



Tax News

September 2018

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Featured publication: FTB 985, Audit/Protest/Appeals (The Process)

We are pleased to announce that we recently revised our publication, FTB 985 Audit / Protest/ Appeals (The Process).

Changes include:

1. **Office of Tax Appeals (OTA)** – We included contact information for the new OTA created by the Taxpayer Transparency and Fairness Act of 2017. OTA was established to hear appeals from California taxpayers regarding various taxes and fees administered by the California Department of Tax and Fee Administration and us.
2. **MyFTB** – We provided features for the tax professional including self-service options for filing a Power of Attorney declaration and filing a protest in MyFTB.
3. **Updates** – Shortened and simplified language where possible while keeping the same message.

We hope you find this newly revised publication helpful. Please look for this publication at our many education and outreach events.

For more information, go to our [website](#) and search for **FTB 985**.

Relationship verification for power of attorney (POA)/tax information authorization (TIA) relationship requests

In last month's Tax News we mentioned some things you can do to ensure a smooth process when submitting POA relationship requests. This month, we provide additional information about the post-submission process for both POAs and TIAs.

Our primary goal has always been to protect taxpayers' confidential information. For this reason, we verify all new POA and TIA relationship requests. If we are unable to verify the relationship during our initial processing, your client may receive a letter requesting they contact us to authorize the relationship.

If we send a letter to your client, you will also receive a letter from us informing you that the request is on hold and your client has 45 days to respond. Additionally, we will call you to let you know we have contacted your client as part of the relationship verification process.

If you receive this letter and/or a call from us, we encourage you to reach out to your client and advise them they need to contact us and authorize the relationship. This will help expedite the process and reduce the overall processing timeframe.

If the taxpayer:

- Contacts us and authorizes the relationship, the relationship will become active.
- Contacts us and denies the relationship, we will reject the POA/TIA relationship request.
- Does **not** contact us within 45 days, we will reject the POA/TIA relationship request.

We will send a letter to the taxpayer informing them the relationship has been authorized or denied.

We understand that this added layer of security may seem burdensome. Given the environment we all work in today and the extent of online data theft, we feel this is a necessary step to ensure taxpayers' confidential information remains safe, secure, and is only disclosed to authorized users.

Head of Household (HOH) – Tax year 2017 returns

Beginning in late September through October 2018, we will mail:

- 5,000 HOH demand letters - These letters require taxpayers to complete and return form FTB 3532, Head of Household Filing Status Schedule.
- 14,000 Notices of Proposed Assessment denying the tax year 2017 HOH filing status.

In addition, we will mail the following in December 2018:

- 56,000 HOH education letters - These letters remind taxpayers of their requirement to attach form FTB 3532 to their tax return if they are claiming the HOH filing status for 2018, as well as ensure they meet the qualifications for claiming HOH.

If your clients receive an HOH demand letter requesting they complete and return form FTB 3532, they will need to respond by the due date on the letter to avoid incurring a penalty for failure to furnish information. If you determine they do not qualify for the HOH filing status, they should mark the “I do not qualify for head of household” box on the top of the HOH demand letter.

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

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

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

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

Franchise Tax Board
PO Box 942840
Sacramento CA 94240-5340

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

California extends New Employment Credit

The New Employment Credit (NEC) is a California tax credit that encourages hiring and employment in the state. The NEC was recently extended by Senate Bill 855. The NEC is available for taxable years beginning on or after January 1, 2014, and before January 1, 2026. The NEC is available to businesses located in designated areas in the state that hire qualified

full-time employees, receive a tentative credit reservation for that employee, and meet other requirements.

Over the last few years, we have identified many taxpayers who have incorrectly claimed the NEC on their tax returns when they may actually be claiming a different credit. We have found taxpayers reporting the NEC on their tax returns when they intended to report the repealed Enterprise Zone or the New Jobs Credits. This had resulted in adjustment to taxpayers' accounts, and in some instances, created additional California tax liabilities. Here are some helpful tips to assist your clients in reporting the correct credit on their tax returns:

- **Verify the tax preparation software uses the correct credit code:**
 - New Employment Credit—Credit Code 234
 - Enterprise Zone Hiring Credit—Credit Code 176
 - New Jobs Credit—Credit Code 220
- **Credit from Pass-Through Entities:** Verify and ensure the amount of credit reported on the California Schedule K-1 is correctly reported on the tax return.

Go to the New Employment Credit webpage for additional information. You can also refer to our previous Tax News article, *Which Employment Credit Am I Claiming?*, for more helpful tips.

Systemic issue reported

A tax professional reported an issue using our Systemic Issue Management System (SIMS) on our public website. The issue surrounds taxpayers receiving notices assessing late filing penalties even though they are in a federally declared disaster area and granted tax return filing relief.

We follow federal postponement periods for any presidentially declared disaster. We identified a systemic issue that resulted in erroneous assessment of the late filing penalty for taxpayers who qualify for disaster relief. We are actively working on updating our system to prevent the erroneous assessment; the anticipated update is summer 2019. Until the update is completed, you or your clients may contact us directly by phone or Live Chat to have the issue resolved. We understand that this puts additional, unnecessary burden on your clients and are working diligently to remedy this situation.

If you identify a systemic issue, please report it to us. Go to ftb.ca.gov and search **systemic**.

It's a good time to check your withholding

In last month's Tax News, we talked about making 3rd quarter California estimated tax payments. While the amount due for the 3rd quarter is 0, if your clients are underpaid/under withheld, this would be a great time for them to make an estimated payment or revise their withholding. This will help them so they don't end up with a large balance due and possibly an underpayment penalty when they file their 2018 returns.

The IRS also wants taxpayers and tax professionals to know that it's [Time for a Paycheck Checkup](#). This is especially important because of the recent changes to federal tax law. To assist taxpayers, the IRS created an [online withholding calculator](#) that can be used to determine whether changes in withholding should be made.

The [IRS Withholding Calculator](#) helps you identify your tax withholding to make sure you have the right amount of tax withheld from your paycheck at work. There are several reasons to check your withholding:

- Checking your withholding can help protect against having too little tax withheld and facing an unexpected tax bill or penalty at tax time next year.
- At the same time, with the average refund topping \$2,800, you may prefer to have less tax withheld up front and receive more in your paychecks.

If you are an employee, the [Withholding Calculator](#) helps you determine whether you need to give your employer a new [Form W-4](#), Employee's Withholding Allowance Certificate. You can use your results from the Calculator to help fill out the form and adjust your income tax withholding.

While it's always a good idea to periodically check your federal and California withholding, it may make more sense to do so this year, especially for taxpayers impacted by the recent changes to federal tax law.

FTB assists taxpayers at the local assistance centers

In July, Governor Brown declared a State of Emergency for several fires burning in California. Some of the fires were the Carr Fire in Shasta county, Holiday fire in Santa Barbara county, Klamathon fire in Siskiyou county and West fire in San Diego county. The Governor's Office of

Emergency Services (Cal OES) opened Local Assistance Centers (LACs) in the counties mentioned here.

As of August 2, the 4 fires had destroyed over 154,000 acres of land, 1,100 residences and 500 other structures, with the Carr Fire in Shasta County still being active. In July, our representatives assisted 136 survivors at LACs and they remain on site helping dozens more survivors daily.

Our staff will be present to assist survivors at active LACs as long as we are needed. We are able to:

- Provide copies of lost returns.
- Answer questions regarding their accounts.
- Provide information and handouts regarding how to claim a qualified disaster loss on a tax return.

Taxpayers affected by the fires may also contact us at 800.852.5711 for assistance.

Third-party designee and implied consent

We encourage you to use MyFTB and take advantage of all the self-service tools available to expedite and help streamline your work loads. However, you are still welcome to call the Practitioners' Hotline at **916.845.7057** if you have additional questions about your client's account which you have been authorized as third-party designee.

Third-party designee authorization occurs directly on the tax return. An authorized designee may discuss:

- Information needed to process a current year tax return
- Inquire about refund status or payments made
- Respond to our notices about math errors, offsets, and return preparation
- Request copies of notices for the authorized tax year

This privilege expires on April 15 of the following year.

Implied consent occurs when a taxpayer's representative can provide enough information from a notice or a taxpayer's account to conclude that the representative has authorization to discuss specific account information. It allows a taxpayer's representative to receive limited information about our notice or specific details about a client's tax matter. Implied consent does **not** replace the need for a Power of Attorney (POA) declaration. If you wish to discuss any tax years that are not included in the notice or will be representing the taxpayer on an ongoing basis, you will need to submit a POA declaration.

We provide ongoing training to our staff to ensure you have a consistent experience when contacting us. If at any time you are unable to obtain information using implied consent or as the third-party designee and feel that you have provided the information necessary to do so, we encourage you to request a callback from a supervisor, so that your concerns may be addressed.

2018 Advisory Board summary

The Advisory Board is made up of several invited representatives from industry, state and the federal government, and our staff. The Board meets once a year to provide insight to our Executive Officer from a non-FTB point of view. Their feedback is about the various projects and programs we administer and upcoming initiatives that impact us, the way we do business, and our staff. This meeting allows us to better understand the issues, challenges, and concerns faced by industry and our government partners.

The format of this year's meeting consisted of a focus group, 2 breakout sessions, and a legislative and litigation update. Here are some of the highlights from the meeting to give you an idea of what we discussed in the focus group and what we covered in the breakout sessions.

This year's focus group covered:

- POA/TIA relationships.
- MyFTB access for tax professionals.
- Opportunities to increase awareness of MyFTB and our other electronic services.

In addition, 2 breakout sessions covered EDR2 and Security and Privacy.

In the coming months, we will share more about our plans moving forward and what changes you can expect in the way we do business and interact with you, the tax professional.

Ask the Advocate



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

IRS Tax Forums: San Diego

I recently spent several days at the [IRS Tax Forum](#) in San Diego. This year, the Tax Forum takes place in Atlanta, National Harbor (MD), San Diego, Chicago and Orlando. The first 4 dates have already taken place, with the last stop (Orlando) coming up September 11 to 13.

For those of you who have never attended, this 3-day event provides tax professionals with continuing professional education, the opportunity to network, and access to exhibitors with products and services that may be of interest to you. Attendees also have the opportunity to meet with IRS specialists who can help resolve a difficult case for one of your clients.

While I was in San Diego, I met informally with many of you. It came as no surprise that one of the top issues you are concerned about are the recent changes in federal tax law and whether California will conform. I want you to know that FTB is working on providing information to you on this topic. We are developing a dedicated webpage on our website for this topic and we will include it in our many education and outreach efforts. Of course, we will also keep you informed through Tax News.

Interestingly enough, one of the areas where I received several questions while at the Tax Forum was about Head of Household filing status and the federal changes to credits for individuals who would formerly have qualified for a dependency exemption deduction. Many of you asked whether there are any California changes in this area. Here's what I can tell you:

- For Federal purposes there has been an expansion of both the child tax credit (higher AGI limits and credit amount) and a new lower credit for qualifying dependents that are not qualified children.
- California has had no substantive changes to our exemption credits, other than indexing the amounts.

- For HOH filing status, there have been no substantive federal or California changes. One still must use the same filing status for both and the rules as to who qualifies one for HOH and under which circumstances remain the same.

While HOH filing status and exemption credits may not make the “Top 10” list of conformity questions, together these affect nearly all filers. My recent conversations with many of you in San Diego remind me that when we provide updated conformity information, we need to cover as many issues as possible, even those that we might think are straightforward. As your Advocate I will make sure that we do. I also look forward to providing additional conformity information to you as it becomes available, including letting you know when our conformity webpage is available.

MyFTB Corner

Full online access grandfathered in for active relationships in MyFTB

As a reminder, representatives with active Power of Attorney (POA) and Tax Information Authorization (TIA) relationships approved **prior to June 24, 2018, will continue to have full online account access** to their client’s account information in MyFTB until the relationship expires or is revoked; full online access has been “grandfathered in.”

Only **new** relationships approved after June 24, 2018, will require their client (the taxpayer) to authorize/opt-in for your full online account access. Additionally, after June 24 there is no longer a 10-business day hold for newly approved POA or TIA relationships.

For more information on Full Online Account Access in MyFTB see our June Tax News, **Taxpayer Authorization Needed for Full Online Account Access.**

All About Business

Like-kind exchanges (IRS changed, but California did not)

There has been a lot of talk recently about the federal tax reform for 2018. The IRS is working on implementing the [Tax Cuts and Jobs Act](#) (TCJA) and preparing for the major impact this tax legislation will have on individuals, businesses, tax exempt, and government entities.

Because California's tax system is based in part on specified date conformity to provisions of federal tax law, concerns about the growing disparity between federal and California tax laws are again one of the topics of these discussions. Each of the federal provisions in the Act was analyzed to determine its impact on California's Revenue and Taxation Code (R&TC). You can find this analysis in reports at:

- Preliminary Report on Specific Provisions of the Federal Tax Cuts and Jobs Act
- May 16, 2018 Summary of Federal Income Tax Changes 2017

These reports and more can be found on our Legislation Information page.

An issue to watch out for is the new disparity between federal and California tax laws when your client has an exchange of property. For purposes of Internal Revenue Code (IRC) Section 1031, the determination of whether property is of a "like-kind" relates to the nature or character of the property. The New Federal Law (IRC Section 1031) provision modified the existing law providing for nonrecognition of gain in the case of like-kind exchanges by limiting its application to real property that is not held primarily for sale completed after December 31, 2017.¹ Since California law conforms to the federal rules for like-kind exchanges under IRC Section 1031, as of the "specified date" of January 1, 2015, with modifications, it does not conform to the federal law that now limits like-kind exchanges to real property that is not held primarily for sale.

In addition, California has an annual information reporting requirement for taxpayers that claim nonrecognition of gain or loss for a like-kind exchange when property in California is exchanged for property located outside of California. Taxpayers are required to file an information return (form FTB 3840, California Like-Kind Exchanges), in the taxable year of the exchange and in each subsequent taxable year in which the gain or loss attributable to the exchange has not been recognized.

Failure to comply with that reporting requirement and failing to file a return to properly report the recognition of the gain or loss attributable to the exchange, may result in us making an estimate of the net income from the exchange using any available information, including the amount of deferred gain or loss reported in the year of the exchange, and proposing to assess

¹ This is a general rule as there are exceptions to this date for exchanges begun on or before December 31, 2017.

the amount of tax, interest, and penalties due in the same manner as assessments that are proposed for the failure to file a return.

More information on when and how to file our form FTB 3840, can be found on our [Like-Kind IRC Section 1031 Property Exchange Reporting — Information Return Requirement](#) page.

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.