



# Tax News

October 2016

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## California conforms to federal business entity due date changes

### Original due dates for filing and payment

On September 14, Governor Brown signed AB 1775, which generally conforms due dates for California business entity tax returns to the changes to federal due dates for the 2016 tax year. For 2016 returns due in 2017, partnership returns will be due the 15th day of the third month following the close of the taxable year (March 15, 2017 for calendar year partnerships). C Corporation tax returns will be due the 15th day of the fourth month (April 15, 2017, for calendar year corporations, extended to April 18 due to the 15th falling on a Saturday.) Due dates for Limited Liability Company (LLC) returns classified as partnerships will be the same as the partnership due date, LLC returns classified as corporations will be due on the corporation due date.

For Single-Member LLCs (SMLLCs) owned by pass-through entities (S corporations, partnerships, and LLCs classified as partnerships), the original due date of the return is the 15 day of the 3rd month following the close of the taxable year. For all other SMLLCs, the original due date of the return is the 15th day of the 4th month following the close of the taxable year of the owner.

### Extensions

Revenue and Taxation Code Section 18604 allows us to set filing extension periods for corporations. We plan to issue a formal FTB Notice soon generally keeping the extended due date for C Corporation returns as the 15th day of the 10th month after the tax year (October 15 for calendar year corporations, reducing the current seven month extension to six months due to the later original due date). The extended filing due date for S Corporations will be the 15th day of the 9th month after the tax year (September 15 for calendar year S Corporations, reducing the current seven month extension to six months to match the federal extended due date). The extended filing due date for Exempt Corporations will be the 15th day of the 11th month after the tax year (November 15th for calendar year Exempt Corporations, reducing the current seven month extension to six months to match the federal extended due date).

Revenue and Taxation Code Section 18567 limits filing extensions for partnerships to six months after the original due date. As AB 1775 changes the partnership original due date from the 15th day of the 4th month to the 15th day of the third month (April 15 to March 15 for calendar year partnerships), We plan to allow the maximum six-month extension permitted under the statute, which will move the current October 15 extended filing due date to September 15, 2017, for 2016 calendar year partnership returns. For LLCs electing to be taxed as corporations, the

corporation extension dates will apply. For LLCs electing to be taxed as partnership, the partnership extension dates will apply. Note that if the 15th falls on a weekend or holiday, returns may be filed the next business day.

## Amended rules on market-sourcing for intangible property finalized

Tax preparers should be aware of important new changes related to the market-based sourcing regulation.

Recent amendments to the California Code of Regulations, Title 18, Section 25136-2 have been approved by the Office of Administrative Law and have been sent to the Secretary of State for finalization. These amendments are effective on January 1, 2017 and will be operative for most taxpayers for tax years beginning on or after January 1, 2015.

The new amendments provide:

- The definition of and assignment rules for "marketable securities"
- Assignment rules for dividends and goodwill, and
- Assignment rules for interest

For tax year 2015, the new amendments may require some taxpayers to file an original return if they were not previously aware they had a filing requirement.

A taxpayer might have to amend a return when they did not properly assign the sale under the new assignment rules. For example, a taxpayer may have mistakenly assigned investment interest to the location of the customer, rather than the location where the investment is managed, as is required by the new rules.

Another example of when a taxpayer might need to file an amended return is when a taxpayer discovers they have California sales in the form of marketable securities. When the taxpayer is in the form of a partnership or LLC, the filing of the amended return will also require its partners and members to amend their returns.

Please see the matrix below for additional information on a taxpayer's eligibility to file in a group return:

	Taxpayer Filing Status	Can Taxpayer File In A Group Return?	Can Taxpayer File In Multiple Group Returns?
<b>Nonresident</b>	Filed Own 540NR	No	No
<b>Nonresident</b>	Filed In Group	Yes	Yes
<b>Nonresident</b>	Not Filed Return	Yes	Yes
<b>Resident</b>	Filed 540	No	No
<b>Resident</b>	Not Filed Return	No	No

FTB will abate applicable penalties as allowed by law. This will be explained in a Franchise Tax Board Notice which will be issued at a later date.

### Are you and your client protected from identity theft?

Recently, tax professionals have been the target of criminals for identity (ID) theft.

Among other reasons, tax professionals work with a large amount of sensitive data; stolen data can be used to file fraudulent returns rather inexpensively, and the return to criminals is very high. What’s more, smaller firms make an attractive target because in general, they have fewer security controls and it is easier to execute an attack.

**Did you know that phishing scams are the number one attack method?** These scams entice the user to click on an email attachment, which contains malicious software that tracks keystrokes and may identify password information. You can minimize exposure to phishing scams by not opening messages from unknown senders. Make sure your staff members are trained on the dangers of phishing scams in the form of e-mails, texts, and calls.

Whether you have a large or small practice, there are measures to reduce the likelihood of a successful attack. Employ appropriate security controls for your environment based on the size, complexity, nature and scope of your activities. Security controls are necessary to protect the confidentiality, integrity and availability of your clients’ sensitive information.

Other ways to protect your business from cyber criminals: range from locking doors to restricting access to paper or electronic files to installing antivirus software with automatic updates to recognize viruses and malware on all computers on your business network. Frequently back up and secure data on a flash drive or external hard drive and store in a fireproof safe. Use strong passwords and don't share them including your MyFTB password. These are only a few examples of ways to reduce ID theft from your office.

For more information on how you can protect client information and your business, see IRS Publication 4557, [Checklist for Safeguarding Taxpayer Data](#). It contains a series of check-lists for creating a comprehensive security plan that addresses functions such as administrative activities and security measures for facilities, personnel, information and computer systems, and electronic media, as well as how to certify information systems for use by your business.

Take some time to review IRS Publication 4557 and if you do not have the knowledge or skills to complete the checklist tasks, you can use the tasks as a guide to hire someone who can. Remember confidential information is only confidential as long as it is protected.

### [IRS warns of fake tax bill emails](#)

Generally, the scam involves an email that includes the fake CP2000 as an attachment.

The IRS and its Security Summit partners (the state tax agencies and the private-sector tax industry) recently issued an alert to taxpayers and tax professionals to be on guard against fake emails purporting to contain an IRS tax bill related to the Affordable Care Act (ACA). The IRS has received numerous reports nationwide of scammers sending a fraudulent version of CP2000 notices for the 2015 tax year. Generally, the scam involves an email that includes the fake CP2000 as an attachment.

The CP 2000 notices appear to be issued from an Austin, Texas, address. The underreported issue is related to the ACA; and the payment voucher lists the letter number as 105C. The issue has been reported to the Treasury Inspector General for Tax Administration for investigation.

The CP2000 is a notice commonly **mailed** by IRS to taxpayers through the U. S. Postal Service (USPS). The CP2000 and other IRS notices are **never** sent to taxpayers as part of an email. FTB

also **never** sends a notice to a taxpayer via email. We, like the IRS, always send our notices through the USPS.

To date, we have not been made aware of similar scam involving fraudulent FTB notices. However, this doesn't mean that you shouldn't be on guard against similar or other scams. Once scammers find success with a certain method, they duplicate, copy, and revise it, creating many variations until it is no longer successful.

So what do you do if you receive a notice from FTB and have concerns about its authenticity? Taxpayers and tax professionals generally can do a keyword search on [our website](#) for any notice they receive from us. There is generally also a phone number provided with each notice that you can call and that can also be found on our website. We have a page with information about our common bills and notices and a page providing information and how to report scams, identity theft, and tax fraud. For taxpayers with a MyFTB account, they can access their account to see copies of any notices we have sent to them. This feature is also available for representatives with a Power of Attorney declaration on file with us.

Finally, if after taking the above steps, you still have concerns about an FTB notice your client received, have a copy of the notice sent to your client available and contact our Practitioner Hotline at 916.845.7057. The hotline is open 8 a.m. to 5 p.m. Monday through Friday.

## 2016 tax schedule

We published the 2016 state tax brackets, which are annually adjusted for inflation.

Tax filing requirement thresholds, the standard deduction, and certain credits were adjusted along with income tax brackets based on the inflation rate of 2.1 percent, as measured by the California Consumer Price Index for all urban consumers from June 2015 to June 2016. Last year, California had an inflation rate of 1.3 percent.

Below are some of the changes:

	2016	2015
<b>Standard deduction for single or married-filing-separate taxpayers</b>	\$4,129	\$4,044

	2016	2015
Standard deduction for joint, surviving spouse, or head-of-household taxpayers	\$8,258	\$8,088
Personal exemption credit for single, separate, or head-of-household taxpayers	\$111	\$109
Personal exemption credit for joint filers or surviving spouses	\$222	\$218
Dependent exemption credit	\$344	\$337
Renter's Credit available for single filers with adjusted gross incomes of...	\$39,062 or less	\$38,259 or less
Renter's Credit available for joint filers with adjusted gross incomes of...	\$78,125 or less	\$76,518 or less

We also updated the minimum adjusted gross income amounts for determining whether or not taxpayers must file a state tax return. For example, most single people under 65 years old with no dependents would not need to file a tax return unless they have adjusted gross income of \$13,278 or more in 2016. However, these individuals should still file if they are due a refund or are eligible for the Earned Income Tax Credit.

Other tax credits affected by indexing include the Joint Custody Head of Household Credit, Dependent Parent Credit, and Qualified Senior Head of Household Credit.

The complete 2016 tax rates and exemptions are available on our website [ftb.ca.gov](http://ftb.ca.gov).

### Information return news – New due date for Form 1099-MISC

We will follow Public Law 114-113, Division Q, Section 201, which requires Form 1099-MISC to be filed on or before January 31, 2017, when reporting nonemployee compensation payments in box 7. This means that effective January 31, 2017, 1099-MISC Information Returns containing non-employee compensation in Box 7 must be filed with us by January 31. This includes tax year 2016 1099-MISC Information Returns.

File all other 1099 Information Returns by February 28, 2017, if you file on paper or by March 31, 2017, if you file electronically.

For more information please visit us at: [ftb.ca.gov](http://ftb.ca.gov) and search for **Information Returns**.

## Filing an information return?

### Instructions

Any person, including a corporation, partnership, individual, estate, or trust that makes certain reportable payments during a calendar year, must file the appropriate information returns to report those transactions with the Internal Revenue Service (IRS) and Franchise Tax Board (FTB). Generally, our reporting requirements are the same as IRS' reporting requirements. See [A Guide to Information Returns](#) on the IRS website for a list of all the required returns and what to report.

## Electronic filing

If you submit more than 250 Information Returns you must use our Secure Web Internet File Transfer (SWIFT) System. SWIFT is the secure file transfer system all external customers use for submitting confidential information to us via the Internet. SWIFT uses Axway's Secure Transport software. Transmitters should use SWIFT for all Internet file transfers made to us.

The SWIFT Transmitter User Guide contains information your business will need to:

- Successfully transmit data through our SWIFT system
- Request an account to use SWIFT
- Transmit files to or receive files from FTB

## Paper filing

If you file paper information returns with IRS, do not send a paper copy to us. IRS will forward the information to us, whether you are located in or out of California.

If you have an exception that requires you to report something different for federal and state purposes, such as a different dollar amount, file separate returns with IRS and us.

While we encourage you to file electronically, you may file up to 249 paper returns by the due date of February 28. If you file 250 or more returns, you must file electronically. If you must file on a paper return with us, mail it to:

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

## IRS combined federal/state filing program

Through the Combined Federal/State Filing (CF/SF) Program, the IRS, Technical Services Operation (TSO) forwards original and corrected information returns filed electronically to participating states free of charge for approved filers. Separate reporting to those states is not required.

### Only the following forms can be filed through the combined federal/state filing program:

- Form 1099-B, Proceeds from Broker and Barter Exchange Transactions
- Form 1099-DIV, Dividends and Distributions
- Form 1099-G, Certain Government Payments
- Form 1099-INT, Interest Income
- Form 1099-K, Payment Card and Third Party Network Transactions
- Form 1099-MISC, Miscellaneous Income
- Form 1099-OID, Original Issue Discount
- Form 1099-PATR, Taxable Distributions Received From Cooperatives
- Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
- Form 5498, IRA Contribution Information

### You still must file the following returns directly with FTB:

- 1098
- 1098-E
- 1098-T
- 1099-A
- 1099-C
- 1099-LTC
- 1099-Q
- 1099-S
- 5498-ESA
- 8300 (IRS/FinCEN form)
- W2-G

To request approval to participate in the IRS Combined Federal/State Filing Program, see [IRS Publication 1220, Specifications for Filing Forms 1098, 1099, 5498, and W-2G Electronically](#) or call IRS Information Reporting at 866.455.7438. For further information call the TSO Customer Service Section at 866-455-7438 or at 304-579-4827 (not toll-free).

## When to file

- File Forms 1097, 1098, 1099, 3921, 3922, or W-2G on paper by February 28, 2017, or March 31, 2017, if filing electronically. (File Form 1099-MISC by January 31, 2017, when reporting nonemployee compensation in Box 7.)
- File Forms 5498, 5498-ESA, 5498-QA, and 5498-SA by May 31, 2017.

## New "stand alone" electronic payment process via e-File

Contact your software provider to see if they are supporting "stand alone" EFW payments.

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
  - Estimate
  - Extension
- 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.

## FTB Notice 2016-02: Treatment of existing water's edge elections after a law change

FTB Notice 2016-02 explains how we will treat an otherwise valid water's-edge election with the new law change.

We recently issued FTB Notice 2016-02 explaining how we will treat an otherwise valid water's-edge election when a unitary foreign affiliate of the water's-edge combined reporting group becomes a taxpayer "doing business in California" due to an addition to Revenue and Taxation Code (R&TC) Section 23101, specifically subdivision (b).

The California Legislature amended R&TC Section 23101 in 2010, adding subdivisions (b) through (d), operative for taxable years beginning on or after January 1, 2011.

Subdivision (b) outlines additional circumstances that constitute "doing business in California." Corporations that are doing business in California are subject to the franchise tax, i.e., they are taxpayers. Consequently, a corporation that was not previously subject to the franchise tax could become subject to the franchise tax, i.e., become a taxpayer due to the addition of subdivision (b).

The Notice provides that if certain conditions are met, we will not seek to terminate the water's-edge election of the water's-edge combined reporting group that is unitary with a foreign affiliate that is now a taxpayer, but will instead apply specific treatments outlined in the FTB Notice.

## Employers must alert workers about possible California EITC eligibility

Employers called to send a notice to employees at about the same time that W-2 forms are delivered.

Governor Brown signed Assembly Bill 1847 (Stone), which requires employers to let employees know they may be eligible for California's Earned Income Tax Credit (EITC).

AB 1847, which takes effect on January 1, 2017, updates the Earned Income Tax Credit Notification Act, which already requires that employers alert employees that they may be eligible for the federal Earned Income Tax Credit.

The Act calls on employers to send a notice to employees at about the same time that W-2 forms are delivered.

Governor Brown and the Legislature created the state's first refundable EITC in 2015 in an effort to assist the state's low-income families. The California EITC is designed to supplement the federal EITC.

## Business tax collection help

Prior to January 2016, the City/County Business Tax (CCBT) Program allowed only city participation. Effective January 2016, as a result of Assembly Bill 279 (Dodd, Stats. 2015, ch. 180), counties in California became eligible to participate in the CCBT program. CCBT program authorizes us to disclose limited confidential tax data to participating county tax officials. Participating counties would provide data to us on local business taxpayers. This exchange of data helps us identify businesses who are not filing required income tax returns and provides a county potential leads in finding unlicensed businesses in their jurisdiction.

We may only provide a county with limited confidential tax data for taxpayers with an address within the county's jurisdiction.

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 Board of Supervisors (if required), or a copy of the county municipal code
- A completed Safeguard Questionnaire (this questionnaire ensures the protection of taxpayer information)

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

Counties interested in participating in the program should contact [LocalGovtLiaison@ftb.ca.gov](mailto:LocalGovtLiaison@ftb.ca.gov) or at 916.845.6304 by January 16, 2017.

## Free FTB Form 588 webinar for withholding agents, payees, and tax practitioners

During this 15-minute webinar designed for withholding agents, payees, and tax practitioners, we cover the following key topics for FTB Form 588, Nonresident Withholding Waiver Request:

- Form 588's purpose.
- When and why withholding is required.
- How and when to submit Form 588 to request a waiver from California source income to nonresident payees.
- Our approval and denial process for waiver requests.
- Resources and contact information.

Register **anytime** to view our prerecorded webinar.

Go to our California Source Income Withholding Webinars webpage to view other webinars.

For more information on California's nonwage withholding program, go to our website.

## Ask the Advocate



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

### 2016 Advisory Board Meeting

Late summer and early fall are a busy time for me and my staff. One of the more important events for September was our Executive Officer's annual Advisory Board Meeting, which my office hosts.

The Advisory Board is made up of 20 invited representatives from industry, state and federal government, in addition to FTB staff. The Board meets to provide insight and contributions to our Executive Officer from a non-FTB point of view on the various projects and programs we administer and to provide input on upcoming initiatives that impact FTB, the way we do business, and our staff.

Being directly involved with this meeting allows me and my staff to gain valuable insight into the issues, challenges and concerns faced by industry and our government partners. The format of this year's meeting consisted of presentations from FTB staff and two breakout sessions. Here are some of the highlights from the meeting to give you an idea of what we presented to the attendees and what we covered in the breakout sessions. This year's presentations covered:

- FTB's updated Strategic Plan. Based on input from last year's meeting, we are making changes in order to better reflect our goals of taxpayer-centric service and effective enforcement.
- An update of significant litigation involving FTB, including cases heard at the United States Supreme Court, California Supreme Court, and other lower courts.
- An update of pending regulations, including those covering like-kind exchanges, withholding issues, market-based sourcing rules, apportionment of income from space transportation activities, and several other topics.
- Emerging issues, including changes to tax forms, amended return processing, data security as it pertains to MyFTB, and for corporations, improvements to the dissolution and revivor processes.
- Discussion on getting a federal conformity bill passed.

The two breakout sessions covered:

- Market-based sourcing, nexus standards, and single sales factor apportionment.
- Practitioner feedback regarding MyFTB and Power of Attorney processing, updates for refunds and withholding, and our various customer service channels.

We received many positive comments from attendees about the meeting, including FTB's willingness to listen to their input and carefully consider it when going forward with the many programs, policies, and initiatives that were discussed that day. In the coming months, I look forward to letting you know more about what's coming for the future and what changes you can expect in the way we do business and interact with you, the tax professional community. I and my staff will keep you updated through Tax News, the many California Tax Updates we present statewide to various groups, and through our external website – stay tuned!

## MyFTB Corner

[Send secure message](#)

### What is send secure message?

We introduced a new channel for communication with the implementation of the enhanced MyFTB, *Send Secure Message*. This new feature allows you to electronically send us a secure message on behalf of your client with the option to add attachments, and in most cases, eliminate the need to mail paper.

### What are the benefits of using send secure message?

Send Secure Message is a faster and more efficient way to communicate with us. It allows you to send correspondence electronically and optionally attach supporting documentation 24/7. Once the information is submitted, it is automatically associated to your client's account allowing any of our agents to view the information.

A great benefit of this new functionality is it allows you to send information on behalf of your client any time of day, and if you contact us; our agent can view this information while you are on the phone. Additionally, if our agent requests additional information during a phone call, this option allows you to upload and send the requested information while on the call. Sending a message with this option also allows us to respond online.

**Note: While you do not need an active Power of Attorney (POA) to send a secure message to FTB, you will need one to view any response or correspondence we send to your client. We encourage you to file a POA online to view future FTB notices or correspondence sent to your client.**

## What should NOT be submitted using this option?

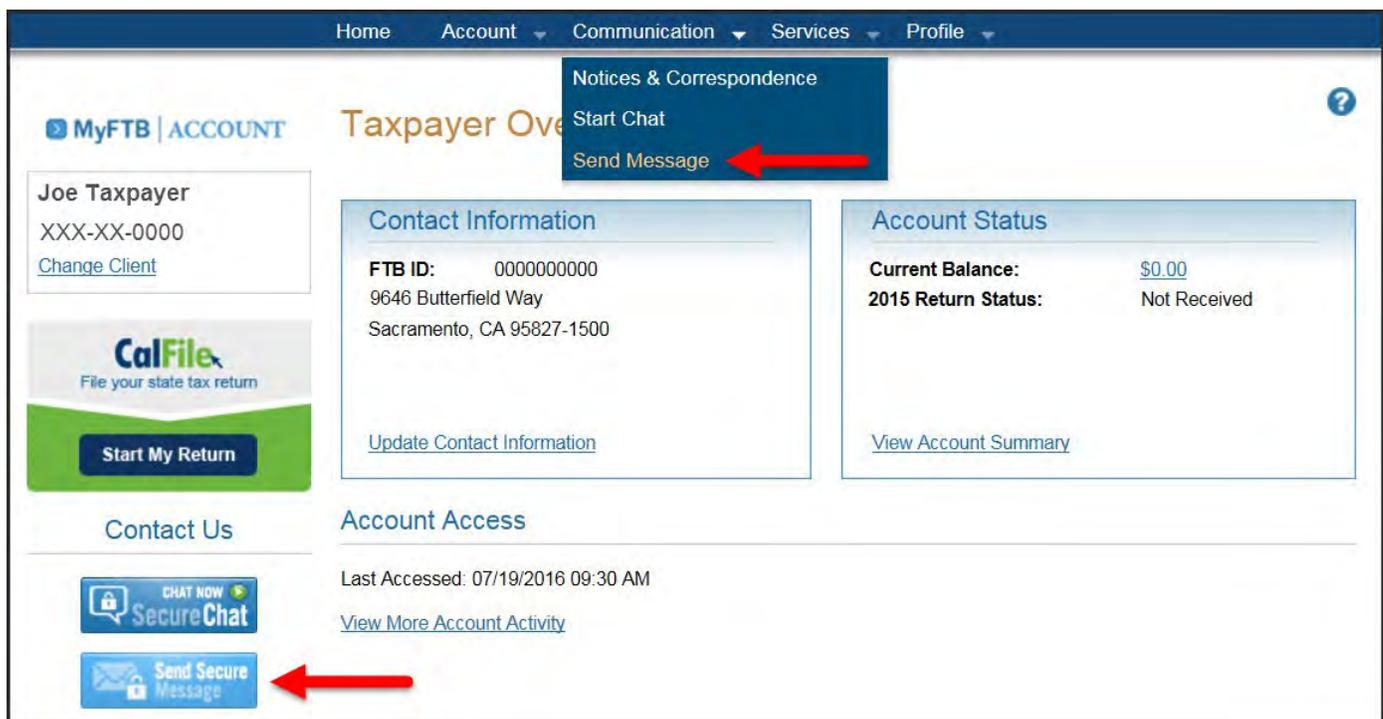
Do not submit live tax returns.

Do not submit a POA Declaration for processing. Review Tax Preparer: How To Submit a FTB Form 3520, Power of Attorney Declaration.

Do not submit a protest. To respond to a proposed assessment that may not be protested or viewed online, select the **send FTB a message** link from the **Proposed Assessment List** page. Select **Proposed Assessments** from the **Account** dropdown menu from your client's account.

## How do I submit a message?

From your client's account, select **Send Message** from the **Communication** dropdown menu, or select the **Send Secure Message** button in the lower left of the page.



The screenshot displays the MyFTB Account interface. At the top, a navigation bar includes links for Home, Account, Communication, Services, and Profile. A dropdown menu is open under 'Communication', showing options for Notices & Correspondence, Start Chat, and Send Message, with a red arrow pointing to 'Send Message'. The main content area features a 'Taxpayer Overview' section for 'Joe Taxpayer' (XXX-XX-0000) with a 'Change Client' link. Below this is a 'CalFile' section with a 'Start My Return' button. To the right, 'Contact Information' and 'Account Status' boxes are visible. The 'Account Status' box shows a 'Current Balance' of \$0.00 and a '2015 Return Status' of 'Not Received'. At the bottom left, there is a 'Contact Us' section with a 'CHAT NOW Secure Chat' button and a 'Send Secure Message' button, with a red arrow pointing to the latter. The 'Account Access' section shows the last accessed time as 07/19/2016 09:30 AM and a 'View More Account Activity' link.

## Message information

Use the **Subject** field dropdown list to select the subject of your message. This is a required field and will help deliver your message to the correct business area.

Subject	Business Area
General Assistance	Filing Services
A Request or Demand for a Tax Return	Filing Enforcement
Non-Wage or Real Estate Withholding	Withholding Services and Compliance
My Tax Balance Due	Collections
A Notice of Tax Rtn Change/Stmt of Tax Due	Filing Services
My CA Return under Audit	Audit
Reporting my Federal Audit	Audit

**Message Information**

\* **Subject:** I want help with:

**Attention:**

**Tax Year:**

\* **Message:**

General Assistance

A Request or Demand for a Tax Return

Non-Wage or Real Estate Withholding

My Tax Balance Due

Notice of Tax Rtn Change/Stmt of Tax Due

My CA Return under Audit

Reporting my Federal Audit

←

2000 characters remaining

- If you are already working with one of our agents on this matter, enter their name in the **Attention** field. Otherwise, leave this field blank.
- Enter a tax year for your message in the **Tax Year** field, if applicable.
- Enter your message, up to 2,000 characters, in the **Message** field. This is a required field. Tell us if you want this message associated to a joint taxpayer and include the joint taxpayer's full name.

**Message Information**

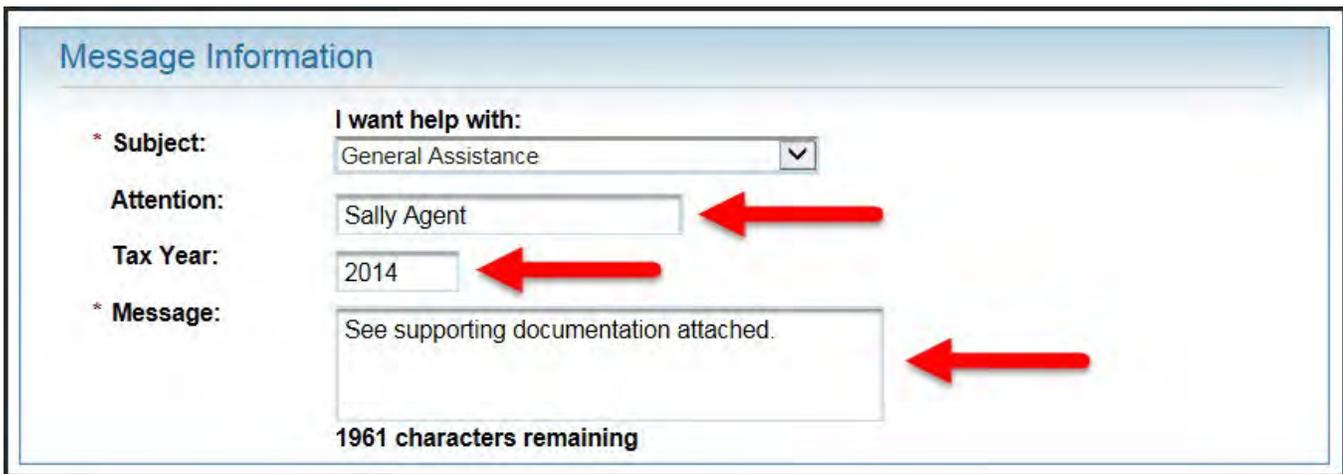
\* **Subject:** I want help with:  
General Assistance

**Attention:** Sally Agent

**Tax Year:** 2014

\* **Message:** See supporting documentation attached.

1961 characters remaining



**Tip:** To request a tax return to be viewable online, select *General Assistance* as the **Subject**. Make your request in the **Message** field. Include the tax year and form type of the tax return to be made available.

### Attachments

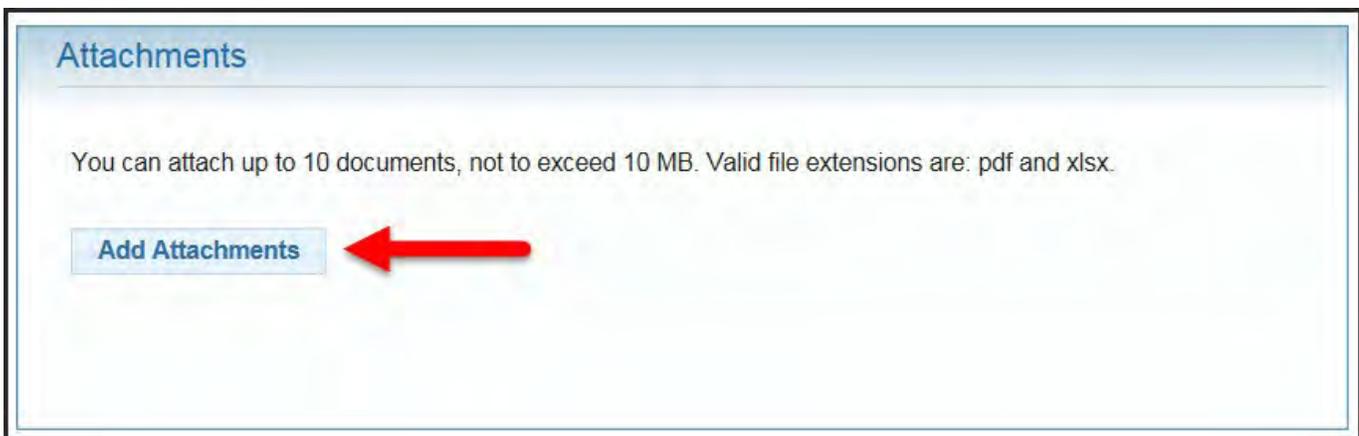
Use this option if you have relevant documents to attach.

- Select the **Add Attachments** button and follow the instructions.

**Attachments**

You can attach up to 10 documents, not to exceed 10 MB. Valid file extensions are: pdf and xlsx.

**Add Attachments**



- When you are ready to send your message, select the **Submit** button.

**Attachments**

You can attach up to 10 documents, not to exceed 10 MB. Valid file extensions are: pdf and xlsx.

**Add Attachments**

**Submit** **Cancel**

**Tip:** You can view messages you've initiated on your client's **Notices and Correspondence** page.

### When can I expect to receive a response to my message?

Allow up to 30 business days for us to respond to your message. If you do **not** have an active POA declaration for your client, you will not be able to see our response online. Remember, if you sent us a message and you call, any agent can access and view your message including attachments to assist you with resolving your client's tax matters.

Take a look at all Tax Preparers How To's on our website by selecting [Learn More](#) below the MyFTB logo, then find the How To's at the right of the page.

### "NEW Monthly Column" Doing Business in California

#### Information on Doing Business in California

We made improvements for easier access to the "doing business" and related information web pages.

Our website, [ftb.ca.gov](http://ftb.ca.gov), contains a wealth of information on Doing Business in California, such as the definition of doing business in California under Revenue and Taxation Code Section 23101, Single-Sales Factor, Assignment of Sales, Public Law 86-272 and Nexus issues. The information can be accessed under the Businesses tab, Popular column, Doing Business in California link. The same information can also be accessed under the Tax Professionals tab, Resources column, Doing Business in California link. Another way to access the information is

by using the Search tool located in the top right corner of the web page. Search terms such as “doing business” and “business in California” will retrieve the Doing Business in California web page. Search terms containing the word “market”, such as “market rule,” “market assignment,” “market based rule”, and “market based sourcing” will retrieve the Single-Sales Factor and Assignment of Sales web page.

We are open to improving these web pages. We are happy to consider any feedback you have on how we can improve these web pages by filling out "is there anything wrong with this page?" at the bottom of the web pages.

## All About Business

### Business income: Where are we today? Apportionment - No sales (startups)

Startups often have losses in the early years but they may have no revenue (sales). The question is how should such losses be apportioned?

We received many requests for guidance on the issue of apportionment, for companies (mostly startups) that have organized in California, registered with the Secretary of State (SOS) to do business in California, or otherwise meet the legal definition of doing business in California (R&TC Section 23101), but have no current year sales.

Startups often have losses in the early years but they may have no revenue (sales). The question is how should such losses be apportioned? These corporations will need to know how much of their current year net operating loss (NOL) to apportion to California for use in future years when the company is expected to have sales and income.

### Filing requirement

Every corporation that is organized in California, registered with the SOS to do business in California, or doing business in California is subject to the franchise tax, and therefore, has a filing requirement. In cases where a franchise taxpayer has losses in California, it is required to file a return and pay the minimum franchise tax of \$800.<sup>1</sup>

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<sup>1</sup> Corporations that incorporate or qualified to do business in California on or after January 1, 2000, do not have a minimum tax their first taxable year (R&TC Section 23153(f)).

## **Computation of the franchise tax**

If a taxpayer has no sales and its business activity takes place entirely within California in a taxable year, it is not an apportioning taxpayer and its losses would be sourced to California and carried forward into future taxable years. If the trade or business of a taxpayer is conducted partly within California and partly elsewhere such that the taxpayer is subject to tax in more than one jurisdiction, the taxpayer must apportion its income under the Uniform Division of Income for Tax Purposes Act, R&TC Section 25120-25137.

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 be apportioned using the single-sales factor formula. Under the single sales factor apportionment formula now applicable to most taxpayers, a company that has no sales does not have a sales factor. Thus, although such taxpayers will likely be responsible for filing a return and paying the minimum franchise tax based on their business activity in this state, the question arises as to how losses generated by such companies should be apportioned (sourced) so they may be properly applied in future taxable years.

An apportionment result must fairly reflect the extent of a taxpayer's business activity in California. R&TC Section 25137 states that when the standard allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act (R&TC Sections 25120-25139) do not fairly represent the extent of a taxpayer's business activity in California, the taxpayer may petition for the use of an alternative method to accomplish an equitable allocation or apportionment of income to California.

Because a taxpayer with no sales has no sales factor, such a result would not fairly reflect its business activity in California. For this reason, an alternative apportionment methodology might be appropriate. In such situations, a taxpayer with no sales should file a petition with us for relief under R&TC Section 25137. The petition should set forth the facts demonstrating that the taxpayer has no sales for the taxable year in question and should suggest a reasonable alternative to single sales factor apportionment that will result in sourcing its losses in a manner that fairly reflects the extent of the taxpayer's business activity in California. Our staff will work with such taxpayers to fashion appropriate relief based on the facts and circumstances of each case.

## **Interested party meeting (IPM) coming**

In recent years, the number of taxpayers seeking to apply alternative apportionment methodologies under the authority of R&TC Section 25137 increased. Along with this increase, we have received an increasing number of inquiries about what procedures need to be followed when submitting petitions under R&TC Section 25137. For these reasons, staff recently requested authority from our Board to begin the IPM process, to meet with taxpayers and consider drafting proposed regulatory language that might be promulgated to outline procedures for submitting petitions under this section.

An IPM is an informal meeting with the public to get input, ask questions, and provide ideas on specific topics such as:

- Implementation of new laws
- Proposed initiatives
- Policy considerations
- Possible solutions to issues raised

When we hold an IPM, the public is invited to either attend these meetings in person or participate by telephone.

For more information, go to interested party meetings. We post meeting notes, discussion draft(s), and additionally, we post summaries of prior interested parties meetings.

If you would like to provide input or join in on the discussion, and do not want to miss this meeting, you may want subscribe to receive email updates about meetings. Select **News & Events** in the upper right of this page, then under **Subscription Services**, select **Meetings** to add **Regulation Hearings** and **Interested Parties Meeting** to your subscription service.

## 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.