



Tax News

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Make Your FTB Website Experience Better

We try to serve our tax professionals by providing the best tools and information on FTB's website. Help us make your experience better. Please take **two minutes** to complete our [Tax Pro Survey](#). Your feedback will be invaluable as we make enhancements to the website in the coming months.

Thanks, from the Web Team.

2021 IRS Virtual Nationwide Tax Forum

The annual IRS Tax Forum is already underway, having begun in late July. We try to mention this every year because it provides tax professionals with continuing professional education at a reasonable cost, the opportunity to connect with the IRS, and access to vendors with products and services that may be of interest to you.

Due to COVID-19 concerns, there will be no in-person events this year. Instead, there will be 30 live-streamed webinars from July 20, 2021 to August 19, 2021. Webinars will be offered every Tuesday, Wednesday, and Thursday at 11:00am and 2:00pm Eastern Time. A detailed schedule of webinars and other important information is available on the [IRS Tax Forum](#) webpage.

Offsets Have Resumed

Earlier this year, in keeping with the Governor Gavin Newsom's March 12, 2020 executive order and to provide relief to California taxpayers, FTB temporarily suspended certain collection activities through July 31, 2021, from the following programs: [Interagency Intercept Collections \(IIC\)](#), [Treasury Offset Program \(TOP\)](#) & [Multistate Offset Program \(MOP\)](#). FTB, however, continued to collect child support debt through the IIC Program during that time.

Also, last year at this time, FTB also temporarily suspended certain offset requests from the IIC and FTOP programs in light of the COVID 19 pandemic and then resumed the programs.

These three programs collect money from tax refunds or other government disbursements to satisfy taxpayer debts to us, other government agencies, and other partner states.

This year, most of the offset requests that had been suspended through July 31, 2021, include:

- California income tax refunds to state and local agencies
- Lottery prizes and unclaimed property
- IRS refunds (including federal Economic Impact Payment checks)
- Transfers of state income tax refund to or from a partner state

As of August 1, 2021, all three of these offset programs have resumed. Individuals and business entities that expected a refund and have other government debts may be impacted.

Visit [Interagency Intercept Collections](#), [Treasury Offset Program](#) or & [Multistate Offset Program](#) on our website for more information on each program.

California Competes Tax Credit

The California Competes Tax Credit (CCTC) is an income (or franchise) tax credit available to businesses that want to grow in California and create new, quality full-time jobs. The 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.

For Fiscal Year 2021/2022, the CCTC is available for allocation in three separate application periods:

- July 26, 2021 through August 16, 2021
- January 3, 2022 through January 24, 2022
- March 7, 2022 through March 28, 2022

For the first application period, \$150 million is available for allocation. Applications for the credit will be accepted at calcompetes.ca.gov from **July 26, 2021, until August 16 2021**.

In addition, GO-Biz is hosting online [webinars](#) on how to apply for the credit on the following dates:

August 5, 2021 from 4:00-5:00 p.m. PDT

August 10, 2021 from 11:00 a.m.-12:00 p.m. PDT

Visit GO-Biz's Program webpage on the [California Competes Tax Credit for more information](#).

The Main Street Small Business Tax Credit is Back for 2021!

California enacted legislation for the Main Street Small Business Tax Credit II on July 16 to assist businesses impacted by the economic disturbances in 2020 and 2021. This credit is similar to the Main Street Small Business Tax Credit that was available for the 2020 tax year. However, there are key differences in the time frame and the requirements needed to receive the credit in 2021.

To qualify for the credit, taxpayers must have had:

- 500 or fewer qualified employees on December 31, 2020 (this includes part-time employees).
- A decrease of 20 percent or more in gross receipts determined by comparing gross receipts for 2020 to gross receipts for 2019.

And must:

- Obtain a tentative credit reservation from the California Department of Tax and Fee Administration (CDTFA). When applying for the reservation, taxpayers must make an irrevocable election to apply the credit either to sales and use taxes or income taxes. The time period for requesting the required reservation begins on November 1, 2021, and ends on November 30, 2021, or an earlier date if the allocation limit for this credit is reached.

The credit is equal to \$1,000 for each net increase in qualified employees, as measured in monthly full-time employee equivalents. The total amount of credit for each employer cannot exceed \$150,000. Any credit available to the taxpayer under the Main Street Small Business Tax Credit in the 2021 taxable year will be reduced by either the amount received or allocated for the 2020 taxable year.

There are special rules for taxpayers that file on a fiscal year basis and for taxpayers that commenced business in 2019. We will be updating our webpage with more information regarding these and other requirements.

For information related to the tentative credit reservation and claiming the credit against your sales and use taxes, go to [CDTFA](#) and search for Main Street.

Ask the Advocate

Welcome Christopher Frost our new Tax News Editor



Brenda Voet, EA.
Taxpayers' Rights Advocate.
Follow me on Twitter at
twitter.com/FTBAdvocate

*"...every new beginning comes from some other beginning's end." –
Lucius Annaeus Seneca*

While we said goodbye to our long time Tax News editor in our April issue, in this issue we get to say hello to our new editor, Christopher Frost.

Although new to this role, Christopher is not new to the FTB family. Christopher joins our Taxpayers' Rights Advocate team by way of our Accounts Receivable Management (ARM) Division where he was a Publications Manager developing, formatting and analyzing notices.

He has a solid foundation as a writer, editor and interviewer which he developed during his time as the feature profile writer for an online magazine. More recently, he provided support for ARM Management as a lead scribe by organizing and preserving discussions, information and assignments for management meetings. Christopher's excellent customer service skills were strengthened through his prior work as an account executive for a National Bank, and by providing helpful information and assistance for taxpayers and tax professionals via FTB's online live Chat feature where he also became familiar with issues of concern.

As our Tax News editor, Christopher will be a great asset to you and your clients by providing informative articles each month about state income tax laws and regulations; FTB's policies and procedures; and events that affect the tax professional community.

Please help me in welcoming Christopher!



Chief Counsel Corner

Office of Tax Appeal (OTA) Precedential Opinion Resolves Demand Penalty Regulation Inconsistency



Jozel Brunett
Chief Counsel

The recent OTA precedential opinion in the *Appeal of R. Jones*, 2021-OTA-144P, issued on March 4, 2021, resolved a recently-raised dispute regarding the interpretation of the regulatory language for imposition of the Demand Penalty.

Revenue and Taxation Code section 19133 provides that FTB may impose a penalty when a taxpayer fails to file a return or provide information upon FTB's notice and demand to do so. To provide taxpayers clarity as to when this penalty would be imposed, FTB promulgated Cal. Code of Regs., title 18, section 19133 (the Demand Regulation), which indicates that, for personal income taxpayers, FTB will only impose a penalty for failure to file a return upon demand if (1) the taxpayer fails to respond to a current demand, and (2) at any time during the preceding four tax

years, FTB issued a Notice of Proposed Assessment (NPA) following the taxpayer's failure to timely respond to a request or demand.

In prior OTA non-precedential opinions applying the Demand Regulation to current appeals, there was a split by OTA Administrative Law Judges (ALJs) in the interpretation of the second prong of the Demand Regulation. This interpretation turned on the meaning of the words "during the four-taxable-year period preceding the taxable year for which the current Demand for Tax Return is issued" in the regulatory language. FTB's interpretation of the regulatory language means that FTB imposes the penalty when a taxpayer received a prior NPA following a request or demand for a tax return *for* any of the four years preceding the tax year at issue. In several non-precedential OTA opinions, some ALJs interpreted the language to mean that an NPA following a request or demand for tax return had to have been issued by FTB *during* the four years preceding the tax year at issue. FTB took the position that interpreting the language in the regulation in this alternative manner was inconsistent with Example 2 of the regulation;

therefore, the language of the regulation was ambiguous and the principles of administrative deference should apply.

In *Jones*, a similar fact pattern to Example 2 emerged. There the appellant appealed the imposition of the Demand Penalty imposed for the 2016 tax year. The prior request or demand and NPA for the 2015 tax year were not issued until 2017 - the tax year after the 2016 tax year at issue in the appeal. Using the alternative interpretation found in several non-precedential OTA opinions, the penalty would have been determined to have been improperly imposed because the prior NPA following the request or demand was not issued in the four years preceding the tax year at issue, but rather in the year after the tax year at issue. However, the panel in *Jones* determined that the penalty was properly imposed because the determining factor is the tax year of the failure to file rather than the timing of the request or demand and NPA. The opinion noted that this interpretation is supported by the intent of Regulation section 19133, which is to impose the Demand Penalty "only upon individual taxpayers who are repeat nonfilers; that is, those taxpayers who received an NPA for previously failing to timely file within any one of the preceding four taxable years." *Jones*, at page 3.

The precedential *Jones* opinion resolves the conflict in the interpretation of the regulatory language and, under the concept of *stare decisis*, this opinion and interpretation of the law within it will be followed for future appeals with similar law and facts, resolving the split of opinions amongst the ALJs. You can review this precedential opinion (search for *Appeal of R. Jones*, 2021-OTA-144P) and other opinions issued by the OTA at their website at www.ota.ca.gov.

MyFTB Corner

The Facts about Full Online Account Access



We have received a few questions about how Full Online Account Access actually works. As you know, when a Power of Attorney (POA) declaration, or Tax Information Authorization (TIA) relationship is approved for a new client, you automatically have Limited Online Account Access to their information. If you request Full Online Account Access when you file the POA or TIA, or request it later in MyFTB, we send your client an Authorization Code they must use to activate your access.

- If my client approves Full Online Account Access for me, does that mean all representatives on the POA have Full Access?
 - No. While the POA establishes a relationship between a taxpayer and one or more representatives, the online account access level is specific to an individual representative.
- Should I share my Authorization Code with the other representatives on the POA?

- No. Each representative who requests Full Online Account Access or has a MyFTB account when we approve the POA declaration is assigned a unique Authorization Code. Other representatives cannot use your Authorization Code. The notice we send to your client lists the Authorization Code for each representative on the POA who has a MyFTB account.
- I have Full Online Account Access, but I need to file a new POA declaration. Will my client need to Opt-In again?
 - As long as you request Full Online Account Access when you file the new POA you will not need to have your client Opt-In again. Your Full Online Account Access applies to all active relationships you have with a client. Your access level will stay the same unless you request Limited Online Account Access, your client revokes your Full Online Account Access, or you no longer have an active relationship with the client.

Event Calendar

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