

**BOARD OF EQUALIZATION
LEGISLATIVE COMMITTEE MEETING AGENDA
HONORABLE JEROME HORTON, CHAIR
450 N STREET, SACRAMENTO, ROOM 121
NOVEMBER 16, 2010 10:00 AM**

----- Committee Report and Action Summary -----

**I. 2011 LEGISLATIVE PROPOSALS; FOR DISCUSSION ONLY.
PROPOSALS TO BE VOTED ON IN JANUARY 2011.**

BUSINESS TAXES

2011 Legislative Proposals

Set forth below are suggestions for Business Taxes legislation to be sponsored by the BOE in the first year of the 2011-12 Legislative Session (see attachments). Additional suggestions will be included on the agenda for December 2010.

**Suggestion
Number**

[2-1](#) Amend Section 6591.5 of the Revenue and Taxation Code to revise the interest calculation provisions in the tax and fee programs the BOE administers so that the rate of interest allowed on refunds of tax and fee overpayments is the same as that calculated on late payments.

Source: Honorable Michele Steel

Revenue Impact: If provisions had been in effect in FY 2008-09, would have resulted in credit interest payments of approximately \$26 million for BOE administered tax and fee programs.

COMMITTEE DISCUSSION

Ms. Steel expressed her hope that this 14th attempt to equalize the interest rates is successful. Mr. Horton commended Ms. Steel on bringing this proposal forward.

- 2-2 Amend Revenue and Taxation Code Section 6829 of the Sales and Use Tax Law to include imposition of personal liability on responsible persons of a closely held corporation or closely held limited liability company (LLC) for liabilities arising during a period of suspension of that closely held corporation or closely held LLC, but only if the corporation or LLC is not revived within 60 days of the imposition of the suspension. Further, add statutes comparable to Section 6829, as amended, to those BOE-administered special tax and fee programs where circumstances would warrant the imposition of personal liability on an officer, partner, member, manager, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of taxes or fees for a corporation, partnership, limited partnership, limited liability partnership, or LLC that has been terminated, dissolved or abandoned or on a responsible person of a closely held corporation or closely held LLC that has been suspended without being timely revived.

Source: Legal Department, Sales and Use Tax Department, and Property and Special Taxes Department.

Revenue Impact: An increase in collections of delinquent accounts receivables of approximately \$800,000, primarily in the Special Taxes and Fees programs.

COMMITTEE DISCUSSION

Ms. Steel stated that she cannot support this proposal's expansion to the special taxes and fees programs.

- 2-3 ~~Amend Revenue and Taxation Code Sections 6480.1 and 60116 of the Sales and Use Tax Law and Diesel Fuel Tax Law, respectively, to make technical and administrative changes related to the fuel tax swap legislation. Both the prepayment rate of the sales tax and the Interstate User rate for diesel fuel have adjustment dates that would be changed to coincide with the annual diesel and gasoline fuel excise tax rate adjustment, as specified in the fuel tax swap bills.~~

**Put
Over**

~~Source: Sales and Use Tax Department and Special Taxes and Fees Division~~

~~Revenue Impact: None~~

BUSINESS TAXES SALES AND USE TAXES

2011 Legislative Proposals

Set forth below are suggestions for Sales and Use Taxes legislation to be sponsored by the BOE in the first year of the 2011-12 Legislative Session (see attachments). Additional suggestions will be included on the agenda for December 2010.

Suggestion Number

[3-1](#) Amend Revenue and Taxation Code Section 6203 of the Sales and Use Tax Law to expand the definition of “retailer engaged in business in this state” for purposes of enforcing California’s Use Tax Law to the fullest extent.

Source: Honorable Betty T. Yee

Revenue Impact: State and local use tax revenue gain of potentially \$11 million to \$55 million annually.

COMMITTEE DISCUSSION

Proposal 3-1 was discussed first to accommodate the five speakers who had signed in to testify.

Ms. Shedd presented the item. Mira Guertin, Policy Analyst for the California Chamber of Commerce, stated that she is not in opposition to the proposal, but she does not want to provide uncertainties in the law. She believes the current statute provides enough authority within the confines of the Constitution. Ms. Guertin believes the proposed changes would lead to uncertainties, open up the statute to litigation, and threaten jobs. She also stated that this proposal is broader than other bills brought before the Legislature.

The second speaker, Suzanne Sutton, representing California Taxpayers’ Association, indicated that she understood the frustration of the Board, but believes the proposal provides a vague definition that would provide significant uncertainty.

Next, Rebecca Madigan, Executive Director of Performance Marketing Association, expressed her concern over the unintended consequences the proposal would have to affiliate marketers. She explained that affiliates earn revenue from advertising through banners on their websites; that they do not sell items and therefore, do not meet the definition of nexus. She stated that affiliates provide income to the state, citing affiliates’ earnings of \$1.6 billion in income in California and \$124 million in state income tax. She further expressed concern that out-of-state merchants can simply end their affiliate programs in California if the law changes to their disadvantage.

COMMITTEE DISCUSSION 3-1 (cont'd)

Stephen Carlson, representing Direct Marketing Association, expressed his opposition to the proposal and his agreement with the previous speakers. He indicated that a bright line definition is important for businesses, and that this proposal changes that. He further suggested that much of the nexus discussion centers around one large company but that thousands of smaller businesses would be equally or perhaps even more affected by removing the clarity contained in the current nexus statutes. Mr. Carlson expressed his interest in working with the Board to look at other proposals to ensure individuals in California that owe the tax, pay the tax.

The last speaker, Fred Main, representing TechNet, expressed opposition over the impact and the ambiguity of the proposal, and requested that the Board reconsider adopting a definition of nexus.

Ms. Yee expressed her appreciation of the comments of the parties regarding their concerns and potential impacts of the proposal. She stated that she is pursuing this proposal to broaden the discussion of how to address the Legislature's frustration over the last 3-4 years regarding how to address the nexus issue, and focus more broadly than narrow inquiries that ultimately have little effect on the problem. She further cautioned against speculative conclusions regarding what the proposal would mean, and that its extent would ultimately need to be decided by the courts in this or other states. Ms. Yee expressed the Legislature's and the Board's frustration with use tax compliance; that this issue will continue to come before the Board; and the need for a full blown discussion of the potential extent of the Board's authority to address the use tax compliance problem. Without a more comprehensive discussion, Ms. Yee expressed her concern that some actions may lead to more damage. She also expressed her concern regarding where the use tax compliance burden currently falls, and she invited the parties to provide input on the Legislature's current mandates on the Board to develop programs overnight to require use tax reporting from consumers, which she called a "nightmare." She further expressed concerns that these efforts would have marginal effect to improve use tax compliance. She expressed that this issue would continue to come back, and she would like the opportunity to get a better understanding of what expanding the Board's nexus authority would mean – whether it includes third party contractors, affiliates, or computer servers – and that a more narrow discussion could have a deleterious effect on solving the nexus problem. Ms. Yee also welcomed further discussion prior to the Board's consideration of the proposal in January, and she welcomed further input from the parties who presented to the Board. Lastly, she expressed her frustration with Amazon.com.

Mr. Horton stated that he believed that the Board has current authority to pursue collection from Amazon and believes the Board should enforce the use tax and ultimately force the Courts to clarify. Mr. Horton expressed that he is not frustrated with collection of use tax, but this his frustration relates to California retailers who are operating at a competitive disadvantage.

Ms. Mandel said she would not tell Staff who to assess, and expressed that she expected Staff would assess tax where Staff had facts showing that an entity had nexus. She also said she did not have all the facts in front of her. Mr. Horton stated that he is ready, and that he won't hesitate to open the box first to see what's inside – that's why he was elected.

COMMITTEE DISCUSSION 3-1 (cont'd)

Ms. Yee indicated that the Board is doing everything it can to honor the nexus law in California, and the Legislature's eyes should be wide open regarding the extent of California's authority in light of court actions in other jurisdictions.

3-2 Add Revenue and Taxation Code Section 6593.7 to the Sales and Use Tax Law to authorize the Members of the BOE, meeting as a public body, to relieve all or any part of interest imposed on a late payment if the Members find, in their discretion, that a person's late payment was due to extraordinary circumstances and that it is inequitable to compute interest as the law requires, under specified circumstances.

Source: Honorable Michelle Steel

Revenue Impact: Indeterminable.

COMMITTEE DISCUSSION

Ms. Steel stated that this proposal would give the Board flexibility in relieving interest.

3-3 Amend Revenue and Taxation Code Sections 6055 and 6203.5 of the Sales and Use Tax Law to remove the requirement that retailers and lenders file an election form with the BOE prior to claiming a bad debt in the case of accounts held by a lender that have been found worthless and written off by the lender.

Source: Sales and Use Tax Department

Revenue Impact: None.

COMMITTEE DISCUSSION

Item presented but there was no discussion of this proposal.

[3-4](#) Amend Civil Code Section 1793.25 to allow the BOE to reimburse a manufacturer of a new motor vehicle for the use tax the manufacturer refunds to a buyer or lessee when the new motor vehicle is reacquired by the manufacturer pursuant to California's "Lemon Law."

Source: Legal Department

Revenue Impact: None.

COMMITTEE DISCUSSION

Item presented but there was no discussion of this proposal.

[3-5](#) Amend Business and Professions Code Section 7145.5 to authorize the BOE to request the Contractor's State License Board for a denial or suspension of a contractor's license for failure to resolve any outstanding final tax or fee liabilities.

Source: Sales and Use Tax Department

Revenue Impact: Increases ability to collect on \$55 million in outstanding liabilities owed by construction contractors.

COMMITTEE DISCUSSION

Ms. Steel stated that she wants to see proof of the 85 percent compliance rate that the Franchise Tax Board has experienced after the request has been made to suspend the contractor's license. Ms. Steel stated that she thinks the BOE is going in the wrong direction with this proposal.

Ms. Mandel stated that her notes from last year show that she asked staff whether the outstanding final liabilities included accounts under installment payment plans and was told that they did not. This year the answer to that same question was that it did include only a very small percentage. Ms. Mandel requested a clearer explanation of the revenue estimate number.

Erin Little of the Sales and Use Tax Department explained that in last year's proposal the total outstanding final liability was \$68 million. This year's total outstanding final liability is \$55 million. The difference is the result of several factors, (1) write off of uncollectible accounts, (2) collection of payments, and (3) refinement of the numbers due to the completion of converting the Board's business codes to NAICS codes. Of the \$55 million in outstanding final liabilities, only six percent, or \$3 million, are accounts under installment payment plans.

COMMITTEE DISCUSSION 3-5 (cont'd)

Ms. Mandel stated that the \$55 million is not a fair representation of what the potential revenue increase will be that is attributable specifically to this proposal. She requested that when this proposal is brought back, that the revenue estimate needs to be specific to this proposal, without regard to outstanding tax liabilities subject to an installment payment plan.

Mr. Horton stated that there should be a specific exclusion for accounts in installment payment plans. We should add language that if a taxpayer has entered into an installment payment plan that account would be excluded from the provisions.

[3-6](#) Amend Unemployment Insurance Code Section 1088.5 to allow the BOE to use the new employee registry information maintained by the Employment Development Department for tax enforcement purposes.

Source: Sales and Use Tax Department

Revenue Impact: Estimated \$500,000 annually.

COMMITTEE DISCUSSION

Ms. Steel believes this proposal is an expansion of government's power and that this proposal is not the right direction for tax agencies.

Mr. Horton suggested that staff look at a conformity measure that seeks to provide the Board with the same authority that exists for FTB and EDD as it relates to data sharing, data warehousing, and the exchange of information.

**BUSINESS TAXES
SPECIAL TAXES AND FEES**

2011 Legislative Proposals

Set forth below are suggestions for Special Taxes and Fees legislation to be sponsored by the BOE in the first year of the 2011-12 Legislative Session (see attachments). Additional suggestions will be included on the agenda for December 2010.

**Suggestion
Number**

[4-1](#) Amend Revenue and Taxation Code Sections 41031 and 41032 of the Emergency Telephone Users Surcharge Law to remove the requirement for the BOE to publish in its meeting minutes the emergency telephone users surcharge rate set by the California Technology Agency (CTA).

Source: Special Taxes and Fees Division

Revenue Impact: None.

COMMITTEE DISCUSSION

Item presented but there was no discussion of this proposal.

ADMINISTRATION

2011 Legislative Proposals

Set forth below are suggestions for legislation to be sponsored by the BOE in the first year of the 2011-12 Legislative Session (see attachments). Additional suggestions could be included on the agenda for December 2010.

Suggestion Number

[5-1](#) Amend Government Code Sections 17280.1 and 17280.2 to specifically provide that the BOE shall accept registered warrants as payment for any tax, surcharge, or fee liability to the BOE if the registered warrant is issued specifically to that tax, fee, or surcharge payer.

Source: Honorable Betty T. Yee

Revenue Impact: None.

COMMITTEE DISCUSSION

Ms. Yee stated that she understands the hurdles the bill faced last year but she still seeks the clear authority in the statutes. She stated that she is sensitive to the priority of payments and that a lot of people suffer during a budget impasse. The other important provision in the proposal clarifies the interest payment. Ms. Yee stated she is seeking this statute change so the BOE can memorialize its current practice for accepting registered warrants. Ms. Yee stated that she could not believe that the BOE will not have support for a proposal like this when we go to the Legislature in light of the substantial negative impact a budget impasse has on so many Californians.

Ms. Steel stated that she agrees that this proposal is the right direction to take for taxpayers.

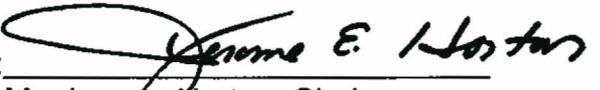
II. TABLE OF SECTIONS SCHEDULED TO SUNSET BY JANUARY 1, 2013

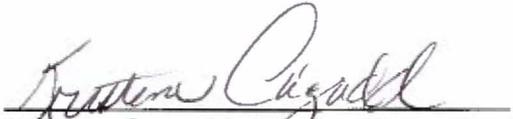
Notification of law sections administered by the BOE that will sunset by January 1, 2013.

COMMITTEE DISCUSSION

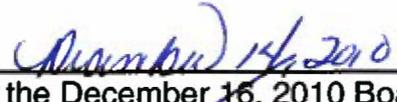
Ms. Mandel asked whether staff will be bringing proposals back on the statutes that are going to be repealed. Ms. Shedd indicated that the Property Taxes Welfare Exemption statute has been in existence since 1972, and staff would not be bringing that as a proposal, but that staff will be bringing the itinerant veteran vendor and the AIDS/HIV thrift store exemption proposals to the Board at its December Legislative Committee. She also stated that the staff is currently working on the offers in compromise proposal.

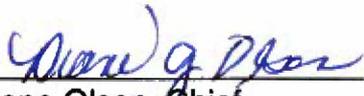
Mr. Horton suggested that the Legislature be notified of statutes that are repealing in order for them to make appropriate decisions.

Approved: 
Mr. Jerome Horton, Chair
Board Member
Board Legislative Committee


Kristine Cazadd, Interim Executive Director

BOARD APPROVED


at the December 16, 2010 Board Meeting
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Diane Olson, Chief
Board Proceedings Division