



Robert W. Wood

THE TAX LAWYER

TAXES 10/20/2016

To Fight California Tax Bills, Procedure Counts

If you live in California, have investments in California, or do business here, you must interact with California's tax system. California's taxes are high, and its tax system is complex. There are income taxes, franchise taxes, sales and use taxes, property taxes, and excise taxes. There are nexus issues, withholding taxes, tough residency rules, and many procedural oddities.

Rather than adopt federal tax law wholesale, California's legislators pick and choose. And California's tax dispute system is unusual. If you have an IRS dispute, you can fight it administratively with the auditor and at the IRS Appeals Office. If necessary, you can go to U.S. Tax Court, where you can contest the taxes before paying. Alternatively, if you are willing to pay the tax first, you could proceed to the U.S. Court of Federal Claims, or U.S. District Court.



Many states have a state tax court, but California does not. It has a State Board of Equalization (SBE). It is a five-member administrative body—the only elected tax commission in the U.S.—that functions much like a court. If

you are unable to resolve an income or franchise tax dispute with the FTB, you can appeal it to the SBE. The SBE will hear your side and counterarguments from the FTB. The SBE will rule on the law, and also has equitable powers. The SBE can bend the rules a bit, if they are persuaded that the taxpayer is honest and sympathetic.

Of course, you can't count on that. In many ways, the deck is stacked against you as a California taxpayer. Notably, the SBE doesn't just hear income tax appeals. It also hears sales and use tax cases, and even property tax appeals. If you are unable to resolve an income tax, property tax, or sales or use tax matter, you can appeal it to the SBE. Confusingly, in addition to the five-member SBE (the ruling body) there's also a large agency called the SBE that administers sales and use taxes.

If you can't resolve your sales or use tax dispute administratively with the SBE (the agency), you can appeal to the SBE (the five-member body). Property taxes, on the other hand, are administered by local county tax collectors. If you can't resolve your property tax dispute with the local authorities, though, it too can eventually end up at the SBE. You might say that all roads lead to the SBE.

California's five member SBE has a very tough job. They try to resolve and administer California's tax laws, and most of them are not tax professionals. They are not judges, so it is okay to talk to them *ex parte*. In fact, it is common for California tax professionals to seek out individual members of the SBE in advance of a hearing. You can give them a private advance screening of your client's case.

You may not be able to garner a commitment that your client's position is meritorious. But if the member is going to vote against you, you are better off knowing in advance. You might get clear signals that an individual SBE member cannot—or will not—vote for your client. Sometimes a “no” vote in this circumstance can have its own kind of empowerment.

Indeed, where this happens, one of the most unique features of California's tax system kicks in: money. You may donate to that SBE member, and both you and the member will then need to disclose that. Any contribution of \$250 or more must be disclosed. Your contribution will disqualify that member from considering your case. With a five-member board, if you identify two members who will vote against your client and make contributions to them, they will likely be disqualified.

Your board is now three members. If you garner two positive votes out of the three remaining, you win. Non-Californians may find this untoward. It is different, and not for the untutored. Another feature of California tax law is what happens after an SBE dispute. The SBE is a unique forum. Particularly because of its powers to do equity as well as apply the statutes, it can sometimes offer unexpectedly good results for sympathetic taxpayers.

Yet if the taxpayer is a large company that might be seen as skirting California's tax system and taking the Golden State's resources, you may feel decidedly discriminated against by the SBE. The SBE is an important venue for tax problem resolution in California, a forum that should not be taken lightly. If you win before the SBE, that decision is binding on the FTB. The FTB cannot appeal or go on to another body or court.

In contrast, if the taxpayer loses at the SBE, the taxpayer can bring suit in California Superior Court for a *de novo* trial. This one-way appeal right, something only the taxpayer has, is a nice taxpayer protection. If you do sue in Superior Court, you will have a regular judge, not a tax specialist. But if you are a California taxpayer or represent one, what you want is to win before the SBE. That way, you don't have to go to court.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.