



Tax News

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Amending a personal income tax return

For taxable years beginning on or after **January 1, 2017**, Schedule X, California Explanation of Amended Return Changes, has replaced California Form 540X, Amended Individual Income Tax Return. To amend a Personal Income Tax (PIT) return for taxable years 2017 or later, the taxpayer files a corrected form (540, 540 2EZ, 540NR) with the “Check here if this is an amended return” box checked, along with the completed Schedule X.

For tax year 2017 to present, **only include these following two items:**

- A corrected form (540, 540 2EZ, 540NR), with supporting documents
- Schedule X

Do not include a copy of your original return. This may cause a delay in the processing of your amended return.

Additionally, starting with tax year 2017, taxpayers and tax practitioners are able to **e-file** PIT amended returns when the tax software supports this functionality.

Gig economy information and resources available for you and your clients

Here at the FTB we would like to remind you of the many resources that are available regarding the gig economy or shared economy. The FTB and our Education and Outreach team have made a concerted effort to look into ways in which we could help get information out to those that are using gig economy platforms such as Uber, Lyft, Airbnb, Postmates, etc. Multiple studies have shown that a large percentage of those working for these platforms don't know enough information about their potential tax filing requirements. We understand that our most informed customers/taxpayers are the ones that are the most compliant. Consequently, we looked for ways to help inform those that work in the gig economy of their possible filing requirements and the resources that are available to them.

One of the tools that the FTB created to help inform people about the gig economy was to publish and launch a [gig economy webpage](#) to provide valuable information and useful links about the tax aspects of the gig economy. This webpage also includes a link to our [Tax News Live Video](#) on YouTube that discusses the gig economy and possible filing requirements. This video was created by the Taxpayers' Rights Advocate's Office and features our Small Business Liaison.

Also, last year we attended 126 different education and outreach events where we presented information that included income tax filing requirements for those involved in the gig economy. We presented to various tax practitioner groups and at small business seminars throughout the state. At small business seminars, we include information and resources about the gig economy and discuss the different Forms of Ownerships for businesses. This includes information for sole proprietors, partnerships, corporations, and limited liability companies.

Finally, we continue to use all the various social media outlets available to us to share information. This includes Facebook, Twitter, YouTube, etc., which are valuable tools to keep gig economy participants informed.

California Competes Tax Credit first application period announcement for fiscal year 2019/2020

The California Competes Tax Credit (CCTC) is an income or franchise tax credit available to businesses that want to come to or stay and grow in California. Tax credit agreements are negotiated by the Governor's Office of Business and Economic Development (GO-Biz) and approved by a statutorily-created CCTC Committee.

The Committee consists of:

- Director of GO-Biz (Chair)
- State Treasurer
- Director of the Department of Finance
- One appointee each by the Speaker of the Assembly and Senate Committee on Rules

For fiscal year 2019/2020, the CCTC is available for allocation in three separate application periods:

- July 29, 2019 through August 19, 2019
- January 6, 2020 through January 27, 2020
- March 9, 2020 through March 30, 2020

For the first application period, \$90 million is available for allocation. Applications for the credit will be accepted at calcompetes.ca.gov from **July 29, 2019, until August 19, 2019.**

For more information, go to GO-Biz's Program webpage on the [California Competes Tax Credit](#).

Tax Appeals Assistance Program update

As previously mentioned in our January issue of Tax News, the Taxpayers' Rights Advocate Office at the FTB began administering the franchise and income tax portion of the Tax Appeals Assistance Program (TAAP).

TAAP offers free legal assistance to eligible taxpayers of limited means who have filed an appeal with the Office of Tax Appeals (OTA) on an action taken by the FTB, where the amount in dispute or the refund being claimed is less than \$30,000.

We are able to provide this valuable service by partnering with several California law schools throughout the state. Law students, supervised by an experienced TAAP tax attorney, help taxpayers during the appeals process by researching issues, drafting briefs, providing advice and guidance, and representing appellants at pre-hearing conferences and oral hearings before the OTA.

We have detailed information about [TAAP](#) on our website and how to contact us, if you feel this may be a viable option for your client.

The FTB has administered TAAP for over six months now and we wanted to give you a brief update on what we have done so far in this important program. As of June 30, 2019, TAAP has had 35 law students participate in the program, helped resolve 60 appeals cases, and represented two taxpayers at oral hearings in front of the OTA in Los Angeles and in Sacramento. We are also available to represent clients who reside outside of California as well.

Schedule K-1 and withholding

If you prepare Schedule K-1 and there is a withholding credit, below are some items you may need to consider. The amount withheld should be allowed to the recipient of the income as a credit against the tax associated with that income for the taxable year. This means the withholding credit follows with the related income.

- If you or your client is a trust, verify if the income distribution deduction on line 18 of California Form 541, California Fiduciary Income Tax Return, is related to a withholding credit. If the income related to the withholding credit is included and distributed, then the related withholding credit must also be distributed. The withholding credit is reported on both the Schedule K-1 and Form 592, Resident and Nonresident Withholding Statement.
 - To allocate the withholding to the beneficiary, the trust completes Form 592. Form 592 provides us with the information we need to apply the withholding credit to the beneficiary account. At the same time, the trust provides California Form 592-B, Resident and Nonresident Withholding Tax Statement, to the beneficiary. Form 592-B is used to report to the beneficiary the amount of income and withholding credit allocated by the trust (as reported by the trust on Form 592). When the beneficiary files an income tax return, the beneficiary should attach Form 592-B to the income tax return to claim the withholding.
 - If the payee is a **grantor trust**, Form 592-B should have the name and SSN or ITIN of the grantor that is required to file a tax return and report the income. If the payee is a **non-grantor trust**, Form 592-B should have the name of the trust and the trusts FEIN.
- If you or your client is a pass-through entity and had money withheld and remitted to us by another entity, then the pass-through entity can claim a portion (not to exceed the total tax and fee due) of the withholding credit on their tax return and must allocate the remaining credit to its pass-through owners. If there is no tax due or the pass-through entity chooses not to claim a portion on their tax return, then the entity must allocate the entire withholding credit to its pass-through owners.

Here are a few additional tips and reminders to help you complete Form 592 and Form 592-B:

- For instructions and more information on how to complete Form 592 and Form 592-B go to ftb.ca.gov.
- The year of the tax form(s) and the year of the withholding must be the same.
- When the credit is being allocated from another entity, enter the trust or pass-through entity information as the withholding agent. Even though the trust or pass-through entity did not withhold, the trust or pass-through entity has a withholding credit that must be allocated to its beneficiaries or pass-through owners. Enter the beneficiary or pass-through owner information as the payee.
- Complete Form 592-B with the beneficiary or pass-through owner information as the payee in Part II. Enter the amount of income and withholding credit allocated in Part IV.

For questions, suggestions, or comments, visit our [Contact Us](#) page.

New advocates for CDTFA and GO-Biz

The California Department of Tax and Fee Administration's (CDTFA) recently announced that William Hain was selected to be their new Taxpayers' Rights Advocate and Small Business Liaison.

Mr. Hain began his career with the former Board of Equalization (now CDTFA) in 1989 as a Tax Representative, working for several years in the San Francisco Bay Area. Mr. Hain relocated to Sacramento and continued on his career path with the CDTFA, working as a Tax Compliance Specialist and as a Principal Compliance Supervisor before becoming the manager of CDTFA's Department's Compliance and Technology Section.

The California Governor's Office of Business and Economic Development (GO-Biz) has also recently welcomed a new Director of the Office of Small Business Advocate, Isabel Guzman.

Ms. Guzman was co-founder and director at GovContractPros, LLC since 2018 and an independent consultant since 2017. She was deputy chief of staff at the U.S. Small Business Administration from 2014 to 2017 and director of strategic initiatives and advisor to founding chairwoman at ProAmerica Bank from 2009 to 2014. She also served as a deputy appointments secretary in the Office of Governor Gray Davis from 2002 to 2003.

The Taxpayer's Right to Representation

Did you know that FTB has an official policy in place that covers a taxpayer's right to representation? This means when a taxpayer appoints a representative, i.e., a power of attorney (POA), we will work directly with that representative regarding all matters within the scope of the representative's authorization.

FTB employees are expected to respect this right at all times. However, there are certain circumstances where we will contact the taxpayer directly, even if there is a POA in place. These include responding to taxpayers when they contact us directly or when a representative fails to respond to inquiries or requests. This is especially true for issues that are time sensitive and require immediate action.

It is also important to note that this policy does not apply to investigations of potential criminal activity.

Ask the Advocate



Susan Maples, CPA
Taxpayers' Rights Advocate
Follow me on Twitter at
twitter.com/FTBAdvocate

It is always good to hear from you!

I think most of us look forward to the summer months of July and August because the pace of things tends to slow down a bit between the initial and extended filing deadlines. For me and my staff, this gives us time to prepare for our four annual meetings scheduled for later in the year, beginning with our Executive Officer's Advisory Board meeting in early August.

This is also the time when we have the opportunity to attend conferences such as the California Society of Enrolled Agent's (CSEA) Super Seminars and the Latino Tax Professional Association's Tax Fest. Having a presence at these events is a vital component of our outreach, allowing us to hear firsthand any issues or concerns you have interacting with the Franchise Tax Board. For example, at the recent CSEA Super Seminars, the two most common things I talked about with those who stopped by my table were real estate withholding and FTB's new website.

When it comes to the real estate withholding process, FTB recognizes the unique challenges this can present - both for payers remitting withholding and for taxpayers who may be unaware that their funds were held back from a sale. Ideally, all real estate withholding would be remitted, processed and applied to taxpayers' accounts without any issues. However, from talking to you, I know this is not always the case. For this reason, we are working with our Withholding Services and Compliance Section and other stakeholders to find solutions to issues you may be experiencing. We will also be providing additional education and outreach materials on this topic. Keep an eye out for more on this in upcoming issues of Tax News.

The changes to FTB's website also generated a lot of comments from you. In late June, FTB's new website was rolled out as a redesign to improve accessibility to current standards. As a result, there were limits placed on the amount of older or less frequently viewed content brought forward. I have heard from you that some of the content you need is no longer available when you search under the "Tax Pros" link. When this happens, there is a "contact us"

link in the search results page where you can submit a request for the missing content, which will then be provided to you within a few business days. FTB will evaluate these requests to prioritize which documents should be reintroduced to our website in the future. FTB wants to hear from you about our new website and they have placed a feedback link at the top of each page for this purpose. Take a look and let us know what you think.

Please know that as your Advocate, my staff and I work hard every day of your behalf. I always appreciate your stopping by to see me when I am out at a speech or an event. Sharing your concerns with me and providing specific examples of issues and problems helps our business areas here at FTB to improve our processes and programs and make these work better for you.

MyFTB Corner

MyFTB is now mobile-friendly!

When you access MyFTB on your mobile devices, such as your phone or tablet, it will automatically resize and adapt to your screen size. Not only will you notice MyFTB looks great on your mobile device, it will also allow you to:

- Read text without zooming.
- Easily access links and buttons.
- Reduce horizontal scrolling.

The type of mobile device you use to access MyFTB will determine how it displays.

All About Business

Reminder: S Corporations need to file their form 100S by September 16, 2019

A corporation, or a limited liability company (LLC) that has elected to be treated as a corporation and has a valid federal S election in effect, automatically becomes an S corporation for California franchise and income tax purposes. This applies whether or not the corporation or LLC treated as a corporation is qualified or registered with California's Secretary of State.

Since the corporation becomes an S corporation automatically for California purposes, the corporation does not need to file a separate California S corporation election, but attaches a copy of its federal S election confirmation letter with its first California return. The federal S corporation election is binding and the corporation cannot make a separate state election to be treated as a C corporation for California tax purposes.

The original due date of the S corporation's return is the 15th day of the third month following the close of the S corporation's taxable year, generally March 15, and the six-month extended

due date, generally September 15,¹ is the same as the extended due date for the S corporation's federal return.

The six-month extension allowed to file the S corporation return does **not** extend the period in which the corporation is required to pay its tax liability. The S corporation is required to pay its tax liability by the original due date of March 15, regardless of whether it files its return later using the six-month extension.²

The six-month extension is automatic and the S corporation does not have to file a written request for an extension. However, if the corporation does not file its return by the extended filing deadline, then the extension does not apply and any applicable late return penalties will be measured from the original non-extended filing due date, e.g., March 15. Regulation 18567 states, "The granting of the extension is conditioned solely upon the filing of a return within the automatic extension period. If the return is not filed within six months of the original due date, no extension is allowed."³

If the S corporation misses the due date for filing the return, it can receive a penalty even if no taxes are due. Similar to federal law, California law imposes a late filing penalty for the late filing of an S corporation's tax return (Form 100S) that is computed solely based on the number of shareholders during the taxable year.⁴ We are required to impose this penalty even if all taxes have been paid, unless the taxpayer can establish there was reasonable cause for filing late. For tax returns filed on or after January 1, 2011, the late filing penalty under R&TC section 19172.5 is \$18 multiplied by the total number of shareholders in the S corporation during its taxable year multiplied by the number of months (including partial months) that the return is late. This penalty is in addition to the late filing penalty imposed under R&TC Section 19131 that applies if the S corporation did not fully pay its tax by the original due date.

¹ When the due date falls on a weekend or holiday, the deadline to file and pay is extended to the next business day. For the 2018 calendar taxable year, the extended filing due date for an S corporation is September 16. (See 18 Cal. Code Regs. section 18566 (return due dates); Calif. Civil Code section 11 (general rule that action performed on the next business day after a weekend or holiday is timely); Cal. Code of Civil Proc. section 12 (computation of time for performing acts required by law).)

² R&TC section 18604(b).

³ See R&TC, Sections 18567 and 18604. Section 18604 is the law that address corporate taxpayers. See also opinion in Appeal of KidzArt Texas, LLC, 2019-OTA-060, nonprecedential, Mar. 13, 2019, footnote 5.

⁴ R&TC Section 19172.5.

For a comprehensive list of all the penalties in the R&TC, go to ftb.ca.gov and search for [FTB 1024](#) or [penalty chart](#). This chart also lists the available defenses to the penalties.

California Group Nonresident Return (aka Composite Returns)

California law imposes a tax on the income of a nonresident taxpayer that is derived from or attributable to sources within this state. Generally, a nonresident taxpayer will file a Form 540NR, California Nonresident or Part-Year Resident Income Tax Return. Form 540NR requires a nonresident to report their income on a world basis (total taxable income or total TI) and identify their California sourced income. A ratio is determined based on the “tax on total TI” over “total TI” and is applied against California-sourced taxable income to determine the nonresident’s tax liability.

California’s group nonresident return, is an individual return filed by the pass-through entity. The return reports the state income of nonresident owners or, in California’s case, the electing members, as one group return by the business entity (S corporation, partnership, or limited liability company) and pays the tax on behalf of the **electing** nonresident individuals for their convenience. California also allows a corporation to report the **electing** nonresident directors’ wages, salaries, fees, or other compensation from that corporation for directors’ services performed in California.

An S corporation that is electing to file California’s group nonresident return for its nonresident shareholder(s) or nonresident directors do have until October 15, 2019, as this return is filed under the Personal Income Tax law (Section 18567).

For instructions and more information related to California’s group nonresident return go to our [California group nonresident tax return](#) webpage.

Event Calendar

As part of education and outreach to our tax professional community, we participate in many different presentations and fairs. We now provide a [calendar](#) that shows the events we attend, as well as other events happening with us, such as interested party and board meetings.