



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

02.03.2025

Dear Christine Grab:

Thank you for submitting your issues for the December 2024 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. No Payment Suspense Account

In previous ATBOR responses, FTB has stated that the estimated tax payments that FTB collects are immediately identified as revenue and turned over to the State Controller: <https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2023-Supplemental-response-Grab-Reply.pdf>

FTB has also stated that some types of estimated tax payments are not immediately applied to the taxpayer's account; these payments are held in a suspense account until the taxpayer files that year's tax return. When I log into MyFTB estimated payments page, it states "Funds listed below can only be claimed when you file a tax return for the corresponding tax year." I believe this indicates that all estimated tax payments that I may make are withheld from my account and placed into the suspense account.

In the San Diego Superior Court case *Grab v FTB*, FTB propounded documents that stated that the estimated tax payments which are held in suspense are identified as "no payments." Last year, FTB stated "It is unclear to what indicators you are referring to as 'no payments' indicators." So to clarify, here is one of the documents that FTB propounded under penalty of perjury: <https://qwsandiego.net/blog/wp-content/uploads/2021/09/22no-payment22.pdf>.

The only purpose I can think of to identify payments as "no payments" is to not include these funds into the revenue collected totals.

In 2022, I had asked "Please specify exactly when these withheld payments are counted in the revenue totals for the State of California for that year." FTB's deceptive reply was "Yes, estimated tax payments are recorded as revenue when the funds are remitted." I hadn't asked about payments that FTB had identified as estimated tax payments. I had asked about payments FTB had identified as "no payments":

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

In 2022, I had also asked “Who is the custodian of the suspense accounts in which the withheld payments are placed for the interim?” FTB’s deceptive reply was “All funds are deposited into accounts within the Centralized State Treasury System (CTS) and remitted to the State Controller’s Office (SCO).” Again, I hadn’t asked about payments that FTB had identified as funds. I had asked about payments that FTB had identified as “no payments,” which obviously weren’t yet identified as funds.

When I asked about the “no payment suspense account” again in 2023, FTB falsely stated that it had already addressed the issue in the 2022 supplemental response: <https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2024-Grab-FTB-TBOR-Reply.pdf>

In *Grab v FTB*, I used the records that FTB propounded to show numerous egregious accounting irregularities associated with these withheld payments. The strange accounting irregularities makes it appear that these funds are somehow utilized in the interim between being receive by FTB and being applied to the taxpayer’s account. The complete details can be found in the *Statements of Undisputed Facts and Supporting Evidence in Opposition to Motion for Summary Judgment* (68 - 129 exposes the accounting fraud), which can be downloaded from the court’s website: <https://roa.sdcourt.ca.gov/roa/faces/CaseSearch.xhtml>. The case number is year 2020, case number 00005100.

I request that FTB provide full disclosure about this “no payment suspense account” that the withheld estimated tax payments are held in:

- Is this account a “borrowable funds” account?
- If so, please provide complete details about the terms of when these funds can be utilized, including who can utilize them and for what purposes.
- If not, please explain the nature of how these funds are utilized in the interim between FTB receiving the funds and applying the funds to the taxpayer’s account.
- Who controls the funds within the “no payment suspense account” account? Is it FTB, the State Controller, or another agency?
- Are there records from this account available to the public to scrutinize, or is this an “off-the books” or a “secret” account?

Furthermore, Ms. Cohen: Back in 2017, Yvette Stowers told me that she had opened an audit into FTB’s accounting irregularities involving misapplied payments. I have made multiple Public Records Requests from the State Controller’s Office for the results of this audit. All of my requests have gone unacknowledged. As the head of the California Auditor’s Office, will you please publicly release the results of the audit?

Response

FTB previously informed you in its response for the 2023 Taxpayers' Bill of Rights dated February 1, 2024, that it previously addressed the issue of withholding payments and their application in its supplemental response to you for the 2022 Taxpayers' Bill of Rights dated February 15, 2023. Please see the link below.

<https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2023-Supplemental-response-Grab-Reply.pdf>

2. When Tax Payments are Applied to the Taxpayer's Account

In the SDSC court case *Grab v FTB*, I documented that, year in and year, out the Taxpayer's Advocate office told me that withholding some types of estimated tax payments from the taxpayer's account until the tax return for that year was filed was FTB's standard business practice. However, the Disclosure Department repeatedly denied the existence of these same withholding practices.

In the court case, FTB never confirmed nor denied the existence of these withholding practices. If these practices were lawful, FTB would have stated so in court. This failure to admit to these practices in court indicates that these practices are extralegal (also referred to as "underground regulations.")

In the SDSC case, I alleged that the practice of temporarily withholding estimated tax payments instead of immediately applying the funds to the taxpayer's account was an embezzlement scheme. I also alleged that the practice of imposing late fees, penalties and interest for "paying late" when the funds had been received by the due was a racketeering scheme. FTB never denied these allegations. Failure to deny constitutes admission of truth.

Since the case ended, I have tried multiple times to get FTB to provide full disclosure regarding **exactly when** all tax payments are **actually applied** to the taxpayer's accounts. FTB has repeatedly evaded disclosure of this information.

In 2022, FTB gave a vague response "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":

<https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2023-Supplemental-response-Grab-Reply.pdf>

In my 2023 request, I wrote:

"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

I request that FTB clarify **exactly when** the payments are applied in each of the above listed scenarios, along with the specific **California** Revenue and Tax Codes utilized to justify the delay in application of funds. I believe that how, when and where payments are applied are material facts, and refusing to disclose this information is a violation of 18 USC §1001 (a)(1), which states in part:

it is a federal crime, in a matter within the jurisdiction of a government agency, to (1) falsify, conceal or cover up a material fact.”

FTB’s response was: “FTB applies bill payments on the date they are received”:
<https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2024-Grab-FTB-TBOR-Reply.pdf>

I’d requested disclosure of FTB’s standard operating procedures on fourteen types of payments FTB only addressed one of the fourteen types of payments. This year, I expect FTB to comply with the above referenced federal law and fully disclose **exactly when each type of the rest of the tax payments are actually applied to the taxpayer’s account.**

The improper application of payments in accordance with the assorted laws is a violation public policy. The deceptive wording used to evade disclosing these practices are clearly intentional schemes of deceit.

Response

FTB applies bill payments on the date received. Additionally, FTB previously informed you in its response for the 2023 Taxpayers’ Bill of Rights dated February 1, 2024, that it has previously addressed this issue in its response to you for the 2022 Taxpayers’ Bill of Rights dated February 15, 2023. Please see the link below.

<https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2023-Supplemental-response-Grab-Reply.pdf>

3. Payments/Portions of Payments Recognized for Interest Calculation Purposes

In the SDSC court case *Grab v FTB*, it was disclosed that, for the purpose of calculating interest, FTB only recognizes some of the payments that had been made and only portions of other payments that had been made. Thus, the taxpayer pays more interest than they should because it falsely appears that the taxpayer had a higher outstanding balance than they actually did.

Please provide the criteria and guidelines utilized for **determining which payments and portions of payments are withheld from/applied to the totals** of payments collected by FTB for the purpose of calculating interest: <https://qwsandiego.net/blog/wp-content/uploads/2021/02/proof-of-4-schemes-to-overcharge-interest.pdf>

I made this request in 2022. FTB fraudulently responded as if I had asked a different question altogether. In FTB's response, FTB addressed situations in which FTB may pay interest to the taxpayers.

I made this request again in 2023. FTB responded:

“FTB does not intend for taxpayers to pay more interest than what is required by law. However, should a taxpayer overpay interest, FTB will take the appropriate actions to correct any overpayment of interest.”

While it is nice that FTB has stated that if a constituent catches FTB overcharging interest, FTB will refund the excess interest paid, FTB still has not disclosed the criteria and guidelines utilized for determining which payments and portions of payments are withheld from/applied to the totals of payments collected by FTB for the purpose of calculating interest. (BTW, I still haven't gotten my refund for the interest that I overpaid, which was documented in the link above. Since FTB stated this overage would be refunded, I'm waiting for my check)

The improper application of payments in accordance with the assorted laws is a violation public policy. Furthermore, I believe that how, when and where payments are applied are material facts, and refusing to disclose this information is a violation of 18 USC §1001 (a)(1).

I expect full disclosure this year.

Response

FTB accounts for **all** payments received from the time the payment is received for each tax liability for the purpose of calculating interest on liabilities unpaid after the due date for payment of taxes.

4. Tax Codes Not Allowing Protests

Here is an excerpt from the *Declaration of Christine N. Grab in Support of Motion to Compel Further Response to Specially Prepared Interrogatories, Set #1: Clarification of Policies and Procedures*,

SPECIAL INTERROGATORY NO. 3C: It appears there are many categories for protesting the amount of income FTB assessed in calculating the tax liability (please see the examples attached as pages 2 - 5); however, it appears there is no category to Protest the amount of money that FTB has collected in payments towards that year's liability. Is it possible for a taxpayer to file a Protest to a NPA on the basis that FTB has underreported the amount of payments FTB has collected?

FTB RESPONSE TO SPECIAL INTERROGATORY NO. 3C: ...Therefore, any protest on the ground that FTB did not include the prepayments or credits is not supported by legal authority.

As has been established by Revenue and Tax Code 19087, a Notice of Proposed Assessment can only be issued on accounts that have an outstanding tax liability due for the year as assessed by FTB using a status of single, filing 0 exemptions.

My husband and I filed Protests to the NPAs that FTB issued. FTB "misclassified" all of our Protests and thus denied us our right to Protest under R&TCs 21010 and 20102 (please see the above referenced court document. SUF 29 - 67 expose FTB's violations of the Right to Protest).

However, as FTB employee Keith Swank stated under penalty of perjury, even if our Protests had not been "misclassified," the Protests would have been denied on the grounds that FTB does not legally have to include all prepayments and credits received into the calculations. I believe that the denial of the right to Protest on these grounds is a violation of the Taxpayer Bill of Rights Sections 21010 and 20102.

Mr. Swank failed to provide any legal codes to substantiate this claim that FTB is not required to include all prepayments and credits, which is one of the reasons that I filed the *Motion to Compel*. While the judge did not order Mr. Swank to provide the legal codes, I believe that FTB has a responsibility to disclose these legal codes in order to comply with its own Foundational Principals:

- Operate with transparency to maintain public trust and confidence.
- Conduct our business in accordance with the Statement of Principles of Tax Administration, Taxpayers' Bill of Rights, and our organizational values.

As such, I request that FTB provide all of the relevant legal codes which justify not applying all prepayments and credits that have been collected by FTB into the taxpayer's NPA totals.

I also request all legal codes that justify not allowing Protests on the grounds that FTB had underreported the totals collected.

If FTB again fails to provide codes to justify these nefarious and malicious business practices, the Taxpayer Advocate has a legal obligation to immediately halt these extralegal business practices accordance with our constitutional protections.

I am sure that you will want to review the full context of the quote above for your response. Please download the *Declaration* from the court: <https://roa.sdcourt.ca.gov/roa/faces/CaseSearch.xhtml>. The case year is 2020 and the case number is 00005100. The Declaration is Item #39. Item #3C, the quote referenced above, encompasses pages 10 – 16.

Response

Pursuant to California Revenue and Taxation Code section 19307 and FTB Notice 2005-6, voluntary payments remitted **before** a return is filed or **before** a final liability is established are held in suspense until the liability is final. Such prepayments are treated as estimated tax payments or tax deposits placed on the taxpayers account and are held until the liability becomes final. The payment becomes effective upon the proposed assessment becoming final and is credited the day the payment is received for the purposes of calculating interest. FTB does not deny the right to protest proposed assessments based on the status of payments for the taxable year at issue.

5. Collections Agents Overcharge Constituents

In the SDSC court case *Grab vs. FTB*, I utilized the documents propounded by FTB to document that on 07-09-2014, FTB collections agent Carrey Burton-Beilby directed me to send more money than the bill stated was due, then falsified FTB's internal records to make it appear that that was always the amount due: <https://gwsandiego.net/blog/wp-content/uploads/2019/11/Staples-Scan-7.pdf>

I also documented that on 02-24-2016, FTB collections agent Alexis Bear directed me to send more money than the bill stated was due, then falsified FTB's internal records to make it appear that that was always the amount due: <https://gwsandiego.net/blog/wp-content/uploads/2021/02/proof-of-4-schemes-to-overcharge-interest.pdf>

FTB never denied these allegations in the court case, and failure to deny constitutes admission of truth.

Public records indicate that instead of firing and prosecuting Alexis Bear and Carrey Burton-Beilby, FTB instead gave both of them promotions and large raises.

Since the beneficiary of both of these overpayments was FTB, this appears to be a *bona fide* criminal scheme being run by the head of the Collections department,

Jennifer Fowler. Not only was Ms. Fowler not fired, she has consistently gotten increases in total compensation each year.

My request is that FTB provide proof that this bona fide criminal scheme has been halted and that Collections agents are no longer overcharging constituents and falsifying records.

If this business practice has not been halted already, the Taxpayer Advocate is required by law to immediately protect our constitutional rights by halting this extralegal and fraudulent business practice.

Response

FTB disagrees collection agents overcharged constituents. FTB's practice is to collect the correct amount of tax, penalties, and interest consistent with the law.

6. Conform to IRS Guidelines By Considering Married Couples as One Tax Entity

The IRS treats married couples as a single taxpaying entity from the moment the couple notifies them of marriage until the couple notifies them that the marital status has changed. However, FTB considers all individuals as unmarried. Each year, after a married couple files that year's return, FTB updates their records with proper marital status for only that particular year. In the SDSC case *Grab v FTB*, I documented that:

1. FTB utilizes this incorrect marital status in order to falsely impose penalties and fees via policy and procedure violations (please see the above referenced court document, *Statements of Undisputed Facts*. Numbers 29 - 67 expose FTB's violations of the Right to Protest).

2 FTB utilizes this incorrect marital status to temporarily unlawfully enrich themselves by demanding extra additional tax liability and penalty payments above and beyond what FTB knows — *by its own records* — is actually owed (please see the above referenced court document *Statements of Undisputed Facts*. 68 - 129 exposes the accounting fraud).

While the excess funds are eventually refunded, FTB considers the refund to be income, and thus the married couple is required to pay higher income taxes in order to get extorted funds back.

I have been asking FTB since 2017 to provide the legal statutes that it utilizes in order to justify this unlawful imposition of extra tax and penalty liabilities. FTB has committed fraud numerous times by citing irrelevant statutes and federal guidelines which say the exact opposite of what FTB claimed the guideline said.

In *Grab v. FTB*, I alleged these business practices to be an embezzlement and racketeering scheme. If these business practices had been lawful, FTB would have provided the pertinent statutes in court.

FTB never provided any statutes, nor did FTB deny the allegations of running a systematic embezzlement and racketeering scheme specifically targeted against married people. Failure to deny constitutes admission of truth. FTB has tacitly admitted that these business practices are extralegal “underground regulations.”

3. Marital status is considered a class. Financially penalizing people for being married violates the 14th Amendment of the Constitution. The Taxpayer Advocate must immediately bring FTB’s business practices in line with our constitutional protections by halting the extralegal business practices over overcharging married people.

Response

As you have previously been informed, FTB cannot enact, amend, or repeal laws. You can contact your state legislators regarding any suggested changes to California law regarding conformity.

7. Advocate to Address Issues of Constitutional Violations

The Taxpayer Advocate page has a clause which states “Unfortunately, the Taxpayer Advocate will not resolve or accept your case for: Constitutionality of the tax system or tax laws.”

The Taxpayer Bill of Rights was passed by the legislature in order to prevent nefarious practices by the taxation agencies. Above, I documented that FTB has been caught not applying estimated tax payments in order to fraudulently impose penalties, overcharging interest, overcharging married couples, and violating due process laws. All of these are violations of our constitutional rights.

When I made this request in 2022, I wrote:

“...personally experienced from FTB involves shockingly inaccurate interpretations of the existing federal and state laws. Every item on my list this year either involves FTB abusing the legal system in a way that unlawfully penalizes taxpayers or FTB’s failure to disclose the laws on which questionable business practices are based.”

FTB responded with deception. Instead of addressing the issues that I’d brought up – that I wanted the Advocate to hold FTB accountable to what is actually written in the statutes and to halt FTB’s extra-legal activities -- FTB pretended as if I had requested that the Advocate take it upon herself to declare existing statutes unconstitutional. FTB cited California Constitution Article III - State of California Section 3.5., which states:

SEC. 3.5.

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the

basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

- (b) To declare a statute unconstitutional;
- (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

(Sec. 3.5 added June 6, 1978, by Prop. 5. Res.Ch. 48, 1977.)

Last year, when I made this request again, I tried to be clearer that I was asking Ms. Jones to protect constituents from FTB's business practices which are clear violations of the existing statutes that are already in place and/or extralegal. I wrote:

"I request that all interpretations of statutes be reviewed...in order to ensure that FTB policies and procedures follow the laws as written, with no words omitted from and no extra words inserted into the statutes. Remember that omitting or adding words constitutes fraud..."

... FTB tends to alter the language found in the statutes in order to change the effect to FTB's favor or convenience. FTB's legal counsel and employees then use these fraudulent misrepresentation of statutes to commit malfeasance worthy of criminal sanctions.

The Taxpayer Bill of Rights was passed by the legislature in order to prevent such nefarious practices."

FTB responded to my 2023 request by doubling down on their 2022 response. The author (likely one of the many FTB attorneys without a properly executed oath who set up Ms. Jones as a patsy) stated "FTB cannot enact, amend, or repeal laws," which deceptively disregarded the allegations that I had made that FTB was not following the statutes as written and/or making up statutes that don't exist.

Interestingly enough, at no point in FTB's 2023 response did FTB dispute my allegations that FTB maliciously misinterpreted the following statutes in order to unlawfully exploit constituents: R&TC 19117 (FTB does not disclose all pertinent information in accordance with this law), R&TC Section 21027 (FTB does not process all correspondence in the same time frames no matter which method of delivery), R&TC 19363 (FTB does not apply all credit elect payments on the prescribed tax day) and Treas. Reg. § 1.6654-2 (FTB withholds payments made by married couples instead of applying joint estimated tax payments in the manner the spouses agree to).

Failure to deny constitutes admission of truth. By signing this letter, Ms. Jones has tacitly admitted that she is knowingly turning a blind eye to FTB's gross violations of existing statutes/regulations in order to exploit taxpayers. She has essentially admitted that she is conspiring to violate our taxpayer and constitutional rights. Considering that

her job is to literally protect taxpayers from fraud, I don't know how she sleeps at night or can look herself in the mirror.

I request this clause be immediately repealed and that the Advocate's office address matters of constitutionality, especially in regards to FTB's malfeasant misinterpretations of the statutes on the books and FTB's extralegal activities (AKA unsanctioned "underground regulations.").

In closing, FTB seems to have forgotten that they are public servants work on behalf of "we the people." "We the people" can revoke the power that we have given FTB and change how the system operates.

I suggest that this in this year's response, FTB take into account the multiple recent Supreme Court rulings made in 2024 which reign in government overreach, particularly *Loper v. Raimondo (The Chevron Deference)*, which allows judges to interpret laws instead of relying on an agency's interpretation.

Thanks to these recent rulings, the days of FTB maliciously altering statutes and engaging in extra-legal activities has ended. FTB is at a cross-roads: FTB can voluntarily change its policies and procedures to comply with existing federal and state law, or "we the people" can force FTB to change – which will likely involve federal lawsuits and criminal prosecutions. FTB has built its business model on fraud; there is no statute of limitation on fraud.

In all the previous ATBOR responses that I have received, the Legal Department used the Taxpayer Advocate as a shield to protect themselves from liability for the fraudulent, evasive and/or deceptive words in those responses. This year, I request that the Legal Department take responsibility for the words they write and identify the true author of each of the sections. As I have stated many times before, I am disgusted by FTB's culture of the legal department throwing others under the bus to protect themselves.

Response

Regarding your request that the FTB allows the Advocate's Office to address matters of "constitutionality." FTB does not have the authority to allow the Advocate to address constitutional issues. FTB administers the California tax laws and regulations but does not have the authority to address constitutional issues. Article III, section 3.5 of the California Constitution establishes separation of powers meaning administrative agencies like FTB (and its Advocate) cannot determine the constitutionality of laws, as this is a judicial function. California Revenue and Taxation Code section 21021 provides the Advocate may assist taxpayers in disputes with FTB but does not have the authority to change laws or address constitutional issues.

Sincerely,

A handwritten signature in black ink that reads "Angela Jones". The signature is written in a cursive, flowing style.

Angela Jones
Taxpayers' Rights Advocate

cc: Malia M. Cohen

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