



# Tax News

March 2019

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## Cannabis business resources

### Income tax resources for newly licensed business

California began issuing licenses to cannabis businesses in 2018. Therefore, many of these businesses will soon be filing their first income tax return with California. To assist these taxpayers with their filing requirements, FTB created a dedicated webpage with up-to-date information specific to the cannabis industry. Forms, instructions, contact information, and even videos are available on this webpage to assist cannabis businesses.

#### Where can you get more information?

Visit [ftb.ca.gov/cannabis](http://ftb.ca.gov/cannabis) for additional information on cannabis business income tax, including our cannabis email address.

## Filing California claims for refund under the Combat-Injured Veterans Tax Fairness Act of 2016

The Combat-Injured Veterans Tax Fairness Act (CIVTFA) gives veterans who retired from the Armed Forces for medical reasons additional time to claim a federal tax refund if they had taxes improperly withheld from their severance pay. Severance pay received for a combat-related injury may be excluded from gross income. Under the CIVTFA (see also [IR-2018-148](#)) the federal statute of limitations was extended to allow affected veterans time to file their claims for refund for previously taxed income.

It's important to note that while California does not conform to the federal legislation establishing the extended statute of limitations (SOL), claims for refund may still be filed under California law. If the regular California SOL is still open, a claim for refund may be filed independent of the corresponding federal claim. However, if the California SOL has expired, the California claim for refund should not be filed until the IRS has allowed the corresponding federal claim. Generally, we allow two years<sup>1</sup> from the date of a federal change to file a claim for refund resulting from the federal change.

### How to file a claim

To file a claim for refund with FTB, Veterans may submit a [Schedule X](#) with an amended Form 540, 540 2EZ, or Long or Short Form 540NR for tax years on or after 2017, Form 540X for tax years 2016 and before, or a letter claim. Amended returns or letter claims should include the following:

- A copy of the letter they received from the Defense Finance and Accounting Service (DFAS) or the Internal Revenue Service

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<sup>1</sup> Revenue and Taxation Code section 19311

- A copy of the IRS Form 1040X and substantiation indicating the IRS allowed the refund (determination letter, refund issues, etc.)

If we need additional information, we will contact you.

## Where to send your claim

Taxpayers should send their claim for refunds and supporting documentation to:

STATE OF CALIFORNIA  
INFORMATION VALIDATION SECTIONS MS 170  
FRANCHISE TAX BOARD  
PO BOX 1565  
RANCHO CORDOVA CA 95741-1565

## Have a married military client?

There has been a change in federal law that may affect your military clients' tax filing position if they have a spouse who is earning income while in California.

Veterans Benefits and Transition Act of 2018 (Sen. No. 2248, 115<sup>th</sup> Cong., 2d Sess. (2018).) passed on December 31, 2018. In particular, section 302 of the bill amended the Servicemembers Civil Relief Act to provide certain state requirements related to the residency and domicile of military spouses. These changes apply to California.

Spouses of service members may now elect to use the same residence as the service member for tax purposes on any taxable year of the marriage regardless of the date on which the marriage occurred. It is effective for California income tax returns filed beginning with the taxable year that includes the date of enactment (2018).

## Make the election

Similar to other military elections, see Tax Information for Military Personnel (Pub 1032), in order to make this election you must write, "**VBTA**" at the top of the tax return in **RED INK**, or include it according to the software's instructions.

The Military Spouses Residency Relief Act (MSRRA) was signed into law on November 11, 2009. The MSRRA amended the Servicemembers Civil Relief Act to provide that, for taxable years beginning on or after January 1, 2009, a service member's spouse is considered a nonresident for tax purposes if:

- The service member and spouse have the same legal residence or domicile outside of California

- The spouse is in California solely to be with the service member who is serving in compliance with military orders.

In addition, a qualified spouse's income for services performed in California is **not** considered to be from sources within this state if:

- The spouse is not a California legal resident or domiciliary because the spouse is in California solely to be with the service member serving in compliance with military orders
- Both have the same out-of-state legal residence or domicile

With the recent change, the spouse of a service member can claim the same residence as the service member as long as they meet the above criteria, regardless of when they were married and regardless of the spouse's original state of residency.

**Example:** Henry, a military service member, is a Florida resident. He married Elita in 2016. Elita grew up in Oklahoma and she is domiciled there. Henry has PCS orders at Camp Pendleton, California dated January 15, 2018. Elita is also living in California solely to be with Henry who is serving in compliance with military orders. Elita has a job working at a local hardware store in nearby Oceanside.

Prior to the passage of the Veterans Benefits and Transition Act of 2018, Elita could not elect to claim Henry's state of residence, Florida, because they did not share the same state of domicile. Now, she can elect to have the same residence outside of California as her military spouse, and she is considered a nonresident for tax purposes; and since she is in California solely to be with the service member who is serving in compliance with military orders, her income from the local hardware store is **not** considered to be from sources within this state.

See 2018 Tax Information for Military Personnel ([FTB 1032](#)) for more information about military personnel income tax.

## Where to send clients' "state copy" of an Information Return?

It is filing season and your clients may be asking you where to send the "state copy" of an information return, such as a W-2 for an employee and a 1099 to other payees. If your client filed paper returns with IRS, they **do not need to send a paper copy to us**. IRS will forward the information to us, whether they are located in or out of California. However, if your client has an exception that requires them to report something different for federal and state purposes, such as a different dollar amount, they will need to file separate returns with IRS and us.

Any person, including a corporation, partnership, individual, estate, or trust that makes reportable transactions during a calendar year, must file the appropriate information returns (such as Wage and Tax Statement (Form W-2) or a Form 1099) to report those transactions with IRS and us. Generally, our reporting requirements are the same as IRS reporting requirements.

See [A Guide to Information Returns](#) on the IRS website for a list of all the required returns and what to report.

Payers are required to furnish each employee a completed Form W-2, and each other payee a completed Form 1099 by January 31. The due date to file electronically with us is March 31. Your client will only have to file once if they use the IRS Combined Federal/State Filing Program. IRS will send us original and corrected California information returns filed electronically. Only the following forms may be filed under this program:

- Form 1099-DIV Dividends and Distributions
- Form 1099-G Certain Government Payments
- Form 1099-INT Interest Income
- Form 1099-MISC Miscellaneous Income
- Form 1099-OID Original Issue Discount
- Form 1099-PATR Taxable Distributions Received From Cooperatives
- Form 1099-R Distributions From Pensions, Annuities, Retirement
- Form 5498 IRA Contribution Information
- Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

Apply for the IRS Combined Federal/State Filing Program, see Specifications for Electronic Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G ([IRS Publication 1220](#)) or call IRS Information Reporting at 866.455.7438.

We accept the IRS extended due date of March 31 for electronically-filed Forms 1099, 1098, and W-2G.

While we encourage payers to file electronically, they may file up to 249 paper returns. If they file 250 or more returns, they must file electronically. Mail paper returns to:

FRANCHISE TAX BOARD  
PO BOX 942840  
SACRAMENTO, CA 94240-6090

Email [IRPhelp@ftb.ca.gov](mailto:IRPhelp@ftb.ca.gov) if you have questions or comments

## Tax deduction - Charitable contributions and others

Federal tax reform approved in December 2017 changed many areas of federal income tax law. These laws may now conflict with state income tax law. One goal of federal tax reform was to simplify tax filing by increasing the standard deduction so some taxpayers will no longer need to itemize deductions on their federal tax return. Your client may take the increased standard deduction on their federal return, but they may still want to itemize on their California return.

Here are a couple items to keep in mind:

## State and local taxes

- Federal law limits your state and local tax (SALT) deduction to \$10,000 if single or married filing jointly, and \$5,000 if married filing separately.
- California does not allow a deduction of state and local income taxes on your state return.
- California does allow deductions for your real estate tax and vehicle license fees.

## Mortgage interest

- Federal law limits deductions for home mortgage interest on mortgages up to \$750,000 (\$375,000 for married filing separately) for loans taken out after December 15, 2017.
- California allows deductions for home mortgage interest on mortgages up to \$1 million.

## Charitable contributions

- Federal law limits cash contributions to 60 percent of your federal adjusted gross income (AGI).
- California limits cash contributions to 50 percent of your federal AGI.

If your client received a benefit as a result of making a contribution to a qualified organization, the deduction is limited to the amount of the contribution exceeding the value of the benefit received. This frequently arises when a contribution entitles the donor to merchandise, goods, or services, including admission to a charity ball, banquet, theatrical performance, or sporting event.

**Example:** If your client buys a ticket to a charity dinner for \$100, and the dinner itself is valued at \$35, the donation will be limited \$65 – the amount that exceeds the fair market value of the benefit received.

## Remember to have proper documentation

Your clients must keep adequate records to prove the amount taken. Contributions of \$250 or more to any single charity require written acknowledgment of the contribution by the charity (done) before claiming a charitable contribution. Written acknowledgement is required and must be contemporaneous. This means the donor obtains the acknowledgement from the charity on or before the earlier of the date the tax return is filed or the due date of the tax return (including extensions). The written acknowledgement must also contain:

- Organization name
- Amount of cash contribution
- Description (but not the value) of any noncash contribution(s)
- Statement that the organization did not provide goods or services in return for the contribution, if that were the case
- Description and good faith estimate of the value of the goods or services, if any, that the organization provided in return for the contribution

- Statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits

Visit the IRS website for more information:

- Charitable Contributions Substantiation and Disclosure Requirements ([IRS Publication 1771](#))
- IRS' online search tool [Tax Exempt Organization Search](#) (formerly Select Check). Find out if an organization qualifies as a charitable organization for income tax deductions

## Interest rates increase

The current rate on personal income tax underpayments and overpayments, corporation underpayments, and estimate penalties will increase to 6 percent through 2019.

The corporation overpayment rate will also increase to 2 percent through December 31, 2019.

For more information on interest rates, visit our [interest rates](#) webpage.

## California Competes Tax Credit

The California Competes Tax Credit (CCTC) is an income or franchise tax credit available to businesses that want to come to or stay and 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 2018/2019, the CCTC is available for allocation in 3 separate application periods:**

- July 30, 2018 through August 20, 2018
- January 2, 2019 through January 21, 2019
- **March 4, 2019 through March 25, 2019**

For the third application period, at least \$74.7 million is available for allocation plus any remaining unallocated amounts from the previous application periods. Applications for the credit will be accepted at [calcompetes.ca.gov](http://calcompetes.ca.gov) from **March 4, 2019, until March 25, 2019.**

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

## IRS is looking for victims of “ghost tax preparers”

IRS released a tax tip on [choosing a tax preparer](#) cautioning taxpayers to choose their tax preparer wisely and warns taxpayers to avoid certain unethical tax return preparers, known as ghost tax preparers.

By law, anyone who is paid to prepare or assist in preparing federal tax returns must have a valid 2019 Preparer Tax Identification Number (PTIN). Paid preparers must sign the return and include their PTIN.

But ghost tax preparers do not sign the return. Instead, they print the return and tell the taxpayer to sign and mail it to the IRS or, for e-filed returns, they prepare but refuse to digitally sign it as the paid preparer.

According to the IRS, similar to other tax preparation schemes, dishonest and unscrupulous ghost tax preparers look to make a fast buck by promising a big refund or charging fees based on a percentage of the refund. These scammers hurt honest taxpayers who are simply trying to do the right thing and file a legitimate tax return.

Ghost tax preparers may also:

- Require payment in cash only and not provide a receipt
- Invent income to erroneously qualify their clients for tax credits or claim fake deductions to boost their refunds
- Direct refunds into their own bank account rather than the taxpayer’s account

### **The IRS is looking for victims of “ghost tax preparers” who are willing to share their experiences.**

The IRS can provide guidance, ethical tax practitioners can help clean up the mess, but people telling their stories of how they were harmed will make the biggest difference in touching others.

### **Who can you reach out to with this information?**

Email or call IRS Stakeholder Liaison Gerry Kelly-Brenner at [Geraldine.Kelly-Brenner@irs.gov](mailto:Geraldine.Kelly-Brenner@irs.gov) or (510) 907-5341 to discuss this further.

If the person wishes to remain anonymous in sharing their experience, IRS will honor their request.



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

### Top Power of Attorney and Tax Information Authorization rejections

As the Taxpayer Advocate, one of my primary responsibilities is coordinating FTB's education and outreach efforts to tax professionals. My staff and I take these efforts seriously and share a strong commitment to this. We always look for useful information to pass along to you, especially when it comes to helping you navigate FTB's many processes and procedures. We know that you want to provide the best possible service to your clients and we're here to help you do that.

One area where FTB focused a lot of attention this past year was on Power of Attorney (POAs) and Tax Information Authorization (TIAs). You are probably aware that FTB had a major effort underway in 2018 to streamline and improve the POAs and TIAs processes surrounding.

We've seen some successes and I have heard many positive comments about these changes from tax professionals. While we cannot guarantee that every POA or TIA submitted will move quickly through the process and be approved, our rejection rates have declined substantially and our processing timeframes have shortened considerably.

With that being said, we know there are still some areas for improvement and we will continue to work on those under our control. However, there are some things about submitting POAs and TIAs that are beyond our control, including errors made when a POA or TIA is submitted by a tax professional. For this reason, I wanted to let you know about the most common reasons why a POA or TIA might be rejected.

When considering POA and TIA rejections combined, the most common reason by far is when the taxpayer/client does not respond to our request to verify the relationship with the tax professional. When a POA or TIA relationship requires additional verification, we take steps to notify the representative so they can alert their client that they (the client) will need to respond to FTB.

Another common reason for TIAs being rejected is the taxpayer/client is deceased and the TIA is submitted in the name of the deceased individual. To authorize a representative to receive confidential tax information on behalf of the decedent's estate or trust, the fiduciary must file the TIA. We recommend that the TIA include either a certificate of trustee, court order, governing instrument, Letter of Administration, or Last Will and Testament.

Rounding out the list of top reasons for POAs and TIAs being rejected are the use of electronic or digital signatures (which are prohibited), declarations being altered or modified, the taxpayer's information not matching our systems, and finally, illegible documents being

submitted. As you can see, all of these reasons for POAs and TIAs being rejected are easily avoidable and as we go forward, we expect our rejection rates to continue to decline.

In closing, I hope that your experience with our POA/TIA process has gone well and that despite some of the early challenges we've seen this year, that your tax season is off to a good and productive start.

## MyFTB Corner

### Manage your Tax Information Authorization (TIA) clients in MyFTB – What you need to know

For uninterrupted access to your clients' online account information, it's important to renew your TIA clients in MyFTB timely. You must have your client's permission to renew your access to their online account information.

#### Need continued access to your TIA clients' online account information?

You can renew access through your **MyFTB Tax Professional account**.

1. Select the **Renew** link next to your client's name.
2. **Confirm** you are authorized to continue to access your client's online account information.
3. **Submit** by selecting **OK**.

We will send a letter to your client notifying them that you have renewed your access to their online account information.

#### When will my TIA clients expire in MyFTB?

Access to your TIA client's information will expire 13 months from either the:

1. Date you added or renewed your TIA client on MyFTB, or
2. Signature date on FTB 3534 (Tax Information Authorization) if mailed to us.

#### Can I renew my TIA clients after they expire?

No. If a TIA client relationship expires, you will need to add your client again as a new client on MyFTB or mail a new FTB 3534 to us.

#### Can I renew my TIA clients any time before they expire?

No. For uninterrupted access, you must renew your TIA clients **more than 10 business days before** the expiration date.

#### Example:

- 02/21/2018 - TIA client added on MyFTB
- 03/06/2019 - **Last Day** to renew TIA client (**More than 10 business days before** expiration date.)

- 03/21/2019 - TIA client relationship expires (13 months)

MARCH 2019						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
			Day 10	Day 9	X	
10	11	12	13	14	15	16
X	Day 8	Day 7	Day 6	Day 5	Day 4	X
17	18	19	20	21	22	23
X	Day 3	Day 2	Day 1	TIA Relationship Expires		
24	25	26	27	28	29	30
31						

**Do I have to request Full Online Account Access again when I renew my TIA clients?**

No. If you have Full Online Account Access when you renew your TIA client, you will retain it.

Visit [How to Renew a Tax Information Authorization \(TIA\) Client](#) for more information.

Don't have a MyFTB Tax Professional account? Sign up for one today! Go to [How to Register for a MyFTB Account](#).

## All About Business

### Schedule IW, Limited Liability Company (LLC) Income Worksheet

The Schedule IW, Limited Liability Company Worksheet, is used to calculate an LLCs "Total California Income" to determine the amount of the LLC fee. For purposes of this worksheet, "Total California Income" means total income from all sources derived from or attributable to this state, not worldwide income. This includes income from all sources, such as income from trade or business activities, rentals, interest, and dividends.

For more information on "total income from all sources derived from or attributable to California," see the instructions for the Schedule IW instructions, on page 14 of the 2018 Limited Liability Company Tax Booklet (Form 568). Each LLC, regardless of whether it is a multiple member LLC or a single member LLC (SMLLC) must calculate total income and pay the fee.

If your LLC is a multiple member LLC that operates **only in California**, you will transfer the amount from Form 568, Schedule B, line 3, to line 1a of the Schedule IW. However, if the LLC conducts business both **within and outside of California**, line 1a of the Schedule IW will not be the same as Form 568, Schedule B, line 3. Schedule B does not have to reconcile with the LLC Income Worksheet since it includes total worldwide income, Schedule B amounts are also adjusted for differences between state and federal law, such as differences for depreciation and deductible taxes. Therefore, the LLC will need to assign its total income item by item to

California, based on the rules for assigning sales under Revenue and Taxation Code (R&TC) Sections 25135 and 25136, and the regulations thereunder, as modified by regulations under R&TC Section 25137, if applicable, other than those provisions that exclude receipts from the sales factor.

Only SMLLCs whose income meets certain threshold amounts are required to complete Schedules B and K. SMLLCs which are disregarded entities, for income tax purposes, should prepare Schedule IW by entering the California amounts attributable to the disregarded entity from the member's federal Schedule B, C, D, E, F (Form 1040), or additional schedules associated with other activities.

### **Important Reminders when completing the Schedule IW:**

California law imposes an annual fee on every LLC that has "Total California Income" of \$250,000 or more. "Total Income" for this purpose means gross income, plus the cost of goods sold, paid, or incurred in connection with the trade or business of the taxpayer attributable to California; and specifically excludes all allocations, distributions, or gains from another LLC that was already subject to the LLC fee. So when you are looking to determine the LLC's "Total California Income", don't include gross receipts received from another LLC that were included in that LLC's calculation of the fee. If the income has already been reported by another LLC, do not enter the amounts on the Schedule IW (LLC Income Worksheet).

Form 568, line 1 **must** match the amount from LLC Income Worksheet, line 17. A very common error is to enter Form 568, Schedule B, line 23 on Form 568, line 1, which in many cases causes us to increase the LLC fee amount when processing Form 568. LLCs will sometimes make adjustments when transferring the amount from the LLC worksheet, line 17 to Form 568, line 1.

The following lines of the LLC worksheet **cannot** be entered as a negative number: 1b, 2b, 3b, 3c, and 17. In addition, lines that state "(not losses)" should not be entered as negative amounts.

SMLLC doing business in California must file its own return and pay its own \$800 annual tax and LLC fee based on its own income. Each LLC, regardless of whether it is a multiple member LLC or a SMLLC, must calculate total income and pay the fee at its level. Many times a parent LLC will incorrectly include total income from a lower-tiered SMLLC without also backing it out, and pay the fee only at the parent level. As discussed above, the parent can back out receipts that were already subject to the fee.

All apportioning LLCs, except SMLLCs, must include Allocation and Apportionment of Income (Schedule R) with Form 568.

**California rental real estate.** In computing California rental real estate income, line 8a is the rental real estate gross income from real estate held directly by a multiple member LLC (MMLLC). Line 8b is the pass-through rental income or loss from other rental activities. Line 8c is the total of line 8a and 8b.

Cancellation of debt is included in gross income for purposes of calculating the LLC fee. (IRC 61(a)(12).) California requires the income be reported in the year the debt was reduced.

## 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.