



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

02.03.2025

Ryan LLC

Dear Gina Rodriquez:

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. Taxpayers' Addresses

The FTB operates effective automated collection processes to ensure taxpayers pay what they owe. However, the FTB should consider pausing these systems in certain cases—particularly when outdated taxpayer addresses are identified—to ensure taxpayer rights are fully protected.

As the largest property tax and sales and use tax firm in North America, we frequently encounter issues with outdated addresses maintained by local governments. Address management is an area where all levels of government could benefit from improved coordination, especially with the emergence of AI technologies. This issue is further compounded by the FTB's economic nexus rules, which have brought numerous new taxpayers into California's jurisdiction, including foreign (non-U.S.) taxpayers that likely are unfamiliar with California's bifurcated and complex tax system.

One complexity for taxpayers that the FTB is aware of involves the continuous filing requirement for business entities registered with the California Secretary of State (SOS) but that no longer are doing business in California. These entities must file returns with the FTB until they are officially canceled or dissolved with the SOS. Many taxpayers, particularly those new to California's taxing jurisdiction, are unaware of this requirement until they formally shut down with the SOS.

Regarding address rules for the FTB, R&TC §18416 says:

- (a) Unless expressly otherwise provided in this part, any notice may be given by first-class mail postage prepaid.
- (b) For purposes of this part, any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last known address.
- (c) The last known address shall be the address that appears on the taxpayer's last return filed with the Franchise Tax Board, unless the taxpayer has provided to the Franchise Tax Board clear and concise written or electronic notification of a different

address, **or the Franchise Tax Board has an address it has reason to believe is the most current address for the taxpayer. [emphasis added]**

It is this bold-faced text I have asked the FTB on which to focus.

Taxpayers are responsible for notifying the government of any change in address. This is one reason business entities are required to file Statements of Information with the SOS. The primary purpose of these Statements is to ensure the state maintains accurate and up-to-date records for official use and compliance purposes. However, the FTB does not consult the SOS's public website for this information, nor do the two agencies seem to share address data electronically, despite their existing data-sharing protocols. Why is this the case?

A notice of deficiency may be deemed defective if it is sent to an outdated address while the sender has actual knowledge of a new address, as established in *Sicari v. C.I.R.* (1998) 136 F.3d 925. Case law also highlights the obligation of tax agencies to **exercise reasonable diligence** in determining a taxpayer's correct address when they are aware the last-known address may be incorrect. Reasonable diligence typically requires the agency to consult its own files, especially computer databases. *Id.*

In instances where the IRS had actual knowledge of an address change in one database but failed to consult it before issuing a deficiency notice to an outdated address, courts have ruled that the IRS did not exercise reasonable diligence in ascertaining the taxpayer's correct address. *Id.*; see also *United States v. Bell*, 183 B.R. 650 (S.D. Fla. 1995) As noted in *Russell J. Kutell, Note, The Current Trend in Interpreting the Internal Revenue Service's Standard of Reasonable Diligence in Mailing Notices of Deficiency to a Taxpayer's "Last Known Address" and the Due Process Implications*, 44 Tax Law. 625, 630 (1991)): "While the taxpayer should bear the burden of notification of the new address, **the IRS cannot simply ignore that which it obviously knows.**"

We are not asking the FTB to check the SOS public website for updated addresses in every collection case, only those where, perhaps, the levy is more than \$100,000, or whatever threshold the FTB deems appropriate. It would t, and where all notices have indicated an outdated address. This would appear to take minimal time and effort for such collection cases to be routed to the correct address or for the FTB to send an automated letter using the SOS address to verify the correct address.

The following is a real example of a problem that occurred this year:

A foreign (non-U.S.) client registered with the California Secretary of State (SOS) in 2016 and timely filed all California tax returns through 2018. All returns reflected the \$800 minimum franchise tax owed, which the taxpayer paid. After the 2018 tax year, the client ceased having gross receipts and stopped filing with the FTB but did not formally dissolve with the SOS.

In 2022, the taxpayer moved and updated its address by filing a new Statement of Information with the SOS. Being unfamiliar with California's complex system and the numerous agencies requiring notification, the foreign entity believed it had fulfilled its address update requirements.

The FTB's automated collection system began sending filing enforcement notices to the taxpayer's old address, continuing for more than a year. In 2024, the FTB issued an Order to Withhold to the taxpayer's bank for close to \$1 million. This was the first time the taxpayer became aware of the ongoing filing requirement. Interesting that the FTB didn't ask the bank for the correct address, but maybe there are confidentiality issues.

The FTB calculated the \$1 million liability using an "industry average" of the taxpayer's business but failed to consider the cost of goods sold (COGS), resulting in a tax assessment based solely on gross receipts. The FTB also failed to review the taxpayer's filing history. The fact that the taxpayer was an \$800 filer should have provided the FTB with proof that they overestimated the tax. Note: The FTB's aggressive use of industry averages was an issue brought forth to the FTB's taxpayers' rights advocate many years ago, but we thought that the FTB refined the system, so that these types of issues no longer occurred. But this is an issue to be addressed on another day.

Here is where the statute comes in, and specifically the words: **"or the Franchise Tax Board has an address it has reason to believe is the most current address for the taxpayer."** With an updated Statement of Information on file with the SOS, wouldn't the FTB have "reason to believe" that it is "the most current address for the taxpayer," or at least reach out to the taxpayer at that address before levying almost \$1M from the taxpayer's bank account?

Further, after reviewing the file and seeking help through normal FTB channels, I asked for your help. You would not accept the case because the taxpayer failed to prove there was a "financial hardship," even though the FTB's process harmed this taxpayer.

In our opinion, the FTB made multiple mistakes:

- 1) The FTB failed to reach out to the taxpayer at the address shown on the Statement of Information, **"an address [the FTB had] reason to believe is the most current address for the taxpayer;"**
- 2) According to the taxpayer's filing history, the taxpayer only owed \$800 for all prior taxable years, yet the FTB ignored the taxpayer's filing history and withdrew close to \$1 million from the taxpayer's bank account;
- 3) The FTB failed to consider the taxpayer's COGS when calculating the taxpayer's industry average for purposes of its estimated tax liability, a number that was grossly exaggerated; and
- 4) The TRA office would not assist the taxpayer because the taxpayer failed to provide there was a financial hardship, even though this taxpayer had a proven history of being an \$800 taxpayer, I had been through all normal channels, and the FTB's estimated tax liability was grossly overstated.

Response

It is correct FTB and SOS share many types of data. However, FTB does not automatically update the taxpayer's address in our systems based on the address provided to SOS on the Statement of Information (SOI). Entities sometimes purposefully choose different addresses for SOS and FTB purposes. Often, the address provided to SOS on the SOI is an address for the Agent for Service of Process and not the actual business.

For business entity collection accounts with a bad address, FTB collectors utilize multiple search tools, including but not limited to, the California DMV, US Postal Service, Lexis Nexis, CDFTA, and EDD to locate a mailable address. Collectors may use SOS address information if they are unable to locate a mailable address through other sources.

2. POA Instructions

This is a follow-up to the 3520-BE issues we addressed with the FTB in 2023. The FTB forms team released the draft 2024 3520 form and instructions on July 10, 2024. Disappointingly, the draft did not address the problems we identified in the prior year, as it appears identical to the 2023 version.

When we raised these issues last year, the forms team informed us it was “too late” to make the corrections. We were assured the changes would be noted for the 2024 version. To ensure this that the corrections would be made, we submitted our suggestions through the FTB's Tax Form Improvements Suggestions platform on December 21, 2023, and received an automated acknowledgment stating we would receive a response within 3–5 days. However, we never heard back from anyone. Recall that we asked the FTB to add instructions about requiring separate POAs for every R-7 entity in the unitary combined report for practitioners to gain full MyFTB access to those entities' accounts. As we discovered last year, there is no way to gain access to every R-7 account in a unitary combined report just by filing a POA for the key corporation. Unfortunately, the instructions only discuss filing POAs for the key corporations and for taxpayers that previously were included in the unitary combined report. Again, with more new California taxpayers, we need to be helpful. Second, we requested the addition of instructions regarding the procedures for suspended/forfeited business entities in the POA instructions. If a suspended/forfeited business entity can file a POA, it should be affirmatively stated in the POA instructions. Some FTB personnel believe it isn't allowed, and adding some instructions would help the FTB internally, as well as help taxpayers in these situations. The FTB also needs to add some instructions on POA for a suspended/forfeited R-7 entity and whether that entity can adversely impact the POA for the parent/key corp. For example, can the POA file a refund claim, protest, alternative apportionment petition, etc., for the parent/key corp. if one of the R-7 entities is suspended/forfeited? This is more common than you think because we often find suspended/forfeited R-7 entities part of the unitary combined return. When we previously checked on this with Jackie Zumaeta, she said to

call the Hotline, and the Hotline said to call the POA Unit, and the POA Unit said that they are not allowed to talk with practitioners. Practitioners answer as many questions as we can for the FTB, but some simple instructions would go a long way to fix these types of problems.

Response

FTB values collaboration with our customers and sincerely appreciates your suggestion. When adopting changes, FTB considers the equitable benefit to all taxpayers. We updated internal procedures and updated our agents to ensure they can handle the contacts for combined report taxpayers.

3. MyFTB Chat

You have heard from many practitioners about the lack of access to FTB's Hotline, but at least there is a recording telling us that they are too busy to answer and try back later. We have not had the same experience on MyFTB Chat. We hold for a very long time, present our issue after showing proof of who we are and start a chat. Then, we are cut off. I have provided you examples of some of these instances, and hopefully, you are working on correcting this platform. Telling us they are too busy is much better than holding for an hour and then getting cut off.

Response

FTB experienced issues during the summer with disconnected chats. In late September, we implemented a technology solution to resolve the issue. FTB has since experienced a reduction in the number of disconnected chats. We asked our customer service representatives to gather additional information when issues are reported so we can more promptly identify the issue and resolve. Although there may be a small number of disconnected chats due to technical issues, including Internet connection, we believe such instances are limited and taxpayers continue to utilize MyFTB Chat effectively.

4. FTB Notices

Please clarify which "taxable years" FTB is referencing on notices. For example, does "Taxable Year(s) 04/22" mean Taxable Year Beginning 04/22 or Taxable Year Ending 04/22? It is especially confusing for some taxpayers when FTB references a calendar year, and it says: "Taxable Year(s) 12/29." Sometimes even the FTB staff can't figure it out.

Response

In general, the "taxable year" on the notice, if represented as a month and year, indicates the end date for the tax period in question. So, if the taxable year on the notice is 04/22, that would be the period ending in April 2022.

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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