



STATE OF CALIFORNIA  
TAXPAYERS' RIGHTS ADVOCATE'S OFFICE MS F280  
FRANCHISE TAX BOARD  
PO BOX 1468  
SACRAMENTO CA 95812-1468

chair **Betty T. Yee** | member **Keely Bosler**

01.25.2019

CYNTHIA LEACHMOORE, EA  
CA SOCIETY OF ENROLLED AGENTS

Dear Ms. Leachmoore:

Thank you for your proposals presented at the Taxpayers' Bill of Rights hearing last December. As the Taxpayers' Rights Advocate, your concerns are important to me. I am always interested in hearing your concerns and partnering with you to help resolve them. Please note the Department's response below to your proposals:

1. CA Conformity with Federal TCJA Provisions

FTB generally believes conformity is good for taxpayers, tax professionals, and FTB and we appreciate CSEA for being an active participant in the Federal Conformity Stakeholder meeting we held in November. Our plan is to continue working with our external stakeholders to understand their concerns and ensure the Legislature has adequate information should they chose to draft conformity legislation.

2. Clarification Regarding Withholding Credits from FTB Withhold-at-Source Programs

FTB includes the amount of credit/payment on several notices similar to FTB 4686 Nonwage Withholding Credits – No Tax Return on File. Examples include FTB 740 - Information Notice: Record of Estimate Payments and FTB 4410 – Payment Received – No Return on File. We include the payment/credit amounts on these forms because we have a high degree of confidence the amounts are correct based on the fact that they were sent to us directly by the taxpayer. As CSEA is aware, however, FTB faces continued challenges with the quality of data provided by many of our third party providers. We continue to strive to improve this reporting through a combination of ongoing education and outreach as well as technology solutions. Unfortunately, we still lack the same degree of confidence in the data available from third party providers to include the credit amount on FTB 4686 without a very manual evaluation of each account.

FTB 4686 Annual Notices for the 2014 tax year have been mailed and do not include the amount of credit on the letter. However, we are committed to finding a way to include it next year when we address the 2015 tax year.

Regarding the need for an amended return, if the taxpayer did not report the income associated with the nonwage withholding credit, then a timely amended return must be filed to report it. After the tax is calculated any available nonwage withholding credit would be applied to the tax year and refunded or applied to other liabilities or offsets the taxpayer may have.

However, if the taxpayer originally reported the income associated with the nonwage withholding and has unclaimed nonwage withholding credit available, there is no need to file an amended return. While the instructions on our notices ask the taxpayer to mail in a copy of their original return and all

withholding statements to FTB, we can usually resolve the taxpayer's issue much faster via a phone call to the number included on the notice.

If the taxpayer is unsure whether the income was reported on the original return, they should call us first.

### 3. Taxpayer Information Authorizations and Power of Attorneys for Deceased Taxpayers

At the date of death, FTB considers the Social Security Number of a deceased individual as invalid and therefore, any formal relationship that previously existed between that individual and their representative is considered invalid. A new relationship must be established between the representative and the estate or trust of the decedent. In order to establish a relationship with the FTB, the estate or trust must first obtain a Federal Employer Identification Number (FEIN) from the IRS. Without a FEIN, the relationship will be rejected by FTB. Once a FEIN is obtained, a new FTB 3534 Tax Information Authorization or FTB 3520-PIT Individual or Fiduciary Power of Attorney Declaration should be submitted under the name of the estate or trust using the FEIN. Although not required, providing the SSN of the decedent may assist FTB when processing the new TIA or POA. The TIA or POA should be signed by all required individuals. When co-trustees or co-executors have been appointed, we recommend all co-trustees or co-executors sign the TIA or POA unless "authority to act independently on behalf of the trust or estate" has been granted, per the supporting documentation. The necessary supporting documentation which should be included with the TIA/POA submission include items such as:

- Trust instrument
- Succession Documents
- Court Orders
- Letter of Conservatorship (IRS Form 56 is not accepted as supporting documentation for conservatorships)
- Last Will and Testament/Letters Testamentary
- IRS Form 56

To prevent rejection, attach the supporting documentation to the TIA or POA and submit separately from other FTB forms (returns, notices, etc.). POA declarations and supporting documentation may be uploaded through MyFTB. Those without MyFTB access or those needing to establish a TIA relationship may mail form FTB 3520-PIT or FTB 3534 to the following address:

POA/TIA Unit  
Franchise Tax Board  
PO Box 2828  
Rancho Cordova CA 95741

Providing complete documentation enables us to verify the legal authority of the individual(s) signing on behalf of the estate or trust. If the TIA or POA is submitted with all required information and supporting documentation, the processing timeframe is 15 days which is the same timeframe as other TIA and POA forms.

### 4. FTB Voluntary Disclosure Program

Generally, departmental legislative proposals intend to ease tax administration, reduce taxpayer burden, or both, and are presented to the three-member Franchise Tax Board for its approval at the December Board Meeting. FTB staff remains committed to working with our external partners to ensure that further legislative modification of the Voluntary Disclosure Program can be successfully implemented, regardless of whether the bill originates from FTB or other sources.

In response to concerns about this issue, FTB also added the following information to the top of the Voluntary Disclosure Program page on its website:

*Potential Disqualification for the Franchise Tax Board (FTB) Voluntary Disclosure Program (VDP) by Entering the California Department of Tax and Fee Administration's VDP First. If you also intend to apply for the voluntary disclosure program with the California Department of Tax and Fee Administration (CDTFA), note the CDTFA online registration has an optional field for a Secretary of State (SOS) number during the completion of the online registration. If you intend to apply for the voluntary disclosure program with the FTB, please note that establishing a SOS registration prior to applying for the FTB program will disqualify you from participating in the voluntary disclosure program with the FTB.*

*For more information regarding the CDTFA Out-of-State Voluntary Disclosure Program, see <http://www.cdtfa.ca.gov/formspubs/pub178/>.*

FTB notes that the CDTFA only recommends that the taxpayer register with the SOS in order to verify the taxpayer's identity. There is no requirement under the law that a taxpayer must register with the SOS, and in fact CDTFA will accept an application through an alternative verification process.

For practitioners, FTB would also like to note that once the FTB VDP application has a stamp from a national carrier with the date of mailing, it may then enter the CDTFA's VDP as soon as the next day. FTB has interpreted R&TC sections 19191 and 19192 to mean that a taxpayer must not have registered with the SOS before entering, but not completing, FTB's VDP. Additionally, receiving the acknowledgement letter from the VDP section of FTB definitively means the applicant has "entered" the program, and the applicant is then free to enter CDTFA's program without the fear it will be disqualified.

Sincerely,

Susan Maples  
Taxpayers' Rights Advocate

cc: Yvette M. Stowers  
Jacqueline Wong-Hernandez  
Irena Asmundson  
Val Davidson