

22 ACTING CHAIR MANDEL: Thank you.

23 MR. HORTON: Yeah, I would second that. I just
24 question whether or not there is concern with more of a
25 public notice concern and that the public notice did not

14

1 indicate as such.

2 I would second the motion and ask for approval of
3 amendment to somehow devise public notice that it is the
4 intent of the Franchise Tax Board to hold a subsequent
5 interested parties meeting.

6 MR. KUSIAK: We always announce interested parties
7 meetings well in advance, but to the extent that you would
8 like something further, we would certainly do that.

9 ACTING CHAIR MANDEL: I think you said maybe people
10 could look on the website when the minutes go up. That
11 wouldn't be for a while.

12 MR. KUSIAK: Right.

the

13 ACTING CHAIR MANDEL: So if someone were to go to
14 website right now, they would see the material as it was
15 presented to the Board.

a

16 MR. KUSIAK: Well, bear in mind, just as a matter of
17 technical point, once it's been submitted, we go ahead and
18 publish it on our website as well.

19 ACTING CHAIR MANDEL: With the amendment?

20 MR. KUSIAK: With the amended language, yes.

21 ACTING CHAIR MANDEL: Okay.
22 MR. HORTON: Second.
23 ACTING CHAIR MANDEL: It's been moved and seconded.
24 Any objection?
25 No objection. So it's adopted.

15

1 MR. KUSIAK: Thank you.

2
Administrative

2 ACTING CHAIR MANDEL: We are on Item 5,

3 Matters. These are action items. We have got three sub
4 items, and we have Lisa Garrison.

5 MS. GARRISON: Thank you very much, Madam Chair and
6 Members.

7 Today I bring to you three administrative matters
for

8 your approval. First, Item 5.a, is a 13/14 proposed BCP
9 which would request funding of \$18,000 for fiscal year

13/14

10 and \$8,000 for fiscal year 14/15 in order to implement
four

11 new voluntary contributions check-offs on the tax returns.

12 This is a negative amount because we are also doing
13 away with four of the voluntary contribution funds that
did

14 not meet the minimum contribution threshold in 2011.

15 MR. HORTON: Move adoption of staff recommendation.

16 ACTING CHAIR MANDEL: I will second that.

17 It's been moved. Thank you.

18 I'm going to blame it on the cold.

19 MR. REYES: I was going to say something, but you're
20 in charge.

21 Public comments?

22 ACTING CHAIR MANDEL: Any comment on these from
23 anyone? No one is jumping to the podium.

24 It's been moved and seconded. It's passed.

25 MR. REYES: There will be one abstention.

16

1 ACTING CHAIR MANDEL: Abstention from Finance.

2
requesting

2 MS. GARRISON: The second item, 5.b, we are

3 Board approval to engage in negotiations for contracts
4 exceeding \$1 million. This is for a proprietary contract
5 with Computer Associates, Inc. This is a contract that is
6 negotiated by DGS on behalf of the California Technology
7 Agency and the Franchise Tax Board for licenses for the
8 software products that we use to run our mainframe system.
9 We expect it's going to be a 51-month contract of a value
10 exceeding \$6 million is our portion of the contract. The
11 total contract will be probably in the range of about
12 \$48 million.

13 MR. HORTON: Move adoption.

14 MR. REYES: Second.

15 ACTING CHAIR MANDEL: It's been moved.

16 No public comment.

17 It's been moved and seconded.

18 Any objection?

19 No objection.

20 The item has been passed.

21 MS. GARRISON: Thank you.

22 The third item, Item 5.c, is asking Board approval
for

23 FTB to proceed with certain action items with the
Department

24 of General Services.

25 There are two action items we would like to pursue

17

1 with them. First, is looking at negotiation of some
leases

2 in our West Covina Field Office.

3 MR. HORTON: Move approval.

4 MR. REYES: Second.

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

6 Any objection?

7 No objection. No public comment.

8 It's approved. Thank you.

9 MS. GARRISON: Thank you.

10 ACTING CHAIR MANDEL: We are now on Item 6. This
the

11 Taxpayers' Bill of Rights hearing.

12 This is the time set for the Board's annual
Taxpayers'

13 Bill of Rights hearing as required by Section 21006 of the

14 Revenue and Taxation Code. The purpose of this hearing is

to 15 to allow taxpayers and tax practitioners the opportunity
16 present directly to the Board any proposals they may have
17 for changes in existing state income tax law or for
public. 18 improvement in FTB's publications or services to the

19 FTB staff is available to respond to questions which
20 may be raised as a result of taxpayer proposals. Present
21 are Selvi Stanislaus, the Executive Officer; Carl Joseph,
22 who is our acting Chief Counsel; Gail Hall, who you saw a
23 bit a ago, the Director of Legislative Services Bureau;
and
24 Steve Sims, a Taxpayer Rights Advocate. Staff will
analyze
25 the fiscal and administrative consequences of the
proposals.

18

I'll 1 We will have some introductory comments, and then
2 call the names of people who have indicated that they want
3 to make a presentation. So please come forward when
you're 4 name is called and present your proposal.

5 MR. SIMS: All right. Thank you, Madam Chair, Board
6 Members.

7 First, I'd like to begin by thanking those who have
8 submitted written questions in advance and those -- I
guess
9 I'll thank you in advance -- who will be approaching the
10 podium and bringing issues and questions to us.

11 Let me kind of summarize the process. What will
12 happen is we will respond to both written requests and
13 verbal questions by February 1st. We'll send those out to
14 the people that actually raised the questions and issues.
15 We'll also be publishing them on our website.

16 That's pretty much it.

17 ACTING CHAIR MANDEL: Okay. Great.

18 I have Vicki Mulak from the California Society of
19 Enrolled Agents.

20 MS. MULAK: Good afternoon, Madam Chair,
21 Honorable Horton, Mr. Reyes, Chief Deputy Director of
22 Finance, the Franchise Tax Board -- Selvi, Steve and his
23 team.

24 We did submit written comments, and we had six
items.
25 The first page, hopefully you saw in our letter, praising

19

1 our relationship with Steve and Selvi and their team. I
2 will say that we remain very appreciative.

3 I'm Vicki Mulak from the California Society of
4 Enrolled Agents, if I didn't say that earlier.

5 The responsiveness to our concerns of the Withhold
at
6 Source units, with the backup withholding, nonresidence
7 withholding, there's a lot of responsiveness there,
8 transparency, their reference to us. And we just wanted
to
9 thank them for that.

10 We did bring six items in our written, and I'll just
11 be brief on them here. Probably our primary right now is
12 the combining of the Secretary of State's Statement of
13 Filing the SI with the Franchise Tax Board return as is
done
14 in many states.

15 We do notice that many corporations and LLCs in
16 California are suspended inadvertently due to lack of
17 filing, and the filing is now an online program, including
18 payment online. And if you don't get your little reminder
19 postcard, there is nothing that otherwise triggers you to
20 remember this.

21 For a nominal fee of 20 or \$25, you would go
suspended
22 and then just add a zero onto the amount, and that's your
23 penalty for failing to do your annual or biannual filing,
24 depending on whether you're a corporation or an LLC.

25 Now, we think that Franchise Tax Board has just been

20

1 stellar in their collection of use tax and all the other
2 collections they do, and we think this would be a very
3 nominal thing to add that when it's your time to file and
4 pay with your corporation or your LLC tax return.

5 So that's probably the most prominent item that we
6 would like to recommend. I think it would save a lot of
7 grief all the way around for small business clients so
that

8 they won't be suspended.

9 We do have our members constantly report that they
10 check their clients' active status, which they can also do
11 online, and surprisingly discovered suspensions over the
12 years.

13 Our second item is not a new item, it's just that,
you
14 know, the squeaky wheel gets the grease. And the lien
15 filing threshold increase has been something we've
mentioned
16 before. I know it's not off radar, but I guess, until
it's
17 completed, we'll keep it on radar.

18 So these are difficult times for people right now.
We
19 have tax increases, federal and state, and people are
having
20 a harder time than ever managing their tax liability. So
I
21 think this would be a very useful thing, especially in
view
22 of the Internal Revenue Service's leniency with their
fresh
23 start initiative and their enhancement to their offer and
24 compromise program.

25 Our third item has to do with the Franchise Tax

21

1 Board's interaction in receiving information from the
2 Internal Revenue Service through their automated
3 underreported units, the acronym AUR. And what happens is

4 the IRS will machine read a tax return, and if they think
5 there is a discrepancy against information reporting
6 documents, they will issue a notice of proposed
assessment,
7 which is basically a heads-up, look at what we have
problems
8 with, send us some correspondence back --

9 MS. BERWICK: Time.

10 ACTING CHAIR MANDEL: Keep going.

11 MS. MULAK: And so what happens is you do have a
12 period of time to get it straight with Internal Revenue
13 Service, but if you miss that, it is communicated
14 electronically to the Franchise Tax Board. And,
oftentimes,
15 these proposed assessments are reversed, but the reversals
16 are never reported to the Franchise Tax Board.

17 And so we would just propose that maybe this could
be
18 something to consider, because there is a lot of staff
time
19 around these reversals for them as well as for us as
20 practitioners.

21 Our fourth item is also not new, but it is the
22 disaster treatment simplification, which is a legislative
23 requirement that we have that our Assembly or Senate have
a
24 bill that authorizes the special treatment on tax returns.

25 This year, we've had two disasters, or two bills for

to 1 eleven disasters, and there were just very minimal dates
2 get that out.

3 Our fifth item is -- our sixth item -- I can be
withhold 4 brief -- is really just keep focus on the fact that
5 at source is still an education and outreach problem, as
6 well as our concern that the financial institution records
7 match program that began about a year ago, that now EDD
and 8 Board of Equalization are utilizing that data as well. We
9 just want to make sure that everyone is aware that it is
10 possible in a computer world to identify the wrong
taxpayer 11 and that there won't be too much assumption that they have
12 found the right person that owes the tax.

13 Thank you very much.

14 ACTING CHAIR MANDEL: Thank you, Vicki.

15 Lynn Freer, Spidell Publishing.

16 MS. FREER: I'm Lynn Freer from Spidell Publishing.

17 Madam Chair, Board members, FTB staff and fellow
18 attendees, we have a couple of issues that we want to
19 present. And the first one is the reasonable cause
20 regulation. This regulation was approved by the Board in
21 2011, and when it was pulled back, we were told that it
was 22 because the Franchise Tax Board was going to sponsor
23 legislation.

24 This regulation matched the IRS's first-time
offender

25 program, and basically provides relief for first-time

23

1 offenders of late filing penalties. We have not seen any
2 legislation come forward. I'm concerned that maybe there
3 some sort of revenue issue here.

is

4 I would encourage the Franchise Tax Board to either
5 pursue the legislation or continue with the regulation.

It

6 is really tough times out there, and a lot of times people
7 who have failure to file penalties, they've had them for
8 years and years and years, and the reasonable cause
9 exception, from what I have seen in the past, the only
10 reasonable cause that always works is that you can only
11 it once. So I would encourage us to work on that.

use

12 I misspoke on my write-up on the Cutler decision. I
13 said that the instructions for the 540 form -- I should
14 said the draft instructions -- indicated that the Cutler
15 decision was final, and that taxpayers could not claim
16 multiple stock exclusions or rollover as a gain. The case
17 has been remanded to the lower court, and I feel that the
18 Franchise Tax Board staff was premature in putting those
19 the instructions if that is how the case ends up.

have

in

20 The third item is the amended return and mandatory
21 electronic payment. Someone who is required to e-pay, if
22 they file a paper amended return, which I understand soon

23 they will be able to electronically file, and they pre-pay
24 their payment, by the time the return is processed, the
25 electronic payment cycle has gone and the money is
refunded

24

1 back out.

2 So we would request that there be an additional box
on
3 the web page to check for amended return.

4 Finally, in the identity theft area -- this is not
5 anything that you folks don't know about -- but in light
of
6 the South Carolina disaster in the identity theft area, we
7 would just request that the FTB continue to be as
concerned
8 in the future as they have been in the past on the
problems
9 of identity theft.

10 And we are very excited about the taxpayer folder on
11 the FTB's website. I think it's going to be really great
12 for taxpayers, and even I know, to do things
electronically,

13 is kind of scary. But just as a reminder to Franchise Tax
14 Board, and also to illustrate or to reiterate my concern
15 with the collection policy where people are calling
16 Franchise Tax Board, Franchise Tax Board is calling
17 taxpayers and asking for identity information, when it
could
18 be somebody that you shouldn't be talking to.

19 appreciate

20 Finally, I would just like to say I really
21 Selvi and Steve and their staff for trying to balance the
22 needs of State, the taxpayers, and including the tax
23 professionals in this process. I think it really works
24 all of us.

for

25 I'd like to thank you for your attention.

you

ACTING CHAIR MANDEL: Okay. Thank you, Lynn. And

25

also had submitted a letter which sort of gave some
details.

1 also had submitted a letter which sort of gave some

that

2 And, Jozel, my understanding is IRS is looking at

at

3 penalty relief provision themselves, and we were looking

4 whether we could go along with what they have. But they

5 have it under review, as I understand.

6 (Jozel responds.)

at

7 ACTING CHAIR MANDEL: So IRS is apparently looking

8 something with their program. So that's what's kind of

9 going on with that one.

it.

10 And if you couldn't hear Jozel, IRS doesn't know

11 exactly what's going to be done, but they're looking at

12 But appreciate the comment.

13 Dave Doerr, CalTax.

14 MR. DOERR: Thank you very much.

15 My name is Dave Doerr with California Taxpayers
16 Association.

17 First, kudos to the staff for listening to us,
working
18 with us, finally getting it right on the deductibility of
19 property tax from the state income tax. We appreciate
that,
20 and we hope to have similar working relationships on all
21 these issues.

22 My first issue is an old one, but it's an old but
good
23 one. The Tax Code is a mess. I am willing to take, if
not
24 full responsibility, partial responsibility. I was chief
25 consultant to the Assembly Revenue and Taxation Committee.

26

1 We came up with a scheme to conform to federal income tax
by
2 reference, and list only those differences we have with
3 federal income tax, that is now in conformance with a
4 federal tax code that no longer exists. We conformed that
5 as of January 1, 2009, we hope.

6 What I'd like to see us do in the name of conformity
7 is restore some kind of process where we can achieve an
8 annual date change. And to do this, I think that the
9 Franchise Tax Board has to take ownership of the
conformity
10 issue. We don't have a staff or the expertise at CalTax.
11 Our legislative staff is small, overworked. This agency
is

12 one that has resources and would be able to do that.

13 We used to have a process where we had an interested
14 parties meeting and where everybody would discuss these
15 conformity issues. We would include the ones that are
16 noncontroversial. The conformity process has to be
17 noncontroversial because otherwise there is no process.

18 So our request is to resume the process that was
19 successful for many years where the Franchise Tax Board
20 would take the ownership of the conformity bill.

21 The second issue is one of transparency. For some
22 time the Franchise Tax Board told us the assumption behind
23 the revenue estimates. We'd like to see that again. The
24 State Board of Equalization does an excellent, excellent
25 in terms of the material they put out in respect to their

job

27

1 revenue estimates, and we would like to see the Franchise
2 Tax Board begin doing that again.

3 My third issue is a technical issue that relates to
4 disregarded entities and tax credits. And the amount of
5 credit allowable should be allowed, and not just under the
6 business entities disregarded. That's an issue I think
7 that's been around and we are working on it.

8 Thank you very much.

9 ACTING CHAIR MANDEL: Okay. Thank you, Dave.

10 I have someone else from CalTax. Therese Twomey.

11 MS. TWOMEY: Good afternoon, Members. Therese
Twomey
12 with the California Taxpayers Association. I'll keep it
13 brief. We have several issues.
14 I just want to bring one issue to your attention and
15 that is the erroneous refund penalty. For the past
several
16 years, the Legislature has been trying to pass legislation
17 to impose an erroneous refund penalty and, as we all know,
18 that is a 20 percent penalty on corporations and on
19 individual taxpayers, personal income taxpayers, and it's
a
20 20 percent penalty on refund claims that the Franchise Tax
21 Board may determine to be without a legitimate basis.
22 The legislation that has been brought forward over
the
23 past several years, and including last year, has been
very,
24 very broad. We have heard from different folks that, in
the
25 past, the penalty was targeted more towards noncompliance

28
1 for those with research and development credits. We've
also
2 heard that those were for noncompliance of enterprise zone
3 credits. We've heard to date that there may be some
4 noncompliance issues remaining; there may not be
5 noncompliance issues remaining in other areas.
6 So what we'd like to do is we'd like to work with
the

with

even

no

the

7 Franchise Tax Board to address any noncompliance issues.

8 The legislation last year was overly broad, and what it

9 would have done is it would have discouraged taxpayers

10 legitimate claims for refund from even filing a refund

11 because, going in, filing for a refund, they would not

12 be able to determine whether or not the claims would be

13 deemed reasonable or unreasonable. There is no basis and

14 definition as to what would be determined as a reasonable

15 claim for refund.

16 So what we'd like to do is get to the root of the

17 problem and work with the Franchise Tax Board. And to the

18 extent that there is a problem, we'd like to understand

19 scope of the problem, and work with them to resolve the

20 issue, and hopefully in the near future.

21 Thank you.

22 ACTING CHAIR MANDEL: Thank you.

23 I have a few more sign-ups.

24 Do you guys want to talk on the Taxpayers' Bill of

25 Rights?

29

1 No? There were four cards from ReedSmith on

2 Taxpayers' Bill of Rights. Is this just accidental?

3 They don't want to talk. Okay.

4 MR. KUSIAK: Madam Chair, if I may. I suspect that

5 they may have signed that sheet rather than the sign-in
6 sheet.

7 ACTING CHAIR MANDEL: Just want to make sure.

8 Then I don't have any more sign-ups for the
Taxpayers'
9 Bill of Rights.

10 Is there anyone else who wants to address the Board
on
11 Taxpayers' Bill of Rights?

12 Okay. That's the Taxpayers' Bill of Rights hearing.

13 MR. SIMS: That's it? All set? Thank you.

14 Thank you, guys, for showing up and the written
15 materials.

16 Thanks, Dave, for raising conformity again. This is
17 my pitch to raise it and include it in my annual report to
18 the State.

19 I had to get my shameless plug in somehow.

20 Thank you.

21 ACTING CHAIR MANDEL: Item 7, Executive Officer's
22 time.

23 Selvi.

24 MS. STANISLAUS: Thank you.

25 Good afternoon, Madam Chair and Board Members.

30

1 I would like to take a few minutes to discuss our
2 Strategic Plan to present.

3 I am happy to report that we are making great
progress

4 on our plan. I would like to give you just a few examples
5 here as a teaser, and I will bring this back to you next
6 year.

7 Under Goal #1, Taxpayer Centric Service, we have
8 redesigned our website. Ongoing efforts include the look
9 and feel and navigation of our website so our customers

can

10 get access to information and help whenever they need it:
11 24/7.

12 The new look was launched last fall but it is under
13 continuous improvement. We welcome your comments.

14 Under this goal, too, we have expanded our Internet
15 chat to Collections. As you are aware, in September of

last

16 year, we implemented Live Chat for taxpayers who have
17 general tax questions. The new service channel helps us
18 serve our customers while reducing FTB costs per
19 interaction.

20 Under Goal #2, which is our Effective Enforcement
21 goal, I am proud to announce and report our success in

this

22 program. FTB has fully implemented our Federal Treasury
23 Offset program. It's a debt collection program where
24 federal refunds are intercepted for payment of past due
25 California income tax debts.

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1 The U.S. Treasury office recently reported that, as

of

2 September of this year, California has now collected the
3 most funds through the State Income Tax program, which
4 places California in the number one spot nationally.

5 We would like to thank the Controller for, first,
6 bringing this to our attention, and for encouraging us to
7 start participating in this great program.

8 Thank you, Controller.

9 Under Goal #3, that is Strong Organization, there is
10 so much activity and enthusiasm surrounding this goal in
the
11 HR arena, but I am going to wait for our March meeting,
when
12 I have more time, to talk about these exciting activities.

13 For now, please indulge me as I share another win in
14 our procurement area. FTB won the Excellence and
Leadership
15 in Procurement award for consistently exceeding mandated
16 participation requirements pertaining to the State's Small
17 Business and Disabled Veteran Business Entity program.

18 (Applause.)

19 MS. STANISLAUS: So, thank you to FTB staff.

20 So, under Goal #4, Operational Excellence, I'd like
to
21 talk to you very briefly about our two-factor
authentication
22 which was implemented in June of 2012. This effort
supports
23 operational excellence and is also a foundational
principle
24 of our Strategic Plan.

strategy,
25

The two-factor authentication is a security

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1 requiring two different factors or proof to access our
2 network. This ensures your network identity is protected
3 and that only you can successfully log in to the network.
4 This also provides another layer of security for log-in to
5 FTB's network, reducing the risk of hackers into our
6 systems, avoiding an incident just like the one in
7 South Carolina which Lynn spoke about.

8 So, quoting from the Charlotte Observer on
9 November 28, 2012, it says, "A \$25,000 dual password
system
10 likely would have prevented hackers from stealing state
tax
11 data belonging to 6.4 million consumers and businesses
from
12 the South Carolina Department of Revenue, a special state
13 subcommittee investigating the data breach was told
14 Wednesday."

15 So I am proud to say that we have that
implementation
16 here, and two-factor authentication is working very well
at
17 FTB.

18 So, in summary, at our next meeting we will present
to
19 you a more in-depth look at our Strategic Plan progress.

I
20 have so many more successes that are a direct result of
the

21 talent and passion and dedication of my staff.

22 I am extremely thankful to work for the Board and in
23 an organization that places high value on excellence in
the
24 public service.

25 Thank you.

33

1 ACTING CHAIR MANDEL: Thank you, Selvi.

2 And I know you said at the March meeting -- I
haven't

3 set any dates yet -- but maybe you know my calendar, but
4 that's typically around when we have them. But I'm
getting

5 ready to start looking at the calendar. So I always wait
6 for the BOE meeting, because I only want my work load to
be

7 so much. Okay.

8 Any questions or anything for Selvi?

9 All right.

10 We are now on Board Members' time. This is the
11 members' opportunity to raise other matters of interest.

12 It's not an action item.

13 I have an item.

14 I see him in the audience. Titus.

15 Titus Toyama, come on down. Titus.

16 (Applause.)

17 He's sitting in the back. I was looking around.

18 Where's Titus? I was already to say Titus is retired now
so
19 he's so relaxed I can't even recognize him in the room,
and
20 then I saw where he was.

21 Titus was our director of Planning, Performance, and
22 the Project Oversight Bureau, and we have a Resolution for
23 him which, I don't know, maybe he's going to want to write
24 it down with that bad a cold. It was actually quite a bad
25 cold, so maybe he did.

34

1 Let me tell you people what we have on this lovely
2 plaque:

3 "WHEREAS, Mr. Titus Toyama faithfully served the
4 People of the State of California for the past 30 years,
5 most recently as" -- what I just told you he was;

6 "WHEREAS, Mr. Toyama believes everything in the
7 universe can be articulated in three points, this
resolution
8 happily capitalizes on this bromide by highlighting three
9 points: Mr. Toyama's past, present, and future; and

10 "WHEREAS, Mr. Toyama's past -- for our purposes --
11 began in 1982, the year of the cinematic classic Star Trek
12 II: The Wrath of Khan, where channeling his inner Star
Fleet
13 captain, he enjoyed directing staff to, quote, 'make it
so'
14 at the Office of Legislative Analyst, the Department of
15 Social Security, then as a Fi\$Cal project executive at the

16 Department of Finance; and

17 "Whereas, Mr. Toyama's present career at FTB will
18 leave lasting reverberations as we build upon his sage and
19 lengthy wisdom in all things budgeting, planning, and
20 visioning, and as we fondly recall how such wisdom was
often
21 dispatched with Mr. Toyama's own special brand of humor --
22 and yes, we use that term lightly; and

23 "WHEREAS, Mr. Toyama's future should be enriching and
24 rewarding thanks to his unique ability to communicate the
25 complex into understandable and quantifiable terms, and as
he

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1 morphs into his alter ego, Inspector Gadget, as he
gleefully
2 expands his toy car collection, magnetic contraptions, and
3 other assorted brain teasing gizmos, and assumes the
mantle
4 of part-time college professor to impart his commitment to
5 strong public service on thirsty young minds;

6 "NOW, THEREFORE, LET IT BE RESOLVED, this Fifth Day
of
7 December, Two Thousand and Twelve, by the Franchise Tax
8 Board, that we recognize and thank Mr. Titus Toyama, on
the
9 occasion of his retirement, for his professional and
10 personal dedication to the Franchise Tax Board and, most
11 importantly, to the People of the State of California."

12 (Applause.)

13 MR. TOYAMA: So, Selvi asked that I say something.
14 For those of you who know me, I'm tempted to share one of
my
15 famous jokes, but I'll spare you.

16 MR. HORTON: He has three points.

17 MR. TOYAMA: Well, the first point is that I'm
really
18 flattered and honored by this Resolution. The second
point
19 is that I feel very fortunate in having worked most of my
20 State career for the Franchise Tax Board. And the third
21 point is that FTB is a great organization, and under
Selvi's
22 leadership and support of her amazing and totally engaged
23 employees, as a taxpayer, I will always remember you on
24 April 15th.

25 But, seriously, the FTB has truly made its mark in

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for
1 terms of outstanding service and will continue to do so
2 many years to come.

3 Thank you very much.

4 ACTING CHAIR MANDEL: Thank you, Titus.

5 MR. HORTON: Madam Chair, I just wanted to
6 congratulate Titus for 30 years of service. He's been
just
7 an awesome mentor to a number of individuals at the
8 Franchise Tax Board as well as the Board of Equalization.
9 And I understand that you're going to be teaching a

10 class over at one of our local colleges?

11 MR. TOYAMA: I hope so.

12 MR. HORTON: Well, I look forward to taking that
class
13 someday after I retire. So hang around a little bit.

14 MR. TOYAMA: I'm a hard grader, so watch out.

15 MR. HORTON: Thank you, Titus.

16 ACTING CHAIR MANDEL: Okay. Thank you.

17 Nothing further for Board Members' time.

18 Mr. Kusiak.

19 MR. KUSIAK: Before announcement of closed session,
20 Madam Chair and Members of the Board, I want to mention
that

21 in the last few days we have received several written
22 submissions from interested parties addressed to Board
23 members that mistakenly assumed the Board would be
24 considering in closed session implementation of the
25 now-final decision of the California Court of Appeal,
Second

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1 Appellate District, in Frank Cutler v. Franchise Tax
Board,
2 208 Cal.App.4th, 1247, which was filed on August 28, 2012.

3 While litigation pending in the Los Angeles County
4 Superior Court known as Cutler v. Franchise Tax Board is
on
5 the closed session agenda, consideration of the decision
of

not 6 the Court of Appeal in Cutler v. Franchise Tax Board is
7 a part of that item.

8 ACTING CHAIR MANDEL: Thank you, Mr. Kusiak.

9 At this time the Board is going into closed session
to

10 discuss pending litigation and personnel matters
authorized

11 by the Bagley-Keene Open Meeting Act.

12 (Closed session.)

13 ACTING CHAIR MANDEL: The Board met in closed
session

14 and discussed pending litigation and personnel matters as

15 authorized by the Bagley-Keene Open Meeting Act.

16 We are adjourned.

17 Thank you, Members.

18 (Meeting adjourned at 3:16 p.m.)

19 ---oOo---

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4 STATE OF CALIFORNIA)
5) ss.
6 COUNTY OF SACRAMENTO)

7

8

9 I, SANDRA VON HAENEL, certify that I was the
10 official Court Reporter for the proceedings named herein,

and

11 that as such reporter, I reported in verbatim shorthand
12 writing the named proceedings;

13 That I thereafter caused my shorthand writing

to

14 be reduced to typewriting, and the pages numbered 1

through

15 30, inclusive, constitute a complete, true, and correct
16 record of said proceedings:

17

18 IN WITNESS WHEREOF, I have subscribed this
19 certificate at Sacramento, California, on the 27th day of
20 December, 2012.

21

22

SANDRA VON HAENEL
CSR No. 11407

23

24

25