Furloughs at the Franchise Tax Board:

Loss is Seven Times Greater than the Savings

Board of Equalization and Constitutional Offices Achieve Equivalent Savings without Mandatory Furloughs

A Report for the Senate Rules Committee

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California Senate Office of Oversight and Outcomes

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Board of Equalization and Constitutional Offices Achieve Equivalent Savings with Less Harm Through Cuts, Not Furloughs

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Executive Summary

The furlough of 5,300 workers at the Franchise Tax Board will likely cost California's general fund seven times more tax money than it saves – a loss that would, if taken into account, substantially shrink the overall savings Gov. Arnold Schwarzenegger expects from his 17-month furlough of most of the state workforce.

The Franchise Tax Board estimates that $465 million in taxes will be lost because furloughed workers will not be on the job to pursue the money through audits and collection efforts. That loss offsets by 28% the $1.66 billion in general fund money that the administration expects to save by furloughing state workers two to three days a month.

This report by the Senate Office of Oversight and Outcomes compares the effects of furloughs on revenue generation at the Franchise Tax Board to budget cuts at California's other major tax-collecting agency, the Board of Equalization.

Spared from furloughs, the Board of Equalization nonetheless had its budget cut the equivalent of savings from three furlough days per month. With discretion to make the cuts, the board did a better job of minimizing harm to tax revenue collection than the Franchise Tax Board could with furloughs. The Board of Equalization cut $41.5 million and will be unable to collect an estimated $264 million in tax money as a result.

Thus, California lost $6.36 for every dollar saved through budget cuts at the Board of Equalization and lost $7.15 for every dollar saved through furloughs at the Franchise Tax Board.

After a year of treating the state's two biggest tax-collection agencies no differently than agencies that do not generate revenue, the governor has proposed boosting funding and hiring for the tax collectors in the coming fiscal year. The governor has not, however, moved to lift furloughs at the Franchise Tax Board earlier than their scheduled end on July 1.

This report also considers cost-saving measures by the constitutional officers. Like the Board of Equalization, they were spared from the Schwarzenegger furlough policy but forced to reduce their budgets by as much as would have been saved with a three-day-per-month furlough of their workforce.

None of these statewide elected officials, including the treasurer and controller, used mandatory furloughs to achieve savings. Supervisors in many of the offices told us that the flexibility to decide where and how to make budget cuts allowed them to protect public service better than they could have with furloughs.

This report is the fourth by our office to examine the effects of the governor's furlough policy – the most sweeping in the nation in recent years. Previous reports by our office have detailed the inefficiencies of furloughs in these government operations:

- Prisons and other round-the-clock facilities where most workers who take off furlough days must be replaced by temporary or newly-hired employees or colleagues working overtime;
- The Department of Motor Vehicles, where furloughs save no general fund money but slow service;
- Assistance programs that are administered by the state but funded by the federal government, where furloughs slow delivery of benefits to needy Californians but save no general fund money.

Franchise Tax Board

After Gov. Arnold Schwarzenegger ordered most of the state workforce to take two unpaid days off work starting in February 2009, he rejected a plea by the Franchise Tax Board to be excluded.

The 5,300 workers at the agency took an overall 14% cut in pay when a third furlough day was added by the governor on July 1. The unpaid days will save an estimated $65 million in Franchise Tax Board salaries by the time furloughs end in July 2010.

The tax board is essentially a money factory for the state; it administers the personal income and corporate taxes that make up two-thirds of California's general fund. And so the hours of work lost to furloughs at the Franchise Tax Board mean that an estimated $465 million that the agency's auditors and collectors would have otherwise pursued will go uncollected.

The Franchise Tax Board derived the estimate by assuming that furloughs will reduce by about 14% the number of hours of work spent on the audit, collection and enforcement efforts that bring in the $4 billion to $4.5 billion "non-voluntary" taxes collected by the board each year. (About 95% of the revenue collected by the board flows in voluntarily, and was not part of the board's calculation of uncollected revenue due to furloughs.) The estimate also assumes that certain actions taken by the board will mitigate the amount of tax money left uncollected.

The Schwarzenegger administration does not dispute the board's estimate of loss. Legislative analysts say the state's tax boards both have a good track record of estimating how changes in funding and staffing will affect tax collection.

The revenue sacrificed to furloughs at the Franchise Tax Board is seven times more money than furloughs will save. Also as a result of furloughs, another $2 million in tax revenue will be delayed and not reach the state treasury until after June 2010, agency officials say.

The estimated loss and delay in revenue take into account the "self-directed" nature of furloughs at the Franchise Tax Board. Under the Schwarzenegger furlough program, most state offices shut down three Fridays each month. Workers are forced to stay off the job. But Franchise Tax Board employees are allowed to work on "furlough Fridays" and bank the time off to use in the future.

The estimated revenue lost to furloughs at the Franchise Tax Board – $465 million – equals about 28% of the $1.66 billion in general fund money the administration expects to save overall by applying furloughs to nearly all of state government. In other words, the revenue lost to furloughs at the Franchise Tax Board is nearly equivalent to all of the savings achieved by furloughing most of the state workforce one day a month.

The Franchise Tax Board initially estimated the taxes uncollected due to furloughs at $652 million, with collection of an additional $54 million delayed beyond June 2010.

After nearly a year of experience with furloughs, however, the Franchise Tax Board in January revised its estimate of lost and delayed revenue substantially downward: to $465 million in lost revenue and $2 million delayed.

Several factors helped bring down the estimate. First, the Franchise Tax Board mitigated the loss by shifting focus to cases involving the greatest potential tax revenue, moving support staff to revenue-generating jobs and otherwise reprioritizing resources.

Franchise Tax Board officials say the loss also has been dampened somewhat by the fact that auditors have been closing out cases that they launched two or three years ago, before the imposition of furloughs. The full effect of the furloughs on the audit staff will show in a year and a half to two years, they say.

"The impact of hours lost is not all felt today," said Jeanne Harriman, director of the Franchise Tax Board's Financial Management Bureau. "You're missing dollars today, and you're missing dollars tomorrow."

And finally, Franchise Tax Board officials say they have found that employees are using furlough time more quickly – and banking less – than expected. Board employees used about 87% of the furlough days they earned from February through December 2009, said tax board budget officer Crystal Taylor.

In January, after taking into account that employees are using most of their furlough time as they earn it, the board revised its estimate of lost revenue in the 2009-10 fiscal year upward, from $270 million to $293 million. But the Franchise Tax Board lowered the projected loss for the following two fiscal years from $382 million to $172 million.

The Franchise Tax Board

Authorized staff in 2009-10:
5,276

Budget in 2009-10:
$500 million

Portion of budget derived from general fund:
98%

Duties:

Administers personal income and corporation taxes that account for **68% of California general fund revenue**. Also administers various programs including court-ordered debt and child support collections.

How the board calculated that three-day-per-month furloughs would result in **$465 million** *in uncollected revenue:*

Board officials figure that each day of furlough per month reduces by roughly 5% the number of hours of work performed in its involuntary compliance programs.
That program – which involves audits, collections and enforcement – is projected to collect $4.4 billion in fiscal year 2009-10.
The 14% loss estimate is mitigated by efforts that include moving staff from support to revenue-producing jobs, decreasing the number of hours spent on cases and delaying planning efforts.

Board of Equalization

California's other major tax collector, the Board of Equalization, is an independent agency outside the governor's direct control. As such, it so far has avoided furloughs. An appellate court is still weighing whether the board and other independent executive offices are subject to the governor's furlough order.

Escaping furloughs didn't mean the board escaped the budget ax. Like other constitutional offices that refused to impose furloughs on all workers, the tax agency saw its budget sliced by the Schwarzenegger administration about as much as a 14% salary reduction. The Board of Equalization was told to cut \$41.5 million from its \$465 million budget in 2009-10.

To meet the savings, the Board of Equalization stopped hiring and promoting. It also dipped into its operating budget. More than 1,000 employees took voluntary leave.

In all, the board cut \$41.5 million. But the savings carry a cost. Board of Equalization officials now say they have 500 empty positions and will not be able to collect \$264 million in tax money -- \$157 million of it for the general fund -- in the 2009-10 fiscal year. Thus, California will lose more than six times more money than it saved through cuts at the Board of Equalization.

Even so, the uncollected revenue is less than would have been lost if the Board of Equalization had been forced to furlough, supervisors at the board say. Discretion over the cuts, they say, allowed them to minimize – but not totally avoid – harm to their tax-collecting function. Agency-wide furloughs would have cost the state treasury substantially more, they say, by hampering collection of the 95% of taxes paid voluntarily to the board.

Board of Equalization

Authorized staff in 2009-10:

4,317

Budget in 2009-10:

$425 million

Portion of budget derived from general fund:

56%

Duties:

Collects sales, use, property and special taxes that account for **32% of California general fund.** Collects local and district sales and use taxes that totaled $9.6 billion for counties, cities and special districts in 2007-08. Also handles income and franchise tax appeals and collects various taxes (such as those on cigarettes, alcohol and fuel) to support hundreds of state and local government programs.

How the board calculated that **$41.5 million** *in budget cuts would cost* **$264 million** *in revenue:*

About 95% of the taxes collected by the Board of Equalization flow in voluntarily. To estimate the effect of budget cuts, board officials assumed a 15% reduction to the other 5% of revenue that the board collects non-voluntarily through such activities such as assessed liabilities, audits and billings on delinquent accounts.

Administration Rationale

The furlough policy was born of a fiscal crisis, with an eye to immediate cash savings instead of long-term costs.

In December 2008, facing a $15 billion general fund shortfall and a treasury so depleted experts figured the state would not be able to pay its bills by February, Gov. Arnold Schwarzenegger declared a fiscal emergency. He issued an executive order that cut the pay of nearly all state workers by roughly 10% and directed them to take two days off work unpaid each month. Several months later the governor added a third day of furlough, which amounted to another 5% pay cut.

Administration officials say they expected to sacrifice some revenue, productivity and morale through furloughs, but in the cash crisis of February 2009, easing immediate pressure on the treasury was more important than the long-term cost. Administration officials have stuck with the policy even as it has become clear that furloughs cost the state hundreds of millions of dollars in uncollected taxes.

There are several reasons, they say, the Franchise Tax Board has not been granted a furlough exemption.

First, according to officials in the governor's office and the Department of Personnel Administration, California's civil service system has long been based on the concept that state employees should be treated equitably in pay, benefits and working conditions regardless of how their jobs are funded. The system operates on the assumption that a clerk at the Franchise Tax Board, for example, should be paid the same as someone of the same job classification doing similar work at the Resources Agency.

"We simply do not, in the normal course of things, treat one state employee differently than another who is working in the same classification, based upon whether a position or department produces revenue, is funded by a special or federal vs. the General Fund," according to a written response prepared by the governor's office for the Senate Office of Oversight and Outcomes.

Administration officials say that granting too many exemptions beyond those given to highway patrolmen and firefighters for public safety reasons would chip away at the state's argument that it is trying to be fair to all state workers. Exemptions, according to administration claims, also put the state at risk of violating laws designed to provide equal pay for equal work. And exemptions open the door for the leaders of furloughed departments to argue that their agencies also deserve special treatment.

Too many exemptions could endanger the entire furlough program and the boost in cash flow for which it was created, according to administration officials.

Finally, they say, scattershot application of furloughs could trigger confusion as employees fled their furloughed departments for the higher pay available in exempted departments.

National Perspective

California tax officials say the state historically boosted its tax-collection efforts in tough economic times. But these days, California is not alone in refusing to spare its tax collectors from cuts. Across the country, states have furloughed tax collectors and shrunk their budgets, even when it makes no fiscal sense, said Verenda Smith, senior manager of administration and policy at the Federation of Tax Administrators, a non-profit group that serves the tax agencies of all 50 states.

Smith said she could think of few states that have exempted tax agencies from furloughs or budget cuts.

"In 2009, the tax agencies were not spared," she said. "When there were cuts across the board, it happened to them, too. When there were furloughs, it happened to them commensurately."

The argument that such cutbacks cost more than they save "initially fell on deaf ears," said Smith. "There are early signs that the 2010 legislative sessions may be different."

California Owed Increasing Amounts of Taxes

The cuts and furloughs come in the midst of the worst recession to strike the nation since the Great Depression – and a time of increasing workload for tax agencies.

Taxes often go unpaid when people are struggling financially, out of work or bankrupt. Debts become harder to collect and foreclosures leave fewer assets available for liens. Personal and business bankruptcies also increase the workload at the tax agencies, because they are labor-intensive and cannot be handled through the usual collection process.

In California, according to the Franchise Tax Board, the amount of taxes uncollected from individuals is up 25% since 2007, while the amount owed by businesses has increased 43%. Overall, the Franchise Tax Board is owed $8.1 billion, about $5 billion of that considered "collectible" because it is not involved in a bankruptcy, the address of the taxpayer is known, assets exist, etc.

The accounts receivable balance at the Board of Equalization is also on the rise. The amount of retail sales tax owed that is considered collectible has jumped 38% since 2007, with $1.26 billion outstanding as of December 31, 2009.

The estimate of special taxes owed the Board of Equalization has increased 20% since 2007, with $280 million due at the end of 2009. In all, $1.54 billion is owed the Board of Equalization, up from $1 billion two years ago.

Collection Efforts Impaired as Tax Debts Grow

The troubled economy helps explain why more people are not paying their taxes at all or on time, say state tax officials. But so does a lack of manpower at their agencies.

Staffing cutbacks at the two tax boards mean there are fewer people available to work on collecting money. The state misses the chance to collect revenue when auditors cannot get to cases before statutes of limitation expire, when taxpayers go out of business before collection activities can be initiated and when liens and bankruptcy claims are filed too late.

With furloughs, for example, there are fewer people available to answer phones at the Franchise Tax Board's collections center. As a result, when people call because they've received a notice that they owe taxes, fewer than 40% reach a live worker.

"This reduces FTB's ability to resolve cases earlier in the collection cycle," wrote tax board officials in a November 2009 plea to the governor's office for more money to go after unpaid taxes. As a result, they wrote, agreements to pay taxes in installments are delayed. Resolution takes longer and costs more.

The Board of Equalization made a similar plea for more money last fall.

"In the current economic climate," board officials wrote, "efforts need to be made to ensure the timely collection of taxes that the Board administers."

"However, it is impossible to produce the same amount of work with a 14% reduction in staff resources and this will result in far less money collected than is saved."

Officials at both agencies say it is impossible to discern just how much of the growing unpaid tax inventory is due to a faltering economy and how much of it is due to furloughs and cutbacks that hinder collection.

Governor Proposes to Restore Funding

The revenue loss, while not as steep as originally projected, is apparently not something the Schwarzenegger administration wants to repeat.

In January 2010, the governor unveiled a budget proposal for the fiscal year that begins July 1 that includes a restoration of funding at the Board of Equalization and an infusion of money to help the Franchise Tax Board recoup some revenue lost to furloughs.

If approved by the Legislature, his proposals would boost resources at the tax agencies at the same time furloughs end.

The move recognizes that furloughs and budget cuts hindered the flow of tax money to the state treasury, said Program Budget Manager Mark Hill of the state Department of Finance.

Administration officials were always aware that furloughs could curb tax collection, he said. But they had hoped, according to Hill, that the effect would be mitigated by using a "self-directed" furlough policy at the Franchise Tax Board in which employees are free to work on "furlough Fridays" and bank time off to be taken later.

"As time went along in the summer," said Hill, "it became more and more obvious that we were going to have an impact on revenue."

In the budget he proposed to the Legislature in January, the governor would restore the $41.5 million that the Board of Equalization was cut in lieu of furloughs.

The governor also proposes to give the agency 58 more positions and $6.7 million to make permanent one agricultural inspection station and create three new stations where workers check that taxes have been paid on property entering the state by truck. Tax officials estimate the increased enforcement will bring $36.9 million to the treasury next fiscal year.

At the Franchise Tax Board, the governor seeks 158 temporary positions and money for overtime, at a one-time cost to the general fund of $14.7 million, to help handle backlogs worsened by the furloughs. If approved by the Legislature, the investment could diminish the estimated loss of tax money due to furloughs by $50 million.

The governor also proposes to give the Franchise Tax Board another 105 permanent positions, at a cost of $8.2 million in general fund money, to work on the tally of owed taxes that has steadily increased over the past three years. The effort, unrelated to furloughs, is expected to more than pay for itself by generating $52 million in additional taxes.

The governor also moved to spare the Franchise Tax Board some of the further salary reductions he imposed on other state agencies. On January 8, Schwarzenegger ordered all state agencies under his command to draw up plans to cut salary costs by 5%. He exempted the "direct revenue collection functions" of the Franchise Tax Board. Schwarzenegger stated that he made the exception "in order that revenues for the State are not adversely affected."

Franchise Tax Board officials say they are now working with the administration to define which aspects of their operation will be exempt from the order to cut another 5% in salary costs.

"We tried to rebuild the staffing level to recover a little bit from last year and protect the revenue-collection capability into the future," said Hill, the Department of Finance budget manager.

Lingering Effects Hard to Quantify

Even as Schwarzenegger proposes to allow the Franchise Tax Board to hire more workers for the budget year that starts in July, he is not moving to free the current workforce from furloughs until then.

And if the Legislature approves the governor's proposal, new employees will take jobs at the Franchise Tax Board as their co-workers are using up banked furlough time.

By the end of December 2009, the roughly 5,400 workers had earned but not used approximately 128,034 hours of furlough time – or 3 days per worker, on average. All accrued furlough time must be taken before July 2012.

A different sort of time off will complicate operations at the Franchise Tax Board for years to come, thanks to furloughs. Workers typically use their furlough time before tapping vacation, as directed by the Schwarzenegger administration. The amount of vacation banked by Franchise Tax Board employees has risen steadily since furloughs were imposed in February 2009, from 1.1 million hours to1.4 million hours by the end of December 2009. (During the same period in 2008, accrued vacation declined 13,000 hours.)

Managers will have to juggle the workforce to cover the stockpiled vacation.
Many employees may also cash out their banked vacation and retire in the face of Schwarzenegger's proposal to cut state worker salaries across the board between 5% and 10% and boost employee pension contributions by an additional 5%.

Faced last year with pay cuts and a freeze on promotions, many auditors already have retired or taken jobs with the Internal Revenue Service, say tax board officials. A single experienced auditor can generate millions of dollars a year for the state, they say, and so the loss has a real effect on the budget.

At the Board of Equalization, for example, 123 people retired in 2009, up from 99 in

2008. Retirements at the Franchise Tax Board numbered 121 in 2009, 162 in 2008, 112 in 2007 and 69 in 2006.

There are other lingering effects. To save money, both agencies also cut back on their efforts to reach and educate the vast majority of Californians who pay their taxes voluntarily. When such campaigns help a taxpayer file a correct claim on time, it generates revenue while avoiding the more expensive activities of audits, enforcement and collection.

Constitutional Offices Avoid Furloughs

For the sake of comparison, the Senate Office of Oversight and Outcomes also examined the statewide constitutional offices that, like the Board of Equalization, have so far been spared furloughs.

Amidst a dispute over whether the governor had the authority to order furloughs in the offices of independently elected constitutional officers, Schwarzenegger's lawyers went to court in February 2009 to force Controller John Chiang to withhold 14% of the pay of 15,500 constitutional office employees. In March, a Sacramento County Superior Court judge agreed the governor had such authority, but the imposition of furloughs has been stayed while the Third Appellate District Court in Sacramento considers Chiang's appeal.

Blocked from imposing furloughs on the staffs of the constitutional officers, the governor instead cut their budgets for the 2009-10 fiscal year by roughly the amount that three-day-per-month furloughs would have saved. The lieutenant governor's office was singled out for deeper cuts; about two-thirds of its budget was eliminated.

In two separate cuts in February and September 2009, the Schwarzenegger administration sliced a total of $148 million – roughly 9% – from the overall budgets of the six statewide constitutional officers other than the Board of Equalization.

The constitutional officers coped in various ways. The Secretary of State saved $4.8 million by, among other things, closing two regional offices, eliminating the use of most student assistants and retired annuitants, reducing Blackberry service and travel and delaying equipment purchases.

The Department of Justice, overseen by the state attorney general, slowed its hiring process to save money and combined the department's two separate administrative offices. The department also abolished hundreds of positions that were funded but not filled, curtailed employee travel and training, and renegotiated contracts to save money.

The treasurer's office eliminated positions, but also reduced the use of overtime and temporary help. The controller's office imposed a hiring and purchasing freeze, so that now the agency has a 17% vacancy rate among staff.

The Department of Insurance also abolished vacant positions. And the insurance commissioner saved $9.8 million by "eliminating waste and duplication of effort" and making many changes including restricting use of state cars by investigators, according to a statement prepared by the department's chief of financial management. The Department of Education consolidated offices and divisions, eliminated funding for a high-level position and maintained a hard freeze on "non-essential" hiring, travel and purchasing.

The most severe cuts were absorbed by the lieutenant governor and practically abolished that office: the office went from a $3 million budget in 2007 with a staff of 21 to a budget of $981,000 and four employees, including acting lieutenant governor Mona Pasquil.

All but one person was laid off from the lieutenant governor's Los Angeles and San Francisco offices, said Pasquil, and the offices were closed. All travel was banned except for that necessary to produce an annual report for the California Commission for Economic Development, which is chaired by the lieutenant governor.

None of the independent executive offices imposed mandatory furloughs to achieve the necessary savings, although the Board of Equalization and Secretary of State offered workers the opportunity to take voluntary unpaid furlough days. Those voluntary programs are estimated to save $3.5 million at the tax board and $50,000 at the Secretary of State.

In court documents and letters to the administration, all of the statewide elected officials questioned the governor's authority to impose furloughs. Some pointed out that furloughs would interfere with their ability to provide vital public services.

The governor's budget cuts have had consequences, too. The Secretary of State's office does not complete work as quickly as when it could afford student assistants, retired annuitants and paid overtime. The wait time for processing of corporate, limited liability and other business documents at the Secretary of State has increased from less than 10 days to 27 business days. Processing of the applications of people who want to be certified as notaries has gone from three to 34 business days.

At the Department of Justice, which serves as the state's law firm, so many positions for attorneys have been eliminated that the department returned some legal work to state agencies, telling them to either hire private attorneys or pay the department an hourly rate.

Still, taking a budget cut and having the opportunity to decide where an agency can best save money is better than a mandate to furlough, said Chief Deputy Secretary of State Evan L. Goldberg.
"If the Secretary of State were required to save money solely by furloughing employees," he said, "the agency would have been forced to reduce services to the public even further than they've been reduced following two years of unallocated reductions."

In interviews, officials at nearly all the constitutional posts said budget cuts with the flexibility to decide how to achieve the savings did less harm to their offices than furloughs would have, while saving as much money.

"In hindsight," said one high-level official, "it proved that our way was actually the more efficient and better government way, because the furloughs proved to be too disruptive and arbitrary."

Sources of Information

The following individuals provided information used in this report.

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- Michelle Fallon, Director, Communications Services Bureau, Franchise Tax Board
- Lisa Garrison, Chief, Financial and Executive Services Division, Franchise Tax Board
- Crystal C. Taylor, Budget Officer, Franchise Tax Board
- Mona F. Pasquil, Acting Lieutenant Governor
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