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May 10, 1989

FTB Notice 89-277
410:BRL:CN-89-277

Re: Taxpayers' Bill of Rights, Franchise Tax Board Chief Counsel
Rulings Guidelines

This Notice Modifies and Supersedes FTB Notice 88-693

[Revisions are shown in **bold** type.]

A. Summary

Revenue and Taxation Code §21012(a), added by AB 2788 (Taxpayers' Bill of Rights) **authorizes** relief from assessed taxes, interest and penalties in certain situations where taxpayers relied to their detriment on Chief Counsel Rulings. Subdivision (h) of §21012 provides that Chief Counsel Rulings shall be issued in accordance with published guidelines.

Franchise Tax Board rulings and correspondence generally follow the IRS system. Private advance rulings consist of formal Chief Counsel Rulings, similar to IRS Private Letter Rulings, Opinion Letters, similar to IRS Determination Letters, which apply well established principles to routine facts, **and computer generated form letters, which are issued in response to the most common recurring questions.** Other answers to general taxpayer inquiries are **informational** only.

Published rulings consist of our current Legal Rulings, similar in scope and effect to IRS Revenue Rulings; FTB Notices [previously called chief counsel letters or tax service letters], similar in scope and effect to IRS Notices or Revenue Procedures; and informal Announcements or News Releases.

These guidelines are applicable to requests **received** on or after January 1, 1989. They prescribe the form and manner for requesting rulings, clarify areas in which the Franchise Tax Board will not issue advance rulings, and explain when federal rulings and procedures will be followed.

B. General Practice and Definitions

1. Private Advance Rulings and Answers to Taxpayer Correspondence

The Franchise Tax Board answers inquiries of individuals and organizations, when appropriate in the interest of sound tax administration, about their status for tax purposes and the tax effects of their acts or transactions.

NOTE: ((---)) = Indicates obsolete information.

Revenue and Taxation Code §21012(a)(1) provides that taxes, interest, additions to tax and penalties may be relieved if a person's failure to make a timely return or payment was due to the person's reasonable reliance on the written advice of a legal ruling by the chief counsel, and all the conditions set forth in §21012(b) are met.

Revenue and Taxation Code §21012(a)(2) provides that interest, additions to tax and penalties may be waived if a person's failure to make a timely return or payment was due to reliance on written advice other than a chief counsel ruling.

a. Responses to which §21012(a)(1) will apply:

The Franchise Tax Board Chief Counsel has determined that Chief Counsel Rulings, which are similar in nature and effect to IRS private letter rulings and are issued by the Legal Division and signed by the Chief Counsel or designee and Opinion Letters (Determination Letters), which correspond to IRS Determination Letters and are issued by Franchise Tax Board staff designated by the Chief Counsel, will be considered written advice to which §21012(a)(1) will apply.

Requests for Chief Counsel Rulings and Opinion Letters must identify the taxpayer as well as meet the other requirements set forth in part D of these guidelines. In the case of requests made on behalf of corporations or individuals represented by tax professionals, the request must also provide the taxpayer's legal analysis and authorities.

All Chief Counsel Rulings and Opinion Letters will contain advisory declarations pursuant to §21012(e) explaining that the tax consequences may be subject to change for any of the reasons specified in §21012(b)(5).

Only the taxpayer making the request will be entitled to rely on these rulings, and can be relieved of tax, penalties, interest and additions to tax if the conditions set forth in Revenue and Taxation Code §21012 are met.

b. Responses to which §21012(a)(2) will apply:

The Franchise Tax Board Chief Counsel has determined that §21012(a)(2) will be applied to Franchise Tax Board correspondence such as standard computer-generated letters and references to published forms.

The taxpayer is entitled to rely on such correspondence, and can be relieved of penalties, interest and additions to tax if the conditions set forth in §21012(b) are met:

(1) The person or representative requested in writing that the Franchise Tax Board advise him or her whether a particular activity or transaction is subject to tax, and fully described the facts and circumstances of the transaction or activity.

(2) The Franchise Tax Board responded in writing, stating whether the described activity is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The person relied on the advice and did not remit an amount of tax.

(4) The ruling was not rescinded or revoked before the taxpayer relied on it.

(5) There has not been a change in applicable state or federal law or in the taxpayer's facts and circumstances.

As a general rule, advance rulings and answers to taxpayer

correspondence are confidential, and will not be released for publication. In some circumstances, the text of Information Letters, Chief Counsel Rulings and Opinion Letters which respond to questions of general applicability may be released as FTB Notices, especially where the requester is a publisher or other organization involved in disseminating tax preparation information. In such cases, the name and identifying characteristics of the requesting taxpayer will be deleted.

2. Published Positions, Rulings and Announcements are classified as follows:

a. Legal Rulings are California's equivalent of Revenue Rulings, and are issued to publish the Franchise Tax Board's official conclusion on how the law is applied to a specific set of facts. Because they are generally interpretive of existing law, they have retroactive effect unless otherwise stated in the ruling.

b. FTB Notices include letters involving substantive interpretation of the law and general procedures to be followed with respect to administrative procedures. They are dated, given a control number, and released to various tax services. Copies are available on written request to the Franchise Tax Board.

c. Announcements and News Releases involve non-technical explanations of tax laws, decisions or other topical events. The Franchise Tax Board publication Tax News is an example of this category.

3. Internal Advice and Positions are requests for legal advice from inside the Department. In some cases, internal memoranda may be released as FTB Notices where the subject involved is of general applicability.

C. Discretionary Authority to Issue Advance Rulings

Areas in which Chief Counsel Rulings will not be issued.

Corporate Taxpayers

The Franchise Tax Board generally follows federal policy in this area, and will ordinarily not issue advance rulings in certain areas because of the factual nature of the problems involved. The Franchise Tax Board may decline to issue a ruling or opinion on other grounds, whenever warranted by the facts and circumstances of a particular case. The Franchise Tax Board will normally decline to issue an advance ruling in areas including, but not limited to where:

(1) The request involves an area in which the Internal Revenue Service

has announced that it will not issue advance rulings, including alternative plans of proposed transactions and hypothetical situations;

(2) Either the taxpayer's name or identifying number is not provided;

(3) The requester is a professional preparer or representative acting on behalf of a taxpayer and has not provided his or her legal analysis and conclusion with the request;

(4) The law is clear and reasonably thorough research would provide the answer;

(5) State and federal law are the same (unless a specific statutory or regulatory authority requires such a ruling);

(6) The answer to the question depends on factual issues. For example: whether a unitary business exists, or the value of property as of a certain date.

(7) The question involves an issue that is subject to an existing audit, appeal or protest with respect to that taxpayer or where the issue is currently on appeal or in court.

Non-Corporate Taxpayers

The Franchise Tax Board will issue advance rulings and advisory information letters to non-corporate taxpayers whenever possible in the interests of sound tax administration.

D. Instructions to Taxpayers Requesting Advance Rulings

1. Each ruling request must contain a complete statement of all facts relating to the transaction, including the taxpayer's name and identifying number. It must also disclose if the identical issue is in a prior return of the taxpayer or an affiliate for a previous year, or subject to an existing audit, protest, appeal or litigation concerning the taxpayer or affiliate.

2. If the requester is a professional preparer or representative acting on behalf of the taxpayer, the requester must provide his or her legal analysis and authorities with the request.

E. Oral Advice to Taxpayers

The Franchise Tax Board does not issue advance rulings on oral requests. However, subject to workload constraints, Franchise Tax Board personnel ordinarily will discuss with taxpayers or their representatives inquiries regarding: substantive tax issues; whether the Franchise Tax Board will rule on particular issues; and questions relating to procedural matters. Any discussion of substantive issues will be discretionary and will not be binding on the Franchise Tax Board.

F. Effect of Chief Counsel Rulings, Opinion Letters and Information Letters.

A taxpayer may not rely on a ruling issued to another taxpayer. A ruling may be revoked or modified at any time under appropriate circumstances. If a ruling is revoked or modified, the revocation or modification applies to all years open under the statutes.

Where the revoked or modified ruling was requested after January 1, 1989, the relief provisions of Revenue and Taxation Code §21012 may apply. Taxpayers should follow the procedures outlined below to request relief from taxes, penalties, additions to tax and/or interest.

Information letters are advisory only and the relief provisions of §21012 do not apply.

G. Procedure for requesting relief under Revenue and Taxation Code §21012(a) [Chief Counsel Rulings] and §21012(b) [Opinion Letters.]

In certain circumstances, a taxpayer may be relieved of taxes, interest, penalties or additions to tax where the taxpayer's failure to make a timely return or payment is due to the taxpayer's or representative's reasonable reliance on written advice from the Franchise Tax Board.

If a taxpayer has requested and received written advice from the Franchise Tax Board, and the Franchise Tax Board subsequently takes action against the taxpayer (such as an audit assessment or denial of a claim for refund) which the taxpayer feels is inconsistent with the written advice, the following procedures should be followed:

If the written advice was issued by a Franchise Tax Board unit other than the Legal Division, the taxpayer should obtain a copy of FTB Form 3910, Request for Waiver of Penalty and Interest, and follow the instructions on the form.

If the written advice was issued by the Franchise Tax Board Chief Counsel or other authorized staff, the taxpayer should request relief in a letter addressed to the Franchise Tax Board Chief Counsel. The request must include:

1. A copy of the written request for the opinion **(if available)** and a copy of the Franchise Tax Board's written opinion in response to that request.
2. A copy of the adverse action, such as a Notice of Additional Taxes Proposed to be Assessed, Notice of Action, Notice of Tax Due or a written denial of a Claim for Refund.
3. A statement made under penalty of perjury describing the particular activity or transaction which did in fact occur and stating that the taxpayer did not remit the tax due in reliance on the opinion.

This request must be made separately and in addition to any protest or appeal from denial from a claim for refund filed by the taxpayer.

The Franchise Tax Board will then consider the taxpayer's request to determine whether the original ruling request contained any misrepresentation of material facts; what portion (if any) of the tax, penalties, interest and additions to tax is attributable to the actions taken by the taxpayer after receipt of the written advice from the Franchise Tax Board which were in reasonable reliance on the written advice; whether the tax consequences expressed in the Franchise Tax Board's written advice were subsequently changed by a change in statutory or judicial or administrative case law, a change in federal interpretation in cases where the board's written advice was predicated on federal interpretation, or a change in material facts or circumstances relating to the taxpayer.

The Franchise Tax Board may request additional information or documentation from the taxpayer in order to make this determination.

H. Federal Rulings and Procedures

Where the provisions of the Personal Income Tax Law and the Bank and Corporation Tax Law are in substantial conformity with the Internal Revenue Code, the Franchise Tax Board will generally follow federal regulations, procedures and rulings. However, federal rulings and procedures will not be binding on the Franchise Tax Board for California purposes if an authorized officer or employee of the Franchise Tax Board has publicly indicated in writing that the ruling or procedure will not be followed. In addition, federal regulations, procedures and rulings shall not be binding with respect to matters involving apportionment and allocation of income and the determination of whether corporations should be included in a combined report under Article 1 (commencing with Section 25101) of Chapter 17 of the Bank and Corporation Tax Law, and

analogous provisions.

Glenn L. Rigby
Chief Counsel

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