

JOSEPH F. MICALLEF'S ROLE IN LEGISLATIVE ADVOCACY

Mr. Micallef's aggressive posture before the Board has proven to be very effective. For the past 30-plus years, Mr. Micallef and his staff have prevailed in securing tax adjustments in more than 95% of the cases. This has resulted in an average savings to our clients of over 80% of the tax liability originally proposed by the Board!

Along with education efforts over the years through seminars and workshops for tax attorneys, certified public accountants and industry representatives, Mr. Micallef was instrumental in helping reform the Board from within. He has consistently criticized the Board's policy of "secret agency law" and has successfully prevailed in several Superior Court cases that required the agency to produce its library of private letter rulings which were previously not disclosed to the public.

In his role with Associated Sales Tax Consultants, Inc., the company won a judgment against the Board of Equalization (*Associated Sales Tax Consultants, Inc. vs. California State Board of Equalization, 10 Cal App 4d 1177*). The Superior Court judgment compelled the Board to provide copies of what the Court called "secret" documents to the taxpaying public.

Although the Board appealed that decision, the Appellate Court was even stronger in its language admonishing the Board for its surreptitious policies. Based on that decree, the State Supreme Court denied to hear the Board's final appeal. Even with this decision, the public's position was precarious until it could be codified into law. That happened in early 1998 and the Board can now be held accountable with the passage of SB 2174 (Rainey, 1998).

ASSEMBLY BILL 1043 INTRODUCED MARCH 4, 1991 DIED IN SESSION

This was a re-introduction of SB 1848 as described above. The basic parameters and summary remained unchanged.

With the help of the Legislative Counsel's written opinion, Mr. Micallef was able to overcome the Board's objection of confidentiality. The Board's opposition this time was the prohibitive costs they said would be involved in implementing this program and maintaining the information required in this bill. The current budget climate garnered significant attention to that argument. The bill was held over in the Revenue and Taxation Committee to be considered in the 1992 session, where it subsequently died.

ASSEMBLY BILL 1965

INTRODUCED FEBRUARY 18, 2000

AMENDED APRIL 24, 2000

FILED WITH SECRETARY OF STATE JUNE, 2000

This Assembly Bill was introduced as supposed “protection” to taxpayers and individuals registered with the Board of Equalization and doing business in the state. The protection, in effect, circumvented the provisions in the Revenue and Taxation Code section 7056 and the Information Practices Act of 1977 that required the disclosure of the name and address of any person(s) conducting business within the state. The sponsor was under the misguided belief that the names and addresses should be considered confidential information, rather than public information, and should therefore be restricted. It was Mr. Micallef’s belief that this was in fact public information and should not be withheld. He viewed this as a first step by the Board to limit access to other information that they have previously held secret. Although Mr. Micallef vehemently opposed the bill, and had great support from constituents and clients, the bill was passed and signed into law. Mr. Micallef continues to monitor the progress of this type of legislation. It has the potential of affecting CSTC’s ability to obtain the taxpayer information we need to represent our clients and to protect the rights of access for all taxpayers.

SENATE BILL NO. 1849

APPROVED BY THE GOVERNOR AUGUST 12, 1988

FILED WITH THE SECRETARY OF STATE AUGUST 15, 1988

The existing California Public Records Act provides that public records are open to public inspection at all times during normal business hours of state and local agencies and that every person has a right to inspect a public record. The Act also requires specified state and local agencies to establish written guidelines for gaining access to those records. This bill specifically added the Board of Equalization to the list of approximately 35 government agencies required to comply with the California Public Records Act. The Board previously had not been included.

SENATE BILL 1848

AMENDED FEBRUARY, MARCH AND APRIL, 1988

DIED IN SESSION

This bill would have required the Executive Secretary of the Board of Equalization to make available to the public copies of any text of any public record which has interpretive value in the administration of tax by the Board. Certain confidential

information would be deleted before the text was released. In effect, this would have required the Board to make available to all citizens their internal correspondence and interpretive memorandums, to which they current prohibit or restrict access. The bill died in session primarily because of opposition by the Board of Equalization and their contention that it would violate confidentiality laws. They prevailed even though the Legislative Counsel wrote a detailed opinion that emphasized the taxpayer's confidentiality would actually be better protected than it is currently.

SENATE BILL 2174

INTRODUCED FEBRUARY 20, 1998

AMENDED APRIL 13, 1998

FILED WITH SECRETARY OF STATE JULY, 1999

This is the third attempt to codify into law the Appellate Court ruling mandating that the Board of Equalization (as well as all state agencies) allow access to all records maintained by any agency when a reasonable request is made and fees are paid to cover costs. It will also require that the agencies prepare and maintain and index to those records. In June, 1998, the bill passed the Senate by a 36-0 vote and then the Assembly committee with similar support. The bill was signed into law by the Governor effective January 1, 1999. A more complete synopsis is available by contacting us.

ASSEMBLY BILL 1631 & SENATE BILL 1478

INTRODUCED JANUARY 5, 1998

AMENDED FEBRUARY 6, 1998

These two bills are virtually identical and shift the burden of proof, under certain circumstances, to the taxing agency. The existing law provides that the burden of proof for various laws rests with the taxpayer. This is a significant change in the application and administration of tax laws. Taxpayers will have further protection in presenting their evidence and information when assessed additional tax.

SENATE CONCURRENT RESOLUTION NO. 64

FILED WITH THE SECRETARY OF STATE AUGUST 10, 1988

This resolution requested that the Board of Equalization establish a more comprehensive program to educate the general public and business community in the correct interpretation and application of the California Sales and Use Tax Law. Based on this resolution, the Board is conducting quarterly seminars in various Board districts.