

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

PUBLIC MEETING

TUESDAY, DECEMBER 3, 2018

1:35 P.M.

GERALD GOLDBERG AUDITORIUM

9646 BUTTERFIELD WAY

SACRAMENTO, CALIFORNIA

REPORTED BY:

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APPEARANCES

BOARD MEMBERS

BETTY YEE  
State Controller  
(Chairperson of the Board)

MALIA M. COHEN  
Chairperson  
Board of Equalization

GAYLE MILLER  
Chief Deputy Director, Policy  
Department of Finance

YVETTE STOWERS  
Deputy State Controller, Taxation  
State Controller's Office

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STAFF

SELVI STANISLAUS  
Executive Director

DAWN CASEY  
Board Liaison

JOZEL L. BRUNETT  
Chief Legal Counsel

SHANE HOFELING  
Assistant Chief Counsel

WILLIE ARMSTRONG

RED GOBUTY

SUSAN MAPLES

JULIE MORENO

JOEL SMITH

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A P P E A R A N C E S C O N T I N U E D

ALSO PRESENT

BARBARA DONOVAN  
California Society of Enrolled Agents

CHRISTINE GRAB

MEGHAN LOPER  
Capitol Strategies Group

KATHRYN ZDAN  
Spidell Publishing

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1 SACRAMENTO, CALIFORNIA

2 TUESDAY, DECEMBER 3, 2019 1:35 P.M.

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4 CHAIRPERSON YEE: Good afternoon. This is the  
5 scheduled time for the meeting of the Franchise Tax  
6 Board.

7 Would the board liaison please call the roll to  
8 determine if a quorum is present.

9 MS. CASEY: Member Cohen.

10 MEMBER COHEN: Present.

11 MS. CASEY: Chair-Controller Betty T. Yee.

12 CHAIRPERSON YEE: Here.

13 Okay. Seeing two members present, we do have a  
14 quorum, and the Franchise Tax Board is now in session.

15 At this time, I would like to ask everyone to  
16 please stand and join me in the Pledge of Allegiance.

17 (Pledge of Allegiance was recited  
18 in unison.)

19 CHAIRPERSON YEE: The public has the right to  
20 comment on each agenda item and if there are any members  
21 of the public who wish to speak to an item, please come  
22 forward when that item is called, and you will have  
23 three minutes to address the Board.

24 The first item, Members, is approval of the  
25 minutes. And we have the minutes of the September 12,

1 2019, as well as the October 1st, 2019, board meetings.

2 Is there a motion?

3 MEMBER COHEN: I will make a motion to approve  
4 the minutes.

5 CHAIRPERSON YEE: Okay. Motion by Member Cohen  
6 to approve the minutes from both meetings.

7 I will second that motion.

8 Without objection, such will be the order.

9 Item 2 is an update on the October 1st, 2019,  
10 board meeting, and we have Shane Hofeling to provide  
11 that update.

12 Good afternoon.

13 MR. HOFELING: Good afternoon, Madam Chair and  
14 Members of the Board. My name is Shane Hofeling, and  
15 I'm an Assistant Chief Counsel in the Legal Division of  
16 the Franchise Tax Board.

17 As you know, on October 1st, 2019, your Board  
18 held a board meeting to discuss the California tax  
19 landscape and the gig economy, which included a FTB  
20 staff presentation on the past, present, and future of  
21 tax compliance with respect to the gig economy.

22 First, as a brief, high level summary of the  
23 issues raised in the meeting, I would like to provide  
24 you a short recap of that meeting:

25 During the meeting, we discussed the need for

1 better data for both independent contractors and W-2  
2 employees at the federal and the state level.

3 We also discussed the challenges faced by our gig  
4 workers and the fact that many of them do not understand  
5 their tax filing obligations and items such, as how much  
6 income do they need to report, what should they report,  
7 and how should they report it.

8 We identified that more education and outreach is  
9 definitely needed to help these workers properly report  
10 and pay their tax obligations.

11 We heard from gig workers directly about these  
12 challenges and their need for more information and  
13 assistance with their tax obligations.

14 We also heard from platform providers and what  
15 they are doing in terms of providing information for  
16 their workers, tools, as well as their offer to partner  
17 with state agencies.

18 Overall, the meeting provided us with an  
19 excellent opportunity to identify and understand the  
20 challenges, the opportunities, and the California tax  
21 landscape where respect to the gig economy.

22 Turning to the issue of data, during the  
23 Franchise Tax Board staff presentation, we highlighted  
24 several key areas in which staff is actively engaged in  
25 the studying and in analyzing the aspects of the gig

1 economy, as well as the staff's education and outreach  
2 activities in this area.

3 Today we would like to provide the Board with a  
4 brief update on the FTB's continued efforts in the  
5 aspects of the gig economy, specifically in the area of  
6 FTB's continued research and data analytic efforts, our  
7 ongoing outreach and education efforts, and our  
8 collaboration with industry, labor, and sister agencies.

9 During the FTB's previous presentation, Richard  
10 Geck, an administrator with the FTB, and Dr. Annette  
11 Bernhardt of the California Policy Lab at UC Berkeley,  
12 discussed some of the current data efforts currently  
13 being undertaken by the FTB, the data collected and  
14 analyzed by the California Policy Lab, and the types of  
15 data and information uncovered through the joint  
16 partnership between the FTB and the Policy Lab.

17 FTB staff is continuing to collect this data, and  
18 although we received most of our information through  
19 California income tax filings, we continually look to  
20 these areas to identify areas of trends and areas that  
21 need -- provide additional opportunities for education  
22 and outreach.

23 Since the FTB relies on data from the most recent  
24 tax filings, unfortunately, we don't have any additional  
25 updated information until we receive the 2019 filings in



1 2020. However, in the meantime, we are continuing to  
2 work with our partners at the California Policy Lab to  
3 gain instructive insight on the gig economy and the data  
4 that is coming in from that economy.

5 Now, by way of background, the FTB and the  
6 California Policy Lab began a research partnership in  
7 2017 to generate evidence to help us inform decisions on  
8 tax administration, policy, and our practices.

9 The FTB and the California Policy Lab have  
10 launched research to identify and evaluate low cost,  
11 innovative ways that the FTB can better meet its mission  
12 to help taxpayers file in a timely and accurate manner.  
13 The California Policy Lab has also facilitated research  
14 and collaborations between the FTB and other state  
15 agencies, acting as a trusted third party to link  
16 administrative data sets and previously unanswerable  
17 empirical questions.

18 Now, as you know, the FTB takes its role as a  
19 data custodian very seriously, and we work hard to make  
20 sure that taxpayers data is secure and used only for the  
21 appropriate purposes of tax administration.

22 As a result, the FTB and the California Policy  
23 Lab have ventured into a data use agreement that allows  
24 the California Policy Lab to use anonymous tax data for  
25 specified research projects. The FTB strips all

1 identified information before securely sharing that data  
2 with the Policy Lab so that any individuals or companies  
3 cannot be identified. Furthermore, the California  
4 Policy Lab can only use the data for the research  
5 purposes specifically enumerated upon and agreed upon in  
6 the data use agreement.

7 All FTB/California policy project labs go --  
8 undergo a review by institutional review boards at the  
9 state level. The state review board requires review and  
10 approval before individual level data held by a state  
11 agency or a department can be used for research  
12 purposes. All projects involve data analysts --  
13 analytics conducted by the California Policy Lab have  
14 undergone this review and have all been approved.

15 And as you can tell, all efforts taken by the FTB  
16 and by the California Policy Lab are to ensure that the  
17 confidentiality and integrity of the taxpayers' data is  
18 maintained.

19 We look forward to our continued partnership with  
20 the California Policy Lab and the numerous and valuable  
21 data and information we continue discovering through  
22 that partnership.

23 Now, in addition to our partnership with the  
24 Policy Lab, the FTB continued to look to additional  
25 areas to provide additional education and outreach about

1 the gig economy and to help explore opportunities to  
2 make tax compliance easier for California gig workers.  
3 Our Taxpayer Rights Advocate Office, Education and  
4 Outreach Program, will begin to include specific gig  
5 information as part of their forms of ownership  
6 presentations that are presented at the state and small  
7 business events.

8 In fact, last year, our Advocate's Office  
9 participated in 57 small business events and have  
10 already participated in 43 events this year across the  
11 state. In addition to providing these informational  
12 presentations, they are also available to answer  
13 questions, provide informational material, and share  
14 what resources are available through our FTB's website  
15 about the gig economy and the resources for those  
16 workers.

17 We are also currently in the process of  
18 identifying what FTB web content is relevant to gig  
19 workers and their community, so that we can consolidate  
20 all that information into our current gig economy web  
21 page. Similar to the IRS Sharing Economy Tax Center web  
22 page, our FTB's gig web page will allow a gig worker to  
23 go to the web page and find information and links to  
24 information to help them understand what are their  
25 filing requirements, including FAQs and other helpful

1 tips and tricks. In short, this will serve as a  
2 one-stop informational portal for gig workers.

3         Once the new materials are publicly available on  
4 our website, we will reach out to the different platform  
5 providers to share the link to our newly repackaged gig  
6 website and share the information so they may be able to  
7 disseminate that to their workers. They'll also  
8 continue to use the various social media outlets to  
9 inform the public of the new gig website and the tools,  
10 tricks, and tips it will provide to all Californians.

11         Furthermore, we continue to look at the current  
12 FTB publications that have relevant information for gig  
13 workers and ways that we can enhance those publications  
14 to provide additional information. We will continue to  
15 evaluate and update our existing publications to make  
16 sure that they include easy-to-find references and  
17 information related to gig issues and topics, or whether  
18 we need to tailor new publications specifically for  
19 workers in the gig economy.

20         In fact, two of the publications we have already  
21 begun to evaluate are the Franchise Tax Board's Guide to  
22 Common Forms of Ownership and the business expense  
23 publications. We are making sure that we're  
24 incorporating the information that have been identified  
25 by our stakeholders as well as the gig workers, as far

1 as the information that they need to have to make their  
2 obligations easier.

3 As we work towards our goal of updating the  
4 relevant publications, given that there are many  
5 different types of businesses in the gig economy, we are  
6 focusing and concentrating our effort on the areas and  
7 issues that are most common to the most amount of  
8 taxpayers. This way, we can make sure that we are able  
9 to provide the most sought-out information to the widest  
10 of audiences.

11 The FTB also is continuing to strive to partner  
12 with key stakeholders in the gig economy, including  
13 industry platforms, labor, and our sister state  
14 agencies. During our meeting, we previously expressed  
15 our desire to work with stakeholders on the platform  
16 side as -- the platform side as well as labor. Since  
17 your October 1st meeting, we have continued to work with  
18 industry professionals to understand what information  
19 would be helpful for the platform to be able to provide  
20 to their service providers. Some of the information  
21 we're currently working on would allow service providers  
22 to know what their tax obligations would be, based on  
23 their classification, and provide handy tools, trips --  
24 tips and guidance to take the complexity out of those  
25 tax filing obligations.

1           In addition, we continue our willingness and our  
2 openness to work with industry professionals, platform,  
3 and labor industry to make sure that we can provide a  
4 taxpayer-centric service and ease the burden of tax  
5 compliance.

6           We have also continued to work with our sister  
7 state agencies to help increase awareness of income tax  
8 filings. More specifically, with relation to the gig  
9 economy, the FTB has partnered with Employment  
10 Development Department, or EDD, to make sure workers and  
11 hiring entities have all the information they need when  
12 it comes to their tax filing requirements. We are going  
13 to continue to liaison with EDD to work to provide  
14 taxpayers with the tools they need early and provide the  
15 information they need at the time of their tax filings.

16           The FTB also is looking at sister states to see  
17 what type of issues they may be experiencing when facing  
18 similar challenges with worker classifications. For  
19 example, this year, in the New York State Assembly,  
20 there was a bill proposed to create a new worker  
21 classification known as a "dependent worker." This is  
22 for worker who provides professional services through a  
23 private sector third party, typically what you would see  
24 in a gig worker environment. This bill provides some  
25 limited benefits that are -- that are normally received

1 by traditional employees. We are continuing to monitor  
2 that legislation as it is currently in committee in the  
3 New York State Assembly.

4 Also, in New Jersey, similar to California, a  
5 worker is considered an employee once they meet a test  
6 similar to California's ABC test. In 2018, the governor  
7 of New Jersey established a Misclassification Task Force  
8 to explore misclassification issues in the gig economy  
9 and to propose solutions to stop the misclassifications.  
10 Also throughout 2019, New Jersey has seen multiple bills  
11 introduced in its Assembly to help clarify workers'  
12 classification, explore alternative worker  
13 classifications, and provide assistance to anyone in the  
14 gig economy.

15 Other states, such as Massachusetts, Illinois,  
16 and Vermont have passed legislation to create the  
17 state-only filing requirement for the 1099-K, which  
18 would include lower thresholds than would be on par with  
19 the thresh -- filing thresholds for 1099 Miscellaneous  
20 with your payments of \$600 or more.

21 As other states continue to work on the gig  
22 economy, we will continue to monitor those states and  
23 their activities with regard to the gig economy to see  
24 where we may leverage any opportunities and provide  
25 additional information to our California gig workers.

1           We greatly appreciate this opportunity to update  
2 the Board on our work with the gig economy and  
3 appreciate the service that you provided towards the  
4 FTB's goal of taxpayer-centric services.

5           I'm happy to answer any questions you may have.

6           CHAIRPERSON YEE: Thank you, Mr. Hofeling.

7           Questions or comments, Members?

8           Member Cohen.

9           MEMBER COHEN: Yes. Thank you.

10          You know, first, I just want to say, good  
11 afternoon, ladies and gentlemen. Good afternoon.

12          I want to just thank the staff for the work in  
13 developing an absolutely extensive presentation of the  
14 gig economy. It was fantastic and probably one of the  
15 highlights of the hearings and the things of the work  
16 that we have done, for me, this year. So my compliments  
17 on the -- on the October 1st board meeting.

18          And as I said in the last meeting, the gig  
19 economy is a -- complex; it's an emerging -- a complex  
20 and emerging issue, which has significant public policy  
21 implications, both for income as well as tax collection,  
22 as well as protecting the gig economy workers.

23          And I want to compliment you, Betty Yee, for your  
24 focus on the attention of the -- focusing this board  
25 to -- and our attention on the gig economy. It's kind



1 of a little bit of a hot topic, and you got us thinking  
2 about it in a different way.

3 Now, we know, earlier this year, AB 5 was at the  
4 forefront of many people's minds and was very popular in  
5 the news, and it was really refreshing to bring that  
6 conversation here, to look at it from a -- from a tax  
7 perspective. And I learned a lot from -- from those  
8 that are actually the practitioners; those who are  
9 actually actively working in the gig economy,  
10 understanding a little bit more where their challenges  
11 are, so that we, as policymakers, can help -- help them.

12 And as AB 5 begins to be implemented, I trust  
13 that the Franchise Tax Board will continue to monitor  
14 events and keep the board fully informed. And, again, I  
15 just want to, again, thank the FTB staff for their  
16 presentation and -- as well as the recap today.

17 Very good.

18 MR. HOFELING: Thank you.

19 CHAIRPERSON YEE: Thank you, Member Cohen. And  
20 let me add my thanks to the staff as well.

21 Clearly, I think the work to be done -- that  
22 continues to need to be done will require some  
23 partnerships, and very grateful for the one that we have  
24 with the California Policy Lab, and so I look forward to  
25 more information forthcoming.

1 I wanted to just ask a question with respect to  
2 AB 5 implementation, since Member Cohen raised it. And  
3 that is, on the, kind of, roles and responsibilities,  
4 and if you don't have that clearly now, we can talk  
5 about it at another time. But in terms of a  
6 determination about whether the tests are met, as laid  
7 out in AB 5.

8 Can you just kind of talk about, I guess, the  
9 decision map or the implementation map in terms of our  
10 role in that and where that begins and how we --

11 MR. HOFELING: You bet.

12 CHAIRPERSON YEE: Yeah.

13 MR. HOFELING: So normally what happens now, as  
14 you know, the presumption is, a individual or a worker  
15 is an employee unless the test is met. At that point,  
16 we look -- since it is a test under the Labor Code and  
17 Employment Insurance Code, we look to the determination  
18 by our sister state agencies that make that  
19 determination. And once that determination is made, we  
20 will follow that for purposes of administering the  
21 California income tax.

22 CHAIRPERSON YEE: Okay. Other comments or  
23 questions?

24 Great. Thank you very much for the overview,  
25 again, and we look forward to further reports as we

1 begin to tackle some of the data gaps that you have  
2 identified.

3 Thank you, Mr. Hofeling.

4 Okay. Members, we are going to move on to Item  
5 Number 3, and this is -- relates to legislative matters,  
6 and we have Mr. Willie Armstrong to present the 2020  
7 legislative proposals. We can either consider these  
8 action items separately or in a single motion. But why  
9 don't we hear about them all first.

10 MR. ARMSTRONG: Good afternoon --

11 CHAIRPERSON YEE: Good afternoon.

12 MR. ARMSTRONG: -- Members. My name is Willie  
13 Armstrong, as you mentioned. I'm the department's  
14 legislative director. And I have four legislative  
15 proposals for your consideration:

16 I will begin with Legislative Proposal A, which  
17 seeks to allow electronic delivery of earnings  
18 withholding orders for taxes, earnings withholding  
19 orders, and continuous orders to withhold, and herein --  
20 hereinafter, I will just refer to them as "notices."

21 So just by way of background, this is a proposal  
22 that is similar to a previously Board-approved  
23 proposal -- that's LP 96-16 -- which resulted in the  
24 enactment of RTC Section 19264. It allowed FTB to  
25 establish a pilot program to issue automated earnings

1 withholding orders for taxes to employers  
2 electronically. However, due to insufficient technical  
3 capabilities, the pilot program failed to launch.

4         Currently, as it stands today, current law  
5 restricts the methods of serving and responding to these  
6 issues by FTB to First-Class Mail and in-person service.  
7 This precludes the FTB from utilizing electronic service  
8 methods that could reduce the time and cost for  
9 employers and the FTB to process paper documents.

10         So once again, this is a proposal that seeks to  
11 modify various RTC sections to permissibly allow the FTB  
12 to serve these notices.

13         The next legislative proposal is Legislative  
14 Proposal B. This seeks to modify the six-year statute  
15 of limitations for understatement of gross income in  
16 excess of 25 percent of gross income.

17         Members, this is a conformity proposal for your  
18 consideration.

19         And so, in general, federal and California tax  
20 law applies a six-year statute of limitations for the  
21 substantial omission of gross income. However, Internal  
22 Revenue Code section 6501 was amended to provide a  
23 six-year statute of limitations for omission from gross  
24 income resulting from the overstatement of unrecovered  
25 costs or bases.

1           And so under current California law, the six-year  
2 statute of limitations is inapplicable when there's an  
3 omission of gross income as a result of the  
4 overstatement of unrecovered costs or bases. So, once  
5 again, this proposal would realign California law with  
6 federal law.

7           The third proposal is Legislative Proposal C, and  
8 it's related to the disregarded limited partnership  
9 annual tax and filing requirement. As you may recall,  
10 in the 1990s, California law conformed to the federal  
11 check-the-box entity classification regulations, and,  
12 therefore, generally disregards, for California income  
13 and Franchise Tax purposes, entities that are  
14 disregarded for federal purposes.

15           As a result, California law enacted specific  
16 exceptions to the disregarded entities' ruling related  
17 to disregarded limited liability companies, such as  
18 requiring disregarded LLCs to file a return and pay the  
19 annual tax and LLC fee. However, there were no  
20 exceptions enacted for disregarded LPs, because  
21 disregarded LPs were not a recognized entity by the IRS.

22           In later years, the IRS issued Revenue Rule  
23 2004-77, acknowledging the existence of disregarded LPs,  
24 but California did not amend the RTC section 23038 to  
25 reflect the new type of entity.

1           And so current state law lacks a provision  
2 expressly requiring disregarded LPs to annually file a  
3 return and pay the annual tax. So this proposal seeks  
4 to remedy that disparate treatment by amending the RTC  
5 to expressly require disregarded LPs to pay the annual  
6 tax and file a return under the applicable statutes.

7           And so, Members, the final proposal is  
8 Legislative Proposal D. And this seeks to modify the  
9 dependent exemption credit identification number  
10 requirement by allowing the FTB to accept alternate  
11 documentation from taxpayers ineligible from obtaining a  
12 federal ITIN for the claimed dependent.

13           As you know, in tax year 2015, California  
14 required that the dependent's taxpayer identification  
15 number, either a social security or a federal ITIN, must  
16 be provided on a California tax return, or the dependent  
17 exemption credit would be disallowed. With the recent  
18 federal changes, taxpayers who are unable to obtain  
19 federal ITINs for nonresident alien dependents will fail  
20 to meet the identification requirement for claiming the  
21 California dependent exemption credit.

22           This will result in the denial of a dependent  
23 exemption credit for otherwise qualifying dependents.  
24 This proposal would allow an additional option of  
25 providing relevant documentation, as prescribed by FTB,

1 for an affected taxpayer claiming the dependent  
2 exemption credit when a nonresident alien dependent is  
3 not eligible to receive a federal ITIN.

4 And so, Members, these are the four proposals.

5 Do you have any questions or conditions?

6 CHAIRPERSON YEE: Thank you, Mr. Armstrong.

7 Questions or comments, Members?

8 MEMBER COHEN: I have a couple questions --

9 CHAIRPERSON YEE: Please.

10 MEMBER COHEN: -- for proposal A.

11 CHAIRPERSON YEE: Okay. Why don't we do them in  
12 order.

13 MEMBER COHEN: Okay.

14 CHAIRPERSON YEE: Okay -- on Legislative Proposal  
15 A. Member Cohen.

16 MEMBER COHEN: Okay. Thank you.

17 Okay. So -- sorry. Bear with me here. I lost  
18 my place.

19 Okay. So just a handful of questions for you.  
20 How are you doing?

21 First, what's -- what is the current practice of  
22 identifying employers of individuals who are subject to  
23 wage garnishment? What's the practice that you use to  
24 identify them?

25 MR. ARMSTRONG: So, usually, once -- once there's

1 a tax liability that's identified, normally notices will  
2 go out to that particular taxpayer. That process could  
3 last anywhere from six months to a year, and then, after  
4 that, that's when FTB would begin to reach out to the  
5 employer.

6 MEMBER COHEN: So since many employees have --  
7 could have multiple jobs and employment venues -- or  
8 even change their jobs frequently, how does the FTB know  
9 or how does the FTB ensure that the wage garnishment  
10 notices are delivered electronically to the correct  
11 employer?

12 And this is kind of hindsight of the gig economy,  
13 right? How do we -- how do you identify the correct  
14 employer to send these notifications to?

15 MR. HOFELING: So what we will do is, at that  
16 point, we will take every effort to make sure we do  
17 identify the right employer and to confirm that  
18 employment before we send out any notices.

19 As you know, right now we're required to do it  
20 via First-Class Mail, and so by allowing us to do it  
21 electronically, we feel we'll be able to actually make  
22 more accurate identification in these services, that  
23 will be able to be electronically rather than sent to an  
24 address via mail.

25 MEMBER COHEN: And what leads you to believe that



1 it will become -- it will be more accurate? That acc --  
2 you increase your accuracy rate by delivering it  
3 electronically, as opposed to post mail?

4 MR. HOFELING: Just as far as the opportunity to  
5 be delivered immediately and not -- and that way, based  
6 on the information we currently have.

7 MEMBER COHEN: Um-hmm. Um-hmm.

8 So would wage garnishment be sent to all  
9 employers, regardless of the size? Or would they be  
10 limited to companies which receive significant numbers  
11 of wage garnishment?

12 MR. ARMSTRONG: So it's my understanding that  
13 under this proposal, employers would have the option to  
14 opt in, given their technical capabilities.

15 MEMBER COHEN: So it could be a large employer or  
16 a small employer, but the -- the decision is the  
17 employer's decision.

18 MR. ARMSTRONG: Yes.

19 MEMBER COHEN: Okay. Would employers be  
20 contacted first to see if they wanted to receive wage  
21 garnishment notices electronically? Or is this  
22 something -- you know, sometimes you have a system where  
23 you can opt in or you have to opt out. Just want a  
24 clarification on what the proposal is.

25 MR. ARMSTRONG: Just so I understand the

1 question, you are saying, would the employee --

2 MEMBER COHEN: Employer.

3 MR. ARMSTRONG: The employer.

4 MEMBER COHEN: Yes.

5 MR. ARMSTRONG: I'm sorry. Could you --

6 MEMBER COHEN: So would the -- would the employer  
7 be contacted first to see if they wanted to receive the  
8 wage garnishment notices electronically?

9 MR. ARMSTRONG: Yes.

10 MEMBER COHEN: Okay.

11 MR. ARMSTRONG: And the -- the other two options  
12 still apply: They can still receive First-Class Mail --

13 MEMBER COHEN: I see.

14 MR. ARMSTRONG: -- or in-person service.

15 MEMBER COHEN: So -- okay. That clears things up  
16 for me. So it's not mutually exclusive.

17 MR. ARMSTRONG: Right.

18 MEMBER COHEN: Could I select both? Could I  
19 select post and electronic as well, if I was an  
20 employer?

21 MR. ARMSTRONG: That's a good question. I can --  
22 I can get back to you on that one.

23 MEMBER COHEN: Okay.

24 And then my final question is, will there be a  
25 requirement that employers acknowledge receipt of the

1 electronically transmitted wage garnishment notice?

2           Because, you know, things get, all the time,  
3 jammed up in a spam box. So how do we -- I mean, you  
4 are sending a notification, but if it keeps going into a  
5 spam box, we need some kind of a assurance that it's  
6 being received.

7           Do we have that?

8           MR. HOFELING: That is a great -- at some point,  
9 we will definitely consider that as we go forward.

10           The current LP would just allow us to serve that  
11 electronically. So if that is -- and we will definitely  
12 work with procedures and policy when we develop that.  
13 But that would be something we would definitely  
14 consider, is creating some type of acknowledgement.

15           MEMBER COHEN: Have you taken it under  
16 consideration? I mean, this is a proposal that you are  
17 bringing to us and we are kind of evaluating it. So I'm  
18 a little surprised to hear that you are going to take it  
19 under consideration.

20           MR. HOFELING: As far as all the policies and  
21 procedures?

22           MEMBER COHEN: Well, in terms of the requirement  
23 that employers acknowledge a receipt. Like, what is --  
24 what is the policy in place? I send you an electronic  
25 notification. Does the employer confirm receipt? Is

1 it -- I don't know. Is there a return receipt  
2 automatically given? I don't know.

3 CHIEF COUNSEL BRUNETT: This would be a new  
4 procedure, so, currently, we don't have it. So I think  
5 what we are trying to say is that it's a very good  
6 point, when we develop the policies and procedures, it  
7 doesn't need to be in the law. We develop the policy  
8 and procedure. That's something we want to build into  
9 how we program that.

10 MEMBER COHEN: Fantastic. Thank you. I hope you  
11 take some of these questions. I have more if you want  
12 more. I have a whole nother page more. No. I will  
13 spare everyone. But if you want my notes, I'm happy to  
14 give them to you.

15 Thank you very much.

16 CHAIRPERSON YEE: Thank you, Member Cohen, for  
17 your questions.

18 Any other questions or comments?

19 I have one. In the legislative summary, for  
20 Proposal A, there was a policy consideration about  
21 whether this might be the time to expand the proposal,  
22 and I just want to get your thoughts on the feasibility  
23 of that, at this point in time, or how -- or a better  
24 time that you envision that being --

25 MR. ARMSTRONG: Absolutely.

1 CHAIRPERSON YEE: -- a little more appropriate.  
2 Yeah.

3 MR. ARMSTRONG: That's a good question.

4 So right -- so we have had discussions with our  
5 six sister agencies. However, right now, we're moving  
6 forward with the FTB proposal, should you all approve  
7 it. And as we're shopping for authors for this  
8 proposal, there may be an opportunity for the sister  
9 agencies to join in at that time.

10 CHAIRPERSON YEE: Okay. So -- so it would be  
11 feasible if there were an interest to do that now?

12 MR. ARMSTRONG: Yes.

13 CHAIRPERSON YEE: Okay. Good. Good. All right.  
14 Excellent. All right.

15 Let's -- Members, do -- Member Cohen, please.

16 MEMBER COHEN: One more. One last one, just very  
17 quickly.

18 Are there other states providing these  
19 notifications electronically?

20 MR. ARMSTRONG: So there's -- there's currently a  
21 pilot program that's being developed in Wisconsin. It's  
22 my understanding that there's roughly 23 or 24 other  
23 states that are interested in joining in that program.

24 MEMBER COHEN: Okay. Thank you.

25 CHAIRPERSON YEE: All right. Thank you.

1           Members, what's the desire? Should we hear all  
2 of these -- have questions after all of them and take  
3 them up together?

4           MEMBER COHEN: I thought we were going --

5           CHAIRPERSON YEE: Well, we will go by -- one at a  
6 time. Well, let me then see if -- let me entertain a  
7 motion, then, on Legislative Proposal A.

8           Is there a motion?

9           MEMBER COHEN: I will take make a motion to  
10 approve Legislative Proposal A.

11          CHAIRPERSON YEE: Okay. We have a motion by  
12 Member Cohen to approve Legislative Proposal A.

13          I will second that motion.

14          MEMBER COHEN: Great.

15          CHAIRPERSON YEE: And Gayle, you are not voting  
16 on these or --

17          MEMBER MILLER: No. I am abstaining on all of  
18 them.

19          CHAIRPERSON YEE: Great.

20          With Member Miller not voting, that motion  
21 carries.

22          Thank you.

23          Okay. Let's move on to Legislative Proposal B.

24          Any questions or comments on this proposal?

25          MEMBER COHEN: I don't have any on B.

1 CHAIRPERSON YEE: I don't either.

2 Okay. Seeing none, we'll move -- is there a  
3 motion to approve?

4 MEMBER COHEN: Make a motion to approve  
5 Legislative Proposal B.

6 CHAIRPERSON YEE: Okay. I will second that  
7 motion.

8 Again, with Member Miller not voting, that  
9 proposal is approved.

10 Legislative Proposal C.

11 MEMBER COHEN: Yes. I have a question.

12 CHAIRPERSON YEE: Please.

13 MEMBER COHEN: So how would the proposal to  
14 require disregarded limited partnerships to file and pay  
15 a minimum of \$800 tax impact the auditing -- the  
16 auditing entities, which includes -- including  
17 corporations, including LLCs, partnerships, and  
18 individuals? How would -- how would the proposal to  
19 require these limited partnerships file to pay the  
20 minimum of \$800 tax impact?

21 MR. HOFELING: So any -- currently, any  
22 disregarded limited partnerships under this -- the  
23 legislative proposal would have their own filing  
24 obligation.

25 MEMBER COHEN: Okay.

1 MR. HOFELING: And so they would have to file a  
2 California -- pardon me, I believe it's 565 is the  
3 partnership form -- to report the -- to report their  
4 \$800 tax obligation.

5 MEMBER COHEN: I'm curious. Could this -- could  
6 this proposal result in a -- in -- in the duplicate  
7 filing and duplicate tax payments?

8 MR. HOFELING: It shouldn't, based on -- right  
9 now, what our current position is that a discredited LP  
10 does not have a filing obligation. And so with this --  
11 if this is enacted, then it would create a one-filing  
12 obligation. It should not result in duplicate.

13 To the extent it has, we would definitely work  
14 with that taxpayer to reverse the duplication.

15 MEMBER COHEN: Great. Thank you.

16 I have no other questions.

17 CHAIRPERSON YEE: Okay. Is there a motion?

18 MEMBER COHEN: Sure. I will make a motion to  
19 approve Legislative Proposal C.

20 CHAIRPERSON YEE: Great. Thank you, Member  
21 Cohen.

22 I will second that motion.

23 Without objection, noting Member Miller not  
24 voting, such will be the order.

25 Okay. Legislative Proposal D.



1 MEMBER COHEN: I have a question.

2 CHAIRPERSON YEE: Yes, Member Cohen, please. No,  
3 I love it.

4 MEMBER COHEN: I have a question.

5 Okay. So I like this particular proposal. I  
6 support this proposal as a simple fairness measure. And  
7 I think no family should be denied receiving the benefit  
8 of an exemption credit simply because their otherwise  
9 qualified dependent can't obtain an individual tax  
10 identification number. So I definitely want to go on  
11 the record and say that.

12 When enacted, I'm sure that the Franchise Tax  
13 Board will make sure that this is publicized and so that  
14 everyone in communities, in communities that speak  
15 English as a second language, understand that they do  
16 not have a barrier in qualifying for this exemption  
17 credit.

18 So I guess it's not a question. It's more of a  
19 comment.

20 Thank you.

21 CHAIRPERSON YEE: Great comment. I share in  
22 that.

23 And I know, this is probably something the staff  
24 is already thinking ahead about.

25 MEMBER COHEN: Yeah.

1 CHAIRPERSON YEE: So thank you for the -- the  
2 comment.

3 Is there a motion on Legislative Proposal D?

4 MEMBER COHEN: I will make a motion to accept  
5 Legislative Proposal D.

6 CHAIRPERSON YEE: All right. Motion by Member  
7 Cohen. Seconded by -- I will second that motion.

8 Without objection, noting that Member Miller is  
9 not voting, that motion carries.

10 Thank you very much, Mr. Armstrong.

11 All right. Our next item is Item Number 4, which  
12 relates to regulation matters. There are actually two  
13 action items, Members, on this. The first is the annual  
14 Rulemaking Calendar, and let me ask Red Gobuty to come  
15 forward and present that.

16 MR. GOBUTY: Thank you very much.

17 My name is Red Gobuty with the Legal Division's  
18 Technical Resources Bureau. The 2020 Rulemaking  
19 Calendar in your materials shows the regulation projects  
20 FTB staff plans to work on during the 2020 calendar  
21 year.

22 As required by Government Code 11017.6, on a  
23 yearly basis, FTB delivers a Board-approved Rulemaking  
24 Calendar to the Office of Administrative Law, providing  
25 required information on the regulatory items FTB plans

1 to transmit for review and approval as part of the  
2 rulemaking process during the year.

3 As in the past, this Board's approval of the  
4 calendar -- and any new items identified on it for which  
5 staff has not previously received Board approval to  
6 begin the informal regulatory process -- serves as an  
7 explicit approval by the Board to allow staff to begin  
8 the informal regulatory process and hold interested  
9 parties meetings for all calendared items.

10 This year, there are four new items on the  
11 calendar: These items are identified on the first page  
12 of the materials. There are two regulatory projects  
13 related to the new minimum essential coverage individual  
14 mandate; one item related to market-based rules for  
15 personal income tax sourcing and withholding; and one  
16 project related to architectural and engineering  
17 services.

18 And at this time, I would now ask for the Board's  
19 approval of the 2020 Rulemaking Calendar.

20 CHAIRPERSON YEE: Thank you very much,  
21 Mr. Gobuty.

22 We do have a speaker on this item. Let me call  
23 the speaker forward. Meghan Loper, please come forward.  
24 You will have three minutes to address the board.

25 MS. LOPER: Good afternoon, Members.

1           For the record, my name is Meghan Loper from  
2 Capitol Strategies Group, and I'm here on behalf of  
3 Bechtel, an S Corporation.

4           We appreciate the inclusion of the 2020  
5 Rulemaking Calendar. And in Schedule B, it includes the  
6 proposed changes to the California Code of Regulations,  
7 Title 18, section 18001-1 regarding the other state tax  
8 credit.

9           The Rulemaking Calendar does state that staff  
10 anticipates a second interested parties meeting for this  
11 item in 2020 and that then the proposed regulatory  
12 change would be submitted to the Office of  
13 Administrative Law in February of 2021.

14           We respectfully request that that second  
15 interested parties meeting does occur in the first  
16 quarter of 2020 so that they will be able to ensure  
17 meeting the February 2021 deadline.

18           We would also like to bring to the Board's  
19 attention that we did submit a comment letter during the  
20 interested parties meeting that was held on August 7th,  
21 and we look forward to a response to that comment  
22 letter.

23           Thank you.

24           CHAIRPERSON YEE: Thank you very much, Ms. Loper.  
25           Okay. I think, with that, let me entertain a

1 motion on adopting the calendar.

2 MEMBER MILLER: Sure. I make a motion.

3 MEMBER COHEN: Second.

4 CHAIRPERSON YEE: Okay. We have a motion by  
5 Member Miller, second by Member Cohen, to adopt the 2020  
6 Rulemaking Calendar.

7 Without objection, such will be the order.

8 Thank you very much, Mr. Gobuty.

9 MR. GOBUTY: Thank you.

10 CHAIRPERSON YEE: We now have Joel Smith, who  
11 will speak on the second action item, and that relates  
12 to the notice and demand penalty regulation.

13 Good afternoon.

14 MR. SMITH: Good afternoon, Madam Chair and Board  
15 Members. My name is Joel Smith, and I'm an attorney  
16 with the Franchise Tax Board. We are seeking the  
17 Board's approval to proceed with the formal regulatory  
18 process to amend regulation section 19133. Pursuant to  
19 Revenue and Taxation Code section 19133, regulation  
20 section 19133 provides the framework for the Franchise  
21 Tax Board to impose the notice and demand penalty, which  
22 is commonly referred to as the demand penalty, on  
23 individual taxpayers who fail to file a tax return after  
24 contact from the Franchise Tax Board.

25 The reason for the proposed amendment is to

1 clarify how the Franchise Tax Board imposes the demand  
2 penalty. Specifically, the proposed amendments resolve  
3 ambiguity in subsections (b) and (d) of the regulation.  
4 This will allow for ease of administration and avoid  
5 confusion regarding the imposition of the penalty. The  
6 proposed amendments do not alter how the Franchise Tax  
7 Board interprets the regulation or imposes the demand  
8 penalty. Staff held one interested parties meeting to  
9 solicit comments from the public regarding the proposed  
10 amendments. Staff did not receive any comments or  
11 suggested changes regarding the proposed amendments from  
12 the public.

13           Following the interested parties meeting, staff  
14 did make two nonsubstantive changes to improve clarity  
15 with respect to the proposed amendments. The first  
16 change inserted the word "immediately" in subsection (b)  
17 before the word "preceding;" and the second change  
18 deleted the word "previous" in subsection (d), example  
19 2, and inserted the phrase, "immediately preceding the  
20 2001 taxable year."

21           These changes, as well as all of the proposed  
22 amendments, are reflected in the documents provided in  
23 your materials.

24           Again, we request the Board's approval to proceed  
25 with the formal regulatory process for regulation

1 section 19133. I am happy to answer any questions you  
2 may have at this time.

3 CHAIRPERSON YEE: Great. Thank you, Mr. Smith.  
4 Questions or comments, Members?

5 (No response)

6 CHAIRPERSON YEE: Okay. Hearing none, is there a  
7 motion?

8 MEMBER MILLER: Move for approval.

9 MEMBER COHEN: I will make a motion to approve.

10 MEMBER MILLER: Second.

11 CHAIRPERSON YEE: Okay. Motion by Member Cohen  
12 to approve and proceed with the regulatory process on  
13 this item; and seconded by Member Miller.

14 Without objection, such will be the order.

15 Thank you very much.

16 MR. SMITH: Thank you.

17 CHAIRPERSON YEE: All right, Members. Next we  
18 have Item Number 5, and this is the Annual Taxpayer Bill  
19 of Rights hearing. This is the time that is set for the  
20 Board's annual Taxpayer Bill of Rights hearing, as  
21 required by section 21006 of the Revenue and Taxation  
22 Code. The purpose of the hearing is to allow taxpayers  
23 and tax practitioners the opportunity to present  
24 directly to the Board any proposals they may have for  
25 changes in existing state income tax law.

1           We have FTB staff who are available to respond to  
2 member questions, which may be raised as a result of the  
3 presentation of the proposals. We have also present  
4 Selvi Stanislaus, our Executive Officer; Jozel Brunett,  
5 our Chief Counsel; Shane Hofeling, our Assistant Chief  
6 Counsel; and Susan Maples, our Taxpayer Rights Advocate.

7           Staff will analyze the fiscal and administrative  
8 consequences of the proposals that come to us. Susan  
9 has some introductory remarks before we get started, and  
10 then I will call on the names of the individuals who  
11 have indicated that they want to make a presentation,  
12 and you can come forward when your name is called and  
13 present your proposals, and we generally allow for three  
14 minutes for each presentation.

15           So Susan, with that, let me turn it over to you  
16 for some introductory comments.

17           MS. MAPLES: Thank you, Madam Chair, and good  
18 afternoon, Board Members. It's hard to believe that  
19 another year has passed so quickly. 2019 was a year,  
20 though, filled with twists and turns, and it was  
21 definitely a year of change as we made adjustments to  
22 handle the federal Tax Cuts and Jobs Act. This year  
23 promises to be no different, as we work on the new  
24 health care mandate and employee versus independent  
25 contractor rules.



1 I would like to thank you, Selvi, and this Board  
2 for your support throughout the year. I would also like  
3 to thank the many tax professionals and external  
4 stakeholders and other partners who have worked  
5 alongside me this year. The successes we had would not  
6 have been possible without this collaboration, and I am  
7 truly grateful for that.

8 As we listen to the speakers signed up for  
9 today's hearing, I would like to say that FTB will  
10 review their comments and concerns presented and respond  
11 in writing by January 31st, of 2020.

12 Thank you.

13 CHAIRPERSON YEE: Thank you very much, Susan.

14 Okay. Let me call the speakers up in the order  
15 that we receive requests.

16 First, let me have Barbara Donovan, representing  
17 the California Society of Enrolled Agents come forward.

18 MS. DONOVAN: Hi. Thank you. My name is Barbara  
19 Donovan, and I represent the California Society of  
20 Enrolled Agents, and I'm from the Sacramento Chapter.  
21 We want to thank FTB for all your support that you  
22 helped the community and the tax advisers.

23 We have a couple issues that we're a little  
24 concerned with, with the federal Tax and Jobs Act. One  
25 of the things is that California CA and the importance

1 of conforming with the itemized deductions in the  
2 future. The California CA form is -- for itemized  
3 deductions continues to be long and, as a result,  
4 doesn't conform with federal law.

5           Although the form is adequate, the information  
6 required from the California taxpayer to complete is  
7 significant, and the current form should not be  
8 considered for use in the ongoing future. Since  
9 California standard deduction is substantially lower  
10 than the federal, it -- it causes a lot of issues for  
11 the taxpayers doing their taxes. They don't have to  
12 file itemized deductions on the federal side, but on the  
13 state, they do. So it causes a lot more work for the  
14 taxpayers.

15           Our next issue that we're really concerned about  
16 is new health insurance mandate. We're just kind of  
17 hearing about this. With the passage of SB 78, we  
18 understand that California will now have a penalty for  
19 not maintaining health insurance effective 1/1/20. CSEA  
20 understands that there will be a penalty calculated on  
21 the 540, including the taxpayer's disclosure of their  
22 exemptions and their income if they are below the 600  
23 poverty level; I guess they won't be penalized.

24           However, we're unclear as how this is going to  
25 work. How -- we're the one that's going to be working

1 with this. So we want to get some more information:  
2 How this is going to proceed, how the tax providers --  
3 practitioners are going to deal with it.

4 Also, for the taxpayers, a lot of them aren't  
5 even aware that this has come about and we need to get  
6 information out there. The website doesn't have a lot  
7 of information out there, the FTB website, so they are  
8 not really addressing the concern. And when the  
9 taxpayers -- you know, some of them have actually  
10 finally said, oh, you know, the penalty, we can't afford  
11 to have insurance. Now that the federal side is gone,  
12 now California is coming. So we need to get the  
13 information out to the taxpayer and the practitioner  
14 community.

15 So, as always, we want to thank FTB for your  
16 attention to this, and we look toward to a response.  
17 Thank you.

18 CHAIRPERSON YEE: Thank you, Ms. Donovan.

19 Any comments by staff on that? I know we're  
20 focused on that issue.

21 MS. MAPLES: Yeah. I do want to address the  
22 conformity piece. While it is the process of developing  
23 the legislation properly lies with the state  
24 legislature, I do want to thank CSEA and our other  
25 partners for working with us and working alongside us as

1 we saw AB 91 get passed, so brought us into some  
2 conformity with the Tax Cuts and Jobs Act.

3 In the past, FTB has generally had a policy in  
4 favor of conformity, simply because it makes it easier  
5 for taxpayers when they only have one set of rules to  
6 work with.

7 As far as health care, the health care mandate, I  
8 appreciate the comments about communication, and as we  
9 work on our communication plan, we'll definitely take  
10 those into consideration.

11 So thank you.

12 CHAIRPERSON YEE: Thank you very much.

13 Next we have Ms. Christine Grab. Please come  
14 forward.

15 MS. GRAB: My name is Christine Grab. I have 13  
16 requests:

17 One, in the policy of withholding estimated tax  
18 payments made via credit elect until the taxpayer files  
19 a return. This policy violates R&TC 19363, which, in  
20 simple English, says that no matter what date you file  
21 the previous return, the credit elect payment must be  
22 applied on Tax Day, which is usually April 15th.

23 The FTB does not apply these payments in  
24 accordance with the law. Instead, the FTB puts the  
25 credit elect money into suspense, which is a fancy word

1 for the general slush fund. The credit elect money does  
2 not get moved from the slush fund until the taxpayer  
3 files that year's return.

4 The FTB claims this policy is in line with  
5 federal practices, but that is a lie. The IRS does not  
6 withhold payments made via credit elect. Demand notices  
7 are only sent to taxpayers whom the FTB believes have  
8 underpaid their tax liability. The accompanying demand  
9 penalty is a crippling 25 percent of extra additional  
10 taxes beyond what the taxpayer actually owed.

11 By withholding the credit elect payment, it  
12 appears that the account was underfunded and, thus, a  
13 demand penalty is assessed. However, had the credit  
14 elect payment been applied in accordance with the law,  
15 the account would not have been underfunded and the  
16 demand penalties would not have been imposed. This  
17 practice of withholding credit elect, in order to  
18 improperly impose demand penalties, is the federal crime  
19 of racketeering, per the RICO Act.

20 If a taxpayer is single, the FTB will apply the  
21 credit elect to the taxpayer's account after the demand  
22 notice has gone out, but they are still on the hook for  
23 the false penalties. However, married taxpayers are  
24 double-racketeered. The FTB refuses to apply monies to  
25 married people's account until the return is filed.

1           In addition to the false penalties, the FTB  
2 demands overpayments of estimated tax monies that would  
3 not have been due had the original estimated tax  
4 payments been applied in accordance with the law. This  
5 second ploy to collect extra funds from married people  
6 is also the federal crime of racketeering, per the RICO  
7 Act.

8           Two: End the policy of withholding estimated tax  
9 payments from married couples. It is not only credit  
10 elects that are withheld from married couples. All  
11 estimated tax payments made by married couples are  
12 withheld. If a married couple files late, they are  
13 double racketeered, as I just described.

14           The FTB claims its policy is in line with federal  
15 practice, but that is a lie. The IRS does not withhold  
16 estimated tax payments made by married couples. The tax  
17 code that the FTB uses to justify this policy says that  
18 joint estimated tax payments can be apportioned in any  
19 manner that the spouses agree upon. By not giving the  
20 spouses the opportunity to designate how much of the  
21 money is to be applied to each spouse, and instead  
22 withholding the payment altogether, the FTB is violating  
23 federal law.

24           Three: Implement a policy whereby fees may not  
25 be assessed when the fee was imposed as a result of

1 breach of duty. The FTB seems to frequently misapply  
2 estimated tax payments. The net result of these  
3 mistakes is the same as with the withholding scenarios.  
4 If a taxpayer files late, the current year's tax  
5 liability appears to be underfunded, and, thus, a demand  
6 fee is imposed. The fee would not have been imposed had  
7 the FTB not breached their duty by -- by inaccurately  
8 applying the payment. The FTB is currently being  
9 financially rewarded for their breaches and, thus, are  
10 incentivized to make mistakes. We must eliminate the  
11 incentive to err.

12 Four: Disclosure of the requests for the annual  
13 Taxpayer Bill of Rights meetings can be submitted  
14 online. This meeting is a California state right. I am  
15 pleased to see that the FTB has added a blurb about the  
16 meeting on their website in a place where it can  
17 actually be found.

18 However, the verbiage makes it sound as if  
19 personal attendance is required to make a request.  
20 Attending this meeting is impossible for most  
21 Californians, as most of us can't take the day off work  
22 to fly to Sacramento. Not disclosing the right to make  
23 a request via e-mail is discrimination against the  
24 middle and lower classes.

25 Last year, I also stated that the FTB agents were

1 trained to violate California's disclosure laws by  
2 telling people who complain about FTB policies or  
3 procedures that the FTB cannot do anything to change  
4 these practices.

5 In their response, the FTB did not address  
6 retaining -- retraining staff to comply with the law. I  
7 am asking you to address it this year.

8 Five: Create a public, online database of all  
9 the FTB's policies and procedures that is searchable by  
10 keyword. Over the years, FTB agents have repeatedly  
11 given me erroneous information that created problems.  
12 Even the FTB's disclosure department sometimes gave me  
13 incorrect information; that is, when they answered my  
14 request. Several of my disclosure department requests  
15 were not answered because they seeded -- they said I  
16 needed to better identify what I was looking for.

17 Had an online database of policies existed, I  
18 could have simply looked up the information for myself  
19 by typing in assorted keywords until I found what I was  
20 looking for.

21 Six: Clear guidelines of what constitutes an  
22 abatement request and claim for refund request. At last  
23 year's meeting, I made the same question: I explained  
24 that I had been turned down for my tax years 2013 and  
25 2014 abatement requests before I applied.



1           When I asked Ms. Maples how this could possibly  
2 be legal, she told me that I was turned down because I  
3 told Gov Ops that I was going to submit an abatement  
4 request. Ms. Maples said this turndown was considered  
5 reasonable, thanks to the FTB's loose guidelines of what  
6 defines an abatement request. This policy of loose  
7 guidelines is a tool to deny due process for taxpayers.  
8 The law states that documentation must be provided,  
9 along with the request, but the FTB preemptively issues  
10 denials before the taxpayer has had a chance to submit a  
11 formal request along with the documentation.

12           In the FTB's formal response to me, they did not  
13 address this request. Instead, they reference a page on  
14 the FTB's website titled "Claims for Refund," which  
15 contains directions on how to request a refund. I am  
16 asking that you address the unlawful practice of  
17 preemptively issuing denial letters in this year's  
18 response.

19           Seven: Post questions submitted to the annual  
20 Taxpayer Bill of Rights meeting along with the answers.  
21 For the 2017 meeting, I made an online request to end  
22 the policy of withholding estimated tax payments made  
23 via credit elect. In their formal resolution, the FTB  
24 did not respond to my question. Instead, they answered  
25 a completely different question altogether. But I was

1 the only one who knew that because the question had not  
2 been posted.

3           When I asked Ms. Maples why questions weren't  
4 posted, she replied, it was necessary to leave the  
5 questions out because they may contain personal  
6 information. That is ridiculous, as personal  
7 information can be redacted. I am requesting that the  
8 FTB pose -- post the questions so they can no longer  
9 evade accountability.

10           Eight: Timely reapplication of misapplied  
11 payments. I notice, in the FTB's accounting ledgers,  
12 that there is a six-week lag between the date that a  
13 misapplied payment is located and the date the money is  
14 moved to the correct year.

15           I am requesting that these misapplied payments be  
16 corrected immediately.

17           Nine: The FTB should only utilize standard use  
18 English. The FTB utilizes a strange internal vocabulary  
19 that does not match standard use English. Here are  
20 three examples:

21           The word "transfer" to the FTB means, tell the  
22 customer to hang up and call an entirely different phone  
23 number;

24           Two: When someone disputes a notice of proposed  
25 assessment, the dispute is called a "no response";

1 Three: When the FTB ignores written  
2 correspondence they call it, "issuing a turndown."

3 Due to the language barrier created by the  
4 strange vocabulary, taxpayers often do what they believe  
5 they were told, only to find out later that they did the  
6 wrong thing. Besides confusing taxpayers, these odd  
7 vocabulary words also serve to deceive regulators.

8 Ten: Issuing of denial letters. Over the years,  
9 I have submitted many requests to the FTB that they  
10 never responded to. In my OTA appeal, the FTB claimed  
11 that not responding to my request was the same as  
12 issuing a denial letter. This practice is  
13 unprofessional and creates confusion for taxpayers. I  
14 am asking that the FTB establish a policy that all  
15 denials must be issued in writing.

16 Eleven: Move the Taxpayer Advocate to work under  
17 Gov Ops. Having the Taxpayer Advocates employed by the  
18 taxation agencies they are supposed to be protecting  
19 taxpayers from is a conflict of interest. It is not  
20 fair to the advocates to be placed in a position of  
21 divided loyalties. This can be corrected by changing  
22 their employer to Gov Ops.

23 I am requesting that the FTB with work with my  
24 state legislators to create a bill to propose, in 2020,  
25 with the following structural changes:

1           Instead of one advocate for taxation agency,  
2 there should be one advocate per district that works  
3 with all three agencies; the advocates should all work  
4 under Gov Ops; and the Tax Appeals Assistance Program  
5 should stay with the advocates at Gov Ops.

6           Currently, this crucial, free student attorney  
7 program is being administered by the agencies they are  
8 fighting against in court.

9           Twelve: FTB staff should only sign letters they  
10 wrote themselves. In the 2014 formal resolution that I  
11 mentioned, Susan Maples committed two counts of  
12 collusion to cover up racketeering. The advocate  
13 department later claimed she did not write that letter  
14 herself, but she signed it, so she is on the legal hook.

15           Rather than making Ms. Maples a scapegoat, I  
16 think that, in this year's resolution, each person who  
17 helped author it should sign the portion that they  
18 wrote. Going forward, all letters issued by the FTB  
19 should only be signed by the true author.

20           And, finally, stop harassing people online. In  
21 May 2019, a new account by someone named "Dave" appeared  
22 on a popular website called Reddit. He offers advice to  
23 people who post questions about tax issues. Based on  
24 his expertise and all matters FTB, how quick he is to  
25 respond, and how much time he spends online, he appears

1 to be a full-time FTB employee, paid to answer these  
2 queries. Unfortunately, Dave also harasses people who  
3 criticize the FTB.

4 While I think an online marketing person is a  
5 great idea, I am asking that you train your employees to  
6 be polite.

7 Thank you.

8 CHAIRPERSON YEE: Thank you, Ms. Grab, for  
9 bringing all of those issues to our attention.  
10 Appreciate you being here.

11 Next we have Kathryn Zdan with Spidell.

12 MS. ZDAN: Good afternoon, Board and staff. My  
13 name is Kathryn Zdan. I'm the editorial director at  
14 Spidell Publishing. As always, we appreciate the  
15 opportunity to present issues of concern to taxpayers  
16 and tax professionals.

17 The first issue we bring before you today relates  
18 to the FTB's website upgrade. We understand that a lot  
19 of the issues with the new website were due to budget  
20 constraints, and we know that it's expensive to convert  
21 content, both in terms of cost and staff time. But the  
22 design is still very user unfriendly and it causes  
23 confusion.

24 The FTB used the standard state website template,  
25 but compared to the other agencies, there's a lot of

1 wasted space and design elements that interfere with the  
2 normal usage of the website. Our main issues with the  
3 site are, the new HTML display is clunky and hard to  
4 navigate, and we request a link to be added to the PDF  
5 version of the content for those who would like to  
6 access the content that way. The design of the search  
7 results page is such that the list of results is pushed  
8 all the way down to the bottom of the page so it looks  
9 like there are no results. And the search function does  
10 not return good results.

11 To this point, I will just say that some FTB  
12 employees have mentioned to us that they have trouble  
13 finding things on the FTB website.

14 The next issue is the passage of AB 5 and the  
15 adoption of the ABC test. This has caused chaos in the  
16 tax and business communities with questions about who is  
17 an employee and who is not. For income tax purposes,  
18 the big question is, how will a worker who is an  
19 employee for California purposes, but an independent  
20 contractor for federal purposes, reports wage and  
21 independent contractor income. The FTB initially told  
22 us that these workers are employees for California  
23 income tax purposes, but we believe that under standard  
24 personal income tax conformity treatment, they should be  
25 treated as independent contractors.

1           We also believe that if they are treated as  
2 employees for personal income tax withholding, this  
3 should have been included in the amendment to the  
4 applicable Unemployment Insurance Code section, because  
5 all the other programs and code sections the legislature  
6 intended to amend were specifically listed. If personal  
7 income tax withholding wasn't addressed in the bill, we  
8 feel the legislature was aware of this and the  
9 omission -- they were aware of the omission and they  
10 chose not to apply the changes for income tax purposes.  
11 So we're asking for further investigation and  
12 clarification on this issue.

13           The third issue is SB 274, which established the  
14 state level partnership reporting and payment  
15 requirements for adjustments made at the federal level  
16 after an IRS-centralized partnership audit. The bill  
17 also directed the FTB to hold an interested parties  
18 meeting, and we would like to know when the FTB will be  
19 holding this meeting.

20           Our next issue is that we've been hearing  
21 complaints that on power of attorney forms, the FTB  
22 misreads a signature as electronic rather than as a wet  
23 signature. And it seems that if somebody too legibly  
24 prints a signature, it's being interpreted as an  
25 electronic signature; but the opposite is happening too,

1 where the forms are rejected if they have a very  
2 scribbly signature.

3 We believe that FTB should make implementation of  
4 E-signatures a priority. And, in the meantime, we would  
5 like FTB staff to be better trained and more careful  
6 when they are reading signatures.

7 And finally, Covered California has been running  
8 radio, TV, and billboard ads about their open enrollment  
9 and California's new requirement that all residents have  
10 health insurance. But Covered California's marketing  
11 has minimal information about the penalty for not having  
12 health insurance.

13 We would like to thank the FTB for the recent  
14 outreach they have done regarding the penalty,  
15 specifically the informative news release sent on  
16 December 2nd. Also, along with EDD and Covered  
17 California, the FTB has gone to great lengths to notify  
18 the public about the penalty via their website, a new  
19 brochure, and there's a letter campaign. But this can't  
20 compare with advertising.

21 The FTB has done everything they can to publicize  
22 the penalty, but Covered California is the agency with  
23 the funds to do the marketing. We believe Covered  
24 California has been irresponsible in their campaign. We  
25 would like the FTB to push them to be more transparent



1 about the penalty, and we would also like the FTB to  
2 provide the brochure to the public, especially at small  
3 business workshops and other public events.

4 Thank you for your consideration on these issues.

5 CHAIRPERSON YEE: Thank you very much, Ms. Zdan,  
6 for coming forward with the issues. We appreciate it.

7 Any comments, Susan?

8 MS. MAPLES: Yes, I have a few.

9 With regard to the website, I just wanted to say,  
10 although they weren't able to get external stakeholder  
11 feedback prior to the go-live date, since then, we have  
12 conducted a lot of feedback sessions, including at our  
13 Advisory Board at the CSEA and CalCPA liaison meetings,  
14 as well as a lot of external stakeholder events that we  
15 have attended. So we do really appreciate the feedback,  
16 and we have been taking that into consideration.

17 And as we move forward, we're looking forward to  
18 that partnership with our external stakeholders to  
19 improve the website, so thank you for your comments  
20 today.

21 Also, with regards to the interested parties  
22 meeting for the partnership rules, that will be  
23 commencing in 2020, so we're looking forward to that.

24 And then, finally, I just wanted to -- since this  
25 was the second testimony we have heard on the health

1 care mandate and the penalty, I wanted to share a couple  
2 of items that we have been doing with regards to the  
3 communication about the penalty, starting with a FTB  
4 news release that was put out yesterday. And that  
5 focused heavily on the penalty, as well as, Covered  
6 California is planning on sending a letter to families  
7 identified as being in need of the insurance. The  
8 letter was developed with the help of FTB and will  
9 include information about the penalty.

10 A joint FTB Covered California video is also in  
11 the works. It's going to address the penalty and be  
12 shared via social media.

13 We also have, at FTB, on our integrated voice  
14 response system -- that's the messaging that callers  
15 hear as they are waiting for an agent -- there will be  
16 messaging about the health care mandate as well as the  
17 penalty so that callers waiting for an agent will be  
18 able to get information about that.

19 Also, this -- I guess the filing season in  
20 January, as we do our tax tips interviews, we're going  
21 to be sharing information about the mandate as well as  
22 the penalty.

23 And, finally, FTB is also working with EDD to  
24 leverage their relationship with employer -- with the  
25 employer community to try to further spread the word

1 about the mandate and the penalty.

2 So those are just a few of the things we've got  
3 going on, and we are looking forward to doing more.

4 CHAIRPERSON YEE: Thank you very much Susan.

5 Comments from Members?

6 (No response)

7 CHAIRPERSON YEE: Very well.

8 Thank you very much.

9 Any other members of the public who wish to come  
10 forward during the Taxpayer Bill of Rights hearing?

11 (No response)

12 CHAIRPERSON YEE: Okay. Seeing none, we will  
13 conclude that portion of the hearing and move on to Item  
14 Number 6, which is the Executive Officer's Time.

15 Selvi.

16 EXECUTIVE OFFICER STANISLAUS: Thank you. Good  
17 afternoon, Board Members.

18 Here we are at the end of 2019. As we get ready  
19 to close another year and decade, I would like to  
20 celebrate and commemorate FTB's 90th anniversary.

21 Here's a brief recap of our rich history:

22 We started in 1929, when the California  
23 Legislature created the Office of the Franchise Tax  
24 Commission to administer California's new Bank and  
25 Corporation Franchise Tax Act. The honorable Reynold

1 Blight took office as the first Franchise Tax  
2 Commissioner with the staff of 33 employees.

3 California's personal income tax law was enacted  
4 in 1935 as part of a major restructuring of the state's  
5 tax system, resulting from revenue pressures created by  
6 the Great Depression.

7 In the first year of operation, nearly 373,000  
8 returns were filed. Those returns reported a  
9 1.4 billion of income earned during 1935 and resulted in  
10 11.8 million in personal income taxes.

11 So fast forward to the 1950s, with abolishment of  
12 the Office of the Franchise Tax Commissioner, and the  
13 creation of the Franchise Tax Board, with the State  
14 Controller, Director of Department of Finance, and the  
15 Chair of the State Board of Equalization as board  
16 members.

17 The first executive officer was John Campbell,  
18 effective January 1st, 1950.

19 In the 1960s, Martin Huff became the Executive  
20 Officer and launched us into the technology era when we  
21 acquired one of the largest data processors in America.

22 We also saw the assignment of the Senior Citizens  
23 Property Tax Assistance Law that required the department  
24 to function in dual roles: One, as a tax collection  
25 agency; and, two, as a tax assistance agency.

1           In the 1970s, we saw a lot of change: The  
2 minimum tax on high income tax taxpayers, income tax  
3 withholdings, 9.5 million tax returns were filed, and  
4 our office moved from 1025 P Street to Aerojet.

5           In the 1980s, California had its first Tax  
6 Amnesty Program. We moved from Aerojet to our current  
7 location in 1985, and Gerry Goldberg signed on as  
8 Executive Officer.

9           In the 1990s and 2000s, more buildings were  
10 acquired to our central campus. We acquired nontax debt  
11 collection. We started e-file, CalFile, Ready Return,  
12 and the EDR projects.

13           After 25 years of service, Mr. Goldberg, FTB's  
14 third executive officer, retired, and I was hired in  
15 2006 as the fourth Executive Officer.

16           And today, we have more than 5,800 employees and  
17 we process more than 18 million individual tax returns,  
18 for a total of \$48.8 billion in revenue.

19           Since 1929, our mission and workloads continue to  
20 grow along with the state of California. We are proud  
21 to help taxpayers file timely and accurately their tax  
22 returns and pay the correct amount to fund important  
23 services to Californians.

24           And we are also very proud to have reached this  
25 milestone of FTB's 90 years of service. All of these

1 achievements are due to the leadership of our forward  
2 thinking Board and our wonderful FTB staff. I would  
3 like to personally thank each and every one of you here  
4 today and also those of you who are watching online.

5 I invite all of you to enjoy some cookies outside  
6 of the auditorium after the board meeting to celebrate  
7 90 years of service to taxpayers.

8 Thank you.

9 (Applause)

10 CHAIRPERSON YEE: Thank you very much. Really  
11 quite a milestone and a lot of accomplishments along the  
12 way.

13 Members, our next item is Item Number 7. This is  
14 Board Members' Time, and I would like to see if any  
15 members wish to make a comment.

16 Yes, please.

17 MEMBER MILLER: I just -- I also wanted to  
18 celebrate the 90 years of the Franchise Tax Board and  
19 the amazing team that you have that works here. I have  
20 gotten to work with you for 23 years, and the exemplary  
21 service and the professionalism and the intelligence  
22 that your team brings all the time is -- is remarkable.  
23 And I think, only having had four directors in 90 years  
24 really speaks to the -- to the caliber not only of the  
25 directors, but just of the team that you have brought

1 together, and it's really been an honor to work  
2 alongside you and learn from you and your team, and I'm  
3 really, really grateful for the service you have  
4 provided.

5 Thank you very much.

6 EXECUTIVE OFFICER STANISLAUS: Thank you.

7 CHAIRPERSON YEE: Thank you.

8 Any other comments, Members?

9 (No response)

10 CHAIRPERSON YEE: I will just say one, and that  
11 is, I think, over the years, we have even earned the  
12 admiration and the respect of the Internal Revenue  
13 Service, so they have been looking to us as really being  
14 the leaders in the -- in the field and in the  
15 disciplines. So congratulations on all of that.

16 Also, with Board Member Time, these are the  
17 bittersweet moments when we honor a member of the team,  
18 and we're celebrating Franchise Tax Board and 90 years,  
19 but we have a member of the team who has been serving  
20 the people of the State of California for more than 40  
21 years, who is retiring, and that's Julie Moreno, who is  
22 our Bureau Director of Technology Services.

23 (Applause)

24 CHAIRPERSON YEE: We have heard a lot about the  
25 milestone initiatives that were achieved over the 90

1 years, and I think, Julie, you probably had a hand in  
2 being an architect in almost all of them, whether it be  
3 e-file, CalFile, Ready Return, but just -- you have been  
4 a terrific mentor. You are actually very well known by  
5 reputation in this organization.

6 But I understand that you are going to be winding  
7 down and beginning to enjoy other aspects of your life,  
8 and so we will miss seeing your mismatched shoes in the  
9 morning. But really wish you the best as you begin to  
10 travel and really create your next journey in life.

11 But really nothing is adequate to just thank you  
12 for the years of service and, certainly, the years of  
13 contribution to the benefit of the people of State of  
14 California.

15 Congratulations.

16 MS. MORENO: Thank you, Controller and Members.

17 I wanted to make just a few comments:

18 I really thank you for the honor of this  
19 recognition today. I really enjoyed my time at the FTB,  
20 the fine people that work here, and, really, all of the  
21 innovations that -- that we have done together.

22 And as I reflect back over these many years, I  
23 did serve under three of the directors. And I remember,  
24 in my first retirement training class -- this is quite a  
25 long time ago -- thinking I could work here until 2020,



1 but never really believing that could happen, and, yet,  
2 here we are. So I am going to exceed expectations and  
3 retire in 2019, one day before 2020.

4 (Laughter)

5 MS. MORENO: So getting back to a little bit  
6 about FTB, I really feel privileged to have worked here.  
7 I came here for a job and it turned into a career. And  
8 I really appreciate that because -- and I can attest to  
9 the variety of interesting work at the FTB. There's  
10 always something that really draws you in. And as you  
11 talked about today, the gig economy is one of the latest  
12 things that we've been drawn into. And so it did become  
13 a career and -- and it really -- because you devote so  
14 much time here and self, it gave me memories that are  
15 truly memorable and, oh, meaningful and rewarding.

16 So today, I want to thank you all, as the Board,  
17 and as my FTB colleagues, I will miss you, and I know  
18 you will continue to do great things.

19 CHAIRPERSON YEE: Thank you. Thank you.

20 (Applause)

21 CHAIRPERSON YEE: Once again, I can assure you  
22 that your work that you have so graciously shared in  
23 your four decades studying the future of work will be  
24 still very, very topical as we move forward. So thank  
25 you for all of your time spent on that.

1 I do have a resolution that had been signed by  
2 each of the board members, and we would like to come up  
3 and present that to you.

4 (Applause)

5 CHAIRPERSON YEE: All right. Thank you.

6 Any other business to come before the Board?

7 (No response)

8 CHAIRPERSON YEE: Hearing and seeing none, this  
9 meeting is adjourned.

10 Thank you very much.

11 (Proceedings concluded at 2:49 p.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings were reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December 2019.

/s/ Kathryn S. Swank  
KATHRYN S. SWANK, CSR  
Certified Shorthand Reporter  
License No. 13061