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Does One “Wrong” Make Two “Rights”? – The Demise of the Board of Equalization Results in Sweeping Changes in California

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The California legislature has voted to strip the Board of Equalization of all powers and duties except for those originally given to it by constitutional amendment in 1879. Over time, the board received the statutory authority to administer the California sales and use tax and many other state taxes and fees. The Board also was responsible for hearing appeals of property, business and income tax assessments. However, effective July 1, 2017, the Board’s functions will be primarily limited to reviewing assessments, collections and appeals for property, insurance, and alcoholic beverage taxes.

California lawmakers created two new agencies to handle the functions taken away from the Board. The California Department of Tax and Fee Administration will, beginning July 1, 2017, be responsible for administering the sales and use tax, business and excise taxes and certain other fees. The legislation also created the Office of Tax Appeals to take over the appellate duties of the Board. While the Board utilized elected officials to hear and decide appeals, the Office of Tax Appeals will be comprised of panels of three unelected administrative law judges – each being a lawyer having experience with state taxes. The Office of Tax Appeals is scheduled to begin hearing taxpayer appeals effective January 1, 2018.

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The subject of breaking up the duties and responsibilities of the Board had been raised and debated many times over the last several decades. The “last straw” came in March 2017 following an audit of the Board. The elected members of the Board were accused of improperly influencing audits and investigations by civil service employees, wrongly intervening in administrative and appeal-related activities, and interfering with hiring decisions at the agency. Moreover, and perhaps most shocking, the Board was found to have misallocated local tax revenues to the tune of approximately \$47.8 million.

The fallout of these radical changes has significant ramifications for taxpayers. Having arbiters experienced in state tax matters is important. The Board’s elected members often had little state tax background and relied on the opinions and guidance of tax experts to decide cases. The Office of Tax Appeals is also preferred to the Board from a tax policy perspective. The Board was only required to provide a written opinion on appeals with an amount at issue greater than \$500,000. By contrast, the Office of Tax Appeals must provide a written decision for each appeal irrespective of the amount in dispute. Having a greater body of law publicly available means more predictability for taxpayers doing business in California.

There are vocal opponents of the new legislation, however. Detractors maintain that the use of three judge panels of lawyers at the Office of Tax Appeals may deter or intimidate small business owners. Further, critics contend, elected officials are generally seen as more accountable to the public. Since the administrative law judges will be unelected appointees, the argument continues, the Office of Tax Appeals will necessarily be less accountable.

These far-reaching legislative changes have not yet been signed into law. However, because Governor Jerry Brown requested the March 2017 audit and has since ordered investigations into alleged

wrongdoings at the Board, prognosticators believe it will be on or before July 1, 2017. Not to be outdone, several Republican lawmakers have hinted about bringing a lawsuit challenging the new law. On the day the legislation was voted on, several Republican legislators read clauses from the state Constitution which they believe prevent the abrupt overhaul of state agencies. Stay tuned.

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