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**DISCRETIONARY DISALLOWANCE OF COMPENSATION PAID
WORKERS: THE NEED FOR GUIDANCE UNDER R&T CODE
SECTIONS 17299.8 AND 24447**

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² Although the authors and/or presenters of this paper might have clients affected by the rules applicable to the subject matter of this paper and have advised such clients on applicable law, no such participant has been engaged by a client to participate on this paper. No author has a direct personal or financial interest in the issue addressed in this paper.

EXECUTIVE SUMMARY

Revenue & Taxation Code sec. 17299.8 vests the Franchise Tax Board with authority to disallow deductions by individuals and entities for remuneration paid to an individual for personal services if the taxpayer fails to file timely reports under the Unemployment Insurance Code or sec. 18631. Sec. 24447 vests the Board with the authority to disallow deductions by corporations for remuneration paid to an individual for personal services if the corporation fails to file timely reports.

Rev. & Tax. Sections 17299.8 and 24447 were enacted by the Legislature in 1984. Both sections were originally mandatory, but were amended shortly after enactment to change the phrase “shall disallow a deduction” to “may disallow a deduction.” By making this change, the Legislature granted the FTB broad discretion to deny deductions for compensation paid for personnel services where required reports were not filed. Yet during the approximately 25 years since amendment, the FTB has provided no published guidance on the correct application of these parallel provisions.

This paper will address the important public concerns from a constitutional, due process, and fairness standpoint. Given the devastating impact that disallowance of labor costs could have on a business, it would be useful for the FTB to issue guidance on the circumstances under which it will propose disallowing deductions under Rev. & Tax. sections 17299.8 and 24447. Therefore, this paper proposes that the FTB issue regulations that would provide all taxpayers with guidance on the circumstances under which the FTB may exercise its discretion permitted under these parallel provisions.

DISCUSSION

I. TAXATION REGIME OVER CALIFORNIA CORPORATIONS

California corporations are subject to two types of taxes under the California constitution: an income tax and a franchise tax. Article XIII, Sec. 26, of the California Constitution, allows the imposition of tax on income. It provides in pertinent part that:

- (a) Taxes on or measured by income may be imposed on persons, corporations, or other entities as prescribed by law.

Article XIII, Section 27, of the California Constitution, authorizes the imposition of franchise taxes on corporations and banks. It provides in pertinent part that:

The Legislature, a majority of the membership of each house concurring, may tax corporations... and their franchise by any method not prohibited by this Constitution or the Constitution or laws of the United States.

Both provisions related to the taxation of corporations are contained at Sections 23001 *et seq.* The franchise tax is imposed on corporations doing business within the state of California. Section 23151 provides that:

- (a) ...every corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the Constitution of this state or by this part, shall pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income...

- (e) For any income year beginning on or after January 1, 1997, the tax rate shall be 8.84 percent.

The minimum franchise tax is \$800.³

³ Rev. & Tax Code Section 23153.

Section 23501 imposes the corporate income tax upon the net income of every corporation at the rate specified in Section 23501. Section 23503 provides that the tax imposed by the corporation income tax shall be offset by the tax imposed by the corporation franchise tax provisions.

California generally follows the definition of “Gross income” as defined in IRC Section 61.⁴ Gross income includes gross income derived from a business.⁵ Treas. Reg. §1.61-3(a) further states in part:

In a manufacturing, merchandising, or mining business, “gross income” means the total sales, **less the cost of goods sold**, plus any income from investments and from incidental or outside operations or sources. ... The cost of goods sold should be determined in accordance with the method of accounting consistently used by the taxpayer.

Cost of goods sold must be computed by taking into account opening and closing inventories.⁶ Both direct and indirect costs that relate to production must be accounted for in the computation of inventoriable costs.⁷ Treas. Regs. §1.471-11(b)(1) defines production costs as:

[Costs that] are incident to and necessary for production or manufacturing operations or processes. Production costs include direct production costs and fixed and variable indirect production costs.

Generally, direct production costs are those costs incident to and necessary for production or manufacturing operations or processes.⁸ Direct labor costs including the cost of labor such as basic compensation, overtime, pay, etc., paid or incurred on behalf of employees engaged in direct labor.⁹ Therefore, cost of goods sold includes a labor component if the taxpayer is a manufacturer. This labor cost is not considered a deduction from gross

² Rev. & Tax. Code Section 24271(a).

⁵ IRC Section 61(a)(2).

⁶ Treas. Regs. §1.162-1(a).

⁷ Treas. Regs. §1.471-11(a).

⁸ Treas. Regs. §1.471-11(b)(2)(i).

⁹ Treas. Regs. §1.471-11(b)(2)(i).

income. It is, instead, a component of cost of goods sold, which is a deduction from gross receipts in order to arrive at gross income.

Both the corporation franchise and the corporation income tax amounts are based on the corporation's "net income," which is defined in section 24341 as "gross income" less allowable deductions.

II. THE FTB HAS DISCRETIONARY AUTHORITY TO DISALLOW DEDUCTIONS

Sections 17299.8 and 24447 were enacted by the Legislature in 1984. These two parallel provisions provide the Franchise Tax Board¹⁰ with discretionary authority to disallow deductions for remuneration paid for personal services in certain situations.

Section 17299.8 vests the FTB with authority to disallow deductions by individuals and entities for remuneration paid to an individual for personal services if the taxpayer fails to file timely reports under the Unemployment Insurance Code¹¹ or under Rev. & Tax. Code section 18631.

Section 24421 provides that in computing net income, certain deductions are not allowable. With respect to remuneration for personal services, section 24447 provides:

The Franchise Tax Board may disallow a deduction under this part to an individual or entity for amounts paid as remuneration for personal services if that individual or entity fails to report the payments required under Section 13050 of the Unemployment Insurance Code or Rev. & Tax. Code Section 18631 on the date prescribed therefor (determined with regard to any extension of time for filing).

Unemployment Insurance Code Section 13050 requires the employer to furnish each employee with an annual wage/withholding statement and file information returns with the EDD.

Both sections were originally mandatory, but were amended in 1986 to change the phrase "shall disallow a deduction" to "may disallow a

¹⁰ Franchise Tax Board will be referred to FTB.

¹¹ Unemployment Insurance Code hereinafter referred to as CUIC.

deduction.” The original version of 17299.8 and 24447 also provided for a reasonable cause exception, but such language was also deleted in the 1986 amendment. By making this change, the Legislature granted the FTB broad discretion to deny deductions for compensation paid for personal services where required reports were not filed and removed the reasonable cause language. By removing the reasonable cause exception and amending the language to allow discretion, it appears that the Legislature wanted the FTB to exercise its discretion on when to apply these provisions so that it may not unfairly penalize some taxpayers. However, there is no published guidance on the circumstances under which the FTB will seek to exercise its discretion under these parallel provisions.

In addition, section 19175 also imposes a discretionary penalty if any person or entity fails to report the amounts paid as remuneration for personal services as required under the CUIC section 13050 or Rev. & Tax. Code section 18631. This penalty provision does not discuss when such discretion will be exercised. It only states that if a penalty is imposed under CUIC section 13052.5, then only the penalty imposed under CUIC Section 13052.5 shall apply.¹² However, the provision is silent whether this provision will also apply even if Section 17299.8 and 24447 is applied. Theoretically, it appears that the FTB can impose a penalty in addition to disallowing the deduction for wages and payments for personal services paid.

III. THE FTB SHOULD ISSUE REGULATIONS MAKING IT CLEAR THAT SECTIONS 17299.8 AND 24447 DO NOT APPLY TO COST OF GOODS SOLD

Under the Revenue & Tax. Code and the Internal Revenue Code, as well as under the Sixteenth Amendment of the U.S. Constitution, it is only possible to tax “gross income.” It is well established that the costs of goods sold must be taken into account in computing “gross income.”¹³ For many taxpayers, specifically manufacturers, labor costs are included in cost of goods sold. Since these labor costs are part of the cost of goods sold, these labor costs are not a deduction from gross income. Instead, these labor costs are a part of the cost of goods sold which is deducted from gross receipts in order to arrive at gross income.

¹² Rev. & Tax. Code Section 19175(e).

¹³ Treas. Reg. Sect. 1.61-3(a).

Cost of goods must be taken into account in computing “gross income” even if the cost of goods sold involve a payment that is illegal under federal or state law. For instance, in *Pittsburgh Milk Company v. Commissioner*, 26 T.C. 707 (1956), the Tax Court held that, where the taxpayer selling milk had paid rebates to its customers and those rebates were illegal under state law, the rebates had to be taken into account for purposes of computing costs of goods sold. The Court stated as follows:

“Under both the Sixteenth Amendment and the Internal Revenue Code, the tax is imposed only on ‘income,’ and not upon every conceivable type of receipt. Where gains, profits, and income derived from the sale of property are involved, the tax is computed with respect to ‘the amount realized therefrom’ (sec. 111 (a), 1939 Code); and such realized amount must be based on the actual price or consideration for which the property was sold, and not on some greater price for which it possibly should have been, but was not, sold. Gains are taxed, irrespective of whether the transaction was legal or illegal (*United States v. Sullivan*, 274 U.S. 259); but no more than the actual gross income can be subjected to income tax, in any event. (*Lela Sullenger*, 11 T. C. 1076.)”¹⁴

In the *Sullenger v. Commissioner* case, the Tax Court stated the following:

“...the Commissioner has always recognized, as indeed he must to stay within the Constitution, that the cost of goods sold must be deducted from gross receipts in order to arrive at gross income.”¹⁵

Both the Tax Court and the Ninth Circuit upheld this principle in the case of *Max Sobel Wholesale Liquors v. Commissioner*.¹⁶ In this particular case, the taxpayer gave illegal rebates to its customers while selling liquor. The IRS argued that the rebates were illegal deductions that should be disallowed under IRC section 162(c)(2). Both the Tax Court and the Ninth Circuit disagreed, holding that the illegal rebates were required to be taken into account in computing income because they were part of the costs of goods sold. The Ninth Circuit even went so far as to declare invalid the

¹⁴ *Pittsburgh Milk Co. v. Commissioner*, 26 T.C. 707, 715 (1956).

¹⁵ *Sullenger v. Commissioner*, 11 T.C. 1076, 1077 (1948).

¹⁶ 69 T.C. 477 (1977), *aff'd* 630 F.2d 670 (9th Cir. 1980)

regulations issued by the IRS that sought to prevent taxpayers from taking into account payments that were illegal in computing costs of goods sold.

Pursuant to section 24271, the FTB adopts the definition of gross income pursuant to IRC §61 except as otherwise provided for.

Section 24447 discusses FTB's discretionary power to disallow a deduction for remuneration for personal services. As discussed above, certain labor costs are a part of cost of goods sold. Since Section 24447 permits discretion in disallowing labor costs, this section could ultimately violate due process/constitutional provisions. Therefore, it would be improper for the FTB to disallow remuneration for personal services that are considered part of the company's "cost of goods sold," as opposed to remuneration for personal services that is a business expense. As a matter of constitutional and statutory law, costs of goods sold, which includes the labor cost, must be taken into account in determining a taxpayer's income and thus cannot be disallowed under section 24447. Regulations should be enacted to clarify that the FTB will draw a distinction between costs of goods sold and tax deductions for purposes of section 24447 and will not propose disallowing labor costs that are properly included under costs of goods sold.

IV. THE FTB SHOULD ISSUE REGULATIONS OUTLINING FACTORS THAT THE FTB WILL USE TO EXERCISE ITS DISCRETION TO DISALLOW DEDUCTIONS UNDER REV. AND TAX. CODE SEC. 17299.8 AND 24447.

Whenever the FTB exercises its discretion under a statute such as section 24447, it must do so consistent with the Due Process clauses of the Federal and California Constitutions.

The plaintiffs in the *Barclays Bank Internat'l v. Franchise Tax Board* case, among other arguments, argued that because the the WWCR [Cal. Code Regs. Tit 18 §25137-6] called for "materiality, reasonable approximations, and advance determinations, all at the unfettered discretion of [the Board], with no guidelines," there was a violation of the Federal and California due process clauses. The Court disagreed that the section violated "due process by allowing unfettered discretion in the tax authorities in the wake of 'literal compliance'" because the Court concluded that the

regulation could be construed to contain constitutionally-adequate standards to guide application.¹⁷ However, both the Court of Appeals for the Third District and the California Supreme Court stated that a regulation must provide reasonably adequate standards to guide enforcement.¹⁸

The Supreme Court requires that a regulation:

- (1) give fair notice of the practice to be avoided, and
- (2) provide reasonably adequate standards to guide enforcement

in order to pass muster under Due Process clause.¹⁹ In the *Fisher v. City of Berkeley* case, the California Supreme Court looked at a rent ordinance challenged by Plaintiff landlords. Fair notice in that situation required

“...only that the subsection’s terms be described with a reasonable degree of certainty so that an ordinary landlord can understand what conduct is proscribed on his part, and under what conditions his rent-withholding tenant will be afforded a defense to an unlawful detainer action.”²⁰

As for the standards of enforcement, the application of the ordinance hinged on a “tenant’s ‘good faith belief’ that a landlord has failed to comply with the ordinance.”²¹ The Court felt that although the showing of a “good faith belief” invoking the provision was not a precisely measurable standard, the provision posed “little threat of arbitrary application” since the question of whether the tenant had the requisite good faith belief at the time he withheld rent is a question is not a standard incapable of “reasonably exact determination.”²² Such determination is a question for the trial court.

Therefore, the “government regulation must be sufficiently clear so that it is understandable and does not encourage arbitrary and discriminatory application.”²³

¹⁷ *Barclays Bank Internat’l Ltd. v. Franchise Tax Bd.*, 10 Cal. App. 4th 1742, 1758 (Cal. Ct. of App. 1992).

¹⁸ *Barclays*, supra at 1759; *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 702 (Cal. Sup. Ct. 1984).

¹⁹ *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 702 (Cal. Sup. Ct. 1984).

²⁰ *Id.* at 702.

²¹ *Id.* at 703.

²² *Id.* at 703.

²³ *Barclays*, supra at 1759.

Here, section 24447 authorizes the disallowance of labor costs from gross income, without specifying any standards governing the FTB's exercise of discretion. The disallowance under Section 24447 is possible only if timely employment tax returns are not filed. Thus, disallowance is theoretically possible where the amount deducted as wages and payments for personal services were in fact paid, yet the statute provides that the FTB may exercise its discretion to disallow an otherwise valid deduction.

Section 24447, as enacted, permits the FTB to disallow otherwise valid deductions for labor costs in any matter where the taxpayer failed to timely file the required information returns. The statute draws no distinction between situations where the information returns are filed one day late and situations where the information returns are never filed at all. Similarly, the statute draws no distinction between situations where the failure to file the required information returns was inadvertent or beyond the control of the taxpayer and situations where the failure to file the information returns was intentional.

Without any regulations which establish factors and procedures which will govern the disallowance of deductions for labor expenses, taxpayers are not given adequate notice of the circumstances under which deductions for labor expenses may be disallowed, and the FTB is free to treat similarly situated taxpayers differently in applying this law. Taxpayers are at risk of losing an otherwise legitimate and valid deduction, a deduction based on amounts which they have paid out of their own pocket.

It is quite possible that the statute as enacted, without any regulations setting forth criteria and guidance governing when the FTB will seek to disallow deductions for labor expenses under this section, violates the Due Process Clauses of the Federal and California Constitutions. The statute provides no guidance whatsoever to the FTB as to when it should disallow deductions for labor expenses. This is precisely the situation which the courts have indicated violates both the Federal and California Due Process Clauses. Thus, the issuance of regulations under this section will not only provide guidance to taxpayers and prevent inconsistent and discriminatory enforcement of the law, but the issuance of regulations will also allow the FTB to avoid constitutional challenges to any attempts to enforce the law as enacted.

The circumstances under which there can be a failure to file the required information returns are varied. For example, a taxpayer may have operated through part of a calendar year and then filed for liquidating bankruptcy. If the Chapter 7 bankruptcy trustee is acting as trustee at the time the information returns are due to be filed, the duty to file those information returns falls on the trustee. If the trustee fails to file the information returns because of a lack of funds, it seems overly harsh to disallow the deductions for labor costs. The information returns might not be filed due to earthquakes, fires and/or floods. And, notwithstanding the failure of the taxpayer to file the required information returns, the workers who were paid for their labor may end up reporting their income and paying tax on their income. Yet the statute, in its present form, draws no distinction between those types of situations and those situations where a taxpayer has intentionally failed to file the information returns and the workers who were paid have failed to pay the tax on their income.

There are two cases that address section 24447 and 17299.8, but they are not to be cited as precedent. However, the cases are useful to evaluate what factors were considered in determining whether the disallowance of payments for personal services was appropriate. For instance, in the case of P&L Check Service Inc., 1995 Cal. Tax Lexis 289 (CA SBOE, 1995), Section 24447 was used to disallow commission expenses of the taxpayers. At this time, the statute had not been revised to allow the FTB discretion to disallow the expenses, and the section still had the reasonable cause exception language. In this case, the taxpayer provided corporate records and worksheets to support the expense. However, the taxpayer did not provide copies of any W2's, K-1's, Form 1099's or employee contractors. It was found that the taxpayer failed to provide any evidence that its failure to report was reasonable. The Franchise Tax Board argued that although there were corporate records and worksheets, the taxpayer had not provided any records to show that Mr. Bauer, the individual to whom payments for personal services were paid, actually received these monies. Nor did the taxpayer show that Mr. Bauer "ever reported them as income and paid tax accordingly."

The other case, *The People v. James Francis Bray*, 2005 Cal. App. Unpub. Lexis 5702 (2005), discusses section 17299.8 in the context of a roofing business, *Roofing Unlimited*, operated by a husband and wife where the husband was found guilty of various counts of criminal activity

associated with the business. The defendant was ordered to pay restitution to several governmental agencies including the Franchise Tax Board and he argued that errors were made regarding the restitution amount. An EDD audit was previously conducted for the business. The auditor had testified that the business “had not registered, had not reported any workers, and not filed a quarterly or annual report for the period of 1997 to 1999. Roofing Unlimited had not paid any money into EDD funds. It had not issued W-2’s or 1099 forms to its workers.”²⁴ Additionally, an employee of the FTB testified that she found “no record of any returns filed by the business, which meant no returns were filed. She conducted a search which showed defendant last filed a personal income tax return in 1991. She found no record that personal income tax returns for defendant were filed in 1997, 1998 and 1999.”²⁵ The EDD had information regarding the wages paid to the business’s employees per the audit conducted, but the FTB utilized section 17299.8 to add back into net income those amounts determined to have been wages in order to determine the taxable income for which the corporate income was to be calculated.

V. PROPOSED REGULATIONS

Because there are no published guidelines which address the circumstances under which the FTB is to apply section 24447, the only way to ascertain whether the FTB is applying section 24447 in a non-discriminatory, non-arbitrary manner is for the FTB to provide details about all the cases in which the FTB has considered asserting section 24447, including the ultimate action proposed by the FTB. This solution obviously is very impractical. Therefore, utilizing this limited information available as to sections 24447 and 17299.8 in addition to balancing the above concerns, we propose that legislation issue regulations providing guidelines or a list of factors that the FTB will look at when evaluating whether section 24447 and 17299.8 should be applied. Here is a sample of the proposed regulation which would address the above concerns.

Regulations to section 24447 and 17299.8 should be adopted to read:

(a) *Purposes for issuing regulations for section 24447 and 17299.8.* The purposes for issuing regulations which govern the FTB’s use

²⁴ The People v. James Francis Bray, 2005 Cal. App. Unpub. Lexis 5702 (2005).

²⁵ *Id.*

of its discretion to disallow deductions by individuals and entities for remuneration paid to an individual for personal services if the taxpayer fails to file timely reports under the Unemployment Insurance Code or section 18631 of the Rev. & Tax. Code includes the following:

- 1) Taxpayers are encouraged to file the required information returns where they are able to do so;
- 2) Taxpayers are provided guidance as to when they are at risk for disallowance of deductions under these sections;
- 3) Taxpayers are given fair notice of the practice to be avoided;
- 3) Taxpayers could be assessed a monetary sanction against the taxpayers who do not meet the standard of compliant behavior; and
- 4) The regulations will provide reasonably adequate standards to guide enforcement.

(b) *Approach for Issuing Regulations Governing the FTB's Exercise of Discretion under 24447 and 17299.8.* The following objectives should be met in the event that 24447 or 17299.8 are utilized to disallow deductions by individuals and entities for remuneration paid to an individual for personal services:

- 1) Consistency. Ensure that this approach is applied equally in similar situations.
- 2) Impartiality. Administer this approach in an even-handed manner that is fair and impartial to both the government and the taxpayer.
- 3) Representation. Give the taxpayer the opportunity to have their interests heard and considered.

(c) *Procedure for when 24447 and 17299.8 will be Utilized.* Each case must be judged individually based on the facts and circumstances at hand.

1) Taxpayer's Reason. Evaluate the reason for why the taxpayer failed to file timely reports under the Unemployment Insurance Code or section 18631 of the Rev. & Tax. Code. Here are some facts that may weigh in favor of using 24447 and 17299.8.

- a. The taxpayer was aware that he/she had an obligation to file the required reports.
- b. The taxpayer was advised that he/she had an obligation to file the required reports.
- b. The taxpayer intentionally failed to issue the required reports.
- c. The taxpayer had no justifiable reason for the failure to issue the required reports.

2) Compliance History. Evaluate the taxpayer's compliance history for failing to file, or in the alternative, for filing the required reports. Here are some facts that may weigh in favor of using 24447 and 17299.8.

- a. The taxpayer was noncompliant for a long period of time.
- b. The taxpayer has a history of noncompliance for failing to file required reports.
- c. The taxpayer has a history of general tax noncompliance.
- d. The period of noncompliance is significant in light of how long the taxpayer has been in business.
- e. The taxpayer has been found guilty of tax crimes.

3) Length of Time. Evaluate the length of time for which the taxpayer was not compliant with filing the required reports. Here are some facts that may weigh in favor of using 24447 and 17299.8.

- a. The taxpayer was noncompliant for a significant period of time.
- b. The taxpayer has not made any efforts to become compliant.

4) Record & Payment History. Evaluate the payment history for which the taxpayer was with filing the required reports. Here are some facts that may weigh in favor of using 24447 and 17299.8.

- a. The taxpayer has not paid any or a majority of related payroll tax and/or personal withholdings.
- b. The taxpayer has not filed form 1099 or W2 forms.
- c. The total amounts paid to individuals for personal services not properly reported consists of all or a majority of the amounts paid for personal services.
- d. The taxpayer does not maintain accurate or complete financial records.
- e. The taxpayer does not make the records available to verify that payments were made for personal services.
- f. The recipients of the payments for personal services did not report their income.

5) Circumstances Beyond Taxpayer's Control. Evaluate whether the taxpayer faced circumstances beyond taxpayer's control that prevented the filing of the required reports.

Issuance of guidelines will give the taxpayer fair warning and provide due process to the taxpayer at a relatively low cost and administrative burden on the FTB.

VI. THE REVENUE & TAXATION CODE'S PENALTY PROVISION 19175 SEEKS TO PENALIZE ON THE SAME NONCOMPLIANCE UNDER 17299.8 AND 24447

As discussed above, Rev. & Tax. Code Section 19175 also imposes a discretionary penalty if any person or entity fails to report the amounts paid as remuneration for personal services as required under the Unemployment Insurance Code Section 13050 or Rev. & Tax. Code Section 18631. Similar to sections 17299.8 and 24447, this penalty provision does not discuss when such discretion will be exercised. It does provide that if a penalty is imposed under Section 13052.4, then section 19175 will not be applied. This provision should be revised to provide that if a deduction is disallowed

under 17299.8 and 24447, then section 19175 should not be applied as it unfairly penalizes the taxpayer for the same behavior resulting in the disallowed deduction. In the alternative, regulations should be enacted to parallel the same guidelines under 17299.8 and 24447.

VII. Conclusion

As discussed above, there are serious constitutional and fairness concerns with regards to sections 17299.8 and 24447 as drafted currently. These sections provide the FTB complete discretion to apply these provisions, but do not provide any guidelines to the FTB and the taxpayers as to what may impact the FTB's decision to actually exercise such discretion. Additionally, it should be made clearer that these provisions do not affect cost of goods sold even if labor costs are included in such line item. Based on these constitutional and fairness implications, it is clear that regulations should be issued to clear up the ambiguity surrounding these sections. The regulations would help mitigate the constitutional and fairness concerns at a relatively low cost to the FTB. Moreover, such a remedy would not unduly burden the FTB, and will also assist the FTB in providing guidance to its own employees as to when the use of such sections may be warranted.

The comments contained in this paper are the individual views of the authors who prepared them, and do not represent the position of the State Bar of California or of the Taxation Section.