

Assembly Bill No. 2686

CHAPTER 349

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

[Approved by Governor September 17, 2012. Filed with
Secretary of State September 17, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2686, Committee on Revenue and Taxation. Franchise Tax Board: 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, and until January 1, 2016, 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 executive officer of the board for concurrence, and would limit the total relief granted to \$7,500, as adjusted.

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

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

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

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

(c) (1) On and after January 1, 2013, the advocate may review any application for relief pursuant to this subdivision and abate any penalties, fees, additions to tax, or interest assessed on a taxpayer, if it is determined

by the advocate that the penalties, fees, additions to tax, or interest that have been assessed, or any part thereof, is attributable to any of the following:

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

(B) Unreasonable delay caused by the board.

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

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

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

(ii) The total relief granted pursuant to this subdivision may not exceed seven thousand five hundred dollars (\$7,500).

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

(i) The taxpayer's name.

(ii) The total amount involved.

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

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

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

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

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

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

(2) The board shall then:

(A) Compute the percentage change in the California Consumer Price Index for All Urban Consumers from the later of June 2008 or June of the

calendar year prior to the last increase in the amount specified in paragraph (1).

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

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

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

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

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

SEC. 2. Section 21004 is added to the Revenue and Taxation Code, to read:

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

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

(c) This section shall become operative on January 1, 2016.