

AMENDED IN SENATE JULY 5, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2686

**Introduced by Committee on Revenue and Taxation (Perea (Chair),
Beall, Charles Calderon, Cedillo, Fuentes, and Gordon)**

March 12, 2012

An act to amend *and repeal* Section 21004 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2686, as amended, Committee on Revenue and Taxation. Taxation: Taxpayers' Rights Advocate.

The Katz-Harris Taxpayers' Bill of Rights Act establishes the position of Taxpayers' Rights Advocate and provides specified protections for taxpayers for purposes of, among other things, determining their correct tax liability.

This bill would, beginning on and after January 1, 2013, authorize the Taxpayers' Rights Advocate to abate penalties, fees, additions to tax, or interest attributable to error of the Franchise Tax Board, as specified. This bill would require any relief granted in which the total reduction exceeds \$500, as adjusted, to be submitted to the ~~chief counsel executive officer~~ of the board for concurrence, and ~~for relief that exceeds would limit the total relief granted to \$7,500, as adjusted, for the board to be notified.~~

This bill would repeal these provisions on January 1, 2016.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21004 of the Revenue and Taxation Code
2 is amended to read:

3 21004. (a) The board shall establish the position of the
4 Taxpayers' Rights Advocate. The advocate or his or her designee
5 shall be responsible for coordinating resolution of taxpayer
6 complaints and problems, including any taxpayer complaints
7 regarding unsatisfactory treatment of taxpayers by board
8 employees. The advocate shall report directly to the executive
9 officer of the board.

10 (b) The advocate or his or her designee shall give highest priority
11 to reviewing and taking prompt and appropriate action, including
12 staying actions where taxpayers have suffered or will suffer
13 irreparable loss as the result of board action. Applicable statutes
14 of limitation shall be tolled during the pendency of a stay. Any
15 penalties and interest which would otherwise accrue shall not be
16 affected by the granting of a stay.

17 (c) (1) On and after January 1, 2013, the advocate may review
18 any application for relief pursuant to this subdivision and abate
19 any penalties, fees, additions to tax, or interest assessed on a
20 taxpayer, if it is determined by the advocate that the penalties,
21 fees, additions to tax, or interest that have been assessed, or any
22 part thereof, is attributable to any of the following:

23 (A) Erroneous action or erroneous inaction by the board in
24 processing documents filed or payments made by taxpayers.

25 (B) Unreasonable delay caused by the board.

26 (C) Erroneous written advice that does not qualify for relief
27 under Section 21012.

28 (2) Relief may be granted pursuant to this subdivision only if
29 no significant aspect of that error or delay can be attributed to the
30 taxpayer involved and relief is not available under any other
31 provision of this part, Part 10 (commencing with Section 17001),
32 or Part 11 (commencing with Section 23001), including any relief
33 granted under any regulation or other administrative
34 pronouncement of the board.

35 (3) (A) (i) Any relief granted pursuant to this subdivision in
36 which the total reduction in penalties, fees, additions to tax, or
37 interest exceeds five hundred dollars (\$500) shall be submitted to
38 ~~the chief counsel~~ *executive officer*, for concurrence.

1 (ii) ~~If the~~*The* total relief granted pursuant to this subdivision;
2 ~~including penalties, fees, additions to tax, and interest, exceeds~~
3 ~~may not exceed~~ seven thousand five hundred dollars (\$7,500); ~~the~~
4 ~~chief counsel shall notify the board.~~

5 (B) Whenever relief is granted under this subdivision, there
6 shall be placed on file in the office of the executive officer of the
7 board a public record with respect to that relief. The public record
8 shall include the following:

9 (i) The taxpayer's name.

10 (ii) The total amount involved.

11 (iii) The amount payable or refundable due to the error or delay.

12 (iv) A summary of why the relief is warranted.

13 (4) A refund may be paid as a result of relief granted under this
14 subdivision only if the applicable statute of limitations, with respect
15 to filing a claim for refund, remains open as of the date that the
16 basis for providing relief, as authorized in subparagraphs (A) to
17 (C), inclusive, of paragraph (1), as reflected in a written
18 communication received by the advocate.

19 (d) No other entity may participate in the grant or denial of relief
20 pursuant to this section.

21 (e) On January 1 of each calendar year beginning on or after
22 January 1, 2009, the board shall increase the amount specified in
23 subparagraph (A) of paragraph (3) of subdivision (c) to the amount
24 computed under this subdivision. That adjustment shall be made
25 as follows:

26 (1) The Department of Industrial Relations shall transmit
27 annually to the board the percentage change in the California
28 Consumer Price Index for All Urban Consumers, as modified for
29 rental equivalent home ownership for all items, from June of the
30 prior calendar year to June of the current calendar year, no later
31 than August 1 of the current calendar year.

32 (2) The board shall then:

33 (A) Compute the percentage change in the California Consumer
34 Price Index for All Urban Consumers from the later of June 2008
35 or June of the calendar year prior to the last increase in the amount
36 specified in paragraph (1).

37 (B) Compute the inflation adjustment factor by adding 100
38 percent to the percentage change so computed, and converting the
39 resulting percentage to the decimal equivalent.

1 (C) Multiply the amount specified in paragraph (1) for the
2 immediately preceding calendar year, as adjusted under this
3 subparagraph, by the inflation adjustment factor determined in
4 subparagraph (B), and round off the resulting product to the nearest
5 one hundred dollars (\$100).

6 (f) Notwithstanding any other law or rule of law, all
7 determinations made under paragraph (1) of subdivision (c) shall
8 not be subject to review in any administrative or judicial
9 proceeding.

10 (g) The amendments made by the act adding this subdivision
11 shall become operative on January 1, 2013.

12 (h) *This section shall remain in effect only until January 1, 2016,*
13 *and as of that date is repealed.*