

The Newsletter



FAUCHER LAW

TAX & BANKRUPTCY

California's Weather May Be Sunny, But Its Tax Agencies Are Dark:

California Tax Trolls Make the IRS Look “Nice”

Compared to the IRS, California’s tax authorities are more aggressive and disorganized, and less transparent and reasonable. Why? The federal government can print more money if it needs it, but California can’t, so the collection tactics it uses are less “polite” than the IRS’s. State employees, after all, have been paid in IOUs in the past, so they understand the need to collect actual dollars. California’s tax agencies take illegal positions on audits and get away with it, since it usually costs taxpayers more to fight than to simply pay what’s demanded. And California exploits this reality to maximize revenue collection. Many clients need me more for disputes with California tax authorities than with the IRS because the California agencies are harder to navigate and take more unreasonable positions. Here they are, from most to least easy to deal with.

The Franchise Tax Board collects the state income tax. State laws restrict the FTB much less than federal laws restrict the IRS. Since there’s little oversight, the FTB often gets away with abuses, like levying on taxpayer accounts even when there’s a signed installment agreement to repay in place. FTB audits typically focus on high-dollar transactions. In contrast, the IRS audits many lower-dollar transactions because it’s primarily responsible for ensuring compliance with U.S. tax laws. *Since revenue maximization is the FTB’s primary objective, it rarely changes a bad audit result because the state benefits from collecting as much tax as possible.* While most people can

BOO! FOR HALLOWEEN
I'M THE GHOST OF OUR
CLIENT'S FINANCIAL
PROBLEMS.



INSIDE STORIES

- John shares his thoughts on Thomas Jefferson
- Need an App? Try this Artichoke & Feta Favorite
- Sebastian the Feline Paralegal Translates California Tax Gibberish

handle an IRS audit on their own, I don’t recommend enduring an FTB audit without a tax attorney: *the FTB usually concedes only when case law unambiguously supports the taxpayer*, and most “civilians” simply don’t know California tax case law.

The California Department of Tax and Fee Administration collects the state sales tax, so businesses are its target. CDTFA audit results tend to be harsh and baffling. Auditors often use never-seen-before “formulas” for calculating sales taxes, profit margins and cost-of-goods-sold - anything other than commonly-accepted accounting methods. *So it’s hard to understand how the CDTFA arrives at the amount of tax it says is “correct”, and thus difficult to successfully argue against its calculations.* The burden of proof for overturning a bad audit result is on the taxpayer, even when the CDTFA comes up with results no accountant would calculate. Because most businesses simply haven’t the time or money for a fight with the CDTFA, many just give in and pay.

So how can businesses appeal a bad audit? My approach is to persistently question the auditor on their method until I can replicate it and then explain it to my client or their accountant. *I liken my job to that of a translator:* I decode what the auditor has done, explain it to the business owner, gather what the auditor needs from the client, and take it back to the auditor in a language s/he is likely to understand and agree with. Fortunately, I love languages (I’m fluent in three)!

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The Employment Development Division collects the state's payroll taxes, consisting of disability, employment training and unemployment. ***Failure to full-pay payroll taxes can be deadly for a business because the EDD considers this theft from the employee.***

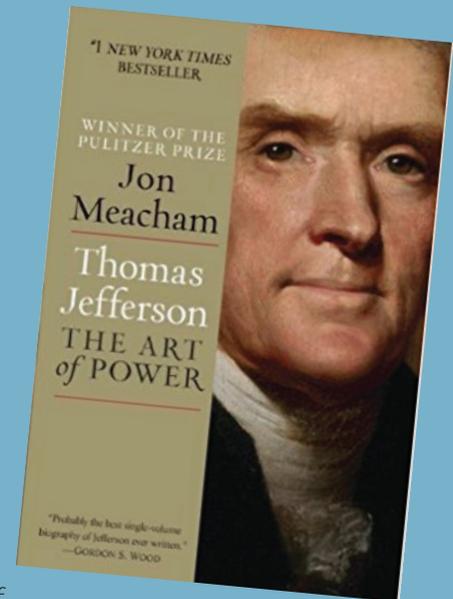
The EDD is the nastiest California tax agency. First, ***the California legislature believes all power in the employer-employee relationship resides with the employer.*** Thus, most EDD agents don't believe

putting acute pressure on businesses to pay back payroll taxes will result in closure – they think firms will find ways to stay open, even though most businesses which fail to remit payroll taxes do so because they're under financial pressure. The EDD doesn't care if closing the business ruins the owner's ability to pay – it wants the theft of payroll taxes to stop. Second, ***the EDD has the murkiest, least transparent bureaucracy - who within the hierarchy has authority to make decisions on matters is non-obvious and changes regularly.***

JDF

Musings on Monticello & Meacham's *Thomas Jefferson: The Art of Power*

This summer, my family visited 3rd President Thomas Jefferson's home, Monticello, sparking lively discussion. We wondered, as have so many people, how the Declaration of Independence's author, could own slaves and even father six children with Sally Hemmings, one of his enslaved women. On the drive home (yes, we drove to New Jersey for a wedding and back, touring many places along the way), we listened to historian Jon Meacham's *Thomas Jefferson: The Art of Power* (2012). The biography did a great job situating Jefferson in his time and culture, thus making the apparent contradiction between Jefferson's promotion of liberty and ownership of people more understandable. On the other hand, Meacham



also concludes that the abolishment of slavery was the only political goal of Jefferson's that he never truly fought for, and that Jefferson's conduct toward Hemmings and their children was wrong despite acceptable practices at the time. While this may seem like a depressing conclusion, I felt more optimistic about America after reading this book. Meacham makes a strong case for how the US's potential (and thus Jefferson's vision) is being slowly realized over time and how our country is an imperfect but admirable product of flawed humans. I highly recommend this book if you've ever wondered how to square Jefferson's political legacy with his personal behavior.

Worth a Thought...

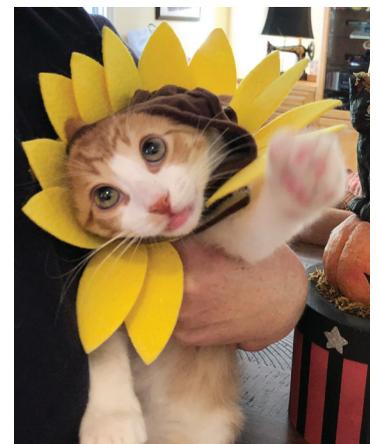
“Educate and inform the whole mass of the people. They are the only sure reliance for the preservation of our liberty.”

**-Thomas Jefferson,
Author of the Declaration of Independence**



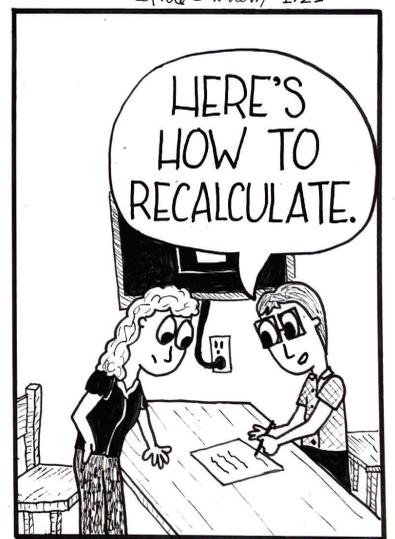
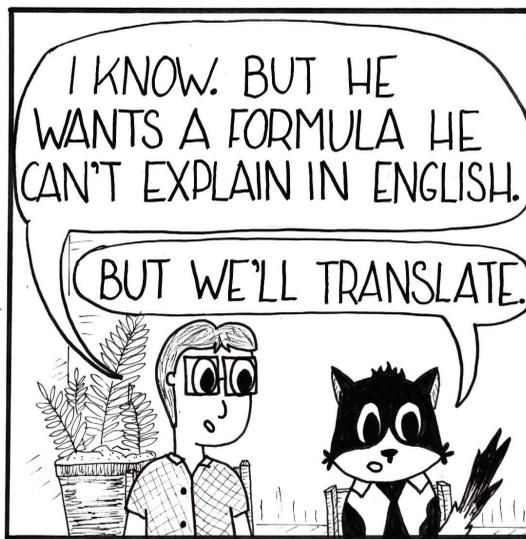
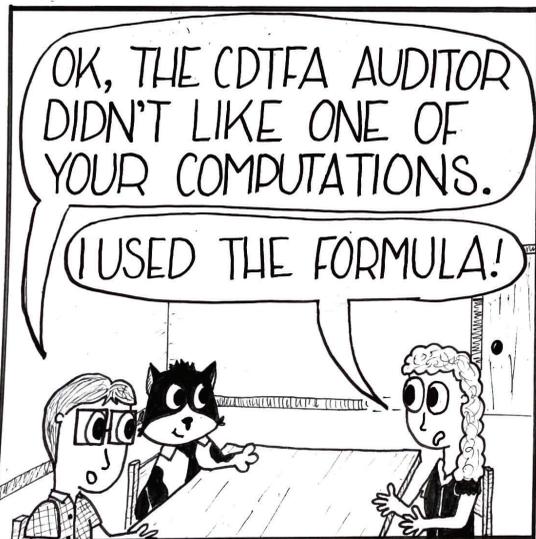
Sebastian A Celebrity Among Neighborhood Kittens!

Many cats live in my neighborhood. When they heard Sebastian was coming to my house on Halloween, lots of kittens showed up to trick-or-treat. Apparently, Sebastian's quite the professional success as my head paralegal, and cat parents want their kittens to meet him. It seems he's kind of a role model in the cat community (who knew?).





Sophie Schmitt 1/21



Artichoke Hearts with Olives & Feta

It's getting chilly in the evenings and this is just the starter to warm up friends and family while watching a game or before dinner. It's a quick recipe, using canned artichoke hearts (but don't use the ones pre-marinated in olive use - use only those packed in water). It's somewhat unusual and really tasty (omit olives if you're not a fan, and substitute with sundried tomato).

¾ cup olive oil	1 TBS minced fresh parsley
2 cups jarred/canned whole artichoke hearts, packed in water, halved and patted dry	3 sprigs thyme
2 cloves garlic, sliced thin	1 small lemon, zested & 1 TBS lemon juice
½ cup kalamata olives, pitted, sliced in half	1 tsp fennel seeds
4 ounces feta cheese, cut into ½-inch pieces	½ tsp red pepper flakes



Instructions:

- Heat 10-inch cast iron skillet over medium heat for 3 minutes. Add 1 TBS oil and heat for 3 minutes until simmering. Add artichokes and ½ teaspoon salt; cook until artichokes browned - 7-10 minutes.
- Stir in thyme sprigs, lemon zest, garlic, fennel seeds and pepper flakes. Cook 1 minute until spices fragrant.
- Stir in olives and remaining olive oil. Reduce heat to low and cook 20 minutes.
- Discard thyme sprigs. Stir in feta cheese and lemon juice. Season with salt and pepper to taste. Serve warm alone or with sliced baguette or pita bread triangles.

Serves 6-8

WELCOME TO FAUCHER LAW

John D. Faucher worked for 10 years as an IRS trial attorney and has been in private practice since 2008. He and his team speak the legal language. They know the **tax and bankruptcy systems** and can help you get the best result. Have other legal issues? Call us. We'll find the lawyer who's right for you, your friends, or family.

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It's Not Just the Feds that Tax & Haunt Us:

CA Tax Agencies Aren't Chill Surfer-Dudes



Being audited by the IRS is intimidating. But being audited by California's Franchise Tax Board, Department of Tax & Fee Administration or Employment Development Division (catchy names, guys – really roll off the tongue!) is so much worse. The IRS is sweet in comparison. In this issue of **The Newsletter**, I explain why California tax agents are more like Dracula than a surfer, and how an interaction with them may leave you permanently haunted.

Also inside, **I muse on Thomas Jefferson** following a visit to Monticello, **Sebastian the Feline Paralegal** translates California tax agent gibberish and gets overwhelmed by neighborhood kittens trick-or-treating, and a recipe for a warm **artichoke & feta appetizer** that's cooked in my favorite: a cast iron skillet! **Happy Halloween**, by the way!