



# Tax News

July 2018

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## Legislative bill watch list and new law

As the month of July begins, we now have an enacted budget.

Included in that budget were several trailer bills that included content from other bills. Below is a list of both trailer bills that are now law and tax bills to watch.

### Budget trailer bills

**AB 1817 (Assembly Budget Committee)** State Leadership Accountability Act and the Administrative Procedure Act, reporting and directives.

**SB 855 (Senate Governance & Finance Committee)** Tax Data Exchange Agreement, delete repeal date; Earned tribal income, exclusion; California Earned Income Credit, modification; New Employment Credit, extend sunset date; and California Competes Credit, allocation report.

**SB 871 (Senate Governance & Finance Committee)** Motion picture credit.

Here are a few interesting **FTB sponsored tax bills** that remain alive:

**AB 2503 (Irwin)** Administrative (dissolution or cancellation) for domestic corporations and limited liability companies.

**AB 2855 (Brough)** Net Operating Loss (NOL) deduction carryover, modified **conformity**.

**SB 274 (Glazier)** Partnership audit rules, notice of deficiency assessment: partnership's federal election regarding audit rules is binding for state purposes unless FTB approves a separate election.

For more information on these and other bills we are currently analyzing, search for **legislative information** on our website. You can also follow bills as they are amended and move through the houses by using our Bill Tracking Report. You can also follow legislative bills by using Legislative Counsel's website.

## 2018 filing season update

At the June 5th Franchise Tax Board meeting, our Filing Division provided its first update for the 2018 Filing Season. Here are some of the highlights for returns, payments, and refunds as of the end of May:

- We have processed just over 17 million personal income tax (PIT) and business entity (BE) returns.
- 16.2 million PIT returns were filed, with 91 percent being e-filed.
- 894,000 BE returns were filed, with 85 percent being e-filed.
- 6.9 million payments (PIT and BE), totaling \$28.7 billion.

- We issued 10.9 million PIT refunds totaling \$10 billion and 76,000 BE refunds totaling \$363 million.
- The average PIT refund was \$917, while for BE's the average refund was \$4,776.
- 92 percent of the PIT refunds were received by taxpayers within 14 days of filing, increasing to 99 percent of refunds being received within 30 days of filing.
- We received over 1.3 million California Earned Income Tax Credit claims, allowing \$292 million in credits/refunds.

Next month, we'll have an article featuring some of our customer service contact numbers for 2018.

### [Discussion on Market-Based Rules for sales other than sales of tangible personal property continues](#)

On May 18, 2018, we held our third Interested Parties Meeting (IPM) for a second round of proposed amendments to California Code of Regulations, Section 25136-2.

We introduced the following new concepts at the meeting including the definition of "domicile" and "beneficial owner," language of "foreign jurisdiction" or "geographic area," simplification rules for services, government contract rules, asset management rules, and the burden of proof for changing the reasonable approximation method.

For more detailed information, read the draft language handout from this meeting. We welcome the public's comments through July 19, 2018.

A 4th IPM for this regulation is expected to occur within the next 6 months and another draft of the proposed language will be provided to the public for discussion at that time.

## Changes to our direct deposit of refund (DDR) process

Historically, when we made an adjustment to a refund requested in the form of a direct deposit, we would issue a paper check and mail a notice explaining why the tax return was changed. This often resulted in a delay in receiving the refund.

Beginning July 2018, in most cases, if there is a change made to a refund, the taxpayer will still receive their refund via direct deposit. Only the notice explaining the change will be mailed. Because it is possible that the revised refund will be deposited prior to the notice explaining the change arriving in the mail, we ask that you advise your clients to wait for the notice before calling about their refund.

The notice explaining the change will also be available in MyFTB. If you have a Tax Professional MyFTB account, you can view the notice in your client's account or they can view it themselves if they have their own individual MyFTB account. This is another good reason for you and your clients to sign up for MyFTB.

If a taxpayer requested the refund be deposited into 2 separate accounts, we will adjust the deposit using these rules:

- If the adjustment results in a **reduced** refund, we will deduct the difference from the second account. If the difference exceeds the amount requested for the second account, we will deduct the remainder from the first account.
- If the adjustment results in an **increased** refund, we will add the difference into the second account.

As a reminder, increased refund amounts to specific account types may need your client's attention.

- If the refund was deposited in an account that has a contribution limit, the taxpayer may need to arrange to withdraw the excess contributions.
- If the refund was deducted as a contribution to a tax-favored account (such as an IRA or 401K), the taxpayer may need to file an amended return.

## Common notices

### Did your client receive a notice from us?

Taxpayers receive notices for numerous reasons. To find out more about the notice your client received, go to our [ftb.ca.gov](http://ftb.ca.gov) homepage, under Popular, select “Did you receive a notice?” then select, Common Notices. You can select individuals or businesses to see a list of common notices. You can also view all notices. Select a notice and get answers to questions such as:

- Why did my client receive the notice?
- What’s in the notice?
- What should I do about the notice?

As always, we recommend signing up for MyFTB for faster service. And, with a power of attorney relationship, you may see the notice and look up the reason code for your client.

## Resources available for small business owners and your small business owner clients

We have many resources available to small business owners and your small business owner clients. We know that our most informed taxpayers are generally our most compliant. In an effort to provide the most information as possible, FTB, along with other California state agencies, have created informative websites, publications, and we sponsor many education and outreach events.

### Informative websites

- [Our website](#) – We have a Businesses section that provides useful links and information about various popular topics for small business owners. Online services such as Web Pay and filing information for the different types of business ownership can be found there as well. There is even a section of our website dedicated to Starting, Running, or Closing a Business.
- [Governor’s Office of Business and Economic Development](#) (GO-Biz) – GO-Biz offers a comprehensive website called [California Business Portal](#) that features a business navigator, quick-start guides, and links to financial assistance. If you or your client is in need of permit assistance, [CalGold](#) is a website that can point you in the right direction for the permits and licenses you may need for your particular business and your particular location.

- [Small Business Assistance Center](#) – The Small Business Assistance Center is another great resource that is located at the [California Tax Service Center](#). This website is sponsored by the state of California and contains useful information for all aspects of your business.

## Publications

- FTB 1123, *Common Forms of Ownership* – This publication is a comprehensive resource of the filing requirements and general information about the different types of business ownership. As a business owner, one of your most important decisions is which type of business ownership will best fit your business needs. This publication gives you the information you need to make an informed decision.
- FTB 984, *Common Business Expenses* – In this publication, the most common business expenses are discussed.
- FTB 3556, *General LLC Information* – This is a publication that specifically deals with Limited Liability Companies (LLCs) and how they are considered hybrid business entities with characteristics from corporations and partnerships.
- FTB 1060, *Guide for Corporations Starting Business in California* – This is a guide to help you understand the filing requirements for corporations.

## Education and outreach events

- FTB Event Calendar – On our website, an event calendar shows upcoming events that we are attending as part of our education and outreach efforts. Upcoming small business seminars are listed on this calendar.
- [CDTFA Event Calendar](#) – This is a comprehensive calendar that lists all upcoming events that are sponsored by the California Department of Tax and Fee Administration (CDTFA). They include small business seminars, new business orientation, basic sales and use tax classes, nonprofit seminars, and more.

Whether you or your small business clients are just starting out, or already have an established business, there are plenty of resources available that can help you along the way. Make sure to take advantage of these opportunities today!

## New and improved California business portal

If you or your client are looking to start or grow a business in California, the [California Business Portal](#) is a comprehensive resource for your business needs. This portal was created by [The Governor's Office of Business and Economic Development](#) (GO-Biz) and provides businesses with tools and information on financial assistance, relocation services, international trade and investment guidance, tax incentive information, registration and permit requirements, information about California regulations, and much more.

The California Business Portal is updated regularly to keep up with ever-changing business requirements.

One section that is frequently updated is the [Business Quick Start Guides](#). This is an easy-to-use list of frequently established business types and the necessary requirements to register and get started. New guides recently added include Automotive Repair, Domestic Repair Person (Handyman), Photographer/Videographer, Physical Therapist, Software/Mobile App Developer, and Tutoring.

## Western Union payments not available

As of June 15, we no longer accept any Western Union payments. The process we used to print and reconcile Western Union payments is outdated and caused numerous problems for us and taxpayers. We are exploring other electronic wire service options for cash payments.

We have several other payment options for you or your clients to use.

## Ask the Advocate



**Susan Maples, CPA**  
Taxpayers' Rights Advocate  
Follow me on Twitter at  
[twitter.com/FTBAdvocate](https://twitter.com/FTBAdvocate)

### Please don't share your MyFTB account

We are already halfway through the year, which puts us at the midpoint between the initial and extended filing deadlines. For many tax professionals, this means that things are a bit slower right now. I hope this holds true for you and that you will be able to spend some time away from the office, either taking a well-deserved vacation or just spending some restful time at home.

For some, however, the summer can also be busy, especially if your client got a notice from us or you do other representation work for clients. As for me, my staff and I do spend a lot of time helping practitioners through “notice season”; however, we also have more time available for speaking engagements and conferences. At events, we always enjoy meeting with you, hearing your concerns and providing you updated information on a variety of topics, including MyFTB. If you have attended an event where I or one my staff spoke, you know that we always mention MyFTB and its ongoing enhancements. We’ve encouraged you to sign up for both an Individual and a Tax Professional account and we are encouraging you to help your clients sign up for their own Individual MyFTB accounts.

Speaking of MyFTB, because it is one of the most powerful self-service tools we offer, we closely monitor its usage to ensure that only authorized users are accessing confidential taxpayer information. This brings me to another important topic. Recently, we have seen a few situations where a tax professional’s MyFTB account is being utilized by someone other than the authorized user. This may occur when sign-in credentials are shared among colleagues or support staff in the same office or firm, or by continuing to access the MyFTB account of a former colleague, e.g., someone who retired or left the firm.

While the number of times this has happened is very small overall, I thought it was worth reminding you that MyFTB accounts are unique to each user and that log-in credentials must not be shared, even among co-workers. While sharing credentials may seem convenient, it is a violation of your user agreement and could lead to some unintended consequences, including deactivation of your MyFTB account and our notifying those taxpayers whose accounts were improperly accessed.

As I mentioned above, the summer is when my staff and I have the opportunity to attend more events and conferences. This summer, I will be at the [CSEA Super Seminar](#) in Reno June 27 – 29, the [Latino Tax Fest](#) in Las Vegas July 31 – August 3, and the [IRS Nationwide Tax Forum](#) in San Diego August 7 – 9. I will have a booth at each of the events and hope that you will stop by to say “hi” and of course, talk to me about MyFTB!

## MyFTB Corner

### Requesting full online account access to your client’s information

Beginning June 24, when a new Power of Attorney (POA) or Tax Information Authorization (TIA) relationship is established, Tax Professionals with a MyFTB account will automatically be granted **Limited Online Account Access** once we have verified that relationship. See our May Tax News article, **Security Changes Coming to MyFTB**, and June Tax News article, **Taxpayer Authorization Needed for Full Online Account Access**, for more details.

### Relationships established on or before June 24, 2018

You will continue to have **Full Online Account Access** to your client’s online information in MyFTB if you had an active Tax Professional MyFTB account. You will retain full online access until the relationship is revoked or expires. For TIA relationships, if the TIA relationship is not renewed in MyFTB prior to expiring, you will need to establish a new relationship and the new process described below will apply.

### Relationships established after June 24, 2018

You will automatically be granted Limited Online Account Access when the relationship is approved by us. To get Full Online Account Access, you must request it and your client must approve your request.

### How the new process works

- After we approve the [TIA](#) or [POA](#) relationship between a taxpayer and a tax professional, you are immediately granted **Limited Online Account Access** to your client’s MyFTB information.
- If you request **Full Online Account Access**, we will mail your client an Authorization Code they can use to approve or deny your request.

- If your client approves your request, you will immediately have **Full Online Account Access** to their MyFTB account information.
- If your client denies your request or does not respond to the letter, you will retain **Limited Online Account Access**.

### Limited vs. Full Online Account Access

We've listed what tax professionals can view or actions they can take for each access level in MyFTB.

This applies to information available online using MyFTB. There is no change to the information you can receive by phone, chat or in person with an active POA or TIA relationship.

### Limited vs. Full Online Account Access Table

Authorization Type	Limited Online Account Access (Granted by FTB when relationship is approved)	Full Online Account Access (Authorized by Taxpayer)
TIA	View notices and correspondence sent from us in the last 12 months. Request full online account access to client's information. Chat with us about confidential matters.  Send us a secure message with attachments.	<b>View</b> information for all tax years: Notices and correspondence. Account balance and tax year details. Estimate payments and credits. California wage and withholding information – individual clients only. Payment history. List of returns filed. Proposed assessments. FTB-issued 1099 information – individual clients only. Exact business entity name to use when filing a return. Chat with us about confidential matters.

Authorization Type	Limited Online Account Access (Granted by FTB when relationship is approved)	Full Online Account Access (Authorized by Taxpayer)
POA	All of the above applies for the tax year(s) listed on the POA declaration.	<p data-bbox="1062 279 1495 447">Send us a secure message with attachments. Calculate a balance due for a date in the future.</p> <p data-bbox="1062 499 1471 579">File a nonresident withholding waiver request</p> <hr/> <p data-bbox="1062 642 1463 768">All of the above applies for the tax year(s) listed on the POA declaration, plus:</p> <p data-bbox="1062 816 1487 984">View images of tax returns. Update contact information. Protest a proposed assessment.</p> <p data-bbox="1062 1035 1482 1203">Respond to a proposed assessment to request a 30-day deferral to file a tax return.</p>

For the most current updates go to [ftb.ca.gov/access](https://ftb.ca.gov/access).

## MyFTB Corner

Viewing client notices with limited online account access

Beginning June 24 when new Power of Attorney (POA) and Tax Information Authorization (TIA) relationships are established, tax professionals with a MyFTB account will automatically be granted **Limited Online Account Access**. See our May Tax News article, **Security Changes Coming**

to MyFTB, and June Tax News article, **Taxpayer Authorization Needed for Full Online Account Access**,for more details.

Notices you can view with Limited Online Account Access

You can view notices and correspondence we have issued to your client within the last 12 months. (This includes responses to Send Secure Message.)

To view notices:

- Select the client’s name on your **Client List**.
- Select the **View Notices** button. (See Image 1.)
- Select the View link. (See Image 2.)

Image 1 – View Notices – From FTB

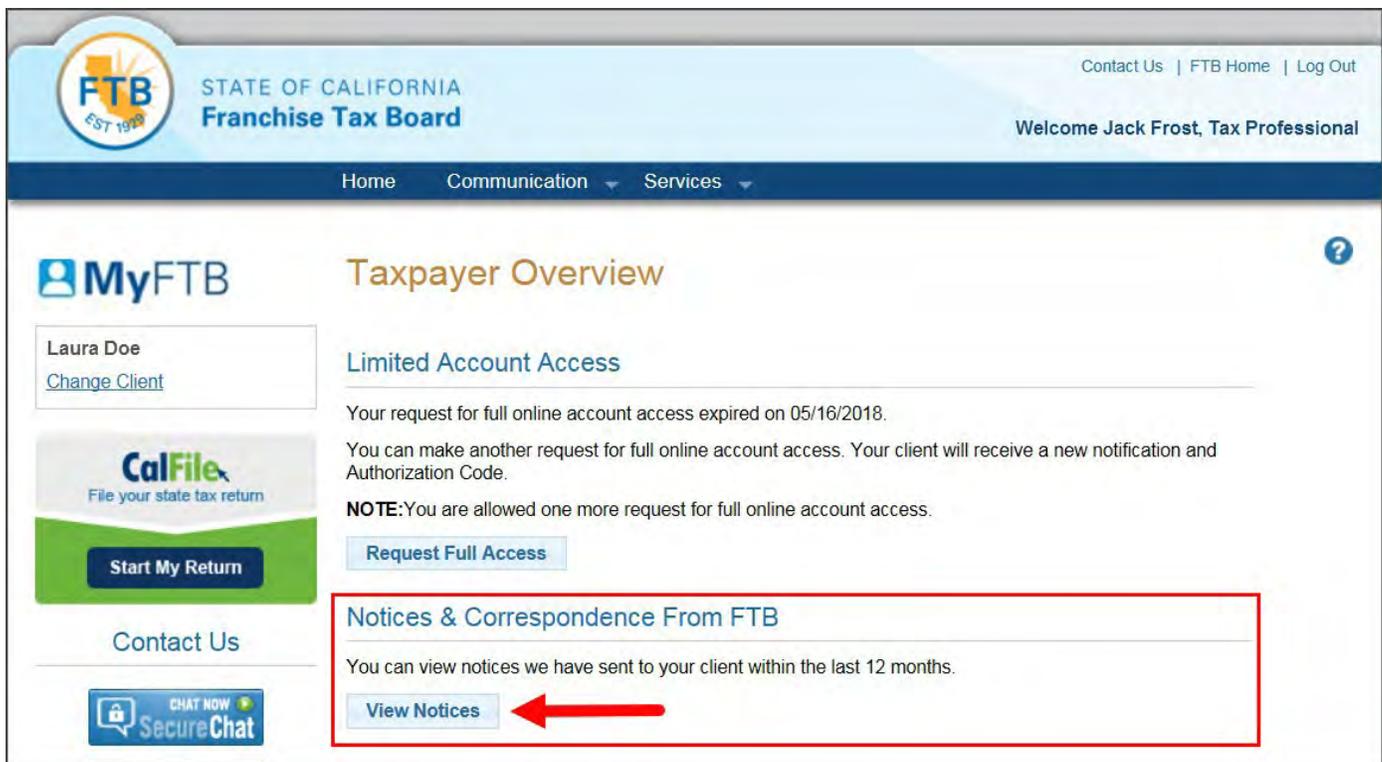


Image 2 – Notices and Correspondence – From FTB

The screenshot shows the MyFTB interface for a user named Laura Doe. The main heading is "Notices & Correspondence". A sub-heading indicates "Not all Notices and Correspondence may be available." Below this, there is a filter for "From FTB" and a "Show Filter" link. A table displays the following notices:

Sent Date	Tax Year	Title	Image
04/16/2018		Power of Attorney Declaration Filed	<a href="#">View</a>
01/27/2018	2012	Tax Return Filed - Confirmation Required	<a href="#">View</a>
08/27/2017	2014	Power of Attorney Declaration Filed	<a href="#">View</a>

### Will you be notified when a notice is available to view?

- POA Representatives\* – We will continue to send POA representatives email notifications to the email address listed on the active POA declaration when a notice has been issued. Additionally, you can continue to view notices by selecting the **Client Notices** link located on your **Tax Professional Overview** page (lists up to 200 notices and correspondence we sent in the last 60 days).
- TIA Representatives – We will not send email notification to TIA representatives. However, if your client contacts you regarding a notice, you can locate the notice in their MyFTB account as indicated above.

\*Only notices and correspondence for tax year(s) specified on the POA declaration will display.

## All About Business

### Technical termination (IRS changed, but California did not)

California's tax system is based (in part) on conformity to provisions of federal tax law, as of a "specified date." The last time California conformed to the Internal Revenue Code (IRC) was when the Conformity Act of 2015 was enacted. The Conformity Act of 2015 changed California's specified conformity date to the Internal Revenue Code as of January 1, 2015.

On December 22, 2017, the federal Tax Cuts and Jobs Act of 2017 (Act)<sup>1</sup> was enacted and made many changes to federal law. Specifically, to IRC Section 708. The Act repealed the IRC Section 708(b)(1)(B) rule providing for technical terminations of partnerships (for federal purposes).

### **What does this mean for California taxpayers?**

Because the last time California conformed to the IRC was when the Conformity Act of 2015 was enacted with a specified conformity date of January 1, 2015, this means that California does not conform to the federal provision that repealed the IRC Section 708(b)(1)(B) rule related to technical terminations of partnerships.

Under California law, a partnership is considered as terminated under specified circumstances.<sup>2</sup> Special rules apply in the case of the merger, consolidation, or division of a partnership.<sup>3</sup>

A partnership is treated as terminated if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.<sup>4</sup>

A partnership for California purposes will still be treated as terminated if within any 12-month period, there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.<sup>5</sup> This is sometimes referred to as a technical termination.

The effect of a technical termination is not necessarily the end of the partnership's existence, but rather the termination of some tax attributes. Upon a technical termination, the partnership's taxable year closes, potentially resulting in short taxable years.<sup>6</sup> If there is a

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<sup>1</sup> Public Law 115-97.

<sup>2</sup> IRC Section 708(b)(1).

<sup>3</sup> IRC Section 708(b)(2). Mergers, consolidations, and divisions of partnerships take either an assets-over form or an assets-up form pursuant to Treasury Regulation Section 1.708-1(c).

<sup>4</sup> IRC Section 708(b)(1)(A).

<sup>5</sup> IRC Section 708(b)(1)(B).

<sup>6</sup> IRC Section 706(c)(1); Treasury Regulation Section 1.708-1(b)(3).

technical termination mid-year, the partnership will have to file 2 short-year tax returns for California, but will not have short taxable years for federal tax purposes.

Partnership returns are due by the 15th day of the 3rd month following the close of the taxable year (generally March 15). When a partnership has a technical termination and needs to file 2 short-year tax returns for California, the partnership will have 2 due dates, depending on when the technical termination occurred.

An LLC treated as a partnership must follow the federal partnership rules in Subchapter K (IRC Sections 701 through 777) including the ownership change rule. The ownership change rule requires the partnership to be treated as terminated when there is a change of 50 percent or more of the total interests in a partnership within a 12-month period. If there is a technical termination mid-year, the LLC will have to file 2 short-year tax returns and pay for 2 entities (annual tax and fee) because we treat each short-period return as a separate taxable year, and the due date for the filing and payment of taxes will be based on both the beginning and ending of each separate taxable year.

For example, if a multiple-member LLC is taxed as a partnership with 2 members, each owning 50 percent, and 1 member sells his interest to another individual on June 30, the LLC terminates as a partnership effective June 30. The multiple-member LLC must file for the period from January 1 to June 30, and pay the annual tax and fee. The new partnership LLC must file for the period from July 1 to December 31, and must also pay the LLC annual tax and fee.

Remember: An LLC's annual tax is due on the 15th day of the 4th month after the beginning of the LLC's year to avoid penalties. Both LLCs must estimate and pay the LLC fee by the 15th day of the 6th month after the beginning of the tax year. An estimated fee penalty may be assessed if it is underpaid. The tax return must be filed by the 15th day of the 3rd month after the end of the taxable year.

As with the IRS (see IRC Sections 6698), we impose penalties on taxpayers when they fail to comply with their tax obligations. California law (Revenue and Taxation Code (R&TC) Section 19172) imposes a partnership/member late filing penalty for the late filing of a pass-through business entity's tax returns (Forms 565 and 568) or if you file the tax returns without required

information.<sup>7</sup> We impose these penalties even if all taxes have been paid or (as is the case with a general partnership) no taxes are imposed.

For tax returns filed on or after January 1, 2011, the partnership or LLC taxed as a partnership late filing penalty is \$18 for each month or part of a month (for a maximum of 12 months) multiplied by the total number of partners or members in the entity during any part of the taxable year for which the tax return is filed after its due date. This penalty is in addition to the existing late filing penalty under R&TC Section 19131.

## 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.

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<sup>7</sup> Failure to File a Timely Return or Provide Information.

Unless failure is due to reasonable cause, a penalty will be assessed against the partnership if it is required to file a partnership return and one of the following occur:

- It fails to file the return on time, including extensions.
- It files a return, including Schedules K-1 (565), that fails to show all the information required.

Interest will be charged on the penalty from the date the notice of tax due is sent by us to the date the return is filed.

For “small partnerships,” as defined in IRC Section 6231, the federal exception to the imposition of penalties for failure to file partnership returns, does not apply for California purposes. For more information see R&TC Section 19172.