



STATE OF CALIFORNIA
Taxpayers' Rights Advocate Office MS F385
FRANCHISE TAX BOARD
PO BOX 157
SACRAMENTO CA 95741-0157

chair **Betty T. Yee** | member **Malia M. Cohen** | member **Keely Bosler**

02.01.2022

Christine Grab

Dear Mrs. Grab,

Thank you for attending and presenting your issues at the December 2021 Taxpayers' Bill of Rights Hearing. As the Taxpayer Advocate, your concerns are important to me.

The following responses were provided by the appropriate program areas within the Department:

1. Close the Loophole That Allows FTB To Evade Due Process for Implementation of Collection Tools

The Department disagrees with your assertion that there is a "loophole" that allows Franchise Tax Board (FTB) to evade due process. The Fourteenth Amendment of the United States Constitution guarantees, in part, procedural due process before an individual is deprived of property. Due process is satisfied by providing individuals with reasonable notice and an opportunity to be heard. Within its authority to administer and enforce the laws of this state, including the collection of taxes, FTB ensures that no collection activity will proceed against a taxpayer until due process is satisfied.

When a liability becomes legally due and payable, the first notice a taxpayer receives is the Notice of State Income Tax Due. If the taxpayer does not pay the liability, enter into an installment agreement or demonstrate a financial hardship by the due date listed on the Notice of State Income Tax Due, the liability will create an account in FTB's Accounts Receivable Collection System (ARCS). The collection system will then issue the taxpayer a sequence of collection notices prior to issuing a levy and/or lien. The second notice a taxpayer receives is an Income Tax Due notice (Form 4963). If the taxpayer does not pay the liability, enter into an installment agreement or demonstrate a financial hardship, by the due date on the Income Tax Due notice, the taxpayer will then receive a Final Notice Before Levy and Lien (Form 4966). If the taxpayer does not pay the

liability, enter into an installment agreement or demonstrate a financial hardship by the due date on the Final Notice Before Levy and Lien, the system will initiate collection actions which can potentially include wage garnishments, bank levies and state tax liens.

Please note, if a new assessment posts while there is an existing balance due, FTB will send the taxpayer a State Income Tax Due notice for the new liability. If the taxpayer does not pay the liabilities, enter into an installment agreement or demonstrate a financial hardship, billing will resume at least 30 days later, at the point in the billing cycle previously reached, and will include the balance due from all liabilities.

2. Conform To IRS Guidelines by Considering Married Couples As One Tax Entity

This is a matter that was raised in a pending litigation. FTB will not comment on pending litigation. You may contact FTB's counsel to address this matter.

3. Disclosure of Protocols Regarding Withheld Payments

This is a matter that was raised in a pending litigation. FTB will not comment on pending litigation. You may contact FTB's counsel to address this matter.

4. Disclosure of All Payments Which Are Immediately Applied

This is a matter that was raised in a pending litigation. FTB will not comment on pending litigation. You may contact FTB's counsel to address this matter.

5. Disclosure of Guidelines Used for Calculating Interest

This is a matter that was raised in a pending litigation. FTB will not comment on pending litigation. You may contact FTB's counsel to address this matter.

6. End Practice of Extortion and Coercion to Waive Right to Protest

The Department disagrees with your assertion of any "extortion and coercion" practices. Based on the Frivolous Submission Notice (FTB 9931H PASS) you attached we are inferring that you are referring to the frivolous submission penalty. The FTB may impose a frivolous submission penalty under California Revenue and Taxation Code ("R&TC") section 19179(c)(2) if a taxpayer filed a

protest that is based on an identified frivolous position. (See also Internal Revenue Code § 6702(b).) A taxpayer is afforded the opportunity to avoid the imposition of the penalty if within 30 days after FTB gives notice of the imposition of the penalty, the taxpayer withdraws the frivolous submission. (R&TC § 19179(c)(1)(E).) A taxpayer can request relief from the penalty by completing a Request for Chief Counsel to Relieve Penalties form (FTB 626). Additionally, a taxpayer can also file a claim for refund after the penalty is paid in full and is pursued within the statute of limitations.

7. 24-Hour Processing of Correspondence and Payments

The Franchise Tax Board previously addressed this issue in the 2020 Taxpayer Bill of Rights response to you, dated January 28, 2021. Please see link below.

<https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2020-bor-final-response-christine-grab.pdf>

8. Put amortization schedules on each bill showing how the interest for the billing period was calculated

The Franchise Tax Board previously addressed this issue in the 2020 Taxpayer Bill of Rights response to you, dated January 28, 2021. Please see link below.

<https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2020-bor-final-response-christine-grab.pdf>

9. Disclose Tax Codes That Justifies Not Including Payments Into NPA Totals/Denying Protests on the Grounds of FTB Underreporting Collected Amounts

This is a matter that was raised in a pending litigation. FTB will not comment on pending litigation. You may contact FTB's counsel to address this matter.

10. Taxpayer Advocate to Address Issues of Constitutionality of Tax Laws

We disagree with your assertion that the refusal to address the constitutionality of the tax system or tax laws is a violation of an oath of affirmation and position duty statement. The Taxpayers' Rights Advocate's Office is mandated to provide assistance to California taxpayers who are unable to resolve tax problems or complaints through FTB's normal channels. They ensure that taxpayers' rights are protected and that taxpayers' problems are handled promptly and fairly.

Christine Grab

Page 4

02.01.2022

However, the Taxpayers' Rights Advocate's Office is prohibited from addressing the constitutionality of the tax system or tax laws by declaring a statute unconstitutional or refusing to enforce a statute on the basis that it is unconstitutional. (Cal. Const., art. III, § 3.5.)

Sincerely,



Brenda Voet, EA
Taxpayer Advocate

cc: Betty T. Yee
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Keely Bosler

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