

## **Status Report on Proposed Regulations 20501 – 20505, and Request to Amend Existing Proposed Language and Proceed to Formal Regulatory Process**

On April 29, 2003, staff received authorization from the Board to proceed with the formal rulemaking process for the above proposed regulations. The proposed regulations address certain definitions and criteria applicable to the Senior Citizen Homeowners and Renters Property Tax Assistance (HRA) law. This law generally establishes a program that provides assistance for the elderly and disabled individuals with the payment of property tax assessments on their place of residence.

The proposed regulations were submitted to the State and Consumer Services Agency for review and approval. They have been approved by that agency and are ready for submission to the Office of Administrative Law to publish the Notice and proceed with the formal rulemaking process.

Since the proposed regulations were presented to the Board for approval to proceed, there has been mounting evidence that the language of one provision of the proposed regulations, proposed regulation section 20504, subdivision (a)(4), could be a source of fraud within the HRA program. This section of the proposed regulations allows applicants to establish that they are disabled, thereby making them eligible for assistance, by submitting a statement from a doctor. However, the method provided for in the proposed regulation is susceptible to abuse, as evidenced by the fact that claimants have misappropriated physicians' medical license numbers, falsified letters, and filed multiple claims by using self-created letters. Moreover, FTB has learned that claimants' requests for signed affidavits have placed physicians in the position of being forced to sign the affidavit for individuals who although impaired do not technically meet the definition of disabled as found in the Revenue and Taxation Code and the Social Security Act.<sup>1</sup>

Disability claims make up the bulk of the fraud that the FTB has investigated in connection with the HRA program. This fraud has grown to a level that an HRA fraud case was pursued by the Los Angeles District Attorney's office this year, was adjudicated and closed in March of 2004. The claimant/defendant in that case had filed multiple claims using multiple copies of a physician's signature and license number, as well as various social security numbers. The court sentenced the claimant/defendant, pursuant to the penal code violations involved, to 180 days in the county jail and placed him on three years formal probation. Further, he was ordered to make restitution in the amount of \$17,973.55 to the FTB.

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<sup>1</sup> The HRA Law provides that an individual may be eligible for assistance if they are either over 65 years of age or disabled. "Disabled" is defined under this program to mean being unable to engage in any substantial gainful activity because of a medically recognized physical or mental impairment, which is expected to last for a period of not less than 12 consecutive months. Under this definition, the impairment must be so severe that the claimant is not only unable to perform his or her previous type of work, but cannot engage in any other type of gainful activity, considering the claimant's age, education and work experience. (Rev. § Tax. Code § 20505; Welf. & Inst. Code § 12050.) The referenced definition refers to the standard used by the Social Security Administration to determine disability under section 1614(a) of Part A of Title XVI of the Social Security Act (42 U.S.C. §1382c).

In addition, the State Board of Equalization (*SBE*) recently imposed a \$500 frivolous appeal penalty against a claimant for submitting fraudulent documents containing a doctor's forged signature. The SBE concluded that appellant had submitted a fraudulent document and, moreover, committed perjury when preparing his HRA claim form.<sup>2</sup>

Given the documented increase in fraudulent activity associated with the use of affidavits, staff recommends that the proposed regulation be amended to identify reliance on determinations made by a local, state, or federal agency to verify that a claimant is disabled. Reliance on a finding of disability by a governmental agency is consistent with the HRA statutory scheme because, as indicated above, the Legislature has adopted the federal definition of disability as the standard for the HRA program. Further, FTB has the ability to verify a claimant's Social Security eligibility through an interagency agreement with the Department of Health Services with regard to the current year.<sup>3</sup>

Using such documentation, as set forth in proposed regulation section 20504, subdivisions (a)(1-4), allows the FTB to verify that the claimant is eligible under the specified definition as well as to verify the social security number of the individual for identification purposes.<sup>4</sup>

Thus, staff recommends a revision of proposed regulation section 20504, subdivision (a)(4), to reduce and potentially eliminate the bulk of the fraudulent claims received by the HRA program. The revised language for the proposed regulations is attached hereto as Exhibit A. Staff requests the Board's approval of the proposed regulations, as amended, and authorization to proceed with the formal regulatory process.

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<sup>2</sup> *Appeal of Jamie Hunt #240103*, July 1, 2004. This case is not to be cited as precedent, but is used here to demonstrate another example of the spread of fraud within the HRA program.

<sup>3</sup> The Department of Health Services only has one year at a time available on its system to which FTB presently has access. Further, due to the way the HRA computer system operates, if there is another issue regarding the claimant's eligibility such as whether the property is exempt from property tax, FTB cannot utilize the Health Services data system as it does not allow for the determination of the other issues before a decision to allow the assistance is made based solely on disability status.

<sup>4</sup> To clarify, Social Security administers two programs, SSA and SSI. SSA benefits are based on work history while SSI benefits, or Supplemental Security Income, are not tied to work history but rather are funded from general revenue. The SSI benefits help aged, blind, and disabled people, who have little or no income by providing monthly cash payments to meet basic needs for food, clothing, and shelter. If one is unable to work and does not exceed the income limitations so as to be eligible for the HRA program, that individual would also be eligible to receive SSI benefits. As such, on the assumption that HRA claimants will generally have also applied for and be receiving SSI benefits, staff has concluded that documentation from the Social Security Administration is the most reliable information for purposes of verifying an individual's eligibility for HRA.

**Section 20501 is adopted to read:**

§ 20501. "Medically Incapacitated" Defined.

For purposes of Revenue and Taxation Code section 20563, the term "medically incapacitated" means an individual being unable to attend to his or her own personal needs and activities of daily life, including, but not limited to, matters such as their own personal hygiene or nutritional needs.

NOTE: Authority cited: Sections 19503 and 20642, Revenue and Taxation Code.  
Reference: Sections 20501 and 20563, Revenue and Taxation Code

**Section 20502 is adopted to read:**

§ 20502. "Substantially Equivalent to Property Taxes" Defined.

For purposes of Revenue and Taxation Code section 20509, subdivision (a), the term "substantially equivalent to property taxes" means payments made in lieu of property taxes, as specified in Revenue and Taxation Code section 20509, subdivision (a), must be at least 80 percent of the amount of property taxes assessed on a property of comparable assessed value without regard to any granted or applicable exemptions or exclusions granted by the property taxing authority.

NOTE: Authority cited: Sections 19503 and 20642, Revenue and Taxation Code.  
Reference: Sections 20502 and 20509(a), Revenue and Taxation Code

**Section 20503 is adopted to read:**

§ 20503. Submission of Property Tax Bill.

For purposes of Revenue and Taxation Code section 20561, the following rules shall apply:

(a) In the first year for which a claim for assistance is filed, the claimant that owns a residential dwelling must submit with the claim form a copy of the property tax bill for the residential dwelling for the qualifying year for which the assistance is claimed.

(b) For all subsequent years for which the same owner files a claim for assistance with respect to the same property, no property tax bill need be filed.

(c) In any case where there has been a change of residence, change of ownership after the tax bill referenced under subsection (a) was submitted, or upon written request of the Franchise Tax Board to the claimant that such a bill be submitted for verification purposes, the rules of subsections (a) and (b) of this regulation shall not apply.

(d) The provisions of this regulation shall apply to all claims for assistance filed on or after July 1, 2003, for claims relating to the 2004 claim year."

NOTE: Authority cited: Sections 19503, 20561(c), and 20642 Revenue and Taxation Code.  
Reference: Sections 20503 and 20561(c), Revenue and Taxation Code

**Section 20504 is adopted to read:**

§ 20504. Proof of Disability.

(a) For purposes of Revenue and Taxation Code section 20561, a claimant that claims to be eligible based on being under age 62 and disabled but not blind shall submit with the claim form proof of disability in one of the following forms:

(1) Medicare Card, if receiving Social Security or Supplement Security Income benefits as a disabled person;

(2) Social Security Award Letter (the letter notifying the claimant that they are qualified for Social Security or Supplemental Security Income benefits as a disabled person);

(3) Supplement Security Income payment decision; or

(4) Documentation accepted by a local, state or federal agency to support its determination of disability, as defined in Welfare and Institutions Code section 12050.

~~(4) A statement from a physician, signed by the physician under penalty of perjury, which specifies the dates and nature of the disability.~~

NOTE: Authority cited: Sections 19503, 20561(c), and 20642 Revenue and Taxation Code.  
Reference: Sections 20504 and 20561(c), Revenue and Taxation Code

**Section 20505 is adopted to read:**

§ 20505. Opportunity to Cure Deficiency.

If a claimant fails to provide any of the documentation as required by sections 20501 through 20504 with the claim form, the Franchise Tax Board will notify the claimant of the defect and allow the claimant a reasonable opportunity to provide the documentation before the claim is denied.

Note: Authority cited: Sections 19503, 20561(c), and 20642 Revenue and Taxation Code.  
Reference: Sections 20505 and 20561(c), Revenue and Taxation Code.