State of California

Board of Equalization
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Memorandum

To : Honorable Betty T. Yee, Chairwoman
Honorable Jerome E. Horton, Vice Chair
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

Date: January 7, 2010

From : Kristine Cazadd
Chief Counsel

Subject: **Board Meeting January 26-27, 2010**
Item M1
Other Chief Counsel Matters
Current Status of Funding for Homeowner and Renter Assistance (HRA) Claims - Recommendation for Handling Appeals

The Franchise Tax Board (FTB) has notified us that it no longer has any funding available to process or pay the claims of HRA claimants whose appeals are pending before this Board. This memorandum presents the recommendation of the Appeals Division regarding the disposition of these appeals. As discussed further below, the Appeals Division recommendation is to continue processing and submitting HRA appeals to the Board for decision, while notifying HRA appellants of the funding situation. This memorandum requests the Board's direction as to whether staff should proceed in this manner.

Background

For claims for fiscal years prior to fiscal year 2008-2009, all funds allocated to the FTB to process and pay HRA claimants have been exhausted. For fiscal 2008-2009 claims and fiscal 2009-2010 claims, the FTB did not receive an allocation of funds to process and pay HRA claimants. In light of this situation, the FTB has indicated that it is no longer processing any HRA claims.

There are currently 108 HRA appeals filed before the Board. We have not been receiving any new appeals, because the FTB is no longer processing claims, nor issuing the denial letters from which appellants would normally appeal.

Legal Analysis and Recommended Action

Section 20645 of the Revenue and Taxation Code (R&TC) provides that, when the FTB denies an HRA claim, the denial shall be treated as though it were a denial of an income tax refund, and the appeal provisions relating to an income tax refund shall apply. Under these appeal provisions, the claimant may appeal the denial of assistance to this Board for it to hear and determine the appeal. (Rev. & Tax. Code, §§ 19324, 19333.) California Code of Regulations,

title 18, (Regulation) 5412, subdivision (a)(10), likewise provides that the Board has jurisdiction to hear and decide appeals from any FTB action denying a claim for assistance under the HRA law; and further, sets forth appeal filing requirements for appellants filing such appeals. The Board is charged with hearing and determining these appeals pursuant to R&TC section 19333.

The Board's Form BOE-682 *Homeowner and Renter Property Tax Assistance* provides appellants with an appeal form and instructs appellants on the appeal process before the Board, stating that:

- Claimants may appeal to the Board when the FTB denies a homeowner's or renter's claim for property tax assistance.
- The Board's attorneys will review the case and send it to the Board Members for a decision.
- The Board Members will hear the appeal in an oral hearing if one is requested or will otherwise decide the case based on the written information provided by the parties.
- Appellants are referred to the Taxpayers' Rights Advocates' offices at both the Board and the FTB for problems that cannot be resolved at other agency levels.

Based on our research of the relevant statutes, regulations and Board publications regarding HRA appeals, the Appeals Division believes that the most prudent approach would be to continue to process the pending appeals for Board hearing and decision and to advise the appellants that their claims may not be paid due to the funding situation. Our objective is to ensure that the Board performs its statutory role, which has been communicated to appellants in Board publications, and ensure that HRA appellants are not left without a remedy. Thus, the Appeals Division recommends the following action:

a. The Board Proceedings Division (BPD) will notify all those with pending HRA appeals by letter of the current lack of funding. The letter will also notify HRA appellants that the Board will hear and decide their appeals but that the FTB has informed us that, due to lack of funding, it cannot pay HRA claims even if this Board ultimately rules in their favor.

b. The Appeals Division will continue processing and submitting proposed decisions in HRA appeals, and, as applicable, will schedule hearings and submit hearing summaries, until the remaining HRA appeals are resolved. The Appeals Division will continue making additional briefing requests where necessary to facilitate the determination of an HRA appeal or requested by a Board Member's office.

c. The letter decisions that are sent following an oral hearing on an HRA appeal and the cover letters that accompany adopted summary decisions will advise appellants of the funding situation.

Other Alternatives

Although the Appeals Division recommends the approach outlined above, other approaches may be possible, including those discussed below.

Alternative 1: Deferring or Holding HRA Appeals in Abeyance

HRA appeals would be deferred or held in abeyance until such time as funding becomes available or until some other time. We note, however, that funding may not ever become available and we do not wish to indefinitely hold these appeals or inadvertently to imply that we have reason to believe that funding might later become available. The drawbacks of this alternative are: (1) lengthy delays in processing pending HRA appeals; (2) uncertainty as to the deferral period; and (3) the possibility that funding may not ever be restored which will result in stale cases to be processed and heard by the Board.

Alternative 2: Dismissing HRA Appeals

The Appeals Division staff would submit the current HRA appeals to the Board and ask the Board to consider dismissing them. Presumably, the grounds for dismissal would be that the lack of funding would render any Board decision meaningless. However, we are not aware of any precedent for dismissing an entire class of appeals that were properly brought before the Board for determination (i.e., to determine whether the appellant is entitled to assistance). In addition, such action, even though undertaken in an effort to perform the Board's duties in a reasonable manner, could raise legal issues that may be difficult to anticipate at this time or raise questions of fairness in the minds of HRA appellants.

Conclusion and Recommendation

With respect, the Appeals Division and the BPD requests the Board's guidance with regard to how it wishes pending HRA appeals to be handled. As outlined above, the recommendation of the Appeals Division is to continue processing the remaining HRA appeals, while notifying appellants of the funding situation.

If you have questions regarding this matter or wish to discuss it further, please do not hesitate to contact Mr. Grant Thompson, Tax Counsel III (Supervisor) at (916) 205-1644, or Ms. Diane Olson, Chief of Board Proceedings at (916) 322-9569, or myself at (916) 445-4380. Thank you.

Approved:

Ramon J. Hirsig
Executive Director

cc: Mr. Ramon J. Hirsig (MIC:73)
Ms. Diane Olson (MIC:80)
Mr. Jefferson Vest (MIC:85)
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