



Tax News

January 2017

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California Competes Tax Credit

The California Competes Tax Credit is an income or franchise tax credit available to businesses that relocate to California or stay and expand 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 California Competes Tax Credit Committee. The committee consists of:

- Director of GO-Biz (Chair).
- State Treasurer.
- Director of the Department of Finance.
- Appointee of Speaker of the Assembly.
- Appointee of Senate Committee on Rules.

For Fiscal Year 2016/2017, \$243.3 million of the California Competes Tax Credits will be available for allocation during three application periods.

GO-Biz is hosting informational workshops on applying for the credit. Get a [list of the workshops](#).

For the second application period, \$100 million will be available for allocation.

Credit applications for the second application period will be accepted at calcompetes.ca.gov from January 2, 2017, until January 23, 2017.

Go to the [California Competes Tax Credit](#) webpage more information.

Common audit issues

Filing season is now in progress. Here are a few common issues and mistakes that you should be aware of when filing tax returns.

Unreimbursed Employee Business Expenses (EBE)

During the past year, we contacted over 72,000 taxpayers to clarify the requirements for claiming unreimbursed employee business expenses. The focus of these letters was to remind taxpayers of their continuing responsibility to file accurate tax returns, to include only deductible amounts they are legally entitled to claim, and to maintain and provide appropriate documentation and substantiation for all deductions and credits claimed.

Common EBE audit issues over the past year include:

- Taxpayers did not maintain adequate substantiation to support claimed deductions.
- Taxpayers claimed EBE even though their employer had a reimbursement policy (whether or not they submitted reimbursements).
- Taxpayers claimed non-deductible “commuting” mileage.
- Taxpayers did not keep all their supporting state tax documentation four years. The California statute of limitations is four years, one year longer than the three-year federal statute of limitations.

For more information about allowable unreimbursed employee business expenses, refer to Internal Revenue Code Section 162 and Treasury Regulations Section 1.162-1(a). In addition, the IRS has many publications on this issue including: IRS Tax Tip 2015-45, [Six Things You Should Know about Employee Business Expenses](#), and Tax Topic 514 - [Employee Business Expenses](#).

You are encouraged to read the referenced information provided above and review claimed unreimbursed EBE deductions on your client’s tax returns. If your clients claimed expenses in prior years that do not qualify, they should file amended tax returns, if appropriate.

Head of Household (HOH) Filing status

The HOH filing status provides a lower tax liability and a higher standard deduction than the single filing status. Although many of your clients may think of themselves as the head of their household, they may not qualify for this filing status under state and federal tax laws.

Taxpayers filing with the HOH filing status are now required to attach FTB 3532, **HOH Filing Status Schedule** to their tax return.

To qualify for the HOH filing status, the taxpayer must meet all of the following requirements:

- The taxpayer was unmarried and not a Registered Domestic Partner (RDP), or met the requirements to be considered unmarried or considered not in a registered domestic partnership, as of the last day of the year.
- The taxpayer paid more than half the costs of keeping up their home for the year.
- The taxpayer's home was the main home for the taxpayer and a qualifying person who lived with the taxpayer for more than half the year.
- The qualifying person is related to the taxpayer and met the requirements to be a qualifying child or qualifying relative.
- The taxpayer was entitled to a Dependent Exemption Credit for their qualifying person. However, the taxpayer does not have to be entitled to a Dependent Exemption Credit for their qualifying child if they were unmarried and not an RDP and their qualifying child was also unmarried and not an RDP.
- The taxpayer was not a nonresident alien at any time during the year.

There are several resources available to assist you in determining if your client qualifies for head of household:

- The 2016 personal income tax instruction booklets for Forms 540/540A and 540 2EZ contain the general rules for using the head of household filing status.
- For detailed information, refer to FTB Publication 1540, California Head of Household Filing Status.
- FTB Publication 1540 SP is the Spanish version.
- You can also access the same comprehensive information online at our HOH Webpage.

By reviewing these resources, most taxpayers can avoid a denial of their HOH filing status and an assessment of additional tax and interest.

Common audit issues include:

- Taxpayers did not attach form FTB 3532, **Head of Household Filing Status Schedule**, to their tax return if they claimed the HOH filing status. Taxpayers who fail to attach the FTB 3532 schedule or fail to complete the form in full may receive a Demand for Information Document Request letter asking them to complete and submit the schedule and provide supporting documentation.
- Invalid or incorrect Social Security Number for dependents.
- More than one HOH taxpayer claiming the same dependent.
- Qualifying person's gross income exceeds the allowable threshold.
- Qualifying person does not meet the requirements to be a qualifying relative.

Credits

Currently, we are auditing credits that are expired, but claimed on personal income tax returns. Some of the expired credits being claimed include:

- Code 171 Ridesharing.
- Code 174 Recycling Equipment.
- Code 178 Water Conservation.
- Code 180 Solar Energy.
- Code 184 Political Contributions.
- Employer Ridesharing.
 - Code 191 Large employer.
 - Code 192 Small employer.
 - Code 193 Transit passes.

Some of these credits had no carryover provisions and were only in place for a specified period. Other credits, such as the Political Contributions credit, are disallowed to the extent they exceed the allowable limit.

Senior Head of Household Credit

Taxpayers claim the Senior Head of Household credit but do not meet the minimum age requirement. We will disallow credits that do not meet either the minimum age requirement or if the taxpayer is not “qualified” to claim senior HOH in one or both of the prior years.

Other State Tax Credit (OSTC)

California taxpayers may be taxed on their income by California and another state. To alleviate this problem of double taxation, the state may allow taxpayers an OSTC.

Common OSTC audit issues over the past year include:

- Taxpayers claim the OSTC for those states which California does not have a reciprocal agreement.
- Taxpayers claim income as double taxed that was not taxed by both California and the other state.
- Taxpayers claim OSTC for city and county taxes paid.

Please see California Schedule S instructions for further information.

Federal tax changes - Notification requirements when federal changes result in an increased California tax liability

Taxpayers are required to notify us within six months of the Final Federal Determination (FFD) if the IRS adjusts or corrects gross income or deductions. The notification to us should include any IRS assessed penalties, adjustments or corrections resulting from math errors, tax credit adjustments, other tax adjustments, or supplemental income even if the IRS did not examine these adjustments.

- If we are notified within six months of the FFD, we have two years from the date we receive a report of the federal changes to issue an assessment, or the normal statute of limitations, whichever expires later.
- If we are notified after six months from the date of the FFD, we have up to four years from the date we receive sufficiently detailed information to issue an assessment.
- If we are not notified of the federal changes, the statute of limitations remains open and we may issue an assessment at any time.

To prevent processing delays after you notify us, be sure the notification information provided is complete. The more information provided about the federal adjustments, such as the effect on the tax return (including schedules), or the effect on credits and carryovers, the more quickly your client's case can be resolved.

Individual taxpayers

For individual taxpayers, provide notification by one of the following methods:

Fax a copy of all federal information and changes to: 916.843.2269.

Send a Form 540X, *Amended Individual Income Tax Return*, to:

FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0001

Send a notification letter with a copy of all federal information and changes to:

RAR/VOL MS F310
FRANCHISE TAX BOARD
RANCHO CORDOVA CA 95741-1998

Corporate taxpayers

For corporate taxpayers, provide notification by one of the following methods:

Fax a copy of all federal information and changes to: 916.843.2269.

Send a notification letter with a copy of all federal information and changes to:

CORPORATION RAR MS F310
FRANCHISE TAX BOARD
PO BOX 942857 SACRAMENTO CA 94257-0501

- File Form 100X, Amended Corporation Franchise or Income Tax Return.

Exempt organizations

For exempt organizations, provide notification by one of the following methods:

Send a notification letter with a copy of all federal information and changes to:

EXEMPT RAR MS F120
FRANCHISE TAX BOARD
PO BOX 1286 RANCHO CORDOVA CA 95741-1286

- File Form 100X, Amended Corporation Franchise or Income Tax Return.

For more information, see FTB Publication 1008, Federal Tax Adjustments and Your Notification Responsibilities to California or contact us at 800.852.5711.

Important message from Employment Development Department (EDD)

Attention employers:

Beginning January 1, 2017, new state law requires employers with ten or more employees to electronically submit employment tax returns, wage reports, and payroll tax deposits to the EDD. All remaining employers will be subject to this requirement beginning January 1, 2018.

For more information, visit EDD's [e-file mandate](#) webpage.

New “Stand-alone” electronic payment process via the e-file channel

Beginning January 2017, taxpayers and tax practitioners will have the ability to submit an Electronic Fund Withdrawal (EFW) request for extension and estimate payments using tax preparation software.

These payment requests will be accepted as “stand-alone,” and can be submitted separately from the e-file return. The return can be filed at a later date.

The following payment types will be available:

- Individuals and Fiduciary (Estate/Trust)
 - Estimate
 - Extension
- Business Entities (Corporations/Limited Liability Companies/Partnerships)
 - Extension

Taxpayers and tax practitioners will still have the ability to submit EFW requests for return and estimate payments with the e-filed return using tax preparation software.

Contact your software provider to see if they are supporting “Stand-alone” EFW payments. Stay tuned to our website and to **Tax News** for more information about our e-file Program.

Nonprofit administrative dissolution

Beginning January 2017, we will move forward to administratively dissolve qualified inactive nonprofit corporations.

Assembly Bill 557 (Stats. 2015, ch. 363), which becomes effective January 1, 2017, provides for the administrative dissolution of qualified inactive nonprofit corporations.

Who is affected?

Qualified nonprofit corporations that are suspended or forfeited by us for a period of 48 continuous months or more and are no longer in business.

What will be done?

We will mail a contact letter to selected nonprofit corporations informing them of the pending administrative dissolution to the last known valid mailing address. A list of the selected corporations pending administrative dissolution will be posted on the California Secretary of State (SOS) website. If a corporation does not have a known valid mailing address, notification will only occur by the posting on the SOS website.

Corporations will have 60 days to object in writing to the pending administrative dissolution.

What happens if the corporation objects?

If the corporation objects in writing during the 60 day notice period, then it will have 90 days from the date of the written notice to pay any owed taxes, penalties, and interest and file any missing returns and a current Statement of Information with SOS, or it will be administratively dissolved/surrendered at the end of the 90 day period. (We are authorized to grant one 90 day extension.)

Additional information will be made available on our Charities and Nonprofits webpage to provide guidance to nonprofit corporations on the administrative dissolution process as procedures are developed.

For more information about tax requirements and/or applying for tax-exempt status, visit ftb.ca.gov and search for **Charities**, or contact our Exempt Organizations Unit at **916.845.4171**, 7 a.m. to 4:30 p.m. weekdays, except state holidays.

CBIG web portal launched

The California State Treasurer's Office launched the California Business Incentive Gateway (**CBIG**) web portal in December. CBIG is a one-stop business development website where businesses expanding or locating in California can find business development opportunities. CBIG connects business owners and entrepreneurs with financial opportunities and incentives offered by state and local government. We are one of the many California departments that

partnered with the State Treasurer's Office to provide information. It includes information on our [New Employment Credit](#).

For more information, go to the [CBIG's About Us](#) web page and watch the video.

[PIT amended return process "save the date" invitation](#)

Currently, we are in the final stages of planning a January 2017 outreach effort designed to solicit feedback from you on ways to improve Amended Return processing for personal income tax (PIT) returns (currently filed using form 540X).

We hold focus groups on an as-needed basis to generate feedback from the public about specific topics. Our experience is that efforts like these are a great way to initiate the type of productive dialogue that can lead to positive breakthroughs in our ability to better-serve the taxpayers of California.

If you would like the opportunity to participate in the outreach effort, please email your name, organization, and contact information to FTBAmendedReturnOutreach@ftb.ca.gov by close of business on January 18, 2017.

For the ease of the participants, the outreach effort will be facilitated via the internet and can be completed anytime it is convenient. As a result, time and travel considerations won't be a concern.

Once selected, we will email each participant a "save the date" invitation with specific information on how to take part in the outreach opportunity.

[FTB Board Meeting and Bill of Rights Hearing held](#)

On December 8, 2016, the Franchise Tax Board held its annual Taxpayers' Bill of Rights Hearing along with a regularly-scheduled board meeting.

During the Board meeting, Board members heard an update on the 2017-2020 strategic plan, identity theft related fraud, our EDR project final report, and legislative matters. During the

identity theft related fraud update, Jennifer Roussel, Fraud and Discovery Section, mentioned that over 21,300 identity theft refunds were stopped representing over \$70 million. She also mentioned that eighty-five percent of efile refunds were processed within our goal of 0-7 days.

For the Taxpayers' Bill of Rights portion of the agenda, practitioners and taxpayers were invited to submit issues in writing, but they could also request time to address the Board during the meeting to present their issue. Here are a few of the items presented to the Board:

- Power of Attorney
- Form 4734D Taxpayer Verification Requests
- Availability of interest waivers on "stale" penalties
- Encrypted email
- Failure to Respond Penalty

In addition, Sandy Weiner from Spidell thanked FTB and the Taxpayers' Rights Advocate Office for our help during the year and all of the department's help with the launch of the enhanced MyFTB.

Ask the Advocate

2016 year in review



Susan Maples, CPA

Taxpayers' Rights Advocate

Follow me on Twitter at

twitter.com/FTBAdvocate

The 2016 year was a very busy year for the Taxpayers' Rights Advocate Office (TRAO).

While we traditionally have a full calendar throughout the year, this past year seemed busier than ever! We recently completed the last of the many quarterly and annual meetings we participate in or chair, as well as our Annual Report to the Legislature. We will continue to present our 2016 California Tax Update, where we discuss recent law changes and the services provided by the Taxpayers' Rights Advocate, through the end of January. In fact, Education and Outreach is such an important part of what we do, this past year, we participated in approximately 150 live presentations throughout California. Popular topics at our speaking events included Forms of Ownership, the

enhanced MyFTB and the first ever California EITC, which refunded nearly \$200 million dollars to California's hardworking families and individuals.

In addition to Education and Outreach, much of TRAO's focus throughout the year involves working to resolve problems for you and your clients when normal channels fail. While we cannot guarantee a positive outcome for every problem, we do our very best. I know from speaking with so many of you the frustration that comes from not being able to resolve issues quickly and easily. Each of us in the TRAO works hard on your behalf, which is why I was deeply honored to receive the California Society of Enrolled Agents 2016 President's Award, in part for helping to resolve difficult situations on behalf of California taxpayers. This award was truly the result of a team effort and would not have been possible without the tireless efforts of both the TRAO staff and the Executive and Advocate Services staff.

Another award I'm especially proud of is the 2016 Award for Publication Excellence (APEX) in the category of Newsletters – Electronic and Email won by our *Tax News* publication. Working to create a top-notch newsletter for you has been our passion and has paid off in terms of our readership, which now stands at more than 26,000 subscribers. We are always open to suggestions and constructive feedback on *Tax News*, and it is our goal to continually improve our publication and its relevance to you, the tax professional. You can email us with your comments and suggestions at taxnews@ftb.ca.gov

As I mentioned above, we recently completed the last of our annual meetings. I especially enjoy our annual liaison meetings with the California Society of Certified Public Accountants and the California Society of Enrolled Agents. Having the opportunity to meet with and hear from both groups helps us to better understand your concerns and the issues you and your clients are facing. In addition to these two liaison meetings, our Executive Officer's Advisory Board meeting and the annual Taxpayer Bill of Rights Hearing round out our opportunity to get feedback from a diverse group of industry and tax professionals on everything from administrative policy to legislative recommendations. Many of the issues raised at these meetings will be discussed in future editions of **Tax News**.

Finally, I would like to express my gratitude for your trust and confidence in the Advocate's office. On many occasions, I have asked for opinions, pain points, and even participation in various events to help FTB find solutions to some of your issues and concerns. Without your participation, we would not be as successful in our partnership.

I hope that you and your families had a wonderful and joyous 2016 holiday season. As we move into 2017, I look forward to continuing to work on your behalf and advocating for you and your clients.

MyFTB Corner

Now available! Renew your tax preparer client relationships in MyFTB

You can now renew your Tax Preparer client relationships in MyFTB.



Simply:

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

Tax Preparer clients expire 13 months from the date you add them to your **Client List** in MyFTB. For uninterrupted access, renew your clients *more* than 10 business days **before** the expiration date. We will send a letter to your clients notifying them you have renewed access to their account.

For additional details, see How To Renew a Tax Preparer Client on the Client List and our December *Tax News* article Renew Your Tax Preparer Client Relationships in MyFTB.

MyFTB Corner

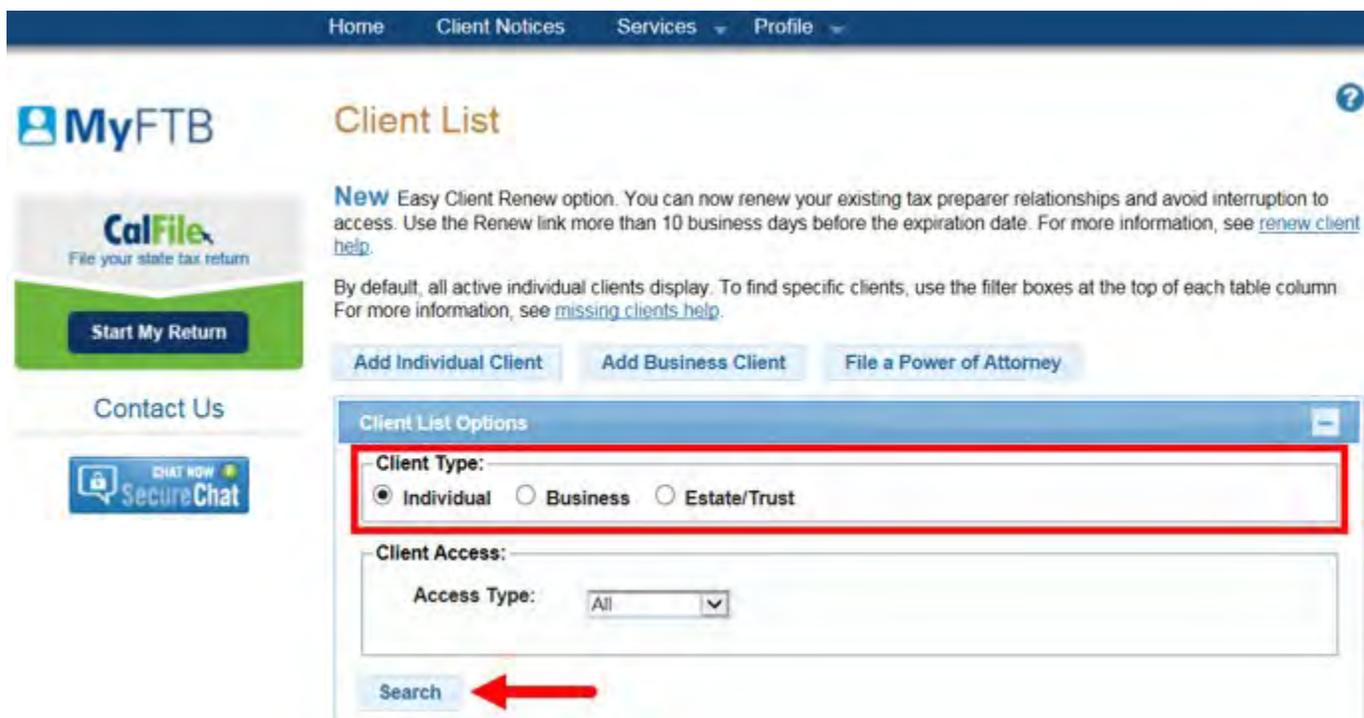
Enhanced client list page and client notices page in MyFTB

We have enhanced the performance and usability of two important pages in MyFTB; the Client List page and the Client Notices page.

These enhancements will allow you to more effectively search for clients and view notices and messages for POA clients.

Client List Page

The **Client List** page will now display by default, all active Individual clients, not just the first 200. To view Business, or Estate and Trust clients, update the **Client Type** and select the **Search** button.



The screenshot shows the MyFTB Client List page. At the top, there is a navigation bar with links for Home, Client Notices, Services, and Profile. Below the navigation bar, the MyFTB logo is on the left, and the page title "Client List" is on the right. A "New" announcement highlights an "Easy Client Renew option" and provides a link to "renew client help". Below the announcement, there is a note stating that by default, all active individual clients are displayed, and a link to "missing clients help" is provided. Three buttons are visible: "Add Individual Client", "Add Business Client", and "File a Power of Attorney". A "Client List Options" panel is shown, which contains a "Client Type" section with radio buttons for "Individual" (selected), "Business", and "Estate/Trust". Below this is a "Client Access" section with an "Access Type" dropdown menu set to "All". A red arrow points to the "Search" button at the bottom of the options panel.

To find specific clients, use the filter boxes at the top of each table column.

Home Client Notices Services Profile

MyFTB

CalFile
File your state tax return

Start My Return

Contact Us

Secure Chat

Client List

New Easy Client Renew option. You can now renew your existing tax preparer relationships and avoid interruption to access. Use the Renew link more than 10 business days before the expiration date. For more information, see [renew client help](#).

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](#).

Add Individual Client Add Business Client File a Power of Attorney

Client List Options

Client Type:
 Individual Business Estate/Trust

Client Access:
 Access Type: All

Search

Search Results - Individual Clients

Clear Filter

Last Name	First Name	SSN/TIN	Expiration Date	Access Type	Status	Actions
doe	nancy	0000		tax preparer		
Doe	Nancy	XXX-XX-2455	12/28/2017	Tax Preparer	Active	Remove

To view more information regarding search for clients, see How To Search for a Client on the Client List.

Client Notices Page

The **Client Notices** page will now display a list of all notices and messages available to view for your active POA clients that you have the authority to view. This page will display up to 200 client notices and messages sent in the last 60 days. This change will remove the client grouping when you have more than 40 active POA clients to allow you to quickly and easily identify which of your POA clients have a notice or message to view.

Home Client Notices Services Profile

Client Notices

We sent the following POA clients notices in the last 60 days. You can only view notices and messages for a tax year or account period with an active POA agreement. Notices for Nonresident Group Return clients are not available online at this time.

You can respond to [HOH Audit Letter](#) or a [Request/Demand for Tax Return](#) on the general FTB Website. These services require additional authentication and open in a new window.

Note: Estate, Trust, and Nonresident Group Return clients are not available online at this time.

[Show Filter](#)

Date	Client Name	Description	Action
11/16/2016	Doe, John	Notice FTB 4099 was sent to JOHN DOE by mail on 11/16/2016.	View
11/16/2016	Justin Thyme Meals	Notice FTB 4734D was sent to JUSTIN THYME MEALS by mail on 11/10/2016.	View

All About Business

Claim for refund – Proper notification

Over the last year, we have been involved in several discussions about refund claims and we have taken significant steps to address the concerns.

Back in our November 2016 Tax News article FTB Works to Improve Tax Return Amendment Process we shared with you the fact that we are currently studying ways to make it easier to amend tax returns, speed processing of refunds, save paper, and reduce processing costs.

What is a Claim for Refund?

A claim for refund is a request for reimbursement of overpaid taxes, penalties, fees, or interest. A Claim for Refund can be filed by either filing amended return or a letter.

To be valid, a claim for refund must:

- Be in writing.
- Be signed by the taxpayer or their authorized representative.

- Include the specific reason for the claim.
- Be filed within the statute of limitations. (See exceptions.)

A claim for refund:

- Will not automatically stop collection action.
- Cannot be filed by a corporation or limited liability company that is suspended or forfeited.

What is an "Informal" claim?

Requests for refund (or penalty waiver) when the taxpayer has satisfied all the requirements for a valid claim, except for making full payment, are considered "informal claims."

Under California law (Revenue and Taxation Code (R&TC) Section 19322.1), a claim for refund of tax (that is otherwise valid), made before full payment has been made, will only delay (toll) the expiration of the statute of limitations. However, no credit or refund may be made or allowed for any payment made more than seven years before the date of full payment.

This informal claim for refund will be "perfected" and deemed filed on the date that full payment of tax is made. For due and payable (billable) amounts, all amounts due, including tax, penalty and interest, must be paid to perfect the claim. This perfection date will be the date that an informal claim becomes a formal refund claim for purposes of the administrative claims process. We may consider the merits of an "informal" claim, but we cannot take any formal action on such claim until the claim has been perfected by full payment.

What happens once a claim has been filed?

To assist you in understanding the process we added this Flow Chart of the Claim for Refund Process. After a taxpayer has filed a valid claim for refund, we must either allow the claim (issue a refund for the amount claimed), or issue a notice of disallowance or modification. R&TC Section 19323 states when we deny a claim for refund, "[FTB] shall notify the taxpayer accordingly and provide an explanation for the disallowance."

R&TC Section 19324 provides that our denial of a refund claim becomes final if the taxpayer does not file an appeal to the BOE within 90 days of the Notice of Action on Cancellation, Credit or Refund or a Claim for Refund Denial Letter.

Claim for refund – Proper notification

Our Legal Division recently answered several questions raised by tax practitioners with respect to claims for refund:

Question:

What constitutes proper notification under R&TC Section 19323?

A notice titled “Notice of Action on Cancellation, Credit or Refund” clearly satisfies the notification requirement of R&TC 19323. What other types of notices, if any, can satisfy this notification requirement? For example, would a letter addressed to the taxpayer from a protest hearing officer that is titled “Claim for Refund Denial” satisfy this notification requirement?

Response:

We issue formal claim denials either by issuing a Notice of Action on Cancellation, Credit or Refund or a Claim for Refund Denial Letter. When we deny all or part of the claim for refund, taxpayers have a couple of options: they can either file an appeal with the BOE or file a suit in Superior Court. Our internal procedure is that a formal notification of a claim denial should contain information regarding appeal rights. Therefore we attach Forms 1084 or 1087 with the formal notification which gives detailed information about the different options, where to file and how to file it.

Question:

If there are other types of notices other than the Notice of Action on Cancellation, Credit or Refund that can constitute proper notification under R&TC Section 19323, what other requirements, such as the time period to file an appeal to the BOE, etc. must be stated in these other types of notices in order to constitute proper notification?

Response:

If we send the Claim for Refund Denial letter instead of the Notice of Action on Cancellation, Credit or Refund, the letter itself is very brief but includes the proper language regarding appeal rights. We also attach either Forms 1084 or 1087 which contains all the information you need regarding appeal rights and procedures as mentioned above.

Question:

If an auditor issues an Audit Information Presentation Sheet indicating the claim for refund is either fully or partially denied, does this constitute proper notification under R&TC Section 19323?

Response:

No, the Audit Issue Presentation Sheet does not constitute a formal notification of a claim denial under R&TC Section 19323. We use the Audit Issue Presentation Sheet to inform the taxpayer of our proposed audit determination, but it is not intended to be the formal notification denying a claim for refund. When we issue the Notice of Action on Cancellation, Credit, or Refund or the Claim for Refund Denial Letter following the Audit Issue Presentation Sheet, it's considered the formal claim denial. This starts the 90-day time period for which an appeal with the BOE must be filed.

For more information, visit our [Claim for Refund webpage](#).

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.