

Memorandum

To: All Team Members

Date: July 25, 2018

From: Nick Maduros
Director, CDTFA



Subject: **Tribal Consultation Policy**

Preface

In 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11 requiring all State of California agencies and departments to encourage communication and consultation with California Indian Tribes, as defined further below. Accordingly, the California Department of Tax and Fee Administration (CDTFA) hereby adopts this Tribal Consultation Policy (“Consultation Policy” or “Policy”), which memorializes its commitment to strengthening and sustaining government-to-government relationships between California Indian Tribes and the State.

Background

CDTFA administers over 30 tax and fee programs for the State of California. CDTFA's mission is to provide the services and information to help taxpayers file accurate and timely tax returns and pay the proper amount owed.

CDTFA Consultation Policy

This Policy is intended to foster effective consultation and collaboration between CDTFA and California Indian Tribes, and to provide meaningful input into the development of policies, rules, regulations, programs, projects, plans, and activities that may affect tribal communities. CDTFA's goal is to engage in a timely and interactive process to seek, discuss, and consider Tribes' views in an effort to resolve concerns at the earliest opportunity and in a manner that respects the interests of Tribes and the State.

This Policy shall be implemented by CDTFA in a manner that facilitates effective communication and consultation practices, promoting cooperation and efficiencies in tribal consultation.

CDTFA hereby adopts this Tribal Consultation Policy based on input received from Tribal Leaders and their designees. This Policy shall be considered and acknowledged in communication and consultation efforts pursuant to Executive Order B-10-11.

This Tribal Consultation Policy broadly defines provisions for enhancing CDTFA's consultation processes with Tribes. This Policy shall complement, not supersede, any existing laws, rules, statutes, or regulations that guide consultation processes with Tribes. This Policy shall not be construed to displace existing CDTFA policies.

Definitions

For purposes of this Policy, the following definitions shall apply:

Federally Recognized Tribe: A tribal entity that is recognized as having a government-to-government relationship with the United States; these entities are listed on the Federal Register and the current list is posted on the Governor's Office of the Tribal Advisor's website.

Non-Federally Recognized Indian Tribe: Those Tribes that are not federally recognized and are on the list maintained by the Native American Heritage Commission.

California Indian Tribe: Refers to a federally-recognized California Indian Tribe, as listed on the Federal Register. Only in situations involving cultural resources will a non-federally recognized California Native American Tribe that is on the list maintained by the Native American Heritage Commission ("NAHC") be included in this definition. The NAHC will provide a list of non-federally recognized California Native American Tribes for each instance.

Tribe: Refers to a California Indian Tribe.

Tribal Leaders: Refers to elected officials of Indian Tribes.

Tribal Sovereignty: Refers to the unique political status of federally recognized Indian tribes. Federally-recognized Indian tribes exercise certain jurisdiction and governmental powers over activities and Tribal members within their territories. Existing limitations on Tribal sovereignty are defined through acts of Congress, treaties, and federal court decisions.

Consultation Policy Principles

Collaboration. CDTFA is committed to the principle that interaction with Tribes shall be regarded as a partnership of mutual respect whereby CDTFA strives to ensure a sound and productive relationship with Tribes through the development and maintenance of a meaningful dialogue. CDTFA will collaborate and encourage input in the development of its policies, rules, regulations, and other tax matters that may affect California Indian Tribes.

Consultation is a process whereby parties meet and confer to exchange information, compromise, and reach understandings that, when possible, may result in the adoption of mutually-beneficial policies and sustainable outcomes. CDTFA will work to identify and coordinate policy when there are issues that may pertain to or impact Tribes, disseminate public documents and notices, seek opportunities for collaboration, and maintain an ongoing dialogue with Tribes.

Communication. Open and respectful communication with Tribal representatives is essential. CDTFA will engage in early, inclusive, and frequent communication with Tribal Leaders regarding issues pertaining to or impacting Tribes. Such communication shall occur on a regular basis; continue throughout changes in leadership; be inclusive and transparent; provide timely notification (see below) and documentation in a manner that provides an adequate review and response period for the parties involved; and, be conducted in a manner that is consistently executed with the

utmost level of respect, decorum and diplomacy. When a matter involves confidential or culturally sensitive information, CDTFA will work with tribal representatives early in the consultation process to address the sensitivity of such information to the fullest extent possible. All parties in the process should promote respect, shared responsibility, and an open and free exchange of information.

Tribal Liaisons. CDTFA's Director will designate a high-level CDTFA employee, who has direct access to the CDTFA's executive leadership, to serve as its Tribal Liaison. The Tribal Liaison will be responsible for coordinating outreach, communication and other activities affiliated with the CDTFA and Tribal interests. Current contact information for the Tribal Liaison shall be maintained on CDTFA's website and the Governor's Tribal Advisor's website. The Tribal Liaison shall ensure that Tribal issues are elevated to CDTFA's executive leadership and to the Tribal Liaison for the California Government Operations Agency (GovOps) for resolution whenever necessary. The Tribal Liaison will oversee and implement this Policy, and ensure that CDTFA's outreach and communication efforts are consistent with this Policy. The Tribal Liaison will be accessible to Tribal representatives and inform those representatives of issues that may affect Tribal communities. CDTFA's Tribal Liaison will meet with the GovOps Tribal Liaison and the Tribal Advisor to the Governor to review Tribal consultation efforts.

Education. The Director shall endeavor to instill an awareness of tribal culture and respect within CDTFA.

The CDTFA Director will encourage the Tribal Liaison and staff to seek continued education and training to emphasize communication, tribal sovereignty, the unique distinctions of Tribes, and the skills and tools necessary for collaboration. CDTFA will provide timely customer service and information to help Tribes and their members on tax matters. CDTFA provides information through its website, publications, telephone, or email, and encourages Tribal feedback to enhance its outreach and customer service efforts.

Upon the written request of a Tribal Leader, CDTFA will provide outreach, training and technical assistance on tax related matters affecting the Tribe.

Process. CDTFA is responsible for implementing a wide range of inter-governmental services that are subject to federal and state laws, regulations, guidelines and restrictions. Within such mandates, CDTFA will make every attempt to communicate and collaborate with Tribes in a manner that is timely and respectful, and which clearly identifies internal processes and timeline expectations for the parties involved. Consultation at the field and executive staff level is strongly encouraged so that information is available early in the decision-making process. CDTFA will solicit input regarding tax issues, questions, and concerns involving California Indian Tribes. Consultation may be initiated by either CDTFA or Tribe(s). Issues that could require consultations include determinations of the applicability of taxes and fees, legal rulings on tax matters, and discussions on forms and protocols to document compliance with relevant tax laws. These consultations, as appropriate, may generate issue papers, rulings, determinations, or precipitate the need for further discussions.

Timely Notice. This Consultation Policy recognizes that Tribes are located in diverse and sometimes remote regions throughout the state, thereby necessitating the need for clear and adequate notice/outreach prior to consultation or meetings that may require travel by Tribal

Leaders. Contact with Tribes should be initiated as early as possible, preferably with no less than thirty calendar days' notice, to provide adequate time for Tribes to respond, particularly on substantive matters, and most importantly, to respect tribal protocol and cultural patterns that require consideration, deliberations, and consensus. Tribal requests for additional time to prepare for or attend a consultation session or in-person meeting will be honored whenever possible.

Tribes may initiate communication with CDTFA by contacting the CDTFA Tribal Liaison. Whenever Tribal representatives initiate communication with CDTFA, the Tribal Liaison shall be responsible for providing timely information and updates to the relevant Tribal Leaders and representatives and to the GovOps Tribal Liaison until the issue is resolved. Acknowledgement of receipt of official Tribal communication will be provided within ten business days, and whenever possible, a substantive response will be provided within thirty calendar days. If a substantive response will require more than thirty calendar days, the Tribal Liaison will advise the relevant Tribal Leaders and representatives as well as the GovOps Tribal Liaison, to provide an estimated date for the response.

This Policy expresses CDTFA's respect for tribal sovereignty and intent to strengthen the ability of CDTFA to work collaboratively with Tribes to resolve issues of mutual concern. While the communication and collaboration encouraged by this Policy provides opportunities to strengthen and promote government-to-government relationships between Tribes and the State, it may not result in a resolution of all issues. Therefore, inherent in this Policy is the right of Tribes and the CDTFA to elevate an issue to any decision-making authority of another entity including, when appropriate, the highest levels of state and tribal government.

This Policy Implements Executive Order B-10-11 and is intended to improve CDTFA's internal management and communication; it is not a regulation and does not supersede, create, expand, limit, waive or interpret any state or federal legal rights or obligations including but not limited, to treaty rights, immunities or jurisdiction of any Tribe or the State of California.

Effective Date

This Policy shall be effective on the date executed by the Director and shall be posted on the CDTFA website. It shall be subject to periodic review to ensure provisions are current and consistent with state policy and enacted legislation.

Pursuant to Executive Order B-10-11 dated September 19, 2011, the California Department of Tax and Fee Administration hereby adopts this Tribal Consultation Policy.