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State of California
Franchise Tax Board

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SUBJECT: Due Process – Mailing of Notices Bearing a Facially Invalid Address (FIA)

QUESTION PRESENTED

Whether the mailing of notices by Franchise Tax Board (FTB) to a Facially Invalid Address (FIA¹) satisfies procedural due process requirements.

CONCLUSION

Based on Revenue and Taxation Code section 18416, a notice bearing an FIA would not be valid. Therefore, a notice bearing an FIA does not satisfy procedural due process requirements if mailed.

ANALYSIS AND DISCUSSION

The primary purpose of this memorandum is to provide legal advice concerning whether the mailing of a notice with an FIA constitutes valid notice to the addressee, fulfilling FTB's due process requirement. While this TAM focuses on the "notice" aspect of due process only, the FTB must also provide the taxpayer/debtor with the "opportunity" to dispute the claim against them in order to fulfill due process requirements.

Under Revenue and Taxation Code section 19501, the FTB is given the authority to administer and enforce the franchise and income tax laws of this state, including the collection of taxes. Assurance that all taxpayers are afforded "due process" is perhaps the

¹ Notices that bear an FIA are those notices with an address that is patently undeliverable. Notices that are FIA are undeliverable on the face of the notice. Examples of FIAs are Joe Smith, CA 92222; Jane Hernandez, 482 Chino Drive, CA; John White, Unknown and Jill Garcia, Transient. A notice that bears an address that includes all of the necessary address information except for a zip code is not a notice bearing an FIA, and should be deliverable by most mail carrier services.

most important aspect of any legally significant² enforcement and/or collection action taken against taxpayers.

The Fourteenth Amendment of the United States Constitution guarantees, in part, that no state shall deprive any persons of their property without due process of law. The essential elements of due process of law are:

- 1) that the state provides reasonable notice of an action taken that affects an individual; and,
- 2) that the individual be given notice of an opportunity to be heard and allowed to present any claims or defenses.³

Accordingly, in its administration of the tax laws, FTB must insure that all legally significant enforcement and/or collection activities will proceed against a taxpayer only after those essential elements of due process are satisfied. Legally significant enforcement activities include, but are not limited to, the issuance of Notices of Proposed Assessment (Revenue and Taxation Code section 19033), Notices of Action (Revenue and Taxation Code section 19045) and Notice and Demand letters (Revenue and Taxation Code section 19133).

Tax collection activities performed by the FTB include, but are not limited to, levying on a taxpayer's property, which requires a pre-levy notice prior to involuntary collection action as provided for under Revenue and Taxation Code section 21015.5 (under the Taxpayer's Bill of Rights).⁴ Other than the collection of taxes, FTB has been granted authority to collect various non-tax debts, which include debts related to Vehicle Registration Collections, Court-Ordered Debt Collections, and Industrial Health and Safety Collections. Under Revenue and Taxation Code section 19280, FTB is given the authority to collect court-imposed obligations, including restitution orders, forfeitures, fines, penalties and fees. FTB also has authority to collect unsatisfied judgments ordered by the Department of Industrial Relations

² Legally significant enforcement and/or collection activities are those activities that bear legal consequences for a person's failure to comply with legal requirements related to that activity. For example, a legally significant enforcement activity is the issuance of a Notice of Proposed Assessment. A taxpayer's failure to comply with the protest procedures shown on an NPA will result in the loss of the taxpayer's pre-payment dispute rights, and the amounts thereon become collectible.

³ "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'" (*Fuentes v. Shevin* (1972) 407 U.S. 67, 80 (quoting *Baldwin v. Hale* (1864) 68 U.S. 223).)

⁴ The primary function of section 21015.5 is to provide taxpayers with the opportunity to dispute the propriety of FTB's collection practices before involuntary collection action proceeds.

(DIR) and delinquent debts resulting from a final determination by the DIR under Revenue and Taxation Code section 19290. In addition, under Revenue and Taxation Code section 10878, FTB is given the authority to collect debts related to vehicle registration, use taxes, and some court-imposed penalties and fines in addition to penalties related to specified parking violations.

Each of the above sections either specifically requires or allows the FTB to use the statutory authority for the collection of taxes in its collection of all non-tax debts, in so far as the statute is relevant to non-tax debts. Thus, Revenue and Taxation Code section 18416 (relating to proper notice), set forth below, is equally applicable to notices issued to non-tax debtors.

Revenue and Taxation Code section 18416 provides specific requirements for giving proper notice by FTB. Under that code section, notices may be mailed first-class, without registration or certification by the mail carrier service. Furthermore, under section 18416, the notice must be sent to the taxpayer's last known address in order for the notice to be valid or legally sufficient. That section defines last known address as the address that appears on the taxpayer's last return filed with FTB, unless the taxpayer has provided FTB with clear and concise notification of a change of address or the FTB has discovered an address that it has reason to believe is the most current address for the taxpayer.

In other words, the statute directs FTB to use a taxpayer's/debtor's last-known address in order to send valid notice. An address that is facially invalid does not meet the criteria to qualify as a last known address under section 18416. Moreover, a facially invalid address shown on a notice is not obtained as a result of clear and concise⁵ notification from the taxpayer. Further, FTB would have no reason to believe that a notice bearing a facially invalid address is the most current address for the taxpayer/debtor.

Based on Revenue and Taxation Code section 18416, a facially invalid address is not a taxpayer's/debtor's last known address. According to section 18416, if the notice is not sent to the taxpayer's/debtor's last known address, the notice is invalid. Therefore, because a notice that bears a facially invalid address is an invalid notice, such notice would not satisfy procedural due process requirements.

⁵ "Clear and concise notice" of a change of address is a term of art utilized by the Courts. There is a high probability that the Courts would not consider a facially invalid address on a tax return or some other correspondence as "clear and concise notice" of the taxpayer's address. "Clear and concise notice" would require that the taxpayer provide at least a plausible address.

In those cases where FTB cannot ascertain a better address than the FIA, FTB cannot collect on those accounts without providing some other form of notice to satisfy procedural due process requirements, because mailing notices with a facially invalid address would not provide the taxpayer/debtor with the essential due process protections guaranteed by the U.S. Constitution.

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