



# Tax News

March 2017

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## Legal Ruling 2017-01

### California Other State Tax Credit or Deductions for Taxes Paid.

California taxpayers may be taxed on their income by California and another state. To alleviate the problem of double taxation, California allows its residents (and nonresidents that reside in "reverse credit" states) an Other State Tax Credit (OSTC).

Questions have arisen regarding the general eligibility for California's OSTC and deductibility of the various taxes paid to other states on a California income tax return. The determination of whether a taxpayer is eligible for an OSTC or has an allowable deduction is based on the characterization of the other state's tax as net income tax or a tax not on, according to, or measured by income, which is determined by analyzing the other state's statutory tax base. This can be difficult for taxpayers since each tax paid to another state must be analyzed individually.

If you have clients who receive income within and outside of California, recently released FTB Legal Ruling 2017-01 was issued to provide guidance regarding the circumstances under which a taxpayer may claim the OSTC, or alternatively, a deduction for taxes paid to another state. This legal ruling provides an overview of the general legal requirement that the other state's tax be a net income tax for a taxpayer to claim the California OSTC, and explains that taxes paid to another state must not be an income tax in order for a taxpayer to claim a California deduction for payment of a tax. The legal ruling guides taxpayers through the analysis of whether a tax is an income tax or not, referencing various court and Board of Equalization decisions.

For additional information, see Legal Ruling 2017-01.

## California Competes Tax Credit

Applications for the credit will be accepted from **March 6, 2017**, until **March 27, 2017**.

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 the statutorily created California Competes Tax Credit 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 2016/2017, \$243.3 million of the California Competes Tax Credits will be available for allocation during three application periods. For the third application period, \$68.3 million plus any remaining unallocated amounts from the previous application periods will be available for allocation. Applications for the credit will be accepted at [calcompetes.ca.gov](http://calcompetes.ca.gov) from **March 6, 2017, until March 27, 2017**. Go to [California Competes Tax Credit webpage](#) for more information tax credit.

## Customer service dashboard

When you know your time frames, you can choose your service!

In a continuing effort to provide timely and transparent customer service for you and your clients, we launched our Customer Service Dashboard on March 1, 2017, just in time for the tax season! The Dashboard will provide wait times for our Customer Service General Lines, Tax Practitioner Hotline, Secure Chat, and General Chat. Our Dashboard will also display processing time frames for payments, refunds, returns, and correspondence.

Take a moment to consider the following questions:

- Would you like to know our current wait times for assistance before you call us?
- Would you like to know the best time to call us?
- If we provided our current letter and correspondence processing time frames, would you use our MyFTB Secure Message option rather than send a letter?
- Did you know a two-minute chat could get you the form that you or your client needs?

Our goal is to provide our customers with tools and resources to resolve their tax matters. The Dashboard is easily accessible, concise, and simple to understand and use. The Dashboard provides accurate time frames and contact wait times, so you will know what to expect and can decide which channel is best suited for your needs and the needs of your clients.

## Previous identity theft scheme picking up speed

Thieves are focusing more attention on getting employee W-2 information from businesses.

If you have a business client impacted by this scheme, please advise them to call us at **916.845.7088**. We will need them to provide:

- Their Federal Employer Information Number (FEIN).
- Their State Employer Information Number (SEIN).
- Social security numbers of the impacted employees, if possible.

## Tax deduction - Charitable contributions

If your client gave a cash or noncash contribution in 2016 to a qualified charitable organization, they may qualify for an income tax deduction.

Below, we briefly summarize charitable contributions and highlight a few items to keep in mind.

### Brief summary

Charitable contributions are deductible only if your client itemizes deductions on their federal Form 1040, Schedule A, and has the proper documentation to support the deduction.

Deductions for most charitable contributions are generally limited to 50 percent of your client's federal adjusted gross income (AGI), but in some cases limitations of 30 percent and 20 percent of federal AGI may apply. Also remember that payments to individuals are **never** deductible.

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 to \$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 claimed. Contributions of \$250 or more to any single charity require written acknowledgment of the contribution by the charity (recipient of the donation) before claiming a charitable contribution. Written acknowledgement is required and must be concurrent with when a donation was made. 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 contain:

1. Organization name.
2. Amount of cash contribution.
3. Description (but not the value) of any noncash contribution(s).
4. Statement that the charitable organization did not provide goods or services in return for the contribution, if that were the case.

## Noncash contributions

Noncash contributions over \$500 require your client to complete and file IRS Form 8283, Noncash Charitable Contributions, with their tax return for the year of the donation. If your client is claiming a deduction for a contribution of noncash property:

- Greater than \$5,000, then a qualified appraisal of the noncash property is needed. However, your client does not have to include the appraisal with the tax return.
- Worth more than \$500,000, then your client must include the qualified appraisal with the tax return for the donation year.

For additional information on charitable contributions and the documents needed to substantiate deductions, see IRS Publication 526, Charitable Contributions, also see IRS Publication 1771, [Charitable Contributions Substantiation and Disclosure Requirements](#).

To find out if an organization qualifies as a charitable organization for income tax deductions, use IRS' online search tool [EO Select Check](#).

## Reminder - New tax return due dates for business entities

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.

## Important reminder for the month of March

Partnerships and limited liability companies treated as partnerships:

- The original tax return due date is now March 15 which used to be April 15 for calendar year filers. For fiscal year filers, the new due date is the 15th day of the 3rd month following the close of the taxable year.
- The extended due date has also been changed from October 15 to September 15 for calendar year filers and for fiscal year filers, the extended due date is the 15th day of the 9th month following the close of the taxable year.

Refer to this chart for the more details about due date for business entities.

## Year 2 of CalEITC

A taxpayer who qualifies for CalEITC and the federal EITC can receive up to \$6,000 back.

California's Earned Income Tax Credit (Cal EITC) is now in its second season, and we are working hard to build awareness as taxpayers file their 2016 income tax returns. As you complete your clients' income tax returns, double check to see if they may qualify for the CalEITC and the companion federal EITC. We encourage everyone with earned income of \$14,161 or less to check if they may be eligible.

A taxpayer who qualifies for CalEITC and the federal EITC can receive up to \$6,000 back. In its first year, over 385,000 California families qualified and shared almost \$200 million from the cash-back credit.

If a taxpayer filed a 2015 state income tax return and may have qualified for CalEITC, they may want to amend their return. If they do, they need to fill out a Form 540X and Form 3514 to claim the credit.

For eligibility requirement and more information go to [CalEITC4Me.org](http://CalEITC4Me.org).

## New city/county business tax program

Newly enacted legislation (January 2017) began allowing county participation in the City/County Business Tax (CCBT) Program.

Counties within California are now eligible to exchange limited confidential taxpayer tax data with us through a reciprocal Standard Agreement. Participating counties will provide data to us on local business taxpayers. In return we provide participating county tax officials data for individuals operating a business with an address within the county's jurisdiction. This exchange of data helps us to identify businesses who don't file required income tax returns and provides a county with potential leads in finding unlicensed businesses.

Participation in this program requires a county to submit the following:

- County contact information (typically a representative from the finance department).
- An executed Standard Agreement between us and the county.
- A resolution, motion, or order from the respective county Board of Supervisors (if required), or a copy of the respective county municipal code.
- A completed Safeguard Questionnaire (this questionnaire ensures the protection of taxpayer information).

To learn more details about this program, go to City/County Business Tax at [ftb.ca.gov](http://ftb.ca.gov).

Counties interested in participating in the program should contact us via email [LocalGovtLiaison@ftb.ca.gov](mailto:LocalGovtLiaison@ftb.ca.gov) or call **916.845.6304**.

## Did your client receive a 2016 1099G for a 2014 overpayment?

Receiving a 1099G for a year beyond one year from the return year for an overpayment credited forward or a refund issued is not uncommon.

This may occur when an amended return is filed, a return is filed beyond the extended due date, or when significant steps beyond normal processing are required by us to process a return.

We received several calls recently from practitioners regarding clients who received a 2016 1099G for their timely-filed 2014 return instead of a 2015 1099G as they expected. In these instances, the taxpayers filed by the extended deadline, applied their 2014 overpayment forward to their 2015 estimated tax, and reported the California overpayment as income on their 2015 federal return.

We properly credited their 2014 overpayments to their 2015 estimated tax as requested. However, due to the implementation of our new return processing systems in the latter part of 2015, some 2014 overpayments (even though properly credited to taxpayers' accounts in 2015) weren't posted to our accounting systems until early 2016. This resulted in us issuing their 2014 1099Gs for the 2016 tax year.

If your client timely filed their 2014 return, applied their 2014 overpayment to 2015 and reported the income from the overpayment for federal purposes in 2015, but received a 2016 1099G from us, they may contact us and we will revise the 1099G accordingly.

## Ask the Advocate



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

In our January 2017 issue, we provided you with an overview of the Taxpayers' Bill of Rights Hearing held on December 8, 2016.

This month, we share some of the responses provided regarding Power of Attorney, Level of Service, Policy Regarding Other State Tax Credit, the Texas Franchise Tax, and the Failure to Respond Penalty.

### **Power of Attorney Declaration (POA) Submissions**

Our goal is to provide representatives with timely assistance to help their clients resolve their tax matters. We sincerely appreciate the feedback that has been provided. It's made us look closer at the contacts we've received and our procedures. We agree that we can do better in this area and have obstacles to overcome. We are committed to making improvements in order to provide the level of service representatives have traditionally received from us. Improving the POA process is a top priority for us and we are taking both short and long-term steps, investing the time and effort necessary to make changes so that representatives are able to conduct business with us efficiently and effectively.



In the short term, to decrease processing timeframes we have hired more than 50 additional POA processing staff, beginning in July, 2016. We have also improved procedures to enable staff to interact with representatives quickly and easily, and in most cases without a processed POA declaration. This is done through the process of “implied consent” which occurs when a taxpayer’s representative can provide enough information from an FTB notice or a taxpayer’s account to indicate that the representative has authorization to discuss specific account information. In general terms, to assist a representative and establish authorization, our customer service staff need to verify the representative’s identity and establish the right-to-know, using details from an FTB notice, transaction, or sufficient taxpayer information and details. We recommend representatives obtain details from their client prior to calling us.

While the concept of implied consent is not new at FTB, given the changes to our POA process, many practitioners now rely more on implied consent to resolve their clients’ issues. For this reason, we assembled an enterprise-wide team early this year to review our implied consent procedures. Team members from Filing, Collections, Legal, Disclosure, Audit and the Taxpayers’ Rights Advocate participated. We have clarified and simplified our procedures and are currently in the process of training our contact center staff, supervisors and managers. Our goal is to ensure that we provide representatives with consistent service, regardless of which business area they contact. If at any time you are unable to obtain information using implied consent and feel that you have provided the information necessary to do so, you may escalate the contact to a supervisor or manager.

We also understand that implied consent may not be the solution for every practitioner and every situation; there will always be a need for POAs. For this reason, longer-term efforts are underway to improve and address other areas of concern you have voiced with POA declarations. We have embarked on a comprehensive review of our POA process that began in September 2016. We are committed to making improvements in the POA process where possible. We are carefully looking at all phases of the POA process, including the various POA forms, different privileges based on need, and access to MyFTB. We are identifying areas that are “pain points” for the tax professional and working to alleviate them so we can help you serve your clients better.

Finally, if you have submitted a POA for processing and it has not been worked within our processing timeframes, you may contact us and request expedited processing.

## **Level of Service**

We understand the importance of our Practitioner Hotline to you, especially during peak filing season. We are committed to providing an acceptable level of service and continuously seek out opportunities to improve our level of access and the service we provide to our customers.

While our permanent staffing levels for the Practitioner Hotline and average wait times have remained constant, we have added technology solutions which provide options for you to self-serve and more quickly resolve your clients' issues. These include Live Chat, which has a high level of access, and Secure Chat, which allows you to discuss confidential taxpayer information with our customer service staff. While these new service channels are not intended to replace the traditional methods of communicating with us, they do offer our customers additional ways to contact us.

However, we understand that there will always be certain issues and circumstances that require direct phone contact with a customer service staff in a timely manner. We are adding processes across the department to better manage the flow of notices we send, which should help level out the volume of calls we receive, overall reducing wait times. We will also continue redirecting staff to the Practitioner Hotline during peak periods.

Finally, we have implemented a Customer Service Dashboard revising the Processing Time Frames page, to also include contact center wait times. Check out the Customer Service Dashboard article in this issue of Tax News.

## **Clarify Policy Regarding Other State Tax Credit and the Texas Franchise Tax**

On January 12, 2016, we issued Technical Advice Memorandum 2016-01 indicating that payment of the Revised Texas Franchise Tax (RTFT) is not eligible for the other state tax credit (OSTC) for any taxable year because the RTFT is not a net income tax as required by Revenue and Taxation Code sections 18001 and 18002. Our prior guidance indicated the RTFT may be eligible for the OSTC in some cases based upon a factual analysis; however, this guidance was withdrawn by FTB Notice 2014-01 on January 17, 2014.

We drafted Legal Ruling 2017-01 that affirms the position taken in our Technical Advice Memorandum 2016-01 and provides an analysis and examples to give further guidance to taxpayers.

We received feedback from taxpayers following the issuance of Technical Advice Memorandum 2016-01, and we evaluated each of the legal arguments made in support of those taxpayers' positions prior to drafting the legal ruling in an effort to ensure that the legal ruling was well reasoned and provided appropriate guidance to taxpayers.

In the event that a taxpayer relied upon our prior guidance in deciding to file a return claiming the OSTC for payment of the RTFT for tax years prior to 2015, such reliance will be one factor taken into consideration when determining whether cause has been shown to abate any penalties imposed as a result of the disallowance of the OSTC.

### **Failure to Respond Penalty**

We currently impose a "failure to provide information requested/failure to file a return upon demand"<sup>1</sup> penalty on any taxpayer that fails to provide requested information, or fails to file a return after notice and demand. The penalty is equal to 25 percent of the total tax liability assessed without regard to any payments or credits. This penalty may be waived for reasonable cause and not willful neglect.

In response to your concerns that a taxpayer may be assessed the penalty even though they have moved out of the state, it should be noted that the penalty is only applied if the taxpayer has a tax due and a filing requirement. Presumably, even if the taxpayer moved out of California, they would still be aware of their filing requirement in California, if any. Additionally, if that taxpayer can prove that the failure to file was due to reasonable cause and not willful neglect, the provisions of our statute allow the penalty to be abated in those cases.

We appreciate your concern and we are currently completing a comprehensive review of all penalties we assess. Once we've completed our review and determined where improvements can be made, we are committed to pursuing all avenues available to us, including possible legislation.

### [Inside FTB](#)

#### [Improvements made to our use of W2 data](#)

As we enter into our busiest time of the year, we are excited to tell you about some improvements that we made in our use of W2 data.

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<sup>1</sup> CR&TC Section 19133.

We anticipate these changes will improve our customers' experience this year.

- We are expanding how we use both Employment Development Department (EDD) withholding information and taxpayer-provided withholding information to verify claimed withholding. If the information looks suspicious, we will refer the return to our Fraud Detection area for review. We believe this procedure will eliminate our need to make many of the adjustments that affected taxpayers last year.
- We enhanced the information page that displays to our Return Analysis staff, who review tax returns for errors. The page now provides staff with a table that shows wage and withholding information by quarter. This page will improve the decisions made by staff when they identify discrepancies.
- We revised the language for the withholding adjustment printed on the Notice of Tax Return Change (NTRC). The revised language provides clear information on why we adjusted their claimed withholding and provide clear instructions on what they need to do if they disagree.
- We updated our procedures and trained staff on how to handle discrepancies across the department. This will ensure that you and taxpayers will be treated in a consistent manner regardless of who the contact is at FTB (Taxpayer Services Center Section, Collection contact center, field office, Tax Practitioner Hotline, etc).
- We are collaborating with EDD and forming a team to ensure we share and use accurate data to verify taxpayers' wage and withholding information.

We feel these enhancements will improve our customers' experience and will allow us to make timely and appropriate adjustments this tax season.

## MyFTB Corner

[Submitting a new POA declaration as a representative, but want to retain existing POAs?](#)

When an individual taxpayer or business representative files a Power of Attorney Declaration (POA) with us, it automatically revokes any prior POAs they filed with us that have overlapping tax years. To prevent the automatic revocation of a POA, the individual taxpayer or business representative must select the POA they want to retain on the **Revoke or Retain Existing POA** page in MyFTB.

Eligible business representatives<sup>1</sup> may also use MyFTB to submit a new POA for a taxpayer's account. However, they cannot access the **Revoke or Retain Existing POA** page. This page is only available to individuals or business representatives (authorized members of the business). For

confidentiality reasons, business representatives, even those with a POA on file with us, are not allowed to see all other POAs on the account.

To submit a new (additional) POA using MyFTB with *different* privileges than those of the representative and retain a prior POA, a business representative will need to check the box in Part 6, **Retention or Revocation of Prior POA**, on the new POA and attach copies of all pages of the POA(s) they are retaining with the new POA when submitting the POA using MyFTB.

If a POA business representative has the privilege to add another eligible business representative to their POA, and wishes to grant their *same* privileges to that business representative, they can simply edit the existing POA using MyFTB. They can add the new business representative without having to file a new POA or provide copies of prior POAs they wish to retain.

<sup>1</sup> An eligible business representative must have one of the following to create a Tax Preparer account in MyFTB:

- Preparer Tax Identification Number (PTIN).
- Electronic Filing Identification Number (EFIN).
- California CPA Number.
- California Tax Education Council (CTEC) number.
- California State Bar number.

## All About Business

### Swart Enterprises decision

On January 12, 2017, the California Court of Appeal issued an opinion finding that Swart Enterprises, an Iowa Corporation was not doing business in California and therefore not subject to the \$800 minimum franchise tax.

We will not be appealing the Court of Appeal's decision and issued FTB Notice 2017-01 providing additional information about the decision.

## 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.