

TAXPAYERS' BILL OF RIGHTS HEARING
FRANCHISE TAX BOARD
MINUTES
DECEMBER 4, 2013

The Franchise Tax Board met in open session at 1:38 p.m. at the Franchise Tax Board, 9646 Butterfield Way, Gerald Goldberg Auditorium, Sacramento, CA. Present were Deputy Controller Marcy Jo Mandel for Hon. John Chiang, Hon. Jerome E. Horton, and Chief Deputy Director Eraina Ortega for Hon. Michael Cohen.

Franchise Tax Board

Staff Participating: Selvi Stanislaus, Jozel Brunett, Patrick Kusiak, Bill Gardner, Steve Sims, and Colleen Berwick.

Others Participating: Vicki Mulak, California Society of Enrolled Agents (CSEA) and Gina Rodriguez, Cal Tax.

Taxpayers' Bill of Rights Hearing

Deputy Controller Marcy Jo Mandel provided opening remarks regarding this annual hearing required by law and introduced Franchise Tax Board staff members who were present to respond to questions.

Steve Sims, Taxpayers' Rights Advocate, provided opening remarks advising that we received several written submissions in advance, and that our goal is to respond to the written submissions by February 1, 2014.

Vicki Mulak – CSEA

Ms. Mulak presented written materials and provided oral comment to the Board on the following issues:

- Ms. Mulak thanked Selvi and her whole team for constantly working with CSEA and indicated CSEA had six items to discuss.
- The first item pertained to cancelling a California business entity and the reviver process and the cost associated with it. Most clients would like to close and exit in a professional manner and they don't want to come up with several thousand dollars that it takes to clean up the business.
- The second item pertained to mortgage relief nonconformity for this final year of federal conformity for principal residence indebtedness. There is a more positive approach being taken for short sales, but foreclosure people who are in bankruptcy or insolvent, pretty much get taxable COD for 2013.
- Ms. Mulak's third issue involved the taxpayer education that is needed for market-based sourcing rules; some small business clients are getting into the apportioning world and few clients will not file any more than a one state tax return. Ms. Mulak asked for a publication with examples similar to the nonresident and residency rules.
- The fourth item pertained to small tax exempts that had to file the e-postcard return for three years; California is two years behind on conforming to federal for that so the federal revocations happened. IRS came up with transition rules;

CSEA asked that some relief would be put in place with the tax exempt revocations for not filing 199N.

- The fifth item involved amended tax returns; amended returns were taking so long (about 6 months) that clients were actually getting refunds returned to them because they couldn't get their tax assessments up that would match to their payments. Ms. Mulak stated that CSEA hoped the EDR program would have a solution; a lot of cases are given to the Taxpayer Advocates' Office because of the length of time for processing.
- The last item addressed the EDR project; there was a recently announced implementation delay due to security reasons; CSEA's problem would be getting power of attorneys recognized so they could get taxpayer information to resolve cases. Ms. Mulak added that IRS functioned in a different manner where they could get things within 24 to 48 hours and they recognized POAs right away.

Gina Rodriquez – Cal Tax

Ms. Rodriquez provided oral comment to the Board on the following issues:

- Ms. Rodriquez thanked Steve Sims and Susan Maples for working tirelessly with Cal Tax.
- Ms. Rodriquez addressed FTB's forward resolution of its compliance endeavors, which included refund claims, audit protests and appeals; unacceptable resolution times; compliance backlog violates the Taxpayers' Bill of Rights. Ms. Rodriquez stated that Section 21010 of the Bill of Rights addressed the need for FTB to reduce the time required to resolve refund claims, protests and appeals by developing a plan that included standard time frames; FTB seems to operate with the lack of urgency with respect to assisting taxpayers with refund claims; taking 24 to 30 months to audit a claim; evidenced by FTB's lack of inventory controls.
- Ms. Rodriquez commented further on the LCUP and the increased number of refund claims being filed; corporate refund claims are likely on the rise due to the LCUP; 2013 is the first taxable year that it is allowing claims from operating loss carryback so it is expected the refund claim inventory will continue to rise.
- Another issue discussed by Ms. Rodriquez was the delay in audits, which leads to unfair audit practices; FTB is not completing many audits in a timely manner; FTB then demands a waiver to extend the statute of limitations. Ms. Rodriquez stated that audits of pass-through entities were especially problematic; a pass-through audit is one item, but FTB refuses to accept a ruling limited to that one item.
- Ms. Rodriquez discussed the timeframe for completing docketed protests; as stated at the September 2013 Board meeting, they are taking an average of 42 months; incoming protests have increased 35 percent in past three years, docketed protests have increased 28 percent. Ms. Rodriquez asked that FTB look into underlying issues; lack of auditor training; lack of coordination between

Legal and Audit, lack of inventory controls and pursuit sometimes of unsubstantiated positions.

- Ms. Rodriguez's final issue involved the unreasonable time frame to have taxpayers' appeals heard; interest accrues, audit becomes stale, taxpayers die, staff retires and key witnesses move; taxpayers lack any guidance for years subsequent to the years under appeal.

The hearing adjourned at approximately 3:00 p.m.

Board Liaison

Date