

**REPORT BY THE  
AUDITOR GENERAL  
OF CALIFORNIA**

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**STATUS OF  
FRANCHISE TAX BOARD/BOARD OF EQUALIZATION  
TAX SETTLEMENTS**

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Kurt R. Sjoberg, Auditor General (acting)

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**State of California**  
**Office of the Auditor General**  
660 J Street, Suite 300, Sacramento, CA 95814  
Telephone : (916) 445-0255

May 23, 1991

F-031

Honorable Robert J. Campbell, Chairman  
Members, Joint Legislative Audit Committee  
State Capitol, Room 2163  
Sacramento, California 95814

Dear Mr. Chairman and Members:

**Summary** In 1988, the Harris-Katz Taxpayers' Bill of Rights added Section 7093 and the Katz-Harris Taxpayers' Bill of Rights Act added Section 21015 to the Revenue and Taxation Code. These sections require the Office of the Auditor General periodically to monitor agreements that the Board of Equalization (BOE) and the Franchise Tax Board (FTB) make with taxpayers to settle tax liability disputes of \$5,000 or less. As of March 28, 1991, neither the BOE nor the FTB has made any agreements with any taxpayers under these sections.

**Background** The Taxpayers' Bill of Rights bills were passed in 1988. One statute applied to the BOE (Chapter 1574), and a similar one applied to the FTB (Chapter 1573). Each essentially allows the respective executive officer, with the approval of the Board of Control, to settle tax disputes that are \$5,000 or less.

**Scope and  
Methodology**

The purpose of our review was to determine the quantity and significance of any tax settlements made by either the BOE or the FTB, to determine the propriety of the settlements, and to ensure there was sufficient documentation for the settlements. After discussions with officials at the BOE and the FTB, we determined that no tax settlements had been made under the statutes cited above. Therefore, we focused our review on the status of regulations the boards will use to make tax settlements under these statutes.

**Board of  
Equalization -  
Current Status**

The BOE's taxpayers' rights advocate stated that the BOE has drafted preliminary guidelines to make tax settlements under the Revenue and Taxation Code, Section 7093, but has not entered any tax settlement agreements under this statute. According to the advocate, the BOE's legal staff has determined that the policy and guidelines for settlements must be drafted into a regulation, which must then be reviewed. The advocate believes that it will take nearly a year to have the BOE complete its review, to have the regulation reviewed by the Office of Administrative Law, and to obtain public input. Thus, based upon our discussions with the advocate, it appears that the BOE will not have established written procedures, final policies, and formal regulations until at least late 1991 or early 1992. In the interim, the board's advocate stated that if any taxpayers request a tax settlement under these provisions, his staff will individually assist them through the process.

**Franchise  
Tax Board -  
Current Status**

The FTB has drafted preliminary guidelines outlining the steps and requirements the FTB and taxpayers must follow to make tax settlements under the Revenue and Taxation Code, Section 21015. However, according to the FTB's assistant chief counsel, these guidelines have not been formally approved by the three-member Franchise Tax Board. The counsel further stated that the FTB will also make formal regulations for these tax settlement procedures but does not expect to complete the process until January 1992. However, the counsel stated, the FTB's written guidelines can be used to assist any taxpayer who requests a tax settlement under these provisions.

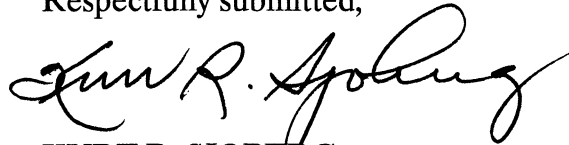
According to the assistant chief counsel at the FTB, no settlements have been made under these statutes. The FTB's counsel believes that since the average protest in the legal division involves deficiencies of over \$2 million, settlements limited to \$5,000 are clearly not a consideration in such cases. Further, the counsel stated that it is probably reasonable to assume that, in most small cases, the issues are generally clear cut and well defined, making these cases more readily capable of resolution on their merits and less likely candidates for potential settlement.

To resolve a concern that the \$5,000 cap on settlements is too low to make it a viable option and to reconcile some conflicting legislation, AB 4286 was introduced in fiscal year 1989-90. However, according to information provided by the FTB's legislative services bureau, the Senate's Revenue and Taxation Committee held the bill without recommending that it be passed. This may have occurred, in part, because the Department of Finance raised concerns about the elimination of certain safeguards established in the Taxpayers' Bill of Rights. Additionally, the Department of Finance believed that the bill would allow unlimited reduction of tax liabilities.

On February 28, 1991, AB 887 was introduced. This bill would make several changes to existing statutes related to settlement authority in the Personal Income Tax law, Bank and Corporation Tax law, and the Taxpayers' Bill of Rights. Although an analysis of the various provisions of this bill is not within the scope of our review, it appears that, except for minor changes, this bill is identical to the previous bill that concerned the Department of Finance. On May 1, 1991, this bill was modified to include a provision that every recommendation for settlement be sent to the Attorney General's Office for review. The bill requires the Attorney General's Office to evaluate each agreement by estimating the hazards of litigation.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



KURT R. SJOBERG  
Auditor General (acting)

Attachments

**Responses to  
the Audit**

Franchise Tax Board

Board of Equalization

GEORGE DEUKMEJIAN  
GOVERNOR



# State and Consumer Services Agency

OFFICE OF THE SECRETARY  
915 CAPITOL MALL, SUITE 200  
SACRAMENTO, CA 95814  
(916) 323-9493

Building Standards Commission  
Consumer Affairs  
Fair Employment & Housing  
Fire Marshal  
Franchise Tax Board  
General Services  
Museum of Science & Industry  
Personnel Board  
Public Employees' Retirement System  
Teachers' Retirement System  
Veterans Affairs

May 10, 1991

Kurt R. Sjoberg, Acting Auditor General  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, California 95814

Dear Mr. Sjoberg:

Thank you for the opportunity to respond to your letter report concerning the status of Franchise Tax Board/Board of Equalization tax settlements.

The State and Consumer Services Agency concurs with your status report. You correctly reported that AB 887 was introduced in this legislative session and relates to certain matters in your letter report. AB 887 was amended extensively on May 1, 1991 and is scheduled for a hearing shortly. Because of the interest in this bill, we understand the Franchise Tax Board staff has placed its Settlement Guidelines Regulation Program into temporary abeyance.

If you need further information or assistance you may wish to have your staff contact Gerald Goldberg, Executive Officer of the Franchise Tax Board, at 369-4543.

Sincerely,

A handwritten signature in cursive script that reads "Porter L. Meroney".

PORTER L. MERONEY  
Undersecretary

cc: Gerald Goldberg, Executive Officer  
Franchise Tax Board

plm:ejp



**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 445-3956

WILLIAM M. BENNETT  
First District, Kentfield

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ERNEST J. DRONENBURG, JR.  
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*Controller, Sacramento*

CINDY RAMBO  
*Executive Director*

May 10, 1991

Mr. Kurt R. Sjoberg  
Auditor General (acting)  
660 J Street, Suite 300  
Sacramento, California 95814

Dear Mr. Sjoberg:

My department has reviewed the enclosed draft and has no comment.

Sincerely,

A handwritten signature in cursive script that reads "Cindy Rambo".

Cindy Rambo  
Executive Director

CR:fb

Enclosure