



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

02.01.2023

Christine Grab

Dear Mrs. Grab:

Thank you for virtually attending and presenting your issues at the December 2022 Taxpayers' Bill of Rights Hearing. As the Taxpayers' Rights Advocate, your concerns are important to me.

The following responses are provided by the appropriate program areas within the department:

**1. Conform to IRS guidelines by considering married couples as one tax entity**

FTB disagrees with your assertion that its "treatment" of married couples is a "loophole" or violation of federal law. In addition, FTB disagrees that its decision not to answer this question last year due to pending litigation violated any state or federal laws. As FTB is unable to change the federal and state statutes, you may contact your federal and state legislators regarding any suggested changes to federal or California law.

**2. Close the loophole that allows FTB to evade due process for implementation of collection tools**

FTB previously addressed this issue in the 2021 Taxpayer Bill of Rights response to you, dated February 1, 2022. Please see link below.

<https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2022-bor-final-responses-grab.pdf>

FTB disagrees with your assertion there is a "loophole" that allows FTB to evade due process.

### **3. Repeal R&TC 19179(c)(2)**

FTB disagrees with your assertion that its implementation of Revenue and Taxation Code section 19179, subdivision (c)(2), violates any state or federal laws. As stated above, FTB cannot enact, amend, or repeal laws. You can contact your state legislators regarding any suggested changes to California law.

### **4. Disclosure of protocols regarding withheld payments**

Due to the various types of information requested, FTB will provide you with a supplemental response by February 28, 2023, or sooner.

### **5. Disclosure of all payments which are immediately applied**

The following is a list of Personal and/or Business Entities payment types that are applied to the accounts of taxpayers:

- Estimate Payments
- Return Payments
- Bill Payments
- Proposed Assessment Payments
- Extension Payments
- Suspense Payments
- Amended Return Payments
- Prior Year Estimate Payments
- Prior Year Miscellaneous Payments
- Tax Deposits
- Fiscal Payments
- Accounts Receivable Payments
- Federal and State Offset Payments
- Collection Payments
- Limited Liability Company (LLC) Tax Voucher
- LLC Estimated Fee
- Automatic Extension Payments
- Pass-Through Entity Elective Tax Payment

(Please note the above list is in no specific order)

The timing of when the payments are applied may vary based on how the payments are made, the number of taxpayers the payment is made on behalf of, the method of payment, and whether additional information is needed to apply to the correct amount to the taxpayer's account.

FTB disagrees with your assertion that FTB's prior responses to this question violated any state or federal laws or is a violation of an oath of affirmation and position duty statement.

## **6. Disclosure of guidelines used for calculating interest**

FTB allows interest on the following payments or overpayments: tax overpayments; penalty overpayments; interest overpayments; tax deposit overpayments; payments not claimed on a tax return when an overpayment exists (e.g., estimate and extension payments); payments received with a tax return; bill payments; amounts credited against unpaid liabilities for a different tax year; refundable overpayments where the taxpayer had no filing requirement and filed a tax return; refunds returned to FTB due to FTB's error; and Excess State Disability Insurance.

Interest is allowed on overpayments only after a tax return is filed for that tax year. Under Revenue and Taxation Code, section 19341, interest is not allowed on an overpayment from the filing of a tax return if FTB refunds or credits the overpayment within 45 days of the tax return filing date for individual taxpayers and 90 days of the tax return filing date for corporate taxpayers.

In addition, FTB disagrees with your assertion that FTB's decision not to answer this question last year due to pending litigation violated any state or federal laws.

## **7. 24-Hour processing of correspondence and payments**

FTB 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>

FTB disagrees with your assertion that FTB's prior responses to this question violated any state or federal laws or is a violation of an oath of affirmation and position duty statement.

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

FTB 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>

FTB disagrees with your assertion that FTB's prior responses to this question violated any state or federal laws or is a violation of an oath of affirmation and position duty statement.

**9. Disclose tax codes that justifies not including payments into NPA totals/denying protests on the grounds of FTB underreporting collected amounts**

FTB issues assessments under Part 10.2, Chapter 4, of the Revenue and Taxation Code. Regarding protests, under Revenue and Taxation Code section 19041, subdivision (a), a "taxpayer may file with the [FTB] a written protest against the proposed deficiency assessment, specifying in the protest the grounds upon which it is based."

FTB disagrees with your assertion that FTB's decision not to answer this question last year due to pending litigation violated any state or federal laws.

**10. Taxpayer Advocate to address issues of constitutionality of tax laws**

FTB previously addressed this issue in the 2021 Taxpayer Bill of Rights response to you, dated February 1, 2022. Please see link below.

<https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2022-bor-final-responses-grab.pdf>

FTB disagrees 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.

**11. Refer to taxpayers as "constituents," not as "clients."**

FTB will take your suggestion under consideration.

Sincerely,



Brenda Voet, EA

Taxpayers' Rights Advocate

Christine Grab

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