

# BEWLEY LASSLEBEN & MILLER LLP

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December 14, 2012

Sent Via Email (jerome.horton@boe.ca.gov) and U.S. Mail

Honorable Jerome Horton, Chairman  
State Board of Equalization  
400 Capitol Mall, Suite 2540  
Sacramento, California 95814

Re: AB 2323 Board Hearing of Wednesday, December 19, 2012  
M-Other Chief Counsel Matters

Dear Jerome:

I have reviewed the staff presentation posted on the website regarding the above referenced matter. I have comments that I would like to share with the Board.

The importance of fair tax procedure and precedent cannot be understated. The undersigned was involved with the crafting of the initial State Board of Equalization Rules of Practice alongside Board Member Matt Fong and Assistant Chief Counsel Don Hennessy. As changes have been made in the Rules, I have been involved with helping to generate and rewrite/add to the body of procedural law. Additionally, we have been counsel for the taxpayer in several memorandum opinions that are of still important precedent today. It is of therefore great interest to be able to comment on the implementation of AB 2323.

AB 2323 is an attempt to bring more transparency and precedent to State Board of Equalization ("SBE") appeal process and adjudication of cases. By bringing more cases forward that act as precedent for future cases, the more settled the law and the easier the task for administration by the staff and decision making by taxpayers. AB 2323 is an important improvement to the Board's creating a body of law for all. In that context I have several suggestions for the Board members as they consider implementation.

As a general thought, it is important to meet the specific requirements of AB 2323 and the spirit of the law. However in building a body of case law, the Board and staff must be careful not to burden and slow the administrative appeal process. As the Board is well aware, at times during the past 10 years, the Appeals process has slowed and only with the addition of more staff did the process move more quickly. We need to be careful that in this added requirement of providing written opinions, the process is not slowed again.

Honorable Jerome Horton  
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With respect to the matrix for action, Items 1-9, I am in agreement with the staff recommendation except with respect to Item 4. It is unfortunate that the statement, "amount in controversy," is not more clearly defined in the legislation. From an ease in administration standpoint, it is my suggestion that the Alternative be utilized. It is my experience, for example in sales and use tax cases, that the figure in question can change many times. For ease of administration it is probably best to utilize the figure when a petition is filed (in business tax cases) and the figure upon appeal from the FTB upon a protest/refund appeal.

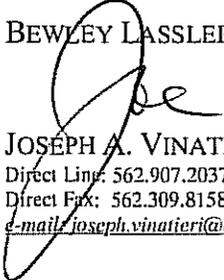
I note that AB 2323 sets forth the ability for a concurring or dissenting Board member to file an opinion, however, I see no discussion of same in the matrix nor the agenda item. There needs to be a methodology for these Board members to set forth their positions if the Board is not unanimous in its decision. There are various ways that concurring and dissenting opinions could be written and become part of a final memorandum decision, etc. However, the alternative methodologies to do so are not found in the agenda presentation.

With respect to changes in the Rules for Tax Appeals, a suggestion for conformity between FIT and the business tax process is a good idea and it should be undertaken.

Thank you for the opportunity to present comments on this important step towards further transparency and development of precedential California tax law. If I can be of assistance, please feel free to telephone me.

Sincerely,

BEWLEY LASSLEBEN & MILLER LLP



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