



Tax News

June 2017

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Implementation of SB 836 – Stale-dated warrants

We now require your clients to submit a signed claim form for stale-dated warrants (expired checks) more than three years old from the date of issuance. The claim forms available:

- FTB 3900A for Personal Income Tax
- FTB 3900B for Business Entities

Prior to June 27, 2016, the law provided that taxpayers who sought the replacement of a stale-dated warrant older than three years from the date of issuance must make a government claim to the Victim Compensation and Government Claims Board. Upon passage of Senate Bill (SB) 836 (2016) the responsibility for reissuance of stale-dated warrants returned to us.

When your client requests a reissuance of a stale-dated or replacement warrant, we ask for your client to return the original warrant and send their signed claim form to the following address:

RETURNED WARRANT DESK
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0001

If the bank is unable to return the original stale-dated warrant to your client, under the "Check 21" law, the bank can give the taxpayer a copy of the warrant or a substitute check. We will accept either in-lieu of the original stale-dated warrant.

Note: We will not process warrants that are more than three years old without a signed claim form. We will contact your client.

Next steps after an auditor makes a recommendation

What can a taxpayer expect once an auditor reaches a conclusion?

The answer may vary depending on the type of audit and the auditor's conclusion. When the audit is near conclusion, we will inform the taxpayer/representative of the issues, potential adjustments, and changes to a claim for refund, if any, and the opportunity to respond to the auditor's position letter on the issues. At the conclusion of the audit, the taxpayer/representative receives a "closing letter" summarizing the issues under audit and their

resolution. The overall result to the taxpayer's tax liability for each taxable year under audit is either:

- No change to the taxpayer's tax liability
- Additional tax is proposed
- Refund due to the taxpayer

A completed case may be subject to further review. The audit case review function is designed to promote the completion of quality audits and ensure consistent and accurate application of the tax laws, regulations, practices, and procedures. This review function can be performed at a location different than the office where the audit originated. As a result, additional time is required to incorporate this function into the estimated time of completion for the audit.

Remember, if at any point during the review process you have questions or concerns, you may contact the auditor assigned to the case or their supervisor or manager.

Upon final review and approval, the related tax returns and taxpayer accounts are submitted for notice processing. These activities allow us to properly identify the specific requirements of each account so our systems may correctly compute the tax, interest, and penalties (if applicable). The appropriate notice is issued and mailed to the taxpayer's address on record. The taxpayer's protest and/or appeal rights and related instructions to contest the notice are included in the notice issued. If the taxpayer's claim for refund is denied in full or in part, a formal notice is issued and the taxpayer has the opportunity to appeal to the Board of Equalization or take action in court.

For information on our Protest and Appeal process refer to:

- FTB 7275 (Personal Income Tax Notice of Proposed Assessment Information)
- 5830C (Business Entities—Notice of Proposed Assessment Information)
- FTB 1084 (Personal Income Tax Denial of Claim for a Refund Information)
- FTB 1087 (Business Entities—Denial of a Claim for Refund Information)
- FTB 936, Nonwage Withholding Audit Process
- FTB Publication 985 (Audit/Protest/Appeals (The Process))
- Board of Equalization Publication 81 (Franchise and Personal Income Tax Appeals)

Did your client receive a notice from us?

Review the notice your client received in the mail and read below for further information on what action you can take.

Do not delay in responding.

These additional procedures have been instituted to protect reduce the increase in phishing, hacking, cyber breach, and identity theft schemes for you and your clients.

We want to protect your client's information as you file their income tax returns. These additional contacts are taking place to ensure the security and safety your client's data and information.

Request to Confirm Tax Return Filing (FTB 3904):

We send this notice when we need you to confirm if your client filed a specific personal income tax return.

- If your client did not file this tax return, call 916.845.7088 within 30 days from the Notice Date. The sooner you call, the better.
- If your client filed this tax return, you can call 916.845.7088 as soon as possible to identify yourself and receive requests for any additional information.

Request for Tax Information and Documents (FTB 4734D):

We send this notice when we need additional information to approve your client's tax refund.

- Complete the Request for Tax Information and Documents (FTB 4734D), and
- Fax it to 916.843.6036, or
- Mail to:

FILING COMPLIANCE BUREAU MS F-151
FRANCHISE TAX BOARD
PO BOX 1468
SACRAMENTO, CA 95812-1468

Request for Tax Return and/or Demand for Tax Return

We issue a Request/Demand for Tax Return notice when we have no record of your client's California personal income tax return for the year specified.

- Response promptly.

- Late filing can be subject to penalties and interest.
- Late payment can also be subject to enforcement action.
- **Do not ignore.**
- Follow all contacts as specified in the notice.

Consent to certain changes in accounting methods

We recently issued FTB Notice 2017-03 to advise taxpayers and their representatives that we withdrew FTB Notice 96-3. FTB Notice 96-3 announced that we would **not** follow the procedures for a change of accounting method involving previously unclaimed, but allowable depreciation or amortization deductions, as provided by Revenue Procedure 96-31, issued by the Internal Revenue Service (IRS) effective May 13, 1996, (1996-1 C.B. 714).

The IRS has periodically updated the procedures for a change of accounting method involving previously unclaimed, but allowable depreciation or amortization deductions, most recently with [Revenue Procedure 2016-29](#). Accordingly, we follow the provisions of Revenue Procedure 2016-29. Because we do not provide automatic consent to accounting method changes, an accounting method change under Revenue Procedure 2016-29 or any of its earlier versions may only be made if:

- The taxpayer has a deemed California election¹, or
- With the prior consent from us.

FTB Notice 2000-8 provides additional information regarding California's conformity to federal elections and the method of electing a change of accounting method for California purposes.

Update on tax return amendment process improvements

We focused our efforts on the various individual forms such as 540, 540NR Long, 540NR Short, and 540 2EZ.

¹ A deemed California election is made when California conforms to a proper federal election and the taxpayer does not file a separate California election.

We recently concluded an outreach effort to tax practitioners and tax software providers that began in mid-2016. During the outreach, we received a good deal of helpful feedback that we incorporated to improve the way amended returns will be filed and processed in 2017.

Beginning with tax year 2017, we will eliminate separate form for amending personal income tax returns (Form 540X) and replace it with the 540 series forms, each adapted to allow for amended return filing.

At the same time, we will also introduce a simple schedule (Schedule X) which we designed to capture the reason for the amendment and to guide taxpayers with the calculations of their revised tax liability or refund.

More details will be available soon as a part of the yearly forms update and review process that we use to inform you and tax software providers regarding upcoming changes.

Corporation overpayment rate change

The current rate on personal income tax underpayments and overpayments, corporation underpayments, and estimate penalties will remain the same at four percent through 2017.

The corporation overpayment rate will increase from zero percent to one percent starting July 1, 2017.

For more information on interest rates, go to ftb.ca.gov and search interest rates.

A deemed California election is made when California conforms to a proper federal election and the taxpayer does not file a separate California election.

Ask the Advocate

Power of attorney process changes



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

In my December Ask the Advocate article, I let you know FTB values your feedback and listened to your concerns about improving the overall POA process. Moving from the traditional process of faxing or mailing POAs to one that is primarily electronic and conducted online is a larger undertaking than you might think. We have to find an acceptable balance between providing service options that best fit your needs, including easy to use self-service options, and keeping taxpayer data secure. We must also ensure that all tax professionals, including those who continue to use our traditional processes receive an acceptable level of service and are able to adequately represent their clients when dealing with FTB.

Because the changes FTB ultimately puts into place will impact how tax professionals interact with FTB, during May, we convened several focus groups, meeting with approximately 50 tax professionals. I had the privilege of facilitating these groups and I am very grateful to those who took the time out of their busy schedules to meet with us. We received both positive comments and constructive feedback regarding the proposed changes and we will make adjustments where we can.

There are many changes planned for our POA process and we will let you know about these as they are closer to implementation – be sure to read the MyFTB Corner in each month's Tax News. But for now, I want to let you know about two areas where changes are under consideration and how you too can provide comments and suggestions about our POA process.

FTB Form 3520

We are looking to redesign the FTB 3520, Power of Attorney form with the goal of expediting processing. Instead of a "one size fits all" form, we are creating separate forms and instructions for individuals and business entities and a new form for revoking POAs. Our new forms will be easier to complete, which should help reduce the rejection rate for POAs submitted through MyFTB.

The Tax Preparer/POA Client Relationship

For the Tax Preparer Client relationship, we are expanding the information tax professionals may receive without a POA to include copies of correspondence and notices. In addition, for both Tax Preparer and POA client relationships, obtaining full MyFTB access will require your clients to affirmatively approve your access.

In closing, I want you to know that we have heard your concerns about the POA process and we are working hard to improve and streamline it. I am confident we will make it a better process, for you the tax professional and FTB. Going forward, we want to hear from you. If you have comments or suggestions about FTB's POA process, you can email us at:

myftbfeedback@ftb.ca.gov

MyFTB Corner

Power of attorney (POA) declaration...Revoke or remove?

Generally, your Power of Attorney (POA) Declaration remains in effect until you or the taxpayer revoke it.

If you no longer represent a taxpayer, you should revoke the POA Declaration or remove yourself from a POA Declaration to ensure you do not receive confidential information you are not entitled to access.

When should I revoke a POA Declaration?

You should revoke a POA Declaration when:

- You are the only representative listed on the POA Declaration and no longer represent the taxpayer, or
- There are multiple representatives listed on the POA Declaration and none of you continue to represent the taxpayer.

When should I remove a representative from a POA Declaration?

You should remove yourself or another representative from a POA Declaration when:

- There are multiple representatives listed on the POA Declaration that represent the taxpayer and you or another representative no longer represent the taxpayer, such as a representative moves to a new firm or is no longer working on that taxpayer’s case.

How do I remove a representative from a POA Declaration?

There are a couple of options to remove a representative from a POA Declaration:

1. If you have the “Add/Delete” privilege on the POA Declaration, you can complete this action on MyFTB using the **Edit Representative** option. For step-by-step instructions including screenshots see, [How To Remove a Representative on an Active Power of Attorney \(POA\) Declaration](#).
2. If you do not have the “Add/Delete” privilege on the POA Declaration or MyFTB access, you can submit the request in writing and include:
 - a. Name, address, and professional ID(s) of representative to be removed,
 - b. Name and ID of taxpayers (clients), and
 - c. Statement indicating to revoke only the indicated representative from the POA Declaration(s).

You can fax or mail the required information to the following:

Revocation Fax Number

916.845.9144

Mailing Address

POA Unit MS F283

Franchise Tax Board

PO Box 2828

Rancho Cordova, CA 95741-2828

[All About Business](#)

[Business income: Where are we today – Update to Legal Ruling 11-01](#)

In 2013, we published a series of articles focusing on the changes and effects for individual and business entity taxpayers based on California law changes that affect apportioning business clients that do business both in and out of California.

In our October 2013 edition of Tax News, we looked at nonresidents with apportioning business, trade, or profession income with a focus on several law changes summarized in our September 2013 edition of Tax News. In our December 2013 edition of Tax News, we focused on partnerships, and our February 2014 edition of Tax News focused on apportioning corporations. The laws have not changed and these articles are still available for reference. However, over the next few months, we will publish articles that focus on additional resources and address questions related to an “out-of-state taxpayer” that invested in a business that is doing business in California or has income from sources within California.

For purposes of these articles, we will use the general term “out-of-state taxpayer(s)” when discussing issues that can apply to a(n):

- Nonresident
- Out-of-state formed partnership (general or limited)
- Out-of-state formed limited liability company (LLC)
- Out-of-state formed corporation (C or an eligible entity that has elected to be taxed as an S corporation).

What has not changed?

In California, an “out-of-state taxpayer” must file tax returns if the taxpayer is doing business in California or has income from sources within California. Also, a non-California entity that registers to do business in California, even if it's not actually doing business in California, must also file a return. Which forms will need to be filed and what taxes will need to be paid will depend on various factors.

For example: A nonresident (individual) with a single member limited liability company (SMLLC) doing business in California would need to file both a Form 568, Limited Liability Company Return of Income, for the LLC, and a Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, for the individual. If the SMLLC is owned by an out of state formed (foreign) corporation (C or an eligible entity that has elected to be taxed as an S corporation) a Form 568 will still need to be filed for the LLC, and the corporation will also need to file either a Form 100, California Corporation Franchise or Income Tax Return, 100W, California Corporation Franchise or Income Tax Return - Water's-Edge Filers, or 100S, California S Corporation Franchise or Income Tax Return, depending on the type of corporation (C or S) and whether or not the corporation made a Water’s-Edge election. If the owner of the SMLLC is an S corporation a third

tax return (or more) will need to be filed, either a group Form 540NR filed by the S corporation² for its out of state (nonresident) shareholder(s), or each shareholder will need to file a tax return. In both of these examples the SMLLC that is doing business in California will owe the \$800 annual tax and depending on its California based sales may also owe an LLC fee.³

Additional resources - Legal Ruling 2011-01

We issued Legal Ruling 2011-01, Activities of a Disregarded Entity, in January 2011. In that ruling we addressed the question, is the sole owner of a disregarded entity "doing business" in California if the owner has no other activities in the State other than those of its disregarded entity? Legal Ruling 2011-01 provides the laws and our analysis for not only the disregarded SMLLC, but also addresses Qualified Subchapter S Subsidiaries ("QSub").

What changed? Business entity return due dates

For taxable years beginning on or after January 1, 2016, the original and extended tax return due dates for California returns have changed for business entities.

Original tax return due dates

Entity Type	Calendar Year Filer	Fiscal Year Filer
C Corporations and LLCs taxable as a corporation	April 15	15th day of the 4th month following the close of the taxable year
S Corporations ⁴	March 15	15th day of the 3rd month following the close of the taxable year

² An S corporation may also have to withhold on distributions of California source income made to nonresident owners and file the Form 592, Resident and Nonresident Withholding Statement, for more information see our Withholding on Pass-Through Entity Owners page.

³ For more information on the LLC fee see our publication 3556, Limited Liability Company Filing Information.

⁴ No change to original due date.

Entity Type	Calendar Year Filer	Fiscal Year Filer
Partnerships and LLCs taxable as a partnership	March 15	15th day of the 3rd month following the close of the taxable year
Exempt Organizations ⁵	May 15	15th day of the 5th month following the close of the taxable year

California's paperless extension is for filing not paying

Generally, California grants all income and franchise taxpayers an automatic extension of time to file a tax return.⁶ Taxpayers do not need to request the automatic extension as long as the taxpayer files their tax return within the extension period. If the tax return is filed after the extension date the taxpayer will have no valid extension and the taxpayer would be subject to a late filing penalty⁷ (Cal. Code of Regulations Section 18567(a)).

Extended tax return due dates

Entity Type	Calendar Year Filer	Fiscal Year Filer
C Corporations and LLCs taxable as a corporation	October 15	15th day of the 10th month following the close of the taxable year

⁵ No change to original due date.

⁶ If a corporation or limited liability company is either suspended or forfeited, it is not allowed an extension.

⁷ This penalty can be waived if the taxpayer can show their failure to timely file their return was due to reasonable cause. Taxpayers or their representative may use either FTB 2917, Reasonable Cause – Individual and Fiduciary Claim for Refund or FTB 2924, Reasonable Cause – Business Entity Claim for Refund to file a claim for refund to request penalty abatement due to reasonable cause.

Entity Type	Calendar Year Filer	Fiscal Year Filer
S Corporations ⁸	September 15	15th day of the 9th month following the close of the taxable year
Partnerships and LLCs taxable as a partnership	September 15	15th day of the 9th month following the close of the taxable year
Exempt Organizations ⁹	November 15	15th day of the 11th month following the close of the taxable year

Single member limited liability companies (SMLLCs) follow the original and extended due date of the owner. If a SMLLC is owned by a pass through entity, the original due date is the 15th day of the 3rd month following the close of the taxable year. The due date for all other SMLLCs, is the 15th day of the 4th month following the close of the taxable year.

Limited liability company (LLC) annual tax and fee

California imposes on all LLCs classified as partnerships or disregarded entities both an annual tax of \$800 and an annual fee based on the LLC's total income. The LLC annual tax is similar to the corporate minimum franchise tax as both taxes are imposed for the privilege and protections of doing business in California. The \$800 annual LLC tax is due and payable **by the 15th day of the 4th month** after the **beginning** of the LLC's taxable year (fiscal year) or April 15, 2017 (calendar year). When the due date falls on a weekend or holiday, the deadline to file and pay without penalty is extended to the next business day.

If the 15th day of the 4th month of an existing foreign LLC's taxable year has passed before the foreign LLC commences business in California or registers with the SOS, the annual LLC tax should be paid immediately after commencing business or registering with the SOS.

⁸ No change to original due date.

⁹ No change to original due date.

Example: LLC1, a newly-formed calendar year taxpayer, organizes as an LLC in Delaware on June 1, 2017. LLC1 registers with the SOS on August 14, 2017, and begins doing business in California on August 15, 2017. Because LLC1's initial taxable year begins on June 1, 2017, the annual LLC tax is due by September 15, 2017 (the 15th day of the 4th month of the short-period taxable year).

If the LLC tax of \$800 was not paid by the 15th day of the 4th month after the beginning of the taxable year, the tax should be paid as soon as possible, using the **appropriate taxable year** form FTB 3522, Limited Liability Company Tax Voucher.

The annual fee, however, is a graduated fee based on the LLC's total income from all sources derived from or attributable to this state plus the cost of goods sold under Revenue and Taxation Code (R&TC) Section 17942. For more information on the LLC fee see our form FTB 3556 LLC MEO, Limited Liability Company Filing Information.

Limited liability companies classified as either a partnership or disregarded entity which files Form 568 needs to estimate and pay its LLC fee by the 15th day of the 6th month of the taxable year. LLC should use form FTB 3536, Estimated Fee for LLCs, to remit the estimated fee payment. Members may have to make estimated tax payments for their own reporting purposes.

An LLC that elects to be treated as either a C or S corporation will determine its tax under California Bank and Corporation Tax Law, so they are subject to the \$800 minimum franchise tax under R&TC Section 23153, or the franchise tax under R&TC Section 23151, or the corporation income tax under R&TC Section 23501.

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.