

Introduced by Senator AllenFebruary 16, 2024

An act to amend Sections 12803.2 and 15670 of, and to add Sections 15570.5 and 15681 to, the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 1436, as introduced, Allen. California Department of Tax and Fee Administration Board: Office of Tax Appeals Board.

Existing law establishes the California Department of Tax and Fee Administration (CDTFA) in the Government Operations Agency to administer specified taxes. Existing law establishes in state government the Office of Tax Appeals (OTA) to conduct tax appeals hearings. Existing law requires that the director of the OTA administer and direct the day-to-day operations of the office, including that each hearing office is sufficiently staffed and that appeals hearings are heard and resolved in a timely and efficient manner. Existing law prohibits the director from being involved in the decisionmaking process of tax appeal panels.

This bill would establish in the Government Operations Agency the California Department of Tax and Fee Board and the Office of Tax Appeal Board to oversee the policy direction of the CDTA and the OTA, respectively, as specified. The bill would require the boards to consist of the Controller, Director of Finance, and Chairperson of the State Board of Equalization.

This bill would require the boards to provide transparent, open, and accessible forums, meeting at least two times each year, and would require the boards to report on findings after each hearing, together with recommendations, to all participants, tax agencies, and the Government

Operations Agency. The bill would also require the boards to issue an annual report on all tax policy issues and recommendations to the Government Operations Agency and to the Legislative Analyst's office before the end of each fiscal year.

This bill would require the boards to be under control of a director, and would require the boards recommend a director, a chief deputy director, and a chief counsel to the Governor for appointment, and for the director, subject to confirmation by the Senate. With respect to the California Department of Tax and Fee Board, the bill would specify that the director is responsible for selecting persons for career executive assignment positions and other noncivil service managers.

This bill would specify that the OTA is in the Government Operations Agency and prohibit the director of the Office of Tax Appeals Board from interfering with the decision making process of the tax appeal panels.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12803.2 of the Government Code is
- 2 amended to read:
- 3 12803.2. (a) The Government Operations Agency shall consist
- 4 of all of the following:
- 5 (1) The Office of Administrative Law.
- 6 (2) The Public Employees' Retirement System.
- 7 (3) The State Teachers' Retirement System.
- 8 (4) The State Personnel Board.
- 9 (5) The California Victim Compensation Board.
- 10 (6) The Department of General Services.
- 11 (7) The Department of Technology.
- 12 (8) The Franchise Tax Board.
- 13 (9) The Department of Human Resources.
- 14 (10) The California Department of Tax and Fee Administration.
- 15 (11) The Office of Data and Innovation, effective July 1, 2023.
- 16 (12) *The California Department of Tax and Fee Board.*
- 17 (13) *The Office of Tax Appeals.*
- 18 (14) *The Office of Tax Appeals Board.*
- 19 (b) The Government Operations Agency shall include the
- 20 Department of FISCAL upon the acceptance of the Financial

1 Information System for California (FISCAL) by the state, as
2 determined by the Director of Finance, pursuant to Section 11890.

3 (c) The Government Operations Agency shall be governed by
4 the Secretary of Government Operations pursuant to Section 12801.
5 However, the Director of Human Resources shall report directly
6 to the Governor on issues relating to labor relations.

7 (d) The Governor, upon the recommendation of the Secretary
8 of Government Operations, may appoint up to three deputies for
9 the secretary.

10 SEC. 2. Section 15570.5 is added to the Government Code, to
11 read:

12 15570.5. (a) There is in the state government, in the
13 Government Operations Agency, the California Department of
14 Tax and Fee Board consisting of the Controller, Director of
15 Finance, and Chairperson of the State Board of Equalization, vested
16 with the responsibility of directly overseeing the policy direction
17 of the department, including receiving, reviewing, and working
18 collaboratively with the Government Operations Agency on
19 recommendations to resolve public grievances related to these
20 agencies' tax administration policies and procedures. The
21 California Department of Tax and Fee Board shall provide
22 transparent, open, and accessible forums, meeting at least two
23 times each year for such purposes, as well as to improve tax-related
24 policies, creating a more efficient, just, and responsive tax system,
25 and working collaboratively on recommendations regarding
26 grievances brought by taxpayers or other state or local entities
27 concerning the tax administration policies and procedures that may
28 be relevant to the department. The California Department of Tax
29 and Fee Board, after each meeting, shall report the board's findings
30 and conclusions, together with recommendations, to all participants,
31 tax agencies, and the Government Operations Agency, and shall
32 issue an annual report on all tax policy issues and recommendations
33 to the Government Operations Agency and to the Legislative
34 Analyst's office before the end of each fiscal year.

35 (b) The California Department of Tax and Fee Board is under
36 the control of a director. The California Department of Tax and
37 Fee Board shall recommend to the Governor and the Governor
38 shall appoint the director, a chief deputy director, and a chief
39 counsel, and these appointees shall hold office at the pleasure of
40 the California Department of Tax and Fee Board and the Governor.

1 The appointment of the director shall be subject to confirmation
2 by the Senate.

3 (c) The director shall be solely responsible for selecting persons
4 for career executive assignment positions and other noncivil service
5 managers for the California Department of Tax and Fee Board.

6 SEC. 3. Section 15670 of the Government Code is amended
7 to read:

8 15670. (a) There shall be established in state~~government~~
9 *government, in the Government Operation Agency*, the Office of
10 Tax Appeals.

11 (b) (1) The office is under the control of a director. The
12 Governor shall appoint the director, chief deputy director, and
13 chief counsel of the office. The appointment of the director is
14 subject to confirmation by the Senate.

15 (2) The director shall administer and direct the day-to-day
16 operations of the office, including, but not limited to, ensuring that
17 each hearing office is sufficiently staffed and that appeals hearings
18 are heard and resolved in a timely and efficient manner. The
19 director *nor the Office of Tax Appeals Board, established in Section*
20 *15681*, shall not direct, oversee, supervise, or be otherwise involved
21 in the decisionmaking process of the tax appeals panels.

22 (c) Within the office, there shall be tax appeals panels. Each tax
23 appeals panel shall consist of three members designated by the
24 director of the office. Each member shall be a person who satisfies
25 all of the following criteria:

26 (1) The person agrees to adhere to the ethics standards adopted
27 by the office pursuant to subdivision (d).

28 (2) The person has knowledge and experience with regard to
29 the administration and operation of the tax and fee laws of the
30 United States and California.

31 (3) Either of the following is true:

32 (A) The person maintained an active membership in the State
33 Bar of California for at least five years immediately preceding
34 designation to a tax appeals panel and meets the qualifications for
35 a state employee classification as an administrative law judge.

36 (B) The person is employed under either of the following state
37 employee classifications:

38 (i) The Business Taxes Specialist, California Department of
39 Tax and Fee Administration series.

40 (ii) The Program Specialist, Franchise Tax Board series.

1 (d) The office shall adopt by rule, pursuant to Section 15679,
2 ethics standards, including rules governing conflicts of interest
3 and ex parte communication. The office shall, to the extent
4 applicable, model the rules upon the Code of Judicial Ethics
5 adopted by the Supreme Court pursuant to subdivision (m) of
6 Section 18 of Article VI of the California Constitution.

7 (e) The hiring of members for tax appeals panels shall be
8 conducted by the office in compliance with state civil service
9 requirements.

10 (f) It is the intent of the Legislature that the changes made to
11 this section by the act adding this subdivision authorizing the office
12 to hire specified tax specialists to serve as members of tax appeals
13 panels shall be implemented by the office in a manner that will
14 not directly cause a reduction in the number of administrative law
15 judges currently employed by the office.

16 SEC. 4. Section 15681 is added to the Government Code, to
17 read:

18 15681. (a) There is in the state government, in the Government
19 Operations Agency, an Office of Tax Appeals Board consisting
20 of the Controller, Director of Finance, and Chairperson of the State
21 Board of Equalization, vested with the responsibility of directly
22 overseeing the policy direction of the office, including receiving,
23 reviewing, and working collaboratively with the Government
24 Operations Agency on recommendations to resolve public
25 grievances related to these agencies' tax administration policies
26 and procedures. The Office of Tax Appeals Board shall provide
27 transparent, open, and accessible forums, meeting at least two
28 times each year for such purposes, as well as to improve tax-related
29 policies, creating a more efficient, just, and responsive tax system,
30 and working collaboratively on recommendations regarding
31 grievances brought by taxpayers or other state or local entities
32 concerning the tax administration policies and procedures that may
33 be relevant to the office. The Office of Tax Appeals Board, after
34 each meeting, shall report the board's findings and conclusions,
35 together with recommendations, to all participants, tax agencies,
36 and the Government Operations Agency, and shall issue an annual
37 report on all tax policy issues and recommendation to the
38 Government Operations Agency and to the Legislative Analyst's
39 office before the end of each fiscal year.

1 (b) The Office of Tax Appeals Board is under the control of a
2 director. The Office of Tax Appeals Board shall recommend to
3 the Governor and the Governor shall appoint the director, a chief
4 deputy director, and a chief counsel, and these appointee shall hold
5 office at the pleasure of the Office of Tax Appeals Board and the
6 Governor. The appointment of the director shall be subject to
7 confirmation by the Senate.

SB 1436 – Tax Agency Oversight Boards

SENATOR BEN ALLEN

Fact Sheet

SUMMARY

SB 1436 establishes tax agency oversight boards for the California Department of Tax and Fee Administration and the Office of Tax Appeals to promote accountability and consistency in tax policy.

BACKGROUND

There are three primary tax agencies in California. Within the California Government Operations Agency, the Franchise Tax Board (FTB) consists of the Controller, the Director of Finance, and the Chairperson of the Board of Equalization (BOE). FTB's duties and responsibilities include administering and enforcing laws and regulations related to personal and corporate income tax, and the Tax Payers' Bill of Rights. The California Department of Tax and Fee Administration (CDTFA) primarily administers a variety of transaction and use taxes such as sales, fuel, tobacco, and alcohol taxes. The third tax agency, the Office of Tax Appeals (OTA), has the authority to hear appeals originating from tax programs administered by FTB and CDTFA.

California's tax laws impact nearly every aspect of life, influencing the decisions people make about how much to save for retirement, where to live, how to organize and locate their businesses, and how much to borrow and invest. Though the basic criteria needed for sound tax policy is fairness, transparency, and administrative ease, opinions of the tax agencies' commitment to these criteria vary.

Some taxpayer advocates view the FTB as reliable and responsive to tax questions raised by taxpayers. Because of their structure, CDTFA and OTA do not have the same level of transparency and accountability and are less responsive to inquiries from taxpayers. Additionally, ongoing litigation

involving a situation in which CDTFA disagreed with, and did not execute, an appeals decision issued by OTA highlights the policy discrepancies of the tax agencies.

Unlike CDTFA and OTA, FTB has a board consisting of elected officials, typically meets four times a year, and is required to hold an annual hearing to allow industry representatives and individual taxpayers to present proposed changes to California's tax laws. However, under current law, CDTFA and OTA are overseen by appointed officials and do not have meeting requirements like those of the FTB. Additionally, California lacks a statewide body to oversee all three tax agencies' operations to coordinate and enhance their policies on behalf of taxpayers.

SOLUTION

SB 1436 establishes the Department of Tax and Fee Board and Office of Tax Appeals Board with membership that mirrors the current FTB consisting of the State Controller, the Director of Finance, and the Chairperson of BOE. These new boards will have the responsibility to oversee the policy direction of the three tax agencies. Creating dedicated oversight bodies for the operations of CDTFA and OTA will promote consistency in tax policy and provide forums to receive, review, and work collaboratively on recommendations regarding grievances brought by taxpayers or other state or local entities concerning state tax administration policies and procedures.

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