

# TAMP

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## TAX APPEALS ASSISTANCE PROGRAM



OFFICE OF THE TAXPAYERS' RIGHTS ADVOCATE

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# THE TAX APPEALS ASSISTANCE PROGRAM

## Purpose

The California State Board of Equalization (BOE) joined with the Chapman University Dale E. Fowler School of Law to establish a Tax Appeals Assistance Program (TAAP) and Clinic.<sup>1</sup> Under the supervision of BOE attorneys reporting to the Taxpayers' Rights Advocate, participating law students assist taxpayers with their state tax appeals.

In establishing the program, the BOE intended to:

- Foster the development of an independent program offering free legal assistance to under-represented taxpayers;
- Educate and assist those taxpayers in voluntarily complying with California's tax laws while minimizing their compliance burden; and
- Enhance the participation and quality of the appeals that come before the Board.

The purpose of TAAP is to:

- Increase the effectiveness of the BOE in performing its appellate duties and rendering efficient and fair tax administration;
- Fulfill the legislative intent of the Taxpayers' Bill of Rights; and
- Provide participating externs with practical experience and knowledge about preparing an appeal and representing taxpayers before the Board.

## State Board of Equalization: Background and Mission

The State Board of Equalization is one of California's two major tax collection and administration agencies. The Board's five Members, who serve concurrent four-year terms, constitute the nation's only elected tax commission. One Member is elected from each of California's four Equalization Districts. The State Controller, elected at large, serves as the Board's fifth

Member. The Board's Executive Director is appointed by the Board Members and directs approximately 4,000 agency employees who carry out the BOE's mission, goals, and directives.

The BOE's duties extend to the administration of over 20 tax and fee programs that provide essential funding for the state, counties, cities, and special districts, as well as directly overseeing the administration of California's property taxes.

The BOE's mission is "to serve the public through fair, effective, and efficient tax administration," which includes providing due process to all taxpayers under its jurisdiction. The BOE is charged with the responsibility of serving as the administrative appellate body for the tax and fee programs it administers. Its appellate duties also include review of final actions of the Franchise Tax Board involving the state's Bank and Corporation Franchise Tax and Personal Income Tax Laws.

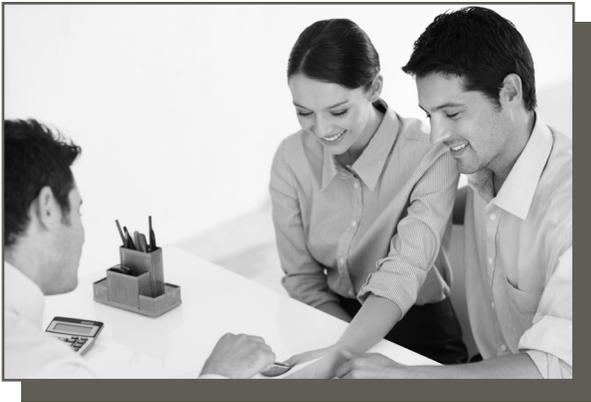
In its capacity as the administrative appellate body reviewing final actions of the Franchise Tax Board, the Board issues opinions and renders decisions interpreting and defining California's income tax laws. The BOE further seeks to educate and assist taxpayers in voluntarily complying with the tax laws while minimizing their compliance burden.

The Board became aware of an increasing number of appeals being filed by taxpayers who lacked an understanding of the relevant tax laws and the BOE's rules, policies, and decision-making processes, and who could not afford to hire legal counsel to assist them. Without a proper understanding of the law or representation by someone with that understanding, such taxpayers were not able to effectively present their cases to the Board. Because no program existed to assist these taxpayers, the Board Members directed the BOE's Taxpayers' Rights Advocate to develop a pro bono legal clinic offering qualified taxpayers free legal assistance.

<sup>1</sup> The term "clinic" as used throughout this document refers to the Board of Equalization's program of taxpayer assistance. The program is not a clinic of Chapman University Dale E. Fowler School of Law, but rather an externship opportunity for Chapman students. Chapman University School of Law does not provide funding for the program and Chapman faculty are not involved in instruction or oversight. Chapman assumes no responsibility for the clinic or the legal work it performs.

## Taxpayers' Rights Advocate

The Board of Equalization's Taxpayers' Rights Advocate is charged with protecting the rights, privacy, and property of California taxpayers during the assessments and collection of taxes, as required by the state's Taxpayers' Bill of Rights. That legislation, which went into effect in January 1989, mandated the creation of a Taxpayers' Rights Advocate at the Board of Equalization.



In the Taxpayers' Bill of Rights, the Legislature recognized and declared that:

"Taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes. . . ."

and

"... [T]he purpose of any tax proceeding between the State Board of Equalization and a taxpayer is the determination of the taxpayer's correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the State Board of Equalization may inquire into, and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer's liability."

(Rev. & Tax. Code, Sec. 7081)

The Taxpayers' Rights Advocate reports directly to the Executive Director and is independent from the other departments at the BOE, including the Legal Department. Taxpayers' Rights Advocate Office staff receive taxpayer complaints and have direct access to all BOE documents and legal and audit staff to help them resolve taxpayers' issues.

The Taxpayers' Rights Advocate office acts as a liaison between the taxpayer and the BOE staff to resolve problems, facilitate better communication, and eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so they can be better prepared to discuss and resolve their issues with staff. The Taxpayers' Rights Advocate office generally succeeds in soliciting full staff cooperation and ensuring that taxpayers receive proper treatment under the law.

# THE TAX APPEALS ASSISTANCE CLINIC—TAXPAYER AND EXTERN BENEFITS

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Participation in the program clinic is open to all qualified students. Previous tax experience or coursework is helpful, but not required. While students can effectively represent taxpayers during a one-semester clinic, they are encouraged to participate for two semesters.

The program and clinic give participating students the opportunity to:

- Develop practical skills in legal research, writing, negotiation, client interviewing, and counseling.
- Gain insight into the manner in which legal theory and principles learned in academic courses are applied to solve actual legal problems and controversies.
- Better understand the attorney's role in the legal system.
- Begin to build a professional network.
- Experience the application of ethical standards in the practice of law.
- Learn to balance and satisfy the sometimes competing demands of supervisors and/or coworkers, personal obligations, and clients, while also representing the clients in an ardent and professional manner.

## Clinic Experience

The program provides participating externs with practical experience and knowledge about preparing an income tax appeal or business tax appeal and representing taxpayers before the Board. It emphasizes the student's opportunity to represent a taxpayer in a Board hearing.

Under the supervision of a BOE tax attorney who reports to the Taxpayers' Rights Advocate, an extern meets with the client taxpayer, solicits and gathers evidence for the taxpayer's case, advises the taxpayer on the strengths and weaknesses of the case, performs legal research, prepares appeals briefs, discusses the merits of the case with opposing counsel (attorneys from the Franchise Tax Board or Board of Equalization), and in those cases not resolved at an earlier stage, presents the case at a Board hearing.

The BOE attorney is available to assist externs onsite during clinic hours. The attorney is also available for questions and guidance through the remainder of the week by telephone or email. The presence and guidance of the BOE attorney guarantees a smooth transition of case files from one extern to another as needed at the conclusion of the academic semester.

Supervising attorneys for the Tax Appeals Assistance Program:



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Franchise and Income Tax Clinic  
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Sales and Use Tax Clinic  
BA, California State University Long Beach  
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## WHAT EXTERNS LEARN

Externs develop important lawyering skills by interviewing and counseling clients; conducting factual investigations, legal research, and analysis; drafting documents and briefs; and managing files. Externs are responsible for their own caseloads, but are closely supervised, as described above.

In addition, externs will improve their knowledge of tax law by participating in weekly strategy meetings in which they discuss the substantive and procedural problems of their own cases and the cases of other externs. The supervising attorneys will assist the externs in all phases of the externs' clinical education.

## EXTERN DUTIES

Externs will be placed in a lawyering role by serving as the representative, advisor, and advocate on behalf of their assigned clients. The supervising attorney will provide necessary guidance to the extern regarding the legal issues raised by the appeal and the relevant procedural rules and substantive law. The supervising attorney will also provide constructive feedback on any work the extern performs.

The BOE's Rules for Tax Appeals set forth specific briefing deadlines the externs will be expected to meet. The externs should seek the most favorable consideration for their clients. Their purpose is not to assist their clients in evading tax liability or to assist in frustrating the efficient administration of tax laws. Instead, the clinic seeks to resolve the appeal fairly, effectively, and efficiently while determining the correct amount of tax liability.

## EXTERN CASELOAD

Externs typically spend between 10 to 15 hours per week working on their clients' cases. They are typically responsible for three to five cases at a time. The clinic participants meet weekly with the supervising attorney for an in-depth discussion of the casework. These sessions are used to help externs recognize, analyze, and resolve a variety of strategic, tactical, ethical, and interpersonal issues that arise when representing clients.



## EXTERNS MAKE A DIFFERENCE

Most TAAP clients are low-income taxpayers who, without the program, would be facing the prospect of a complex tax appeal without legal or tax representation. Many are single parents with young children. For a substantial number, English is a second language. Often these clients do not possess sufficient education or language skills to effectively correspond with the Franchise Tax Board or the BOE. Tax representation for these clients is nearly nonexistent in communities served by this program. The representation provided by the externs makes a real difference in their clients' lives.



## ETHICS AND CONFIDENTIALITY

Externs must adhere to the Rules of Professional Conduct of the State Bar of California at all times. It is particularly important for externs to maintain client confidences. Externs must be extremely careful not to disclose any information that is confidential or that might breach attorney-client privilege.

## Conflicts of Interest

The BOE investigated the conflict of interest and confidentiality issues potentially arising from its association with the program. In order to address the potential issues, the program's supervising attorneys report to the Taxpayers' Rights Advocate. Further, the Advocate developed and maintains a conflict of interest database to ensure that the supervising attorneys assigned to the program and clinic have not and never will advise the Board regarding any appeal raised by a program client. All BOE attorneys, including those assigned to the program, are required to strictly maintain any confidentiality related to any matter in which they are involved, whether or not they present the matter to the BOE. As the program's integrity is of the utmost concern to the BOE, the Taxpayers' Rights Advocate will conduct periodic checks of the program to ensure that no conflict of interest is present and taxpayers' rights and confidentiality are protected.



## Client and Case Criteria

Most cases come to the program by referral information provided to taxpayers by the BOE and the Franchise Tax Board, and through the program's own efforts.

Although the BOE wishes to ensure that all taxpayers have the representation they may need, it recognized that some taxpayers or their issues may be inappropriate for the program. The program therefore developed the following criteria to assist in selecting cases for the clinic:

- The issues and complexity level of the cases are suitable for program law students;
- The case has educational value;
- The clinic identifies the client as one who may benefit from clinic representation;
- The clinic will be able to adequately represent the client;
- The clinic caseload allows for accepting the case (the program accepts cases on an ongoing basis, subject to student and attorney staffing and time limitations); and
- The total liability of the case does not exceed \$20,000.

The TAAP is authorized to assist taxpayers with specific issues. At this time there are fifteen tax issues that generally meet the selection criteria:

### **DECISIONS OF THE FRANCHISE TAX BOARD:**

- Head of Household filing status
- Penalty Relief
- Residency
- Interest Abatement
- Statute of Limitations (assessments or refunds)
- Federal Action (notice of proposed assessment based on an action by the Internal Revenue Service)
- "California Method" (Rev. & Tax. Code Sec. 17041, subd. [b])
- Child and Dependent Care Credits
- Exemption Credits
- Other state tax credits
- Personal income tax deductions
- Corporate Minimum Tax
- Innocent Spouse Claims

### **DECISIONS OF THE BOARD OF EQUALIZATION:**

- Consumer Use Tax
- Violations of the California Cigarette and Tobacco Products Licensing Act
- Dual Determinations

As the needs of taxpayers and resources of the program increase, additional tax issues or programs may be added.

## CONTACT INFORMATION

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**For information on the TAAP or clinics, contact:**

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