



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

May 9, 2025

Doug Middleton  
Doug Middleton, CPA  
KPMG, LLP  
500 Capitol Mall Dr, # 2100  
Sacramento, CA 95814

Re: Your Request for Advice  
**Our File No. A-25-066**

Dear Mr. Middleton:

This letter responds to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are only providing advice under the post-government employment provisions of the Act, and therefore offer no opinion on the application, if any, of other post-government employment laws, such as Public Contract Code Section 10411.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Does the Act’s one-year ban prohibit you from appearing before your former agency, the Franchise Tax Board (“FTB”), or its auditors regarding a tax audit of a potential client in your private capacity?

### CONCLUSION

The one-year ban does not apply to tax audits. Thus, the one-year ban does not prohibit you from appearing before or communicating with FTB staff to represent potential clients in connection with FTB tax audit proceedings. However, note that the permanent ban prohibits you from “switching sides” and representing others on any audits that you worked on or supervised during your employment at FTB.

---

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS AS PRESENTED BY REQUESTER

You are a former employee of the FTB who recently accepted employment with a major accounting firm. At retirement, you were a CEA-A serving as Technical Audit Policy Advisor to Audit's senior management team. You also served as an EDR2 design lead (FTB's technology project). Prior to that, you worked as an auditor in various classifications. You retired from state service on December 16, 2024.

You have been asked to represent a potential new client for their income tax audit (and any resulting protest, appeal, settlement resolution process that might result). You state that, as an FTB Audit employee, you did not directly or indirectly work on, or directly supervise, any tax audit for any tax years for the potential client. The scope of this engagement would be specific to the potential client's tax returns for the tax years in question. Your role would be solely to represent the client in dealing with the FTB's audit of the potential client's tax returns, and the possible resulting protest, appeal, and/or settlement of any controversies resulting from FTB's tax audit.

You also state that, in your current position, you would have no opportunity to, or interest in, influencing any legislative, discretionary, or administrative actions involving the issuance, amendment, awarding, or revocation of any rule, legislation, permit, license, grant, contract, sale, or purchase of any goods or property. Your role would be to communicate with FTB on behalf of the potential client, and to advise the potential client on their best opportunities to minimize tax and controversy costs in the expedient resolution of their FTB tax audit controversy.

## ANALYSIS

### *The One-Year Ban*

The Act's "one-year ban" prohibits designated employees of state administrative agencies, for one year after leaving state service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. (Section 87406(d)(1).)

The one-year ban applies for twelve months from the date the employee "permanently leaves" state employment, which is defined as the date the official is no longer authorized to perform the duties of the office or employment and the official stops performing those duties, even if the official continues to receive compensation for accrued leave credits. (Regulations 18746.1(b)(1).) and 18746.4(b).) The one-year ban applies to any designated employee of a state administrative agency. (Section 87406(d)(1); Regulation 18746.1(a)(4).) As a former FTB employee who held a position designated in the agency's Conflict of Interest Code, you are subject to the one-year ban. You left state service on December 16, 2024. Therefore, you are subject to the one-year ban until December 16, 2025.

During this time, you are prohibited from appearing before or communicating with FTB as a paid consultant for the purpose of influencing any administrative, legislative or discretionary action, to the extent that such action involves the issuance of a permit, license, grant, contract or sale of goods or property during the one-year period.

Administrative or legislative action is statutorily defined and refers to actions that are legislative or quasi-legislative in nature, but not judicial or quasi-judicial.<sup>3</sup> A “judicial, quasi-judicial or other proceeding” includes “any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency. . .” (Section 87400(c).) The key distinction under these statutory definitions is that administrative, legislative and quasi-legislative actions have general applicability, while judicial and quasi-judicial actions affect specific parties. While the one-year ban applies to any administrative or legislative action, it applies to actions affecting specific parties only if the action involves a permit, license, contract, or transaction involving the sale or purchase of property or goods

We have previously advised that tax audits and appeals do not qualify as legislative or administrative action, nor is a tax audit and appeal an action involving a permit, license, grant, contract, or sale of goods or property. Accordingly, tax audits and appeals are not generally actions covered by the one-year ban. (*See Rizado* Advice Letter No. A-09-143.) Similarly, we have advised that tax audits conducted by the Board of Equalization are not actions subject to the one-year ban. (*Estrada* Advice Letter, No. I-12-137.) Thus, the one-year ban does not prohibit you from appearing before or communicating with FTB staff to represent potential clients in connection with FTB tax audit proceedings.

### *The Permanent Ban*

Sections 87401 and 87402 (collectively, the “permanent ban”) prohibit former state administrative officials from advising or representing any person for compensation in any judicial or other proceeding in which the official participated while in state service. Specifically, Section 87401 provides:

“No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial or quasi-judicial or other proceeding if both of the following apply:

“(a) The State of California is a party or has a direct and substantial interest.

“(b) The proceeding is one in which the former state administrative official participated.”

---

<sup>3</sup> “Administrative action” means the “proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding.” (Section 82002.) “‘Legislative action’ means the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature. . .” and includes “the action of the Governor in approving or vetoing a bill.” (Section 82037.)

In addition, Section 87402 prohibits former state administrative officials from being paid to “aid, advise, counsel, consult or assist in representing” any other person in any proceeding in which the official would be prohibited from appearing under Section 87401.

As a Technical Audit Policy Advisor, you were a “state administrative official” for purposes of the permanent ban. (Section 87400(b).) Therefore, the permanent ban restricts your activities in the private sector. Additionally, as a CEA-A serving as Technical Audit Policy Advisor to Audit’s senior management team, you are deemed to have participated in any proceeding that was “pending before” (as defined in Regulation 18438.2) your agency and under your “supervisory authority.” (Regulation 18741.1(a)(4).) A proceeding is under a supervisor’s “supervisory authority” if any of the following situations applies to the supervisor:

“(A) The supervisor’s duties include the primary responsibility within the agency for directing the operation or function of the program where the proceeding is initiated or conducted. However, this provision does not apply to a supervisor who is only responsible for the general oversight of the administrative actions or functions of a program in which the responsibilities concerning the specific or final review of the proceeding are expressly delegated to other persons in the agency.

“(B) The supervisor directly supervises the person performing the investigation, review, or other action involved in the proceeding including, but not limited to, assigning the matter for which the required conduct is taken.

“(C) The supervisor reviews, discusses, or authorizes any action in the proceeding.

“(D) The supervisor has contact with any of the participants in the proceeding regarding the subject of the proceeding.” (Regulation 187411.1(a)(4)(A-D).)

The permanent ban only applies to “judicial, quasi-judicial or other proceedings” in which you “personally and substantially” participated at FTB. (Section 87400(d).) A “judicial, quasi-judicial or other proceeding” is “any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency.” (Section 87400(c).) Specifically, this includes any audit proceeding in which a supervisor actually participated while at his or her former state administrative agency, as well as any audit proceeding in which the official had supervisory authority. (*See Costa* Advice Letter, No. A-98-003.) Thus, the permanent ban covers audit proceedings in which you participated, either directly or by virtue of your supervisory authority, and you would be prohibited from representing any person in connection with an audit in which you participated as an employee of FTB.

However, the permanent ban would not prohibit you from either representing other taxpayers, or from representing a taxpayer in a new proceeding, even though that taxpayer had been a party to a previous proceeding in which you participated. The Act regards as “new” a proceeding involving different parties, or different factual or legal issues from those considered in previous proceedings. For example, we previously advised that the permanent ban applies throughout the duration of any audit proceeding in which an Associate Tax Auditor at the Employment

Development Department participated. (*See Rizado* Advice Letter No. A-09-143.) It did not, however, prohibit the auditor from representing a taxpayer in any new proceeding, even though that taxpayer may have been a party to a previous proceeding in which the auditor participated. (*See Gonzalez* Advice Letter, No. I-10-090.)

Based on the facts presented, the permanent ban does not apply here, where you did not directly work on, or supervise, any tax audit for any tax years for the potential client while employed by the FTB.

If you have other questions on this matter, please contact me at [znorton@fppc.ca.gov](mailto:znorton@fppc.ca.gov).

Sincerely,

Dave Bainbridge  
General Counsel

**Zachary W. Norton**

By: Zachary W. Norton  
Senior Counsel, Legal Division

ZWN:aja