



Tax News

February 2022

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Tax News Flash

FTB 763B – FTB Assigned Identification Number

Due to a system update to accommodate AB 85 (Stats. 2020, Ch. 8)^[i], entities without a Secretary of State ID on file with the Franchise Tax Board (FTB), (even if they had an EIN on file), were issued a temporary FTB ID number. We issued FTB 763B to notify the entity of its assigned temporary FTB ID number. Approximately 295,000 computer generated notices have been sent since December 7, 2021.

If you received an FTB 763B and your non-registered partnership that is no longer doing business in California, contact us at 800.852.5711 to close your account.

If you received an FTB 763B and your non-registered partnership doing business in California, use the assigned temporary ID number on the notice to file a return and/or make payment to FTB.

If you have questions about registering your non-registered partnership, contact the California Secretary of State at 916.653.6814.

^[i] AB 85 provides an exemption from the annual tax for LLCs, LPs and LLPs that organize, register, or file with the Secretary of State **on or after** January 1, 2021, and before January 1, 2024.

1099-NEC Filing Guidelines Update

1099-NEC Filing Tax Year 2021

For tax year 2021, the 1099-NEC is included in the IRS Combined Federal/State Filing (CF/SF) Program.

If you file the 1099-NEC electronically or via paper with the IRS, according to the CF/SF guidelines outlined in [IRS Pub 1220](#) you **do not** need to submit 1099-NEC separately to FTB.

However, if you have an exception that requires you to report something different for federal and state purposes, such as a different dollar amount, file separate returns with IRS and FTB.

For more information: [Guidance for issuing and reporting information returns](#).

Real-time Identify Proofing and Enrollment

Faster Access to MyFTB Account

We are working to finalize implementation of “real time” registration of MyFTB accounts, and will provide an update in either the March edition of Tax News, or with a “Tax News Flash” as soon as completed.

Thank you.

What's New for Filing 2021 Tax Returns

Tax law changes for 2021

Voluntary Contributions

Taxpayers may contribute to the following new funds:

- Mental Health Crisis Prevention Voluntary Tax Contribution Fund California Community
- Neighborhood Tree Voluntary Tax Contribution Fund

COBRA Premium Assistance

The American Rescue Plan Act (ARPA) of 2021, enacted on March 11, 2021, allows an exclusion from gross income for COBRA premium assistance subsidies received by eligible individuals. ARPA effects the COBRA coverage period beginning on April 1, 2021, and ending on September 30, 2021. California law does not conform to this federal provision.

For more information, see Schedule CA (540) instructions.

Employer-Provided Dependent Care Assistance Exclusion

California conforms to the employer-provided dependent care assistance exclusion from gross income as of the specified date of January 1, 2015, without any modifications. The ARPA of 2021 enacted on March 11, 2021, temporarily increases the amount of the exclusion from gross income from \$5,000 to \$10,500 for employer-provided dependent care assistance (and half of that amount for married filing separate). CA law does not conform to this change under the federal ARPA.

For more information, see Schedule CA (540) instructions.

Expanded Definition of Qualified Higher Education Expenses

For taxable years beginning on or after January 1, 2021, California law conforms to the expanded definition of qualified higher education expenses associated with participation in a registered apprenticeship program and payment on the principal or interest of a qualified education loan under the federal Further Consolidated Appropriations Act, 2020.

Federal Acts

In general, California Revenue and Taxation Code (R&TC) does not conform to the changes under the following federal acts: ARPA of 2021 (enacted on March 11, 2021) Consolidated Appropriations Act (CAA), 2021 (enacted on December 27, 2020) Coronavirus Aid, Relief, and Economic Security (CARES) Act (enacted on March 27, 2020) Setting Every Community Up for Retirement Enhancement (SECURE) Act (enacted on December 20, 2019)

California taxpayers continue to follow the Internal Revenue Code (IRC) as of the specified date of January 1, 2015, with modifications. For specific adjustments due to the following acts, see the Schedule CA (540) instructions.

California Microbusiness COVID-19 Relief Grant

For taxable years beginning on or after January 1, 2020, and before January 1, 2023, California law allows an exclusion from gross income for grant allocations received by a taxpayer pursuant to the California Microbusiness COVID-19 Relief Program administered by the Office of Small Business Advocate (CalOSBA).

For more information, see R&TC Section 17158.1 and 24311.

Shuttered Venue Operator Grants

The CAA, 2021, enacted on December 27, 2020, allows an exclusion from gross income for grants received by shuttered venue operators. California does not conform to this federal provision.

For more information, see Schedule CA (540) instructions and business entity booklets.

California Venues Grant

For taxable years beginning on or after September 1, 2020, and before January 1, 2030, California law allows an exclusion from gross income for grant allocations received by a taxpayer pursuant to the California Venues Grant Program that is administered by CalOSBA.

For more information, see R&TC Section 17158 and 24312.

Restaurant Revitalization Grants

The ARPA allows an exclusion from gross income for restaurant revitalization grants awarded to eligible entities that are used for allowable expenses for the covered period. California law does not conform to this federal provision.

For more information, see Schedule CA (540) instructions and business entity booklets.

Small Business COVID-19 Relief Grant Program

For taxable years beginning on or after January 1, 2020, and before January 1, 2030, California allows an exclusion from gross income for grant allocations received by a taxpayer pursuant to the COVID-19 Relief Grant under Executive Order No. E 20/21-182 and the California Small Business COVID-19 Relief Grant Program established by Section 12100.83 of the Government Code.

For more information, see Schedule CA (540) instructions and business entity booklets.

Income Exclusion for Rent Forgiveness

For taxable years beginning on or after January 1, 2020, and before January 1, 2025, gross income shall not include a tenant's rent liability that is forgiven by a landlord or rent forgiveness

provided through funds grantees received as a direct allocation from the Secretary of the Treasury based on the federal CAA, 2021.

For more information, see Schedule CA (540) instructions.

Paycheck Protection Program (PPP) Loans Forgiveness

For taxable years beginning on or after January 1, 2019, California law allows an exclusion from gross income for covered loan amounts forgiven under the federal CARES Act, Paycheck Protection Program (PPP) and Health Care Enhancement Act, Paycheck Protection Program Flexibility Act of 2020, or the CAA, 2021. However, the Paycheck Protection Program Extension Act extends the covered period of the PPP to June 30, 2021. California law does not conform to this extension and does not allow an exclusion from gross income for PPP loans forgiven due to the extended covered period after March 31, 2021, to June 30, 2021.

For more information, see Schedule CA (540) instructions and business entity booklets.

Also, the ARPA expands PPP eligibility to include “additional covered nonprofit entities” which includes certain Code 501(c) nonprofit organizations and Internet-only news publishers and Internet-only periodical publishers. California law does not conform to this expansion of PPP eligibility.

For more information, see Schedule CA (540) instructions and business entity booklets.

The CAA, 2021, allows deductions for eligible expenses paid for with covered loan amounts. California law conforms to this federal provision, with modifications. For California purposes, these deductions do not apply to an ineligible entity. “Ineligible entity” means a taxpayer that is either a publicly-traded company or does not meet the 25 percent reduction from gross receipts requirements under Section 311 of Division N of the CAA, 2021.

For more information, see Schedule CA (540) instructions and business entity booklets or R&TC Section 17131.8 and 24308.6 or go to ftb.ca.gov and search for **AB 80**.

Revenue Procedure 2021-20 allows taxpayers to make an election to report the eligible expense deductions related to a PPP loan on a timely filed original 2021 tax return including extensions. If a taxpayer makes an election for federal purposes, California will follow the federal treatment for California tax purposes.

Advance Grant Amount

For taxable years beginning on or after January 1, 2019, California law conforms to the federal law regarding the treatment for an emergency Economic Injury Disaster Loan (EIDL) grant under the federal CARES Act or a targeted EIDL advance under the CAA, 2021.

Other Loan Forgiveness

For taxable years beginning on or after January 1, 2019, California law allows an exclusion from gross income for borrowers of forgiveness of indebtedness described in Section 1109(d)(2)(D) of the federal CARES Act as stated by section 278, Division N of the federal CAA, 2021. The CAA,

2021, allows deductions for eligible expenses paid for with covered loan amounts. California law conforms to this federal provision, with modifications. For California purposes, these deductions generally do not apply to an ineligible entity. “Ineligible entity” means a taxpayer that is either a publicly-traded company or does not meet the 25 percent reduction from gross receipts requirements under Section 311 of the CAA, 2021.

For more information, see Schedule CA (540) instructions and business entity booklets or go to ftb.ca.gov and search for **AB 80**.

Gross Income Exclusion for Bruce’s Beach

Effective September 30, 2021, California law allows an exclusion from gross income for the first time sale in the taxable year in which the land within Manhattan State Beach, known as “Peck’s Manhattan Beach Tract Block 5” and commonly referred to as “Bruce’s Beach” is sold, transferred, or encumbered. A recipient’s gross income does not include the following:

- Any sale, transfer, or encumbrance of Bruce’s Beach;

- Any gain, income, or proceeds received that is directly derived from the sale, transfer, or encumbrance of Bruce’s Beach.

Reporting Requirements

For taxable years beginning on or after January 1, 2021, taxpayers who benefited from the exclusion from gross income for the PPP loans forgiveness, other loan forgiveness, or the EIDL advance grant and related eligible expense deductions under the federal CARES Act, Paycheck Protection Program and Health Care Enhancement Act, Paycheck Protection Program Flexibility Act of 2020, or the CAA, 2021, should file form FTB 4197, Information on Tax Expenditure Items, as part of the Franchise Tax Board’s annual reporting requirement.

For more information, get form FTB 4197.

Moving Expense Deduction

For taxable years beginning on or after January 1, 2021, taxpayers should file California form FTB 3913, Moving Expense Deduction, to claim moving expense deductions. Attach the completed form FTB 3913 to Form 540, California Resident Income Tax Return.

For more information, see Schedule CA (540) instructions and get form FTB 3913.

Homeless Hiring Tax Credit

For taxable years beginning on or after January 1, 2022, and before January 1, 2027, a Homeless Hiring Tax Credit (HHTC) will be available to a qualified taxpayer that hires individuals who are, or recently were, homeless. The amount of the tax credit will be based on the number of hours the employee works in the taxable year. Employers must obtain a certification of the individual’s homeless status from an organization that works with the homeless and must

receive a **tentative credit reservation** for that employee. Any credits not used in the taxable year may be carried forward up to three years.

For more information, go to ftb.ca.gov and search for **HHTC**.

Elective Tax for Pass-Through Entities (PTE) and Credit for Owners

For taxable years beginning on or after January 1, 2021, and before January 1, 2026, California law allows an entity taxed as a partnership or an “S” corporation to annually elect to pay an elective tax at a rate of 9.3 percent based on its qualified net income. The election shall be made on an original, timely filed return and is irrevocable for the taxable year.

The law allows a credit against the personal income tax to a taxpayer, other than a partnership, that is a partner, shareholder, or member of a qualified entity that elects to pay the elective tax, in an amount equal to 9.3 percent of the partner’s, shareholder’s, or member’s pro rata share or distributive share of qualified net income subject to the election made by the qualified entity. A disregarded entity and its partners or members cannot claim the credit.

For more information, go to ftb.ca.gov and search for **pte elective tax** and get the following new PTE elective tax forms and instructions:

Form FTB 3893, Pass-Through Entity Elective Tax Payment Voucher

Form FTB 3804, Pass-Through Entity Elective Tax Calculation

Form FTB 3804-CR, Pass-Through Entity Elective Tax Credit

Main Street Small Business Tax Credit II

For the taxable year beginning on or after January 1, 2021, and before January 1, 2022, a **new** Main Street Small Business Tax Credit is available to a qualified small business employer that received a tentative credit reservation from the California Department of Tax and Fee Administration (CDTFA).

For more information, get form FTB 3866, Main Street Small Business Tax Credits.

New Donated Fresh Fruits or Vegetables Credit

The sunset date for the New Donated Fresh Fruits or Vegetables Credit is extended until taxable years beginning before January 1, 2027.

For more information, get form FTB 3814, New Donated Fresh Fruits or Vegetables Credit.

Natural Heritage Preservation Credit

The Natural Heritage Preservation Credit is available for qualified contributions made on or after January 1, 2021 and no later than June 30, 2026. This credit may **not** be claimed for any contributions made on or after July 1, 2020, and on or before December 31, 2020.

For more information, get form FTB 3503, Natural Heritage Preservation Credit.

Changes to Court-Ordered Debt Collections and Vehicle Registration Collections Earnings Withholding Orders

This change was featured as a Public Service Bulletin (PSB) on the Franchise Tax Board website, December 20, 2022.

Purpose of bulletin

The purpose of this PSB is to advise of a change to Franchise Tax Board (FTB) Court-Ordered Debt Collections and Vehicle Registration Collections earnings withholding order garnishment and financial institution levy exemption amounts for orders issued on or after January 1, 2022.

Background

On September 23, 2021, the Governor signed AB 176 into law. The new law places additional restrictions on the amount of wages FTB can attach. The new law also places additional exemptions on the amount of funds FTB can attach in a deposit account. The new law is effective January 1, 2022.

Additional information

Earnings Withholding Orders (EWO) - Employers

The maximum amount of disposable earnings of a debtor for any workweek that is subject to collection shall not exceed the amount specified in Section 706.050 of the Code of Civil Procedure for orders issued on or after January 1, 2022. This means that employers will process an EWO like they would process an order from a judgment creditor.

Note: this change in California law DOES NOT impact the way employers calculate the amount of wages to withhold for FTB personal income tax EWOTs.

Orders to Withhold (OTW) - Financial Institutions

In addition to the current exemptions, the minimum basic standard of adequate care amount specified in subdivision (a) of Section 704.220 of the Code of Civil Procedure shall not be subject to collection by FTB OTWs for orders issued on or after January 1, 2022. This means that financial institutions will now process OTWs like they would process an OTW from a judgment creditor.

Note: this change in California law **does not** impact the exemption amounts for FTB personal income tax or corporation/business OTWs

Public inquiries

Please contact Court-Ordered Debt Collections at 916.845.4064 or Vehicle Registration Collections at 888.355.6872 for questions regarding the changes to the Court-Ordered Debt Collections and Vehicle Registration Collections levy exemption amounts for AB 176.

You can also visit ftb.ca.gov and search for [court-ordered debt collections](#) or [vehicle registration collections](#) for more information. We anticipate our website will be updated in January 2022.

Main Street Small Business Tax Credit II – Don't Forget to Claim It!

The credit is for California businesses impacted by recent economic disruptions resulting from COVID-19

To claim the credit, taxpayers were required to obtain a tentative credit reservation from the California Department of Tax and Fee Administration (CDTFA) in November of 2021. On their credit reservation, taxpayers made an irrevocable election to apply it to either Sales and Use taxes, or Franchise and Income taxes.

Taxpayers who elected to apply their credit to their Franchise and Income taxes must claim their credit by filing form FTB 3866, Main Street Small Business Tax Credits, with their timely filed, original tax return (including extensions). The form FTB 3866 must be included with their 2021 tax return, even if the taxpayer cannot utilize the tax credit on that year's return. Any credit not utilized on the 2021 tax return can be carried over for up to five years. The credit cannot be claimed on an amended return.

For additional information on our webpage go to [Main Street Small Business Tax Credit II](#), or visit CDTFA's [webpage](#).

Same Services, Different Name

Speakers' Bureau will now be known as Education and Outreach

We're kicking off the New Year with a fresh new name. The Taxpayers' Rights Advocate's Office recently evaluated their services and updated the Speakers' Bureau name to more accurately reflect current activities performed by the bureau. We changed our Speakers' Bureau name to Education and Outreach and updated the website and email address.

Education and outreach play important roles to effectively communicate information to taxpayers, tax professionals, and other external stakeholders. Our team of expert presenters provide nonprofit organizations (including tax professionals), community groups, and government-funded educational institutions with specific information about California tax matters. We typically offer presentations to groups of 25 or more to speak on topics such as California Tax Updates, and Forms of Ownership – for small businesses.

Due to the pandemic, and state mandated meeting limitation, we are currently providing virtual presentations only. However, we look forward to a return to in person events. You may submit a request for your event through our email address at EducationandOutreach@ftb. Be sure to include the following information:

- Name
- Phone number
- Organization
- Event's organizer: name, date, location and address
- Event date and time, and the speaker's time
- Requested topic(s)
- Number of attendees
- Materials/biography deadlines
- Special requirements

Cannabis-based Businesses

Information and resources for cannabis-based businesses

As we begin the New Year, it's a good time to inform your cannabis-based business clients about available information and resources. A cannabis business files income tax returns just like other businesses; however, there may be some differences which may include:

- Deductions
- Credits
- Unique payment and record keeping methods

Our [Cannabis Industry](#) webpage has additional information about the different business types available and their specific filing requirements.

If your cannabis business client has to pay their tax obligations in cash, remind them of our no cash policy. We recognize that some taxpayers may experience a hardship if required to pay by means other than cash. Those taxpayers may apply for an exemption to our no cash policy using [FTB 3711](#).

After we receive the exemption application, we will respond in writing within two business days. If approved, the taxpayer or their representative should use our convenient online appointment feature to schedule an appointment at their nearest [field office](#) to make a cash payment. Requests for appointments need to be made at least two business days prior to the date you wish to make the payment.

Additional Resources

Here are some additional resources that are available for Cannabis businesses:

- [Department of Cannabis Control](#)
- [Cannabis Industry Payroll Tax Reporting](#)
- [Tax Guide for Cannabis Businesses](#)

Criminal Investigation Bureau

Tax preparers play a key role in identifying and preventing fraudulent tax filings

Franchise Tax Board's (FTB's) Criminal Investigation Bureau (CIB) investigates violations of the California Revenue and Taxation Code, which include crimes of state income tax evasion, state income tax fraud, asset concealment, and preparer fraud (more on this later).

Special agents, who are fully sworn peace officers, conduct the investigation and may write and execute search warrants and interview witnesses and subjects. As a tax preparer, you may be included and requested to provide information related to the investigation involving your client.

Tax preparers are expected to have some knowledge of their clients' finances, which includes sources of income, investments, and expenditures to be able to prepare accurate income tax returns. As such, you are a very important witness if an investigation is found necessary. If your client is under criminal investigation special agents may request, or seize (pursuant to a search warrant) records pertaining to your client, such as:

- Federal and state income tax returns, sales tax returns, and payroll tax returns
- Personal and business ledgers, work papers, schedules, journals, income statements, cash receipts and disbursement journals, profit & loss statements, financial statements, etc.
- Sources of income and supporting documentation
- Expense records and supporting documentation
- Any communication (written/electronic) with the client pertaining to their tax preparation and finances

As a witness to the preparation of your client's income tax returns, you will be interviewed by a special agent and asked:

- Your education, years of experience preparing tax returns and types of returns prepared (individual, corporation, partnerships, limited liability companies, etc.)
- Your relationship with the client (number of years you have prepared returns for the client, types of services provided to the client, types of returns prepared for the client, etc.)
- Income items reported on the returns, source documents, work papers, and communication with the client about the income reported
- Expense items reported on the returns, supporting documentation, and communication with the client about the expenses reported
- Knowledge about the client's businesses and record keeping
- Bookkeeping services and other known accountants or tax preparers

- Who provides the records for the tax preparation, how often are they provided, and how are they provided (email, dropped off, fax, etc.)
- Are the completed returns discussed and reviewed with the client
- What is the process for signing and filing the completed returns

It is important to maintain communication with your clients to ensure they have correctly been advised on what is considered income that needs to be reported, types of expenditures and deductions allowed, and the importance of maintaining income and expense records to support items reported on their tax returns.

While the information we have shared describes the most common examples for when you may interact with FTB's special agents (as mentioned above), special agents also conduct criminal investigations related to preparer fraud.

The tax community is a tremendously valuable resource for the tax filers of our state. Thousands of tax preparers work tirelessly to prepare tax returns in support of our residents and the state year after year. There are however, a small percentage who do not follow the rules, and this is where CIB must work to identify these preparers in support of the reputation of the many.

Unfortunately, we have had to conduct several preparer fraud investigations over the years where we have found a tax preparer to have aided, assisted, or advised their client in the preparation of state income tax returns that are fraudulent or false as to any material matter. In order to prevent preparer fraud, please be mindful of the following:

- Don't report fraudulent deductions on your clients' tax returns
- Don't include tax credits on your clients' tax returns that your clients are not entitled to claim
- Don't prepare fraudulent 1099 or W-2s when the business is cash paying employee wages
- Don't prepare a double set of returns to conceal clients refunds being directed to the preparers bank account(s)

These investigations often identify tax preparers attempting to find ways to improperly increase their client's state income tax refund. By doing so, the tax preparer may believe it will increase the likelihood the client will continue to use their services in future years, and lead their clients to refer their services to friends, family members, business associates, etc.

Through investigation and prosecution of unscrupulous tax preparers, FTB special agents work to not only protect the taxpayers of California, and help ensure the public's continued trust in the state income tax process, but also the reputation of the tax preparer community and the services they provide.

2022 Tax Season is Underway



Brenda Voet, EA.
Taxpayers Advocate

When I started my career with Franchise Tax Board there were two traditional filing seasons. The first was for those who file by the regular due date in the spring and the second in the fall for those who file by the extended due date. Due to the pandemic, it seemed as though last year's filing season would never end! So to everyone involved in helping California taxpayers file returns, I say congratulations for a job well done!

As we enter into what I hope will be like the old traditional filing seasons, I would like to offer a few reminders.

The first reminder is to confirm with your clients that we have their current and correct contact information. It is much easier to communicate to resolve filing or return processing issues when their contact information is accurate. Secondly, clients opting to receive a refund check, opposed to direct deposit into their bank, an incorrect mailing address will result in a delay in receiving their refund.

Another reminder is for tax professionals to sign up for a [MyFTB](#) account and add their clients to their list. While our traditional service channels will still be available to you, there are many benefits to interacting with us through [MyFTB](#) including:

New features

- New Pass-Through Entity Elective Tax Payment displayed on the Payment History and the Estimate Payments pages for Business Entities.
- Option to view e-file return data in a text-only format.

Updated features

- Updated privacy and perjury language when adding a Tax Information Authorization (TIA) client.

If you still prefer to contact us using the traditional channels, here are some helpful telephone numbers:

Tax Practitioner Hotline

916-845-7057

Open weekdays, 8 AM to 5 PM

Remember to check our [Wait Time](#) feature to help you decide the best time to call.

e-file Help Desk

916-845-0353

Open weekdays, 8 AM to 5 PM

When a delay will create an immediate economic hardship for your client relating to a bank levy, wage garnishment, or tax lien, call this number:

800-883-5910

Open weekdays 9 AM to 4 PM

If you need help to resolve an ongoing problem that you have been unable to resolve through our [normal channels](#), please provide the facts and circumstances that need to be communicated using our online [Unresolved Account Issues](#) form, sometimes referred to as the “portal.” The information populated in the online form allows us to easily identify the issue and get it properly assigned.

I hope this year’s filing season will be a bit easier for everyone. And, I am reassured in the knowledge you are consistently doing your very best to assist in this endeavor.

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.
