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August 26, 2016

The Honorable Fiona Ma, Chair  
State Board of Equalization  
1201 K Street, Suite 710  
Sacramento CA 95814

**Re: Support for the position of the Franchise Tax Board in the case of Paula Trust**

Dear Chairwoman Ma:

The California School Employees Association (CSEA), AFL-CIO, has taken a position of SUPPORT for the Franchise Tax Board (FTB) in the case of Paula Trust, set for rehearing next week. The BOE made the right decision the first time: there is no basis for excluding California source income from taxation, which would contradict law and practice for at least the past 80 years.

If the BOE find for the appellant, this could lead to more abuses of our state laws, and tax attorneys will have a new mechanism for tax avoidance, which will be used widely. There are at least 171 trust cases waiting on this appeal, and there will be thousands more which will be able to use a new loophole that would be created from this case. This could lead to major revenue loss to California based on a complete misinterpretation of statute, regulation, and history.

The BOE would have to overturn 80 years of settled law and practice with regard to the taxation of trusts, if it ruled in favor for the appellant. California source income, as provided in this case, has always been taxed, whether to a resident or non-resident. This case seeks to overturn this fundamental part of California tax law with specious arguments relative to a law change in 1937. As the BOE staff notes in its summary, if the interpretation of the FTB was wrong in 1938, then the legislature or courts at some point would have intervened. Instead, as the BOE notes in a footnote:

To the best of staff's knowledge after extensive research, prior to this appeal and the related appeals filed by appellant's counsel, there have been no cases, appeals, or articles that have questioned the validity of the FTB's position that all California source income of trusts is subject to tax without apportionment based on the residence of fiduciaries or beneficiaries.

This appeal is a an attempt to concoct a wholly new tax avoidance scheme, based on interpretations that contradict federal law and state law - that income to a trust should be treated differently than it has been historically. To the contrary, the

history of sound tax policy is that income should be treated equally, unless there are explicit exceptions made. The ruling and arguments of the FTB are sound.

We are also surprised and concerned that the BOE is giving a re-hearing to this case, which the Board had already rejected based on existing law, precedent and practice. To reconsider such a drastic mis-interpretation to current law and practice could result in extensive benefits to those who can arrange their trusts with out-of-state fiduciaries. This effort is simply an attempt to find a new way to avoid California taxes by tax attorneys.

For these reasons, we respectfully urge reaffirmation of the FTB position. Please do not hesitate to call me if there are any questions regarding this issue at (916) 329-3621.

Sincerely,



Jai Sookprasert  
Assistant Director of Governmental Relations

cc: All Members of the Board of Equalization  
Dave Low, Executive Director

JS:sk