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In this installment of Across State Lines, Coffill interviews Shane Hofeling, now chief counsel of the California Franchise Tax Board's Technical Resources Bureau.



**Eric J. Coffill:** Our last interview for *Tax Notes State* was in May 2022,[1] when you were deputy chief counsel of the Franchise Tax Board's Technical Resources Bureau. Congratulations on your appointment in March as chief counsel. Jozel Brunett will be a tough act to follow. Why did you apply for the chief counsel position?

**Shane Hofeling:** Thank you, Eric, for the opportunity to speak with you again. You are correct, Jozel is a tough act to follow. As one of the FTB's longest serving chief counsels, Jozel was a leader in every sense of the word. Not only was she recognized throughout California for her technical expertise, but she was also an empowering leader, both inside and outside of the FTB. For the Legal Division, Jozel shone a light on a path that valued both customer service and fair and just tax administration. That light is one of the reasons that inspired me to apply for the chief counsel position.

It is a true privilege to serve in this role. The FTB has an incredibly talented and dedicated Legal Division. In my opinion, it is a collection of some of the best legal minds in California tax law. I saw the chief counsel position as an opportunity to continue to support and elevate our work by reinforcing a culture of public service, collaboration, and practical problem-solving. This allows us to help strengthen how we support our mission of fair and efficient tax administration.

As part of that mission, I also saw the importance of exemplifying the customer service mindset in our legal work. We deal with complex tax issues, but that does not mean our guidance needs to be hard to understand. I want to build on the FTB's reputation for expertise while helping ensure our communications are clear, timely, and helpful. It is important that we not only make sure our advice meets the highest technical standards, but also helps taxpayers, practitioners, and the FTB navigate income tax law with clarity and confidence.

**Coffill:** What is your focus going to be as chief counsel?

**Hofeling:** My primary focus will be on how we deliver our work. We have always focused on providing excellent technical advice to taxpayers as well as our internal and external stakeholder. My goal will be to continue our technical expertise along with an emphasis on clarity, consistency, and customer service.

Maintaining excellence means combining strong technical expertise with sound judgment and a spirit of public service. Our attorneys handle complex legal and tax issues, often with statewide impact. Excellence isn't just about getting the law right, but more so, it is about understanding context, anticipating challenges, and offering practical, solutions-oriented advice.

[1] Eric J. Coffill, "An Interview With California FTB Deputy Chief Counsel Shane Hofeling," *Tax Notes State*, May 22, 2023, p. 705.

In the Legal Division, we strive to provide legal services of the highest quality and a superior customer experience that enhances and maintains public trust. We are public servants at heart and strive to be just and fair administrators of California's income tax laws.

To help us accomplish this, we are investing in process improvements to make our work more efficient, whether it be providing guidance or working on protests and appeals. We are looking to make our processes work for both our Legal Division as well as the tax community. In the spirit of continuous improvement, we strive to examine our processes and identify areas to improve our processes and procedures.

This also means reinforcing a culture of partnership with the taxpayers, tax practitioners, and the tax community. We know that income tax laws can be complex and may even lead to disagreements regarding the interpretation of those statutes. However, it is focusing on cooperation, understanding, and partnership that will help everyone succeed. We can work together to identify ways to improve tax administration that provides fair and uniform application of the income tax laws to everyone.

**Coffill:** What about AI? I suspect various FTB divisions are testing AI proposals. What role do you see AI having at the FTB?

**Hofeling:** We have long embraced technology to improve efficiency, reduce taxpayer burden, and strengthen program integrity. Artificial intelligence is not entirely new to us. The FTB has been using artificial intelligence for more than a decade, and today, AI is deeply embedded in our operations. Today, we use AI in our everyday operations, such as fraud prevention and detection, compliance efforts, tax return processing, and customer service enhancements for taxpayers.

However, with new technologies, we continue to explore and evaluate the benefits and risks inherently involved. Generative AI [Gen AI] is a good example of this and has prompted us to think even more deeply about what responsible adoption looks like. Any adoption of new AI and technologies requires us to use it responsibly without compromising public confidence. It is imperative for us to ensure taxpayers' privacy and security are never compromised. Taxpayers trust us with their data, and we want to make sure their data remain private and secure. Further, we want to make sure any use of AI avoids bias and supports fairness across all communities we serve.

**Coffill:** So you see an expanded use of Gen AI?

**Hofeling:** We are evaluating the benefits and risks posed by generative AI. In fact, the FTB has a Gen AI subcommittee, a cross-divisional team that is exploring use cases and developing proposals for how we can safely and effectively use these tools. This group ensures that innovation is not siloed, and it brings together technologists, policy experts, program staff, and legal advisers to think holistically.

The expanding role of AI in the Legal Division follows along with the exploration that we are doing within the department. As we explore our use of AI and Gen AI in the Legal Division, there will undoubtedly be benefits and efficiencies realized in its use. We are exploring the use of virtual assistants, productivity tools, and tools that will allow our staff to have more accessible and efficient ways to share internal knowledge and access departmental information. Also, the use of AI tools will allow our staff to complete more thorough research and unlock training and educational tools.

However, it is also important to realize that the use of AI and Gen AI will never be a replacement for human judgment, especially in the Legal Division. As we have seen — and many of us have experienced — AI and Gen AI in the world of legal research and statutory and judicial interpretation is still prone to errors and AI fabrication. It is imperative that we look to AI and Gen AI only as tools in helping us achieve our mission rather than a substitute of original legal thought and analysis.

**Coffill:** Can you comment on the relationship between Legal with the Audit Division?

**Hofeling:** It is a strong and collaborative relationship and one we continue to strengthen. Legal and Audit share the same goal of applying the law fairly and consistently. Audit and Legal work closely together to help accomplish those goals while maintaining our own unique, independent workloads. Both divisions work together in various ways to help provide customer service to taxpayers and representatives by identifying common issues where further education or guidance would be helpful. Further, Legal takes its role of providing support to and working with Audit seriously. This helps ensure that our positions are well grounded in statute, regulations, and judicial precedent.

By working together on the front end, we can identify administrative issues earlier, provide guidance to our teams, and provide better service. Gretchen Moe, our Audit Division chief, and I meet regularly to identify areas to improve our internal administrative processes and procedures to streamline the customer's experience and remove any roadblocks. We continue to expand communication between our teams early in the process and empower our management teams to do the same so we can address procedural issues quickly.

Although Legal and Audit work collaboratively on many issues, we also are charged with our own distinct workloads. As a result, it is important that while we support our auditors, our auditors make their own determination based on California tax law. Although some taxpayers may request the Legal Division intercede or take over an audit or a protest case, it is important to respect and allow each division to complete its own review and determination independently.

**Coffill:** What about Technical Review Services — TRS? There is a perception that auditors look to TRS for technical advice rather than involving Legal. Is that a fair summary?

**Hofeling:** The Technical Resources and Services Bureau, or TRSB, is a bureau within the Audit Division. TRSB collaborates with and provides multiple services to the various program areas within the Audit Division and other areas throughout the department. Its functions include reviewing audits, providing technical assistance to auditors, working with the Legal Division, managing special credit programs, as well as coordinating internal and external stakeholder communications. By design, TRSB works with Legal and other enterprise areas in addition to the review and technical assistance to auditors.

*Shane Hofeling*

Therefore, I think that perception is based on a false assumption that auditors should be involving Legal rather than looking to TRSB first. Auditors have their own internal resources and review, including TRSB for technical assistance and review. As discussed previously, Legal and Audit each have their own processes and procedures when completing their own distinctive work. During Audit's quality control process and procedures, auditors may refer cases or issues to their own technical review process. However, the auditor may have already received guidance or clarification from the Legal Division before submitting the case to TRSB. And as mentioned earlier, the Audit and Legal divisions work collaboratively, so TRSB may also consult with the Legal Division as well during its process to seek additional clarification or guidance. Overall, our auditors have a variety of resources available to them throughout the department, so just because they utilize one resource does not mean they do so to the exclusion of all other available resources.

**Coffill:** Speaking of Legal providing technical advice, the San Francisco Superior Court ruled in late 2023 in *American Catalog Mailers Association*[2] that the FTB's technical advice memorandums [TAMs] were invalid because they were "underground" regulations. TAMs were one of the common ways for Legal to provide guidance to Audit. The FTB did not appeal the superior court's decision but instead removed the TAMs from its website. What is the current status of the TAMs?

**Hofeling:** The Legal Division has always valued providing clear, practical guidance to our colleagues in the Audit Division and being transparent in providing that advice. After the *American Catalog Mailers Association* decision that one of our TAMs was an "underground" regulation, we removed all our TAMs from our website and took time to carefully review how we communicate technical advice to ensure that we are both transparent and compliant with the Administrative Procedures Act.

Our focus is on developing approaches that continue to deliver the same level of expert analysis and support through formats that better align with the court's decision. The strength of the Legal Division is our staff's deep subject matter expertise, and we want to make sure that expertise remains accessible to our internal teams — and to the public — in appropriate ways.

**Coffill:** Is the FTB thinking of a way to replace TAMs or to provide that advice by other means?

**Hofeling:** In order to balance both of those concepts, we are looking at ways to do that effectively with the same commitment to customer service and collaboration that exemplifies how we operate. In that spirit, we have heard from many tax practitioners that they found the publication of the TAMs to be beneficial. We had previously posted TAMs on our website to be transparent with the legal advice that was being provided to Audit for particularly complicated issues. As such, we have been evaluating all our previous TAMs to determine if they are still relevant and if they have continuing efficacy. To balance transparency and to be compliant with the APA, we are working toward reissuing some of those TAMs as FTB legal rulings, which will serve as legal guidance to all taxpayers.

**Coffill:** We are currently seeing significant cuts to the IRS budget and personnel, which will have an impact on state revenue departments. One obvious impact on the audit side in California is there likely will be far fewer federal audits and resulting federal revenue agent reports that generate tax changes at the California level. What about the impact on FTB Legal of a smaller IRS?

**Hofeling:** When the IRS experiences significant cuts to its budget and staffing, it can affect far more than just audit volumes. It also slows the development of federal guidance in all forms. Many states — including California, whose tax laws include conformity to provisions of the Internal Revenue Code — look to that federal guidance for consistency and clarity. The reduction in federal guidance and policy can create uncertainty both for taxpayers and for income tax administrators who rely on that framework to interpret and apply state income tax law that incorporates federal tax provisions.

For the Legal Division, that means our attorneys increasingly identify where the lack of federal guidance leaves gaps and provide well-grounded legal advice to ensure consistent application of California tax law. Fortunately, we have a tremendously talented legal staff with deep expertise in state income tax law and conformity issues, and they are well equipped to handle that challenge.

Despite these challenges, we also work on and place a strong emphasis on maintaining open lines of communication with the broader tax community. California benefits from a very engaged tax professional community. Many professional organizations, such as the California Society of Enrolled Agents, the California Society of CPAs, and the California Lawyers Association [CLA] are great partners when working through these challenges. Also, programs like CLA's Sacramento Delegation and Eagle Lodge West help foster collaboration and policy discussions. These forums provide invaluable opportunities to exchange ideas, discuss emerging issues, and help shape sound tax policy.

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[2] *American Catalog Mailers Association v. Franchise Tax Board*, No. CGC-22-601363 (Cal. Sup. Ct. San Francisco 2023).

So even if a smaller IRS results in a reduction of federal guidance and direction, we are committed to staying proactive by relying on our internal expertise and collaborating with the tax community to provide guidance and customer service to the taxpayers of California.

**Coffill:** In the current fiscal situation, are you planning for or anticipating FTB Legal may be facing difficulties in hiring personnel in the foreseeable future?

**Hofeling:** While we are always mindful of the state's broader fiscal environment, the Legal Division continues to carefully assess and manage our staffing needs. We constantly evaluate our needs thoughtfully to ensure we have the right level of staffing to meet workload demand while maintaining efficiency and fiscal responsibility.

**Coffill:** So, still hiring?

**Hofeling:** Yes. Right now, we are in the process of hiring several attorneys at both the entry and senior level. These positions are primarily to fill vacancies created by retirements and natural attrition, so we can ensure continuity in our operations and help make sure that we are able to provide the same level of customer service to our internal customers and to taxpayers as well.

Attracting and retaining top talent is essential to delivering high quality service to the public. The Legal Division's work is highly specialized — spanning complex areas of income tax laws, litigation, and tax administration. This requires us to maintain the necessary expertise, as it is critical to fulfilling our mission. I believe our staff is already composed of the best and the brightest minds, so it is important that we continue to maintain that level of expertise through our hiring efforts.

Although we are aware that the fiscal landscape may change looking ahead, we will continue to focus on building a team that are experts on what we do, but also collaborative, resilient, and understands the important and noble calling of public service. I would like to invite anyone interested in joining our team to keep an eye on CalHR's website for the latest job opportunities in FTB's Legal Division.

**Coffill:** What's the current state of Legal's caseload?

**Hofeling:** The caseload in the Legal Division continues to grow each year. In fact, over the last couple of years, we have seen a sharper increase in some of our workloads. We have seen about a 40 percent increase in the number of appeals filed with the Office of Tax Appeals [OTA] over the past several years. Some of that growth may stem from the ease of filing an appeal with the OTA. The OTA's portal and the fact that the FTB now includes appeal instructions with its notices have made the appeal process more accessible to taxpayers. That is a good thing for transparency and taxpayer engagement, though it does mean more cases being handled at appeal.

We also see that some taxpayers wait until there is a final action before reaching out to the FTB, or they file their appeal before reaching out to the FTB to try to resolve the issue at the earliest stage of the process. Unfortunately, this may lead to the taxpayer spending the time filing an appeal, whereas if the evidence was presented to the FTB at an earlier point in the process, such as when a taxpayer receives a notice of proposed assessment, the FTB would have adjusted the action, and an appeal would not have been necessary. We strongly encourage taxpayers to resolve any dispute at the lowest level to minimize the level of effort and time that the taxpayer goes through to file the appeal.

**Coffill:** Are you cutting into the protest backlog?

**Hofeling:** I am happy to share that we have made meaningful progress in reducing our aged, docketed protest inventory. Our goal is to work on our protests efficiently and in a timely manner without jeopardizing the partnership and collaboration that we want to achieve with taxpayers and their representatives. Income tax issues can be incredibly complex and may lead to differences of legal interpretation; however, we strive to make the protest process as respectful and collaborative an experience as possible. Thus, we continually balance working our docketed cases timely while ensuring the taxpayers have the opportunity and time they need to present their positions and provide supporting evidence.

To manage our workload trends, we have refined our case assignment process and case management. We are utilizing our nonattorney professional staff to assist with some briefs and protests to leverage their specialized knowledge and expertise. Also, when a case proceeds from docket protest to appeal, we try to have the same attorney handle both stages. That continuity ensures a complete understanding of the factual record and legal issues, which improves our efficiency and the consistency in outcomes. However, whenever possible, we generally do not assign the same attorney to handle a docketed protest if they were substantively involved in the audit determination. This is important for maintaining fairness, objectivity, and the integrity of an independent review during the protest process.

As I mentioned, although our workload has grown, the Legal Division is managing the increase effectively. Through it all, we remain focused on providing professional, timely, and legally accurate services to taxpayers and the tax community.

**Coffill:** What is your current in-office policy, and what are your thoughts on the move from 100 percent in-office work to teleworking on Legal's operations?

**Hofeling:** Currently, our Legal Division follows a hybrid work schedule, with attorneys and staff in the office two days a week and teleworking three days. This structure has allowed us to maintain the best aspects of in-person collaboration while taking full advantage of the flexibility and efficiencies that remote work provides. Our in-office days continue to play a vital role, as they allow hands-on training and mentorship. Those face-to-face interactions help build the connections between staff and keep our professional relationships strong, which only makes working remotely more efficient.

The transition from 100 percent in-office work for a majority of our staff before COVID to our current hybrid model has gone very well. Our operations remain strong, and we continue to deliver high-quality legal work by supporting our internal clients and the taxpayers with the same level of customer service that we aim to provide. Teleworking has also broadened our ability to recruit and retain talented attorneys from across the state, giving us access to a more diverse and experienced workforce.

**Coffill:** Has it changed the culture in Legal?

**Hofeling:** Managing this culture shift from in-office to hybrid work requires teamwork and original solutions. We recognize that each person may have different expectations and comfort levels with technology, remote work, and communication styles. Our approach has been to embrace that difference and use them as strengths by encouraging flexibility, teamwork, and understanding. We have made a conscious effort to stay connected and preserve our sense of community and workplace culture while working in a hybrid model. We hold regular in-person and video conferences to collaborate and to maintain open dialogue amongst all staff regardless of bureau or office. We use team chats and other tools to ensure that staff have easy access to peers and leadership.

We also find new ways to develop good co-worker relationships. One great example of this is our staff's creation of a collection of our employees' own unique stories. Staff can voluntarily submit a biographical profile about themselves that celebrates their own unique personal and professional background and journey. It is a wonderful way to strengthen connections, foster inclusivity, celebrate diversity, and remind us of the human side of our work — even if we are not all physically together at the same time.

Overall, our hybrid model has been very successful for us, as it blends the flexibility of telework with the benefits of in-person teamwork. It has allowed us to strengthen our bench, improve operations and morale, and it has contributed to a more adaptive, connected Legal Division.

**Coffill:** Last question: While FTB Legal is largely based in the central office here in Sacramento, you have attorneys based in both San Francisco and Los Angeles. Do you see that changing, or see expanding those operations, or adding attorneys in other locations outside Sacramento?

**Hofeling:** The Legal Division is fortunate to have a strong presence in our central office in Sacramento, where most of our work is centralized, and to have attorneys located throughout California — including San Fransico, Oakland, Los Angeles, West Covina, and Santa Ana. This geographic distribution is more than just a convenience, as it allows us to provide timely, in-person legal support across the state and maintain close collaboration with other FTB divisions, local audit teams, and be closer to taxpayers. Although we do have an attorney in our Houston office, and previously had an attorney in our New York office, we are focusing on our staffing within California.

Having attorneys in field offices brings real customer service benefits as well. For example, it allows us to offer more in-person protest and settlement options to taxpayers, which can make resolving issues more efficient. It also strengthens our collaboration with audit teams in those offices by fostering better communication and quicker legal support. This physical presence can be especially valuable when nuanced analysis and direct discussion can help clarify complex issues.

At the same time, modern technology has greatly enhanced how we have worked across locations. Video conferencing, secure data sharing, and other collaboration tools allow our attorneys to work seamlessly between colleagues in Sacramento and our field offices. This means that all our attorneys have the same access to resources, support, and documentation, regardless of whether they are in the central office or in our field offices.

Although we don't have any plans to expand attorney presence in other field locations, we continue to explore our options for balancing office availability and customer service needs. ■