



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

TAXPAYERS' RIGHTS ADVOCATE OFFICE MIC: 70
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State Controller

CYNTHIA BRIDGES
Executive Director

June 16, 2014

Mr. Gary P. Salamone

Dear Mr. Salamone:

I am responding to your comments provided to my office on May 21, 2014 concerning the California Taxpayers' Bill of Rights. You indicated that the Taxpayers' Bill of Rights may be unconstitutional if certain conditions were not met.

As requested by Chairman Jerome Horton at the Taxpayers' Bill of Rights Hearings on May 22, 2014, the Legal Department prepared a legal analysis of your comments for presentation to the Members at the June 24-26, 2014 Board meeting in Culver City. For your information, attached is a copy of the Legal Department's report to the Board, containing the analysis.

Legal Department staff is scheduled to present the report to the Board on June 24, 2014 as agenda item P2.1. The Public Agenda Notice for the Board meeting is available at:

www.boe.ca.gov/meetings/pdf/2014/062414_PAN_June_Culver_City.pdf

You may listen to and/or view a live broadcast of the Board meeting via a link on the Public Agenda Notice. In addition, an archived copy of the broadcast will be available approximately 24 hours following the Board meeting.

Thank you again for sharing your ideas and concerns as part of the annual Taxpayers' Bill of Rights Hearing process. If you have any further questions regarding this matter, please do not hesitate to contact me at 1-916-324-2798. You may also contact Ms. Laureen Simpson of my office at 1-916-445-0218.

Sincerely,

Todd C. Gilman
Chief, Taxpayers' Rights and
Equal Employment Opportunity Division

TCG:ls
Salamone response 061614.docx

Attachment

cc (with attachment):

Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, Board Member, First District
Senator George Runner, Board Member, Second District
Honorable John Chiang, State Controller
Ms. Marcy Jo Mandel, Deputy State Controller
Mr. Mike Gipson, Board Member's Office, Fourth District
Mr. Joel Angeles, Board Member's Office, Third District
Mr. Sean Wallentine, Board Member's Office, Second District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Maria Delgado, Board Member's Office, First District
Ms. Shellie Hughes, Board Member's Office, Fourth District
Ms. Cynthia Bridges, Executive Director, MIC 73
Mr. Randy Ferris, Chief Counsel, MIC 83
Mr. Robert Tucker, Assistant Chief Counsel, Taxes and Fees Division, MIC 82
Mr. Jeffrey McGuire, Deputy Director, Sales and Use Tax Department, MIC 43
Mr. Dean Kinnee, Chief, County-Assessed Properties Division, MIC 64
Mr. Ken Thompson, Chief, State-Assessed Properties Division, MIC 61
Ms. Laureen Simpson, Taxpayers' Rights Advocate Office, MIC 70
Mr. Mark Sutter, Taxpayers' Rights Advocate Office, MIC 70

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: June 5, 2014

From: Randy Ferris 
Chief Counsel

Subject: **Constitutionality of the Board of Equalization's Taxpayers' Bill of Rights
June 24-26, 2014 Board Meeting – Chief Counsel's Report – Item P2**

On May 22, 2014, the Board of Equalization held its annual Taxpayers' Bill of Rights hearing in Sacramento. At this hearing, a written submission was received by the Taxpayers' Rights Advocate's office that asserted the Taxpayers' Bill of Rights may be unconstitutional. Mr. Todd Gilman, the Taxpayers' Rights Advocate, explained that he would coordinate with the Legal Department to provide a written response to the person who made the submission containing this assertion. The Legal Department was also asked to provide a report of its findings to the Board Members at the June 2014 Board meeting.

I. Background

Assembly Bill No. 2788 (Stats. 1988, ch. 1573) and Assembly Bill No. 2833 (Stats. 1988, ch. 1574) were approved by the Governor on September 30, 1988, and became effective January 1, 1989. They govern the Sales and Use Tax Law, the Personal Income Tax Law, and the Bank and Corporation Tax Law. Subsequently, Senate Bill No. 1661 (Stats. 1992, ch. 438) extended the Taxpayers' Bill of Rights to special tax and fee programs administered by the Board of Equalization. In 1993, the Taxpayers' Bill of Rights was extended to the Property Tax Law with Senate Bill No. 143 (Stats. 1993, ch. 387). For ease of expression herein, these various statutes will be collectively referred to as "the Taxpayers' Bill of Rights."

The Taxpayers' Bill of Rights was created with the understanding that "there is a delicate balance between revenue collection and freedom from government oppression," which motivated the Legislature "to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes." (See, e.g., Rev. & Tax. Code, §§ 7081, 21002.)

Pursuant to the Taxpayers' Bill of Rights, the office of the Taxpayers' Rights Advocate, on behalf of the Board of Equalization, holds annual public hearings in Sacramento and Culver City before the Board Members to solicit input from industry representatives, individual

taxpayers, and the general public. At the May 22, 2014, hearing in Sacramento, written correspondence from an individual, Mr. Gary P. Salamone, was received stating that:

I will not be able to attend, but wanted to contribute an insight for consideration and implementation at the hearing and in its aftermath. The so-called Taxpayers' Bill of Rights is unconstitutional and not a genuine Taxpayers' Bill of Rights (1) if it does not specifically and automatically incorporate federal and state Constitutional guaranties/Bills of Rights; (2) if state-governmental employees are not trained to recognize, honor and apply the supreme law of the land and the higher law of California; (3) if those personnel subordinate those higher laws to mere state legislation or otherwise operate as if state laws must somehow confirm the authority of the federal and state Bills of Rights, for those higher laws to be at all enforceable in California; and (4) if those personnel do not concede, without a struggle and forcing taxpayers into court, the supremacy of the Bills of Rights (both the U.S. Bill of Rights and the California Declaration of Rights) and respect the rights of California citizens in a manner and spirit consistent with the nation's claim of being a Constitutional republic.

II. Relevant Law

As relevant to the concerns and issues raised in the submission, the California Constitution specifically provides that:

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- (b) To declare a statute unconstitutional;
- (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations. (Cal. Const., art. III, § 3.5.)

III. Analysis

Although the Board of Equalization is not authorized to declare any state statute unconstitutional or otherwise refuse to enforce an existing statute, for the record, the Legal Department is confident that there is nothing in any of the provisions of the Taxpayers' Bill of Rights that conflicts with any federal law, including the federal constitution, or with the state constitution. The statutes that make up the Taxpayers' Bill of Rights are the current law in California. To date, no appellate court has made the determination that any portion of the Taxpayers' Bill of Rights is unconstitutional. Moreover, the Legal Department is not aware of any potential legal infirmity that would suggest amendments to these statutes are warranted.

IV. Conclusion

Accordingly, since the Board of Equalization's Taxpayers' Bill of Rights statutes have not been declared unconstitutional or invalid by a court of competent jurisdiction, the Board is required to follow these statutes.

If you have any questions regarding this matter, please contact Robert Tucker, Assistant Chief Counsel at (916) 322-0437.

Approved: 
Cynthia Bridges
Executive Director

RF:RT:hp

cc: Mr. Todd Gilman MIC:70
 Mr. Robert Tucker MIC:82