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ENDORSED FILED
IN THE OFFICE OF
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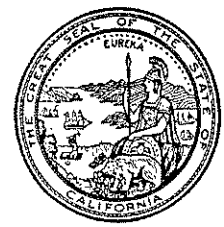
BILL JONES
SECRETARY OF STATE



July 21, 2000

Scott Dunn
19744 Beach Blvd., #373
Huntington Beach, CA 92648

Re: **2000 OAL Determination No. 11 (File no. 99-013)**
Franchise Tax Board: (1) Agreement on Coordination of Tax Administration (Rev. 1), and (2) Guidelines for Implementation of the Agreement on Coordination of Tax Administration, California Franchise Tax Board - Internal Revenue Service, Revision 1 (Original and Amendment Superseded).

Dear Mr. Dunn:

This determination letter is in response to your request for determination submitted to the Office of Administrative Law (OAL). Pursuant to Government Code section 11340.5, subdivision (b), when OAL is notified of an uncodified state agency rule, it has the authority to determine whether the state agency rule is a "regulation" as defined by Government Code section 11342, subdivision (g), and should have been, but was not, adopted pursuant to the Administrative Procedure Act (Government Code section 11340 et seq.). However, the issue presented in your request concerning the challenged documents noted above is moot because the documents had been superseded and were no longer in effect when your request for determination was submitted to OAL.

The Franchise Tax Board ("FTB") has the power and duty to administer the taxes imposed by the Personal Income Tax and Bank and Corporation Tax Law. (Rev. & Tax. Code section 19501.) A part of that duty is to ascertain the correctness of any return, and to determine or collect the tax liability of any person in respect to any liability imposed under the Personal Income Tax and Bank and Corporation Tax Law. (Rev. & Tax. Code section 19504.)

The first document challenged, titled "Agreement on Coordination of Tax Administration (Rev. 1)" ("Agreement"), was a written agreement between the FTB and the Internal Revenue Service ("IRS"). The Agreement established mutually acceptable

techniques and modes of exchange of taxpayer information between the FTB and the IRS. It was signed by the executive officer of FTB on July 3, 1985, and by the Commissioner of Internal Revenue on January 3, 1986. (Agreement, p. 15.)

The second document challenged is titled "Guidelines for Implementation of the Agreement on Coordination of Tax Administration, California Franchise Tax Board - Internal Revenue Service, Revision 1 (Original and Amendment Superseded)" ("Guidelines"). The Guidelines supplement the Agreement by setting forth the mechanics for the continuous exchange of tax information between the FTB and the IRS. The Guidelines supplement was signed by the executive officer of FTB on March 24, 1986, and by the director of the Sacramento District of the Internal Revenue Service, Federal/State Program, on March 27, 1986. (Guidelines, p. 18.)

A new agreement (Revision 2) was executed by FTB on January 29, 1997, and the IRS on April 17, 1997, and an addendum to that agreement was executed by the FTB on November 21, 1997, and by the IRS on July 1, 1998. This new agreement superseded the 1986 Agreement. The 1986 Guidelines were superseded by new guidelines (Revision 2) that were executed by FTB on January 30, 1989, and the IRS on January 17, 1989. (FTB letter dated July 20, 2000.) Your request for determination was accepted by OAL on June 9, 1999, for having met the procedural requirements for submitting a request pursuant to Title 1, California Code of Regulations (CCR), section 122.

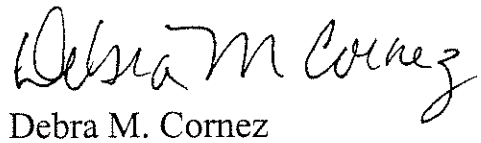
In the course of its review, OAL was made aware by FTB in its response to your request that the documents at issue had been superseded and replaced with subsequent versions. The 1997 Agreement and the 1989 Guidelines have not been properly brought before OAL, and therefore, are not subject to OAL's review at this time.

Because the 1986 versions of the Agreement and the Guidelines had been superseded and were not in effect at the time your request for determination was filed with OAL, the Agreement and the Guidelines do not constitute state agency rules subject to review as authorized by Government Code section 11340.5, subdivision (b). It would serve no useful purpose to proceed to analyze documents that have been superseded and are no longer operative.

As stated in OAL's notice of acceptance letter to you dated June 9, 1999, the scope of OAL's authority is to determine whether a state agency rule or policy meets the definition of "regulation" pursuant to Government Code section 11340.5, subdivision (b). OAL does not have the authority to address the other issues raised in your request for determination: whether the state agency has the authority to enter into the agreements being challenged, the legal validity of a statute, or whether the state agency rule is unconstitutional, unauthorized, or otherwise inconsistent with existing state or federal law.

If you have any questions concerning this determination letter, please contact me at (916) 323-6831.

Sincerely,



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