



STATE OF CALIFORNIA
Taxpayers' Rights Advocate Office MS F385
FRANCHISE TAX BOARD
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02.01.2022

Rex Halverson & Associates, LLC
3741 Douglas Blvd., Suite 380
Roseville, CA 95661-4259

Dear Mr. Halverson,

Thank you for attending and presenting your issues at the December 2021 Taxpayers' Bill of Rights Hearing. As the Taxpayer Advocate, your concerns are important to me.

The following responses were provided by the appropriate program areas within the Department:

Issue 1. PTE

While Franchise Tax Board (FTB) does not generally advance tax policy, we do work with legislative members and inform them of key compliance issues on an ongoing basis. We will monitor any developments on this issue in current and future legislative sessions, including the recent proposal by the Governor and provide appropriate assistance and communication as items proceed through the legislative process. Additionally, we will take into consideration whether this is an item to advance in an FTB legislative proposal.

Issue 2 - Income Sourcing Regulation 25136-2 (Sales Other Than Sales of Tangible Personal Property in this State:

California Revenue and Taxation Code ("RTC") section 25136(a)(1) and California Code of Regulations, title 18, section 25136-2 provide the rules for assigning revenue from the performance of services. Generally, receipts from services are assigned to the location where the customer receives the benefit of the service performed. In the travel agent fact pattern presented, whether the revenue is properly assigned to California depends on who the customer is, what service is provided, and where the customer received the benefit of such service. The actual determination would be dependent upon the specific facts and circumstances of the transaction.

Issue 3 - Income Tax Nexus Questionnaires

RTC section 23101 contains two tests to establish whether an entity is "doing business" in California. Under RTC section 23101 subdivision (a), a taxpayer is "doing business" in California if it "actively engages in any transaction for the purpose of financial or pecuniary gain or profit." For taxable years beginning on or after January 1, 2011, a taxpayer is also "doing business" under subdivision (b) if its property, payroll, and sales factors reach a specified threshold. These two tests, under subdivisions (a) and (b), are independently analyzed and a taxpayer will be found to be "doing business" in California if it satisfies *either* test.

In *Appeal of GEF Operating, Inc.*, (May 9, 2019) 2020-OTA-057P, the OTA has found "no textual basis or legislative history to suggest that the addition of subdivision (b) altered or revised subdivision (a)." Accordingly, the test for "doing business" under subdivision (a) remains applicable.

As you know, when a business entity fails to file a tax return, the Franchise Tax Board sends a Demand for Tax Return that requires the business to either file a tax return if one is required, or use the enclosed Nonqualified Business Entity Questionnaire ("Questionnaire") to determine whether that business has a filing requirement. The questions in Questionnaire are used to ascertain whether that entity is "doing business" in California under RTC section 23101(a) or (b).

Issue 4 - Power of Attorney and MyFTB Rejections

Our primary goal is to protect taxpayers' confidential information, so FTB's Power of Attorney (POA) process is built with multiple safeguards in place, to ensure proper, accurate and secure handling as well as confidentiality of taxpayer information. We are continuously looking for ways to optimize the POA process to allow for a better customer experience. FTB consistently provides helpful information in Tax News Articles, especially with upcoming changes that may be occurring and always provide best practices at our annual conferences with CSEA and CalCPA. Since 2017, the POA process has improved in the following ways:

- Rejection rate on POAs went from 60% to 23% currently
- Processing time has decreased from 45 days to 11 days (10 on average)
- We have had no inventory backlogs in the last several years

We are always available to assist tax professionals through conference calls which we have conducted with other representatives having difficulties with the POA process and are always available by phone.

Sincerely,



Brenda Voet, EA
Taxpayer Advocate

cc: Betty T. Yee
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