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FTB NOTICE 99-1

SUBJECT: PROCESSING OF PROTESTS

The purpose of this notice is to provide the public with preliminary advice regarding internal policies and procedures for processing Protest cases. These internal procedures are intended to reduce the length of time necessary to process Protest cases. Staff is currently preparing proposed regulations to implement formal administrative processing procedures for all Protests. As required by the Administrative Procedures Act, the proposed regulations will be available for public comment and a hearing prior to their adoption by the three-member Franchise Tax Board.

The Goal

The goal of the internal procedures is to have the department's staff evaluate the merits of the Protest of the deficiency (and any included Claims for Refund), conduct a hearing if requested, and issue a notice of action within 33 months or less of the filing date of the Protest. It is recognized that there will be reasons why some Protests are properly deferred (see *infra*) and that there will be reasons why some Protests may take longer to conclude. Staff has been instructed that their deadline for closure of a Protest will be extended only on an exception basis.

There are cases in the existing inventory which already exceed the 33-month target or which have not proceeded to a point where they can be completed within the 33-month target. Special efforts will be made to take action on these cases as soon as possible.

Staff Procedures

To accomplish the above goal, the department's staff has been instructed to contact taxpayers and taxpayer representatives in each Protest assigned to them to arrange a case development plan. Staff is to work together with the taxpayer to design a plan to accomplish all necessary factual development and conduct any requested hearing within a time frame which will allow the processing of a Protest to be completed within the 33-month target.

For newly filed Protests, staff has been given a guideline to make initial contact with the taxpayer or the taxpayer's representative within eight months of the date the Protest is filed. For existing inventory received prior to September 1, 1998, staff has been given a guideline to contact the taxpayer or representative by April 30, 1999, with a goal of developing a processing plan to be in place by May 30, 1999. For cases that are already in a development stage, staff has been instructed to initiate discussions with the taxpayer or the representative to set an agreed date for a hearing if one has not already been set. Confirmation of the agreed hearing date shall be made in the next substantive contact by the department with respect to the Protest.

Staff Procedures for Protests Regarding the Introduction of Issues not Raised in the Protest Letter

Section 19041 of the Revenue and Taxation Code provides that a written Protest may be filed within 60 days after the mailing of each Notice of Proposed Assessment. The Protest shall "specif[y] ... the grounds upon which it is based." Accordingly, staff, unless it obtains management's approval, has been instructed not to attempt to consider issues that were not raised by the taxpayer or tax representative in writing within the 60-day Protest limitation period unless these issues can be considered and resolved within the 33-month target period for processing the Protest.

Deferral of Protests

For purposes of the 33-month rule, staff has been instructed to defer Protests for the following reasons:

- (1) The file has been referred back to the field because
 - (a) the taxpayer has not supplied audit with requested information, or
 - (b) the Notice of Proposed Assessment was issued because of an impending expiration of the statute of limitations, or
 - (c) the Protest letter has raised issues that were not considered at audit.
- (2) New issues have been raised that were not set forth as a ground or grounds in the Protest letter; the new issues cannot be resolved in the 33-month target period for processing the Protest; and management has determined that it is appropriate to resolve the new issues at the Protest level.

- (3) Other years are pending before the State Board of Equalization or the courts with respect to the individual taxpayer involving the same issue or issues. Or there is a case involving another taxpayer pending with respect to an issue where there is no existing precedent and the decision in the other case will be controlling with respect to the Protest. A deferral will normally be conditioned upon the taxpayer and the department agreeing that the case upon which the deferral is based will be controlling.
- (4) A petition in bankruptcy has been filed and the automatic stay has not been lifted.
- (5) There is a dispute pending between the taxpayer and the Internal Revenue Service that is, or may be, central to the determination of the state liability.
- (6) The case has been referred to the Franchise Tax Board Administrative Settlement Program.
- (7) There is a request for consideration of a petition under Section 25137, Revenue and Taxation Code.
- (8) The case has been referred to the Special Investigation Section.

Staff has been instructed to expedite any case, which had been in deferred status, once that case is returned from deferred status. Staff has been instructed to give such cases priority so that those cases will be completed in less than 33 months. The period of time in which a case was in deferral will not be taken into account in computing the 33 months.

Location of Hearings

Hearings will be scheduled at an office of the Board that is convenient to the taxpayer when possible. Hearings may be held by electronic means, including videoconferencing and telephone, when appropriate.

Drafting Information

The principal author of this notice is Benjamin F. Miller of the Franchise Tax Board, Legal Branch. For further information regarding this notice, contact Mr. Miller at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720.