

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

August 21,
2010

2. Department

Franchise Tax Board

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

Audit Division/Technical Resource and Services Bureau

4. CEA Position Title

Bureau Director, Technical Resource and Services Bureau

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

The California Franchise Tax Board (FTB) proposes to establish a CEA, Level B as a Bureau Director over the Technical Resource and Services Bureau of the Audit Division.

6. Reports to: (Class Title/Level)

Audit Division Chief, CEA C

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):

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 Technical Resource and Services Bureau (TRSB) resides in the Audit Division and consists of two distinct sections with unique functions. The TRSB Bureau Director has the responsibility to set policy, monitor performance and oversee effectiveness for the Technical Resource Section and the Specialized Technical Services Section with the following responsibilities associated to them. The latter section became into existence in 2014 and was developed from the ground up.

The Technical Resource Section (TRS) is responsible for providing Audit staff and management (approximately 1150 employees) with technical service and support for conducting effective audits and consequently, defending those audits. This specialized guidance is also shared throughout the enterprise and to external stakeholders to ensure consistency, accuracy and fairness. TRS is committed to enhancing quality audits through shared knowledge. This section provides technical consultation advice on the largest and most complex personal income multistate taxpayers where the law is unsettled, positions are unprecedented, and taxpayers can take aggressive positions. TRS develops highest-level policies, procedures and guidelines in areas with significant departmental consequences, where the potential for litigation is certain, and where multi-divisional leadership and departmental coordination is of the essence. These workloads can provide a host of information to the auditor and FTB with regards to how to improve audits, and when trends appear on inappropriate tax liability avoidance occurs, can help to identify early detection or opportunities for education. In addition, outside stakeholders have magnified the risks with sensitive case management and quality review due to increased scrutiny, thus heightening the need for sound guidance and policies.

The other program within TRSB is the Specialized Technical Services Section (STSS). STSS differentiates itself from TRS by bringing together services that span the division under one umbrella to create efficiencies and provide optimum customer service to our internal and external stakeholders. The section's expectation is to be a resource for auditors to resolve unique and complex business tax credit cases, including providing consultation services on California's research credit cases. In order to accomplish this, STSS must be flexible, resourceful, and responsive to the department's responsibilities in performing various legislatively mandated workloads, such as the CA Competes Tax Credit. The CA Competes Tax Credit is administered by the Governor's Office of Business and Economic Development (GO-Biz). Applications for the credit are available to businesses that want to locate or stay and grow in California. Tax credit agreements are negotiated between taxpayers and GO-Biz and are approved by the California Competes Tax Credit Committee. In order to secure the tax credit, businesses "commit" to certain employment or project investment requirements; referred to as "milestones," as part of the credit agreements. The legislation that enacted this credit requires FTB to review certain businesses books and records to ensure that businesses are in compliance with the agreed upon milestones. The STSS developed the standards for which to conduct these audits and the book reviews to ensure consistency and accuracy so as not to bring discredit to this program that the Governor is committed to that is intended to bring more businesses to California. Since inception of the program in 2014, over 900 applications have been approved awarding \$750 million in tax credits, with an anticipation of creating thousands of jobs and resulting in approximately millions in new capital equipment investments within California. The program was recently extended by several years under Senate Bill 855.

Together, these two programs provide efficiencies and best practices for the Audit Division's staff and other customers, including other divisions and, in some cases, other agencies, ensuring the division meets its mission and performance goals.

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: The Audit Division's mission further enhances FTB as follows: "Our mission is to administer and enforce the income tax laws. To accomplish this mission, we develop knowledgeable and engaged employees and responsibly conduct our business with fairness, integrity and in a timely manner."

TRSB has the overall responsibility of implementing the tax laws that impact the audit division or department, often with unique factors that require collaboration among several different business areas. Frequently, the subject matter of these new laws is high profile and involves partnering with other agencies towards desirable outcomes and consistent approaches. The Bureau Director has responsibility for overseeing these activities and ensuring related policies arising from the new laws are reasonable and administrable by FTB.

In addition to the development of tax law implementation, TRSB also provides guidance and communication related to emerging issues that arise from new laws or new audit approaches.

These two aspects alone are critical to FTB achieving its Mission, specifically "Our mission is to help taxpayers file timely and accurate tax returns, and pay the correct amount to fund services important to Californians."

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.

The Audit Division consists of 5 Bureaus, each lead by Career Executive Assignment (CEA) appointments except the TRS Bureau. The TRS Bureau is lead by an Administrator IV which has created inequities between these leaders as well as the inability to rotate the Bureau Director's due to the use of this classification over the TRS Bureau. The Bureau's impact and responsibility meets the criteria of a CEA position, it simply was not included in the initial structure. Over the last few years, the bureau has expanded its policy oversight over sensitive and critical activities that serve the division and California taxpayers such as the Research Credit and California Competes Credit that are of interest to the public and other agencies and for which the related policies significantly impact taxpayers and businesses. These credits and other tax credit programs, including the related assignment of these credits which can often involve complex transactions, are designed to achieve specific economic development goals and attract and retain businesses within the state of California.

The TRS Bureau is also responsible for the overall policies, procedures and quality review of domestic and international companies' audits to ensure polices are applied reasonably and conducted in accordance with the department's Statement of Principles of Tax Administration, Taxpayers' Bill of Rights, and our organizational values and strategic plan. The associated revenue and financial impact of these companies can be significant; for example, since its inception in 2014, the California Competes credits approved have amounted to almost \$1 billion in awarded credit. The TRS Bureau performs compliance reviews to ensure awardees are in compliance with their agreed upon terms related to the credit as approved by the Governor's Office of Business and Economic Development.

The TRS Bureau was created in 2014 and has 62 positions contained within the unit. While this number is low, its impact is threaded throughout the enterprise. The Audit Division responsibility to administer and enforce the tax laws requires Audit to interact with all divisions to ensure all are fully knowledgeable of current tax laws as well as new tax laws and how they are implemented. This also requires monitoring of the administrative court's interpretation of audit appeals by taxpayers and corporations.

This bureau oversees many sensitive items, including coordinating with other departments or agencies. For example, the College Access Tax Credit is a credit administered by College Educational Facilities Authority (CEFA). CEFA is chaired the State Treasurer's Office. The TRS Bureau works in collaboration with their office to ensure the tax aspects of the program are both communicated to the public and the related policies and procedures implemented properly. As changes are made to the fund or program, the TRS Bureau acts quickly to ensure changes are reflected on our materials and in our systems as needed. The TRS Bureau is developing and overseeing workforce items such as a comprehensive development model that will be available to the entire Division that adopts workforce strategies and governance as aligned with our Departmental strategic organizational development goals and policies.

The College Access Tax Credit is just one credit with unique or broad impacts that is implemented within FTB by the TRS Bureau. Other credits include the New Employment Credit, Research Credit, and California Competes Tax Credit. For the New Employment Credit, the bureau collaborated with Department of Technology and other agencies to develop a mapping system as well as a reservation system to ensure the credit was properly administered. The research credit is taken by some of the largest corporations and pass through entities whose structures and business operations are both complex and unique. In addition, California recently enacted adult use cannabis that required looking at the issue from a variety of perspectives, including legislative, educational, and compliance has been a large focus for FTB. Ensuring proper application of law through the development of policies, procedures and guidance to taxpayers is a key role of the TRS Bureau.

The TRS Bureau also works closely with legal and other impacted business areas on precedent-setting matters. For example, when large court cases are decided, the TRS Bureau is responsible for communicating any needed policy or procedural changes internally or to the taxpayer community. In doing so, the TRS Bureau needs to be fully aware of all the impacts of such changes. One such case is the Gillette case, where TRS Bureau worked closely with our Legal division on the proper treatment of cases, applicability of penalties, and any needed communication to staff to ensure the case results were implemented into ongoing audit case workloads. Additional cases that have significant volumes or impact are currently in progress or pending in litigation that will also require the need for administration under the direction of the court in a proper manner to mitigate any downstream impacts.

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 Technical Resource and Services Bureau Director (TRS) will oversee the development of policies related to audit practices, especially in areas where limited precedent exists and that may have significant revenue implications for the State of California. The TRSB Bureau Director will ensure that appropriate business organizations internally or externally are consulted in the process to develop sound policies that are then effectively communicated to impacted parties.

1. Oversee interpretation of the federal and state income tax laws:

The TRS Bureau Director 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 Office of Tax Appeals 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. 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 Bureau Director will lead Interested Parties Meetings, seek feedback at various public forums, and provide updates to our Agency and FTB Board members, which will then be used to develop or administer related policies. These meetings can include a variety of venues, including overseers such as the State Controller. For example, the passage and adoption of an entirely new Cannabis laws that were adopted by California voters in 2016, with a brand new framework affecting a multitude of agencies, business, and counties within the state, has resulted in new policies and practices for which consideration of the public input and partnerships with other agencies is paramount for practical and fair policy administration of this statewide program. For example, IRC 280E, to which California conforms under personal income tax law, prohibits deductions for certain California cannabis businesses. A thorough analysis of this provision as well as policies and impacts of proposed legislation, e.g. Assembly Bill 37, is required to ensure cannabis businesses, their representatives are complying with income tax laws. Additionally, the TRS Bureau oversees the development compliance policies for unlicensed businesses that can result in a detriment to the statewide program and need to be aligned at a statewide level, resulting in significant communication and coordination with executive leadership from governmental organizations and industry associations, all requiring a certain level of diplomacy. In addition, the TRS Bureau often discusses matter of tax administration policy with other state agencies on matters of interest to them. The various collaboration efforts the TRS Bureau oversees has a positive impact on our relationships with our stakeholders state and nation-wide.

3. Oversee communication and establish policies on emerging issues and tax law changes:

As tax laws change and as tax positions become increasingly complex, new policies need to be developed and communicated for groundbreaking issues. The decisions and recommendation surrounding these policies needs to be sound and reasonable. These activities are expected to bring a higher level of quality on audit findings and potentially stronger, supportable cases through the administrative process. The increased workload due to new laws passed by CA Voters and legislators required a CEA B to handle oversight and policy development. This position and section was previously housed within another bureau but because of growth of policy and staffing levels was moved to create its own bureau in 2014. With the implementation of several new policies for the state of CA (CA Competes, Cannabis) and the bringing of the research credit consultant and other division-wide services under one bureau umbrella there is a significant amount of workload and staff level growth that is needed to manage the role out and development of these and future policies. With these increased workloads there is a need to raise the level of oversight of the program in alignment with the other CEA Bs within the department.

4. Represent the FTB at public forums:

As the Bureau Director begins to implement any approved recommendations, there will be implementation concerns or areas of interest requiring frequent and open communication and review of our policies and practices. The CEA B will participate in various liaison meetings with public taxpayer advocacy groups, taxpayer representatives, and taxpayers that have a notable interest in audit policies and practices. Often these forums can be of interest to media, for example, the statewide Cannabis Banking Working group that were designed to hear the concerns and challenges of cannabis businesses, especially as related to the policies related to cash at both the state and federal level, were televised and streamed to the public. The current Administrator IV participated in the public meetings and related follow up discussions hosted by the State Treasurer's Office, as well as consideration and input into proposed strategies. 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 TRS Bureau Director 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 with fellow directors and other executive management by providing strategic policy advice that ultimately should have a profound impact on the department's operations. The incumbent will evaluate and determine the impact of the department's multi-state and business 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 Bureau Director will make recommendations for proposed legislation, regulations, FTB Notices and legal rulings and ensure proper policies and procedures are developed to successfully implement any changes. The incumbent will guide any decision-making on precedent-setting issues or laws, including coordinating with internal and external stakeholders on sensitive matters.

The Bureau Director must also oversee that the application of the law is in a reasonable and practical manner. Issues are raised when they have merit, and are never raised arbitrarily or for trading purposes. Staff are encouraged to raise meritorious issues and also exercise care not to raise an issue or to ask a court to adopt a position inconsistent with an established FTB position.

The Bureau Director 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 large multi-state/multinational corporation versus closely-held corporation, or multi-tiered partnership versus sole proprietorship);
- 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 industry, such as technology, telecommunication, oil & gas, financial; and
- 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 peers, Division Chief, and other executive management in the recommendation, development, and implementation of policies, standards, processes, and procedures as it relates to the Audit Division's strategic goals and mission.