

RESOLUTION 07-11-2017

DIGEST

Taxpayers: Taxing Agencies to Contact Authorized Representative

Adds Revenue and Taxation Code section 21029 to provide that a taxpayer who files an executed Power of Attorney be contacted through the authorized representative.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds Revenue and Taxation Code section 21029 to provide that a taxpayer who files an executed Power of Attorney be contacted through the authorized representative. This resolution should be approved in principle because it is consistent with existing rights to representation by an attorney or authorized tax practitioner and will ensure that agency contact is through the authorized representative.

Both federal and California tax authorities recognize the rights of a tax payer to be represented by an attorney or authorized tax practitioner. (See, e.g. <https://www.irs.gov/taxpayer-bill-of-rights>; Rev. & Tax Code, § 21028; Franchise Tax Board form, FTB 4058C.) This resolution would help ensure the proper implementation of that recognized right by ensuring that upon notification of representation, communication by the tax authority is through the authorized tax representative. It is no different than our courts communicating with the parties through their counsel of record.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored add Revenue and Taxation Code Section 21029 to read as follows:

- 1 § 21029
- 2
- 3 If a taxpayer is represented by a “Federally authorized tax practitioner” as defined under Part 10,
- 4 Section 21028, and the taxpayer has authorized the Federally authorized tax practitioner to
- 5 represent the taxpayer pursuant to an executed Power of Attorney (FTB Form 3520, BOE-392,
- 6 DE 48, or other equivalent form), and duly submitted the form to the appropriate California
- 7 taxation authorities, then no agent from any California taxing authority shall contact the taxpayer
- 8 without the Federally authorized tax practitioner’s knowledge, and shall send a copy of all
- 9 correspondence that is sent to the taxpayer to the Federally authorized tax practitioner. Violation
- 10 of this right to representation shall result in the removal of the taxpayer’s case to a new and
- 11 impartial agent who shall not consider any information that was improperly obtained by the prior
- 12 agent who is replaced.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

The Problem: There is no existing law that prevents the California taxing authorities from contacting a taxpayer directly even if said taxpayer has duly authorized an attorney or other tax representative. The California Taxpayers' Bill of Rights indicates that a taxpayer may be represented by a tax practitioner, including an attorney. However, in reality, there is no law that requires an agent of a California taxing agency to avoid contacting a taxpayer directly, or even notifying the taxpayer's representative of a direct contact or communication with the taxpayer. The right to representation in the California Taxpayers' Bill of Rights is not strictly enforced, and there are no guidelines or laws to facilitate enforcement of this right.

Accordingly, there is no current law to protect taxpayers from harassment by California taxing authorities. There are numerous situations in which the amount of tax liability is in dispute, or where there is a simple mistake by a taxpayer, or an error made by relevant California taxing authority. The California taxing authorities are tasked with collecting the correct amount of tax. If a taxpayer needs assistance in determining the correct amount of tax or correcting a mistake or error, by either side, the California taxing authorities should not be permitted to directly contact or harass the taxpayer prior to resolution. If a taxpayer is working to resolve an issue and invokes their right to representation, it must be honored. Obtaining information from taxpayers, who are often elderly or not fully knowledgeable of the complexities of the numerous tax laws, through intimidation tactics and improper contact harms taxpayers and puts them at an unfair advantage, even in situations where the asserted tax liability is incorrect. California taxing authorities can achieve the same results and resolve problems without resorting to these tactics and by working with a taxpayer's authorized representative if the taxpayer chooses to engage one.

The Solution: This resolution would require that a taxpayer who has elected to invoke her right to representation, by completing, executing, and submitting a California Power of Attorney form shall not be contacted directly without the authorized representative's knowledge. This resolution would also require that all California taxing authorities send a copy of any and all correspondence to a taxpayer's authorized representative in addition to sending the correspondence to the taxpayer. This resolution would require that any violation of the above-described requirements would result in the reassignment of the case to a new and neutral, auditor, examiner, appeals officer, or other California agent, and that any improperly obtained information prior to said reassignment shall not be reviewed by the new and neutral agent.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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