



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Department
PO Box 1720
Rancho Cordova, CA 95741-1720
(916) 845-7835 Fax (916) 843-0410

STEVE WESTLY
Chair

CAROLE MIGDEN
Member

STEVE PEACE
Member

M E M O R A N D U M

To: Theria Grady Date: October 15, 2003
From: Carissa Lynch
Subject: Electronic Storage of Returns

Question Presented

Whether FTB may use electronic imaging technology¹ to preserve reports and tax returns as required under Revenue and Taxation Code section 19530 instead of storing the original paper tax return as filed.

Conclusion

Under current statutory provisions, FTB may retain an image of a tax return that has been captured using electronic imaging technology as opposed to storing the original paper return as long as that image is a non-modifiable image.

Background

TAM 2000-0344, November 16, 2000, addressed the issue of whether the Franchise Tax Board could retain 2D Barcode information in lieu of retaining the original paper return. That TAM concluded that even though return information that has been stored electronically is now sufficient to allow FTB to issue a notice of proposed assessment, this data is not sufficient to qualify as a "return" for purposes of the specific statute requiring returns to be preserved.

TAM 97-0288, July 28, 1997, explained that under Revenue and Taxation Code section 18621.5(b), documents which are required to be signed can be electronically imaged, and will be deemed to be valid original documents when that image is reproduced in paper form by the department.

Analysis and Discussion

Revenue and Taxation Code section 19530 requires FTB to "preserve reports and tax returns for three years from the due dates thereof and thereafter until it orders them to be destroyed." That statute does not provide any definition for the term "preserve" or

¹ For purposes of this memo, "electronic imaging technology" is defined as a system of reproduction that does not permit additions, deletions, or other changes to the original document.

the phrase "reports and tax returns." Since the method for preserving those types of documents are not specified, it appears that FTB has the discretion to determine the method used to preserve these documents. The question arises as to whether FTB can electronically store reports and tax returns and then destroy the original documents and still be in compliance with Revenue and Taxation Code section 19530. The resolution of that issue rests upon the meaning of the term "preserve" and the phrase "reports and tax returns."

To determine if the use of electronic imaging technology is sufficient to preserve tax returns, it is beneficial to examine other statutory provisions that have similar mandates. One such statute is Government Code section 14755. Government Code section 14755 states that an agency is not permitted to destroy or otherwise dispose of a record unless it is determined by the Director of the Department of General Services that it has no further administrative, legal, or fiscal value. Under that section, as well as other sections of the Government Code, state agencies are required to preserve the agencies' records and documents that are considered to still have value. Government Code section 14756, however, makes it clear that the public records maintained by a state agency pursuant to Government Code section 14755 may be electronically imaged as long as it has been imaged in compliance with the guidelines adopted by the Department of General Services. If those guidelines are met, then those reproductions "shall be deemed the original public records for all purposes, including introduction in courts of law and state agencies." (See Government Code section 14756.)

The States Record Management Act requires the Director of the Department of General Services to establish and administer a records management program that applies "efficient and economical management methods to the creation, utilization, maintenance, retention, preservation and disposal of state records." (See Government Code section 14740 et. seq.) The California Records and Information Management Manual written by the Department of General Services lays out the methods an agency must use to retain and preserve public documents. Currently the Department of General Services allows the use of electronic imaging technology to retain and preserve public records, thereby allowing for the destruction of the original documents, as long as the technology used does not allow for any modification of the original document. (See Department of General Services, The California Records and Information Management Manual. See also Department of General Services, California Records & Information Management (CalRIM), Electronic Records Management Handbook (February 2002); and the Department of General Services, CalRIM Records Retention Handbook.)

Additionally, the Employment Development Department is governed by a separate statutory requirement to "retain information collected." As you stated in your memo, the Employment Development Department has interpreted this requirement to require them to maintain and preserve this information in the same manner as they are required to retain public records under Government Code section 14755. The Employment Development Department has determined that Government Code section 14756 provides sufficient authority to use electronic imaging technology to retain such documents.

Under these provisions, it is clear that the use of electronic imaging technology is a sufficient method to preserve public records as well as other records that are required to be retained by a state agency. The Department of General Services has authorized the use of this type of technology to retain all of the documents that a state agency collects or produces.

The use of electronic imaging technology also appears to be appropriate under the Revenue and Taxation Code as a method of preserving returns. Revenue and Taxation Code section 18621.5 allows taxpayers to file any return, statement, or other document using electronic technology. That return, or other document, is deemed to be a "signed, valid document, including upon reproduction to paper form by the Franchise Tax Board." As any other return, the Franchise Tax Board is required to preserve this return for three years from the due dates.

Revenue and Taxation Code section 18621.5 (b) states that "notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed in a traditional medium and captured using electronic imaging technology shall be deemed to be a valid original document upon reproduction to paper form by the Franchise Tax Board." The definition of "traditional medium" is those returns or other documents that are filed in a manner other than using electronic imaging technology. Under this provision, it is clear that a paper return, one that was filed on paper form, that is later captured using electronic imaging technologies, will still be considered a valid original document, and thus a "return" for purposes of Revenue and Taxation Code section 19530, even though just retaining the tax data on that return would not qualify as a return.

Based upon the above information, the use of electronic imaging technologies would be a proper method to "preserve" returns and other documents within the meaning of Revenue and Taxation Code section 19530. In response to your inquiry, it is my opinion that a regulation, while possibly beneficial, is not necessary.

If you have any additional questions, please do not hesitate to contact me.

Tax Counsel

cc: Donald L. Buxton
Kathleen A. Andleman