

AMENDED IN ASSEMBLY JULY 15, 2015

AMENDED IN SENATE APRIL 15, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 540

Introduced by Senator Hertzberg

February 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 amended, 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 or unreasonable delay caused by 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. Existing law authorizes relief to be granted only if no significant aspect of the board's error or delay is attributed to the taxpayer, as provided.

This bill, on and after January 1, 2016, would instead require the Taxpayers' Rights Advocate, in coordination with the Chief Counsel of the Franchise Tax Board, to abate penalties, fees, additions to tax, or interest attributable to error of or unreasonable delay caused by the

Franchise Tax Board, ~~remove~~ *increase* the limit on the amount of relief that may be granted ~~and from \$7,500 to \$10,000~~, *revise* the adjustment provision relating to that amount, and specify the retention period for records of relief granted by the chief counsel. The bill would require the advocate and the board to provide relief to the taxpayer only if no significant aspect of the board’s error or delay is attributed to the taxpayer.

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, 2016, the Taxpayers’ Rights
- 19 Advocate, in coordination with the Chief Counsel of the Franchise
- 20 Tax Board, shall provide relief pursuant to this subdivision and
- 21 abate any penalties, fees, additions to tax, or interest assessed if it
- 22 is determined that the penalties, fees, additions to tax, or interest
- 23 that have been assessed, or any part thereof, is attributable to any
- 24 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.

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

3 (2) Relief shall be granted pursuant to this subdivision only if
4 no significant aspect of that error or delay can be attributed to the
5 taxpayer involved and relief is not available under any other
6 provision of this part, Part 10 (commencing with Section 17001),
7 Part 10.2 (commencing with Section 18401), or Part 11
8 (commencing with Section 23001), including any relief granted
9 under any regulation or other administrative pronouncement of
10 the board.

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

15 (ii) *The total relief granted pursuant to this subdivision to a*
16 *taxpayer with respect to penalties, fees, additions to tax, or interest*
17 *for a taxable year may not exceed ten thousand dollars (\$10,000).*

18 (iii) *Beginning on January 1, 2017, and annually thereafter,*
19 *the amount specified in clause (ii) shall be recomputed in*
20 *accordance with subparagraph (B) of paragraph (3) of subdivision*
21 *(b) of Section 19442, modified by substituting "January 1, 2017"*
22 *for "January 1, 2004."*

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

27 (i) The taxpayer's name.

28 (ii) The total amount involved.

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

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

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

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

38 (e) Notwithstanding any other law or rule of law, all
39 determinations made under paragraph (1) of subdivision (c) shall

1 not be subject to review in any administrative or judicial
2 proceeding.

3 (f) (1) The amendments made by Section 1 of Chapter 349 of
4 the Statutes of 2012 shall become operative on January 1, 2013.

5 (2) The amendments made by the act adding this paragraph
6 shall become operative on January 1, 2016.

7 SEC. 2. Section 21004 of the Revenue and Taxation Code, as
8 added by Section 2 of Chapter 349 of the Statutes of 2012, is
9 repealed.

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