

# **BACKGROUND PAPER FOR THE CALIFORNIA TAX EDUCATION COUNCIL**

**Joint Oversight Hearing, March 5, 2018**

**Assembly Committee on Business and Professions and  
Senate Committee on Business, Professions and Economic Development**

## **IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS**

### **BRIEF OVERVIEW OF THE CALIFORNIA TAX EDUCATION COUNCIL**

#### **Brief Overview**

The California Tax Education Council (CTEC) was established in 1997 by Senate Bill 1077 (Greene).<sup>1</sup> Prior to CTEC's creation, tax preparers were fully licensed by the Tax Preparer Program (TPP) within the Department of Consumer Affairs (DCA). In what was reportedly called a "grand experiment" by the Legislature, SB 1077 shifted responsibility for overseeing tax preparers from the TPP to a registration program under the newly established CTEC, which while established in statute is incorporated as a private 501(c)(3). Upon its creation, CTEC was not allocated any state funding and was not provided with any dedicated staff. The Legislature's belief was that self-regulation by a nonprofit, nongovernmental entity would result in greater efficiency while still adequately protecting consumers.

CTEC is not the only regulatory body that oversees paid preparers of tax returns. Certified public accountants, active attorneys, enrolled agents, and enrolled actuaries, as well as certain financial institutions and their employees, are all exempt from CTEC's requirements. These individuals are subject to their respective professional disciplinary standards for conduct and competence. CTEC serves as a catch-all entity for any other person "who, for a fee or for other consideration, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who holds himself or herself out as offering those services."<sup>2</sup> This encompasses both state and federal income tax preparation.

After certified public accountants, CTEC Registered Tax Preparers (CRTPs) represent the second largest share of professionals engaged in paid tax preparation. As of June 2017, a total of 39,306 individuals were registered with CTEC. This number has remained relatively stable since CTEC last underwent sunset review in 2014. When CTEC was first created, a goal was established to obtain registration numbers approximating 38,000 to 48,000 preparers; registration numbers have consistently been within this range since 2005, though the number of registrants has been on a slight downward trend since 2014.

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<sup>1</sup> Stats. 1996, ch. 1137

<sup>2</sup> Bus. & Prof. Code, §§ 22250 et seq.

The requirements to become registered as a CRTP are relatively basic. An applicant must first complete a total of 60 hours of education from a CTEC-approved provider—45 hours of federal tax education and 15 hours of state tax education—covering basic personal income tax law, theory, and practice. CTEC will accept two years of experience in alternatively authorized tax preparation in lieu of this education. Once the applicant completes the required education hours and passes a CTEC-approved final examination with a score of at least 70%, the provider issues a Course Completion Certificate. Registration with CTEC is required within 18 months of obtaining this certificate. Applicants must obtain a Preparer Tax Identification Number from the federal Internal Revenue Service (IRS). Finally, all CRTPs must purchase and maintain a \$5,000 tax preparer bond. Once all these requirements have been fulfilled, CTEC issues a Certificate of Completion.

CTEC is also charged with approving all providers of tax preparer education whose classes qualify for CRTP applicant Certificates of Completion and registrants' continuing education requirements. Provider standards are set by a special CTEC committee, which also evaluates all schools seeking to become approved curriculum providers. CTEC must either approve or decline education provider applications within 120 days of receiving a request for approval, or the application is deemed approved. CTEC provides the list of approved providers to tax preparers and the public upon request.

CTEC has adopted the following mission statement:

*In order to provide for the public benefit, the California Tax Education Council will continue to establish professional tax education standards, approve tax education providers who comply with these standards, and facilitate tax preparer compliance for the benefit of California taxpayers.*

## Council Membership and Committees

CTEC's Board of Directors (Board) is comprised of 14 professional directors, including 3 officers. Each director serves in a voluntary capacity. Six directors are CRTPs appointed by the Board. CRTPs are elected for two-year terms, and may be reelected at the end of their term with no limits. The remaining directors are associated with either a nonprofit tax preparer membership organization or a business engaged in tax preparation. Each professional society, association, or other entity operating as a California nonprofit corporation that has represented a membership of at least 400 tax preparers, enrolled agents, attorneys, or certified public accountants for the past three years may choose to appoint a maximum of one director to the Board. Similarly, a for-profit tax preparation corporation with at least 400 employees or franchisees (which can include the employees of a franchisee) that has been operating in California for the last three years may appoint a maximum of one director. These directors serve unlimited terms at the pleasure of their respective appointing authority.

The following nonprofit organizations and for-profit corporations have representatives on the Board:

- California Society of Enrolled Agents (CSEA)
- California Society of Tax Consultants, Inc. (CSTC)
- H&R Block Tax Services, Inc.
- Jackson Hewitt Tax Service
- Liberty Tax Service
- National Association of Enrolled Agents (NAEA)
- National Association of Tax Professionals (NATP)
- National Society of Accountants (NSA)

Name and Short Bio	Original Appointment	Expiration of Current Term	Appointing Authority
<p><b>C. Lester Crawford, CRTP (<i>Chair</i>)</b></p> <p>Lester Crawford has been a CRTP since 2000. In 2000, Mr. Crawford was one of four CRTPs first appointed to the California Tax Education Council. He currently is serving a 2nd full term as chairman of the board. Mr. Crawford has previously served as chairman of the Public Awareness Committee, Budget &amp; Finance Committee and Communications &amp; Technology Committee. He has been a member on every committee on the council with the exception of the Bylaws Committee. In addition to CTEC, Mr. Crawford serves as Board Chair of the Mount Moriah Senior Housing Corporation, a non-profit entity in Los Angeles which built and manages a 42-unit apartment complex for senior citizens. Mr. Crawford previously served nine years on the Friends Foundation for the California African American Museum. Mr. Crawford received his Bachelor of Science degree in Criminal Justice Administration from California State University, Long Beach. He has a professional certificate in Personal Financial Planning from the University of California, Los Angeles. Mr. Crawford became a licensed tax preparer in 1988, and has been a registered preparer since CTEC's establishment. Mr. Crawford is the Broker/Owner of Azure Realty, Inc., a boutique real estate company which specializes in residential sales and property management. He also is employed as a Supervising Bankruptcy Analyst with the Department of Justice, Office of the United States Trustee.</p>	05/01/2000	12/31/2019	CRTP appointed by CTEC Board of Directors
<p><b>Susie DiMaggio, EA (<i>Treasurer</i>)</b></p> <p>Susie DiMaggio has been an Enrolled Agent since 2006 and for the past 4 years has operated her own Tax Resolution and Preparation business in Ventura, CA. Prior to owing her own business, she worked for a tax office for 14 years. Susie's areas of expertise are focused towards Tax Representation before the Examinations, Appeals &amp; Collections Division of the Internal Revenue Service. Susie is a Past President of the Channel Islands Chapter of CSEA and serves as the Secretary for the California Society of Enrolled Agents. Susie has served on the CTEC Board of Directors as the CSEA representative for the past 5 years.</p>	11/01/2014	Determined by Appointee Organization	California Society of Enrolled Agents
<p><b>Esperanza Escobedo, CRTP (<i>Secretary</i>)</b></p> <p>Esperanza Escobedo is a CTEC Registered Tax Preparer (CRTP), who was elected as a CTEC director in 2015. She has owned her own tax preparation service in Soledad, California. Ms. Escobedo is a pioneer in educating the Hispanic community in financial services and tax matters. She currently works for Lopez Tax Service, Inc., in Monterey County and specializes in Individual and Small Business tax returns. Ms. Escobedo travels throughout the U.S. to inform tax preparers on State and Federal education requirements and encourages tax preparers in their personal career advancement.</p>	11/01/2015	12/31/2019	CRTP appointed by CTEC Board of Directors

Ms. Escobedo's passion is to serve and educate taxpayers by providing them with current information on tax laws and requirements as well as helping them understand what exactly their tax return is about. In addition to being a CRTP, she is a Notary Public.			
<p style="text-align: center;"><b>Tracy Allford</b></p> <p>Tracy Allford was appointed to the California Tax Education Council Board of Directors by Liberty Tax Service. She has served as the Director of Training for Liberty Tax Service since December 2015. From April 2014 through December 2015, Ms. Allford served as Manager of Training and from October 2012 through April 2014, she served as Tax School Coordinator. Previously, she taught business and economic courses at a Virginia college. Ms. Allford holds an M.B.A in Finance and a B.A. with a dual major in Management and Marketing.</p>	01/01/2016	<i>Determined by Appointee Organization</i>	Liberty Tax Service
<p style="text-align: center;"><b>Marie Archibeque, CRTP</b></p> <p>Marie Archibeque, a CTEC Registered Tax Preparer (CRTP) and a consultant for bookkeeping management. Growing up in family businesses in the construction industry her skills led her to specialize in construction accounting. Marie owned and operated 2 Liberty Tax Franchises for 7 years. During this time, she was a tax preparer and instructor for continuing education classes. After selling her franchises in 2016, she enjoys working part time on her own and enjoying life with her family and grandchildren.</p> <p>Currently, she works only part time and hopes to help with some non-profits where her experience and skills can be appreciated. For several years Marie has been a member of the CSTC. She is currently the President of the Central Valley Chapter.</p>	11/15/2017	12/31/2019	CRTP appointed by CTEC Board of Directors
<p style="text-align: center;"><b>Rupinder (Ruby) Bains, CRTP</b></p> <p>Ruby Bains is a CTEC Registered Tax Preparer (CRTP) and has been preparing tax returns for 12 years. Ruby currently serves as Treasurer of the California Society of Tax Consultants (CSTC). She is also a member of the National Society of Accountants (NSA) and the IRS Stake Holder Liaison for Fresno. Ruby lives in Modesto and is an active member of the local Sikh community.</p>	11/15/2017	12/31/2019	CRTP appointed by CTEC Board of Directors
<p style="text-align: center;"><b>Brandon Chanley</b></p> <p>Brandon has been married for 13 years and has 3 children. He currently lives in Chandler, AZ. Brandon has worked for Jackson Hewitt Tax Service for the past 10 years and works with franchisees in Southern CA, Arizona, Nevada, Colorado, New Mexico, West Texas, Kansas and Kansas City. Prior to Jackson Hewitt, Brandon was in the mortgage industry 7 years. Brandon has been Jackson Hewitt's representative on the CTEC board since 2014.</p>	01/01/2014	<i>Determined by Appointee Organization</i>	Jackson Hewitt Tax Services

<p><b>Karen De Vaney, CRTP</b></p> <p>Since 1976, Karen has owned and operated a business office in Modesto, California. She specializes in income tax preparation, bookkeeping and payroll for individuals and small businesses. For 16 years she served as an instructor for Yosemite Community College District. For over 20 years, Karen taught courses in Practical Bookkeeping, Payroll Accounting, Accounting, Income Tax Preparation, and Budgeting. Since 2009, Karen has served as a Director for the California Tax Education Council and she had served as a Governor's appointee to the Tax Preparer Advisory Committee for the State of California, Department of Consumer Affairs. Karen is also a past President of California Society of Tax Consultants, past President of American Business Women's Associations for Tuolumne River and Golden Poppy Chapters. Karen currently serves as Vice President of the Central Valley Chapter of California Society of Tax Consultants, Advisor to Alliance Small Business Development Center and University of California Cooperative Extension. Karen is also active in several other local and national business and professional organizations.</p>	11/01/2009	<i>Determined by Appointee Organization</i>	California Society of Tax Consultants
<p><b>Margaret "Margy" Dunn, EA</b></p> <p>Margy Dunn, EA, has been a tax professional in Monterey, CA for over 35 years, advising clients about small business management, retirement and estate planning issues. Her ability to make complex tax and estate issues understandable and interesting makes her a popular speaker with both tax professionals and business groups. She is a Fellow of the National Tax Practice Institute. Margy is a past Director of the Mission Society of Enrolled Agents and the California Society of Enrolled Agents, where she served as Chair of the CSEA Education Committee from 2010 to 2013. In 2013 she was honored as the CSEA Enrolled Agent of the Year. Margy is the immediate past Chair of CTEC and has been on its Board of Directors since 2010. She was appointed to the CTEC Board by the National Association of Enrolled Agents.</p>	01/01/2010	<i>Determined by Appointee Organization</i>	National Association of Enrolled Agents
<p><b>Ruth Godfrey, EA</b></p> <p>Ruth Godfrey has been an Enrolled Agent (EA) since 1984. An active leader in the National Society of Accountants (NSA), Ms. Godfrey currently serves on the NSA Board as Governor for District X, (California, Arizona, Nevada and Utah) and as the NSA liaison to the California Tax Education Council (CTEC). Ms. Godfrey is currently serving as chair of the Curriculum Provider Standards Committee for CTEC. On the local level, Ms. Godfrey served as president of the California Society of Tax Consultants (CSTC) (1990-1991) and currently serves on the CSTC Board of Directors as Parliamentarian. Previously she served as President of the Ontario, California Chamber of Commerce. Ms. Godfrey specializes in real estate tax aspects, especially 1031 exchanges, small business tax and business planning.</p>	05/13/2013	<i>Determined by Appointee Organization</i>	National Society of Accountants

<b>Aaron Gray, CRTP</b>  Aaron Gray is a CTEC Registered Tax Preparer (CRTP) and, since 2005 owns an independent tax business in Gardena, CA. Mr. Gray moved his tax practice to Long Beach, CA in 2011. He provides mobile tax preparation. Mr. Gray joined the California Tax Education Council Board of Directors in 2008.	01/01/2008	12/31/2019	CRTP appointed by CTEC Board of Directors
<b>Paul Latter</b>  As regional director at H&R Block, Inc. for Region 68, Paul Latter is responsible for providing strategic direction and leadership to district general managers and their associates in eleven northern and central California districts. Prior to joining the H&R Block family eight years ago, Paul gained extensive management experience at several nationally known companies. For 12 years he worked for FedEx Kinko's as vice president – commercial sales. Before that he worked as a system's engineer for SAS and account manager for Xerox Corporation. Paul earned a Master's in Business Administration from San Diego State University.	11/01/2010	<i>Determined by Appointee Organization</i>	H&R Block
<b>Susan McMillen, CRTP</b>  Susan McMillen has been in practice for 21 years. Champion Income Tax is based in Palm Desert, California and serves over 400 clients in all 50 states. They specialize in personal, small business and corporate returns. Susan has been a member of the Palm Desert Chamber of Commerce and was voted Ambassador of the Month in March 2013. Her son, Steve McMillen, has recently joined her as the firm's accounting partner. Susan's pastimes include oil painting and set design for Desert Theater Works.	11/01/2009	12/31/2018	CRTP appointed by CTEC Board of Directors
<b>Ann Springborn</b>  Ann Springborn was appointed to the CTEC Board of Directors by the National Association of Tax Professionals (NATP). She has been with NATP for over five years, holding various positions. In her current role as Education Manager, her focus is on continuing education standards and requirements imposed by various credentialing organizations, as well as educating the tax preparing community about the importance of continuing education. Before joining NATP, Ann worked for several years as a staff accountant in private industry and almost ten years in a support role at a top ten certified public accounting firm. Ann has a BBA in Accounting from the University of Wisconsin – Whitewater and currently lives in Neenah, Wisconsin with her husband and son.	01/01/2015	<i>Determined by Appointee Organization</i>	National Association of Tax Professionals

While CTEC's Board of Directors does not have any committees designated by statute, it has administratively established a number for various purposes. Committee chairs and members are directors appointed by the current Board Chair based on director interest:

- **Audit Oversight Committee:** This committee has three members who are responsible for overseeing the audit process and working with the outside auditor on the timely completion of an annual audit, issuance of an audit report, and responding to the auditor's Management Letter. Members include the Treasurer and two other directors the Council Chair wishes to appoint. Neither the Treasurer nor the Budget and Finance Chair shall be the Chair of the committee.
- **Executive Committee:** A standing committee of CTEC, the Executive Committee is made up of five members. Three members of the Executive Committee are the CTEC Chair, the CTEC Secretary and the CTEC Treasurer. The other two members of the Executive Committee are Board elected. The Board-elected members of the Executive Committee are elected for a one year term with the option of a one year renewal. They may not serve more than two consecutive years. The Executive Committee oversees the pressing business of CTEC between Board meetings, and reports its actions and findings directly to the Board of Directors.
- **Budget & Finance Committee:** The Budget & Finance Committee currently has six members. The Treasurer is an ex-officio member of the Budget & Finance Committee. The Committee oversees and contributes to the budget process to ensure a balanced budget capable of supporting the adopted programs and activities of CTEC. To do this, Budget & Finance relies on timely Committee projections and their oversight by contract staff.
- **Bylaws Committee:** The Bylaws Committee currently has six members. The Committee is responsible for the review of all amendments to the bylaws, and submits all amendments to CTEC's legal counsel for conformance to California law before submitting the proposed amendments to the Board of Directors for approval. The Bylaws Committee has the right to originate amendments and define the bylaws process.
- **Communications & Technology Committee:** The Communications & Technology Committee is comprised of all CTEC committee chairs plus the Council Chair. Committee chairs may appoint another committee member to replace them on the Communications & Technology Committee. The Communications & Technology Committee continuously reviews the CTEC website and online registration system and recommends changes as needed.
- **Curriculum Provider Standards Committee:** A standing committee, the Curriculum Provider Standards Committee currently has eight members. The Committee sets standards and procedures for curriculum providers, and evaluates the schools seeking approval as curriculum providers. The Curriculum Provider Standards Committee encourages compliance on the part of tax schools. It also provides the public with a list of CTEC approved curriculum providers.
- **Governance Committee:** The Governance Committee currently has six members. The Committee was established to stimulate greater participation within the registered tax preparer community and other qualified organizations that meet the requirements to appoint members to the Council. The Governance Committee works with other committees to establish policies and procedures for better inter-council communications. The operations of the Governance Committee ensure an efficient and effective CTEC organizational structure for the proper qualification of tax preparers.

- **Governmental Relations Committee:** The Governmental Relations Committee currently has six members. The Committee informs and updates the Council with regard to legislative actions. This Committee is the interface between the Council and the Legislature, and reviews and recommends changes to the law that may affect the mission of CTEC. Chief among its responsibilities is to prepare CTEC for its legislative Sunset Review.
- **Professional Standards Committee:** Each Professional Standards Committee is made up of three members. By law CTEC has the express authority to deny registration to an applicant or discipline an existing CTEC registered preparer who has a substantially related criminal conviction, has had disciplinary action taken against them by the Board of Accountancy, or who violates CTEC's code of conduct requirements. Once an individual is identified as meeting any of the above criteria, the Council Chair appoints three Committee members to work with CTEC's legal counsel to review each individual case and make a proposed decision to deny or discipline the individual. If the individual requests an opportunity to be heard, three different board members are appointed to a new Professional Standards Committee to hear from the applicant or registrant and make a final determination regarding the status of the individual.
- **Public Awareness Committee:** The Public Awareness Committee currently has eight members. The Committee is responsible for the development and implementation of a communications program targeted to registered preparers, media, education providers, taxpayers and anyone interested in CTEC and its mission. The goal of the Committee is to ensure the public has an understanding of what CTEC is and who CTEC Registered Tax Preparers (CRTPs) are.
- **Tax Preparer Committee:** A standing committee, the Tax Preparer Committee currently has nine members. The Committee develops and implements Council standards and procedures for the issuance of Certificates of Completion and Statements of Compliance as required by Section 22255 of the California Business & Professions Code, subject to the approval of the Board of Directors.

Newly appointed directors are in attendance during strategic planning sessions, during which new appointees are provided with an overview of CTEC, including its history, its mission statement, and significant enforcement achievements. During these sessions, the Board of Directors reviews Roberts Rules of Order, as well as the previous year's strategic goals and objectives to ensure a uniformity of understanding by all directors. CTEC has also administratively established a mentoring program for new appointees to the Board.

## **Staff**

CTEC does not have any employees. The program is administered through Advocation Strategies Inc., an outside firm that contracts with CTEC to provide staff support services for all of its functions. CTEC pays Advocation Strategies an administrative management fee, which is \$45,750 per month under the current contract. This fee covers all staff support, office space, and all office equipment necessary to administer the program. Advocation Strategies has been the firm administering the program since CTEC's inception in 1997. CTEC also contracts for the following services: curriculum review, advertising and public relations, audit, legal counsel, and IT services. CTEC additionally contracts with the Franchise Tax Board (FTB) for investigation and enforcement activities on its behalf (discussed further under the section relating to Enforcement).

## Fiscal and Fund Analysis

As a private nonprofit, CTEC does not receive any General Fund support and does not submit Budget Change Proposals. The registration fees it collects go into a fund that is not part of the state budget and is not controlled by the Department of Finance. All enforcement penalties collected by the FTB from unlawful preparers go to the General Fund. CTEC's administrative policies state that all approved budgets must be balanced, and all expenditures must be included in the Board-approved CTEC budget for the current fiscal year. CTEC's annual revenues are primarily collected from registration fees during the months of September through December. CTEC's fiscal year begins July 1, three months before the beginning of the revenue stream for the fiscal year. Therefore, three months annualized operating expenses must be funded from the prior year's revenues and provided for in the prior year's budget.

In addition, an operating reserve equal to two months annualized operating expenses is included in each current year budget. The combination requires budgeted reserves equal to two months annualized expenses. The reserve includes \$50,000 restricted funds for possible legal action taken by the FTB against a non-compliant preparer. This reserve level is mandated by CTEC policy and is not set in statute. To fund the reserve, CTEC maintains certificates of deposit, which are reflected in the beginning balance of each fiscal year, reported for each of the past four years as follows:

- **FY 2013/14:** \$400,000
- **FY 2014/15:** \$250,000
- **FY 2015/16:** \$400,000
- **FY 2016/17:** \$650,000

Fund Condition						
	<b>FY 2013/14</b>	<b>FY 2014/15</b>	<b>FY 2015/16</b>	<b>FY 2016/17</b>	<b>FY 2017/18</b>	<b>FY 2018/19</b>
Beginning Balance	529,237	373,657	600,248	961,577	N/A	N/A
Revenues and Transfers	1,342,186	1,717,742	1,750,841	1,719,482	N/A	N/A
<b>Total Revenue</b>	1,871,423	2,091,399	2,351,089	2,681,059	N/A	N/A
Budget Authority	N/A	N/A	N/A	N/A	N/A	N/A
Expenditures	1,497,766	1,483,865	1,389,512	1,365,789	N/A	N/A
Loans to General Fund	None	None	None	None	N/A	N/A
Accrued Interest, Loans to General Fund	None	None	None	None	N/A	N/A
Loans Repaid From General Fund	None	None	None	None	N/A	N/A
<b>Fund Balance</b>	373,657	607,534	961,577	1,315,270	N/A	N/A
<b>Months in Reserve</b>	2	2	2	2	2	2

CTEC does not contribute to DCA Pro Rata, it does not utilize a diversion program, and it does not administer any examinations. The majority of CTEC expenditures are related to registration costs.

Expenditures by Program Component				
	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17
<b>Enforcement</b>	392,615	313,182	311,022	252,4144
<b>Examination</b>	N/A	N/A	N/A	N/A
<b>Registration</b>	823,463	878,880	780,232	776,6705
<b>Administration*</b>	281,688	291,803	298,258	336,705
<b>DCA Pro Rata</b>	N/A	N/A	N/A	N/A
<b>Diversion</b>	N/A	N/A	N/A	N/A
<b>TOTALS</b>	1,497,766	1,483,865	1,389,512	1,365,789

\*Administration includes costs for executive staff, board, administrative support, and fiscal services.

CTEC's renewal registration cycle begins on August 1 of each year through October 31 of the same year. The fee to register with CTEC is \$33. The initial registration fee in 1997 was \$25. It remained at \$25 until it was increased beginning August 1, 2014 to \$33. For those preparers who register late (after October 31), there is a late fee added to the \$33.

The Board has periodically increased the fee for late registration in order to encourage timely compliance of the law by tax preparers. The initial late fee was \$12.50. It was increased to \$13, then \$15. In November 2012 the late fee was increased to \$55. For those registering late (the late registration period is from November 1 through January 15 of the following year), the total cost to renew their registration is \$88. The increased late fee was initiated due to the large number of preparers renewing late.

Statute does not specify the fees CTEC can charge preparers, except that the fees must be related to the regulatory cost of providing services and carrying out CTEC's responsibilities and duties and may not exceed the reasonable cost of the services or responsibilities.

Fee Schedule and Revenue							
Fee	Current Fee Amount	Statutory Limit	FY 2013/14 Revenue \$25 Fee	FY 2014/15 Revenue \$33 Fee	FY 2015/16 Revenue \$33 Fee	FY 2016/17 Revenue \$33 Fee	% of Total Revenue
New Preparer	25.00/33.00	N/A	207,400	264,759	235,059	199,221	12%
Renewal	25.00/33.00	N/A	781,925	1,079,488	1,092,663	1,098,177	53%
Late Fee	55.00	N/A	325,160	343,145	384,725	381,3156	8%

## **Registration of Tax Preparers**

Prior to 1997, the TPP provided for full licensure of tax preparers under the DCA. When CTEC took over responsibility for regulating tax preparation professionals, it replaced licensure with a registration program for those who meet the statute's education and bonding requirements. At the time of the transfer, there were 28,831 registered preparers. Information received that first year from the FTB indicated that there were anywhere between 10,000 and 20,000 unlawfully unregulated preparers in California.

The expectation for CTEC was to reach registration numbers somewhere between 38,000 and 48,000. Below is a listing of yearly registrations since CTEC was established:

<b>Registration Year</b>	<b>Total Registrations</b>	<b>Registration Year</b>	<b>Total Registrations</b>
07/01/97-06/30/98	28,831	07/01/07-06/30/08	41,881
07/01/98-06/30/99	29,009	07/01/08-06/30/09	44,888
07/01/99-06/30/00	29,773	07/01/09-06/30/10	43,963
07/01/00-06/30/01	28,444	07/01/10-06/30/11	44,326
07/01/01-06/30/02	29,943	07/01/11-06/30/12	42,144
07/01/02-06/30/03	32,093	07/01/12-06/30/13	39,088
07/01/03-06/30/04	34,391	07/01/13-06/30/14	39,201
07/01/04-06/30/05	36,931	07/01/14-06/30/15	41,564
07/01/05-06/30/06	39,226	07/01/15-06/30/16	39,965
07/01/06-06/30/07	40,565	07/01/16-06/30/17	39,306

CTEC's annual registration numbers for the last 12 years have been within CTEC's initial goal of registering between 38,000 and 48,000 annual registrants. Moving forward, CTEC's aim is to increase its current registration numbers and has begun working with the FTB to target unregistered preparers through what has been named the "Ghost Tax Preparer" program. This will be a major effort by CTEC's Public Awareness and Governmental Relations Committees working with the FTB to identify Ghost Preparers (those individuals preparing returns and not signing them). Once identified, these individuals would be urged to register with CTEC or, if they continue preparing, would be cited and fined by the FTB. CTEC's stated goal is not to have individuals fined, but rather to educate them regarding the law and bring them into compliance.

Since CTEC requires online registration, an application is processed immediately, including verification of education. It takes 4-6 weeks to send the appropriate certificate to the applicant; however, that applicant can begin preparing taxes once their application is completed online and they immediately receive a computer-generated verification that their registration has been successful. In comparison to paper applications, online registration has significantly reduced processing time. Paper applications are still accepted on a case-by-case basis but are rarely submitted.

CTEC's information technology contractor is currently developing a new online registration program to further streamline the process by operating in the Microsoft Azure Cloud, Microsoft Azure App Services, SQL Database, Storage Accounts, and other modern technology solutions to CTEC's registration process.

CTEC currently does not have a backlog of pending applications.

CTEC issues applicants for registration a Certificate of Completion once they have completed their 60-hour qualifying education course from a CTEC-approved provider. Final examinations are not administered by CTEC, and CTEC does not have a standardized test that must be used by providers. The examination process is left to the provider; however, the provider's course, including the exam, must be reviewed and approved by CTEC. All CTEC-approved providers who offer qualifying education courses are required to have a final exam, and individuals taking the course must pass that exam with a grade of not less than 70%.

CTEC issues an annual Statement of Compliance to individuals who are renewing their registration and have completed a 20-hour continuing education course from a CTEC-approved provider.

Non-Exempt preparers who live and prepare outside of California are not required to register with CTEC.

Registration Population					
		FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17
New Registration Certificate of Completion	Active	8,296	8,023	7,123	6,037
Renewal Registration Statement of Compliance	Active	25,365	26,473	26,283	26,345
	Delinquent*	5,912	6,239	6,995	6,933
<b>TOTAL REGISTRATION</b>		39,573	40,735	40,401	39,315
*“Delinquent” refers to those preparers who renewed their registration after the October 31 deadline and were charged a late fee.					

Registering Data by Type					
Application Type		Received	Approved	Closed	Issued
FY 2013/14	(Exam)	N/A	N/A	N/A	N/A
	(New)	8,296	8,296	8,296	8,296
	(Renewal)	31,277	31,277	31,277	31,277
FY 2014/15	(Exam)	N/A	N/A	N/A	N/A
	(New)	8,023	8,023	8,023	8,023
	(Renewal)	32,712	32,712	32,712	32,712
FY 2015/16	(Exam)	N/A	N/A	N/A	N/A
	(New)	7,123	7,123	7,123	7,123
	(Renewal)	33,278	33,278	33,278	33,278
FY 2016/17	(Exam)	N/A	N/A	N/A	N/A
	(New)	6,037	6,037	6,037	6,037
	(Renewal)	33,278	33,278	33,278	33,278

<b>Total Registration Data</b>			
	<b>FY 2013/14</b>	<b>FY 2014/15</b>	<b>FY 2015/16</b>
<b>Initial Registration Data</b>			
Initial Registration Applications Received	8,296	8,023	7,123
Registration Applications Approved	8,296	8,023	7,123
<b>Initial Registration/Initial Exam Pending Application Data</b>			
Pending Applications (total at close of FY)	None	None	None
<b>Initial Registration/Initial Exam Cycle Time Data</b>			
Average Days to Application Approval	Immediate	Immediate	Immediate
<b>Registration Renewal Data</b>			
Registration Renewed	31,277	32,712	33,278

Applicants for registration by CTEC are not fingerprinted and do not have to pass a criminal history background check by the Department of Justice (DOJ) as a condition of registration.

CTEC does not verify personal information (i.e. social security number or personal tax identification number) provided by the applicant, though the FTB does. CTEC does verify the required education that tax preparers must take from CTEC-approved providers. Approved providers must submit student course information electronically to CTEC.

## **Education**

To become a CTEC-approved provider, an applicant must submit a completed CTEC Curriculum Provider Application. The completed packet will go through an administrative review to be sure that all necessary components of the application have been provided. As part of the application, a digital copy of all course material will be provided and sent to a CTEC curriculum reviewer. The review includes a meticulous examination of a prospective provider's course. CTEC has a review check list that includes the critical elements of a 60-hour course. If the provider's course fails the review, they have the option to start over with their approval process or appeal the findings to the Board.

Once the review is complete, the reviewer will send to CTEC's Curriculum Provider Standards Committee a recommendation of approval or a recommendation of denial. The committee will review the recommendation and will contact the applicant with their decision. A separate approval is required to be a qualifying education provider and a continuing education provider.

The IRS has developed a national tax preparer program they have fashioned closely to the California program. The Director of Continuing Education Management for the IRS Return Preparer Office regularly attends the CTEC Board meetings.

The IRS has also implemented a course review and approval process similar to CTEC's, and has designated CTEC as an approved IRS Licensing Body. Any provider approved by CTEC is automatically approved as an IRS provider.

Since CTEC has been in existence, there has never been an application from a foreign education provider. Several CTEC approved providers do offer courses in Spanish.

CTEC's Board of Directors regularly reviews its policies related to continuing education, and has recently made several policy changes with regards to education. Annually in May, CTEC holds a provider task force meeting with its approved providers to gain insights into operational problems faced by the providers and to keep the providers abreast of changes in CTEC policies.

Recently, CTEC reviewed the new joint American Institute of Certified Public Accountants (AICPA) and National Association of State Boards of Accountancy (NASBA) education standards and the IRS education standards for their national registration program. The Board adopted the AICPA/NASBA approach to determining the continuing education awarded for self-study courses. The Board went farther than AICPA/NASBA standards and gave its curriculum review staff the latitude to deny approval of an education course where the course and/or the questions are not:

- Clearly written;
- Technically accurate;
- Current – up-to-date with current tax laws;
- Complete – sufficient detail to explain the subject matter; and
- Sufficient to meet the course learning objectives.

CTEC also adopted the NASBA restriction on the use of IRS, state, and general usage publications as course study material. These publications are designed for use by taxpayers, not tax professionals, and do not include code, regulation, or court case references, and are therefore not suitable for professional use.

CTEC approves continuing education providers by initially reviewing and approving one of their courses. The approved provider is then allowed to provide additional courses that have not been reviewed. Because of the hundreds of courses being taught, having the funds and staff to review every course is a long-standing problem not only for CTEC but also the IRS and NASBA.

CTEC verifies both qualifying and continuing education of every registered tax preparer every year. CTEC requires all approved providers to electronically report successful completion of both qualifying and continuing education courses to CTEC, and then matches those courses to individuals attempting to register online. CTEC does not allow self-certification of either qualifying or continuing education. Preparers are able to go into their personal online accounts and verify the number of education hours reported by their provider.

If an individual does not have the required continuing education credit for the year, CTEC will not renew the applicant's registration, which is due on October 31 of each year, and the applicant can no longer engage in paid tax return preparation in California. If they do not make the October 31 deadline, they are given until January 15 of the following year to make up the education and pay a late fee to register. If they do not register by January 15, they would have to retake the 60-hour qualifying education course and register as a new preparer. There were no Continuing Education audits conducted in the last four years, since all continuing education courses are electronically verified for every applicant every year.

CTEC's provider approval process requires a new provider, either qualifying or continuing education, to submit a course for review. CTEC has several policies dealing with the review process. These policies include:

- CP02-01 – CTEC Curriculum Provider Application
- CP03-01 – Denied Curriculum Provider Appeal Procedure
- CP13-01 – Self-Study Courses
- CP13A-01 – Qualifying Education Course
- CP14-01 – Course Review Policy
- CP23-01 – Education Standards
- CP23-Attachment – Qualifying Education Guidelines

As an overview of the process outlined in the policies, CTEC contracts with a number of knowledgeable reviewers who verify the continuing education awarded by either a word count formula or pilot testing using standards very similar to those adopted by both AICPA and NASBA. This includes verifying an interactive element through the use of 3 review questions per continuing education hour at the end of each education element, and 5 exam questions per continuing education hour at the conclusion of the course.

The reviewers also look for and deny approval for courses whose material and questions are overly simplistic, and questions that are simply look-up questions with no educational value. The review team is headed up by a professional educator, Phillip Storrer, CPA. Mr. Storrer is a retired professor of taxation from Hayward University, Hayward, CA. CTEC also requires providers to undergo a course review every three years to renew their status as approved providers.

There are two types of continuing education provider applications: (1) New applications coming in from providers who are not currently approved by CTEC; and (2) Continuing education provider applications being submitted by approved providers who are up for periodic review (every three years an approved provider must resubmit a completed provider application, including course materials for review). The following numbers reflect both types of applications:

- In 2013 – 5 New provider applications were received and all were approved; of the 28 providers up for periodic review, 1 was denied and 12 withdrew from the program.
- In 2014 – 3 New provider applications were received and all were approved; of the 53 providers up for periodic review, 3 were denied and 21 withdrew from the program.
- In 2015 – 6 New provider applications were received and all were approved; of the 42 providers up for periodic review, 3 were denied and 7 withdrew from the program.
- In 2016 – 8 New provider applications were received and all were approved; of the 24 providers up for periodic review, 0 were denied and 2 withdrew from the program.
- In 2017 – 8 New provider applications were received and all were approved; of the 35 providers up for periodic review, 4 were denied and 2 withdrew from the program.

In an effort to ensure the quality of continuing education courses, in 2013 CTEC instituted a provider audit policy. This policy requires that the five most frequently taken courses be audited each year in addition to random audits and audits as the result of complaints. CTEC's logic is that students will look for an easy way to get continuing education credits, and, by requiring the most frequently taken course, their review staff can uncover deficient courses.

Audits are performed by members of the CTEC course review staff, who subscribe to the course just like any other student without the provider's knowledge. Auditors are looking for courses that award excessive continuing education credits, are overly simplistic, not current, and lack substantial educational value.

## **Enforcement**

As a nongovernmental entity, enforcement for CTEC is handled differently from most other regulatory entities under the Business and Professions Code. CTEC is not a client agency of the Attorney General and its enforcement cases are not typically handled through the DOJ. Statute requires tax preparers to furnish evidence of their surety bond "upon the request of any state, federal agency or any law enforcement agency," as well as CTEC.<sup>3</sup> Statute also establishes a broad private right of action wherein "any person may maintain an action for enforcement of [duties required for registered tax preparers], or to recover a civil penalty in the amount of one thousand dollars, or for both enforcement and recovery."<sup>4</sup>

CTEC's enforcement priorities are not focused on disciplining existing registered tax preparers; instead, CTEC's principle goal is to identify and eliminate unlawful preparers who are not appropriately educated, bonded, and registered. Once an unlawful preparer has been identified, CTEC's goal is to allow that preparer 90 days to take the required education, purchase a bond, and register with CTEC. CTEC believes the combination of enforcement and education efforts deter unlawful activity.

The primary enforcement agency for CTEC is the FTB. Over the years, the FTB's enforcement program has identified hundreds of unlawful preparers, provided them with information regarding CTEC requirements, and most individuals have come into compliance and become CRTPs. Without the enforcement arm of the FTB, CTEC believes there would be no reason for unlawful tax preparers to become registered. CTEC states that it considers its enforcement program to have been an overwhelming success. The FTB has taken steps to further enhance its enforcement process by using systems to improve verification of preparer information and correspondence prior to imposition of the failure to register as a tax preparer penalty. The process has shown an increase in failure-to-register penalties imposed with an 85% increase since the 2012/13 season.

Current process requires the FTB to verify, based on the information available that an unlawful tax preparer is not otherwise exempt from CTEC registration as an attorney, CPA, EA, or other exempt entity. When the FTB is unable to identify the individual or entity as exempt from registration, the FTB will send a first notice and a second notice before imposing the penalty to ensure that unlawful tax preparers can respond with their exempt information or comply with the registration requirement by registering with CTEC before the penalty will be imposed. The penalty for failing to register is \$2,500 for the first failure and \$5,000 for each subsequent failure.<sup>5</sup> These penalties are deposited in the General Fund. The FTB expends time and resources to confirm tax preparer activity, confirming the identity of the tax preparers, and identification of exempt tax preparers.

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<sup>3</sup> Bus. & Prof. Code, § 22250

<sup>4</sup> Bus. & Prof. Code, § 22257

<sup>5</sup> Rev. & Tax. Code, § 19167

Senate Bill 484 (Wyland) went into effect on January 1, 2014, giving CTEC the legislative authority to deregister preparers and deny applicants registration. The bill required CTEC to notify the FTB that a registration is suspended or revoked. As of the 2017/2018 season, the tax preparers that have been deregistered by CTEC will be pursued, if necessary, through the FTB's enforcement process. The bill also gave CTEC the authority to deny an application for registration or discipline a current registrant who has been convicted of a crime "substantially related to the qualifications, functions, or duties of a registrant."<sup>6</sup>

<b>Enforcement Statistics</b>				
	<b>FY 2013/14</b>	<b>FY 2014/15</b>	<b>FY 2015/16</b>	<b>FY 2016/17</b>
<b>Complaint Intake</b>				
Received	234	57	577	290
Closed	234	57	577	290
<b>Compliance Action</b>				
Cease & Desist/Warning	692	1,258	776	904
<b>Citation and Fine</b>				
Citations Issued	288	255	302	479
Average Days to Complete	150	150	150	150
Amount of Fines Assessed	\$957,500	\$800,000	\$930,000	\$1,477,500
Reduced, Withdrawn, Dismissed	64	88	108	186
Amount Collected	\$228,013	\$391,723	\$360,886	\$385,245

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<sup>6</sup> Bus. & Prof. Code, § 22253.1.5

## PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

CTEC last underwent a sunset review by the Legislature in 2014. During the previous sunset review, Committee staff raised a number of issues provided recommendations. Below is a summary of actions which have been taken over the last four years to address these issues.

### **Prior Issue #1: Should CTEC be allowed to provide a standardized test and require increased hours of education for those seeking to become Registered Tax Preparers?**

**Background:** For years, CTEC discussed (1) the potential use of a standardized test and (2) requiring additional hours for both the initial registration as well as annual continuing education. Since these issues were discussed in 2014, CTEC has not required a standardized test for all registration applicants and has not increased the qualifying education hours beyond 60 hours.

**Staff Recommendation for Prior Issue #1:** If the Council is considering the use of a standardized test for initial registrants then they should ensure that the test has the appropriate occupational analysis and examination validation study conducted. The Council might consider contracting with the Office of Professional Examination Resources of the Department of Consumer Affairs to conduct such an evaluation of a standardized test to be provided by the Council to providers. Such an evaluation could also take into consideration the need for increased education for tax preparers so that an appropriate passage rate could be achieved. The passage rate should be closely monitored, however, and the registration rate for initial registrants should not drop significantly because of the additional requirement of both a standardized test and additional education. Tax preparation work is an important profession which many seek as a career and the new education requirements should not be a barrier to entering into this profession.

**CTEC's Response to Prior Issue #1:** *The CTEC Board of Directors has had many discussions, both pros and cons, regarding the issue of a standardized test. The benefits of such a requirement would:*

- *Level the playing field for prospective preparers by making all final exams of equal level of difficulty.*
- *Allow CTEC to monitor the overall pass rates, and adjust the difficulty of the test as is appropriate.*
- *Allow CTEC to monitor pass rates among the providers to identify providers with low pass rates and take appropriate action with those providers.*

*The objective of requiring a standardized test would be to improve the quality of education, and, hence, the quality of tax preparation. The drawbacks to a standardized test requirement includes:*

- *A decline in the number of individuals entering the profession due to the test requirement.*
- *The costs associated with this requirement, such as testing locations and proctors to monitor the test.*

*Further discussion by the Board, including implementation as well as ramifications, need to continue. The Board feels that standardized testing will probably require legislation, and before legislation can be drafted, all aspects of this new requirement need to be determined and reviewed and discussed with the Legislature for their suggestions and approval.*

**Prior Issue #2: Should the FTB be granted authority to enforce some of the other provisions of the “Tax Preparer Code of Conduct and Responsibilities?”**

**Background:** The 2014 sunset review noted that the FTB was only authorized to identify illegal preparers and penalize those preparers if they do not come into compliance. CTEC asked whether it might be feasible for the FTB’s authority and jurisdiction to be expanded so that they could take enforcement action for some of the other issues listed in CTEC’s Code of Conduct.

**Staff Recommendation for Prior Issue #2:** CTEC should continue meeting with the FTB and discuss further what information could be provided by the FTB in dealing with violations of its Code of Conduct for registered tax preparers and what further powers and authority could be granted to CTEC and the FTB to assure that action could be taken against those registered tax preparers who may violate some of the more serious provisions of CTEC’s Code of Conduct.

**CTEC’s Response to Prior Issue #2:** *“Ghost tax preparers” are a significant problem within the tax preparer community. These are individuals who prepare returns for a fee but do not sign those returns, thereby avoiding the education and bonding requirements of CTEC. The FTB has indicated that there are several thousand of these individuals operating in California. Over the years, CTEC has requested an expansion of FTB enforcement and reviewed various options for that expansion, most of them requiring legislative changes to the Tax Preparer Act. FTB has proposed that one way to expand its enforcement efforts, without changing the law, would be to establish a pilot program, using CTEC funds, to find “ghost tax preparers” and bring them into compliance with California law. Since these individuals do not sign returns, the challenge for FTB will be finding them. As a pilot program, CTEC will be monitoring FTB’s efforts and will determine the program’s future feasibility.*

**Prior Issue #3: Should CTEC continue with a rather expensive media campaign costing nearly \$278,000 in 2012, or should it be somehow curtailed?**

**Background:** In the years leading up to the 2014 sunset review, CTEC had engaged on an ambitious media campaign to educate potential unregistered tax preparers and consumers on state laws regarding tax preparation. A public relations campaign was launched to advertise and promote the council and its efficacy was studied by an independent contractor. The overall costs of the campaign were closely scrutinized by CTEC’s 2014 report.

**Staff Recommendation for Prior Issue #3:** CTEC should explain to the Committees what current efforts are being made regarding the advertising and promotion of both the work of CTEC and informing the public about the responsibilities and requirements which tax preparers have under the law and as it pertains to CTEC. The Committees should also receive a breakdown of how these costs are being spent and have another independent study completed by June 30, 2014 on the effectiveness of its advertising and promotion campaign.

**CTEC’s Response to Prior Issue #3:** *CTEC allocates between \$225,000 to \$292,000 each year in advertising to educate the public about the responsibilities and requirements which tax preparers have under the law. This includes advertising through billboards, bus signs, Internet, and social media. Millions of impressions are also achieved through media interviews. CTEC contracts with a public relations firm to (1) develop a clear and concise message regarding who can legally prepare tax returns for a fee in California and what the law requires of paid tax preparers (i.e. signing tax returns); (2) arrange media interviews during tax season to educate taxpayers on CTEC and CRTPs and how to find a tax preparer;*

*(3) develop and distribute press releases each year focusing on educating the public about CTEC and CRTPs and the importance of working with a registered tax preparer who is educated and bonded; (4) launch an Internet advertising campaign so taxpayers are informed about CTEC on a statewide level; (5) develop a social media strategy (i.e. Facebook, Instagram, Twitter, YouTube) to educate the public about CTEC and CRTPs; and (6) develop a microsite to measure and track the results of the campaign.*

*CTEC's public relations firm also develops two public brochures that are handed out at various venues, including: IRS Forums, as well as BOE, FTB and EDD events. The public relations firm receives \$75,000 annually for these services. CTEC has contracted with a research firm to do a study on the effectiveness of its new 2018 advertising and public awareness campaign, which will focus on warning the public about tax preparers who do not sign tax returns.*

*Results will be available at the next CTEC board meeting in May of 2018.*

## **CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA TAX EDUCATION COUNCIL**

This section covers new and unresolved issues relating to CTEC. It includes background information and committee staff recommendations for each issue. Committee staff has provided this paper to CTEC and other interested parties, including the professions, so that they may respond to the issues and recommendations.

### **FISCAL ISSUES**

**ISSUE #1:** *Should enforcement penalties collected by the FTB be deposited in a manner that would allow CTEC to utilize revenue from fines to invest in further enforcement efforts against unregistered tax preparers?*

**Background:** CTEC's primary enforcement priority is identifying unregistered tax preparers and compelling them to fulfill their registration requirements. Unlawful preparers are first issued what amounts to a warning that they are out of compliance with state registration requirements; if the preparer does not comply, the FTB initiates an enforcement action that can result in a penalty of \$2,500 for the first action and \$5,000 for subsequent failures to register. In 2016/17, approximately 30% of potential enforcement cases recognized by the FTB resulted in the issuance of a penalty.

Currently, all revenue collected by enforcement actions brought by the FTB on behalf of CTEC is deposited in the General Fund. This represented \$380,557 in penalty revenue generated in 2016/17, which is representative of average penalties assessed over the past several years. As the result of a collaborative effort to increase the identification and citation of unregistered preparers, CTEC and the FTB anticipate that this number will continue to grow in future years. However, these activities are not fueled by revenue generated from penalty assessments, which are deposited in the General Fund and not allocated toward any programs specifically designated for the enforcement of tax preparer laws.

The most easily identified impediment to enabling CTEC to utilize enforcement action revenue is the council's nongovernmental, nonprofit status. Because CTEC is not part of the State Budget and maintains a fund outside state financial control, penalties collected on behalf of the government cannot simply be deposited in its fund. However, the FTB is a fully governmental entity and its efforts on behalf of CTEC are currently funded through contractual arrangements paid through registration fees collected by the council. It is practically feasible for penalty revenue generated by the FTB on behalf of CTEC to be earmarked for further enforcement activities on CTEC's behalf without requiring CTEC to receive the penalties prior to their redisbursement to the FTB.

**Staff Recommendation:** *While it is far from certain that redirecting the revenue from penalties assessed by the FTB on behalf of CTEC away from the General Fund is a practicable or desirable course of action, CTEC should investigate whether a budgetary avenue exists for its successful enforcement efforts to fuel new activities undertaken by the FTB on CTEC's behalf.*

*CTEC, in partnership with the FTB, should consult with representatives of the Department of Finance and other budget stakeholders to determine whether such a modification of current practice is possible and whether the benefit to consumers of tax services decidedly outweighs the reduction of revenue to the state's General Fund.*

## ADMINISTRATIVE ISSUES

### **ISSUE #2: Is the current structure of CTEC's Board of Directors problematic in the context of recent caselaw regarding liabilities for anticompetitive activity by regulatory bodies?**

**Background:** In 2015, the United States Supreme Court ruled in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* (“*NC Dental*”) that when a state regulatory board features a majority share of active market participants, any allegedly anticompetitive decision-making may not be subject to antitrust litigation immunity unless there is “active state supervision” to ensure that all delegated authority is being executed in the interest of the public and not the private commercial interests of the members. This case has not yet resulted in any meaningful litigation against public bodies established under California law and it remains to be seen whether any of the state’s regulatory entities are vulnerable to antitrust claims. However, the *NC Dental* decision remains a persistent topic of discussion for each regulatory body that has since undergone review.

Currently, CTEC’s Board of Directors consists entirely of current tax preparers and representatives of associations or corporations that are actively engaged in the business of preparing tax returns. The fact that CTEC’s Board of Directors consists entirely of market participants may prompt reasonable concern that the *NC Dental* decision could be relevant to any decisions made by the Board that may be construed as anticompetitive. CTEC’s nonprofit status would suggest that “active state supervision” is not occurring during Board meetings; furthermore, CTEC’s prioritization of taking action against unregistered tax preparers instead of focusing enforcement activities on internal discipline of current registration may be seen as anticompetitive. However, because CTEC cannot bring its own enforcement actions and the FTB (a state agency) possesses the ultimate authority to assess penalties, there is arguably a good degree of state supervision in contexts where anticompetitive decisions could be effectuated by the Board.

As a nongovernmental nonprofit, CTEC states that it has never made any arguments that it is a state actor or under active state supervision. Nor has it argued that it has or will have government immunity in any context. The decision in *NC Dental* therefore likely did not have a substantial impact on CTEC’s current activities or presumed legal protections.

**Staff Recommendation:** *CTEC should confirm whether they believe the NC Dental decision has any bearing on their Board of Directors as part of a nonprofit entity. CTEC should also discuss whether they have any concerns regarding their directors’ probable lack of personal immunity from potential antitrust litigation resulting from their decisions as nongovernmental regulatory body participants.*

### **ISSUE #3: Does CTEC’s nonprofit status render it inappropriately inapplicable to laws aimed at increasing transparency and accountability for entities conducting business on behalf of the public?**

**Background:** Various provisions of law across California’s statutes have been enacted with the intention of ensuring that governmental bodies are fully accountable to the people they serve. These laws provide access to public documents, ensure transparent decision-making, safeguard public funds, and curb corrupting influences on those entrusted with carrying out activities on behalf of the State of California and its citizenry. However, these laws have traditionally been passed in the context of fully governmental state agencies; in cases like CTEC’s where a nongovernmental entity has been delegated public responsibilities, many of these so-termed “good government laws” may not apply.

CTEC is one of several statutorily established nonprofits that fulfill a responsibility typically delegated to a state entity such as a regulatory board or bureau. It is incorporated as a 501(c)(3), and state law is relatively prescriptive in terms of the council's mandate and what processes it must follow in fulfilling its regulatory function. However, none of its members or contracted administrators are employees of the State of California, and there may be a potential lack of transparency and accountability associated with utilizing nongovernmental entities to regulate professional activity. The following examples of state good government laws are accompanied by an assessment of their potential applicability to CTEC, informed by opinions rendered by the Office of Legislative Counsel in regards to analogous nonprofit regulatory bodies.

*Bagley-Keene.* The Bagley-Keene Open Meeting Act<sup>7</sup> (Act) requires meetings of regulatory bodies to be noticed and made available for attendance or observation by members of the public. The intent of the Act is "that actions of state agencies be taken openly and that their deliberation be conducted openly." These requirements are applied to "state bodies," which are defined within the Act as including "a board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body." While the Act's intent would appear to apply to a nonprofit created in statute to fulfill a public function, similar nonprofit regulatory bodies have had their applicability to Bagley-Keene expressly codified. Such a memorialization of open meeting law compliance requirements has not been instituted for CTEC.

*Public Records Act.* The California Public Records Act (PRA)<sup>8</sup> makes records possessed by state or local agencies available to the public for inspection, with specified exceptions. In enacting the PRA, the Legislature declared "that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The PRA applies specifically to each "state agency," which is defined in the Act as "every state office, officer, department, division, bureau, board, and commission or other state body or agency" excepting certain agencies in Article IV of the California Constitution. Relevant caselaw<sup>9</sup> has found that although nongovernmental, nonprofit entities with a clear public function likely fall within the intent of the PRA, they do not fit the Act's definition of "public agency." Thus, it is unlikely that CTEC would be compelled to comply with the PRA.

*Budget Audits by the Department of Finance.* The Office of State Audits and Investigations at the Department of Finance generally has broad authority to inquire into the budgets of state entities.<sup>10</sup> However, this authority is based on the definition of "state agency" as codified in Section 11000 of the Government Code, which includes "every state office, officer, department, division, bureau, board, and commission."<sup>11</sup> A nonprofit council such as CTEC is not included among the specified entities falling under this statute's definition of "state agency."

*Whistleblower Protections.* Gov. § 11000's definition of "state agency" is also utilized by both the California Whistleblower Protection Act<sup>12</sup> and the Whistleblower Protection Act.<sup>13</sup> These laws, which protect employees and other persons who disclose improper activities by public bodies, would therefore likely also not apply to statutorily created nonprofits like CTEC.

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<sup>7</sup> Gov. §§ 11120 et seq.

<sup>8</sup> Gov. §§ 6250 et seq.

<sup>9</sup> *Board of Trustees of California State University v. Superior Court* (2005, Cal App 4th Dist)

<sup>10</sup> Gov. §§ 13400 et seq.

<sup>11</sup> Gov. § 11100

<sup>12</sup> Gov. §§ 8547 et seq.

<sup>13</sup> Gov. §§ 9149.20 et seq.

*Administrative Procedure Act.* California's Administrative Procedure Act (APA) includes a variety of laws aimed at preserving transparency in rulemaking and due process in administrative hearings by state agencies. Provisions of the APA establish entities such as the Office of Administrative Law (OAL), which oversees public participation in agency regulations,<sup>14</sup> and the Office of Administrative Hearings (OAH),<sup>15</sup> which adjudicates administrative disputes. The portions of the APA relating to OAL and rulemaking utilize the Gov. § 11000 definition of "state agency," likely making CTEC inapplicable to any of its provisions. In regards to OAH provisions, Chapter 4 of the APA also utilizes the Gov. § 11000 language; however, Chapter 4.5, which lays out adjudicative procedure in administrative hearings, includes "quasi-public entities," defined as "an entity, other than a governmental agency ... that is expressly created by statute for the purpose of administration of a state function." There is a significant possibility that this definition would encompass a nonprofit like CTEC. However, Chapter 4.5 only applies to the extent that its provisions are not otherwise preempted by existing hearing procedures specifically codified for CTEC, so it is uncertain to what extent the APA directly impacts the council.

*Political Reform Act.* The Political Reform Act of 1974 enacted a number of safeguards to hold public decision-makers accountable and ensure that they "perform their duties in an impartial manner, free from bias caused by their own financial interests."<sup>16</sup> The California Fair Political Practices Commission (FPPC) has relatively broad authority to determine who is subject to the requirements imposed by the Act. It is not entirely clear whether a nonprofit council like CTEC would be considered applicable. An FPPC advisory letter (referred to as the Siegel Letter) lays out four factors in determining whether an entity must comply with the Act: (1) Whether the impetus for the formation of the entity originated with a government agency (CTEC was indeed created in statute); (2) Whether the entity is substantially funded by a government agency (not true for CTEC, which is funded entirely by its own registration fees); (3) Whether one of the entity's principle purposes is rendering services typically performed by public agencies (certainly true for CTEC); and (4) Whether the entity is otherwise treated as a public entity by statute (arguably inapplicable to CTEC). Absent further guidance by the FPPC, it is possible that fulfilling only some of the Siegel Letter's four factors would result in CTEC's inapplicability to the Act.

While no specific instances have been identified in which a lack of accessibility or transparency in CTEC's decision-making has directly presented a problem, the inapplicability of these and other good government laws highlights potential deficiencies in granting regulatory responsibilities to a nongovernmental body.

**Staff Recommendation:** *CTEC should provide an overview of which good government laws it currently complies with, either through specific compliance with statute or as a discretionary matter of administrative policy. To the extent that CTEC believes its nonprofit status makes the council inapplicable to laws designed to increase public accountability and transparency in regulatory decision-making, CTEC should give an explanation for how the benefits derived from its operation as a nongovernmental entity nevertheless outweigh the arguable loss of public access and engagement. For instances where a good government law was enacted to ensure transparency and accountability for all entities entrusted with regulatory functions on behalf of the public, and said statute does not apply to CTEC solely because of its nonprofit status, CTEC's authorizing statute may warrant amendment to ensure that such protections are expressly applicable.*

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<sup>14</sup> Gov. §§ 11340 et seq.

<sup>15</sup> Gov. §§ 11370 et seq.

<sup>16</sup> Gov. §§ 81000 et seq.

## REGISTRATION AND ENFORCEMENT ISSUES

### **ISSUE #4: Should CTEC have the authority to request and receive criminal history information and subsequent arrest notification for registration applicants and active CRTPs?**

**Background:** In 2013, CTEC successfully sponsored legislation enabling the council to deny registration to an applicant or deregister an existing registrant if the individual was convicted of “any felony or misdemeanor that is substantially related to the qualifications, functions, or duties of a registrant, in which event the record of the conviction shall be conclusive evidence of the crime.” This authority is analogous to the discretion afforded to other state regulatory entities when denying an application or disciplining a licensee.

However, while CTEC has the authority to take action based on the criminal conviction history of an individual under their jurisdiction, they do not have the authority to receive this information directly from the DOJ. Similar regulatory entities require background checks as part of their application process, and continue to monitor future arrests and convictions for potential suspensions or revocations. CTEC does not require background checks from applicant registrants and does not automatically receive notification from DOJ when a registrant is arrested for or convicted of a new crime.

According to CTEC, it has only utilized its authority to deny an application or deregister a CRTP based on criminal convictions a handful of times since the authority was granted. Currently, CTEC will typically only learn of a conviction if the applicant or registrant has been backgrounded by another regulatory body that does receive background check information, such as the California Board of Accountancy, and that entity relays the information to the council. Without express statutory authorization to request and receive criminal history information from the DOJ, CTEC is incapable of obtaining this information itself.

**Staff Recommendation:** *CTEC should consider whether there would be a significant benefit in requiring criminal history background checks as a condition of registration and whether it believes public protection would be better served if CTEC received notification subsequent arrests that may result in the deregistration of active registrants. If CTEC does wish to incorporate this authority into their existing application and enforcement protocols, they should consult with the DOJ about what is needed to utilize the background check process and what barriers CTEC's nonprofit status may present.*

## CONTINUED REGULATION OF TAX PROFESSIONALS BY THE CALIFORNIA TAX EDUCATION COUNCIL

### **ISSUE #5: Should the registration of tax professionals be continued and be regulated by the California Tax Education Council?**

**Background:** The need for education standards and professional accountability for professionals engaged in paid tax preparation prompts a compelling need to sustain some form of regulation. Whether the current structure established through CTEC adequately serves this purpose is an issue that must be considered in the context of both public protection and regulatory efficiency.

The current sunset review timeline represents twenty years since CTEC was created through statute as a nonprofit entity, replacing a more traditional licensing program under the DCA. The “grand experiment” envisioned in this transition was to provide a type of oversight and regulation that could more efficiently and effectively oversee professional standards for tax preparers. CTEC’s present fund condition and fee scheme, neither of which implicates state budget obligations, indicates that financial efficiencies have been realized through this structure.

However, CTEC’s status as a nongovernmental entity does pose a number of challenges, as outlined in the issues section of this review, and some degree of engagement with state agencies (particularly the FTB) is necessary to effectuate CTEC’s enforcement priorities. The nonprofit regulatory entity model also calls into question whether various laws aimed at preserving transparency and accountability for regulatory decision-makers. Additionally, while CTEC is not a state agency, registration with the council is mandatory under state law for tax preparers who are not otherwise exempt.

It is also worth discussing the fact that CTEC functions in concert with other entities also charged with regulating tax preparers. The California Board of Accountancy, whose certified public accountants are eligible to prepare income taxes without CTEC registration, represents the largest population of professional tax preparers. The State Bar regulates licensed attorneys who are also authorized to offer paid tax preparation services within the context of their ethical standards. Finally, the FTB’s necessary role in handling enforcement on behalf of CTEC represents another established state agency engaged in the business of regulating those who are involved in tax preparation. If the core objective in California’s regulation of tax preparers is efficiency, an even greater efficiency may be achieved by consolidating existing entities that hold jurisdiction within that space.

CTEC’s role in California’s broad regulatory scheme furthers the longstanding argument that those engaged in occupations that present relatively low risk of consumer harm, and require relatively low educated competence for entry, can be effectively and efficiently self-regulated by a nongovernmental entity. This sunset review as well as prior sunset reviews has indicated that the regulation of tax professionals by CTEC has not revealed any serious institutional deficiencies, and that it has been performed at minimal cost to the state. From this perspective, CTEC should be continued with a 4-year extension of its sunset date and continue its current registration program. However, the Legislature should closely evaluate the value of the nonprofit, nongovernmental regulatory entity model to determine how and when it is an appropriate solution to advancing public protection priorities in a prudent manner. This should include an assessment of whether the specific issues and recommendations in this Background Paper have been sufficiently addressed.

**Staff Recommendation:** *CTEC’s current registration of professional tax preparers should be continued, to be reviewed once again in four years.*