

Introduced by Senator HertzbergFebruary 26, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 540, as introduced, Hertzberg. 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. Existing law, until January 1, 2016, authorizes the Taxpayers' Rights Advocate to abate penalties, fees, additions to tax, or interest attributable to error of the Franchise Tax Board, as specified. Existing law requires 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 limits the total relief granted to \$7,500, as adjusted.

This bill would, on and after January 1, 2016, instead authorize the chief counsel of the Franchise Tax Board to abate penalties, fees, additions to tax, or interest attributable to error of the Franchise Tax Board, remove the limit on the amount of relief that may be granted and the adjustment provision relating to that amount, specify the retention period for records of relief granted by the chief counsel, and remove the sunset date, thus extending these provisions indefinitely.

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 as amended by Section 1 of Chapter 349 of the Statutes of 2012,
3 is amended to read:

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

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

18 (c) (1) On and after January 1, 2013, *and before January 1,*
19 *2016*, the advocate may review any application for relief pursuant
20 to this subdivision and abate any penalties, fees, additions to tax,
21 or interest assessed on a taxpayer, if it is determined by the
22 advocate that the penalties, fees, additions to tax, or interest that
23 have been assessed, or any part thereof, is attributable to any of
24 the following:

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

27 (B) Unreasonable delay caused by the board.

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

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

37 (3) (A) (i) Any relief granted pursuant to this subdivision in
38 which the total reduction in penalties, fees, additions to tax, or

1 interest exceeds five hundred dollars (\$500) shall be submitted to
2 the executive officer for concurrence.

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

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) (1) *On and after January 1, 2016, the chief counsel of the*
20 *board may provide relief pursuant to this subdivision and abate*
21 *any penalties, fees, additions to tax, or interest assessed, if it is*
22 *determined by the chief counsel that the penalties, fees, additions*
23 *to tax, or interest that have been assessed, or any part thereof, is*
24 *attributable to any of the following:*

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

27 (B) *Unreasonable delay caused by the board.*

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

30 (2) *Relief may be granted pursuant to this subdivision only if*
31 *no significant aspect of that error or delay can be attributed to*
32 *the taxpayer involved and relief is not available under any other*
33 *provision of this part, Part 10 (commencing with Section 17001),*
34 *Part 10.2 (commencing with Section 18401), or Part 11*
35 *(commencing with Section 23001), including any relief granted*
36 *under any regulation or other administrative pronouncement of*
37 *the board.*

38 (3) (A) *Any relief granted pursuant to this subdivision in which*
39 *the total reduction in penalties, fees, additions to tax, or interest*

1 exceeds five hundred dollars (\$500) shall be submitted to the
2 executive officer for concurrence.

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

7 (i) The taxpayer's name.

8 (ii) The total amount involved.

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

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

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

16 ~~(d)~~

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

19 ~~(e)~~

20 (f) On January 1 of each calendar year beginning on or after
21 January 1, 2009, and before January 1, 2016, the board shall
22 increase the amount specified in subparagraph (A) of paragraph
23 (3) of subdivision (c) to the amount computed under this
24 subdivision. That adjustment shall be made as follows:

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

31 (2) The board shall then:

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

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

39 (C) Multiply the amount specified in paragraph (1) for the
40 immediately preceding calendar year, as adjusted under this

1 subparagraph, by the inflation adjustment factor determined in
2 subparagraph (B), and round off the resulting product to the nearest
3 one hundred dollars (\$100).

4 ~~(f)~~

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

9 ~~(g)~~

10 The amendments made by the act adding this subdivision shall
11 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.~~

14 SEC. 2. Section 21004 of the Revenue and Taxation Code, as
15 added by Section 2 of Chapter 349 of the Statutes of 2012, is
16 repealed.

17 21004. ~~(a) The board shall establish the position of the~~
18 ~~Taxpayers' Rights Advocate. The advocate or his or her designee~~
19 ~~shall be responsible for coordinating resolution of taxpayer~~
20 ~~complaints and problems, including any taxpayer complaints~~
21 ~~regarding unsatisfactory treatment of taxpayers by board~~
22 ~~employees. The advocate shall report directly to the executive~~
23 ~~officer of the board.~~

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

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