



SEN. GEORGE RUNNER (RET.)

MEMBER
STATE BOARD OF EQUALIZATION
CALIFORNIA'S TAX BOARD

February 5, 2013

Honorable John Chiang
State Controller
Chair, Franchise Tax Board
P.O. Box 942850
Sacramento, California 94250-5872

Ana J. Matosantos
Director of Finance
Member, Franchise Tax Board
State Capitol, Room 1145
Sacramento 95814

Honorable Jerome E. Horton
Chairman, Board of Equalization
Member, Franchise Tax Board
450 N Street, MIC:72
Sacramento, CA 95814

Dear Members of the Franchise Tax Board:

I am writing to urge your reversal of a December 2012 Franchise Tax Board action forcing thousands of small business owners to pay millions in retroactive taxes. Although FTB took this aggressive action in response to a court decision, the scope of FTB's action is unwarranted and unfair to taxpayers.

In *Cutler v. Franchise Tax Board*, the Second District Court of Appeal found unconstitutional the qualified small business stock exclusion. The court held that the exclusion discriminated against non-California corporations in violation of the commerce clause because they could not also claim the exclusion. In its decision, however, the court did not direct California to seek back taxes from those who had claimed the exclusion in prior years. That determination was made solely by FTB.

Understandably, affected taxpayers are outraged by this action. They made business decisions in good faith based on existing California tax law. It is not possible for them to undo these decisions in response to FTB's retroactive actions.

FTB's action sends entirely the wrong message to investors, entrepreneurs and job creators doing business in our state.

As you are aware, the Board of Equalization serves as the final arbiter of FTB appeals. In this important capacity, BOE interprets and applies the state's franchise and income tax laws. In 2010-11, BOE received 954 appeals of FTB actions and issued 378 decisions.

We anticipate a significant number of appeals from taxpayers protesting the unfairness of these retroactive assessments, which will place a burden on the Franchise Tax Board. Once these appeals are denied at the FTB protest level, they will come before the Board of Equalization, creating additional cost and workload for BOE.

As FTB board members, it is within your power to revisit this decision and put forth policy that is fair to taxpayers. Under the Taxpayer Bill of Rights, it is your statutory duty to do so.

I look forward to seeing this matter addressed and corrected. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Runner". The signature is fluid and cursive, with a large initial "G" and "R".

GEORGE RUNNER
Member, State Board of Equalization

Cc: Governor Jerry Brown