

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

A. GENERAL INFORMATION

1. Date

September 27,
2016

2. Department

Franchise Tax Board

3. Organizational Placement (Division/Branch/Office Name)

Audit Division/Individual and Pass-Through Entity Bureau

4. CEA Position Title

Individual & Pass-Through Entity Audit Technical Audit Policy Advisor

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)

The proposed CEA A (CEA) classification will serve as the Individual and Pass-Through Entity Audit Technical Audit Policy Advisor (TAPA) within the Individual and Pass-Through Entity (IPTE) Bureau. In this position, the incumbent will serve as the highest level expert, key policy advisor and technical resource in identifying and developing policy as it pertains to fairly administering the California Revenue & Taxation Code for individuals and pass-through entities.

6. Reports to: (Class Title/Level)

Individual and Pass-Through Entity Bureau Director / CEA B

7. Relationship with Department Director (Select one)

- Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain): This position is not in a supervisory role, but would be utilized as a technical and policy expert and policy key advisor.

8. Organizational Level (Select one)

- 1st
- 2nd
- 3rd
- 4th
- 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The primary function of the Franchise Tax Board is to administer the California Revenue and Taxation Code. It is our duty to correctly apply the laws as enacted; to determine the reasonable meaning of the various tax code provisions; and, to perform in a fair and impartial manner. Interpretation of the tax code is the heart of our duty, as well as the application of the tax code to tax returns as filed, in order to ensure the true meaning of the statutory provisions are being followed. We take this duty seriously, while ensuring we do not adopt a strained construction in the belief we are protecting the revenue. The revenue is properly protected only when the true meaning of the statute is ascertained and applied.

The proposed CEA A (CEA) classification will serve as the Technical Audit Policy Advisor (TAPA) within the Individual and Pass-Through Entity (IPTE) Bureau. In this position, the incumbent will serve as the highest level expert, key policy advisor and technical resource in identifying and developing policy as appropriate in order to ascertain the true meaning of the statutory provisions of the California Revenue & Taxation Code for individuals and pass-through entities.

The incumbent must possess a profound understanding of not only California resident and nonresident income tax laws, but other states as well. In addition, the incumbent must have knowledge of various business enterprises, including C corporations, S corporations, partnerships, limited liability companies, and estates and trusts. The CEA will leverage this extensive knowledge and expertise in developing policies and providing guidance on tax matters that impact taxpayers who have California source income or are "doing business" in California.

The incumbent will also provide expert consultation and advice to the Director, IPTE Bureau; Chief, Audit Division; FTB Executive Officer; Chief Counsel; and Legal and Audit Division staff. Incumbent will provide consultation and analysis to FTB's Legislative Bureau Director, to ensure proposed and existing law is clear, comprehensive, and administratively operative. Incumbent will represent the department on various committees with external interest, including the Internal Revenue Service, Federation of Tax Administrators, other states' taxing authorities, and other taxing organizations. In addition, the CEA incumbent will represent FTB at FTB Board Meetings, Advisory Board Meetings, Interested Parties Meetings, and other public forums. Incumbent will share and exchange information, ideas, strategies, and tax policies with the Internal Revenue Service and any other countries' and states' tax agencies or organizations. The incumbent will also act as an advisor on the most complex audits and issues within the Audit Division and train and develop staff including developing and implementing the Program Specialist Series Technical Development Program. This program supports the strategic goal of a strong organization, ensuring technical staff can meet the demands of increasingly complex tax law.

Additional workloads include drafting tax legislation, regulations and rulings, facilitating symposiums, evaluating distortion petitions, and working with industry groups to implement tax policy. As egregious tax positions increase, so has the need for additional program expertise with more extensive and complex knowledge of individuals and businesses along with evolving accounting practices.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.
- Program is indirectly related to department's primary mission.
- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: Franchise Tax Board's Mission

"Our mission is to provide the services and information to help taxpayers file accurate and timely tax returns and pay the proper amount owed. To accomplish this mission, we develop knowledgeable and engaged employees, administer and enforce the law with fairness and integrity, and responsibly manage the resources allocated to us."

The proposed CEA position is critical to the department's mission to provide the services and information to help taxpayers file accurate and timely tax returns and pay the proper amount owed. To accomplish this mission, we need an expert knowledgeable in a broad range of individual and pass-through entity tax principles. The CEA would also develop engaged employees, administer and enforce the law with fairness and integrity, and responsibly manage the resources allocated. The CEA will effectively direct and facilitate the development and implementation of tax laws and policies in today's sophisticated environment. This will require outstanding leadership and communication skills in interacting with the taxpayer community, other taxing agencies, and the country's leading authorities on state taxation.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

Over the last decade, tax planning has become an integral part in today's environment. The result has been a stepped up level of sophistication of state tax planners and a corresponding increase in the complexity of state tax issues. The use of pass-through entities by taxpayers has created complex tax structures in an effort to avoid tax. Concurrently, the manner in which taxpayers transact business has been rapidly changing as new technologies open doors of opportunities. The globalization of business and the explosion of business transacted electronically have transformed the fundamental structures of income production. This has created a fluid environment where long-established tax principles are being called into question.

To succeed in its duty to fairly administer the California Revenue & Taxation Code, the FTB must be proactive in responding to the changing tax environment. In being proactive, the department has identified the need for more clarification of existing law through regulations, legal rulings, and FTB notices. In addition, taxpayers are more engaging than they have been in the past, and the opportunities to build consensus between the FTB and taxpayers are expanding with the use of Interested Parties Meetings and other public forums. This requires additional skill sets to interact at a high level with the Legislature, other taxing agencies, the taxpayer community and the country's leading authorities on state taxation.

The CEA position is critical to developing and implementing Best Audit Practices, strategic planning, developing and training staff, and meeting the department's needs as an enterprise. As examples, Best Audit Practices and audit issue development that require immediate attention are the following:

Market Base Rules (MBR)

With changes in tax law effective in 2013, multi-state and multinational apportionment methodologies have undergone substantial changes. A clear focus on the MBR (sales factor) issues arising is needed to address questions from auditors and the taxpayer community on the implementation of this new law.

Pass Through Entities (PTE)

The majority of PTE cases involve some sort of tax avoidance transaction, which are among the most complex cases handled by the Audit Division. The auditors are required to analyze and break down intricate business transactions that taxpayers have used to avoid the payment of tax, including use of offshore entities, or multi-tiered entities each with unique tax considerations. These sophisticated transactions require a thorough understanding of PTE and the application of the tax laws. Additionally, the IRS is changing the way they examine entity-level audits and a full analysis of impacts are required to prepare for these changes.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

The proposed CEA will serve as an utmost expert and advisor to the IPTe Bureau Director and Audit Division Chief on policy issues related to individual and pass-through entity tax law matters. There are a wide range of tax matters in the bureau that have significant impacts to tax positions and revenue implications for the State of California. The Technical Audit Policy Advisor (TAPA) will serve as principle policy advisor in a variety of sophisticated transactions involving significant complexities and sensitivities. Examples include:

1. Interpretation of the federal and state income tax laws:

Incumbent will review tax positions, case law, and legislation's intent to determine the true meaning of the statutory provisions and calculate the impacts to the Audit programs and the state general fund. This includes staying abreast of federal and other state tax cases, California Board of Equalization decisions, regulation projects, new or proposed legislations at the IRS or state levels, and current audit policies. Based on the interpretations and understanding, the incumbent will be expected to recommend a course of action impacting the audit workloads, policies or practices.

2. Expert consultation and advise:

Based on the extensive knowledge gathered from researching issues and analyzing tax positions, the incumbent will prepare recommendations for department senior management on audit policy implementation. Examples include, but are not limited to, addressing audit policies and practices for resolving abusive tax avoidance transactions; leading and implementing a department wide team to address precedented rulings from the courts or BOE; and, analyzing the need for additional legislative changes or regulations and collaborate with appropriate parties, as needed. These activities have a state wide impact on how taxpayers file their tax returns.

3. Collaboration with stakeholders:

Based on input from our internal and external stakeholders, the incumbent will share and exchange information, ideas, strategies, and tax policies with stakeholders to promote transparency and ensure that the true meaning of the statutory provisions are being considered. The incumbent will lead Interested Parties Meetings, seek feedback at various public forums, and provide updates to our Agency and FTB Board members. The collaboration efforts will have a positive impact on our relationships with our stakeholders nation-wide.

4. Educate staff on emerging issues and tax law changes:

As tax laws change and as tax positions become increasingly complex, our intermediate and advanced level staff require a forum to discuss, share and apply a consistent interpretation of the tax laws to their sophisticated fact patterns. The incumbent will help flush out areas open to a wide variety of interpretation, develop a training curriculum, and work on educating our intermediate and advanced staff on these unique and often complex tax matters. These activities are expected to bring a higher level of quality on audit findings and stronger, supportable cases through the administrative process.

5. Represent the FTB at public forums:

As the incumbent begins to implement any approved recommendations, there will be implementation concerns or areas of interest requiring frequent and open communication. The incumbent will need to be diplomatic in the sharing and receiving of information and represent the department at public forums in a manner that demonstrates courtesy and considerateness.

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

The CEA will serve as the Audit Division's expert level advisor to the IPTE Bureau Director, Audit management, and staff on individual and pass-through entity tax issues arising under the California Revenue and Taxation Code. This position will be responsible for directly impacting the formulation of tax law policies, strategic decision-making, program effectiveness and the quality of services provided to the public. The incumbent will work in collaboration with the senior management team by providing strategic policy advice that ultimately may have a profound impact on the department's operations. The incumbent will evaluate and determine the impact of the department's individual and pass-through entity tax positions, providing information and recommendations to the Audit Division management team for use in formulating major policy decisions and establishing the division's strategic direction.

The CEA will identify trends and issues affecting the department, and will recommend studies and/or develop solutions to address those issues, and prepare recommendations to department senior management. The incumbent will provide recommendations for proposed legislation, regulations, FTB Notices and legal rulings and assist in getting these items through the adoption process. The CEA will make recommendations on precedent-setting issues on specific cases to ensure that outcomes are consistent with program-wide objectives. In resolving these issues, the incumbent will serve as liaison with taxpayers and tax practitioners on the most complex tax law issues and questions. This complexity is determined by many factors including the:

- type of taxpayer/entity;
- size of entity (such as individual with multiple ownership interests, or tiered partnerships/pass-through entities versus sole proprietorships);
- issues involved, such as offshore financial transactions, derivatives, and all forms of sophisticated tax sheltering devices; multiple layered and tiered pass-through entities and all forms of complex flow through transactions;
- type of transactions, such as real estate, securities, and/or financial;
- sensitivity of the audit, including precedent setting issues or pending legislation.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

The proposed CEA will play a critical role in developing, implementing, and interpreting new and existing policies. The CEA will consult with the Bureau Director and Division Chief in the recommendation, development, and implementation of policies, standards, processes, and procedures as it relates to the Audit Division's strategic goals and mission.

The incumbent will be the highest-level technical expert and key policy advisor within the Individual and Pass-Through Entity program. The incumbent will make recommendations regarding issues in which no departmental policy has been established. In addition, the incumbent will review resolutions of protests, appeals, litigation cases and claims in order to provide management with an opinion concerning future application of the resolutions. The incumbent will also review large or sensitive audits, make recommendations, and resolve conflicts in interpretation of the law.