



**DIANE L. HARKEY**  
CHAIRWOMAN  
CALIFORNIA STATE BOARD OF EQUALIZATION

**M e m o r a n d u m**

To: Honorable George Runner, Vice Chair  
Honorable Fiona Ma, CPA, Second District  
Honorable Jerome E. Horton, Third District  
Honorable Betty T. Yee, State Controller

Date: May 19, 2017

From: Honorable Diane Harkey

**Subject: Member-to-Member Discipline**

In her submission for Board Member Requested Matters, Ms. Yee included a section under Roles and Powers of the Board regarding conducting discipline of members. Below are some of the questions I have that I hope we can discuss:

1. What is the legal authority to discipline elected members?
2. If we have the legal authority what would be the criteria for such discipline?
  - a. What would rise to the level of needing discipline?
  - b. Clarify "the nature and number of violations"?
  - c. Would this discipline be based on external audits/investigations and/or based on internal audits/investigations?
3. What would be the process for imposing such discipline?
  - a. What is the practice of the legislature or other elected Boards regarding discipline of a member?
  - b. Clarify "may include, but need not be limited to, admonishment, censure and/or the requirement of additional training"?
  - c. How many votes would be needed to adopt a motion to discipline?

# STATE BOARD OF EQUALIZATION

## GOVERNANCE POLICY

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## STATE BOARD OF EQUALIZATION

### GOVERNANCE POLICY

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## **STATE BOARD OF EQUALIZATION**

### **GOVERNANCE POLICY**

#### **I. PURPOSE**

This Governance Policy is established to:

- A. Set forth the policies that govern the State Board of Equalization (the “Board”) consistent with its constitutional and statutory responsibilities.
- B. Guide the Board in managing the effectiveness and integrity of the Board's processes, including oversight, accountability, transparency, efficiency and decision-making.
- C. Identify and distinguish between the roles of the Board, the Board Chair, the Board Vice Chair, committees, committee chairs and vice chairs.

This Governance Policy applies to both Board members and their designees.

#### **II. THE BOARD**

Established in 1879 by a constitutional amendment, the Board of Equalization, the nation’s only elected tax commission, is made up of five members. Four representatives are elected for four-year terms from one of California’s four geographical equalization districts. The fifth member is the State Controller, an elected official serving in a statewide capacity, who is elected for a four-year term.

### III. MISSION STATEMENT

The mission of the State Board of Equalization is to serve the public through fair, effective, and efficient tax administration.

### IV. AUTHORITY

The California Constitution and the Revenue and Taxation Code vests in the Board the administration, management, collection and auditing of 34 separate tax and fee programs, 32 of which are revenue generating. Currently, these programs are concentrated in the following general areas:

- Property Taxes,
  - Private Railroad Car Tax
  - Timber Yield Tax
- Sales and Use Taxes
  - Sales and Use Tax
  - Bradley-Burns Uniform Local Sales and Use Tax
  - District Transactions and Use Tax
- Special Taxes and Fees
  - Activity Fee
  - Aircraft Jet Fuel Tax
  - Alcoholic Beverage Tax
  - California Tire Fee
  - Childhood Lead Poisoning Prevention Fee
  - Cigarette Tax
  - Tobacco Products Tax
  - Cigarette and Tobacco Products Licensing Program
  - Diesel Fuel Tax
  - Disposal Fee
  - Electronic Waste Recycling Fee
  - Emergency Telephone Users Surcharge
  - Energy Resources Surcharge
  - Environmental Fee

Facility Fee  
Generator Fee  
Insurance Tax  
Integrated Waste Management Fee  
International Fuel Tax Agreement and Interstate User  
Tax  
Marine Invasive Species Fee  
Motor Vehicle Fuel Tax  
Natural Gas Surcharge  
Occupational Lead Poisoning Prevention Fee  
Oil Spill Prevention and Administration Fee  
Oil Spill Response Fee  
Underground Storage Tank Maintenance Fee  
Use Fuel Tax  
Water Rights Fee

The Board also administers the appeals program which covers taxes administered by Board and franchise and income taxes administered by the Franchise Tax Board (FTB). Similarly, taxpayers may request that the Board review certain FTB determinations such as an FTB's denial of a claim for refund, disputed tax amount, or denials of Homeowners and Renters Assistance (HRA) claims.

## **V. GOVERNANCE PRINCIPLES**

The following governance principles will guide the conduct, decision-making and behavior of the Board and provide a framework for the development of policies and practices that will drive the achievement of the Board's goals:

### **A. Ethical Leaders.**

As elected officials, the Board and executive team share values about what is important and work together with mutual respect in

a constructive partnership. Together, the Board and executives set the tone at the top that permeates the organization.

#### B. Open and Accountable

The Board and executives are appropriately open in the way key decisions are made and publicly disclosed. Governance rules are clear and disclosed. The Board has access to appropriate expertise and data free from undue influence. The Board and executives are accountable to the legislature and taxpayers for assessing and collecting the proper amount of taxes due.

### **VI. AVOIDANCE OF CONFLICTS OF INTERESTS**

A. Board members will at all times act in the best interest of the State of California and its taxpayers. Government Code section 81000 et seq.

B. Board members will never act where there may be a conflict of interest or appearance of a conflict of interest. A conflict of interest is understood to be a situation where a relationship exists that could reasonably be expected to diminish independence of judgment in performance of official responsibilities as a Board member. Specifically, Board members may not participate in decisions which might result in significant personal economic advantage.

C. Board members will not seek nor accept any compensation or political contributions that would violate California law, including without limitation Government Code sections 15626 and the Political Reform Act of 1974 (Cal.Gov Code §§81000, et seq.).

D. Board members and the employees thereof shall not engage in any gainful profession, trade, business or occupation whatsoever for any person, firm or corporation, or be so engaged in their own behalf, which profession, trade, business or occupation is

incompatible or involves a conflict of interest with their property tax duties as members and employees of the board. Conflict of interest shall include receipt of compensation or gifts from private persons or firms for advice or other services relating to the taxation or assessment of property. Violation of this provision by any member of the board shall constitute malfeasance in office. Moreover, a violation by any employee of the board shall be grounds for dismissal. Disciplinary proceedings for any such violation shall be taken pursuant to Article 3 (commencing with Section 19570), Chapter 8, Part 2, Division 5, Title 2, of the Government Code. (Government Code section 15626.)

E. Prior to rendering any decision in any adjudicatory proceeding pending before the Board, each member who knows or has reason to know that he or she received a contribution or contributions within the preceding 12 months in an aggregate amount of two hundred fifty dollars (\$250) or more from a party or his or her agent, or from any participant or his or her agent, shall disclose that fact on the record of the proceeding pursuant to Government Code section 15626.

F. No member shall make, participate in making, or in any way attempt to use his or her official position to influence, the decision in any adjudicatory proceeding pending before the board if the member knows or has reason to know that he or she received a contribution or contributions in an aggregate amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from a party or his or her agent, or from any participant or his or her agent, and if the member knows or has reason to know that the participant has a financial interest in the decision, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9. However, a member may participate in making the decision in any adjudicatory proceeding provided the



contribution has been returned in the manner provided in Government Code section 15626 subdivision (d).

G. Board members will not seek nor accept any gifts (as defined in the California Political Reform Act), or reimbursement for travel or any other activity, that are prohibited pursuant to the Political Reform Act of 1974 (Cal.Gov Code §§81000 et seq.), the Board's Statement of Activities That Are Inconsistent, Incompatible, or in Conflict with the Duties of a Board Member and/or any other applicable Board policies.

## **VII. ROLE AND POWERS OF THE BOARD**

A. The Board reserves the following powers for itself:

1. Conduct and decide tax appeals.
2. Conduct discipline if a member fails to meet Board standards of conduct.

The Board will be responsible for implementing public disciplinary action against a Board member whose conduct fails to meet the standards outlined in or violates this Governance Policy, or whose conduct is otherwise inconsistent with Board policies. Discipline will be at the discretion of the Board, after considering the nature and number of violations, and may include, but need not be limited to, admonishment, censure, and/or the requirement of additional training. Any public discipline will be imposed in open session at a duly-noticed meeting of the Board, and only upon adoption of a motion by the Board.

3. Conduct the hiring, evaluation and termination of the Executive Director.
4. Conduct setting of the Board agendas.
5. Set legislative priorities and approve legislative policy and legislative positions.

6. Approve the initiation or settlement of litigation involving material sums or having a substantial impact on the program operations of the Board.
9. Set and approve the Boards mission and vision.
10. Approve Board delegations.
11. Approve organization performance and oversee overall organization performance.
12. Approve overall communications strategy.
13. Approve and adopt regulations relating to the programs administered by the Board.
15. Conduct election of the Board Chair and Vice President in January of each year.

## **VIII. ROLE OF THE BOARD CHAIR AND VICE-CHAIR**

### **A. Election of the Board Chair and Vice-Chair.**

The Board Chair and Vice-Chair will be elected annually by members of the Board in open session at the January meeting of the Board for the term of one calendar year.

### **B. Role of the Board Chair.**

The Board Chair's principal role is to lead the Board in the conduct of Board business by managing the affairs of the Board and ensuring the integrity of the Board's process. The Chair's specific duties, delegated by the Board, are to:

1. Provide leadership to the Board in terms of collegiality, civility and ethical conduct.
2. Ensure that Board operations are consistent with its own policies.

3. Coordinate with the Executive Director and/or the Chief of Board Proceedings, on the planning of Board agendas, with a focus on the efficient use of written materials provided to Board members and creating realistic time estimates for each agenda item for the benefit of Board members and the public.
4. Convene and conduct Board meetings, controlling the process of Board deliberations pursuant to rules adopted by the Board.
  - a. Limit meeting discussion content to those issues that, according to Board policy, are within the Board's responsibility.
  - b. Ensure timely, fair, orderly, thorough and efficient deliberations, including enforcement of Robert's Rules of Order.
5. With the Executive Director, manage the effective and efficient flow of information to the Board, which is comprehensive and timely.
6. Additional duties as prescribed in the Rules for Tax Appeals.

#### C. Role of the Vice-Chair.

In the absence or incapacity of the Chair, the Vice-Chair will have the authority delegated and established by Board policy and in general conformance with the authority of the Chair.

### **IX. DELEGATIONS TO EXECUTIVES AND BOARD REPORTING RELATIONSHIPS**

- A. The Executive Director will be a direct report to the Board. The Executive Director is responsible for the overall administration of all units, departments and functions within the Board of Equalization.
- B. The Board will annually evaluate the performance of the Executive Director. If the Board is not satisfied with the

performance of the Executive Director, the Board may discipline or replace him or her, but will not otherwise get involved in day-to-day operations.

C. The Board will have ready access to all executives, and such access will be coordinated by the Executive Director.

D. The Board strongly supports an environment where staff may engage in impartial, robust, objective and ethical decision-making free of improper influence from individual Board members, executives or third parties. The Board requires implementation of a staff policy regarding impartial decision-making and immediate reporting of instances of undue influence.

## **X. BOARD MEMBER ROLES, RESPONSIBILITIES AND CONDUCT**

### **A. Governing Style.**

The Board is responsible for creating and maintaining an atmosphere that encourages frank and collegial discussions both at the Board and as between the Board and management. The Board strives to achieve a governing style that emphasizes:

1. Strategic leadership.
2. Civility and courtesy, to both those with whom the Board members interact and between Board members.
3. Respect for diversity, recognizing the value of all input.
4. Governance by consensus.
5. Ethical conduct of Board business to avoid even the appearance of impropriety.

### **B. Board Member Competencies.**

In order to be more effective members of the Board, Board members are expected to develop an understanding of the following:

#### Governance Competencies:

- The role and responsibilities of Board members;
- The Board Governance Policy and other Board policies;
- Conflicts of interest and ethics;
- The Board of Equalization's organizational structure and the roles of executive staff.
- The Open Meeting Act and the Public Records Act;
- The role of the Board of Equalization as a state agency.
- The proper conduct of Board and Committee Meetings in accordance with rules adopted by the Board.

#### C. Questions on Agenda Items.

Individual Board members should direct questions regarding specific agenda items to the Executive Director.

#### G. Communications with Third Parties.

##### 1. Generally.

Any contacts and communications between individual Board members and parties appearing before the Board and/or their representatives will be within the judgment of each Board member. Any such contacts and communications will be in the Board member's capacity as an individual Board member with the understanding that the individual Board members do not represent the Board, and have no authority to bind the Board to any agreements, unless specifically authorized to do so by the Board.

#### H. Participation in Operations, Staff Meetings and Activities.

Individual Board members are not to become involved in operational management and should not participate in routine staff meetings or other staff activities unless specifically requested by the Executive Director.

#### I. Assistance in Responding to Inquiries and Correspondence.

Inquiries or correspondence addressed to a Board member, which the Board member wishes to direct to staff for a response or assistance in the preparation of a response, should be forwarded to the Executive Director.

#### J. Civility and Courtesy.

Each Board member should commit to conduct him/herself at all times with civility and courtesy, to both those with whom the Board interacts and to his/her colleagues.

#### K. Confidentiality.

Board members will not reveal confidential matters and will not use confidential information for personal gain or for the benefit of outside interests.

#### L. Attendance at Meetings.

Each Board member or authorized deputy should attend every meeting of the Board, and every meeting of a committee of which s/he is a member. Periodic absences for illness or other non-avoidable personal and professional reasons are expected.

#### M. Initiation or Supporting Litigation.

Before initiating or supporting litigation that is adverse to the Board, a Board member who believes that the Board has acted in violation of its fiduciary responsibilities or applicable law should first strive to avoid the need for litigation. This includes the

responsibility to proactively discuss the Board member's concerns with his/her fellow Board members and, where applicable, the Executive Director.

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