



Tax News

December 2018

Contents

- 2018 California tax rates and exemptions2
- Still not using Web Pay?2
- Questions and responses from the 2018 annual liaison meetings3
- Claims for Refund: Combat Injured Veterans Tax Fairness Act of 20166
- IRS Tax Reform Webinars for Practitioners and Industry8
- Ask the Advocate9
 - Taxpayer Appeals Assistance Program9
- Chief Counsel Corner11
 - New defective Credit Assignment Regulations11
- MyFTB Corner12
 - We’re expediting full online account access requests12
- MyFTB Corner14
 - Difference between power of attorney (POA) and tax information authorization (TIA) relationships14
- All About Business17
 - Cannabis Business Resources17
- Event Calendar17

2018 California tax rates and exemptions

Each year we update California Tax Rates and Exemptions based on the California Consumer Price Index (CCPI) as prescribed in the Revenue and Taxation Code. The inflation rate, as measured by the CCPI for all urban consumers from June 2017 to June 2018, was 3.9 percent. We have completed the process and updated our website with a summary of these changes for your reference. Other values are indexed and they will be reflected in the respective forms and instructions as necessary. For more information, visit our website and search **2018 California Tax Rates and Exemptions**.

Still not using Web Pay?

One of the more frustrating issues taxpayers and tax professionals encounter is when they mail a payment to us and it doesn't get credited to the account in a timely manner. This can be due to several reasons, which include delays in mail delivery, incorrect or missing information (tax year, tax identification number) on the check when it is sent, and of course, human error.

A quick and easy way to avoid many of these problems is to make payments using FTB's Web Pay, which is available for a variety of individual, fiduciary, and business entity payments. Web Pay is free and you don't need to register to use it. However, if you do register for MyFTB and then access Web Pay while logged in, you can:

- **View** the status of payments made using Web Pay.
- **Cancel** pending payments online.
- **Save** your bank account information for future payments.
- **Save** your spouse/registered domestic partner information, if applicable.

With Web Pay you can schedule payments now for a future date and you can avoid a potential penalty for paying by check if you are subject to mandatory e-pay.

Take a look at our extensive Web Pay FAQs. These will answer many of your questions about how to use Web Pay, the many different types of entity payments that can be made, and who to contact in the event you have a problem with a payment that you've made.

Using Web Pay is quick and easy and you receive immediate confirmation that we have received your payment request. You can even make a payment from your bank account for someone else, if you have their tax identification number. Give Web Pay a try!

Questions and responses from the 2018 annual liaison meetings

On September 24 and October 18, 2018, we held our annual liaison meetings with the California Society of Enrolled Agents (CSEA) and the California Society of Certified Public Accountants (CalCPA).

Below are a few of the top questions from those meetings that may be of interest to you:

Question #1:

California's statute of limitations for collection is 20 years (the federal statute is only 10 years.) When FTB assesses a collection fee while the statute is running on an original assessment, the 20-year state expiration date is extended by restarting the collection period using the date of the subsequent assessment for the collection fee as the new beginning date.

It seems this practice works to circumvent the 20-year statute. Please explain how this practice is supported by current California statute.

Response #1:

Our 20-year collection statute is Revenue and Taxation Code (R&TC) Section 19255.

Under subdivision (c)(1) of RT&C Section 19255, a "tax liability," as those terms are used in Section 19255, includes both "tax" and "fees."

Under subdivisions (a) and (c)(2) of RT&C Section 19255, where there is more than one liability for a tax year, the 20-year statute runs from the latest "due and payable" date for those liabilities. (RT&C Section 19255(a) ("after 20 years have lapsed from the date the latest tax liability for a taxable year . . . becomes 'due and payable' within the meaning of Section 19221") and (c)(2) ("If more than one liability is 'due and payable' for a particular taxable year, . . . , the 'due and payable' date that is later in time shall be the date upon which the 20-year limitation of subdivision (a) commences.").)

Thus, under RT&C Section 19255, in the case of a tax liability and a collection fee imposed with respect to that tax liability, the 20-year statute contained in Section 19255 will run from the due and payable date of the collection fee.

The following example illustrates how the statute is applied:

- A taxpayer files a 2014 return on April 15, 2015. The return has a liability that the taxpayer does not pay. The liability is established on FTB's system on April 17, 2017.
- Approximately 1 year later, we impose a collection fee related to the 2014 tax liability, which is established on our system on April 20, 2018.
- Assuming that there are no other facts, the 20-year statute under Section 19255 will run 20 years after the collection fee was established on our system, because the collection fee has the later "due and payable" date.

Question #2:

Form 592 and 592-B problems

When a Form 592 is filed to report distributions of tax withheld from an entity/individual to other entities/individuals, the form has to be filed on paper and requires 8-12 weeks of processing time. In the meantime, the receiving entities/individuals e-file their returns claiming the withholding. The e-filed returns are always adjusted because the withholding hasn't yet posted to the receiving taxpayer's account. This is an inefficient use of FTB resources and causes angst for taxpayers and their representatives. Could a process for e-filing Form 592 be developed or could the FTB place a hold on returns coming in with 592-B withholding until processing is complete?

Response #2:

We currently do not provide an e-file solution similar to what we provide for Personal Income Tax (PIT) and Business Entity returns for non-wage withholding documents. However, we do allow withholding agents to bypass the United States Post Office as well as our internal receiving and data capture processes by submitting their documents via Secure Web Internet File Transfer (SWIFT). Documents received via SWIFT are usually processed within one week and have a higher probability of being matched to the correct taxpayer because the chance of a data capture error is eliminated. Currently, 450 withholding agents submit documents to us using SWIFT.

When a taxpayer's non-wage withholding claim cannot be verified by our validation systems, the tax return is suspended for manual review. There are several system rules and employee procedures designed specifically to investigate the possibility that the discrepancy may be due to a withholding document stuck in processing.

While we don't currently hold returns with a Resident and Nonresident Withholding (592-B), to allow for possible delays of the associated withholding documents, this concept is similar to steps we take to expedite the processing of wage-withholding claims (particularly around 3rd and 4th quarter employer reporting to the Employment Development Department) and is worth exploring by us.

Question #3:

Assignment of protests

What is the FTB doing to speed up the assignment of protests? It is taking about 18 months from the date of filing the protest letter to get a protest hearing officer assigned. Is the time it takes to assign a protest hearing officer factored into the goal of making a final determination within 36 months or less?

On a related matter, why won't the FTB allow cases in protest into settlement? The FTB is requiring taxpayers to wait until a protest is completed, notices are issued, an appeal is filed with the OTA, and the appeal is acknowledged by the OTA before the taxpayer can file a settlement application with the FTB. The taxpayer then has to request deferral of the proceedings with the OTA. These additional steps delay the process by an additional 6 months and cost the taxpayer more in accounting/legal fees.

Response #3:

To provide our best customer service, we assign protests on a first-in-first-out basis to appropriately skilled staff knowledgeable of the protested issues and tax law. Our main goals are accuracy and timeliness in the determination of the correct tax and to resolve the protest cases within 24-36 months from date the protest is filed.

For cases handled in the Audit Division Protest Section, we recognize there have been some delays with the assignment of protest cases. To help alleviate the delays and expedite the assignment of protest cases, we are cross training staff in different areas of the tax law in an effort to increase the number of cases assigned. Additionally, we are evaluating our internal

processes and the root cause of the delays to more timely assign our protest cases. It is important to us and the taxpayer to have a consistent and timely resolution of our cases.

The Settlement Bureau does accept matters which are the subject of a protest when the case is factually developed and our staff has expressed its legal position on the merits. The Settlement Bureau's role is not to establish our legal position or to undertake factual development of the case. It is to evaluate the cost of litigation, the hazards and risks of the legal position taken, and to recommend a settlement if this is in the best interests of the State of California. However, if a protest hearing has been held, the hearing officer has made a determination, and the matter is ready to be closed, the Settlement Bureau will wait until after the issuance of the Notice of Action and an appeal is filed. Allowing the closing of the protest in such cases establishes a clearer understanding of the case for purposes of evaluating a taxpayer's settlement offer, and reduces our backlog of over-36 month protests.

Claims for Refund: Combat Injured Veterans Tax Fairness Act of 2016

The [Combat-Injured Veterans Tax Fairness Act of 2016](#) (**Public Law 114-292**) allows veterans who overpaid tax attributable to lump sum disability severance payments additional time to file a federal claim for refund or credit to recover the overpayment. The Department of Defense and IRS began notifying approximately 130,000 affected taxpayers by mail in July 2018. For federal purposes the time for filing a refund claim is the later of:

1. One year from the date of the Department of Defense notice.
2. Three years after the due date for filing the original return for the year the disability severance payment was made.
3. Two years after tax was paid for the year the disability severance payment was made.

The IRS also issued [IR-2018-148](#), which provided standard refund amounts (simplified method) for eligible veterans based on the year they received their disability severance pay. This helps veterans in those instances where it is impractical to file a claim with a specific dollar amount(s).

1. \$1,750 for tax years 1991 to 2005
2. \$2,400 for tax years 2006 to 2010
3. \$3,200 for tax years 2011 to 2016

California does not conform to these special rules extending the statute of limitations and also does not conform, or have the authority to allow, the use of standard refund amounts. However, Revenue and Taxation Code (R&TC) Section 19311 allows taxpayers to file a claim for refund with FTB within 2 years from the date of a final federal determination, which is defined in R&TC Section 18622 as the date the adjustment or resolution is “assessed” or posted to the taxpayers’ IRS account.

Therefore, in those instances where the normal California statute of limitation has closed, taxpayers who file these claims with the IRS may then file claims with FTB within 2 years after the claims are allowed by the IRS. This is true even if the taxpayer used the simplified method and claimed the standard refund amount shown in [IR-2018-148](#), instead of filing an Amended U.S. Individual tax Return (1040X), with the actual excluded amount.

For California purposes though, claims must be based on the actual amount to be excluded and ideally a California Explanation of Amended Return Changes (Schedule X) will be filed with that information. However, under R&TC Section 19322, a taxpayer can file a refund claim in any format, as long as it is in writing, signed by the taxpayer or the taxpayer’s representative, and states the grounds of the claim, which in this case, is that they improperly included disability severance pay in income.

Taxpayers claiming a refund as a result of the Combat-Injured Veterans Tax Fairness Act of 2016 should follow FTB’s procedures for filing a general claim for refund as well as:

1. The taxpayer should include a copy of the letter they received from the Defense Finance and Accounting Service (DFAS) or the Internal Revenue Service, a copy of the IRS Form 1040X, and substantiation indicating the IRS allowed the refund (determination letter, refund issued, etc.).
2. Depending on the taxpayer’s situation, the refund may be claimed on either a California Form 540X or through a letter claim.

[Ensure authorizations are selected on your power of attorney \(POA\) declaration](#)

In our August Tax News article, Ensuring a Smooth POA Process: A Few Reminders, we provided tips when submitting POA declarations. Since then, we have noticed an increase in declarations being rejected for year authorizations not being selected.

As of January 2018, we updated our POA declaration forms (FTB 3520 PIT and FTB 3520 BE), Part 3, to require year authorizations to be selected for either:

Authorize All Years – Mark the “Yes” box to authorize all years, including previous, current and future years up to the expiration date.

OR

Authorize Specific Tax Years – Mark the “Yes” box and enter the specific years to be authorized in the boxes provided.

Select “Yes” for only one type of year authorization.

Once a specific type of year authorization has been selected as “Yes”, the other type of year authorization box should be marked “No” to ensure the form is processed correctly. To prevent your POA declaration from being rejected, be sure to select a year authorization type prior to submitting it to us.

Selecting “Yes” for both authorization types may cause your POA declaration to be rejected.

[IRS Tax Reform Webinars for Practitioners and Industry](#)

December 6

Tax Reform Basics for the Qualified Business Income Deduction (199A)

2 PM Eastern; 1 PM Central; 12 PM Mountain; 11 AM Pacific; 10 AM Alaska; 9 AM Hawaii

Click [here](#) to Register

December 13

Tax Reform Due Diligence Requirements

2 PM Eastern; 1 PM Central; 12 PM Mountain; 11 AM Pacific; 10 AM Alaska; 9 AM Hawaii

Click [here](#) to Register

Each session is 60-minutes, including Q & A. Closed Captioning is available for each session.

Continuing education

All participants who qualify will receive a Certificate of Completion

Tax Professionals will earn 1 CE Credit – Category: Federal Tax Update

Have enough Federal Tax Update credit? No worries...excess Federal Tax Update credit can be counted towards Federal Tax/Tax Related Matters instead. For information on future Tax Reform Webinars visit the [Upcoming Webinars](#) page on IRS.gov.

Questions about the webinars?

Email IRS at: cl.sl.web.conference.team@irs.gov

Ask the Advocate



Susan Maples, CPA

Taxpayers' Rights Advocate
Follow me on Twitter at
twitter.com/FTBAdvocate

Taxpayer Appeals Assistance Program

We are rapidly approaching the end of 2018 and the Holiday Season is here! As I often do this time of the year, I look back on the many different projects, meetings, events, and other matters that filled our year here in the Taxpayers' Rights Advocates Office (TRAO). One of the more noteworthy developments for 2018 was the recently approved realignment of the Taxpayer Appeals Assistance Program (TAAP) from the California Department of Tax and Fee Administration (CDTFA) to FTB, under the TRAO beginning January 2019.

I want to let you know about TAAP because many tax professionals are unaware of this important and valuable program. Taxpayers who have appealed FTB actions to the Office of Tax Appeals (OTA) are able to seek free legal assistance through TAAP. Under TAAP, qualified law students assist taxpayers during the appeal process. These students do not answer to FTB's Executive Officer or our

Management Team and they are independent of other areas of the department. The law students are supervised by an experienced attorney and they research and draft appeal briefs, handle other matters on behalf of the appellant, and appear at the hearing before the OTA with or on behalf of the taxpayer. Most importantly, taxpayers' privacy is protected by the attorney/client privilege.

While TAAP is a valuable program, it is currently limited to disputes involving less than \$30,000 and to the following tax issues:

- Head of household filing status
- Penalty relief
- Residency Request to remove or stop interest
- Statute of limitations
- Federal action (notice of proposed assessment based on an action by the Internal Revenue Service)
- California's method to tax nonresidents/part-year residents
- Child and dependent care credits
- Exemption credits
- Other state tax credits
- Personal income tax deductions
- Corporate minimum tax
- Innocent spouse claims

Since its inception in 2006, TAAP has helped resolve hundreds of cases. Without this vital program, taxpayers would have to face the OTA alone, hire representation they may not be able to afford, or just give up and pay the disputed bill. I appreciate the hard work of the volunteer law students and others who make TAAP work. Additionally, providing representation to taxpayers in these circumstances helps to ensure the rights, privacy, and property of California taxpayers during the process of assessing and collecting taxes. We anticipate having complete information about TAAP on our website in January.

In closing, I want to wish everyone a very happy and joyous 2018 Holiday Season! I hope that you are able to enjoy some time away from work with family and friends before embarking on what we all expect will be an interesting and eventful 2019 Filing Season.

Chief Counsel Corner



Jozel Brunett
Chief Counsel

New defective Credit Assignment Regulations

Limited time "catch-up" provision available **until** September 18, 2019

Regulations pertaining to defective credit assignments under Revenue and Taxation Code (R&TC) Section 23663 recently became effective. In addition to providing taxpayers with standard rules for the allocation of credits in the case of defective assignments, the regulations give taxpayers the following alternatives when dealing with defective assignments.

Correction of an error – Including a "Catch-Up" provision available until September 18, 2019

California Code of Regulations, title 18 ("Regulation"), Section 23663-4 allows taxpayers to cure many defective assignments when a request is made before taxpayers file their next year's tax return. The defective credit assignments which may be corrected under this regulation include, originally-filed assignment forms that contain unclear, inconsistent or incomplete information, erroneous assignors, erroneous assignees, or clerical errors listing the wrong credit types or amounts.

Until September 18, 2019, corrections of an error will be available for all defective assignments made before the regulations became effective on September 18, 2018. This one-year special "catch-up" period was intended to allow taxpayers to cure many of their pre-regulation defective assignments so that they can move forward with a fresh start.

Alternative allocations

When taxpayers assign more credits than they actually have, Regulation Section 23663-2(d) allows taxpayers to choose how their actual credits are allocated among the parties involved in the defective assignment. This alternative allows allocations different than the standard allocation rules and is available at any time before an audit begins.

Unitary determinations

When a credit assignment is defective due to the parties involved not being unitary, taxpayers are not able to utilize the credits in the assignment until the unitary issue is finalized. Regulation Section 23663-3(d) allows taxpayers to make a unitary determination for credit assignment purposes only. This allows taxpayers to move forward and be able to utilize the credits at issue before the ultimate unitary determination is made.

Standard allocation rules

Taxpayers do not need to wait for an audit to allocate credits under the standard allocation rules. Taxpayers can request that the FTB apply the standard allocation rules under Regulation Sections 23663-2 and 23663-3. This will allow taxpayers to have the standard allocation rules applied so that they can move forward with the proper amount of credits.

How to make requests under the regulations

FTB Notice 2018-03 provides instructions regarding how taxpayers can make requests under the defective assignment regulations.

[MyFTB Corner](#)

We're expediting full online account access requests

Starting January 2, 2019, taxpayers and tax professionals* can *request* **Full Online Account Access** at the time you submit a Power of Attorney (POA) declaration or Tax Information Authorization (TIA) request. You will no longer need to wait to make the request until after the POA/TIA is approved by us.

How can the full online account access request be made?

The request can be made on the updated POA/TIA forms or in MyFTB.

- **Forms:**
 - Use the updated POA (FTB 3520 PIT/3520 BE) and TIA (FTB 3534) forms (Available December 14th on our website).
 - Check “Yes” under the new section, Request MyFTB Full Online Account Access for Tax Professional(s), to *request* Full Online Account Access.
- **MyFTB – Tax professional submitted:**
 - Use **File a Power of Attorney** (POA Wizard) or **Add TIA Client** (Available January 2, 2019).
 - Select “Full” in the Online Account Access section to *request* Full Online Account Access.
 - For POA declarations, upload the updated POA form.
Note: If your client has a MyFTB account, you can choose to *not* upload the POA

declaration when you submit it. After we validate the POA declaration, your client will need to approve your POA request on their MyFTB account. If you requested Full Online Account Access at the time of submission, your client will be able to **grant** you Full Online Account Access at the same time they approve the POA request.

○

The Full Online Account Access request will be processed when the POA/TIA relationship is approved. Your client will need to authorize the request. For more information, see “What happens after the POA/TIA relationship, submitted by a tax professional, is approved by FTB?”, below.

- **MyFTB – Taxpayer submitted:**
 - Use **File a Power of Attorney** (POA Wizard), and:
 - Select “Full” in the Online Account Access section to **grant** the tax professional Full Online Account Access.
 - **Note:** If the taxpayer selects Full Online Account Access at the time the POA is submitted, we will **grant** you Full Online Account Access at the same time we approve the POA relationship.

When will the new forms be available?

The updated forms will be available on December 14, 2018 at **ftb.ca.gov** on the forms and publications page. We will start processing the new forms on January 2, 2019.

How will I know if I am using one of the updated forms?

The updated forms will have the new section, *Request MyFTB Full Online Account Access for Tax Professional(s)*.

What happens if I don't use one of the updated forms?

The prior version of FTB 3520 PIT (REV 9-2017), FTB 3520 BE (REV 12-2017) and FTB 3534 (REV 9-2017) can still be used. However, if a prior version is used, you cannot request Full Online Account Access when you submit the form. You will need to make the request for Full Online Account Access in MyFTB after the POA/TIA relationship is approved by us, just as you can today.

What happens after the POA/TIA relationship, submitted by a tax professional, is approved by FTB?

Once the POA/TIA is approved, you will have Limited Online Account Access (if you have a Tax Professional MyFTB account). We will send your client a letter (FTB 3911) with the authorization code to authorize or deny Full Online Account Access to their account. The authorization code is active for 30 days. If your client denies the request or does not use the authorization code, you will continue to have Limited Online Account Access. Visit MyFTB Tax Professional Online Account Access for more information.

If I already have full online access to my client's online account, do I need to request it again when I file a new POA/TIA?

Yes. To retain full online account access to your client's account, you must request it **each time you submit a new** POA or TIA request for your client. If the POA or TIA is approved, you will continue to have full online account access. Your client will not receive an authorization code.

If a new POA or TIA is submitted for your client that requests limited online account access, your online access level will be changed to limited when we approve the relationship. Note: your online account access level does not impact the information you can receive by phone, writing, chat, or in person.

For more information, see our November article, Requesting Full Online Account Access Gets Easier.

*For purposes of this article, a tax professional is a representative that has a Tax Professional account in MyFTB.

MyFTB Corner

Difference between power of attorney (POA) and tax information authorization (TIA) relationships

In January of 2018, we formally established the Tax Information Authorization (TIA) relationship as a new option for representatives to assist their clients.

What's the difference between a POA and TIA relationship?

The chart below outlines some of the differences to help you determine which option may be the best for you and your client.

	POA	TIA
Authority	Allows a taxpayer to grant a specific person permission to obtain their confidential information and act on the taxpayer's behalf to represent them in FTB matters (such as protests, appeals, settlement, and litigation).	Allows a taxpayer to grant a specific person permission to obtain their limited confidential tax information.
Tax Years	Either: All tax years Specific tax year(s) indicated on declaration.	All tax years
Expiration	6 years from the signature date (for POA declarations submitted after January 2, 2018)	Either: 13 months from the signature date. Date the TIA client was added or renewed on MyFTB.
Forms	FTB 3520 PIT FTB 3520 BE	FTB 3534
Renewable on MyFTB	No Must submit a new POA declaration.	Yes Must renew on MyFTB more than 10 business days before the TIA expires or a new request must be submitted.
Submission Methods for New Relationship	Mail: FTB 3520 PIT/BE	Mail: FTB 3534

	POA	TIA
	MyFTB: File Power of Attorney When using MyFTB, upload the completed POA declaration if your client will not be approving the relationship using their MyFTB account.	MyFTB: Add TIA Client When using MyFTB, do not send the TIA form to FTB when Adding a TIA Client.
Email sent to Representative when approved	Yes Sent to the email address listed on the POA declaration.	No Only the taxpayer is notified. Tax Professionals can view information from the <i>Taxpayer Relationship Detail</i> page on MyFTB.
Email sent to Representative when rejected	Yes Sent to the email address listed on the POA declaration.	No Only taxpayer is notified. Tax Professionals can view information on MyFTB from the <i>Taxpayer Relationship Detail</i> page.
Online* account access levels to client's MyFTB information	Limited online account access is granted when we approve the relationship. Full online account access is granted when a client authorizes it.	Limited online account access is granted when we approve the relationship. Full online account access is granted when a client authorizes it.
Online account access information	See ftb.ca.gov/access for information relating to online account access.	See ftb.ca.gov/access for information relating to online account access.

*The online account access level does **not** impact the information a representative can receive by phone, chat, in person, or in writing.

Does one form (POA or TIA) get processed faster than the other?

No. Both the POA declaration and TIA request go through the same process and will be approved or rejected within the same timeframe. However, we encourage you to submit your POA declaration or TIA request through MyFTB. This expedites the process since they are received immediately and there is no delay due to mailing.

All About Business

Cannabis Business Resources

We recognize that cannabis businesses face many unique challenges including the need to make **cash payments**. Generally, we do not accept cash payments for taxes. However, if you must pay in cash to avoid undue hardship, you can apply for an exemption. We provide an instructional **video** about how to apply for a cash payment exemption. Watch our short [video](#) to learn more about our no cash policy exemption request process. Once approved to make a cash payment, you must include a Currency Deposit form with your cash payment. We offer a number of other useful online self-service options:

- Access My FTB Account to view payments, balances due, and wage and withholding information. Taxpayers can also change their mailing address.
- Web Pay allows taxpayers to authorize a payment from their bank account on a specific date to satisfy their return balance due or extension payment. New this year is the ability to save your bank account number for future use, to view scheduled Web Pay requests, and to cancel a payment.
- Monthly installment payment plans are available to people who cannot pay what they owe. Generally taxpayers qualify for a payment plan when they owe less than \$25,000 and can pay the tax within five years.

Additional e-file services are available, for questions about cannabis income taxes, email [FTB Cannabis](#).

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.