Lessons from Lucent

By George Runner

We all agree that paying taxes is vital to ensure essential public services. Through elected representatives and sometimes through the ballot, the public determines the amount of taxes individuals and businesses must pay. Taxpayers pay those taxes to tax agencies.

Sounds simple enough, right?

Well, unfortunately government rarely makes things simple. California's tax laws and regulations are extremely complicated, creating headaches and hassles for taxpayers, business owners and, yes, even government itself.

Differing interpretations can lead to costly, time-consuming legal disputes.

A good example—that most people haven't paid attention to— would be a recent court case titled *Lucent Technologies, Inc. v. State Bd. of Equalization*. In January, the California State Supreme Court upheld a lower court decision against the Board of Equalization (BOE) and in favor of the taxpayer, Lucent Technologies.

The dispute centered on whether Lucent must pay tax on specified software that accompanied its telephone equipment sales or whether the sales were part of a technology transfer agreement (TTA). California law defines TTAs as "any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest."

In *Lucent,* the court held that the sales were part of a TTA. It determined that only the "price of the blank media" used to transfer the software was taxable. The rest of the value of the transfer was intangible and, therefore, not taxable under California law.

The court's decision in *Lucent* provides clarity and an opportunity for the Board to get it right going forward.

As discussed at our March meeting, Board staff will begin immediately processing any timely, valid refund claims that meet the conditions specified in *Lucent.*

We'll also start an interested parties process through our Business Taxes Committee chaired by Diane Harkey. The goal is to update our regulations to fully implement the court's decision and provide appropriate guidance to taxpayers.

The Board must interpret the statute correctly and not too narrowly, which is the very problem that prompted Lucent to sue in the first place.

That's why it's so important that taxpayers and the organizations that represent them be involved in our upcoming interested parties process.

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