



STATE OF CALIFORNIA
Franchise Tax Board

Summary of Federal Income Tax Changes 2019 - Part I

Prepared by
The Staff of the Franchise Tax Board, State of California

Members of the Board:

Betty T. Yee, Chair
Antonio Vazquez, Member
Keely Bosler, Member

Executive Officer:

Selvi Stanislaus

Laws Affected

- Personal Income Tax Law
- Corporation Tax Law
- Administration of Franchise and Income Tax Laws

This report is submitted in fulfillment of the requirement in Revenue and Taxation Code section 19522.

Summary of Federal Income Tax Changes – 2019

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EXECUTIVE SUMMARY

Prepared by the Staff of the
Franchise Tax Board (FTB)
State of California

During 2019, the Internal Revenue Code (IRC) or its application by California was changed by:

PUBLIC LAW	TITLE	DATE
116-25	Taxpayer First Act	July 1, 2019
116-59	Continuing Appropriations Act, and Health Extenders Act of 2019	September 27, 2019
116-69	Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019	November 21, 2019

Summary of Federal Income Tax Changes – 2019

This report explains new 2019 federal laws along with the effective dates, the corresponding California law, if any, including an explanation of any changes made in response to the new federal law, and the impact on California revenue if California were to conform to applicable federal changes.

This report also contains citations to the section numbers of federal Public Laws, the IRC, and the California Revenue and Taxation Code (R&TC) impacted by the federal changes.

This report contains the following exhibits:

- Exhibit A *2019 Miscellaneous Federal Acts Impacting the IRC Not Requiring a California Response* - Short explanations of federal law changes that are either not administered by the FTB or are not applicable to California.
- Exhibit B *Expiring Tax Provisions of the California Revenue and Taxation Code* - A complete listing of expiring provisions in California tax law.
- Exhibit C *Revenue Tables* - The impact on California revenue were California to conform to the federal changes.

Taxpayer First Act [Link](#)
Public Law 116-25, July 1, 2019

Title I—Putting Taxpayers First

<u>Section</u>	<u>Section Title</u>
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1001	Establishment of Internal Revenue Service (IRS) Independent Office of Appeals
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Background

The House Ways and Means Committee report for Public Law (P.L.) 116-25 states:

RRA 98[The IRS Restructuring and Reform Act of 1998 (RRA98)]^[1] directed the Commissioner of Internal Revenue (the “Commissioner”) to restructure the IRS by establishing and implementing an organizational structure that features operating units serving particular groups of taxpayers with similar needs and ensures an independent appeals function within the IRS.^[2] Although the [Internal Revenue Code] does not mandate the existence of an independent office within the IRS to review administrative determinations, it does require an independent administrative review of certain determinations, and further requires that the Commissioner ensure that the duties of IRS employees are executed in a manner consistent with rights inferred from other Code provisions.^[3]

Under the general authority of the Secretary of the Treasury (“Secretary”) to interpret the Code and that of the Commissioner to administer the Code and to employ the persons necessary to do so,^[4] the IRS operates an Office of Appeals (“Appeals”) headed by a Chief,

¹ P.L. 105-206.

² “See, e.g., Internal Revenue Code (IRC) sections 6320 (notice and opportunity for hearing upon filing of notice of lien), 6330 (notice and opportunity for hearing before levy), 7122 (rejection of a proposed offer-in-compromise or installment agreement), as well as 7123 (alternative dispute resolution procedures).”

³ “IRC section 7803, as amended in 2015, embraces the taxpayer rights as general principles to be included in the training and evaluation of all employees. H.R. Rep. No. 116-39, 1st Sess., p. 28 (2019).”

⁴ “IRC section 7803(a) (The duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, and to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel)) and 7804 (The Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and is required to issue all necessary directions, instructions, orders, and rules applicable to such persons, including determination and designation of posts of duty), and 7805 (Secretary authority to interpret the Code).”

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Appeals.^[5] That office traditionally functions as the settlement arm of the IRS. In doing so, it reviews administrative determinations arising both from collection and examination activities, and attempts to resolve them without need for litigation, including by using alternative dispute resolution methods such as arbitration or mediation. As a result, review of administrative actions is generally available prior to payment of any tax underlying the controversy. Exceptions occur, and include cases in which inadequate time remains on the limitations period for assessment and collection or those in which the only arguments raised by the taxpayer are frivolous positions.^[6]

New Federal Law (IRC section 7803)

"The provision codifies the requirement of an independent administrative appeals function by establishing within the IRS an office to be known as the Internal Revenue Service Independent Office of Appeals (Independent Appeals) to be headed by an official known as the Chief of Appeals . . ."⁷

Effective Dates

The provision is effective as of July 1, 2019.

California Law

California does not conform to IRC section 7803, relating to the Commissioner and other officials.

Impact on California Revenue

Not applicable.

⁵ "According to its website, the Office of Appeals and its predecessors have existed since 1927. <https://www.irs.gov/compliance/appeals/appeals-an-independent-organization>."

⁶ See IRC section 6702 (c), which requires that the Secretary periodically review and list positions that have been identified as frivolous for purposes of the frivolous return penalty; H.R. Rep. No. 116-39, 1st Sess., pp. 28, 29 (2019).

⁷ H.R. Rep. No. 116-39, 1st Sess., p. 30 (2019).

⁸ IRC section 7122.

<u>Section</u>	<u>Section Title</u>
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1102 Low-Income Exception for Payments Otherwise Required in Connection With a Submission of an Offer-in-Compromise

Background

The House Ways and Means Committee report for P.L. 116-25 states:

The IRS is authorized to enter into offers-in-compromise (OIC) under which the taxpayer and federal government agree that a tax liability may be satisfied by payment of less than the full amount owed.^[8] An OIC may be accepted on one of three grounds: (1) doubt as to liability, available in cases in which the validity of the actual tax liability is in question; (2) doubt as to collectability based on lack of sufficient assets from which the tax, interest, and penalties can be paid in full; or (3) effective tax administration, applicable in a case in which collection in full would cause the taxpayer economic hardship such that compromise rather than collection would better encourage tax compliance.^[9] If the unpaid tax liabilities total \$50,000 or more, an OIC can be accepted only if a public report is filed, supported by a written opinion from the IRS Chief Counsel, stating the reasons for the compromise, the amounts of assessed tax, penalties and interest, and the amounts actually paid pursuant to the OIC.^[10]

Taxpayers making a lump sum OIC must include a nonrefundable payment of 20 percent of the lump sum with the initial offer (herein, “upfront partial payment”).^[11] The IRS waives this upfront partial payment when an offer is submitted by a low-income taxpayer, defined as an individual who falls at or below 250 percent of the poverty guidelines published by the Department of Health and Human Services, or such other measure that is adopted by the Secretary (“low-income taxpayer”).^[12] Taxpayers seeking an OIC involving periodic payments must provide a nonrefundable payment of the first installment that would be due if the offer were accepted.”^[13]

In general, a taxpayer is required to provide a user fee for

⁹ Treasury Regulations (Treas. Reg.) section 1.7122-1(b). For this purpose, economic hardship is defined under Treas. Reg. section 301.6343-1.

¹⁰ IRC section 7122(b); Treas. Reg. section 1.7122-1(e) (6). The \$50,000 threshold was raised from \$500 in 1996. IRC section 503 of the Taxpayer Bill of Rights 2, P.L. 104-168.

¹¹ IRC section 7122(c)(1)(A).

¹² Notice 2006-68, 2006-31 Internal Revenue Bulletin (IRB) 105, July 31, 2006.

¹³ IRC section 7122(c)(1)(B).

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Public Law 116-25, July 1, 2019

processing the OIC.^[14] However, no fee will be charged if an offer either is based solely on doubt as to liability or is made by a low-income taxpayer.^[15]

New Federal Law (IRC section 7122(c))

“The provision codifies the current low-income taxpayer exception with respect to any user fee or upfront partial payment imposed with respect to any OIC. The provision makes clear that the determination of low-income is based on the individual’s adjusted gross income as determined for the most recent tax year for which such information is available.”^[16]

Effective Dates

The provision applies to OIC’s submitted after July 1, 2019.

California Law (Revenue and Taxation Code (R&TC) section 19443)

California does not specifically conform to federal law related to OICs, including the imposition of a processing fee, but instead has stand-alone law.^[17]

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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1202	Exclusion of Interest Received in Action to Recover Property Seized by the IRS Based on Structuring Transaction
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Background

“Nothing in the BSA [Bank Secrecy Act of 1970] or the administrative guidance issued by the IRS affects the federal tax treatment of the interest that may be paid to a successful litigant in civil asset forfeiture proceedings. The Code provides no specific exclusion from gross income or deduction from adjusted gross income for interest received by a successful litigant pursuant to an action to recover property seized by the IRS pursuant to the BSA. Accordingly, the

¹⁴ Treas. Reg. section 300.3(b). The fee for processing an OIC on or after January 1, 2014, is \$186.

Proposed Treas. Reg. would increase the fee to \$300. (81 Federal Register 70654, November 28, 2016.)

¹⁵ Treas. Reg. section 300.3(b) (i) and (ii); H.R. Rep. No. 116-39, 1st Sess., pp. 34, 35 (2019).

¹⁶ H.R. Rep. No. 116-39, 1st Sess., p. 35 (2019).

¹⁷ R&TC section 19443.

interest received is includable in gross income under the Code.”^[18]

New Federal Law (IRC section 139H)

“The provision amends the IRC to exclude from gross income any interest received from the federal government in connection with an action to recover property seized by the IRS pursuant to a claimed violation of the structuring provisions of the BSA.”^[19]

Effective Dates

The provision applies to interest received in an action to recover property seized by the IRS based on structuring transaction on or after July 1, 2019.

California Law (None)

Under the Personal Income Tax Law (PITL), California generally conforms to exclusions from gross income under the IRC as of the “specified date” of January 1, 2015,²⁰ and as a result, does not conform to the exclusion from gross income for interest received in connection with an action to recover property seized based on structuring transactions made by this provision.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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1203	Clarification of Equitable Relief from Joint Liability
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Background

The House Ways and Means Committee Report for P.L. 116-25 states:

If a married couple elects to file a tax return on which they report their income jointly, they are generally jointly and severally liable for the entire tax liability that should have been reported on the joint return.^[21]
A spouse may be entitled to relief from joint liability, in whole or in part,

¹⁸ H.R. Rep. No. 116-39, 1st Sess., p. 38 (2019).

¹⁹ H.R. Rep. No. 116-39, 1st Sess., p. 38 (2019).

²⁰ R&TC section 17131 conforms to the exclusions from gross income provided in Part III of Subchapter B of Chapter 1 of Subtitle A, relating to items specifically excluded from gross income, as of the “specified date” of January 1, 2015, contained in R&TC section 17024.5.

²¹ IRC section 6103(d).

under the innocent spouse relief provisions of the Code.

Grounds for relief from joint liability

There are three types of relief: general innocent spouse relief; relief for spouses no longer married or legally separated (separation of liabilities); and equitable relief. The grounds for relief and its scope differ among these three types of relief. In addition, the first two types of relief must be sought no later than two years after the date the IRS began collection activities against the electing spouse. For equitable relief, there is no limitations period in the statute.

General relief from joint liability with respect to an understatement of tax is available to all joint filers who make a timely election for such relief and are able to establish the following.^[22] First, the electing spouse must establish that the underpayment is attributable to the erroneous items of the other spouse. Second, the electing spouse must show that at the time of signing the return, he or she did not know or have reason to know there was an understatement of tax. Finally, relief is granted only if it is inequitable to hold the electing spouse liable for the deficiency in tax, based on all facts and circumstances.

Separation of liabilities relief from joint liability with respect to a deficiency is available to persons who are no longer married, are legally separated, or were no longer living together in the 12 months ending with the date innocent spouse relief is elected.^[23] The individual electing relief on this basis must establish the portion of any deficiency that is appropriately allocable to him or her. Special rules are provided in the Code for determining allocation of items that benefit one spouse more than the other, property transfers, and children's liability. Relief otherwise available is not permitted with respect to items of which a spouse was aware at the time the return was signed and which contributed to a deficiency.

Equitable relief from joint liability may be available to those spouses who are ineligible under the provisions for general relief or separation of liabilities relief.^[24] Such relief is granted only if, taking into account all facts and circumstances, it is inequitable to hold the individual liable for the unpaid portion of tax or for a deficiency with respect to the joint return.

²² IRC section 6015(b).

²³ IRC section 6015(c).

²⁴ IRC section 6015(f).

Availability and scope of judicial review

If an individual elects to have the general relief provision or the separation of liabilities relief provision apply with respect to a deficiency, the individual may petition the Tax Court to review unfavorable determinations by the IRS with respect to the claimed relief. The Tax Court has held that its authority to review such IRS determinations is under a *de novo* standard.^[25]

The claim for relief from joint liability must be filed no later than 90 days after the notice of final determination on relief from joint liability and no earlier than the earlier of the mailing of such notice of final determination or the date which is six months after electing such relief. During the pendency of the Tax Court proceeding, or during the period in which a petition may be filed, collection action is restricted.^[26]

New Federal Law (IRC section 6015)

“Under the provision, Tax Court review of innocent spouse equitable relief cases is not limited to the administrative record, but it may consider evidence that is newly discovered or was previously unavailable. The provision also clarifies that the Tax Court has jurisdiction to review a denial of equitable claims for relief from joint liability, and is not limited to a review for abuse of discretion by the IRS.

The provision allows taxpayers to request equitable relief with respect to any unpaid liability before the expiration of the collection period or, if paid, before the expiration of the applicable limitations period for claiming a refund or credit.”^[27]

Effective Dates

The provision applies to petitions or requests filed or pending on or after July 1, 2019.

California Law (R&TC section 18533)

California does not specifically conform to IRC section 6015, but instead has stand-alone law that is generally similar to federal innocent spouse relief provisions.²⁸

²⁵ IRC section 6015(e)(1).

²⁶ HR. Rep. No. 116-39, 1st Sess., pp. 38, 39, 40 (2019).

²⁷ HR. Rep. No. 116-39, 1st Sess., p. 40 (2019).

²⁸ R&TC section 18533.

Impact on California Revenue

Not applicable.

Section Section Title

1204 Modification of Procedures for Issuance of Third-Party Summons

Background

The House Ways and Means Committee Report for P.L. 116-25 states:

The IRS has broad statutory authority to require production of information in the course of an examination.^[29] A request for information in the form of an administrative summons is enforceable if the IRS establishes its good faith, as evidenced by the factors enunciated by the United States (U.S.) Supreme Court in *U.S. v. Powell*.^[30] The Court articulated four basic elements necessary to establish that the government issued a summons in good faith: (1) the investigation must be conducted for a legitimate purpose; (2) the information sought is relevant to and “may shed light on” that legitimate purpose; (3) the requested information is not already in the possession of the IRS; and (4) the IRS complied with all statutorily required administrative steps.^[31] Subsequent to *U.S. v. Powell*, the legitimacy of using an administrative summons in furtherance of an investigation into criminal violations was validated in *U.S. v. LaSalle National Bank*,^[32] in which the U.S. Supreme Court determined that the dual civil and criminal purpose was legitimate, so long as there had not yet been a commitment to refer the case for prosecution.

The use of this summons authority to obtain information from third-parties is subject to certain procedural safeguards,^[33] but otherwise the same good faith elements are analyzed to determine whether the summons should be enforced.^[34] When the existence of a possibly non-compliant taxpayer is known but not his identity, as in the case of holders of offshore bank accounts or investors in particular abusive transactions, the IRS is able to issue a summons (referred to as a “John Doe” summons)

²⁹ IRC section 7602.

³⁰ *U.S. v. Powell*, 379 U.S. 48 (1964).

³¹ *U.S. v. Powell*, 379 U.S. 48, pp. 57-58 (1964).

³² 437 U.S. 298 (1978); codified in IRC section 7609(c).

³³ IRC section 7609.

³⁴ *Tiffany Fine Arts, Inc. v. U.S.*, 479 U.S. 310 (1985).

to learn the identity of the taxpayer, but must first meet significantly greater statutory requirements to guard against fishing expeditions.

An effort to learn the identity of unnamed John Does requires that the U.S. seek judicial review in an *ex parte* proceeding prior to issuance of the John Doe summons. In its application and supporting documents,^[35] the U.S. must establish that the information sought pertains to an ascertainable group of persons, that there is a reasonable basis to believe that taxes have been avoided, and that the information is not otherwise available.^[36] The reviewing court does not determine whether the John Doe summons will ultimately be enforceable. Once a court has determined that the predicate for issuance of a summons is met, the summons is served, and the summoned party served may challenge enforcement of the summons, based on the *Powell* factors. It is not entitled to judicial review of the *ex parte* ruling that permitted issuance of the summons.^[37] Nevertheless, enforcement of a John Doe summons is likely to be subject to time-consuming challenges, possibly warranting an extension of the limitations period.^[38]

New Federal Law (IRC section 7609)

"The provision prevents the Secretary from issuing a John Doe summons unless the information sought to be obtained is narrowly tailored and pertains to the failure (or potential failure) of the person or group or class of persons referred to in the statute to comply with one or more provisions of the Code which have been identified. The provision is not intended to change the *Powell* standard or otherwise affect the IRS's burden of proof."^[39]

Effective Dates

The provision applies to summonses served after the date that is 45 days after July 1, 2019.

³⁵ IRC section 7609(h) (2) provides that the determination will be made *ex parte*, solely on the pleadings.

³⁶ IRC section 7609(f).

³⁷ "U.S. v. *Samuels, Kramer & Co., and First Western Government Securities, Inc.*, 712 F.2d 1342 (9th Cir. 1983), which affirmed a lower court determination that the issuance of the John Doe summons was not subject to review, but reversed and remanded to permit a limited evidentiary hearing on whether the *Powell* standard was met."

³⁸ H.R. Rep. No. 116-39, 1st Sess., pp. 40, 41 (2019).

³⁹ H.R. Rep. No. 116-39, 1st Sess., p. 42 (2019).

California Law (R&TC sections 19504, 19504.5)

California does not specifically conform to IRC section 7609, but instead has stand-alone law relating to subpoenas ⁴⁰

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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1206	Reform of Notice of Contact of Third Parties
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Background

"The IRS may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of the taxpayer without providing reasonable notice in advance to the taxpayer that the IRS may contact persons other than the taxpayer. The IRS is required to provide periodically to the taxpayer a record of persons contacted during the prior period by the IRS with respect to the determination or collection of that taxpayer's tax liability. This record is also required to be provided upon request of the taxpayer. This notice requirement does not apply to criminal tax matters, if the collection of the tax liability is in jeopardy, if the Secretary determines for good cause shown that disclosure may involve reprisal against any person, or if the taxpayer authorized the contact."^[41]

New Federal Law (IRC section 7602)

"The provision replaces the requirement that the IRS provide reasonable notice in advance to the taxpayer with a requirement that the taxpayer be provided, at least 45 days before the beginning of the period of contact, notice that contacts with persons other than the taxpayer are intended. The period of contact may not be greater than one year. However, notices are permitted to be issued to the same taxpayer with respect to the same tax liability with periods specified that, in the aggregate, exceed one year. The provision requires the notice to be provided only if there is a present intent at the time such notice is given for the IRS to make such contacts. This intent can be met on the basis of the assumption that the information sought to be obtained will

⁴⁰ R&TC sections 19504, 19504.5.

⁴¹ H.R. Rep. No. 116-39, 1st Sess., p. 44 (2019).

not be obtained by other means before such contact."^[42]

Effective Dates

The provision applies to notices provided, and contacts made, after the date that is 45 days after July 1, 2019.

California Law (R&TC section 19504.7)

California does not specifically conform to IRC section 7602, but instead has stand-alone law that prohibits an officer or employee of the FTB from contacting a person other than the taxpayer with respect to the determination or collection for tax liability without providing reasonable notice in advance to the taxpayer that contacts with other persons are to be made.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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1207	Modification of Authority to Issue Designated Summons
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Background

The House Ways and Means Committee Report for P.L. 116-25 states:

During an audit, the IRS may informally request that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate with such requests, whether by failing to respond or by providing inadequate or incomplete responses. In such cases, if the necessary information cannot be developed from other witnesses or sources, the IRS seeks information by issuing an administrative summons.^[43] If the taxpayer does not cooperate with the request in the summons, the IRS may refer the summons to the Department of Justice to seek and obtain an order for enforcement in federal court. If the summons in question was issued to a third-party rather than the taxpayer, the taxpayer may petition the court to quash an administrative

⁴² H.R. Rep. No. 116-39, 1st Sess., p. 45 (2019).

⁴³ IRC section 7602.

summons.^[44]

In *U.S. v. Powell*^[45] the U.S. Supreme Court articulated four basic elements necessary to establish that the government issued a summons in good faith: (1) the investigation must be conducted for a legitimate purpose; (2) the information sought is relevant to and “may shed light on” that legitimate purpose; (3) the requested information is not already in the possession of the IRS; and (4) the IRS complied with all statutorily required administrative steps. All petitions to enforce an administrative summons must include allegations and supporting declarations to establish that the good faith standards are met.^[46] Although the good faith standards established in *U.S. v. Powell* apply to all administrative summonses, they are not the sole source of limitations on the IRS’s ability to compel production of information during an examination.^[47]

Neither service of an administrative summons nor government-initiated action for judicial enforcement is sufficient to suspend the limitations period.^[48] As a result, in the case of an examination of complicated issues of a large corporation, involving voluminous records, numerous witness interviews, and possible expert reports, the general three-year period for assessment may be inadequate to allow for completion of an examination.^[49] In such cases, the limitations period is often but not always extended by agreement of the parties. An uncooperative taxpayer could force a premature conclusion to an audit by delaying responses and allowing the statute to expire. To guard against such situations in cases in which the IRS requires

⁴⁴ IRC section 7609.

⁴⁵ *U.S. v. Powell*, 379 U.S. 48, pp. 57, 58 (1964).

⁴⁶ “Department of Justice, Tax Division, *Summons Enforcement Manual*, (updated through July 2011), available at https://www.justice.gov/sites/default/files/tax/legacy/2011/08/31/SumEnfMan_July2011.pdf.”

⁴⁷ “See, e.g., sections 7602 (summonses in furtherance of a criminal investigation may be issued, provided that the IRS has not referred the investigation to the Department of Justice for prosecution of the taxpayer whose tax liability is the subject of the summons), 7609 (summons issued to a third-party record-keeper), 7611 (examinations of churches), 7612 (summons for computer software). Summonses to obtain information responsive to a request for exchange of information under a tax treaty present special enforcement issues, both procedural and substantive as well. *Mazurek v. U.S.*, 271 F.3d 226 (5th Cir. 2001).”

⁴⁸ “In the case of third-party summonses, the limitations period is suspended if a taxpayer named in the summons initiates a proceeding to quash the summons, or if compliance with the summons remains unresolved as of the date which is six months after service of the summons.”

⁴⁹ “[IRC] section 6501 (income taxes are generally required to be assessed within three years after a taxpayer’s return is filed, whether or not it was timely filed); section 6501 (c) (there are several circumstances under which the general three-year limitations period does not begin to run, including failure to file a return or filing a false or fraudulent return with the intent to evade tax, extensions by agreement of the taxpayer and IRS, substantial omissions of income, or failure to disclose or report a listed transaction as required under section 6011 on any return or statement for a taxable year); section 6503 (there are also circumstances under which the three-year limitations period is suspended, including the issuance of a designated summons).”

additional information and time to complete its work,^[50] the Code authorizes issuance of a designated summons that triggers suspension of the limitations period if judicial enforcement proceedings are initiated.

A designated summons is an administrative summons that is issued to a large corporation (or person to whom the corporation has transferred the requested books and records) with respect to one or more taxable periods currently under examination in the Coordinated Industry Case program and meets three conditions. First, it must be reviewed and approved by the Division Commissioner and Division Counsel of the relevant IRS operating division or organization with jurisdiction over the return. Second, it must be issued at least 60 days before the expiration of the assessment limitations period (as extended). Finally, it must clearly state that it is a “designated summons.”^[51] No more than one designated summons may be issued with respect to a return under examination.

If a designated summons is issued, and the taxpayer complies without any judicial enforcement proceeding, no suspension of the limitations period occurs. If the government initiates enforcement proceedings, the limitations period is suspended for the judicial enforcement period of that summons and any related summonses, i.e., summonses relating to the same return and issued within 30 days after the issuance of the designated summons. If the court proceeding results in an order to comply with the summons, the limitations period is also suspended for a period of 120 days from the first day after the close of the judicial enforcement period. In addition, the limitations period expires no earlier than 60 days after the close of the judicial enforcement period, if the court does not order compliance with the summons.

Since enactment of the designated summons provision in 1990, few such summonses have been issued.^[52] The IRS is now required to

⁵⁰ “In describing the provision when it was first enacted, the Conference report for the Omnibus Reconciliation Act of 1990 explained, ‘This provision is designed to preserve the ability of the IRS to conclude the audit and assess any taxes that may be due regardless of the length of time that it might take to obtain judicial resolution of the summons enforcement lawsuit.’ H. Rept. 101-964, p. 1073. Omnibus Budget Reconciliation Act of 1990, Conf. Rept. to Accompany H.R. 5835.”

⁵¹ “[IRC] section 6503(j) refers to the regional officials and the Coordinated Examination Program or their successors. The Division Counsel and Commissioner of the relevant office with jurisdiction over the return have been identified in regulation as the appropriate successor officials. Treas. Reg. section 301.6503(j)-1. In addition, the Coordinated Industry Case program is the successor to the Coordinated Examination Program.”

⁵² “The earliest designated summons, involving a request to require testimony from an officer of Chevron Corporation, was enforced. *U.S. v. Derr*, 968, F.2d 943 (9th Cir. 1992). See also *U.S. v. Norwest*, 116 F.3d 1227 (8th Cir. 1997) (court enforced IRS request to produce tax preparation software licensed to Norwest) and *U.S. v. Caltex Petroleum*, 12 F. Supp. 2d 545 (N.D. Tex. 1998) (denied IRS request to produce the software code used to calculate foreign tax credits).”

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submit annual reports to Congress on the number of designated summonses issued each year.^[53] Since 1995, three have been issued, most recently in 2014.^[54]

New Federal Law (IRC section 6503(J))

“Under the provision, issuance of a designated summons must be preceded by review and written approval of the summons by the head of the relevant operating division and the Chief Counsel. The written approval must state facts establishing that the IRS had previously made reasonable requests for the information and must be attached to the summons. In subsequent judicial proceedings concerning the enforceability of the summons, the IRS must establish that the prior reasonable requests for information were made.”^[55]

Effective Dates

The provision applies to summonses issued after the date that is 45 days after July 1, 2019.

California Law (R&TC section 19504, 19504.5)

California does not conform to IRC section 6503(J), but instead has stand-alone law relating to subpoenas.⁵⁶

Impact on California Revenue

Not applicable.

Section Section Title

1208 Limitation on Access of Non-IRS Employees to Returns and Return Information

Background

The House Ways and Means Committee Report for P.L. 116-25 states:

As a general rule, returns and return information are confidential

⁵³ IRC section 1002(b) Taxpayers Bill of Rights Act 2, P.L. 104-168 (1996).

⁵⁴ “*U.S. v. Microsoft*, Case No. C15-00102-RSM (W.D. Wash. May 5, 2017) (in ruling on validity of privileges, the Court ordered further document production in compliance with the designated summons and related summonses, pursuant to the earlier opinion enforcing the designated summons, at *U.S. v. Microsoft*, 154 F. Supp. 3d 1134 (W.D. Wash. 2015)); H.R. Rep. No. 116-39, 1st Sess., pp. 45,47 (2019).”

⁵⁵ H.R. Rep. No. 116-39, 1st Sess., p. 48 (2019).

⁵⁶ R&TC sections 19504, 19504.5.

and cannot be disclosed unless authorized by the Code.^[57] The definition of return information is very broad and generally includes any information received or collected by the IRS with respect to liability under the Code of any person for any tax, penalty, interest or offense. The term “return information” includes, among other items:

- A taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.^[58]

Disclosure exception for tax administration contracts (section 6103(n))

There are several exceptions to the general rule of confidentiality. One exception permits the disclosure of returns and return information in connection with written contracts or agreements for the acquisition of property or services for tax administration purposes (“tax administration contractor”).^[59]

Summons authority

In general

For the purposes of ascertaining the correctness of any return, making a return when none has been made, determining the liability of any person for any internal revenue tax, and certain other purposes, the Secretary is authorized to examine any books, records, or other data which may be relevant or material to such inquiry, and to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. The Secretary also is authorized to issue summonses to appear before the Secretary at the time and place named in the summons to produce books, records and other data and to give testimony, under oath, as may be relevant or material to such

⁵⁷ IRC section 6103(a).

⁵⁸ IRC section 6103(b)(2)(A).

⁵⁹ IRC section 6103(n).

inquiry.

Summons interview regulations

Under the treasury regulations, a person authorized to receive returns and return information as a tax administration contractor may receive and examine books, papers, records, or other data produced to comply with the summons, and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a witness summoned by the IRS to provide testimony under oath.^[60]

Proposed treasury regulations would narrow this authority by excluding non-government attorneys from receiving summoned books, papers, records, or other data, or from participating in the interview of a witness summoned by the IRS to provide testimony under oath.^[61] An exception to this general exclusion is provided with respect to non-government attorneys hired for their expertise in an area other than Federal tax law. The proposed regulations would allow the IRS to hire an attorney who has specialized knowledge of foreign, state, or local law, including tax law, or in non-tax substantive law, such as patent law, property law, or environmental law. It would not permit the IRS to hire an attorney for non-substantive specialized knowledge, such as civil litigation skills. These changes are proposed to be effective for examinations begun and summonses served by the IRS on or after March 27, 2018.^[62]

New Federal Law (IRC section 7602)

"The provision provides that the Secretary shall not, under the authority of IRC section 6103(n) (relating to tax administration contracts), provide to a tax administration contractor any books, papers, records or other data obtained by summons, except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the IRS (including, for example, access to such information by translators). Further, no person other than an officer or employee of the IRS or Office of Chief Counsel may on behalf of the Secretary question a witness under oath whose testimony was obtained by summons. The provision is not intended to restrict the Office of Chief Counsel's ability to use court reporters, translators or interpreters, photocopy services, and other similar ancillary contractors."^[63]

⁶⁰ Treas. Reg. section 301.7602-1(b)(3).

⁶¹ Prop. Treas. Reg. section 301.7602-1(b)(3), 83 Fed. Reg. 13206, March 28, 2018.

⁶² H.R. Rep. No. 116-39, 1st Sess., pp. 48, 49 (2019).

⁶³ H.R. Rep. No. 116-39, 1st Sess., p. 50 (2019).

Effective Dates

The provision takes effect on July 1, 2019, and applies to all contracts in effect under IRC section 6103(n), including contracts that were in effect before the date of enactment.

California Law (R&TC section 19504.7, 19542, 19542.1 and 19545)

California does not specifically conform to IRC section 7602 relating to limitations on access to returns and return information by a tax administration contractor but instead has stand-alone law regarding the disclosure of information.⁶⁴

It is a misdemeanor for the FTB or any member, deputy, agent, clerk, other officer or employee to disclose or make known in any manner information as to the amount of income or other information included in the tax return filed with the state.⁶⁵

Also, any willful unauthorized inspection or unwarranted disclosure or use of confidential information is considered a misdemeanor. If criminal charges have been filed for the willful unauthorized inspection or unwarranted disclosure, the FTB must notify the taxpayer of any known incidents.⁶⁶

⁶⁴ R&TC sections 19542, 19542.1 and 19545.

⁶⁵ R&TC section 19542.

⁶⁶ R&TC section 19542.1.

Disclosure of Information in Judicial or Administrative Proceedings

A return or return information may be disclosed in a judicial or administrative proceeding if any of the following apply:

- The taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability with respect to any tax imposed.
- The treatment of an item reflected on the return is directly related to the resolution of an issue in the proceeding.
- The return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.⁶⁷

Notice of Contact with Third Parties

An officer or employee of the FTB may not contact any person other than the taxpayer with respect to the determination or collection of the taxpayer's tax liability without providing reasonable notice in advance to the taxpayer. A notice is valid for any third-party contacts made during the 12 months following the date of the notice. For any third party contacts made after the 12 month period, an additional notice must be provided.

The FTB must provide, upon request from the taxpayer, a record of the persons contacted during the 12-month period with respect to the determination or collection of the taxpayer's tax liability. The taxpayer's request must be made no later than 60 days after the 12-month period has expired.

The following situations are exempt from the noticing requirement:

- Any contact the taxpayer has authorized. If the FTB determines for good cause shown that the notice would jeopardize collection of any tax or the notice may involve reprisal against any person.
- With respect to pending criminal investigations.⁶⁸

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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⁶⁷ R&TC section 19545.

⁶⁸ R&TC section 19504.7.

1301 Office of the National Taxpayer Advocate

Background

The Office of the Taxpayer Advocate (OTA) independently represents taxpayer interests in disputes with the IRS. It is supervised by the National Taxpayer Advocate (NTA), who reports directly to the Commissioner. OTA has four principal functions, to: (1) assist taxpayers in resolving problems with the IRS; (2) identify areas in which taxpayers have problems in dealing with the IRS; (3) propose changes in the administrative practices of the IRS to mitigate problems identified in (2); and (4) identify potential legislative changes that may be appropriate to mitigate such problems.

A taxpayer can request a Taxpayer Assistance Order (TAO) if the taxpayer is suffering or about to suffer a "significant hardship" as a result of the manner in which a tax law is being administered by the IRS.^[69] A TAO may require the IRS within a specified time period, to release property of the taxpayer that has been levied upon, or to cease any action, take any action as permitted by law, or refrain from taking any action with respect to the taxpayer under specified provisions.^[70] The Commissioner, or the Deputy Commissioner, can rescind an NTA issued TAO if a written explanation of the reasons for the modification or rescission is provided to the NTA.^[71]

While a TAO is taxpayer specific, a Taxpayer Assistance Directive (TAD) is systemic and intended to address groups of taxpayers. The NTA is authorized to issue TADs to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect taxpayer rights, prevent undue burden, ensure equitable treatment or provide an essential service to taxpayers.^[72] The Deputy Commissioner for Operations Support, Deputy Commissioner for Services and Enforcement, and the NTA are authorized to modify or rescind a TAD.

Two reports are required to be submitted by the NTA annually to the House

⁶⁹ "[Per IRC] section 7811(a)(2), a significant hardship is deemed to occur if any one of these four factors exists: (1) there is an immediate threat of adverse action; (2) there has been a delay of more than 30 days in resolving the taxpayer's problems; (3) the taxpayer will have to pay significant costs (including fees for professional services) if relief is not granted; or (4) the taxpayer will suffer irreparable injury, or a long term adverse impact if relief is not granted. The NTA may also issue a TAO if the taxpayer meets other requirements to be set forth in regulations. (IRC section 7811(a)(1)(B).)"

⁷⁰ "[Per IRC] section 7811(b), the specified provisions are: (1) chapter 64 (relating to collection), (2) subchapter B of chapter 70 (relating to bankruptcy and receiverships), chapter 78 (relating to discovery of liability and enforcement of title) or any other provision of law which is specifically described by the NTA in such order. A TAO or action taken by the NTA applies to persons performing services under a qualified tax collection contract to the same extent and to the same manner as such order applies to the IRS."

⁷¹ Per IRC section 7811(c), the NTA can also modify or rescind a TAO issued by the NTA.

⁷² Delegation Order 13-3, IRM 1.2.50.4, dated January 17, 2001.

Committee on Ways and Means and to the Senate Finance Committee.^[73] By statute, the NTA is required to submit the reports directly to the Congressional committees without prior review of the Commissioner, the Secretary, or any officer or employee of the Treasury, the Oversight Board, or the Office of Management and Budget (OMB).^[74] The first report is due by June 30 of each year and covers the OTA's objectives for the fiscal year beginning in that calendar year. Besides statistical information, the report must contain a full and substantive analysis of the objectives.

The second report, due by December 31 of each year, discusses activities of the OTA. The content of this report is set by statute.^[75] Generally, the report must cover initiatives taken to improve taxpayer services and problems encountered, as well as the actions taken to resolve them and the results. This report must cover the 20 most serious problems experienced by taxpayers; and must identify the 10 most litigated issues for each taxpayer category and the areas of tax law that impose significant compliance burdens on taxpayers or the IRS. "Recommendations received from individuals with the authority to issue TAOs, and any TAO not promptly honored by the IRS, must also be included in the report. The report must also set forth recommendations for administrative and legislative action to resolve problems encountered by taxpayers."^[76]

New Federal Law (IRC sections 7803(c) and 6108(d))

The provision requires that for any TAD issued by the NTA, the Commissioner or the Deputy Commissioner shall modify, rescind, or ensure compliance with such directive no later than 90 days after its issuance. If the TAD is modified or rescinded by a Deputy Commissioner, the NTA may, within 90 days, appeal to the Commissioner and the Commissioner must, within 90 days, either: (1) ensure compliance with such directive as issued by the NTA, or (2) provide the NTA with the reasons for any modification or rescission made or upheld by the Commissioner pursuant to such appeal.

In addition, the NTA's annual report must also identify any TAD that is not honored by the IRS in a timely manner. The provision modifies requirements so that the NTA provides a summary of the 10 most serious problems encountered by taxpayers. Before beginning any research or study, the NTA is required to coordinate with the Treasury Inspector General for Tax Administration (TIGTA) to ensure that the NTA does not duplicate any action that the TIGTA has already undertaken or has a detailed plan to undertake.

The provision also requires the IRS to provide to the NTA, upon request and to the

⁷³ IRC section 7803(c)(2)(B).

⁷⁴ IRC section 7803(c)(2)(B)(iii).

⁷⁵ IRC section 7803(c)(2)(B)(ii)(I) through (XI).

⁷⁶ H.R. Rep. No. 116-39, 1st Sess., pp. 50, 51, 52 (2019).

extent practicable, statistical support in connection with the preparation of the annual report on NTA activities. "Such support is to include statistical studies, compilations, and the review of information provided by the NTA for statistical validity and sound statistical methodology. With respect to any statistical information included in such report, the report is to include a statement of whether such statistical information was reviewed or provided by the IRS, and if so whether the IRS determined such information to be statistically valid and based on sound statistical methodology. The IRS's review and provision of statistical support does not violate the requirement that the report be submitted directly without prior review or comment from any officer or employee of the Department of the Treasury or specified other persons."⁷⁷

The provision also eliminates a provision relating to the determination of the NTA's salary.

Effective Dates

The provision is generally effective on July 1, 2019. The provision regarding the salary of the NTA applies to compensation paid to individuals appointed as the NTA after March 31, 2019.

California Law (R&TC sections 21001 - 21028)

California does not conform, under the Taxpayers' Bill of Rights, to the federal OTA and NTA activities and reporting requirements, but instead has stand-alone laws that require the FTB's Taxpayer Rights Advocate to coordinate resolution of taxpayer complaints and problems. The FTB's Taxpayer Rights Advocate reports directly to the Executive Officer, who is directly responsible and accountable to both the Government Operations Agency and the three-member FTB.

Impact on California Revenue

Not applicable.

⁷⁷ Under current section 9503 of Title 5 of the United States Code (U.S.C.), the NTA is entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of Title 5 of the U.S.C.; H.R. Rep. No. 116-39, 1st Sess., p. 53 (2019).

<u>Section</u>	<u>Section Title</u>
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1401 Return Preparation Programs for Applicable Taxpayers

Background

The House Ways and Means Committee report for P.L. 116-25 states:

IRC section 7526 provides, “[t]hat the Secretary may allocate up to \$6 million per year for matching grants to certain qualified low-income taxpayer clinics.^[78] Eligible clinics are those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language. No clinic can receive more than \$100,000 per year. A qualified low-income taxpayer clinic includes (1) a clinical program at an accredited law, business, or accounting school, in which students represent low-income taxpayers, or (2) an organization exempt from tax under [Internal Revenue] Code section 501(c) that either represents low-income taxpayers or provides referral to qualified representatives. A clinic is treated as representing low-income taxpayers if (i) at least 90 percent of the taxpayers represented by the clinic have income that does not exceed 250 percent of the poverty level...^[79] and (ii) the amount in controversy for any taxable year is \$50,000 or less.^[80]

“[F]unding for matching grants ... was provided by the Consolidated Appropriations Act, 2019^[81] [w]hich appropriated approximately \$2.492 billion to the IRS for taxpayer services, of which not less than \$18 million is to be made available for a Community Volunteer Income Tax Assistance (“VITA”) ... program for tax return preparation assistance. VITA is a program created by the IRS in 1969 that utilizes volunteers to provide tax return preparation and filing service assistance to certain low-income taxpayers and members of underserved populations.”^[82]

New Federal Law (IRC section 7526A)

[T]he provision [requires the Secretary to establish a Community Volunteer Income

⁷⁸ IRC section 7526.

⁷⁹ “[As determined in accordance with criteria established by the Director of the Office of Management and Budget,] for a family of four, the 2019 income limit in the 48 contiguous states, Puerto Rico, and the District of Columbia, is \$64,375, available at <https://www.irs.gov/advocate/low-income-tax-payer-clinics/low-income-taxpayer-clinic-income-eligibility-guidelines>.”

⁸⁰ IRC section 7463; H.R. Rep. No. 116-39, 1st Sess., pp. 54, 55 (2019).

⁸¹ P.L. 116-6, Division D, Title I, February 15, 2019.

⁸² H.R. Rep. No. 116-39, 1st Sess., pp. 54, 55 (2019).

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Tax Assistance Matching Grant Program and authorizes the Secretary to allocate] up to \$30 million per year in matching grants to qualified entities for the development, expansion or continuation of qualified tax return preparation programs assisting applicable taxpayers and members of underserved populations. The Secretary is authorized to award a multi-year grant not to exceed three years."^[83]

"The grant funds may be used for ordinary and necessary operation costs, (including ... wages or salaries of persons coordinating the activities of the program, to develop training materials, conducting training, and perform quality reviews of the returns [being prepared, equipment purchases, vehicle-related expenses associated with remote or rural tax preparation services, and for outreach and educational activities]. Matching funds are required to be provided on a dollar-for-dollar basis for all grants provided. Matching funds may include: (1) salaries, including fringe benefits, of individuals performing services for the program; (2) equipment costs used in the program; and (3) other ordinary and necessary costs that may be associated with the program. Indirect expenses, including general overhead of any entity administering the program, are not counted as matching funds."^[84]

"The provision [also] requires the [establishment of] procedures for periodic site visits at least once every five calendar years to ensure the program is [meeting the stated purpose and standards required by the Secretary]."^[85]

In addition, the provision allows the IRS to use mass communications to promote the benefits and encourage the use of the program.

Effective Dates

The provision is effective on July 1, 2019.

California Law (R&TC sections 21005 and 21006)

California does not specifically conform to the federal return preparation programs and their funding, but instead has stand-alone programs. The FTB implements a taxpayer education and information program directed at areas such as: identifying forms, procedures, regulations, or laws, which are confusing and lead to taxpayer errors; the most common errors made by specified taxpayers and how these errors may be avoided or corrected; participating in small business seminars and similar programs organized by state and local agencies; and implementation of continuing education programs for audit personnel to include the application of new legislation.

⁸³ H.R. Rep. No. 116-39, 1st Sess., p. 55 (2019).

⁸⁴ H.R. Rep. No. 116-39, 1st Sess., pp. 55, 56 (2019).

⁸⁵ H.R. Rep. No. 116-39, 1st Sess., p. 56 (2019).

Taxpayer First Act
Public Law 116-25, July 1, 2019

The FTB administers \$5 million in free tax preparation grants on behalf of the state. These grants are aimed at promoting VITA and other free tax preparation services for underserved communities. The FTB also uses its social media channels to promote the free tax preparation locations and encourages qualified groups to apply for state free tax preparation grants.

Impact on California Revenue

Not applicable.

Section Section Title

1402 Provision of Information Regarding Low-Income Taxpayer Clinics

Background

The IRS and the Treasury Inspector General for Tax Administration are prohibited from referring or recommending any attorney, accountant, or firm of attorneys or accountants to anyone in connection with any business that involves the IRS.

New Federal Law (IRC section 7526(c))

“The provision allows officers and employees of the Department of the Treasury to advise taxpayers of the ... eligibility requirements for receiving advice and assistance from qualified low-income taxpayer clinics that receive funding under the [IRC section 7526, including]... location and contact information...”^[86]

Effective Dates

The provision is effective on July 1, 2019.

California Law (R&TC sections 21005 and 21006)

California does not specifically conform to the federal relating to that prohibition. The FTB does administer \$5 million in free tax preparation grants on behalf of the state that promotes the Federal VITA program and other free tax preparation services for underserved communities. The FTB's VITA team trains VITA volunteers, provides phone support for VITA site operators, and facilitates operation of many VITA sites in the state. The FTB also uses its social media channels to promote the free tax preparation locations, refers taxpayers to websites with useful information, and encourages qualified groups to apply for state free tax preparation grants.

⁸⁶ H.R. Rep. No. 116-39, 1st Sess., p. 58 (2019).

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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1403	Notice from IRS Regarding Closure of Taxpayer Assistance Centers
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Background

"The IRS operates Taxpayer Assistance Centers (TAC) around the country to provide face-to-face assistance preparing tax returns and understanding tax laws. The IRS is not currently required to publish information to the public or Congress before closing a TAC."^[87]

New Federal Law (Uncodified section 1403)

"The provision requires the IRS to publish, (including by non-electronic means such as local press and other media), 90 days in advance, a notice containing information identifying the TAC proposed for closure, the date of the proposed closure, and the relevant alternative sources of assistance that may be utilized by the affected taxpayers. The provision also requires the IRS to provide, 90 days in advance, a report to Congress containing the public notice information, the reasons for the proposed closure, and other information as the Secretary may find appropriate."^[88]

Effective Dates

The provision is effective on July 1, 2019.

California Law (None)

California does not conform to this uncodified section relating to TAC closures.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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⁸⁷ H.R. Rep. No. 116-39, 1st Sess., p. 58 (2019).

⁸⁸ H.R. Rep. No. 116-39, 1st Sess., p. 58 (2019).

1404 Rules for Seizure and Sale of Perishable Goods Restricted to Only Perishable Goods

Background

‘[W]hen ... tangible property [is] seized to satisfy unpaid taxes [and it] (1) is ... perishable, (2) ... becomes greatly reduced in price or value by keeping [it], or (3) cannot be kept without great expense, the property may be sold after it has been appraised and the owner has been given an opportunity to pay the appraised value or furnish bond for payment.^[89] The general procedures governing the sale of seized property ... (e.g., requiring a 10-day notice before sale and the determination of a minimum bid,) are not applicable [with respect] to the sales of perishables.^[90] Instead, streamlined procedures apply to the sale of perishable goods.’^[91]

New Federal Law (IRC section 6336)

The provision limits the application of streamlined procedures to sales of seized perishable goods.^[92]

Effective Dates

The provision applies to property seized after July 1, 2019.

California Law (R&TC sections 19262 and 19263)

California does not specifically conform to the federal procedures for seizures and streamlined sales of perishable goods, but instead has stand-alone laws governing the sale of seized property. With notice, the FTB may sell, at public auction, any seized personal property, or sufficient portion thereof, to pay any tax due, with interest and any penalty or penalties imposed for that delinquency, and any and all costs that may have been incurred on account of the seizure and sale. Written notice must be given to the delinquent taxpayer at least 10 days before the sale date. In addition, any unsold portion of the seized property may be left at the place of sale at the taxpayer's risk. Upon sale, any moneys that exceed the amount of taxes, interest, penalties, and costs due to the state from the taxpayer, is returned to the taxpayer unless another party has an interest in or lien upon the property, dependent on a determination of the rights of the respective parties by a court of competent jurisdiction. If the taxpayer is unavailable, the FTB must deposit the excess moneys with the Treasurer, as trustee for the owner.

⁸⁹ IRC section 6336.

⁹⁰ IRC section 6335.

⁹¹ IRC section 6336; Treas. Reg. section 301.6336-1.; H.R. Rep. No. 116-39, 1st Sess., pp. 58, 59 (2019).

⁹² H.R. Rep. No. 116-39, 1st Sess., p. 59 (2019).

Impact on California Revenue

Not applicable.

Section Section Title

1405 Whistleblower Reforms

Background

Disclosure Rules for Whistleblowers

Under the general rule, the IRS is prohibited from disclosing any confidential taxpayer return information.^[93] “[O]ne exception to the general rule of confidentiality permits the IRS to make investigative disclosures of return information to third parties. The disclosures, subject to the conditions provided in regulations, are to be made to the extent necessary to obtain information, which is not otherwise reasonably available, with respect to the correct determination of tax, the liability for tax, the amount to be collected, or with respect to the enforcement of any provision of Title 26 [of the United States Code (U.S.C.)].”^[94] However, “the third party recipient of the return information furnished during an investigative disclosure was not subject to the general rule of confidentiality ...”^[95]

“[C]riminal penalties apply for the willful unauthorized disclosure or inspection of returns and return information.”^[96]

⁹³ IRC section 6103(a).

⁹⁴ Treas. Reg. section 301.6103(k)(6)-1; H.R. Rep. No. 116-39, 1st Sess., p. 59 (2019).

⁹⁵ IRC section 6103; H.R. Rep. No. 116-39, 1st Sess., p. 59 (2019).

⁹⁶ IRC sections 7213 and 7213A.

Whistleblower awards

Individuals who submit information leading to the detection of underpayment of tax, or to the detection, trial, and punishment of persons guilty of violating federal tax laws, may file a claim for an award of 15 to 30 percent of the resulting recovered funds.^[97]

Protection against retaliation

“Though other statutes, such as the False Claims Act^[98] currently protects some individuals from employer retaliation, those who file claims under the Code are not explicitly afforded the same protections.”^[99]

New Federal Law (IRC sections 6103 and 7623)

Disclosure rules for whistleblowers

This provision “[a]llows the IRS to exchange information with whistleblowers to the extent disclosure is necessary in obtaining information which is not otherwise reasonably available, with respect to the correct determination of tax liability or the amount to be collected with respect to the enforcement of any other provision of the Code, as well as notifying the whistleblower as to the status of their case, no later than 60 days after: (1) the case has been referred for an audit or examination; and (2) the taxpayer makes a payment of tax with respect to the tax liability to which the information provided by the whistleblower relates.”^[100]

“Upon written request by the whistleblower, and as long as the disclosure would not seriously impair federal tax administration, the Secretary is to provide information on the status and stage of any investigation.”^[101]

The provision also prohibits whistleblowers from disclosing any information they receive from the IRS.

Whistleblower awards

Upon written request by the whistleblower, in the case where the Secretary makes a determination of the amount of any award, the reasons for such determination must also be provided.

⁹⁷ IRC section 7623.

⁹⁸ Title 31, U.S.C. section 3730(h)(2).

⁹⁹ H.R. Rep. No. 116-39, 1st Sess., pp. 59, 60 (2019).

¹⁰⁰ H.R. Rep. No. 116-39, 1st Sess., p. 60 (2019).

¹⁰¹ H.R. Rep. No. 116-39, 1st Sess., p. 60 (2019).

Protection against retaliation

“The provision adds to section 7623, anti-retaliation whistleblower protections for employees. A person who alleges discharge or other reprisal by any person in violation of these protections may file a complaint with the Secretary of Labor (within 180 days after the date on which the violation occurs), and if the Secretary of Labor has not issued a final decision on such complaint within 180 days (and the delay is not due to the bad faith of the claimant), an action may be brought in the appropriate district court. The remedies provided are consistent with those currently available under the False Claims Act, including compensatory damages or reinstatement, 200 percent of back pay and all lost benefits, with interest, and compensation for other special damages including litigation costs, expert witness fees, and reasonable attorney fees.”^[102]

Effective Dates

The provision modifying the disclosure rules applies to disclosures made after July 1, 2019. The provision related to protections from retaliation are effective on July 1, 2019.

California Law (R&TC sections 19542 and 19525)

Disclosure rules for whistleblowers

California does not conform to the federal disclosure rules for whistleblowers. The FTB has no authority to disclose taxpayer confidential information or return information to fraud informants or whistleblowers.

Whistleblower awards

California does not conform to the federal whistleblower awards. The FTB may prescribe regulations to establish a reward program for information resulting from the identification of underreported or unreported income subject to tax. Any reward may not exceed ten percent of the taxes collected based on the information provided by the informer, except for anyone under contract with a state or federal tax collection agency.¹⁰³ (R&TC 19525). The FTB has not yet adopted regulations under this statute.

Protection against retaliation

California does not conform to the federal False Claims Act, but instead has the California False Claims Act, which does provide some protection to informers from

¹⁰² H.R. Rep. No. 116-39, 1st Sess., p. 61 (2019).

¹⁰³ R&TC section 19525.

retaliation by an employer.¹⁰⁴

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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1406	Customer Service Information
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Background

The IRC provides the Secretary of the Treasury^[105] with the duty and power to administer, manage, conduct, direct and supervise the execution and application of the internal revenue laws or related statutes. “In executing these duties, the Commissioner depends upon strategic plans that prioritize goals and manages IRS’s resources.”^[106]

New Federal Law (Uncodified section 1406)

“The provision requires [the Secretary of the Treasury or the Secretary’s delegate to provide helpful] information over the telephone while taxpayers are on hold with the IRS’s call center [in efforts to assist taxpayers affected by tax-related identity theft. [For example], information about common tax scams, [taxpayer instructions] on where and how to report such activity, and tips on how to protect against identity theft and tax scams.”^[107]

Effective Dates

The provision is effective on July 1, 2019.

California Law (R&TC section 21005)

California does not specifically conform to this uncodified act section related to federal taxpayer assistance programs, but instead has stand-alone programs relating to these provisions. The FTB toll-free 800 number, as well as the FTB public website, provides information related to the types of tax fraud and identity theft, and how to report these activities.

¹⁰⁴ Government Code section 12653.

¹⁰⁵ IRC section 7803(a).

¹⁰⁶ See *Internal Revenue Service Strategic Plan FY 2018—2022*, Publication 3744, available at <https://www.irs.gov/pub/irs-pdf/p3744.pdf>; H.R. Rep. No. 116-39, 1st Sess., p. 61 (.2019).

¹⁰⁷ H.R. Rep. No. 116-39, 1st Sess., p. 62 (2019).

Impact on California Revenue

Not applicable.

Section Section Title

1407 Misdirected Tax Refund Deposits

Background

‘[A]n erroneous refund [i]s the receipt of any money from the IRS to which the recipient is not entitled. [The IRS has procedures in place for employees] to identify and recover such erroneous refunds.^[108] In addition, the IRS website provides [instructions for taxpayers] to return an erroneous refund that was issued to them, either by paper check or direct deposit^[109] [Any erroneous tax refund] may be recovered by civil action brought in the name of the United States^[110] Recovery of an erroneous refund by civil action is allowed if the action is begun within two years after the refund is made, or five years if it appears that any part of the refund was induced by fraud or misrepresentation.^[111]

New Federal Law (IRC section 6402(n))

“The provision requires the Secretary to prescribe regulations within six months of [July 1, 2019] to establish procedures to allow taxpayers to report instances in which a refund made by...electronic funds transfer was not transferred to the [taxpayer's account], to coordinate with financial institutions to identify and recover these payments, and how to deliver refunds to the correct taxpayer's account.”^[112]

Effective Dates

The provision is effective on July 1, 2019.

¹⁰⁸ IRS, Internal Revenue Manual (IRM), *Erroneous Refunds*, Ch. 21.4, section 21.4.5.2, (October 9, 2015).

¹⁰⁹ IRS, *Topic Number 161—Returning an Erroneous Refund—Paper Check or Direct Deposit*, last updated January 28, 2019, available at <https://www.irs.gov/taxtopics/tc161> .

¹¹⁰ IRC section 7405.

¹¹¹ IRC section 6532(b); H.R. Rep. No. 116-39, 1st Sess., p. 62 (.2019).

¹¹² H.R. Rep. No. 116-39, 1st Sess., p. 62 (2019).

California Law (R&TC sections 19368 and 19411; California Government Code section 7480(r))

California does not specifically conform to the federal misdirected tax refund deposit procedures, but instead has stand-alone procedures in place that provide taxpayers the ability to report a missing direct deposit refund (DDR).

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2001	Public-Private Partnership to Address Identity Theft Refund Fraud
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Background

“The Security Summit, formed in 2015, is a partnership of the IRS, state tax agencies, and the private-sector tax industry that addresses tax refund fraud caused by identity theft. In 2016, the Security Summit group members identified and agreed to share more than 20 data components relating to federal and state tax returns to improve fraud detection and prevention. For example, [with shared information], group members found improper or repetitive use of the identification numbers on returns[.]”^[113] Tax software providers agreed to enhance identity requirements and strengthen validation procedures for new and returning customers to protect their accounts from theft. Along with the IRS, 40 state departments of revenue, and 21 tax industry members have signed onto a Memorandum of Understanding regarding roles, responsibilities and information sharing pathways among the IRS, states, and industry^[114] In 2017, the IRS reported a 40 percent decline in the number of taxpayers reporting ... that they were victims of identity theft. [The Security Summit was successful and created a productive venue for government and private organizations to work together to address the growing problem of identity theft tax refund fraud].”^[115]

New Federal Law (Uncodified section 2001)

“The provision requires the Secretary (or the Secretary’s delegate) to work collaboratively with the public and private sectors to protect taxpayers from identity

¹¹³ IRS, *2016 Security Summit: Protecting Taxpayers from Identity Theft Tax Refund Fraud*, June 2016, page 3, available at https://www.irs.gov/pub/newsroom/6_2016_security_summit_report.pdf .

¹¹⁴ *Ibid.*

¹¹⁵ IRS, IR-2018-21, *Key IRS Identity Theft Indicators Continue Dramatic Decline in 2017; Security Summit Marks 2017 Progress Against Identity Theft*, February 8, 2018; H.R. Rep. No. 116-39, 1st Sess., p. 63 (2019).

theft tax refund fraud.^[116]

Effective Dates

The provision is effective on July 1, 2019.

California Law (None)

California does not conform to this uncodified act section and has a stand-alone program in which the FTB is a member of the IRS Security Summit and the Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (ISAC). The FTB works collaboratively with the public and private sectors to protect taxpayers from identity theft refund fraud.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2002	Recommendations of Electronic Tax Administration Advisory Committee Regarding Identity Theft Refund Fraud
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Background

‘[The IRS Restructuring and Reform Act of 1998]^[117] (RRA98) authorized the Electronic Tax Administration Advisory Committee (ETAAC) to provide input to the IRS on electronic tax administration. ETAAC’s responsibilities include researching, analyzing and making recommendations on a variety of electronic tax administration issues. Pursuant to RRA98, the ETAAC annually reports on the following to Congress:

- IRS’s progress on reaching its goal to receive 80 percent of tax and information returns electronically.
- Legislative changes to assist the IRS in meeting the 80 percent goal.
- Status of the IRS’s electronic tax administration strategic plan.
- Effects of e-filing tax and information returns on small businesses and the self-employed.”^[118]

[The ETAAC includes] members ... from state departments of revenue, large tax preparation companies, solo tax practitioners, tax software companies, financial

¹¹⁶ H.R. Rep. No. 116-39, 1st Sess., p. 63 (2019).

¹¹⁷ P.L. 105-206, July 22, 1998.

¹¹⁸ H.R. Rep. No. 116-39, 1st Sess., p. 64 (2019).

services industry, and low income and consumer advocacy groups.^[119]

New Federal Law (Uncodified section 2002)

The provision codifies recent changes to the ETAAC's charter and requires the ETAAC to study and make recommendations to the Secretary regarding methods to prevent identity theft and refund fraud. The provision also ensures that the ETAAC will continue to examine this issue going forward.^[120]

Effective Dates

The provision is effective on July 1, 2019.

California Law (None)

California does not conform to this uncodified section regarding the ETAAC's charter and requirements. However, each year the FTB analyzes its processes and procedures to adjust for trends and new behavior, as well as enhance the FTB's identity theft and fraud detection efforts.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2003	Information Sharing and Analysis Center
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Background

The House Ways and Means Committee report for P.L. 116-25 states:

Information Sharing and Analysis Center

The Security Summit, formed in 2015, is a partnership of the IRS, State tax agencies, and the private-sector tax industry that addresses tax refund fraud caused by identity theft. In 2016, the Security Summit created an Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (ISAC).^[121] The ISAC is a secure, web-based venue for states, industry and the IRS to share and

¹¹⁹ ETAAC, Publication 3415, *Annual Report to Congress*, June 2018, Appendix B, available at <https://www.irs.gov/pub/irs-pdf/p3415.pdf>; H.R. Rep. No. 116-39, 1st Sess., p. 64 (2019).

¹²⁰ H.R. Rep. No. 116-39, 1st Sess., p. 64 (2019).

¹²¹ IRS, *2016 Security Summit: Protecting Taxpayers from Identity Theft Tax Refund Fraud*, June 2016, available at https://www.irs.gov/pub/newsroom/6_2016_security_summit_report.pdf.sec.

exchange information. The ISAC enables the IRS and States to work together with external third-parties to serve as an early warning system for tax refund fraud, identity theft schemes, and cybersecurity issues. A third party contractor hosts, maintains and facilitates the web-based leads reporting and information sharing process for the ISAC.

Confidentiality and disclosure of return information

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the IRC ^[122] The definition of return information is very broad and generally includes any information received or collected by the IRS with respect to any person's liability for any tax, penalty, interest or offense.

The term "return information" includes, among other items:

- A taxpayer's identity.
- The nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments.
- Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.^[123]

There are several exceptions to the general rule of confidentiality. Such exceptions include provisions to permit disclosures to state tax administration officials, for IRS employees and officers to make investigative disclosures, and rules to allow one authorized party to disclose to another authorized party with the permission of the Commissioner.^[124] The disclosures to a state entity are made pursuant to written request from the head of the State tax agency, which designates the state tax officials who can receive the information. The information can only be used for state tax purposes, not for general state civil or criminal law enforcement. The State officials can redisclose the

¹²² IRC section 6103(a).

¹²³ IRC section 6103(b)(2)(A).

¹²⁴ IRC sections 6103(d), allows disclosures to states, 6103(k)(6), and allows investigative disclosures. Disclosures also allowed under Treas. Reg. section 6103(p)(2)(B).

information to other officers and employees of the State tax agency, the agency's legal representative, or the agency's contractors for state tax administration purposes only. In addition, the IRS uses this authority to alert state tax administration officials of tax refund fraud schemes.

IRS officers and employees may disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected, or with respect to the enforcement of any other provision of Title 26 of the U.S.C., and such disclosures can only be made under such situations or conditions as prescribed by regulation.^[125] This provision generally cannot be used to provide confidential return information on an industry-wide basis to alert return preparers to potential fraud schemes.

Information that is obtained by a federal, state, or local agency, or its agents or contractors (the first recipient) may be disclosed by the first recipient to another recipient authorized to receive such information (the second recipient).^[126] However, the disclosure must be approved by the Commissioner. The second recipient may receive only such information only for a purpose authorized by and subject to any conditions imposed by IRC section 6103, including applicable safeguards.

Preparer disclosure penalties

There are civil penalties for a tax return preparer who (1) discloses any information furnished to the preparer for, or in connection with, the preparation of such return or (2) uses such information for any purpose other than to prepare or assist in preparing any such return.^[127] There is also a corresponding criminal penalty for knowing or reckless conduct.^[128] The same exceptions from the imposition of the criminal penalty apply for purposes of the civil penalty. In general, the penalty does not apply for disclosures permitted by the Code or pursuant to an order of a court. Further, the penalty does not apply to the use of information in the preparation of, or in connection with the preparation of state and local tax returns and declarations of estimated tax of the person to whom the information relates. There are additional exceptions and circumstances not involving tax preparation in which disclosure and

¹²⁵ IRC section 6103(k)(6); Treas. Reg. section 301.6103(k)(6)-1.

¹²⁶ Treas. Reg. section 301.6103(p)(2)(B)-1.

¹²⁷ IRC section 6713.

¹²⁸ IRC section 7216.

use of a taxpayer's information by a tax return preparer is permitted ^[129]

Penalties for the unauthorized disclosure or inspection of return information

The unauthorized disclosure of a return or return information is a felony punishable by fine of up to \$5,000, five years imprisonment, or both. Unauthorized inspection is a misdemeanor, punishable by a fine of up to \$1,000, one year imprisonment, or both.^[130]

New Federal Law (IRC sections 6103(k) and 7213(a)(2))

ISAC participation and performance metrics

The provision provides that the Secretary, (or the Secretary's delegate), may participate in ISAC to centralize, standardize, and enhance data compilation and analysis, and to facilitate sharing actionable data and information with respect to identity theft tax refund fraud. In addition, the Secretary, or the Secretary's delegate, is required to develop metrics for measuring the success of ISAC in detecting and preventing such fraud.

Disclosure of return information to certain ISAC participants

The provision authorizes the disclosure of specified return information to ISAC participants, who have entered into a written information sharing agreement with the Secretary. The Secretary may disclose specified return information to specified ISAC participants in furtherance of effective federal tax administration relating to the following:

- (1) Detection or prevention of identity theft tax refund fraud.
- (2) Validation of taxpayer identity.
- (3) Authentication of taxpayer returns.
- (4) Detection or prevention of cybersecurity threats to the IRS.

Terminology

Specified ISAC Participant

The term "specified ISAC participant" means any person designated by the Secretary as having primary responsibility for a function performed by the ISAC and any return preparer (or other person) subject to section 7216 and who is a participant in the ISAC. A

¹²⁹ Treas. Reg. sections 301.7216-1, 301.7216-2 and 301.7216-3.

¹³⁰ H.R. Rep. No. 116-39, 1st Sess., pp. 65, 66, 67 (2019.)

person is only a specified ISAC participant if such person has entered into a written information sharing agreement with the Secretary. The information sharing agreement must set forth the terms and conditions for the disclosure of information to such person, including the requirements imposed on such person for the protection and safeguarding of such information, and must require that recipients of return information under the provision are required to affirmatively report to TIGTA any unauthorized access or disclosure of information and any breaches of any system holding the information.

Specified return information

For purposes of the provision, the term “specified return information” means, in the case of a return filed electronically, which is in connection with a case of potential identity theft tax refund fraud, return information related to the electronic filing characteristics of such return. Such characteristics include internet protocol address, device identification, email domain name, speed of completion, method of authentication, refund method, and such other return information relating to the electronic filing characteristics of such return. In addition, with respect to a return prepared by a tax return preparer in connection with a case of potential identity theft refund fraud, “specified return information” also includes identifying information with respect to such tax return preparer, including the preparer taxpayer identification number (PTIN) and electronic filer identification number (EFIN) of such preparer.

With respect to a return for which identity theft refund fraud has been confirmed by the Secretary, (pursuant to such procedures as the Secretary may provide), “specified return information” also includes the taxpayer’s name and identification number as it appears on the return, and any bank account and provided routing information in connection with applying a refund by such return.

Finally, in the case of any cybersecurity threat to the IRS, information similar to that associated with cases of potential identity theft refund fraud (e.g., electronic characteristics and preparer identifying information) are considered specified return information with respect to such threat.

Restriction on use of disclosed information

Any return information received by an ISAC participant is only to be used for the purposes of, and to the extent necessary, in:

- (1) Performing the ISAC function the person is designated to perform.
- (2) Facilitating authorized disclosures to return preparers, who are specified ISAC participants.
- (3) Facilitating disclosures authorized under section 6103(d) to state tax authorities, who are participants in the ISAC.

Data protection, safeguards and penalties

A specified ISAC participant must enter into an information sharing agreement that includes, among other responsibilities, requirements for the protection and safeguarding of information received under the provision. The return information disclosed under the provision is subject to such protections and safeguards as may be required by regulations, other guidance, or written information sharing agreements. Recipients of return information under the provision are subject to civil and criminal penalties for the unauthorized disclosure or inspection of returns or return information."^[131]

Effective Dates

The provision is generally effective on July 1, 2019, and the disclosure provisions are effective for disclosures made on or after July 1, 2019.

California Law (R&TC sections 19542 - 19572)

California does not specifically conform to ISAC processes, but instead has stand-alone disclosure provisions in place. The FTB participates in ISAC information sharing, however, the FTB's authority to share information with ISAC members is limited.¹³²

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2004	Compliance by Contractors with Confidentiality Safeguards
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Background

"[The Internal Revenue Code] permits the disclosure of returns and return information

¹³¹ H.R. Rep. No. 116-39, 1st Sess., pp. 67, 68, 69 (2019).

¹³² R&TC section 19551.

to state agencies, as well as to other federal agencies for specified purposes, [and requires], as a condition of receiving returns and return information, that state agencies (and others) provide safeguards as prescribed ... by regulation that are necessary or appropriate to protect the confidentiality of returns or return information.^[133] [The Internal Revenue Code] also requires that a report be furnished to the Secretary at such time and containing such information as prescribed by the Secretary regarding the procedures established and utilized [to protect the confidentiality of this information].^[134] After an administrative review, the Secretary may take such actions as are necessary to ensure these requirements are met, including the refusal to disclose returns and return information."^[135]

"[In addition], employees of a state tax agency may disclose returns and return information to contractors for tax administration purposes.^[136] These disclosures can be made only to the extent necessary to procure equipment, other property, or services, related to tax administration.^[137] The contractors can make redisclosures of such information to their employees as necessary to accomplish the tax administration purposes of the contract, but only to contractor personnel whose duties require disclosure^[138] Treasury Regulations prohibit redisclosure to anyone other than contractor personnel without the written approval of the IRS."^[139]

"By regulation, all contracts must provide that the contractor will comply with all applicable restrictions and conditions for protecting confidentiality as prescribed by regulation, published rules or procedures, or written communication to the contractor.^[140] Failure to comply with such restrictions or conditions may cause the IRS to terminate or suspend the duties under the contract or the disclosures of returns and return information to the contractor.^[141] In addition, the IRS can suspend disclosures to the state tax agency until the IRS determines that the conditions are or will be satisfied.^[142] The IRS may take such other actions as are deemed necessary to

¹³³ IRC section 6103(p)(4)(D).

¹³⁴ IRC section 6103(p)(4)(E).

¹³⁵ IRC section 6103(p)(4) (flush language) and (7); Treas. Reg. section 301.6103(p)(7)-1; H.R. Rep. No. 116-39, 1st Sess., p. 69 (2019).

¹³⁶ IRC section 6103(n) and Treas. Reg. section 301.6103(n)-1(a). "Tax administration" includes "the administration, management, conduct, direction, and supervision of the execution and application of internal revenue laws or related statutes (or equivalent laws and statutes of a State) . . ." IRC section 6103(b)(4).

¹³⁷ Treas. Reg. section 301.6013(n)-1(a). Such services include the processing, storage, transmission or reproduction of such returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services for purposes of tax administration.

¹³⁸ Treas. Reg. section 301.6103(n)-1(a) and (b). A disclosure is necessary if such procurement or the performance of such services cannot otherwise be reasonably, properly, or economically accomplished without such disclosure. Treas. Reg. section 301.6103(n)-1(b). The regulations limit the quantity of information to that needed to perform the contract.

¹³⁹ Treas. Reg. sec. 301.6103(n)-1(a); H.R. Rep. No. 116-39, 1st Sess., pp. 69, 70 (2019).

¹⁴⁰ Treas. Reg. sec. 301.6103(n)-1(e)(3).

¹⁴¹ Treas. Reg. sec. 301.6103(n)-1(e)(4).

¹⁴² *Ibid.*

ensure that such conditions or requirements are or will be satisfied."^[143]

New Federal Law (IRC section 6103(p))

"The provision requires that a state, local, or federal agency conduct on-site reviews every three years of all of its contractors or other agents receiving federal returns and return information. If the duration of the contract or agreement is less than three years, a review is required at the mid-point of the contract. The purpose of the review is to assess the contractor's efforts to safeguard federal returns and return information. This review is intended to cover secure storage, restricting access, computer security, and other safeguards deemed appropriate by the Secretary. Under the provision, the state, local, or federal agency is required to submit a report of its findings to the IRS and certify annually that such contractors and other agents are in compliance with the [safeguarding] requirements.... The certification is required to include the name and address of each contractor or other agent, the duration of the contract, and a description of the contract.... This provision does not apply to contracts for purposes of federal tax administration. The provision does not affect the right of the IRS to [1)] conduct safeguard reviews of state, local, or federal agency contractors or other agents, [or 2)] initially approve the safeguard language in the contract and the safeguards in place prior to any disclosures made in connection with such contracts or agreements."^[144]

Effective Dates

The provision is effective for disclosures made after December 31, 2022.

California Law (None)

California does not conform to the safeguarding disclosure rules related to information provided to contractors, but rather has stand-alone procedures in place to ensure the safeguarding of federal return and return information.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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¹⁴³ *Ibid*: H.R. Rep. No. 116-39, 1st Sess., p. 70 (2019).

¹⁴⁴ H.R. Rep. No. 116-39, 1st Sess. pp. 70, 71 (2019).

2005 Identity Protection Personal Identification Numbers

Background

The IRS launched a pilot program in 2011 “to test the Identity Protection Personal Identification Number (IP PIN). The IP PIN is a unique six-digit identifier that authenticates a return filer as the legitimate taxpayer at the time the return is filed. [It] allows taxpayers affected by identity theft to avoid delays in filing returns and receiving refunds. The IRS verifies the presence of the IP PIN at the time of filing, and rejects returns associated with a taxpayer's account where an IP PIN has been assigned but is missing. [Almost 3.5 million taxpayers, who had identity theft markers on their tax accounts, were issued an IP PIN for the 2018 filing season.^[145] The use of an IP PIN has been a useful tool in preventing identity theft refund fraud].”^[146]

“[The IRS also started a limited pilot program in 2014 where] taxpayers who obtained an electronic filing PIN through an IRS authentication website, and lived in the District of Columbia, Florida or Georgia, were provided an opportunity to obtain an IP PIN.^[147] These locations were selected because they had the highest per capita rate of tax-related identity theft... [These residents did] not need to be identity theft victim to participate in the pilot program.”^[148] The IRS recently expanded the program to resident taxpayers of Michigan, California, Maryland, Nevada, Delaware, Illinois, and Rhode Island.

New Federal Law (Uncodified section 2005)

“Within five years of the date of enactment, the Secretary, or the Secretary's delegate, is required to establish a program to issue an IP PIN to any individual, residing in the United States who requests one, after the Secretary verifies the individual's identity. For each calendar year beginning after the date of enactment, the Secretary is required to expand the program as the Secretary deems appropriate, provided that the total number of states served by the program continues to increase.”^[149]

¹⁴⁵ TIGTA, Department of the Treasury, *Results of the 2018 Filing Season* (TIGTA 2019-40-013), December 19, 2018, available at <https://www.treasury.gov/tigta/auditreports/2019reports/201940013fr.pdf>.

¹⁴⁶ H.R. Rep. No. 116-39, 1st Sess., pp. 71, 72 (2019).

¹⁴⁷ IRS, *FAQs about the Identity Protection Personal Identification Number (IP PIN)*, available at <https://www.irs.gov/identity-theft-fraud-scams/frequently-asked-questions-about-the-identity-protection-personal-identification-number-ip-pin#q2>.

¹⁴⁸ H.R. Rep. No. 116-39, 1st Sess., p. 72 (2019).

¹⁴⁹ H.R. Rep. No. 116-39, 1st Sess., p. 72 (2019).

Effective Dates

The provision is effective on July 1, 2019.

California Law (None)

California does not conform to this uncodified section relating to the issuance of an IP PIN.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2006	Single Point of Contact for Tax-Related Identity Theft Victims
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Background

"Tax-related identity theft generally [involves] refund fraud or employment fraud. In refund fraud, a perpetrator obtains a taxpayer's identifying information, submits an individual income tax return using a falsified Form W-2, Wage and Tax Statement, and fraudulently claims a refund. In employment fraud, stolen identifying information is used to obtain employment. Returns ... filed using the stolen identifying information may be based on actual wages and withholding of the identity thief. Victims of employment fraud include the individuals whose identifying information was stolen as well as the businesses whose systems may have been breached to obtain the identifying information."^[150]

"[T]he IRS first established the Identity Protection Specialized Unit (IPSU) to assist victims of identity theft, but taxpayers were also referred to other operating units of the IRS to deal with various aspects of their identity theft cases.^[151] [The Identity Theft Victim Assistance (IDTVA) organization was next established, which] is staffed with specially trained employees, who are able to assess each case, identify issues, and assist the taxpayer in resolving issues...getting the correct return filed, [and issuing correct refunds] ^[152] [In addition], the IDTVA organization's work is coordinated by the IRS's Identity Protection Program through the auspices an oversight office within the Wage and Investment Operating Division.^[153] If a victim thinks he or she is not being

¹⁵⁰ H.R. Rep. No. 116-39, 1st Sess., p. 73 (2019).

¹⁵¹ TIGTA, Department of the Treasury, *Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service* (TIGTA 2012-40-050), May 2012.

¹⁵² A description of the services provided by the IDTVA organization is available at <https://www.irs.gov/uac/Newsroom/IRS-Identity-Theft-Victim-Assistance-How-It-Works>.

¹⁵³ IRS, IRM, *Identity Protection and Victim Assistance*, Ch. 23, section 25.23.1 et seq., October 2018.

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properly served by the IRS or the IDTVA organization, the victim may be eligible for assistance from the Taxpayer Advocate Service (TAS). The TAS would assign a case advocate to the taxpayer's account to assist the taxpayer."^[154]

New Federal Law (Uncodified section 2006)

"The provision requires the Secretary to establish procedures to implement a single point of contact for taxpayers adversely affected by identity theft, [which would provide a team of specially trained employees who can work across IRS functions to resolve problems for the victim and who are accountable for handling the case to completion."^[155]

Effective Dates

The provision is effective on July 1, 2019.

California Law (None)

California does not conform to this uncodified section. However, the FTB maintains and publishes on its public web-site dedicated methods of contact for taxpayers and businesses adversely affected by identity theft.¹⁵⁶ This ensures access for all taxpayers, consistent treatment, and assistance in resolving these cases.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2007	Notification of Suspected Identity Theft
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Background

"[Internal Revenue Code] Section 6103 provides that returns and return information are confidential and may not be disclosed by the IRS, other federal employees, state employees, and certain others having access to the information except as provided."^[157] The definition of "return information" is very broad and includes any information gathered by the IRS with respect to a person's liability or possible liability

¹⁵⁴ H.R. Rep. No. 116-39, 1st Sess., p. 73 (2019).

¹⁵⁵ H.R. Rep. No. 116-39, 1st Sess., p. 73 (2019).

¹⁵⁶ Link to identity theft info on the FTB's public website. <https://www.ftb.ca.gov/help/scams/identity-theft.html>

¹⁵⁷ IRC section 6103(a).

for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.^[158] Thus, information gathered by the IRS in connection with an investigation [for a U.S.C.] Title 26 offense, such as fraud, is the return information of the person being investigated and is subject to the confidentiality restrictions of section 6103."^[159]

"As an exception to section 6103's general rule of confidentiality, the Code permits a taxpayer to receive his or her own tax return, and also can receive his or her return information if the Secretary determines that such disclosure would not seriously impair federal tax administration.^[160] With respect to fraudulent tax returns, if the victim's name and Social Security Number (SSN) are listed as either the primary or secondary taxpayer on a fraudulent return, a victim of identity theft, or a person authorized to obtain the identity theft victim's tax information, may request a redacted copy (one with some information blacked-out) of a fraudulent return that was filed and accepted by the IRS using the identity theft victim's name and SSN."^[161]

"In cases not involving violations of Title 26, under a Privacy Act Notice, TIGTA is allowed to disclose information to complainants, victims, or their representatives (defined to be a complainant's or victim's legal counsel or a senator or representative whose assistance the complainant or victim has solicited) concerning the status and/or results of an investigation or case arising from the matters of which they complained and/or of which they were a victim. Information concerning the status of the investigation or case is limited to whether the investigation or case is open or closed, and the results are limited dependent on whether the allegations made in the complaint were substantiated or were not substantiated and, if the subject has exhausted all reasonable appeals, any action taken."^[162]

New Federal Law (IRC section 7529)

"If the Secretary determines that there has been or may have been an unauthorized use of the identity of any individual, the provision requires the Secretary to, without jeopardizing an investigation relating to tax administration, as soon as practicable, notify the individual of such determination, and:

- (1) Provide instructions to the individual about filing a report with law enforcement.

¹⁵⁸ IRC section 6103(b)(2).

¹⁵⁹ H.R. Rep. No. 116-39, 1st Sess., p. 74 (2019).

¹⁶⁰ IRC section 6103(e)(1) and (7). The IRC also permits the disclosure of returns and return information to such persons or persons the taxpayer may designate, if the request meets the requirements of the treasury regulations and if it is determined that such disclosure would not seriously impair federal tax administration. (IRC section 6103(c).)

¹⁶¹ See IRS, Instructions for Requesting Copy of Fraudulent Returns, March 18, 2019, available at <https://www.irs.gov/individuals/instructions-for-requesting-copy-of-fraudulent-returns>; H.R. Rep. No. 116-39, 1st Sess., p. 74 (2019).

¹⁶² Refer to 75 Federal Register 20715, April 20, 2010, relating to TIGTA Office of Investigation files; H.R. Rep. No. 116-39, 1st Sess. p. 74 (2019).

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- (2) Identify any steps to be taken by the individual to allow investigating law enforcement officials to access the taxpayer's personal information.
- (3) Provide information regarding actions the individual may take to protect themselves from harm relating to the unauthorized use.
- (4) Offer identity protection measures to the individual, such as the use of an IP PIN."^[163]

The provision also requires when this information is provided or, if not available at such time, as soon as it is practicable, that the Secretary issues additional notifications to the individual, or the individual's designee, regarding whether:^[164]

- (1) An investigation has been initiated in regards to the unauthorized use.
- (2) The investigation substantiated an unauthorized use of the taxpayer's identity.
- (3) Any action has been taken with respect to the individual who committed the substantiated violation, including whether any referral has been made for criminal prosecution of the individual, and, to the extent such information is available, whether that person has been criminally charged by indictment or information.

The unauthorized use of an identity includes the unauthorized use by an individual to obtain employment (herein "employment-related identity theft"), and when an SSN used on an information return or tax return does not correspond with the name on the information return or tax return reporting the income.

In addition, "[t]his provision requires the Secretary to examine the statements, information returns, and tax returns... for any evidence of employment-related identity theft, whether such statements or returns are submitted electronically or on paper. The provision amends the Social Security Act to require the Commissioner of Social Security to request information described in the provision not less than annually. The provision also requires that the IRS establish procedures to ensure that income reported in connection with the unauthorized use of a taxpayer's identity is not taken into account in determining any penalty for underreporting of income by the victim of identity theft."^[165]

Effective Dates

The provision applies to determinations made after the date that is 6 months after July 1, 2019.

¹⁶³ H.R. Rep. No. 116-39, 1st Sess. p. 75 (2019).

¹⁶⁴ H.R. Rep. No. 116-39, 1st Sess. pp. 75, 76 (2019).

¹⁶⁵ H.R. Rep. No. 116-39, 1st Sess., pp. 75, 76 (2019).

California Law (R&TC section 19542.1)

California does not conform to IRC section 7529. However, the FTB has procedures in place to notify the taxpayer of identity theft by mail and provide limited information. In addition, notification is required if criminal charges are filed for a willful unauthorized inspection or unwarranted disclosure.¹⁶⁶

Impact on California Revenue

Not applicable.

Section Section Title

2008 Guidelines for Stolen Identity Theft Refund Fraud Cases

Background

Identity theft includes when a perpetrator obtains someone else's identifying information and submits an individual income tax return, using the name and SSN of the victim with a falsified Form W-2, Wage and Tax Statement, and fraudulently claims a refund. Stolen identifying information can also be used to obtain employment, and file a return using the stolen identifying information with actual wages and withholding. "Victims of the fraud include the individuals whose identifying information was stolen as well as the businesses whose systems may have been breached to obtain that identifying information."^[167]

The IRS's IRM describes its procedures for addressing these fraudulent situations, coordinated by the IRS's Identity Protection Program through the auspices of an oversight office.^[168] "In the 2014 Annual Report to Congress, the NTA included a review of fraudulent refund claims involving the theft of a taxpayer's identity.^[169] The review found that such cases involved multiple issues requiring coordination among several IRS business units and took approximately six months to resolve. Identity theft victims were required to deal with multiple persons within the IRS to resolve the issues, either because a case involved multiple business units or was transferred among multiple employees within a business unit."^[170]

¹⁶⁶ R&TC section 19542.1.

¹⁶⁷ H.R. Rep. No. 116-39, 1st Sess., p. 76 (2019).

¹⁶⁸ IRS, IRM, *Identity Protection and Victim Assistance*, Ch. 23, section 25.23.1 et seq., October 2018.

¹⁶⁹ National Taxpayer Advocate, "Identity Theft Case Review Report: A Statistical Analysis of Identity Theft Cases Closed in June 2014," 2014 Annual Report to Congress, available at <http://www.taxpayeradvocate.irs.gov/reports-to-congress/2014-annual-report-to-congress/research-studies>.

¹⁷⁰ H.R. Rep. No. 116-39, 1st Sess., p. 77 (2019).

New Federal Law (Uncodified section 2008)

“The provision requires the Secretary, or the Secretary’s delegate, in consultation with the NTA, to develop and implement publicly available casework guidelines to handle refund fraud cases..., reducing the administrative burdens on victims of identity theft. The guidelines may address both procedures and metrics for determining whether the procedures are successfully implemented.

Guidelines may consider the:

- (1) Standards for opening, assigning, reassigning, or closing a case.
- (2) Average length of time in which these cases should be resolved.
- (3) Average length of time a victim entitled to a tax refund may have to wait to receive such refund.
- (4) Number of IRS offices and employees with whom a victim should interact to resolve a case.^[171]

Effective Dates

The provision is effective July 1, 2019, with guidelines to be implemented within one year of July 1, 2019.

California Law (None)

California does not conform to this uncodified section. However, the FTB has procedures in place to address all aspects of an account for which a victim of identity theft has been impacted with the goal of resolving the account with one FTB interaction.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2009	Increased Penalty for Improper Disclosure or Use of Information by Preparers of Returns
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Background

“The Code provides both civil and criminal penalties for a tax return preparer, who discloses any information furnished to the preparer for, or in connection with, the

¹⁷¹ H.R. Rep. No. 116-39, 1st Sess., p. 77 (2019).

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preparation of such return, or uses such information for any purpose other than to prepare or assist in preparing, any such return. The civil penalty is \$250 for each unauthorized disclosure or use, up to \$10,000 per calendar year.^[172] The corresponding criminal penalty provides that knowing or reckless conduct is a misdemeanor, subject to a fine up to \$1,000, one year of imprisonment, or both, together with the costs of prosecution.”^[173]

For purposes of these penalties, “taxpayer identity” is defined as the person’s name, mailing address, identifying number, or a combination thereof, on the filed return.^[174]

New Federal Law (IRC sections 6713, 7216(a))

“The provision increases the civil penalty on the unauthorized disclosure or use of information by tax return preparers from \$250 to \$1,000 for cases in which the disclosure or use is made in connection with a crime relating to the misappropriation of another person’s taxpayer identity (“taxpayer identity theft”). In addition, the calendar year limitation is increased from \$10,000 to \$50,000, and is applied separately with respect to each disclosure or use made in connection with taxpayer identity theft.

The provision also increases the criminal penalty for knowing or reckless conduct to \$100,000 in the case of disclosures or uses in connection with taxpayer identity theft.”^[175]

Effective Dates

The provision applies to disclosures or uses on or after July 1, 2019.

California Law (R&TC sections 19720 and 19721)

California does not conform to IRC sections 6713 and 7216, related to disclosure or use of information by preparers of returns and instead has stand-alone laws, for identity theft and fraudulently obtained refunds. For acts involving fraudulently obtained refunds, there is a penalty of up to \$5,000, a fine up to \$10,000 plus the cost of the investigation and prosecution, and up to one year of imprisonment.¹⁷⁶ In addition, when the act includes the intent to defraud, there is a penalty of up to \$10,000; and the person can be punishable by imprisonment for up to one year, and

¹⁷² IRC section 6713.

¹⁷³ IRC section 7216; H.R. Rep. No. 116-39, 1st Sess., pp. 77, 78. (2019).

¹⁷⁴ IRC section 6103(b)(6).

¹⁷⁵ H.R. Rep. No. 116-39, 1st Sess., p. 78 (2019).

¹⁷⁶ R&TC section 19720.

can be fined up to \$50,000, or both, plus the cost of the investigation and prosecution.¹⁷⁷

Impact on California Revenue

Not applicable.

¹⁷⁷ R&TC section 19721.

<u>Section</u>	<u>Section Title</u>
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2101	Management of IRS Information Technology
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Background

“The [Internal Revenue] Code describes duties and responsibilities for the Commissioner, the Chief Counsel, and the OTA of the IRS.^[178] It does not presently enumerate duties and responsibilities of an IRS Chief Information Officer (IRS CIO).

Also, the IRC does not explicitly provide for development and implementation of a multiyear strategic plan for the information technology needs of the IRS, and does not require verification and validation of major acquisitions of information technology by the IRS, including the Customer Account Data Engine 2 (CADE 2) and the Enterprise Case Management System (ECM).”^[179]

New Federal Law (IRC section 7803)

“Under the provision, the Commissioner is required to appoint an IRS CIO. The Commissioner and the Secretary will act through the IRS CIO with respect to the development, implementation, and maintenance of information technology for the IRS. The IRS CIO will be responsible for the development, implementation, and maintenance of information technology for the IRS, for ensuring that the information technology of the IRS is secure and integrated, for maintaining operational control of all information technology for the IRS, for acting as the principal advocate for the information technology needs of the IRS, and for consulting with the Chief Procurement Officer of the IRS to ensure that the information technology acquired for the IRS is consistent with the strategic plan, described below.

The IRS CIO will also be responsible for developing and implementing a multiyear strategic plan for the information technology needs of the IRS. This plan should include performance measures of such technology and its implementation, and a plan for an integrated enterprise architecture of the information technology of the IRS. It should take into account the resources needed to accomplish such a plan, as well as planned major acquisitions of information technology by the IRS. The plan should also align with the needs and strategic plan of the IRS. The IRS CIO will review and update this plan at least once a year, taking into account the development of new information technology and the needs of the IRS.

Under the provision, the Commissioner will develop plans for each phase of CADE 2, except phase one, and enter into a contract with an independent reviewer to verify and validate implementation plans developed for each phase, except phase one,

¹⁷⁸ IRC section 7803.

¹⁷⁹ H.R. Rep. No. 116-39, 1st Sess., p. 78 (2019).

and for the ECM. Furthermore, the Chief Procurement Officer of the IRS is directed to regularly consult with the IRS CIO and to identify all significant IRS information technology acquisitions in excess of \$1,000,000, providing written notification to the IRS CIO of each such acquisition in advance of acquisition.

The verification and validation of phase two of CADE 2 and the ECM are to be completed within one year after the date of enactment. The development of plans for all subsequent phases of CADE 2 should be completed within one year after the date of enactment and the verification and validation of each phase should be completed within one year after the date on which the plan for such phase is completed.”^[180]

Effective Dates

The provision is effective on July 1, 2019.

California Law (None)

California does not conform to IRC section 7803, relating to management of IRS information technology.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2102	Internet Platform for Form 1099 Filings
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Background

“The [Internal Revenue] Code does not presently require the IRS to make available an internet platform for the preparation or filing of information returns, such as the Form 1099 series.”^[181]

New Federal Law (Uncodified section 2102)

“The provision requires the Secretary of the Treasury (or his or her delegate) to make available, by January 1, 2023, an internet website or other electronic medium (the website), with a user interface and functionality similar to the Business Services Online

¹⁸⁰ H.R. Rep. No. 116-39, 1st Sess., pp. 79, 80 (2019).

¹⁸¹ H.R. Rep. No. 116-39, 1st Sess., p. 80 (2019).

Suite of Services provided by the SSA.^[182] The website will allow persons, with access to resources and guidance provided by the IRS, to prepare, file, and distribute Forms 1099, and maintain a record of completed, filed, and distributed Forms 1099. The Secretary is required to ensure that the services provided on the website are not a replacement for services currently provided by the IRS, and that the website complies with applicable security standards."^[183]

Effective Dates

The provision is effective on July 1, 2019.

California Law (None)

California does not conform to this uncodified section related to Internet Platform for Form 1099 filings.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2103	Streamlined Critical Pay Authority for Information Technology Positions
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Background

"The IRS is currently subject to the personnel rules and procedures set forth in Title 5 of the U.S.C. Under these rules, IRS employees generally are classified under the General Schedule or the Senior Executive Service.

The RRA98 provided the IRS with certain personnel flexibilities, one of which was the streamlined critical pay authority.^[184] This authority was originally provided for 10 years; it was extended on two occasions and ultimately expired on September 30, 2013.^[185]

Under RRA98, the Secretary of the Treasury, or his delegate, was authorized to fix the compensation of, and appoint up to 40 individuals to, designated critical technical

¹⁸² Available at <http://www.ssa.gov/bsa/bsowelcome.htm>.

¹⁸³ H.R. Rep. No. 116-39, 1st Sess., pp. 80, 81 (2019).

¹⁸⁴ P.L. 105-206, 112 Stat. 712 (1998).

¹⁸⁵ In December 2007, the Consolidated Appropriations Act, 2008, P.L. 110-161, 121 Stat. 1844, (2008), extended the original deadline to July 23, 2013. Subsequently, the Consolidated and Further Continuing Appropriations Act 2013, P.L. 113-6, 127 Stat. 198 (2013), extended the deadline to September 30, 2013.

and professional positions, provided that: (1) the positions require expertise of an extremely high level in a technical or professional field and are critical to the IRS; (2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position; (3) designation of such positions is approved by the Secretary; (4) the terms of such appointments are limited to no more than four years; (5) appointees to such positions are not IRS employees immediately prior to such appointment; and (6) the total annual compensation for any position (including performance bonuses) does not exceed the rate of pay of the Vice President of the U.S.

These appointments would not be subject to the otherwise applicable requirements under Title 5. All such appointments would be excluded from the collective bargaining unit and the appointments would not be subject to approval of the OMB or the Office of Personnel Management.

Also, OMB was authorized to approve increases in the pay level for certain critical pay positions requested by the Secretary. These critical pay positions would be critical, technical and professional positions other than those designated under the streamlined authority described above. OMB was authorized to approve requests for critical position pay up to the highest total compensation that does not exceed the rate of pay of the Vice President of the U.S.

According to the [Treasury Inspector General for Tax Administration] (TIGTA), during the years in which it had streamlined critical pay authority, the IRS exercised that authority to fill 168 positions, the majority of which were in the Information Technology function of the IRS."^[186]

New Federal Law (IRC section 7812)

"The provision reinstates streamlined critical pay authority at IRS for positions in its information technology operations that are necessary to ensure the functionality of such operations. Such authority is reinstated during the period beginning on the date of the enactment of IRC section 7812, and ending on September 30, 2025, for appointees to such positions who were not IRS employees prior to the date of enactment of this Act.

The provision reinstates the ability to provide payment for recruitment, retention, relocation incentives, and relocation expenses for positions in information technology operations at the IRS. Such authority is reinstated during the period beginning on the

¹⁸⁶ TIGTA, "The Internal Revenue Service's Use of its Streamlined Critical Pay Authority," Ref. No. 2015-IE-R001, December 5, 2014, available at <https://www.treasury.gov/tigta/iereports/2015reports/2015ier001fr.pdf>; H.R. Rep. No. 116-39, 1st Sess., pp. 81, 82 (2019).

date of the enactment of IRC section 7812, and ending on September 30, 2025.

The provision also reinstates the ability to pay performance bonuses for senior executives who have program management responsibility over the information technology operations at the IRS. Such authority is reinstated during the period beginning on the date of the enactment of IRC section 7812, and ending on September 30, 2025.”^[187]

Effective Dates

The provision is effective for payments made on or after July 1, 2019.

California Law (None)

California does not conform to IRC section 7812, relating to streamlined critical pay authority for information technology positions.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2201	Disclosure of Taxpayer Information for Third-Party Income Verification
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Background

“As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by [U.S.C.] Title 26.^[188] Under section 6103(c), the IRS may disclose [this taxpayer information] to a third-party [as consented by the taxpayer].^[189] A request for consent to disclosure in written form must be a separate written document pertaining solely to the authorized disclosure..., signed and dated by the taxpayer.”^[190] It must indicate the:

- (1) Taxpayer’s taxpayer identity information.

¹⁸⁷ TIGTA, *The Internal Revenue Service’s Use of its Streamlined Critical Pay Authority*,” Ref. No. 2015-IE-R001, December 5, 2014, available at <https://www.treasury.gov/tigta/iereports/2015reports/2015ier001fr.pdf>; H.R. Rep. No. 116-39, 1st Sess., pp. 81, 82 (2019).

¹⁸⁸ IRC section 6103(a).

¹⁸⁹ IRC section 6103(c), and Treas. Reg. section 301.6103(c)-1. The regulations also specify the requirements for a nonwritten request for information or consent to disclosure to allow a third party to provide information or assistance relating to the taxpayer’s return or to a transaction or other contact between the taxpayer and the IRS.

¹⁹⁰ H.R. Rep. No. 116-39, 1st Sess., p. 81 (2019).

- (2) Identity of the person or persons to whom disclosure is to be made.
- (3) Type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed.
- (4) Applicable taxable year or years.

The IRS's Income Verification Express Service (IVES) is used by mortgage lenders and other financial organizations to confirm the borrower's income during the processing of a loan application.^[191] IVES customers fax to a specified IRS office a signed Form 4506-T, Request for Transcript of Tax Return, or the Form 4506T-EZ, Short Form Request for Individual Tax Return Transcript. The IVES system provides three types of transcript information: (1) a return transcript; (2) a Form W-2, Wage and Tax Statement, transcript information; or (3) a Form 1099, transcript information.^[192] There is a \$2.00 fee per transcript requested, and the requested transcript information is delivered to a secure mailbox on the IRS's e-Services electronic platform, generally within two to three business days. To participate, companies must file a Form 13803, Application to participate in the Income Verification Express Services (IVES) Program.^[193] After the applicant passes an IRS suitability check, the IRS notifies the applicant of acceptance to participate in the program.^[194]

New Federal Law (Uncodified section 2201)

The provision requires the Secretary, or the Secretary's delegate, to implement a fully automated qualified disclosure program that complies with applicable security standards and guidelines on the Internet. A "qualified disclosure" means the disclosure currently available through the IVES program, pursuant to section 6103(c), to a person seeking to verify the taxpayer's income, who is in the process of a loan application.

The Secretary is authorized for a two-year period, beginning six months after the date of enactment, to assess and collect a fee for qualified disclosures at a rate determined by the Secretary to sufficiently cover the costs related to implementing the program, including the costs of any necessary infrastructure or technology.

"Not later than one year after the close of the two-year period, the Secretary is

¹⁹¹ IRS, IVES, <https://www.irs.gov/individuals/international-taxpayers/income-verification-express-service>, January 31, 2019.

¹⁹² There are various 1099 forms: Form 1099-B, Proceeds From Broker or Barter Exchange Transactions; Form 1099-DIV, Dividends and Distributions; 1099-INT, Interest Income; 1099- MISC, Miscellaneous Income; 1099-OID, Original Issue Discount; or 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

¹⁹³ Applicants must also choose one or more of the reasons listed on the form as the basis for using the IVES program: mortgage services, background check, credit check, banking service, licensing requirement or other (must be specified).

¹⁹⁴ H.R. Rep. No. 116-39, 1st Sess., pp. 83, 84 (2019).

required to implement the program."^[195]

Effective Dates

The provision is effective on July 1, 2019.

California Law (None)

California does not conform to this uncodified act section and does not provide an IVES program.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2202	Limit Redislosures and Uses of Consent-Based Disclosures of Tax Return Information
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Background

"As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by [U.S.C.] Title 26."^[196] The IRS may disclose this taxpayer information to a third party as consented by the taxpayer.^[197] If in written form, the consent to disclosure must be signed and dated by the taxpayer and must indicate the:

- (1) Taxpayer's taxpayer identity information.
- (2) Identity of the person or persons to whom disclosure is to be made.
- (3) Type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed.
- (4) Applicable taxable year or years.

Currently, the IRC does not require that a recipient receiving returns or return information by consent maintain the confidentiality of the information received, and can use the information for purposes other than for which the information was

¹⁹⁵ H.R. Rep. No. 116-39, 1st Sess., p. 84 (2019).

¹⁹⁶ IRC section 6103(a); H.R. Rep. No. 116-39, 1st Sess., p. 85 (2019).

¹⁹⁷ IRC section 6103(c), and Treas. Reg. section 301.6103(c)-1. The regulations also specify the requirements for a nonwritten request for information or consent to disclosure to allow a third party to provide information or assistance relating to the taxpayer's return or to a transaction or other contact between the taxpayer and the IRS.

solicited from the taxpayer.^[198]

New Federal Law (IRC section 6103(c))

The provision provides that “persons designated by the taxpayer to receive return information shall not use the information for any purpose other than the express purpose for which consent was granted, and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer.”^[199]

Effective Dates

The provision is effective for disclosures made six months after July 1, 2019.

California Law (R&TC section 19542 - 19572)

California does not specifically conform to IRC section 6103(c), related to the limitation of redisclosures and uses of consent-based disclosures of tax return information, but rather has stand-alone disclosure provisions related to the safeguarding of confidential return or return information.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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2301	Electronic Filing of Returns
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Background

“RRA98 states a Congressional policy to promote the paperless filing of federal tax returns. Section 2001 (a) of RRA98 set a goal for the IRS to have at least 80 percent of all federal tax and information returns filed electronically by 2007.^[200] Section 2001 (b) of RRA98 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law requires the Secretary to issue regulations regarding electronic filing and

¹⁹⁸ H.R. Rep. No. 116-39, 1st Sess., pp. 85, 86. (2019).

¹⁹⁹ H.R. Rep. No. 116-39, 1st Sess., p. 86 (2019).

²⁰⁰ The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal, projected an overall e-filing rate of 80.1 percent in the 2017 filing season based on all federal returns. See Electronic Tax Administration Advisory Committee, *Annual Report to Congress*, June 2017, IRS Pub. 3415, page 5.

specifies certain limitations on the rules that may be included in such regulations.^[201] The statute requires that federal income tax returns prepared by specified tax return preparers be filed electronically^[202] and further requires that all partnerships with more than 100 partners be required to file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at a reasonable cost.

The regulations require corporations that have assets of \$10 million or more and file at least 250 returns during a calendar year to file electronically their Form 1120/1120S income tax returns (U.S. Corporation Income Tax Return/U.S. Income Tax Return for an S Corporation) and Form 990 information returns (Return of Organization Exempt from Income Tax) for tax years ending on or after December 31, 2006.^[203] In determining whether the 250 returns threshold is met, income tax, excise tax, employment tax and information returns filed within one calendar year are counted.

The IRC provides that failure to comply with information reporting requirements is subject to a failure to file correct information return penalty but provides a *de minimis* exception for failures that are attributable solely to noncompliance with the electronic filing requirements. Under the *de minimis* exception, failure to satisfy the electronic filing requirements results in imposition of a failure to file penalty^[204] if a failure arises with respect to (1) more than 250 information returns; (2) more than 100 information returns in the case of a partnership having more than 100 partners; or (3) a return described in Section 6011(e)(4).^[205] Accordingly, there is a penalty waiver on the electronic filing requirements on the first 250 information returns or in the case of the first 100 information returns in partnerships with more than 100 partners."^[206]

New Federal Law (IRC section 6011)

"The provision relaxes the current restrictions on the authority of the Secretary to mandate electronic filing based on the number of returns required to be filed by a taxpayer in a given taxable period. First, it phases in a reduction in the threshold requirement that taxpayers have an obligation to file a specified number of returns and statements during a calendar year in order to be subject to a regulatory

²⁰¹ IRC section 6011(e). Section 6011(e) uses the term "magnetic media" and Treas. Reg. section 301.6011-2 defines this term to include electronic filing.

²⁰² IRC section 6011(e)(3)(B) defines a "specified tax return preparer" as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.

²⁰³ Treas. Reg. sections 301.6011-5 and 301.6033-4.

²⁰⁴ IRC section 6721.

²⁰⁵ IRC section 6724.

²⁰⁶ H.R. Rep. No. 116-39, 1st Sess., pp. 86, 87 (2019).

mandate. That threshold is reduced from 250 to 100 in the case of calendar year 2021, and from 100 to 10 in the case of calendar years after 2021. Notwithstanding these thresholds, in the case of a partnership the applicable number is 200 in the case of calendar year 2018, 150 in the case of calendar year 2019, 100 in the case of calendar year 2020, and 50 in the case of calendar year 2021.^[207]

The provision authorizes the Secretary to waive the requirement that a federal income tax return prepared by a specified tax return preparer be filed electronically if a tax return preparer applies for a waiver and demonstrates that the inability to file electronically is due to lack of internet availability (other than dial-up or satellite service) in the geographic location in which the return preparation business is operated.

The provision modifies the special rule for failure to meet magnetic media requirements to conform to the changes made above."^[208]

Effective Dates

The provision is effective on July 1, 2019.

California Law (R&TC sections 18407, 18409 and 18621.10)

California generally conforms to IRC section 6011, relating to general requirement of return, statement, or list, as of the "specified date" of January 1, 2015,²⁰⁹ and has stand-alone state law requiring the FTB to prescribe regulations providing standards for determining which returns are required to be filed on magnetic media (or in other machine-readable forms), and such standards apply to taxpayers required to file returns on magnetic media (or in other machine-readable forms) to the IRS as of the "specified date" of January 1, 2015.²¹⁰ However, California does not conform to the federal change which phases in reductions in the number of returns and statements required to be filed electronically.

Impact on California Revenue

Not applicable.

²⁰⁷ There is no change to the requirement that partnerships having more than 100 partners must file electronic returns notwithstanding these thresholds.

²⁰⁸ H.R. Rep. No. 116-39, 1st Sess., p. 88 (2019).

²⁰⁹ For taxable years beginning on or after January 1, 2015, R&TC section 18407 conforms to IRC section 6011, relating to general requirement of return, statement, or list, as of the "specified date" of January 1, 2015, with modifications.

²¹⁰ R&TC section 18409.

<u>Section</u>	<u>Section Title</u>
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2302	Uniform Standards for the Use of Electronic Signatures for Disclosure Authorizations To, and Other Authorizations of, Practitioners
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Background

Disclosure of return information by consent of the taxpayer

“As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code.^[211] Under section 6103(c), the IRS may disclose the return or return information of a taxpayer to a third party designated by the taxpayer in a request for or consent to such disclosure. Treasury regulations set forth the requirements for such consent.^[212] A request for consent to disclosure in written form must be a separate written document pertaining solely to the authorized disclosure. At the time the consent is signed and dated by the taxpayer, the written document must indicate (1) the taxpayer's taxpayer identity information; (2) the identity of the person(s) to whom disclosure is to be made; and (3) sufficient facts underlying the request for information or assistance to enable the IRS to determine the nature and extent of the information or assistance requested and the return or return information to be disclosed in order to comply with the taxpayer's request. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer.”^[213]

Electronic Signatures

“The Secretary is required to develop procedures for the acceptance of signatures in digital and other electronic form.^[214] Until such time as such procedures are in place, the Secretary may waive the requirement of a signature for, or provide for alternative methods of signing or subscribing, a particular type or class of return, declaration, statement or other document required or permitted to be made or written under the internal revenue laws and regulations. The Secretary is required to publish guidance as appropriate to define and implement any waiver of the signature requirements or alternative method of signing or subscribing. The IRS currently accepts electronic signatures for some applications, such as the Income Verification Express Services (“IVES”) program.”^[215]

²¹¹ There is no change to the requirement that partnerships having more than 100 partners must file electronic returns notwithstanding these thresholds.

²¹² Treas. Reg. sec. 301.6103(c)-1.

²¹³ H.R. Rep. No. 116-39, 1st Sess., pp. 88, 89 (2019).

²¹⁴ IRC section 6061.

²¹⁵ IRS, IVES Electronic Signature Requirements (August 2, 2018), available at <https://www.irs.gov/individuals/international-taxpayers/income-verification-express-services-ives-electronic-signature-requirements>; H.R. Rep. No. 116-39, 1st Sess., pp. 88, 89 (2019).

IRS Forms

"Form 2848 (Power of Attorney and Declaration of Representative) is used to authorize an individual to represent the taxpayer before the IRS. The individual must be eligible to practice before the IRS.

Form 8821 (Tax Information Authorization) authorizes an individual or organization to request and inspect a taxpayer's confidential tax return information. Form 4506-T (Request for Transcript of Tax Return) authorizes an individual or organization to request and inspect transcripts of a taxpayer's confidential return information. These forms do not authorize an individual to represent the taxpayer before the IRS."^[216]

New Federal Law (IRC section 6061)

"For a request for disclosure to a practitioner with consent of the taxpayer, or for any power of attorney granted by a taxpayer to a practitioner, the provision requires the Secretary to publish guidance to establish uniform standards and procedures for the acceptance of taxpayers' signatures appearing in electronic form with respect to such requests or power of attorney. Such guidance must be published within six months of the date of enactment. For purposes of the provision, a 'practitioner' means an individual in good standing who is regulated under 31 U.S.C. sec. 330 (relating to practice before the Department of the Treasury)."^[217]

Effective Dates

The provision is effective on July 1, 2019.

California Law (Gov. Code section 16.5))

California does not specifically conform to IRC section 6061, related to the electronic signing of returns and other documents, but instead has stand-alone provisions that allow the use of digital signatures under the Government Code.

Impact on California Revenue

Not applicable.

²¹⁶ H.R. Rep. No. 116-39, 1st Sess., p. 89 (2019).

²¹⁷ H.R. Rep. No. 116-39, 1st Sess., p. 90 (2019).

<u>Section</u>	<u>Section Title</u>
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2303	Payment of Taxes by Debit and Credit Cards
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Background

“The Code generally permits the payment of taxes by commercially acceptable means such as credit cards.^[218] The Secretary may not pay any fee or provide any other consideration in connection with the use of credit, debit, or charge cards for the payment of income taxes.”^[219]

New Federal Law (IRC section 6311)

“The provision removes the prohibition on paying any fees or providing any other consideration in connection with the use of credit, debit, or charge cards for the payment of income taxes to the extent taxpayers paying in this manner are fully responsible for any fees or consideration incurred. The provision requires the Secretary to seek to minimize the amount of any fee or other consideration that the Secretary pays under any contract.”^[220]

Effective Dates

The provision is effective on July 1, 2019.

California Law (None)

California does not specifically conform to IRC section 6311 related to payment of tax by commercially acceptable means and instead has stand-alone provisions regarding acceptable payments of tax.

Impact on California Revenue

Not applicable.

²¹⁸ IRC section 6311(d)(2).

²¹⁹ IRC section 6311(d)(2): H.R. Rep. No. 116-39, 1st Sess., p. 90 (2019).

²²⁰ H.R. Rep. No. 116-39, 1st Sess., p. 90 (2019).

<u>Section</u>	<u>Section Title</u>
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2401	Repeal of Provision Regarding Certain Tax Compliance Procedures and Reports
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Background

“Under present law, taxpayers generally are required to calculate their own tax liabilities and submit returns showing their calculations.^[221] Section 2004 of RRA98 requires the Secretary of the Treasury or his delegate (“Secretary”) to study the feasibility of, and develop procedures for, the implementation of a return-free tax system for appropriate individuals for taxable years beginning after 2007.^[222] The Secretary is required annually to report to the tax writing committees on the progress of the development of such system. The Secretary was required to make the first report on the development of the return-free filing system to the tax-writing committees by June 30, 2000.”^[223]

New Federal Law (Uncodified section 2401)

The provision repeals section 2004 of RRA98.^[224]

Effective Dates

The provision is effective on July 1, 2019.

California Law (None)

California does not conform to this uncodified section related the repeal of provisions regarding certain tax compliance procedures and reports.

Impact on California Revenue

Not applicable.

²²¹ P.L. No. 105-206, sec. 2004.

²²² P.L. No. 105-206, sec. 2004.

²²³ H.R. Rep. No. 116-39, 1st Sess., p. 91 (2019).

²²⁴ H.R. Rep. No. 116-39, 1st Sess., p. 91 (2019).

<u>Section</u>	<u>Section Title</u>
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2402	Comprehensive Training Strategy
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Background

“The Code provides that the Commissioner has such duties and powers as prescribed by the Secretary.^[225] Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes. In executing these duties, the Commissioner depends upon strategic plans that prioritize goals and manage its resources. In the current strategic plan, cultivating a well-equipped, diverse, flexible and engaged workforce is identified as one of the IRS's six strategic goals.^[226]

Within the IRS, the OTA is expected to represent taxpayer interests independently in disputes with the IRS. The OTA has four principal functions: (1) to assist taxpayers in resolving problems with the IRS; (2) to identify areas in which taxpayers have problems in dealing with the IRS; (3) to propose changes in the administrative practices of the IRS to mitigate problems in areas in which taxpayers have issues in dealing with the IRS; and (4) to identify potential legislative changes which may be appropriate to mitigate such problems.^[227] The NTA supervises the OTA. The NTA reports directly to the Commissioner.”^[228]

New Federal Law (Uncodified section 2402)

“The provision requires that the Commissioner submit to Congress a written report providing a comprehensive training strategy for employees of the IRS. The report is to be submitted not later than one year after the date of enactment of this Act, and is to include: a plan to streamline current training processes, including an assessment of the utility of further consolidating internal training programs, technology, and funding; a plan to develop annual training regarding taxpayer rights, including the role of the OTA, for employees that interface with taxpayers and the direct managers of such employees; a plan to improve technology-based training; proposals to focus employee training on early, fair, and efficient resolution of taxpayer disputes for employees that interface with taxpayers and the direct managers of such employees, as well as ensure consistency of skill development and employee evaluation throughout the IRS; and a thorough assessment of the funding necessary

²²⁵ IRC section 7803(a).

²²⁶ See *Internal Revenue Service Strategic Plan FY 2018-2022*, Publication 3744, available at <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

²²⁷ IRC section 7803(c).

²²⁸ H.R. Rep. No. 116-39, 1st Sess., p. 92 (2019).

to implement such a strategy."^[229]

Effective Dates

The provision is effective on July 1, 2019.

California Law (R&TC section 21005)

California does not conform to this uncodified section and instead has stand-alone programs under the Taxpayers' Bill of Rights that requires the FTB to develop a comprehensive education and information program, including training audit and compliance staff.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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3001	Prohibition of Rehiring Any Employee of the IRS Who Was Involuntarily Separated From Service for Misconduct
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Background

"Employees of the IRS are subject to rules governing Federal employment generally, as well as rules of conduct specific to Department of the Treasury and the IRS."^[230] Standards of Ethical Conduct for Employees of the Executive Branch are supplemented by additional rules applicable to employees of the Department of the Treasury."^[231]

"RRA98 requires the IRS to terminate an employee for certain proven violations committed by the employee in connection with the performance of official duties."^[232] The violations include: (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) providing a false statement under oath material to a matter involving a taxpayer; (3) with respect to a taxpayer, taxpayer

²²⁹ H.R. Rep. No. 116-39, 1st Sess., pp. 91, 92 (2019).

²³⁰ "Part III of Title 5 of the U.S.C. prescribes rules for federal employment, including employment, retention, and management and employee issues."

²³¹ "Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635; Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury, 5 C.F.R. Part 3101; Department of the Treasury Employee Rules of Conduct, 31 C.F.R. Part 0. H.R. Rep. No. 116-39, 1st Sess., pp. 93, 94 (2019)."

²³² P.L. No. 105-206, sec. 1203(b), July 22, 1998.

representative, or other IRS employee, the violation of any right under the U.S. Constitution, or any civil right established under Titles VI or VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, sections 501 or 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990; (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or a taxpayer representative; (5) assault or battery on a taxpayer or other IRS employee, but only if there is a criminal conviction or a final judgment by a court in a civil case, with respect to the assault or battery; (6) violations of the Code, Treasury Regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating or harassing a taxpayer or other IRS employee; (7) willful misuse of section 6103 for the purpose of concealing data from a Congressional inquiry; (8) willful failure to file any tax return required under the Code on or before the due date (including extensions) unless failure is due to reasonable cause; (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause; and (10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

RRA98 provides non-delegable authority to the Commissioner to determine that mitigating factors exist, that, in the Commissioner's sole discretion, mitigate against terminating the employee. The Act also provides that the Commissioner, in his sole discretion, may establish a procedure to determine whether an individual should be referred for such a determination by the Commissioner. [Treasury Inspector General for Tax Administration] TIGTA is required to track employee terminations and terminations that would have occurred had the Commissioner not determined that there were mitigation factors and include such information in TIGTA's annual report to Congress."^[233]

New Federal Law (IRC section 7804)

"Under the provision, a former employee of the IRS who was involuntarily separated due to misconduct under subchapter A of Chapter 80 of the Code, under chapters 43 or 75 of Title 5 of the U.S.C., or whose employment was terminated under section 1203 of RRA98, cannot be reemployed by the IRS."^[234]

Effective Dates

The provision is effective with respect to the hiring of employees after July 1, 2019.

²³³ H.R. Rep. No. 116-39, 1st Sess., pp. 93, 94 (2019).

²³⁴ H.R. Rep. No. 116-39, 1st Sess., p. 94 (2019).

California Law (None)

California does not specifically conform to IRC section 7804 related to IRS personnel and instead has stand-alone provisions. The FTB is covered by general state civil service laws.

Impact on California Revenue

Not applicable.

Section Section Title

3002 Notification of Unauthorized Inspection or Disclosure of Returns and Return Information

Background

“[Internal Revenue Code] section 7431 provides for civil damages resulting from an unauthorized disclosure or inspection of return information. If a Federal employee makes an unauthorized disclosure or inspection, a taxpayer can bring suit against the United States in Federal district court. If a person other than a Federal employee makes an unauthorized disclosure or inspection, suit may be brought directly against such person. No liability results from a disclosure based on a good faith, but erroneous, interpretation of section 6103. A disclosure or inspection made at the request of the taxpayer will also relieve liability.

Upon a finding of liability, a taxpayer can recover the greater of \$1,000 per act of unauthorized disclosure (or inspection), or the sum of actual damages plus, in the case of an inspection or disclosure that was willful or the result of gross negligence, punitive damages. The taxpayer may also recover the costs of the action and, if found to be a prevailing party, reasonable attorney fees.

The taxpayer has two years from the date of the discovery of the unauthorized inspection or disclosure to bring suit. The IRS is required to notify a taxpayer of an unauthorized inspection or disclosure as soon as practicable after any person is criminally charged by indictment or information for unlawful inspection or disclosure.”^[235]

New Federal Law (IRC section 7431)

“The provision requires the Secretary to notify a taxpayer if the IRS or a Federal or State agency (upon notice to the Secretary by such Federal or State agency)

²³⁵ H.R. Rep. No. 116-39, 1st Sess., p. 95 (2019).

proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee's unauthorized inspection or disclosure of the taxpayer's return or return information. The provision requires the notice to include the date of the unauthorized inspection or disclosure and the rights of the taxpayer as a result of such administrative determination."^[236]

Effective Dates

The provision is effective for determinations proposed after 180 days after July 1, 2019.

California Law(R&TC section 19542.1)

California does not specifically conform to IRC section 7431 related to civil damages for unauthorized inspection or disclosure payment of tax by commercially acceptable means and instead has stand-alone provisions regarding acceptable payments of tax.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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3101	Mandatory E-Filing by Exempt Organizations
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Background

In general

"RRA98 states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001 (a) of RRA98 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.^[237] Section 2001 (b) of RRA98 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present federal law requires the Secretary to issue regulations regarding electronic filing and specifies certain limitations on the rules that may be included in such regulations.^{238]} The statute requires that Federal income tax returns prepared by

²³⁶ H.R. Rep. No. 116-39, 1st Sess., p. 95 (2019).

²³⁷ The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal projected an overall e-filing rate of 80.1 percent in the 2017 filing season based on all Federal returns. See Electronic Tax Administration Advisory Committee, *Annual Report to Congress*, June 2017, IRS Pub. 3415, page 5.

²³⁸ "[IRC] section 6011 (e). Section 6011 (e) uses the term 'magnetic media,' which the Treasury

specified tax return preparers be filed electronically,^[239] and that all partnerships with more than 100 partners file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at reasonable cost.

Tax-exempt organizations

For federal purposes, most tax-exempt organizations are required to file an annual information return or notice in the Form 990 series. Since 2007, the smallest organizations—generally, those with gross receipts of less than \$50,000—may provide an abbreviated notice on Form 990-N, sometimes referred to as an “e-postcard.” Which form to file depends on the annual receipts, value of assets, and types of activities of the exempt organization.”^[240]

“In general, only the largest and smallest tax-exempt organizations are required to electronically file their annual information returns. First, as indicated above, tax-exempt corporations that have assets of \$10 million or more and that file at least 250 returns during a calendar year must electronically file their Form 990 information returns. Private foundations and charitable trusts, regardless of asset size, that file at least 250 returns during a calendar year are required to file electronically their Form 990-PF information returns.^[241] Finally, organizations that file Form 990-N (the e-postcard) also must electronically file.”^[242]

New Federal Law (IRC section 6033 and 6104)

“The provision extends the requirement to e-file to all tax-exempt organizations required to file statements or returns in the Form 990 series or Form 8872 (“Political Organization Report of Contributions and Expenditures”). The provision also requires that the IRS make the information provided on the forms available to the public (consistent with the disclosure rules of section 6104 of the Code) in a machine-readable format as soon as practicable.”^[243]

regulation section 301.6011-2 defines to include electronic filing.”

²³⁹ “[IRC] section 6011(e)(3)(B) defines a ‘specified tax return preparer’ as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.”

²⁴⁰ H.R. Rep. No. 116-39, 1st Sess., pp. 96, 97 (2019).

²⁴¹ “Taxpayers can request waivers of the electronic filing requirement if they cannot meet that requirement due to technological constraints, or if compliance with the requirement would result in undue financial burden on the taxpayer. Treas. Sec. 301.6033-4.”

²⁴² See Form 990-N, “Electronic Notice for Tax-exempt Organizations Not Required to File a Form 990 or 990-EZ.”; H.R. Rep. No. 116-39, 1st Sess., pp. 96, 97 (2019).

²⁴³ H.R. Rep. No. 116-39, 1st Sess., pp. 97, 98 (2019).

Effective Dates

“The provision generally is effective for taxable years beginning after the date of enactment. Transition relief is provided for certain organizations. First, for certain small organizations or other organizations for which the Secretary determines that application of the e-filing requirement would constitute an undue hardship in the absence of additional transitional time, the requirement to file electronically must be implemented not later than taxable years beginning two years following the date of enactment. For this purpose, small organization means any organization: (1) the gross receipts of which for the taxable year are less than \$200,000; and (2) the aggregate gross assets of which at the end of the taxable year are less than \$500,000. In addition, the provision grants IRS the discretion to delay the effective date not later than taxable years beginning two years after the date of enactment for the filing of Form 990-T (reports of unrelated business taxable income or the payment of proxy tax under section 6033(e)).”^[244]

California Law(R&TC sections 18621.5, 18621.9 18621.10)

California does not specifically conform to IRC sections 6033 and 6104 related to filing requirements for exempt organizations and instead has stand-alone provisions that state if a business entity, including an exempt organization, uses software that allows the return to be e-filed, then the return is required to be e-filed.

Organizations with gross receipts normally equal to or less than \$50,000 can file California e-Postcard (Form 199N) to fulfill their annual filing requirement.

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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3102	Notice Required Before Revocation of Tax-Exempt Status for Failure to File Return
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Background

Revocation of exempt status

“An organization that has received a favorable tax-exemption determination from the IRS generally may continue to rely on the

²⁴⁴ H.R. Rep. No. 116-39, 1st Sess., p. 98 (2019).

determination as long as “there are no substantial changes in the organization’s character, purposes, or methods of operation.”^[245] A ruling or determination letter concluding that an organization is exempt from tax may, however, be revoked or modified: (1) by notice from the IRS to the organization to which the ruling or determination letter was originally issued; (2) by enactment of legislation or ratification of a tax treaty; (3) by a decision of the United States Supreme Court; (4) by issuance of temporary or final Regulations by the Treasury Department; (5) by issuance of a revenue ruling, a revenue procedure, or other statement in the Internal Revenue Bulletin; or (6) automatically, in the event the organization fails to file a required annual return or notice for three consecutive years (discussed in greater detail below).^[246] A revocation or modification of a determination letter or ruling may be retroactive if, for example, there has been a change in the applicable law, the organization omitted or misstated a material fact, or the organization has operated in a manner materially different from that originally represented.^[247] Upon revocation of tax-exemption or change in the classification of an organization (e.g., from public charity to private foundation status), the IRS publishes an announcement of such revocation or change in the IRB.

Automatic revocation for failure to file information returns

If an organization fails to file a required Form 990-series return or notice for three consecutive years, the organization’s tax-exempt status is automatically revoked.^[248] A revocation for failure to file is effective from the date that the Secretary determines was the last day the organization could have timely filed the third required information return or notice. To again be recognized as tax-exempt, the organization must apply to the Secretary for recognition of tax-exemption, irrespective of whether the organization was required to make an application for recognition of tax-exemption in order to gain tax-exemption originally.^[249]

If, upon application for tax-exempt status after an automatic revocation for failure to file an information return or notice, the organization shows to the satisfaction of the Secretary reasonable cause for failing to file the required returns or notices, the organization’s tax-exempt status may, in the discretion of the Secretary, be reinstated retroactive to the date of revocation.^[250] An organization may not challenge under the Code’s declaratory judgment procedures (section 7428) a revocation of tax-exemption made for failure to

²⁴⁵ Treas. Reg. sec. 1.501(a)-1(a)(2).

²⁴⁶ Rev. Proc. 2019-5, sec. 12, 2019-1 IRB 230, at p. 257 (January 2, 2019).

²⁴⁷ Ibid. at p. 258.

²⁴⁸ IRC section 6033(j)(1).

²⁴⁹ IRC section. 6033 (j)(2).

²⁵⁰ Sec. 6033 (j) (3); Rev. Proc. 2014-11, 2014-3 IRB 411 (January 13, 2014).

file annual information returns.

The Secretary is authorized to publish a list of organizations whose exempt status is automatically revoked.”^[251]

New Federal Law (IRC section 6033)

“The provision requires that the IRS provide notice to an organization that fails to file a Form 990-series return or notice for two consecutive years. The notice must state that the IRS has no record of having received such a return or notice from the organization for two consecutive years and inform the organization about the revocation of the organization's tax-exempt status that will occur if the organization fails to file such a return or notice by the due date for the next such return or notice. The notice must also contain information about how to comply with the annual information return and notice requirements under sections 6033(a)(1) and 6033(i).”^[252]

Effective Dates

The provision applies to failures to file returns or notices for two consecutive years if the return or notice for the second year is required to be filed after December 31, 2019.

California Law(R&TC section 23772)

California does not conform to IRC section 6033(j)(1), relating to loss of exempt status for failure to file a return or notice, but instead has stand-alone language relating to annual information returns of exempt organizations.

Under California law, every organization exempt from taxation and every trust treated as a private foundation under the IRC must file an annual return which specifically states the items of gross income, receipts, and disbursements, and any other information for the purpose of carrying out the laws as the FTB may prescribe. The return is required to be filed on or before the 15th day of the fifth full calendar month following the close of the taxable year.²⁵³

The law also provides mandatory and discretionary exceptions to the filing requirement. Some of the mandatory exceptions are for churches, and organizations (other than private foundations), with gross receipts in each taxable year normally not exceeding fifty thousand dollars (\$50,000).²⁵⁴

²⁵¹ H.R. Rep. No. 116-39, 1st Sess., pp. 98, 99, 100, 101 (2019).

²⁵² H.R. Rep. No. 116-39, 1st Sess., p. 98 (2019).

²⁵³ R&TC section 23772.

²⁵⁴ R&TC section 23772.

An organization that is required to file an annual return is required to pay a ten dollar (\$10) filing fee on or before the due date for filing the annual information return. (Determined with regard to any extension of time for filing the return.) If the fee is not paid on or before the due date, unless it is shown that the failure is due to reasonable cause, the fee shall be twenty-five dollars (\$25).²⁵⁵

Impact on California Revenue

Not applicable.

<u>Section</u>	<u>Section Title</u>
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3201	Increase in Penalty for Failure to File
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Background

“A taxpayer who fails to file a tax return on or before its due date is subject to a penalty equal to five percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 25 percent of the net amount.^[256] If the failure to file a return is fraudulent, the taxpayer is subject to a penalty equal to 15 percent of the net amount of tax due for each month the return is not filed, up to a maximum of 75 percent of the net amount.^[257] The net amount of tax due is the amount of tax required to be shown on the return reduced by the amount of any part of the tax that is paid on or before the date prescribed for payment of the tax and by the amount of any credits against tax that may be claimed on the return.^[258] The penalty will not apply if it is shown that the failure to file was due to reasonable cause and not willful neglect.^[259]

If a return is filed more than 60 days after its due date, and unless it is shown that such failure is due to reasonable cause, then the failure to file penalty may not be less than the lesser of \$205 ^[260]or 100 percent of the amount required to be shown as tax on the return.^[261] If a penalty for failure to file and a penalty for failure to pay tax shown on a return both apply for the same month, the amount of the penalty for failure to file for such month is reduced by the amount of the penalty for failure to

²⁵⁵ R&TC section 23772.

²⁵⁶ IRC section 6651(a)(1).

²⁵⁷ IRC section 6651(f).

²⁵⁸ IRC section 6651(b)(1).

²⁵⁹ IRC section 6651(a)(1).

²⁶⁰ The \$205 amount is adjusted for inflation.

²⁶¹ IRC section 6651(a)(1) (flush language). For this minimum penalty to apply, the Tax Court has held, and the IRS acquiesced, that there must be an underpayment of tax. See *Patronik-Holder v. Commissioner*, 100 T.C. 374 (1993) (citing the Conference Report to the Tax Equity and Fiscal Responsibility Act of 1982), AOD 1994-03, 1993-2 C.B. 1.

pay tax shown on a return.^[262] If a return is filed more than 60 days after its due date, then the penalty for failure to pay tax shown on a return may not reduce the penalty for failure to file below the lesser of \$205 or 100 percent of the amount required to be shown on the return.^[263]

The failure to file penalty applies to all returns required to be filed under subchapter A of Chapter 61 (relating to income tax returns of an individual, fiduciary of an estate or trust, or corporation; self-employment tax returns, and estate and gift tax returns), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), and subchapter A of chapter 53 (relating to machine guns and certain other firearms).²⁶⁴ The failure to file penalty is adjusted annually to account for inflation. The failure to file penalty does not apply to any failure to pay estimated tax required to be paid by sections 6654 or 6655."^[265]

New Federal Law (IRC section 6651(a))

"Under the provision, if a return is filed more than 60 days after its due date, then the failure to file penalty may not be less than the lesser of \$330 (adjusted for inflation) or 100 percent of the amount required to be shown as tax on the return."^{266]}

Effective Dates

"The provision applies to returns with filing due dates (including extensions) after December 31, 2019."^[267]

California Law (R&TC section 19131)

California does not conform to IRC section 6651, relating to failure to file tax return or to pay tax, but instead has stand-alone language that parallels the federal provision. California law provides that a taxpayer who fails to file a tax return on a timely basis is subject to a penalty equal to five percent of the net amount of tax due for each month that the return is not filed, up to a maximum of five months or 25 percent.²⁶⁸ An exception from the penalty applies if the failure is due to reasonable cause. The net amount of tax due is the excess of the amount of the tax required to be shown

²⁶² IRC section 6651(c)(1).

²⁶³ *Ibid.*

²⁶⁴ IRC section 6651(a)(1).

²⁶⁵ IRC section 6651(e). H.R. Rep. No. 116-39, 1st Sess., pp. 101, 102 (2019).

²⁶⁶ H.R. Rep. No. 116-39, 1st Sess., p. 103 (2019).

²⁶⁷ H.R. Rep. No. 116-39, 1st Sess., p. 103 (2019).

²⁶⁸ R&TC section 19131(a).

on the return over the amount of any tax paid on or before the due date prescribed for the payment of tax.²⁶⁹

In the case of a failure of an individual or fiduciary to file a tax return within 60 days of the due date, California law imposes a minimum penalty equal to the lesser of \$135 or 100 percent of the amount of tax required to be shown on the return.²⁷⁰

Impact on California Revenue

Not applicable.

²⁶⁹ R&TC section 19131(c).

²⁷⁰ R&TC section 19131(b).

**EXHIBIT A – 2019 MISCELLANEOUS FEDERAL ACTS IMPACTING THE IRC
NOT REQUIRING A CALIFORNIA RESPONSE**

Public Law 116-25, Taxpayer First Act.

Public Law 116-25, the Taxpayer First Act, amends provisions of the IRC of 1986 to modernize the IRS to improve customer service, enforcement procedures, cybersecurity and identity protection, and the management of information technology and the use of electronic systems.

IRC Section	Public Law No.	Act Section No. of Title I, Subtitle C	H.R. 3151, Page
6306	115-25	1205	9
		Act Section No. of Title II, Subtitle D	
Uncodified	115-25	2304	34

Public Law 116-59, Continuing Appropriations Act, 2020, and
Health Extenders Act of 2019.

Public Law 116-59, the Continuing Appropriations Act, 2020, and Health Extenders Act of 2019, contains Division A (Continuing Appropriations Act, 2020) of H.R. 4378 and a separate Division B (Health and Human Services Extenders and Other Matters) of H.R. 4378. Division A provides for continuing appropriations for fiscal year 2020. Division B provides for the extension of multiple federal health care programs that were otherwise set to expire September 30, 2019, and provides for some adjustments to additional health programs.

IRC Section	Public Law No.	Act Section No. of Division A	H.R. 4378, Page
9503(e)(4)	115-59	144	10
		Act Section No. of Division B, Title IV	
9511(f)	115-59	1403	15

Public Law 116-69, Further Continuing Appropriations Act, 2020, and
Further Health Extenders Act of 2019.

Public Law 116-69, the Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019, contains Division A (Continuing Appropriations Act, 2020) of H.R. 3055 and a separate Division B (Health and Human Services Extenders and Other Matters) of H.R. 3055. Division A provides for continuing appropriations for fiscal year 2020. Division B provides for the extension of multiple federal health care programs that were otherwise set to expire November 21, 2019, and provides for some adjustments to additional health programs.

IRC Section	Public Law No.	Act Section No. of Division B, Title IV	133 Stat. Page
9511(f)	115-69	1403	1139

**EXHIBIT B – EXPIRING TAX PROVISIONS OF THE CALIFORNIA
REVENUE AND TAXATION CODE**

California Sunset²⁷¹	California Sections	Federal Section	Federal Sunset	Description
06/30/20	17053.30 & 23630	N/A	N/A	Natural Heritage Preservation Credit
12/31/20	18754 - 18754.3	N/A	N/A	Voluntary Contribution: California Sea Otter Fund ²⁷²
12/31/20	18801 - 18804	N/A	N/A	Voluntary Contribution: California Firefighters' Memorial Fund
12/31/20	18805 - 18808	N/A	N/A	Voluntary Contribution: California Peace Officer Memorial Foundation Fund ²⁷³
12/31/21	17053.88.5 & 23688.5	N/A	N/A	Agricultural Donations to a Food Bank Credit
12/31/21	18895 - 18898	N/A	N/A	Voluntary Contribution: School Supplies for Homeless Children Fund ²⁷⁴
12/31/21	18711 - 18714	N/A	N/A	Voluntary Contribution: California Domestic Violence Victims Fund
12/31/22	17053.87 & 23687	N/A	N/A	College Access Tax Credit

²⁷¹ In general, this is the last date in the last taxable year to which the provision applies. Fiscal years beginning within this taxable year are, in general, also covered by the provision. In some cases, the repeal date of the section is listed or the expiration applies to transactions occurring after this date.

²⁷² Under R&TC section 18754.3, this provision may be repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not equal or exceed the minimum contribution amount for the calendar year.

²⁷³ Under R&TC section 18808, this provision may be repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁷⁴ Under R&TC section 18898, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

EXHIBIT B – EXPIRING TAX PROVISIONS OF THE CALIFORNIA REVENUE AND TAXATION CODE

California Sunset ²⁷¹	California Sections	Federal Section	Federal Sunset	Description
12/31/22	18901 - 18901.3	N/A	N/A	Voluntary Contribution: Prevention of Animal Homelessness and Cruelty Voluntary Tax Contribution Fund ²⁷⁵
12/31/23	17207.14 & 24347.14	N/A	N/A	Election to Take Deduction in Preceding Year for Disaster Loss in Areas Proclaimed by the Governor to Be in a State of Emergency
12/31/24	18730 – 18733	N/A	N/A	Voluntary Contribution: California Senior Citizen Advocacy Voluntary Tax Contribution Fund ²⁷⁶
12/31/24	18741 - 18744	N/A	N/A	Voluntary Contribution: Rare and Endangered Species Preservation Voluntary Tax Contribution Program ²⁷⁷
12/31/24	18745 - 18748	N/A	N/A	Voluntary Contribution: Protect Our Coast and Oceans Voluntary Tax Contribution Fund ²⁷⁸
12/31/24	18862 - 18864	N/A	N/A	Voluntary Contribution: California Cancer Research Voluntary Tax Contribution Fund ²⁷⁹

²⁷⁵ Under R&TC section 18901.3, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁷⁶ Under R&TC section 18733, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000)† for the calendar year.

²⁷⁷ Under R&TC section 18744, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁷⁸ Under R&TC section 18748, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁷⁹ Under R&TC section 18864, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

EXHIBIT B – EXPIRING TAX PROVISIONS OF THE CALIFORNIA REVENUE AND TAXATION CODE

California Sunset ²⁷¹	California Sections	Federal Section	Federal Sunset	Description
12/31/24	18891 - 18894	N/A	N/A	Voluntary Contribution: Keep Arts in Schools Voluntary Tax Contribution Fund ²⁸⁰
12/31/24	18791 - 18796	N/A	N/A	Voluntary Contribution: California Breast Cancer Research Voluntary Tax Contribution Fund ²⁸¹
12/31/24	18416.5	N/A	N/A	Allow Electronic Communication to Taxpayers to Inform of Tax Change
12/31/24	18761 - 18766	N/A	N/A	Voluntary Contribution: California Alzheimer's Disease and Related Dementia Research Voluntary Tax Contribution Fund ²⁸²
12/31/24	18902 - 18906	N/A	N/A	Voluntary Contributions: Rape Kit Backlog Voluntary Tax Contribution Fund
12/31/24	18749 - 18749.3	N/A	N/A	Voluntary Contributions: Native California Wildlife Rehabilitation Voluntary Tax Contribution Fund ²⁸³
12/31/25	17053.73 & 23626	N/A	N/A	New Employment Credit ²⁸⁴

²⁸⁰ Under R&TC section 18894, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁸¹ Under R&TC section 18796, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁸² Under R&TC section 18766, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁸³ Under R&TC section 18749.3, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁸⁴ The new employment credit law sections (R&TC sections 17053.73 and 23626) are repealed on December 1, 2029. Those law sections generally apply to taxable years beginning on or after January 1, 2014, and before January 1, 2026; however, they continue to be operative for taxable years beginning on or after January 1, 2026, but only with respect to qualified full-time employees who commence employment with a qualified taxpayer in a designated census tract or former enterprise zone in a taxable year beginning before January 1, 2026.

EXHIBIT B – EXPIRING TAX PROVISIONS OF THE CALIFORNIA REVENUE AND TAXATION CODE

California Sunset ²⁷¹	California Sections	Federal Section	Federal Sunset	Description
12/31/25	17053.91 & 23691	N/A	N/A	Qualified Rehabilitation Expenditure Credit
12/31/25	18851 - 18855	N/A	N/A	Voluntary Contribution: Emergency Food for Families Voluntary Tax Contribution Fund ²⁸⁵
12/31/25	18900.40 - 18900.43	N/A	N/A	Voluntary Contribution: Habitat for Humanity Voluntary Tax Contribution Fund
12/31/25	18907 - 18907.4	N/A	N/A	Voluntary Contribution: Organ and Tissue Donor Registry Voluntary Tax Contribution Fund ²⁸⁶
12/31/25	18910 - 18913	N/A	N/A	Voluntary Contribution: Schools Not Prisons Voluntary Tax Contribution Fund ²⁸⁷
12/31/25	18857 - 18857.3	N/A	N/A	Voluntary Contributions: National Alliance on Mental Illness California Voluntary Tax Contribution Fund ²⁸⁸
12/31/26	18914 - 18917	N/A	N/A	Voluntary Contributions: Suicide Prevention Voluntary Tax Contribution Fund ²⁸⁹
12/31/29	17059.2 & 23689	N/A	N/A	California Competes Tax Credit

²⁸⁵ Under R&TC section 18855, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁸⁶ Under R&TC section 18907.4, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁸⁷ Under R&TC section 18913, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁸⁸ Under R&TC section 18857.3, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

²⁸⁹ Under R&TC section 188917, this provision may be inoperative and repealed earlier if the FTB determines the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount (\$250,000) for the calendar year.

**EXHIBIT B – EXPIRING TAX PROVISIONS OF THE CALIFORNIA
REVENUE AND TAXATION CODE**

California Sunset²⁷¹	California Sections	Federal Section	Federal Sunset	Description
12/31/30	23636	N/A	N/A	New Advanced Strategic Aircraft Hiring Credit

EXHIBIT C – REVENUE TABLES

<div style="text-align: center;"> Taxpayer First Act (Public Law 116-25) </div>					
Act Section	Provision	2019-20	2020-21	2021-22	2022-23
1001	Establishment of IRS Independent Office of Appeals	N/A	N/A	N/A	N/A
1101	Comprehensive Customer Service Strategy	N/A	N/A	N/A	N/A
1102	Low-Income Exception for Payments Otherwise Required in Connection With a Submission of an Offer-in-Compromise	N/A	N/A	N/A	N/A
1201	Seizure Requirements with Respect to Structuring Transactions	N/A	N/A	N/A	N/A
1202	Exclusion of Interest Received in Action to Recover Seized Property	N/A	N/A	N/A	N/A
1203	Clarification of Equitable Relief from Joint Liability	N/A	N/A	N/A	N/A
1204	Modification of Procedures For Issuance of Third-Party Summons	N/A	N/A	N/A	N/A
1205	Private Debt Collection And Special Compliance Personnel Program	N/A	N/A	N/A	N/A
1206	Reform of Notice of Contact of Third Parties	N/A	N/A	N/A	N/A
1207	Modification of Authority to Issue Designated Summons	N/A	N/A	N/A	N/A
1208	Limitation on Access of Non-Internal Revenue Service Employees to Returns and Return Information	N/A	N/A	N/A	N/A

EXHIBIT C - REVENUE TABLES

1301	Office of the National Taxpayer Advocate	N/A	N/A	N/A	N/A
1302	Modernization of IRS Organizational Structure	N/A	N/A	N/A	N/A
1401	VITA and Community Return Preparation Services	N/A	N/A	N/A	N/A
1402	Low-Income Taxpayer Clinics	N/A	N/A	N/A	N/A
1403	Closure of Taxpayer Assistance Centers	N/A	N/A	N/A	N/A
1404	Seizure and Sale of Perishable Goods	N/A	N/A	N/A	N/A
1405	Whistleblower Reforms	N/A	N/A	N/A	N/A
1406	Customer Service Information	N/A	N/A	N/A	N/A
1407	Misdirected Tax Refund Deposits	N/A	N/A	N/A	N/A
2001	Public-Private Partnership to Address Identity Theft Refund Fraud	N/A	N/A	N/A	N/A
2002	Recommendations of Electronic Tax Administration Advisory Committee Regarding Identity Theft Refund Fraud	N/A	N/A	N/A	N/A
2003	Information Sharing and Analysis Center	N/A	N/A	N/A	N/A
2004	Compliance by Contractors With Confidentiality Safeguards	N/A	N/A	N/A	N/A
2005	Identity Protection Personal Identification Numbers	N/A	N/A	N/A	N/A
2006	Single Point of Contact for Tax-Related Identity Theft Victims	N/A	N/A	N/A	N/A

EXHIBIT C - REVENUE TABLES

2007	Notification of Suspected Identity Theft	N/A	N/A	N/A	N/A
2008	Guidelines for Stolen Identity Refund Fraud Cases	N/A	N/A	N/A	N/A
2009	Increased Penalty for Improper Disclosure or Use of Information by Preparers of Returns	N/A	N/A	N/A	N/A
2101	Management of IRS Information Technology	N/A	N/A	N/A	N/A
2102	Internet Platform for Form 1099 Filings	N/A	N/A	N/A	N/A
2103	Streamlined Critical Pay Authority For Information Technology Positions	N/A	N/A	N/A	N/A
2201	Disclosure for Third-Party Income Verification	N/A	N/A	N/A	N/A
2202	Limit of Re-Disclosures of Consent-Based Disclosures	N/A	N/A	N/A	N/A
2301	Electronic Filing of Returns	N/A	N/A	N/A	N/A
2302	Uniform Standards for the Use of Electronic Signatures	N/A	N/A	N/A	N/A
2303	Payment of Taxes by Debit and Credit Cards	N/A	N/A	N/A	N/A
2304	Authentication of Users of IRS E-Services Accounts	N/A	N/A	N/A	N/A
2401	Repeal of Certain Tax Compliance Procedures and Reports	N/A	N/A	N/A	N/A
2402	Comprehensive Training Strategy	N/A	N/A	N/A	N/A
3001	Prohibition on IRS Rehiring Certain Field Employees	N/A	N/A	N/A	N/A

EXHIBIT C - REVENUE TABLES

3002	Notification of Unauthorized Inspection of Disclosure of Return Information	N/A	N/A	N/A	N/A
3101	Mandatory E-Filing by Exempt Organizations	N/A	N/A	N/A	N/A
3102	Notice Required Before Revocation of Tax-Exempt Status	N/A	N/A	N/A	N/A
3201	Increased Penalty for Failure to File	N/A	N/A	N/A	N/A