



# Tax News

March 2018

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## Cannabis clients who need to pay in cash

As tax season approaches you may find that clients in the cannabis industry are only able to pay their obligations with cash. It is important to note that we have a no cash policy. Please see our payment options page. However, 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.

Once the exemption application has been received, we will respond in writing within 2 business days. If approved, the taxpayer or their representative may then contact their nearest field office to schedule an appointment to make the cash payment. Requests for appointments need to be made at least 2 business days prior to the date you wish to make the payment.

If the taxpayer is required to make mandatory e-payments, we recommend that you also complete and submit Form 4107, Mandatory e-Pay Election to Discontinue or Waiver Request for individuals, or Form 3816, Electronic Funds Transfer Election to Discontinue or Waiver Request for business entities, each time a cash payment is made.

## Informational letters continue

Your client may receive an informational letter from us if they have fallen behind on their California income tax obligations.

In certain situations, we proactively contact taxpayers to provide them with information to accurately file their tax returns based on their history with us. As mentioned in the December 2017 Tax News article under “Informational Letters”, we embarked on 3 new proactive letter campaigns for certain taxpayers who may have fallen behind on their California income tax obligations. The letters will offer assistance to help them adjust withholding, change estimate payments, assist in the collection process, and resolve outstanding liabilities sooner.

In January 2018, **Please Call Us About Your California Income Taxes** (Form 4505) contact letters were sent to a select group of taxpayers who owe outstanding tax liabilities for the first time, offering early assistance to bring them into compliance prior to collection activities taking place.

In late January and early February 2018, **Payment Options That Save You Money** (Form 4083) informational letters were sent to a select group of taxpayers in active installment agreements. The letters provided the benefits of resolving tax liabilities sooner and presented payment options that would reduce the time to satisfy the remaining balances.

In late February 2018, **Determining Your Wage Withholding** (Form 4113) and **Determining Your Estimated Tax** (Form 4114) informational letters will be sent to a select group of taxpayers who may need to adjust their withholding or estimate payments for 2018 to avoid owing on tax day and incurring penalties.

Each of the letters have a dedicated phone number for taxpayers to call for assistance. If you have a client that received a letter, we encourage you or your client to contact the number provided on the letter for assistance.

Taxpayers can visit [ftb.ca.gov](http://ftb.ca.gov) for additional information or to verify the validity of the letter they received.

### Remind your clients to update their address with us

While it is not always intuitive to taxpayers, remind your clients to make sure we have their current address when they move, even if it is out of state. We have 4 years to audit a tax return and collection issues can remain unresolved much longer. One error we often see is that taxpayers neglect to include their apartment, suite, or space number (for mobile home parks) on their tax return.

### Did you know that we receive nearly 50,000 returned refunds each year because of returned mail?

While most returned refunds are eventually resolved, taxpayers are frustrated with the delay. Even more disruptive is when we are trying to contact taxpayers regarding a filing error or to notify them of an unpaid tax debt where collection action will follow.

While we actively look for taxpayers' most current addresses, we are not always successful. To ensure that your clients are not caught off-guard by not receiving a timely notice or refund, we are asking for your help by reminding them to keep their addresses updated.

Your clients can report a change of address the following ways:

- Login to MyFTB. Complete a one-time registration process to create a login account. Then login to view your account information or update your address and phone number online.
- File a personal income tax return with the full and correct address information.
- Mail your estimate voucher (Form 540-ES), if they pay estimated tax, with the full and correct address information.
- Mail a change of address form (FTB 3533).

## California Competes Tax Credit

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

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

For fiscal year 2017/2018, \$230.4 million of the CCTC is available for allocation during three application periods. For the third application period, \$55.4 million plus any remaining unallocated amounts from the previous application periods is available for allocation. Applications for the credit will be accepted at [calcompetes.ca.gov](http://calcompetes.ca.gov) from March 5, 2018 until March 26, 2018. Go to <http://www.business.ca.gov/calcompetes.aspx> for more information on the California Competes Tax Credit.

## College Access Tax Credit extended

The College Access Tax Credit (CATC) provides a tax credit to taxpayers and businesses who contribute to Cal Grants, the state of California's largest source of educational financial aid. The credit can be used to offset or reduce taxes.

The CATC program began in 2014, and was recently extended to taxable year 2022. Taxpayers can receive a credit against tax for 50 percent of the amount contributed by the taxpayer for the taxable year.

The application period for the 2018 taxable year will open on March 1, 2018 and close on January 2, 2019. For more information about applying for the credit and receiving a credit certificate, go to the [California State Treasurer](#).

For more information on claiming the tax credit, go to our College Access Tax Credit webpage.

### Interest rates remain the same

There have been no changes to current interest rates.

The current rate on personal income tax underpayments and overpayments, corporation underpayments, and estimate penalties will remain the same at 4 percent through 2018.

The corporation overpayment rate will also remain the same at 1 percent through December 31, 2018.

For more information on interest rates, go to [ftb.ca.gov](http://ftb.ca.gov) and go to our interest rates webpage.

### Take these steps after a data loss

Important steps to take and contact information if you experience data theft.

#### Contact the IRS and law enforcement:

- [IRS](#) – Report client data theft to the local IRS Stakeholder Liaison. Liaisons will notify IRS Criminal Investigation and other appropriate offices within the agency on your behalf. Speed is critical. If reported quickly, the IRS can take steps to block fraudulent returns in your clients' names.

- [Federal Bureau of Investigation](#) – Contact your local office.
- Local police – File a police report on the data theft.

#### Contact state agencies where you prepare state returns:

- [State Tax Agencies](#).
- [State Attorneys General](#) – Most states require that the attorney general be notified of data thefts. This process may involve contacting multiple offices.

#### Contact experts:

- [Security expert](#) – They can determine the cause and scope of the theft. They can also figure out how to prevent further losses.
- Insurance company – You should check to see if your insurance policy covers expenses related to the data loss.

#### Contact clients and other services:

- [Federal Trade Commission](#) – They offer tips and templates for businesses that suffer data compromise. They even have suggested language for informing clients.
- Clients – Send a letter to victims letting them know about the theft. You should work with law enforcement on timing. If you have prior-year data in your system you may need to contact former clients.
- Tax software provider – Contact the provider you use in case they need to take steps to prevent inappropriate use of the compromised account for e-filing.
- Website and client portal provider – Thieves may have stolen passwords. You and the software provider would need to reset these.
- Credit and identity theft protection agency – Certain states require credit monitoring and identity theft protection to victims of ID theft. Check to see if you need to do this.
- Credit bureaus – Notify them if there's a compromise. Your clients may seek their services.

IRS' toll-free assistors cannot accept third-party notification of tax-related identity theft. Clients should file a [Form 14039](#), Identity Theft Affidavit, only if their electronic return is rejected as a duplicate, or they're directed to do so.

#### More Information:

- [Data Theft Information for Tax Professionals](#).

- [Don't Take the Bait.](#)
- [Taxes. Security. Together.](#)

## Ask the Advocate

### Tax professional help tools



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

It goes without saying that as a tax professional, you want to provide the best possible service to your clients as efficiently as possible. And, we want to help you do that. Part of how we do that is to provide you with useful information and resources online, especially through the Tax Professionals page on our website. On this page, we have relevant information about “what’s new” and links to our most popular resources and online services.

This page also has a drop-down menu under **Services/Resources** with links to other services and resources that you may not be aware of. Some of these we have mentioned in prior issues of Tax News, while we will highlight others, such as our Open Data Portal in future issues. One of the most popular features with tax professionals is Ask a Legal

Expert, which provides informal answers from our Legal staff to basic legal questions about topics that we administer.

**Contacts** – This page has our FTB Information Directory (FTB 1240), which is a department-wide directory of phone numbers plus web and mailing addresses. Some of the useful phone numbers you can find here are for our Corporate Revivor/Restoration Unit, Withholding Services and Compliance (when you have questions or need information about nonresident, real estate, or backup withholding), our Identity Theft Hotline, and many others.

**Public Service Bulletins (PSBs)** – We provide these to our Customer Service Representatives to help them respond to your questions and they are available for current and prior years, going back to 2005. As with our internal manuals, PSBs shouldn't be relied upon as authoritative interpretations of the law.

**Register as a Tax Preparer** – Are you preparing tax returns for a fee and **not** an “exempt preparer”? If so, you are required to register as a tax preparer with the California Tax Education Council (CTEC). Exempt preparers are California certified public accountants (CPAs), enrolled

agents (EAs), attorneys who are members of the State Bar of California, and certain specified banking or trust officials. If you meet the registration requirements, our Register as a Tax Preparer page will be of interest to you. When taxpayers use an unlicensed preparer, this often leads to problems with us and/or the IRS. For this reason, CTEC takes its mission seriously in establishing tax preparer compliance for the benefit of California taxpayers. Preparers that are required to register with CTEC but fail to do so may be subject to an initial fine of \$2,500, doubling to \$5,000 for subsequent failures to register.

Finally, two other important links on our **Services/Resources** page are our Subscription Services and of course, Tax News. Subscription Services is our free automated service that provides you important information by email. You can choose from a variety of topics and change or discontinue the topics you subscribe to at any time. Simply go the **New subscriber** page, enter your email, and choose from a variety of topics that you want to receive information on. You can even sign-up to learn more about career information, including job openings here at FTB. Last but not least, our Tax News page allows you to view the current issue, refer to our Penalty Reference Chart, Security Tips for Tax Professionals and link to our Small Business and Tax News Live video presentations.

We know you are busy, your time is valuable and that you are committed to providing quality service to your clients as efficiently as possible. Our Tax Professionals page is designed to help you do that, providing you with a wide variety of important information all in one convenient location. Check it out!

## MyFTB Corner

### [New power of attorney/taxpayer information authorization relationship verification process](#)

We are reaching out to you to let you know that we may be contacting your client when a Power of Attorney (POA) or Tax Information Authorization (TIA) is submitted.

As of January 2, 2018, we now recognize two formal relationships for authorized representatives:

- Power of Attorney.
- Tax Information Authorization.

These relationships can be requested online through MyFTB or by mailing one of the new forms below to us:

- FTB 3520 PIT, Individual or Fiduciary Power of Attorney Declaration.
- FTB 3520 BE, Business Entity or Group Nonresident Return.
- FTB 3534, Tax Information Authorization (TIA).

As part of our efforts to best protect your clients and their confidential information, we are performing extra validation for POA and TIA relationship requests. We may contact your client to confirm that they approve the relationship request. This may impact our processing timeframes. This verification process adds a layer of security, providing protection to the taxpayer's information to prevent any unauthorized access.

If we are unable to verify the relationship upon initial processing, the taxpayer will receive a FTB 1181, Verify Power of Attorney, or FTB 1182, Verify Tax Information Authorization letter directing the taxpayer to contact us to confirm the relationship. When this happens, the POA/TIA representative will receive a FTB 1183, Authorized Representative/Individual Request on Hold letter.

### **What does this mean?**

- The relationship request is on hold to allow the taxpayer time to respond.
- If the taxpayer contacts us and approves the request, we will allow the relationship.
- If the taxpayer contacts us and does not want to allow the relationship or the taxpayer does not contact us within 45 days, we will reject the POA/TIA relationship and send a letter to the taxpayer informing them the relationship has been denied.

### **MyFTB Corner**

Help ensure your tax information authorization and power of attorney declarations are accepted

On January 2, 2018 we started accepting the new Tax Information Authorization (TIA), FTB 3534, and Power of Attorney (POA) declaration FTB 3520 PIT and FTB 3520 BE forms. We are pleased to share that we are processing these forms within 25 business days as planned (this includes the 10 business day hold to notify the taxpayer). The only exception is for those that fall-out for manual intervention.

To help ensure your forms are accepted, we are sharing common rejection reasons we are currently seeing and the related solutions.

## Common Rejection Reasons and Solutions:

### Tax Information Authorization - FTB 3534 / Instructions

1. TIA filed for a deceased taxpayer.

**Solution: The following items must be completed:**

- Don't submit TIA renewals for deceased taxpayers.
- The fiduciary must file an FTB 3534 to authorize a representative to receive confidential tax information on behalf of the estate or trust, the fiduciary must file an FTB 3534 (The fiduciary fills out Part 1 of the form as the taxpayer, not as the representative).
- The Federal Employer Information Number (FEIN) must be included unless the authorization is for a grantor trust and the IRS didn't provide a FEIN, then provide the individual's SSN.
- The fiduciary must sign, date, and enter their title.
- Include either a certificate of trustee (as provided by Probate Code Section 15603), court order, governing instrument, or Last Will and Testament. Otherwise, if an Internal Revenue Service (IRS) Form 56, Notice Concerning Fiduciary Relationship is required to be filed with the IRS, attach a copy to FTB 3534.

2. Representative information is missing on the form.

**Solution: Ensure the FTB 3534 includes all representative information, including the individual's name, address, and professional number, if applicable.**

3. Taxpayer identification number is missing on the form.

**Solution: Ensure the individual taxpayer's social security number (SSN) or individual tax identification number (ITIN) is on the form.**

4. TIA was submitted using the POA wizard in MyFTB.

**Solution: Don't submit a TIA form, FTB 3534, in MyFTB.**

To establish a TIA client in MyFTB, use Add TIA Client. See Add a Client to MyFTB for

instructions. When adding a TIA client online, there is no form to upload in MyFTB and do not mail FTB 3534 to us.

## Power of Attorney Declaration – FTB 3520 PIT / Instructions and FTB 3520 BE / Instructions

1. The incorrect POA declaration form is filed.

**Solution: MyFTB or Mail: Use only the new forms, FTB 3520 PIT and FTB 3520 BE (including declarations uploaded into MyFTB). All other forms will be rejected, with the exception of military durable declarations.**

2. Additional representatives listed on page 3 of FTB 3520 PIT and FTB 3520 BE are not keyed on MyFTB.

**Solution: Key all representatives listed on page 3 of the declaration form in MyFTB.**

To save time, you can also create an Associates List in MyFTB for representatives you commonly use on declarations. You can then select representatives from your Associates List when adding your POA declaration in MyFTB. For additional information, see the January 2018 Tax News article, [Create Your Associates List to Submit a POA on MyFTB and How To Manage My Associates List](#).

3. Taxpayer or representative information is missing on the form.

**Solution: Ensure the individual taxpayer's social security number (SSN) or individual tax identification number (ITIN) is on the form. Additionally, the form must include all representative information, including the individual's name, address and professional number, if applicable.**

4. Multiple taxpayer POA declarations are being uploaded into one taxpayer's account on MyFTB.

**Solution: Upload only the POA declaration for the client entered on MyFTB. For more information on how to submit a POA declaration on MyFTB see, [Submit Form 3520 PIT or 3520 BE, Power of Attorney](#).**

For more information on POA and TIA forms, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **poa** or **tia**.

## MyFTB Corner

### Estates and trusts in MyFTB for power of attorneys

Currently, Estates and Trusts (E&T) are unable to register for a MyFTB account; therefore, Tax Professionals cannot access their E&T client accounts on MyFTB. However, Power of Attorney (POA) representatives can still view notices and manage POA declarations for their E&T clients in MyFTB:

1. View Notices – POA representatives can view their E&T clients' notices for the year(s) listed on the active declaration (this functionality is available for all POAs). When a notice is issued, we send an email notification to the email address listed on the POA declaration. You do not need to include an email address on the declaration to view the notices in MyFTB, but without an email address, you won't receive notification that a notice is available to view. If you need to add or update an email address see Add or Edit a Representative's Email Address on an Active Power of Attorney (POA) Declaration.

To view notices for all Power of Attorney clients:

- Select Client Notices from the Tax Professional Overview page (this page displays up to 200 notices and correspondence FTB sent the taxpayer in the last 60 days).
- Select view detail for your client.

Note: Notices for E&Ts are not viewable on MyFTB for Tax Information Authorization relationships.

2. Manage Your POA Declarations – For declarations received after October 2, 2014, POA representatives can manage their declarations in MyFTB, including updating representatives, revoking a declaration and adding or updating an email address.

To manage a declaration:

- Select Client List from the Tax Professional Overview page.
- Select view detail for your client.

For more information on the use of MyFTB or to file a POA/TIA go to [ftb.ca.gov](http://ftb.ca.gov).

## All About Business

### Swart Update

Since we have received inquiries regarding the status of Swart refund claims, we wanted to update you.

#### Swart Decision

On January 12, 2017, the Court of Appeal issued a published decision in *Swart Enterprises, Inc. v. Franchise Tax Board* (Cal. App. 5th Dist. 2017) 7 Cal. App. 5th 497 (“*Swart*”). In this case, the Court of Appeal held that Swart Enterprises, Inc., an Iowa corporation (“Foreign Business Entity”), was not doing business in California and therefore was not subject to the \$800 minimum franchise tax the Franchise Tax Board (“FTB”) had assessed.

In response to the *Swart* Court of Appeal decision, on February 28, 2017, FTB issued Notice 2017-01.<sup>1</sup> In this Notice, FTB explained that it would not appeal the *Swart* Court of Appeal decision and would follow it in situations with the same facts. Notice 2017-01 also provided that to the extent taxpayers believe their situation has the same facts as in *Swart*, they should take that into consideration in determining if they have a California tax return filing obligation and/or whether to file a claim for refund, as appropriate. Finally, Notice 2017-01 provided that in any claim for refund, taxpayers should cite the holding in *Swart* and explain how their factual situation is the same as the facts in *Swart*.

In *Swart*, the Foreign Business Entity held a 0.2 percent membership interest in a manager-managed California limited liability company (LLC) that was doing business in California. The Foreign Business Entity acquired its 0.2 percent membership interest in the LLC after the original members made the decision for the LLC to be manager-managed. The original members delegated to a sole manager full, exclusive and complete authority to manage and control the LLC. The Foreign Business Entity’s sole connection to California was its 0.2 percent membership interest in the LLC.

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<sup>1</sup> SUBJECT: Court of Appeal Decision in *Swart Enterprises, Inc. v. Franchise Tax Board*.

## Filing a Swart Refund Claim

In order to file valid claims for refund, the statute of limitations must be open for the tax year(s) and all tax, penalties, and interest must have been paid in full. In general, the statute of limitations to file a claim for refund is the later of:

- Four years from the original tax return due date,
- Four years after the date of a timely filed tax return; or
- One year from the date of overpayment.

The refund claim must be signed by an authorized representative. Mail the refund claim and enclosures to:

Franchise Tax Board  
PO BOX 942857  
Sacramento, CA 94257-4040

It is well-established that each taxable year stands on its own as the factual situation can potentially vary from year to year (e.g., the taxpayer's membership interest percentage in the LLC could change; or the LLC could switch from being manager-managed to member-managed, or vice-versa). Therefore, taxpayers must substantiate their factual situation is the same as the facts in *Swart* for each taxable year at issue.

- When filing a Swart refund claim with FTB, include the following:
  - A citation to the *Swart* Court of Appeal decision.
  - Taxpayer's name and identification number.
  - Taxable year(s) involved.
  - Name of person to contact, phone number, and fax number.
  - Name and identification number of the LLC in which the taxpayer held its membership interest.
- For each applicable taxable year,
  - Explain why the taxpayer has the same facts as in the *Swart* Court of Appeal decision (i.e., sole connection to California is a 0.2 percent membership interest, or less; in a manager-managed LLC; and the original members of the LLC delegated to a sole manager full, exclusive, and complete authority to manage and control the LLC).
  - State the amount of the refund claim.
  - Enclose with the refund claim copies of Federal Schedule K-1 (Form 1065) and California Schedule K-1 (Form 568) that the taxpayer received from the LLC.

- Provide any other documents substantiating the taxpayer's membership interest percentage in the LLC for each taxable year at issue.

In terms of taxpayers substantiating the LLC was manager-managed during the taxable year(s) at issue, taxpayers should be prepared to provide the following upon request:

- Copies of the articles of organization and all amendments of the LLC.
- Copies of the operating agreement and all amendments of the LLC.
- The date the LLC became manager-managed.
- The date the taxpayer acquired its membership interest in the LLC.
- Any other documents substantiating the date the LLC became manager-managed and the date the taxpayer acquired its membership interest in the LLC during the taxable year(s) at issue.

### **Swart Refund Claim Processing**

We are currently processing Swart refund claims. If additional information is needed in order for us to make a determination whether to grant a taxpayer's refund claim, we will request additional information from the taxpayer.

If the claim is allowed, it will generally take 30-45 days from the date of that determination for the taxpayer to receive their refund. If additional information is needed, or the claim is denied, processing times will depend on the specific case. If the claim is denied, the taxpayer will receive applicable appeal rights.

### **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.