

Officers, 2016-2017

Amy Thomas Laub
Chair
Nationwide Insurance Company

Arthur J. Parham, Jr.
Vice Chair
Entergy Services, Inc.

Robert J. Tuinstra, Jr.
Secretary & Treasurer
*E.I. DuPont De Nemours
and Company*

John J. Pydyszewski
Past Chair
Johnson & Johnson

Robert F. Montellione
Past Chair
Prudential Financial

Douglas L. Lindholm
President
Council On State Taxation

Directors

Barbara Barton Weiszhaar
HP Inc.

Deborah R. Bierbaum
AT&T

C. Benjamin Bright
HCA Holdings, Inc.

Paul A. Broman
BP America Inc.

Michael F. Carchia
Capital One Services, LLC

Tony J. Chirico
Medtronic, Inc.

Susan Courson-Smith
Pfizer Inc.

Meredith H. Garwood
Charter Communications

Tracy George
The Coca-Cola Company

Denise J. Helmken
General Mills

Beth Ann Kendzierski
Apria Healthcare, Inc.

Kurt Lamp
Amazon.Com

Hugh McKinnon
Raytheon Company

Mollie L. Miller
*Fresenius Medical Care
North America*

Rebecca J. Paulsen
U.S. Bancorp

John H. Paraskevas
Exxon Mobil Corporation

Frances B. Sewell
NextEra Energy, Inc.

Nikki E. Dobay
Senior Tax Counsel
(202) 484-5221
ndobay@cost.org

November 7, 2017

Kristen Kane
California Office of Tax Appeals
Via email: regulations@ota.ca.gov

Re: Comments on Draft Emergency Regulations Issued on October 23, 2017

Dear Ms. Kane:

On behalf of the Council On State Taxation (COST), I am writing to provide feedback regarding the above referenced draft emergency regulations issued by the Office of Tax Appeals (OTA).

COST is a nonprofit trade association consisting of approximately 600 multistate corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

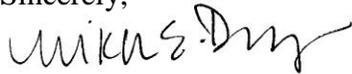
COST recognizes the effort that the OTA and other agencies assisting in setting up the OTA and the drafting of these emergency regulations. This is especially true given the brief period the OTA was given to establish California's new tax appeals tribunal. Considering the time constraints under which the OTA and those assisting have worked, COST offers the following comments for the OTA's consideration as it finalizes its emergency regulations:

- The OTA should consolidate the rules related to appeals from the Franchise Tax Board (FTB) and California Department of Tax and Fee Administration (CDTFA) rather than bifurcating the rules in separate chapters. The bifurcation of these rules will likely create confusion and, to the extent not controlled by statute, the appeal deadlines and briefing schedules should be the same for appeals from both the FTB and CDTFA.
- To the extent not controlled by statute, the OTA should offer a single 90-day (or, at minimum, 60-day) filing deadline for all appeals from both the FTB and CDTFA. As drafted the rules include 30, 60, and 90-day appeal deadlines, depending on the type of case and which agency the appeal is from. To the extent possible, consistent filing deadlines make more sense and would be more workable for taxpayers.
- The OTA should clarify its intent to allow taxpayers to file documents under seal pursuant to the "closed hearing" proceedings provisions outlined in the draft

rules. Based on public comments made by OTA General Counsel Kristen Kane, the OTA's intent appears to be to allow taxpayers to provide certain information to the OTA confidentially pursuant to the closed hearing provisions. As currently drafted, those provisions appear to only allow for certain information provided at a closed proceeding to be confidential. During presentations, Ms. Kane has indicated that these rules could be used more broadly to allow taxpayers to file certain information and evidence "under seal" to be kept confidential. If it is the OTA's intent to allow taxpayers to file documents and other information under seal, pursuant to the closed hearings provisions, then the OTA should include a rule to provide taxpayers the ability to submit such filings under seal.

- The OTA should clarify the provisions related to published BOE authority to provide that such authority may only be de-published as precedential where the issue is before the OTA in a current proceeding and where the OTA formally overrules such BOE authority. Following the OTA's hearing on November 6, the intent of the OTA appears to be that a published BOE decision will only be de-published where the issue of the opinion was before the OTA as part of a current proceeding. Assuming that is the intent of the OTA, it should clarify these provisions.

Sincerely,



Nikki E. Dobay

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director