



Tax News

December 2017

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Head of household audits

Tax year 2017 marks the third year taxpayers claiming the head of household (HOH) filing status are required to attach form FTB 3532, Head of Household Filing Status Schedule, to their tax return.

What's new for 2017?

If taxpayers electronically file (e-file) their 2017 return and do not complete form FTB 3532, we will reject their return. If taxpayers file their 2017 through the mail, and do not complete form FTB 3532, we will contact them.

Types of Taxpayer Contact

Taxpayers may receive one of the following contacts from us:

- **HOH Demand letters:** These letters request the taxpayers to complete and return form FTB 3532. Taxpayers are usually given 30 days to respond to this notice.
- **Notice of Proposed Assessments:** These notices inform the taxpayer that they did not qualify for the HOH filing status. They may protest the notice within 60 days of the date on the notice if they do not agree.
- **HOH Education letter:** These letters remind taxpayers of their requirement to attach form FTB 3532 when filing their 2017 return if they are claiming the HOH filing status.

If your clients receive an HOH Demand letter they will need to respond by the due date on the letter to avoid incurring a penalty for failure to furnish information. If taxpayers determine they do not qualify for the HOH filing status, they should mark the "I do not qualify for head of household" box on the top of the HOH demand letter.

Our HOH audit staff will review the form FTB 3532 and related documentation to determine if taxpayers qualify for the HOH filing status. If the questionnaire is incomplete or provides conflicting information, we may contact the taxpayer to resolve the issue. If we confirm the taxpayer qualifies for the HOH filing status, we will mail an acceptance letter to the taxpayer. Our tax-year specific acceptance letters only apply to the specific tax year examined and do not qualify the taxpayer for other tax years.

Taxpayers who fail to respond to our letters or whose responses indicate they do not qualify for HOH filing status can expect a Notice of Proposed Assessment disallowing their HOH filing status.

Taxpayers may choose one of the following methods to return the HOH information request and/or requested substantiation:

- Go to our website and log into MyFTB to upload the HOH form FTB 3532 and/or substantiation. They will need their account number (FTB ID) from the top of their HOH letter or their social security number (SSN).
- Mail the HOH form FTB 3532 and substantiation to:

Franchise Tax Board
PO Box 942840
Sacramento CA 94240-5340

For more information about the HOH filing status, go to ftb.ca.gov and search **HOH 2017**.

Information letters

We receive and process millions of tax returns each year. We also provide information about how to prepare returns in accordance with our mission to help taxpayers file timely and accurate tax returns, and pay the correct amount of tax and nothing more to fund services important to Californians.

In certain circumstances, we proactively contact taxpayers to provide them with information to accurately file their returns based on their history with us.

Recently, we sent letters to individuals who appeared to qualify for the new California earned income tax credit to urge them to file a return and claim the credit. In the next few months we will be sending letters to certain taxpayers who may have fallen behind on their California income tax obligations. The letters will offer assistance to help taxpayers adjust withholding, change estimate tax payments, and resolve outstanding liabilities faster. For example, showing taxpayers how to save money by increasing their payments to pay off their balance sooner and reduce the amount of interest paid to us.

Last year we sent educational letters to help inform taxpayers about employee business expenses. In January, we may send educational letters to taxpayers who filed and reported itemized deductions for medical expenses, charitable contributions, and/or employee business

expenses. California and federal rules regarding allowable itemized deductions are similar and the letter provides several IRS resources to help taxpayers prepare and file their tax returns.

These efforts will be implemented on a pilot basis so we can study the results for effectiveness while keeping in mind the use of state resources. Depending upon results, we may expand the approach to other functional areas of the department.

Audit division priorities = Desired outcomes

Our Audit Division focuses on three priorities that, combined, will lead to the desired outcomes for our audit programs.

While these priorities are not new, we are placing more effort on defining what these components mean to our business, how they relate to one another, and what we can do to make meaningful progress in these areas. Our plan is that by focusing on these priorities, our efforts will result in an improved audit process and a better audit experience for taxpayers. The focus areas are:

- **Select the Best Cases:** Cases that are selected for their best value means they result in sustainable adjustments and bring taxpayers into compliance. We are focusing on ways to use existing data, data mining tools, and shared knowledge to identify the most productive or egregious cases and minimize unnecessary audits. We are also considering other strategies to address a broader range of taxpayers. These strategies will involve less intrusive contacts, such as educational letters where a full audit is not warranted but there is opportunity for self-compliance.
- **Train, Engage, and Develop Staff:** Providing multi-faceted experiences will contribute to staff development. As staff learn and grow, they become more engaged in and enthusiastic about what they do and are prepared for increasingly complex audits. Specific efforts include knowledge transfer strategies and creation of a comprehensive development model, covering both technical and soft skills that allow us to maintain continuity of vital expertise and talent.
- **Complete Cases Efficiently:** Cases that are completed timely contribute to a favorable customer experience, fulfill our obligations under the Taxpayers' Bill of Rights and ensure we have the ability to meet our program goals. This involves working with taxpayers to develop effective audit plans, maintaining open communication during the audit, and identifying ways to streamline our audit processes. It also includes involving subject matter experts earlier in the process when warranted.

We will continue to look for ways to “move the needle” in these areas and promote these priorities. We consider feedback we receive through our audit customer experience survey as an important validation source and encourage continued participation.

Liaison meeting point of interest questions

In last month’s issue, we highlighted some of the top questions from our liaison meetings with California Society of Enrolled Agents and CalCPA.

We wanted to share four more this month that we think will be of interest to you.

1. Small Business Liaison

Background:

Recent legislation, Assembly Bill (AB) 657 (CH 2017-81, 7/21/17), requires a state agency that significantly regulates small business or that significantly impacts small business to prominently display the name and contact information of the small business liaison on the agency’s website, if the agency has a website. AB 657 also requires a state agency that significantly regulates small business or that significantly impacts small business to notify the Office of Small Business Advocate within the Governor’s Office of Business and Economic Development and the Department of General Services (DGS) of the name and contact information of the person or persons who have been designated as the agency’s small business liaison, on or before March 1, 2018.

Question:

Will FTB have a Small Business Liaison in addition to the Taxpayers’ Rights Advocate position?

Response:

We have had a Small Business Liaison (SBL) in place since 2006. The SBL is responsible for providing information to the small business community through presentations, publications, web content, and by answering small business related questions on our SBL phone line. The SBL reports to the Taxpayers’ Rights Advocate’s Office in the Education and Outreach Program Section. Our current SBL is Lucius Davis. We display the SBL information and phone number on our website under the **Contact Us** tab in the Small Business/Disabled Veteran Business Enterprise (SB/DVBE) section and under the

Taxpayers' Rights Advocates page in the Education and Outreach section. The SBL information is also listed on the California Tax Services Center (taxes.ca.gov) website under the Contact Us tab. We will provide all the necessary information to the Governor's Office and DGS as required.

In addition, we have a Small Business Advocate who is responsible for procurement and contract-related activities. Their contact information can also be found in the Small Business/Disabled Veteran Business Enterprise (SB/DVBE).

Small Business and Disabled Veteran Business Enterprise Services

DGS' Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) certifies qualified small businesses (SB) in order to assist departments in meeting their annual statewide participation goal of 25 percent per Executive Order S-02-06. SB's also receive a five percent bidding preference when competitively bidding on applicable state contracts. We are committed to making every effort to meet or exceed our 25 percent goal and encourage contracting with certified small businesses, for goods and/or services, whenever possible. For any questions please email our SB/DVBE Advocate [Courtney Adams](mailto:Courtney.Adams@dgs.ca.gov), or call 916.845.4385. Our SB/DVBE Advocate is also available to assist in any SB Prompt Payment Act issues.

DGS' OSDS certifies qualified disabled veteran business enterprises (DVBE) for the State's three percent participation goal (per Executive Order D-43-01). We are committed to meet or exceed our three percent goal and encourages contracting with disabled veteran business enterprises, for goods and/or services, whenever possible. For any questions please email our SB/DVBE Advocate [Courtney Adams](mailto:Courtney.Adams@dgs.ca.gov), or call 916.845.4385. Our SB/DVBE Advocate is also available to assist in any DVBE Prompt Payment Act issues.

2. Non-profit Administrative Dissolutions

Background:

AB 557 (CH 2015-363) authorized us to administratively dissolve a qualified nonprofit corporation that is suspended or forfeited for a period of more than 48 continuous months and is no longer in business. A 195-page list of over 8,500 suspended non-profit organizations was published to the Secretary of State's (SOS) website on July 26, 2017. These non-profit organizations automatically dissolved after 60 days, September 2017.

The SOS webpage provides options to an organization on the list. **One option is to pay taxes and penalties and return to active status.** This includes filing the Statements of Information (SOI). The second option is to submit a written objection to our Exempt Organization Unit and receive a 90-day extension for us and the organization to work resolve their account.

Question:

Since non-profit organizations that have obtained tax-exempt status do not owe an \$800 franchise or annual fee each year, what taxes would these non-profit organizations be paying if they chose the first option?

Response:

A nonprofit corporation's exempt status is automatically revoked upon suspension. Accordingly, they are subject to the \$800 annual minimum tax. As a general rule, all suspended corporations must pay taxes and penalties in order to revive to active status. Nonprofit corporations that have continued to operate for a valid exempt purpose are encouraged to apply (using Form 3500) to have their tax exempt status reinstated. Often this reinstatement retroactively covers the period the corporation was suspended, resulting in no minimum taxes due (although filing fees and penalties may still apply). Inactive nonprofit corporations are not entitled to exemption, and would be required to pay the \$800 minimum tax in order to revive.

3. Administrative Dissolutions for Business Entities**Question:**

Since administrative dissolutions are not available to "for-profit" business entities, if some of these organizations never attained their tax-exempt status and so they owe taxes and penalties, why are they allowed to be administratively dissolved with unpaid tax and penalties?

Response:

Currently, administrative dissolution is only available for corporations organized as Nonprofit Public Benefit, Nonprofit Mutual Benefit, and Nonprofit Religious. The majority of these corporations subject to administrative dissolution had previously obtained tax-exempt status but were suspended and revoked for noncompliance in filings with us or the Secretary of State and have since become inactive. The taxes which have accrued since revocation for these corporations would have been exempt if the taxpayer had been in compliance, and therefore are abatable. Nonprofit corporations that never obtain tax-exempt status are in a similar situation and would be treated the same as if they were tax-exempt and revoked.

4. Reassignment of Protest Officer

Background:

After a taxpayer files a protest with us, it is standard procedure for us to send a letter to the taxpayer advising them of the name of the newly-assigned protest hearing officer. Thereafter, the taxpayer can expect to receive a contact letter from the assigned hearing officer.

Questions:

What are FTB's procedures for notifying the taxpayer of a change in the assignment from one protest hearing officer to another? Who decides that a reassignment of the protest hearing officer should be made? What are the grounds for making the reassignment? How soon after the decision to reassign the protest should the taxpayer be notified of the change in assignment? Who is responsible for notifying the taxpayer – the originally-assigned protest officer or the newly-assigned protest officer? What relief, for example, abatement of interest expense, etc., is available to the taxpayer whose protest has been reassigned?

Response:

Typically, a protest case is reassigned based on staff changing positions, being no longer employed by the department or on leave of absence. When this occurs, the manager will review the status of the case and reassign it to a new hearing officer. When possible, the outgoing hearing officer will notify the taxpayer or representative that the case will need to be reassigned. Otherwise, the manager or the newly-assigned hearing officer will inform the taxpayer or representative that the case will or has been reassigned. The newly-assigned hearing officer will review the file and make contact within 30 days of reassignment to pick up where the prior hearing officer left off. We will work with the taxpayer and/or representative to ensure this process is seamless and to minimize any delays due to the reassignment of the case.

Additionally, for circumstances where there is an unreasonable error or delay due to a ministerial or managerial act by the hearing officer or staff involved with the case, interest attributable to the period of unreasonable delay may be subject to review for relief in accordance with Revenue and Taxation Code Section 19104 and, where appropriate, will be abated.

IRS' Security Awareness Week

For the second straight year, the IRS, state tax agencies, and the tax industry hosted **National Tax Security Awareness Week** to encourage individual and business taxpayers to take additional steps to protect their tax data and identities in advance of the 2018 filing season.

The IRS and the states have put many new defenses in place to help protect taxpayers from identity theft. The new IRS protections have worked well, and some key indicators of identity theft on tax returns have dropped by around two-thirds since 2015.

There are three key steps people should take to protect their tax and financial information:

1. Learn to recognize and avoid phishing emails, threatening phone calls, and texts from thieves posing as legitimate organizations such as banks, credit card companies, and government organizations, including the IRS. Do not click on links or download attachments from unknown or suspicious emails.
2. Always use security software with firewall and anti-virus protections. Make sure the security software is always turned on and will automatically update. Encrypt sensitive files such as tax records stored on computers. Use strong passwords.
3. Protect personal data. Use strong, unique passwords for each online account. Don't routinely carry Social Security cards, and make sure tax records are secure. Treat personal information like cash; don't leave it lying around.

Since 2015, the IRS, state tax agencies, and the tax industry have come together to join forces in their fight against tax-related identity theft. Learn more about their efforts and their progress at [Security Summit](#) on IRS.gov.

Ask the Advocate



Susan Maples, CPA
Taxpayers' Rights Advocate
Follow me on Twitter at
twitter.com/FTBAdvocate

What does the advocate office do?

I recently had the opportunity to speak to members of the California State Bar at their annual Tax Policy Conference and part of what I talked about was what my office does. I wanted to share some of my thoughts on that with you because a common question I get when I speak to a group for the first time is “what exactly does the Taxpayer’s Rights Advocate do?”

Content on our website tells you that my office helps taxpayers who have been unable to resolve their tax problems through normal channels. And, that our goal is to protect your rights and ensure that your tax problems are handled promptly and fairly. While this is an accurate description, perhaps a better way to describe what my office does, in the broadest sense, is to try to find a balance between administering tax law and treating our taxpayer’s fairly. This is one of the essential roles my office plays in making our tax system work better for everyone.

My office works to resolve issues when the normal channels are not working. Because of this, we are at times the first in the department to learn of an issue from a representative or taxpayer that may impact more than just one taxpayer. Normally, if we are able to resolve the issue for that taxpayer, that is the end of it for them. They are happy that their problem has been resolved. However, as FTB’s Taxpayer’s Rights Advocate it is my job to take it one step further and dig deeper into the issue to determine if other taxpayers are affected. If they are, I will then work to ensure that any underlying problem is resolved.

I do not work alone, though; my office works closely with all of FTB to look at these issues, identify concerns, and make changes whenever we can to improve customer service and reduce taxpayer burden. While the Advocate’s Office may be the public face for resolution of certain problems or issues, we couldn’t accomplish what we do without the assistance and

cooperation of FTB's many Bureaus and Divisions. The positive outcomes we see are the result of a true team effort. Unfortunately, those working hard on your behalf "behind the scenes" often don't get the credit they deserve for going above and beyond for taxpayers and tax professionals.

Whenever I hear back from someone who is grateful for our help, I make it a point to share this with the appropriate business area, and if warranted, with our executive team. This type of good news helps make everyone's day a bit better. Customer service is truly important to all of us at FTB and something we strive to provide every day. Working as your Advocate affords me the opportunity to provide input on many of FTB's initiatives, and I try to always be your voice on the matters that will impact you, the tax professional.

In closing, we are rapidly approaching the end of 2017, which means that another busy filing season will soon be upon us! Before that arrives though, I hope you will be able to enjoy the holidays and spend some quality time with your family and friends.

MyFTB Corner

[New power of attorney and tax information authorization forms will be released on December 13, 2017.](#)

On January 2, 2018, we will start using the new Power of Attorney and Tax Information Authorization forms, listed below. These forms will be released on December 13, 2017 to give you time to get your client's authorization before filing season, if needed.

Power of Attorney

The Power of Attorney (POA) declaration gives you authority to receive information and act on behalf of your client for the year(s) listed on the declaration.

New Power of Attorney Forms

- FTB 3520 PIT - Individual or Fiduciary Power of Attorney Declaration
- FTB 3520 BE – Business Entity or Group Nonresident Power of Attorney Declaration
- FTB 3520 RVK – Power of Attorney Declaration Revocation

We will no longer:

- Process non-FTB POA declaration forms or prior versions of FTB 3520 after January 1, 2018.
- Automatically revoke declarations with overlapping tax years. FTB 3520 RVK can be used to revoke declarations.

Exceptions

We will process the following forms:

- Military Durable declarations can be submitted without a completed 3520 PIT or 3520 BE, although we recommend one of the new forms be attached for faster processing
- General/durable declarations when submitted with a complete 3520 PIT or 3520 BE attached

Current POAs filed prior to January 2, 2018

All POA forms received prior to January 2, 2018 will be processed. In addition, all active declarations will retain the same privileges and will remain in effect until revoked or expired.

Duration

All Power of Attorney declarations filed after January 1, 2018 will expire six years from the signature date.

How to Submit a Power of Attorney Declaration

POA declarations can be established by:

- MyFTB – use MyFTB to enter the POA declaration information and upload the completed FTB 3520 PIT or FTB 3520 BE; the declaration will be rejected during processing if other forms are uploaded.
- Mail – mail FTB 3520 PIT or FTB 3520 BE to us at the below address.

POA/TIA UNIT
FRANCHISE TAX BOARD
PO BOX 2828
RANCHO CORDOVA CA 95741-2828

Note: Estate and Trusts and 540NR Group Nonresident Return are unable to have a MyFTB account at this time. However, for tax professionals, both entity types will display on the Client List and POA representatives will be able to view their notices.

Tax Information Authorization

The Tax Information Authorization (TIA) is a new relationship recognized by FTB starting January 2, 2018. It gives representatives authority to receive *information only* for all tax years.

New Tax Information Authorization Forms

- FTB 3534 – Tax Information Authorization
- FTB 3535 – Tax Information Authorization Revocation

Duration

Tax Information Authorizations expire 13 months from the signature date or the date the TIA client was added in MyFTB.

How to Submit a Tax Information Authorization

TIA relationships can be established by:

- **MyFTB** – use MyFTB to add a TIA client, just as you do today. When using MyFTB, do not upload FTB 3534. Retain a copy for your records. Do not mail it to us.
- **Mail** – mail FTB 3534 to us (to the same address listed above).

MyFTB Corner

Client list changes

On January 2, 2018, MyFTB will rebrand “Tax Preparer” relationship to “TIA” throughout MyFTB. TIA is the new formal relationship recognized by us. The **Client List** page will be updated to reflect more information on your client relationships:

- The “Add Individual Client” and “Add Business Client” buttons are being updated to “Add Individual TIA Client” and “Add Business TIA Client”, respectively. TIA clients will continue to be added to MyFTB the way clients are added today.
- New **Relationship Type** search options.

- Access Type column has been renamed to **Relationship Type** to reflect the two client relationship options: POA and TIA.
- **Actions** column has been updated with new actions that can be taken. From the **View POA Details** or **View Details** (TIA) pages you can view information and take action:
 - View statuses (such as pending, active, revoked)
 - View estimated processing timeframes
 - View rejections reasons
 - Manage the declaration (for POA declarations only)
 - Revoke the relationship

Client List

By default, all active individual clients display. To find specific clients, use the filter boxes at the top of each table column. For more information, see [missing clients help](#).

Click the 'View Details' hyperlink below to revoke your TIA relationship.

Search Options

Client Type:

Relationship Type:

Relationship Status:

Search Results – Individual Clients

[Clear Filter](#)

Last Name	First Name	SSN/ITIN	Expiration Date	Relationship Type	Status	Action
Anderson	John	XXX-XX-1376	12/09/2019	POA	Active	View POA
Anderson	John	XXX-XX-1376	10/15/2018	TIA	Active	View Details
Baker	Mary	XXX-XX-7231		POA	Active	View POA
Davis	David	XXX-XX-8214	04/29/2018	TIA	Active	Renew View Details

As mentioned in the November Tax News article, the **Client List** will no longer be your homepage. The **Tax Professional Overview** page will be your new homepage; you will be able to navigate to the **Client List** page directly from the new homepage.

All About Business

California's throwback rule

Article modified 12/13/2017

When determining the Taxpayer's California Sales Factor, an out-bound (out-of-state) sale may be included in the Taxpayer's numerator (treated as a California sale).

Every taxpayer (corporation, limited liability company, and limited partnership) that is organized in California, registered with the Secretary of State to do business in California, or "doing business" in California within the meaning of California Revenue and Taxation Code (R&TC) Section 23101 has a filing requirement in California (what form and the type of tax and fee depends on the entity type). The requirement to file a return and pay the taxes owed is imposed on each entity, including corporate taxpayers that are members of a combined reporting group, and multi-tiered pass-through business entities.

If a corporation has income from sources both within and outside California, it is required to allocate and apportion its income as provided in Chapter 17, Part II of the R&TC. For taxable years beginning on or after January 1, 2013, R&TC Section 25128.7 requires all business income of an apportioning trade or business, other than an apportioning trade or business under R&TC Section 25128(b), to apportion its business income to California using the single-sales factor formula.

When determining how much of the receipts from sales are assigned to the California sales factor numerator, California's throwback rule (see R&TC Sections 25135 and 25122) needs to be considered.

Under the California throwback rule, sales of tangible personal property are sourced to California if the property is shipped from a location in California and the purchaser is the U.S. government or the taxpayer is not *taxable* in the purchaser's state.

Under R&TC Section 25122, a taxpayer is *taxable* in another state if in that state it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax.

Regulatory criteria

Title 18 of the California Code of Regulations (CCR), Section 25122 provides guidance on the operation of R&TC Section 25122(a). CCR Section 25122(a) and (b)(1) state that a taxpayer is generally "subject to" a tax in another state if (1) the taxpayer carries on a business activity in that state and (2) that state imposes one of the types of taxes specified in R&TC Section 25122(a) on the taxpayer by reason of the taxpayer's business activity.

However, CCR Section 25122(b)(1) explains that a taxpayer is **not** "subject to tax" if the taxpayer voluntarily files and pays one or more enumerated taxes when not required to do so by the laws of the state. A taxpayer is also **not** "subject to tax" if the taxpayer (1) merely pays a "minimal fee for qualification, organization, or for the privilege of doing business," or (2) engages in some business activity in the state, but the "minimum tax bears no relation to the taxpayer's business activity within such state," with the result that the taxpayer is not "subject to" an enumerated tax.¹

Application

If the following conditions were met in each of the Destination States, then the taxpayer would be taxable in each of the Destination States and the throwback rule of R&TC Section 25135 would not apply to the sales in each of the Destination States:

¹ The exact language of CCR Section 25122(b)(1) is as follows:

If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in that state, but

- does not actually engage in business activity in that state, or
- does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within such state, the taxpayer is not "subject to" one of the taxes specified within the meaning of Section 25122(a).

- The taxpayer was required to file a tax return for an enumerated tax, and actually filed and paid the required enumerated tax.
- The taxpayer did not merely pay the statutory minimum tax or fee for qualification, organization, or for the privilege of doing business.
- The amount of tax paid was based on the amount of business activity in the destination state.

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.