

CALTAX COMMENTARY: TAX ADMINISTRATORS AREN'T REVENUE AGENTS – APPEALS MUST BE DECIDED ON MERIT

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Earlier this year, several public employee unions injected themselves into a tax appeal and urged the State Board of Equalization to reject a taxpayer's arguments primarily because of the amount of money at stake.

In essence, the union representatives were urging BOE members to be revenue agents, as opposed to tax administrators. This is dangerous territory, and taxpayers must forcefully oppose any effort to focus tax appeals on dollars and cents, rather than whether or not tax actually is owed.

In a letter asking the BOE to reject the *Appeal of Paula Trust*, a lobbyist for the California Professional Firefighters association devoted most of his space to a description of how budget cuts impact emergency services. The letter concluded with a statement in large, bolded font: “(W)e respectfully urge you to reaffirm the FTB’s position. Doing so will assist in protecting critically-needed tax revenue for core public safety services.”

Similar letters were sent by the California School Employees Association and the California Tax Reform Association, which represents 11 labor unions, including the California Teachers Association, the Service Employees International Union, and the California Labor Federation.

Even the tax agencies’ representatives alluded to revenue implications, rather than sticking to the facts of the appeal. The Franchise Tax Board noted that there were 171 pending appeals that could be impacted by the board’s decision, and the BOE’s hearing summary noted that the other appeals include “over \$27 million at issue.”

None of that should matter. An appeal for a refund should focus on whether the state wrongly collected too much tax, whatever the amount. If the taxpayer adhered to the law and doesn’t owe anything, the appeal should be granted. No taxpayer should have his or her appeal judged based on how it might impact *other* taxpayers.

Unfortunately, the focus on revenue also is an issue in determining whether the BOE must produce written opinions in decisions where the “amount in controversy” is \$500,000 or more, as required by AB 2323 (Chapter 788, Statutes of 2012).

Again, it should not matter whether the amount in question is \$500 or \$500,000. Tax appeals must focus on the underlying question: Is tax owed?

(The only time the amount at stake arguably should be considered is at the beginning of the process, when the tax agency might determine that the amount is so small that the state would lose money by challenging the appeal.)

Attempts to blur the distinction between revenue agents and tax administrators are not new. In 1997, an employee from the state Department of General Services showed up at an

appeal hearing to testify against the taxpayer because of the potential impact on state finances. Then-BOE Member Dean Andal took offense – and rightly so.

“It is, in my view, outrageous that state agencies would seek to influence the result of a taxpayer appeal with testimony that the program you operate is worthy and ‘needs the money,’” Mr. Andal wrote in a letter sent to many state officials. “The Board’s job is not to protect revenue but to determine if the taxpayer paid the proper amount of tax.”

While this description of a tax administrator’s job seems obvious, taxpayers must keep repeating it until everyone receives the message.