

STATE BOARD OF EQUALIZATION: Window Falls Out of BOE Headquarters During Board Meeting

The agenda for the State Board of Equalization's January 11 meeting in Sacramento said staff would provide an update on the problem-plagued Sacramento headquarters building, but nobody expected the report to include coverage of breaking news. That's just what happened, though, as Deputy Director of Administration Liz Houser told the board about a decorative glass pane that fell out of the building hours earlier, as the board was beginning its meeting, and smashed on the sidewalk more than eight stories below.

Ms. Houser said nobody was injured, and the sidewalk and street were quickly closed as a safety precaution. Inside the building, BOE workers were instructed to move farther away from windows.

The Department of General Services, which owns the building, sent a team to assess the damage and inspect other windows for problems. Ms. Houser said it was not yet known whether the pane that fell was an original part of the building, or was one of the replacements installed in a \$15 million repair job after seven windows spontaneously fell out in similar fashion from 1999 to 2005.

During the discussion of the situation, it was revealed that the equipment used to lower window inspectors and window washers down from the top of the building must be certified before every use, and this process apparently takes several hours.

The window problem is just one of many problems at the 450 N Street office, which was built in 1991. In recent years, the building has experienced extensive water leakage (from rain and broken pipes), mold, malfunctioning elevators and even an infestation of bats.

In other action from the BOE's one-day meeting:

Legislative Proposals Approved. The board's Legislative Committee (which consists of all five BOE members) debated seven legislative proposals over a three-hour period, and voted to approve six.

The approved proposals:

- **Due Dates for Electronic Fund Transfers.** A proposal by BOE Member George Runner would amend Section 15620.5 of the Government Code to authorize the BOE to adopt a policy regarding due dates for electronic fund transfers. Mr. Runner said his proposal addresses the issue of electronic payments that are made before the end of a regular business day, but after 3 p.m., when banks stop processing electronic payments. Such payments should be considered to have been submitted on the day the taxpayer authorized the transfer, he said, and should not be penalized as a late payment if it not received by the BOE until the day after a deadline. The proposal was approved on a 4-0 vote, with Deputy State Controller Marcy Jo Mandel, representing Controller John Chiang, abstaining. As part of the motion approving the proposal, the board also directed

BOE staff to look into the steps that can be taken by the board, without legislative involvement, to adopt such a policy. The board's legal staff indicated that there may be room for the BOE to interpret the definition of a "banking day" to make the proposed change without any legislation.

- **More Time for Filing for Redetermination.** Mr. Runner proposed amending Revenue and Taxation Code Section 6561 and sections of the special tax and fee laws to extend the deadline for filing a petition for redetermination, from 30 days to 60 days (Mr. Runner initially proposed a 90-day period, but amended the proposal to be consistent with the Franchise Tax Board's deadline for filing a protest). Mr. Runner said the proposal would help businesses survive in tough economic times. CalTax Vice President of State Tax Policy Gina Rodriquez testified in support of the proposal. The proposal was approved on a unanimous vote.
- **Use Tax Reporting.** This proposal, sponsored by the BOE's Sales and Use Tax Department, would amend Section 6452.1 of the Revenue and Taxation Code to require California purchasers incurring a use tax liability who do not hold a seller's permit to report use tax on their income tax return if they failed to report the tax to the BOE, and also to specify that payment of use tax on the return shall be applied first as use tax and not to the income tax. Ms. Rodriquez and a representative of the California Society of Enrolled Agents testified in support of the latter provision, saying that the current law is causing a great deal of confusion because the FTB takes the use tax money to satisfy an income tax obligation, leaving taxpayers under the false impression that their use tax liability has been paid. Ms. Rodriquez pointed out that this may result in taxpayers getting two bills, one from the FTB and one from the BOE, but at different times. Upon questioning by Mr. Runner about the witnesses' position on the proposal's first provision, Ms. Rodriquez said CalTax is opposed, stating that taxpayers should not be mandated to pay use tax on their FTB returns; they should be allowed to continue to pay either on the use tax return or the FTB return. (**CalTax:** The problem is not with the taxpayer's choice of whether to pay the BOE or the FTB, but lies with the fact that the BOE's use tax return due dates are inconsistent with the FTB's income tax return due dates. This has been a heavily contested issue with practitioners, CalTax and the BOE since the passage of the 2009 qualified purchaser law, with the board generally refusing to support a change.) The proposal was approved on a 4-1 vote, with BOE Vice Chair Michelle Steel opposed.
- **Vehicle Resale Certificates.** This proposal would add Section 6092.5 to the Revenue and Taxation Code to provide that every person selling a vehicle at auction may not accept a resale certificate from a purchaser who is not a licensed dealer, dismantler, auto repair dealer or scrap metal processor. The proposal was approved on a 5-0 vote.
- **Technical Changes to Fuel Tax Laws.** This proposal would amend several sections of the Revenue and Taxation Code relating to taxes on diesel fuel, motor vehicle fuel and use fuel, to make administrative changes related to changes in the fuel tax rates when triggered by a reduction or elimination of federal fuel taxes. An amended version of the proposal was approved on a 5-0 vote.

- **Partnership to Fight Underground Economy.** This proposal would add a section to the Government Code to create the Centralized Intelligence Partnership, a multiagency effort to combat the underground economy. Mr. Horton said the effort is needed because \$60 billion in revenue is going uncollected due to the underground economy. The board debated the proposal extensively, discussing issues such as whether the BOE's member on the panel (the BOE chair) would be able to act independently or would be directed by the majority of the full board. With the agreement that the exact legislative language would be fleshed out and considered by board members before it is officially deemed to be sponsored by the BOE, the proposal was approved on a 4-0 vote. Mr. Runner did not vote.

The proposal that was not approved:

- **Continuous Budget Appropriation for the BOE.** This proposal would have amended the Government Code to provide the BOE with continuous appropriation authority from the state general fund, so it could pay vendors after July 1, even if a state budget is not in place. Ms. Houser testified that this proposal would address problems that arise when the BOE cannot pay vendors, and then incurs massive late fees (she cited a news report about the BOE incurring \$40,000 in late fees, and said the amount actually was closer to \$60,000). Ms. Houser said the BOE's New York office almost had its electrical service terminated because of unpaid bills, and added, "The folks in New York have no sympathy (for California's budget problems)."

Ms. Mandel said the controller opposes the idea because he does not support "selective preferential treatment."

Board Member Betty Yee also said she does not support continuous appropriations, and said the BOE might be able to develop contingency plans so it can pay bills when it appears that the budget will be late. She added that she is troubled by a proposal focused on a single agency, at a time when many important state programs are facing budget problems.

Mr. Horton questioned whether it was possible for a general fund agency to have the continuous appropriation authorization, and added, "If I was in the Legislature, I would not vote for this."

In support of the proposal, Mr. Runner said that keeping the BOE in operation regardless of the state budget's status should be a priority, since it is a revenue-collecting agency. He said the Service Employees International Union negotiated for its members to be paid out of the general fund in absence of a state budget, so it should be possible for the BOE to have this authorization to pay vendors.

The proposal failed on a 2-3 vote, with Mr. Runner and Ms. Steel in support.

Two additional proposals had been placed on the agenda, but were pulled before being discussed:

- **Computation of Interest.** Amend the Sales and Use Tax Law to provide for daily computation of interest on late payments of tax, fees and surcharges

administered by the BOE.

- **Increase Threshold for "Qualified Purchasers.** Amend the Sales and Use Tax Law to increase the gross receipts threshold for qualified purchasers to \$500,000 annually, and allow qualified purchasers who meet or exceed this threshold to use a look-up table to satisfy their tax liabilities.

Rescinded Purchase of Mobile Home Still Subject to Tax. In the *Appeal of Donald G. Sheridan and Judith C. Sheridan*, the issue was whether a \$182,000 motor home purchased in Arizona was intended to be used in California, and thus subject to more than \$13,000 in use taxes (the amount has reached \$17,090 with interest). The taxpayer hoped to strengthen her argument by noting that the vehicle was a "lemon" that was returned, and that entered California only to be repaired.

Mrs. Sheridan testified that she and her husband, since deceased, purchased the vehicle in Arizona and stored it there, intending to use it for a cross-country trip and then as a winter home in Arizona. But the vehicle had mechanical problems, and was handed over to the dealer for repairs that were supposed to be performed in Yuma, Arizona.

Without notifying the Sheridans, the dealer brought the RV to Fresno, and it remained there for several months as extensive repairs were made. The Sheridans picked up the vehicle in Fresno, drove it on a three-day trip in California, then took it back to the dealer, saying it still didn't work properly. Eventually, the couple sued under the "lemon law," the vehicle was returned to the bank that financed the purchase, and the sales contract was rescinded.

BOE staff noted that even in cases where a sale is rescinded, sales and use tax applies to the original transaction.

The Sheridans had registered the RV in California, and the BOE staff said this signaled their intent to use it here. Mrs. Sheridan said she wanted to make sure the registration papers would be mailed to her home, so she registered the vehicle with her California address, but during her testimony, she also said, "Eventually it would have been brought back to California, and we lived in California." The comment appeared to hurt her case, even after she added that she meant the RV would be driven into California for brief pit stops at home between out-of-state trips.

BOE members expressed sympathy for Mrs. Sheridan's plight, but said the law is not on her side and voted unanimously to uphold the tax and interest. They directed BOE staff to advise Mrs. Sheridan of her options if she has a financial hardship that would make it difficult for her to pay the total tax bill right away.

Negligence Penalty Still Applies to Taxpayer Who Corrected Problems. In the only other tax appeal heard at the Sacramento meeting, the board voted unanimously to reject the *Appeal of Santiago Rodriguez*, involving a taxpayer who acknowledged he had not correctly reported sales tax obligations during the audit period (2001 through 2005), but sought relief from penalties for negligence and failure to participate in the amnesty program.

A representative for Mr. Rodriguez, owner of two Frjtz Gourmet Belgian Fries

restaurants in San Francisco, said the taxpayer accepted responsibility for the underlying tax liability, and has been making payments to satisfy his debt. The taxpayer asked the BOE to relieve more than \$23,000 in penalties, arguing that he corrected reporting problems identified by auditors (the first time his business was audited) and that the errors were due to factors including a language barrier, but not negligence.

The owner originally filed for amnesty based on advice to "file if in doubt," but did not participate in the program because he could not have stayed in business while satisfying the requirement to pay off his debt of approximately \$127,000 in the 13 months allotted, his lawyer said.

While the taxpayer has made payments of more than \$59,000, his tax debt has grown rather than shrunk, thanks to penalties, interest and a small upward adjustment by the BOE's Sales and Use Tax Department. The tax liability originally was \$127,321, but is now \$162,504, with interest accruing at \$405 per month.

Mr. Rodriguez had postponed two previously scheduled appeals (in 2009 and 2011), and another 2009 appeal was postponed for settlement consideration.

More Money for Litigation. The board unanimously approved asking the Department of Finance to provide \$678,000 in additional state general fund money for 2012-13 for the BOE's Legal Services Division. Ms. Houser said the funding is needed to effectively litigate current cases in which \$37 million is in play.

Computer Project Timeline Extended, More Funds Requested. Eric Steen, manager of the Centralized Revenue Opportunity System (CROS) Project, said the timeline for the major computer upgrade is being extended. Mr. Steen said a request for bids is expected to go out this summer, and the Department of General Services has asked for a 13-month extension of time to allow for more vendor responses, but added that he believes an extension of 5½ months should be sufficient.

The board voted unanimously to approve a request for an additional \$22.4 million in state funds for the project in 2012-13. A representative of the Service Employees International Union testified in favor of the additional funding.

Employees Recognized for Meritorious Service. BOE members honored several dozen employees and several units for their work to improve tax administration and other BOE functions, as part of the 2010-11 Employee Recognition Award Program.

Retirees Honored. The board honored six employees upon their retirement:

- Eileen Frutos, a business taxes representative in the Ventura office who will retire January 31 after more than 30 years at the BOE.
- John T. Garcia, a tax auditor in the Houston office, who retired December 1 after 23 years with the agency.
- Leopoldina Limon, a tax technician in the El Centro office, who retired in April 2011 after more than 31 years.
- Ken C. Lin, an associate tax auditor in the Norwalk office, who retired December

31 after more than 21 years.

- Beverly D. Toms, a hearing reporter in the Board Proceedings Division, who retired December 31 after more than 14 years.
- Debra V. Lopez-Tricerri, a tax technician in the Norwalk office, who retired September 30 after more than 22 years.

BOE Candidate Observes an Atypical Day. Early in the hearing, Chairman Horton welcomed Assemblywoman Diane Harkey, who was in the audience. Ms. Harkey, a candidate for the 2014 election for the BOE's newly drawn District 4, observed the board on a very atypical day. The falling window produced more drama than usual, but with only two relatively non-technical appeals on the agenda, that part of the meeting went much faster than normal. Additionally, the board worked through the day without stopping for a lunch break.

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