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### **3.1 BUSINESS ENTITIES**

#### **3.1.1 Security And Disclosure**

##### **3.1.1.1 Confidentiality And Security Of Data**

### **Background**

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When you joined the department, you were required to read and sign a confidentiality statement. By signing the statement, you agreed to follow the privacy and security program of the department.

The Revenue and Taxation Code, the Internal Revenue Code, and the California Civil Code govern the confidentiality of the information collected and maintained by the department. Detailed information is located in the Franchise Tax Board (FTB) Disclosure Manual and the Information Security Manual.

### **Purpose**

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The purpose of maintaining confidentiality and security of data is to aid in the administration of income tax laws by encouraging business entities to:

- Make full and truthful disclosure on their tax returns and/or claims.
- Understand that the information cannot be revealed or used against them for some other purpose.

### **Responsibility**

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It is the responsibility of every FTB employee to ensure confidentiality and security of all data received by or created within the department.

### **Action**

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FTB staff are required to complete the Disclosure Education Training course and to sign a confidentiality statement ((\*\*\*) upon being hired and every year thereafter.

As a general rule, treat all tax and non-tax information received, maintained and/or generated as confidential. Positively identify and confirm that the requester has the right to know before disclosing any confidential information.

Do not disclose any information received from the federal government without written authorization from the federal government to an owner, officer, partner, or authorized representative of a business entity.

## Reference

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[FTB Disclosure Manual](#)

[Revenue and Taxation Code Sections 19542 - 19570](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.1.1.2 Confidential Information

#### **Background**

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Confidential information is defined as any item of information that is not specifically made public by statute.

Confidential information is protected from disclosure by law, regulation and policy. Disciplinary, civil and criminal actions may be imposed for any willful unauthorized inspection, modification or disclosure of confidential information. The information may be on paper, computer or other mediums. Confidential information includes:

- Federal and state corporation tax return information
- Political Reform Audit information
- Personnel records
- Informant and investigative files
- Criminal offender record information
- Computer Master File information, including case transcripts and printouts
- Documents obtained from the Internal Revenue Service

#### **Purpose**

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The purpose of defining confidential information is to ensure that staff are able to quickly identify information that is protected from disclosure.

#### **Responsibility**

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It is the responsibility of Franchise Tax Board (FTB) staff to:

- Know whether or not accessed information is public or confidential
- Protect the confidentiality of business entity information by adhering to the department's privacy and security guidelines
- Understand that unauthorized access, inspection, use, modification, or disclosure of confidential information may result in disciplinary, civil and/or criminal action

**NOTE:** [SB 1386](#) (July 1, 2003) requires FTB to notify an individual if an unauthorized disclosure occurs.

#### **Action**

---

FTB staff are required to complete the Disclosure Education Training course and to sign a confidentiality statement ((\*\*\*\*)) upon being hired and every year thereafter.

The appropriate disclosure action depends primarily on whether the information is defined as “public” or “confidential,” and if the requester has the “right” and “need” to know.

The law allows FTB staff access to information classified as confidential only when that information is necessary to do their job. This provides a “right to know.”

The “need to know” means that FTB staff may only request or access information in order to perform official responsibilities as an employee or agent of the FTB, or as an authorized requester. This means that the confidential information FTB staff receives should relate to the assigned job duty and only to the extent necessary to complete the work tasks. FTB staff must never access information out of curiosity.

Confidential information must always be protected from unauthorized disclosures and/or unwarranted access (UNAX). FTB staff must always verify a requester’s “need to know” and “right to know” before sharing any confidential information. Confidential information can be released to third parties (unrelated to the taxpayer) only if the law specifically allows for such disclosure.

**Remember:** If in doubt, do not disclose the information. FTB staff must contact his or her supervisor or the Disclosure Section for clarification.

## Reference

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[FTB Disclosure Manual, Confidential Information Defined, Section 1100 Revenue and Taxation Code Sections 19542 and 19542.1](#)

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**NOTE:** ((\*\*\*\*)) = Indicates confidential and/or proprietary information.

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### 3.1.1.3 Penalties For Disclosure

#### **Background**

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Under California law, it is a misdemeanor to make an unauthorized disclosure of confidential tax information, including information received through an electronic medium.

Under federal law, it is a felony to make an unauthorized disclosure of federal tax information.

#### **Purpose**

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The purpose of enforcing penalties for unauthorized disclosure is to ensure that confidential information is not accessed, used, or disclosed by or to unauthorized individuals.

#### **Responsibility**

---

It is the responsibility of Franchise Tax Board (FTB) staff to:

- Sign the FTB Confidentiality Statement ((\*\*\*\*)) annually.
- Understand that unauthorized access, inspection, use, modification, or disclosure of confidential information may result in disciplinary, civil and/or criminal action.

#### **Action**

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The type and severity of disciplinary action imposed for unauthorized disclosure, unauthorized transactions or unauthorized computer access is based on an evaluation of the individual case.

The following disciplinary actions may be taken:

- Informal discussion
- Corrective interview
- Formal reprimand
- Suspension
- Salary reduction
- Demotion
- Dismissal
- Criminal prosecution

## Reference

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((\*\*\*)

**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.1.1.4 Power Of Attorney (POA)

#### Background

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A Power of Attorney (POA) is a legal instrument that allows a third party representative to act on behalf of a business entity and/or its officers, partners or members with respect to designated tax matters. Representatives include (but are not limited to) attorneys, certified public accountants and other tax practitioners.

The Franchise Tax Board (FTB) automated the POA process in August 1999. Phase I of the POA project resulted in the creation of the POA Unit, ((\*\*\*\*)), and revisions to [form FTB 3520](#) and [FTB Publication 1144](#).

#### Purpose

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A POA is a legal instrument, which allows a third party to act on behalf of the business entity for specific tax years.

[Form FTB 3520](#), *Power of Attorney Declaration for the Franchise Tax Board*, is used by individuals and business entities to authorize representatives to act on their behalf with FTB.

The POA program facilitates administration of the tax by assisting the department in confirming and tracking valid authorized representative information.

#### Responsibility

---

It is the responsibility of FTB representatives to:

- Determine that a valid POA is on file before disclosing any confidential information.
- Make every reasonable attempt to resolve the collection issues with the designated representative.

Acceptable authorizations include written requests, or the following forms:

- Franchise Tax Board – [Form FTB 3520](#)
- Internal Revenue Service – [Form 2848](#) (it must indicate that FTB is included)
- Board of Equalization – [Form BOE 392](#)
- Durable Power of Attorney form

The request must include:

- Name, address and entity number of the business.
- Type of business (e.g., corporation, partnership or limited liability company).

- Tax Identification Number (e.g., California corporation, Federal Employer or Secretary of State numbers).
- Name, mailing address and telephone number of each representative.
- Specific types of tax and years involved.
- Clear statement pertaining to the scope of authority granted to each representative.
- Signature of an owner, officer or partner of the business entity.

### Action

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Always check the current POA status and confirm that the authorized representative has the right to know before disclosing information. The FTB representative should update the business entity file (i.e., BE ARCS demographics) to include current POA information.

If you receive a call from a representative whose Power of Attorney (POA) is not on file do the following:

Have them fax the POA form directly to you through your faxination, and continue the conversation with them. When the fax is received do the following:

- Add the Representative as a contact to Demographics ARCS.
- Route the faxed POA to the POA Unit/Receiving @F-283 so it can be added to the database.
- DO NOT require them to send the fax to the POA unit and call back after it is input.

If they can't fax it immediately, they can fax it directly to your unit's general fax line, so a call back can be made as soon as possible.

If an authorized representative calls to revoke a POA, the FTB representative must ensure that one of the following documents is filed with the POA Unit:

- A signed copy of the POA indicating that it was "Revoked".
- A letter requesting revocation with specific tax years and names of revoked representatives.

**NOTE:** Providing a current POA will revoke all previous POA declarations with FTB. If there is any doubt regarding the status of the requester, the FTB representative should request a current POA form or written authorization before disclosing any information.

### Reference

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Frequently Asked Questions Power of Attorney

[Power of Attorney form FTB 3520](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.1.1.5 Information Not To Be Disclosed

#### **Background**

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Business entities and their authorized representatives are entitled to copies of the business entities records.

It is departmental policy to permit business entities, claimants and employees to review their own records and/or to obtain copies of documents.

#### **Purpose**

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The purpose of not disclosing any confidential information is to ensure the privacy and confidentiality of business entities.

#### **Responsibility**

---

It is the responsibility of FTB staff not to disclose certain confidential information to unauthorized representatives or to those that do not have the right to know.

FTB staff should withhold disclosing public corporate information if there is a reason to believe that it will be used for commercial reasons.

#### **Action**

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The following information must not be disclosed:

- Information pertaining to other debtors, claimants or employees.
- Information from informants, including the identity of informants.
- Information involving pending or open investigation cases and illegal activities files.
- Proprietary information (e.g., write-off limits, specific audit selection criteria, etc.).
- Federal Employer Identification Number (FEIN).
- Breakdown of the total balance due.

**NOTE:** If confidential information has been inadvertently disclosed, notify your supervisor immediately.

## Reference

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[FTB Disclosure Manual](#)

((\*\*\*)

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### 3.1.1.6 Providing Records To Authorized Representatives And The General Public

#### **Background**

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Franchise Tax Board (FTB) staff may provide information within the limitations imposed by law to owners, officers, partners and authorized representatives of business entities. The law further restricts information FTB staff may disclose to the general public.

#### **Purpose**

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The purpose of limiting the type of information that staff may provide is to ensure that disclosure of business entity records is only made to individuals who have a right to know.

#### **Responsibility**

---

It is the responsibility of FTB staff to ensure that the disclosure of information is made only to appropriate authorized individuals. Limited information may be disclosed to the general public as required by law.

#### **Action**

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FTB staff must obtain written authorization from a business entity owner, officer or partner before providing confidential information to a third party.

Staff may disclose business entity information to authorized individuals provided the records do not contain information that reveals the identities of third party informants, other debtors, or criminal investigation records.

**NOTE:** In questionable situations, signatures of individuals requesting confidential tax return information may be verified against the signatures on the tax return.

#### **Public Information**

Information that may be disclosed to the general public for corporations, Limited Liability Companies (LLC), and Limited Partnerships is limited to the following:

- Exact entity title/name, address and business entity number (e.g., corporation number).
- Date of commencement (registration, incorporation) of business in this state.
- Tax year adopted.
- Due date of the return.
- Whether a return was filed.
- Filing date of the return.

- Total unpaid amount (tax, penalty and interest combined). A total balance can be given for each year.
- Status of business entity (e.g., active, suspended, etc.).
- Name, date, and title of persons signing the return.
- Private addresses of corporate officers and directors (if address is on the return only).
- Industry Code.
- Published court information (e.g., bankruptcy notices).
- Lien information.
- Information published in newspapers or magazines.

Specific business matters, such as how much income was generated, the types and/or locations of property owned by the corporation or any other vital business information, is not considered public information.

### **General Partnerships**

All FTB information on the general partnership is confidential and cannot be released to the public.

**NOTE:** "Person" is defined as individuals, fiduciaries, partnerships, limited liability companies, limited liability partnerships, and corporations.

### **Authorized Representative Information**

#### **Corporations**

Information from a tax return of a bank or corporation may be disclosed (upon written authorization) to:

- Any person designated by action of the Board of Directors or similar governing body.
- Any officer or employee of a corporation designated by any principal officer.
- Any person who was authorized to inspect the tax return at the date of dissolution of the entity.
- Additional authorized representatives including:
  - Individuals designated by the business entity.
  - Trustee or guardian of an estate of a taxpayer who is declared legally incompetent.
  - Administrator, executor or trustee of a decedent's estate.
  - Decedent's next of kin for purposes of filing final returns when there is no estate subject to probate.
  - Receiver or trustee if the debtor is in bankruptcy.

When it comes to partnerships, there are differences regarding what can be disclosed based on whether it is a general partnership or a limited partnership.

### **General partnerships**

General partnerships are subject to Personal Income Tax disclosure provisions. The authorized representative of the general partnership and each partner are entitled access to the complete partnership return (Form 565) and all supporting schedules, including Schedules K-1, filed with the return.

### **Limited partnerships and Limited Liability Partnerships**

Limited partnerships are subject to the same disclosure provisions that corporations are subject to. A partner's access to information depends on whether the partner is a general partner or a limited partner. Limited Liability Partnerships do not have general partners and are all considered to be limited partners.

**NOTE:** Names and addresses of partners are NOT public information. Information on an individual partner's tax return (Form 540) *cannot* be disclosed to the partnership or the other partners regardless of the type of partnership or type of partner.

**General partners** – The authorized representative of the limited partnership and the general partners are entitled access to the same information as those of a general partnership.

**Limited partners** – The limited partners are entitled access to limited information. This includes the partnership return (Form 565) including supporting schedules with the *exception of Schedules K-1*. The limited partner is only entitled to the Schedule K-1 pertaining to them. The limited partner is not allowed access to the Schedule K-1 pertaining to the other partners. The partner is also entitled to FTB information pertaining to pass-through adjustments that affect the shareholder's Schedule K-1.

Other types of entities, such as limited liability companies (LLC) and real estate mortgage investment conduits (REMICs) may elect to be treated as a partnership for tax purposes. Generally these entities have more characteristics in common with limited partnerships than with general partnerships. Therefore, the disclosure guidelines on limited partnerships will also apply to these entities. Investors in these entities may be known as members or owners, rather than partners.

### **Limited Liability Companies (LLC)**

The member is entitled to information regarding only their individual Schedule K-1. Members are not entitled to Schedule K-1 information for any other member. The member is also entitled to FTB information pertaining to pass-through adjustments that affect the shareholder's Schedule K-1.

**NOTE:** If you are unable to determine if you should disclose the information, then *do not* disclose the information. Discuss the issue with your supervisor and, if necessary, contact the Disclosure Office.

## Reference

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[FTB Disclosure Manual, Authorized Disclosure of Information, Section 2000](#)

[Conditions of Disclosure, Civil Code 1798.24](#)

[FTB Disclosure Manual, Procedures and Responsibilities, Section 3000](#)

[FTB Disclosure Manual, Information Practices Act of 1977, Section 4000](#)

[Information Privacy Principles For Individuals](#)

[Revenue and Taxation Code Sections 19542 and 19543](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.1.1.7 Destruction Of Confidential Information

#### **Background**

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Franchise Tax Board (FTB) treats all information received, maintained and generated as confidential unless it is specifically made public by statute. These records must be destroyed in accordance with FTB policy as outlined in the General Procedures Manual Section 7000.

#### **Purpose**

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Proper destruction of confidential information ensures security of business entity information.

#### **Responsibility**

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It is the responsibility of FTB staff to properly dispose of confidential information.

#### **Action**

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Consistent with the General Procedures Manual, the destruction of confidential information is governed by procedures of the location where an employee works.

The following are some examples of confidential material:

- Documents containing a corporate name or corporation number
- Computer printouts or case transcripts
- Case notes or work papers
- Audit reports
- Information collected from outside sources (e.g., Internal Revenue Service, Board of Equalization or Department of Motor Vehicles)
- Investigation reports
- Collection progress reports

**NOTE:** Original tax returns should be returned to Data Services and Storage Section for proper storage or destruction.

## Reference

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### **3.1.2 Privacy**

#### **3.1.2.1 Right To Financial Privacy**

##### **Background**

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The United States Constitution and Article 1, Section 1, of the California Constitution protect the right to privacy.

##### **Purpose**

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The Franchise Tax Board (FTB) recognizes the public concern about its right to financial privacy. The department adopted Information Privacy Principles, based on the California Information Privacy Act, to address those concerns. The principles demonstrate the department's commitment to responsibly use and protect taxpayer information.

##### **Responsibility**

---

It is the responsibility of FTB staff to adhere to the following Privacy Principles. Although these principles refer to individual privacy, they also extend to the protection of a business entity's privacy.

- Information Gathering and Use Principle
- Information Sharing Principle
- Information Retention Principle
- Information Security Principle
- Right to Know Principle
- Right to Inspect & Correct Principle
- Right to Be Heard Principle
- Commitment Principle

##### **Action**

---

The FTB is required to:

- Maintain only information that is relevant and necessary to accomplish the agency's purpose as required by law.
- Attempt to collect information directly from the entity that is the subject matter of the information.
- Maintain the source of information in a readily accessible form.
- Provide the source of information to the entity, upon request, unless such records are exempt from disclosure.
- Maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness.

- Ensure that vendors who handle or maintain FTB records adhere to the same guidelines.
- Establish rules of conduct for individuals involved in the design, development, operation, disclosure, or maintenance of records containing confidential information.
- Establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance for privacy.
- Designate an employee to be responsible for ensuring compliance.

## Reference

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[California Civil Code Sections 1798 - 1798.78](#)

Information Privacy Principles for Individuals

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.1.3 Taxpayer Rights

#### 3.1.3.1 Due Process

##### Background

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The Fourteenth Amendment of the United States Constitution guarantees in part that no state shall deprive any persons of their property without due process of law. The essential elements of due process of law are: 1) that the state provides reasonable notice of an action taken that affects an individual; and 2) that the individual be given an opportunity to be heard and to present any claims or defenses and, in order to be heard, they must be given notice.

Statutory due process is where the law requires that notice be given before an action is taken. For example, Franchise Tax Board (FTB) must notify a business entity before assessing a collection fee and before filing a state tax lien.

Procedural due process is when FTB has a program or process in which we afford due process and then extend the same due process procedure to similar programs or processes. For instance, California law requires FTB to give notice before assessing a collection fee, yet FTB is not required to do so for other fees. FTB notifies business entities of these fees as part of procedural due process.

Due process is best defined as giving notice.

##### Purpose

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Due process ensures that the FTB:

- Provides notice to the business entity prior to taking legal actions, and
- Gives the business entity the opportunity to present any claims and/or defenses.

Due process comes into play when we are required to issue notice, or when taking an action that requires we advise the business entity of their opportunity to avoid the action by complying within a set time limit.

##### Responsibility

---

FTB staff must ensure that due process is afforded to business entities at all times. Before taking any collection action, a liability must be *due and payable*.

As long as the department mails a notice to the last known address supplied by the business entity, due process, as to notice, has been served. The mailing of an FTB notice to the last known address provided by the business entity is adequate notice whether or not the business entity actually received the notice. As a general rule, a business entity's last-known address is the address that appears on the business entity's most recently filed return, unless FTB is given clear and concise notice of a different address.

[Revenue and Taxation Code Section 19049](#) represents the only due process requirement (before collection action can commence) that exists after an assessment becomes final, or a no-pay return is filed. [Revenue and Taxation Code Section 19049](#) states, "When a deficiency is determined and the assessment becomes final, the Franchise Tax Board shall mail notice and demand to the taxpayer for the payment thereof. The deficiency assessed is due and payable at the expiration of 15 days from the date of the notice and demand."

FTB has additional notice requirements before a collection fee is assessed, before a Notice of State Tax Lien can be filed, and before taking any involuntary collection actions.

[Revenue and Taxation Code Section 19254](#), in part, says that a collection cost recovery fee shall be imposed if FTB has mailed notice for payment that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

[Revenue and Taxation Code Section 21019](#), in part, says that at least 30 days prior to the filing or recording of a tax lien, we must mail a notice stating by what authority we are filing the lien (Section 7171 of the Government Code), and what procedures are available to prevent us from filing it. The 30-day notice provision is not applicable where the collection of tax is determined to be in jeopardy.

[Revenue and Taxation Code Section 21015.5](#), in part, says that we must provide a notice in writing at least 30 days prior to taking a levy action. The notice shall be required only once for each taxable period to which the unpaid tax is specified.

## Action

---

FTB staff are required to ensure that due process was provided. Due process consists of:

- Notifying the business entity of their balance due
- Notifying the business entity of possible collection action
- Ensuring the business entity is provided with the necessary legal language prior to taking involuntary actions (e.g., lien, levy)
- Disclosing the reasons for collection action
- Providing the right to a fair hearing
- Advising the business entity of the right to further appeal

## Reference

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[California Taxpayers' Bill of Rights - 1988](#)

[California Taxpayers' Bill of Rights 2 - 1997](#)

[California Taxpayers' Bill of Rights, A Comprehensive Guide](#)

[Revenue and Taxation Code Section 19049](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.1.3.2 Taxpayers' Bill Of Rights

#### Background

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The California Legislature enacted the "Katz-Harris Taxpayers' Bill of Rights Act" in 1988. The enactment became effective in 1989, and was added to the [Revenue and Taxation Code Sections 21001 - 21028](#).

The federal [Taxpayers' Bill of Rights 2, 1997](#) was signed into law on July 30, 1996. California passed taxpayers' rights conformity legislation in an effort to conform to most federal laws, see the [California Taxpayers' Bill of Rights 2 - 1997](#). California's law contains provisions that are intended to provide increased protection of taxpayers' rights, including the most recently legislated Taxpayers' Bill of Rights Act of 1999, ((\*\*\*\*)).

In general, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2001. However, there are continuing differences between California and federal law. It should be noted that California does not always conform to the entire provisions of a public law. For more information regarding California and federal law, view Franchise Tax Board (FTB) website at [www.ftb.ca.gov](http://www.ftb.ca.gov) and select "Law and Legislation" or "Forms and Publications."

#### Purpose

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The Taxpayers' Bill of Rights ensures that the rights, privacy, and property of California taxpayers are adequately protected during the process of assessment (audit, protest and appeal) and collection of taxes. The Taxpayers' Bill of Rights instructs the FTB to promote self-assessment by improving the clarity of the law, by keeping the taxpayers informed of its proper application, and by developing an education program that will raise taxpayers' level of awareness.

The Taxpayers' Bill of Rights further specifies that:

- The purpose of any tax proceeding is to correctly determine the taxpayer's liability.
- FTB and taxpayers have the opportunity to present and consider all relevant information pertaining to the disputed liability.
- The taxpayer has a right to request and receive certain public written records.

#### Responsibility

---

It is the responsibility of FTB staff to adhere to the provisions of the Taxpayers' Bill of Rights, Taxpayers' Bill of Rights 2, and the California Taxpayers' Bill of Rights, A Comprehensive Guide.

**Action**

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We must inform business entities in simple, non-technical language of their rights, how to protest/appeal, and how to contact the Taxpayer Advocate. FTB staff should be knowledgeable of the Taxpayers' Bill of Rights in reference to:

- [Taxpayer Advocate Office](#)
- Taxpayer Education
- Evaluating FTB Employees
- Collection Procedures
- Interest
- Reimbursements and Awards
- Notices to Taxpayers
- Amended Return Claims for Refund, Protests and Appeals
- Written Advice
- Miscellaneous Provisions
- Comparison of California Taxpayers' Bill of Rights to Federal Law

**Reference**

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[California Taxpayers' Bill of Rights - 1988, form FTB 4058](#)

[California Taxpayers' Bill of Rights 2 - 1997, form FTB 4063](#)

[California Taxpayers' Bill of Rights, A Comprehensive Guide, form FTB 4058C](#)

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## 3.2 PERSONAL INCOME TAX

### 3.2.1 Security And Disclosure

#### 3.2.1.1 Confidentiality And Security Of Data

#### Background

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When you joined the Franchise Tax Board (FTB), you were required to read and sign a ((\*\*\*\*)). By signing this statement, you agreed to follow the privacy and security program policies of the department. Each employee is required to sign form FTB 7809 annually.

The [Revenue and Taxation Code Sections 19542, 19542.1, and 19552](#), the Internal Revenue Code, and the California Civil Code govern the confidentiality of the information collected and maintained by the department. Detailed information can be found in the [FTB Disclosure Manual](#).

#### Purpose

---

Security and disclosure aids the department in the administration of income tax laws by placing accountability on employees. (See [Section 3.2.1.3 Penalties For Disclosure](#).) This also encourages taxpayers to make a full and truthful disclosure on their returns and/or claims without fear that this information will be revealed or used against them.

#### Responsibility

---

All FTB staff must ensure confidentiality of all information received regarding taxpayers and their accounts.

This includes, but is not limited to:

- [Personal Income Tax Returns](#)
- [Bank and Corporation Tax Returns](#)
- [Homeowners and Renters Assistance Claims](#)
- Information obtained from third parties

#### Action

---

The following *must* be considered:

- Before any confidential information may be disclosed, it is essential that the positive identification of the requester be determined in order to confirm the “need to know” and the “right to know” basis.

- Federal tax information is furnished to state tax agencies only for tax administration purposes and *may not be disclosed* without express, written authority from the Internal Revenue Service (IRS). As a general rule, the accessibility of this information does not permit FTB, other agencies, or subdivisions of agencies to exchange or make subsequent disclosures of this information.

## Reference

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### [FTB Disclosure Manual](#)

### [Revenue and Taxation Code Sections 19542, 19542.1, and 19552](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.2.1.2 Disclosure And Denial Of Confidential Information

#### **Background**

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Confidential information submitted to, or developed within the department to administer its program responsibilities is not specifically made public information by statute. Included are federal and state tax return information, property tax and renter assistance claim information, political reform audit information, personnel records, informant and investigative files, and proprietary information.

[Government Code Section 90005](#) directly imposes the prohibitions on disclosure, relating to the Political Reform Act of 1974. There are also provisions in the [Revenue and Taxation Code Section 19542](#).

#### **Purpose**

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Disclosure and denial of confidential information ensures that the privacy of the taxpayer will not be violated. It will also ensure the protection of internal Franchise Tax Board (FTB) data that, although not covered by the Revenue and Taxation Code confidentiality statutes, may not be disclosed under provisions of the [California Information Practices Act of 1977](#).

Prohibiting disclosure of confidential information is intended to facilitate the administration of the Personal Income Tax, Business Entities, and the Senior Citizens Homeowners and Renters Property Tax Assistance Laws. This encourages taxpayers and assistance claimants to make full and truthful disclosures without apprehension that this information may be revealed or utilized against them for purposes outside of tax administration.

#### **Responsibility**

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FTB staff must ensure the confidentiality of taxpayers' income tax returns, property tax claims, and renter assistance claims. FTB staff that fail to adhere to the policies set forth may be subject to criminal action, disciplinary proceedings, and loss of employment.

#### **Action**

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Prior to any confidential information being disclosed, it is imperative that positive identification of the requester be verified in order to confirm the "need to know" and "right to know". For information that cannot be disclosed, refer to [FTB Disclosure Manual - Section 4300](#).

**NOTE:** Federal tax information is furnished to state tax agencies only for tax administration purposes and may not be disclosed without express written consent from the Internal Revenue Service (IRS).

## Reference

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[FTB Disclosure Manual](#)

[Revenue and Taxation Code Sections 19542-19570](#)

[Revenue and Taxation Code Section 21023](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.2.1.3 Penalties For Disclosure

#### **Background**

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Under [Revenue and Taxation Code Sections 19542, 19542.1 and 19552](#), it is a misdemeanor to make unauthorized disclosure of confidential tax information, including information received through an electronic medium.

Under [Federal Law 11.3.1.5.1](#), it is a felony to make unauthorized disclosure of federal tax information.

#### **Purpose**

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Enforcing penalties for unauthorized disclosure ensures that confidential information is not accessed, used, or disclosed by or to unauthorized individuals.

#### **Responsibility**

---

Franchise Tax Board (FTB) staff must:

- Sign the FTB Confidentiality Statement ((\*\*\*\*)) annually.
- Understand that unauthorized access, inspection, use, modifications, or disclosure of confidential information may result in disciplinary, civil and/or criminal action.

#### **Action**

---

The type and severity of disciplinary action imposed for unauthorized disclosure, unauthorized transactions or unauthorized computer access is based on an evaluation of the individual case.

The following disciplinary actions may be taken:

- Informal discussion
- Corrective interview
- Suspension
- Salary reduction
- Demotion
- Dismissal
- Criminal prosecution

**Reference**

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[FTB Disclosure Manual](#)

[Revenue and Taxation Code Sections 19542, 19542.1 and 19552](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.2.1.4 Power Of Attorney (POA)

#### Background

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A Power of Attorney (POA) is a legal instrument that allows a third party representative to act on behalf of the taxpayer with respect to designated tax matters. Representatives include (but are not limited to) attorneys, certified public accountants, and tax practitioners.

#### Purpose

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Franchise Tax Board's (FTB) POA policy is developed as a guide to ensure that all department employees permit recognized representatives to receive confidential information relating to the taxpayer they represent.

#### Responsibility

---

It is the responsibility of FTB staff to:

- Determine that a valid POA is on file before disclosing any confidential information
- Confirm POA status has not been revoked
- Make every reasonable attempt to resolve the collection issues with the designated representative

Any of the following POA forms are required to constitute an appropriate authorization on behalf of the taxpayer:

- FTB – form [FTB 3520](#)
- Internal Revenue Service (IRS) – [Form 2848](#) (it must indicate that FTB is included)
- IRS - [Form 8821](#)
- Board of Equalization (BOE) – form [BOE 392](#)
- [General and Durable POA](#), form [FTB 3520](#) must be attached
- [Handwritten POA correspondence](#), form [FTB 3520](#) must be attached
- Employment Development Department (EDD) form [DE 48](#), Power of Attorney Declaration

#### Action

---

FTB staff must properly identify the authorized POA before confidential case information is disclosed by verifying that the POA status is current in the ((\*\*\*\*)).

Upon receipt of a completed POA, FTB staff must update the taxpayer's file in the Accounts Receivable Collection System (ARCS) ((\*\*\*\*)).

If you receive a call from a representative whose Power of Attorney (POA) is not on file do the following:

Have them fax the POA form directly to you through your faxination, and continue the conversation with them. When the fax is received do the following:

- Add the Representative as a contact to Demographics ARCS.
- Route the faxed POA to the POA Unit/Receiving @F-283 so it can be added to the database.
- DO NOT require them to send the fax to the POA unit and call back after it is input.

If they can't fax it immediately, they can fax it directly to your unit's general fax line, so a call back can be made as soon as possible.

**NOTE:** Providing a new POA will revoke all previous POA declarations with FTB. If there is any doubt regarding the status of the requester, FTB representatives should request a current POA form or written authorization before disclosing any information.

## Reference

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[Power of Attorney - General Information](#)  
[Information About Power of Attorney - FTB 1144](#)

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**NOTE:** ((\*\*\*)) = Indicates confidential and/or proprietary information.

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### 3.2.1.5 Administrators And Executors

#### **Background**

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Administrators and executors are legal representatives that act in a fiduciary capacity of a deceased taxpayer's estate.

An estate is a taxable entity that comes into existence upon the death of the taxpayer. The assets of the deceased taxpayer revert to an estate that will be administered on behalf of the decedent by an administrator or executor by one of the following:

- A court process known as probate
- A trust that was established prior to the death
- In some instances, assets may be distributed directly to beneficiaries of the estate

#### **Purpose**

---

The administrator and executor act on behalf of the decedent to ensure fair distribution of a decedent's assets and settlement of outstanding debts.

#### **Responsibility**

---

FTB staff must ensure the administrator and executor has the "right to know". In addition, FTB staff are responsible for educating administrators and executors of all filing requirements or outstanding liabilities of the decedent.

**NOTE:** An individual who acts in a fiduciary capacity for the decedent may be held personally liable for failing to pay the tax liabilities prior to distributing the proceeds of the estate. The fiduciary's liability may not exceed the amount of the distribution. See [Revenue and Taxation Code Section 19516](#).

#### **Action**

---

FTB staff must properly identify the authorized administrator and executor by requesting a completed Power of Attorney (POA) declaration, form [FTB 3520](#), or a court order identifying the authorized administrator and executor as such before confidential case information is disclosed.

Demands for payment of the decedent's debts are filed through the probate of the estate, and are to be paid before the distribution of assets to any beneficiaries or other groups of creditors holding a lesser priority for payment.

## Reference

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[Revenue and Taxation Code Sections 18505, 18505.3, 18505.6, 18508 and 18509](#)

Power of Attorney form [FTB 3520](#)

[Additional information for decedents](#)

[Decedent filing requirements](#)

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**NOTE:** ((\*\*\*)) = Indicates confidential and/or proprietary information.

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### 3.2.1.6 Next Of Kin

#### Background

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Individuals who qualified as a dependent and/or relative of a deceased individual are referred to as next of kin. Next of kin is defined as the nearest blood relative(s) of a person who has died, including the surviving spouse or anyone who would receive a portion of the estate by the laws of descent and distribution if there is no will.

#### Purpose

---

Next of kin have the ability to act on behalf of a deceased taxpayer once proper verification has been established.

#### Responsibility

---

Franchise Tax Board (FTB) staff must obtain a copy of the death certificate to verify next of kin, or obtain Letters of Administration, or Letters Testamentary (Probate) which names the Executor appointed to settle the taxpayers estate.

NOTE: A Power of Attorney (POA) executed by the taxpayer ceases to be valid at death.

#### Action

---

Upon verification of next of kin and appropriate documents have been received, FTB staff will verify the decedent's case has been coded in the Taxpayer Information System (TI) as deceased. ((\*\*\*)

FTB staff should obtain probate information, attorney information and enter history comments into Accounts Receivable Collections System (ARCS) and TI.

#### Reference

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For additional information, see the Special Processes section of this manual.

NOTE: ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.2.1.7 Guardians and/or Conservators

#### **Background**

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Certain individuals cannot legally represent themselves and are unable to resolve their issues with the Franchise Tax Board (FTB). In these cases third parties known as guardians and conservators are designated.

A guardian is defined as an individual acting on behalf of another party. The court usually grants a guardianship when the other party is legally incompetent.

A conservator is defined as an individual appointed to conserve or protect the assets of another. Conservatorships are normally granted when another party is incompetent to perform (generally because the other person is mentally or physically disabled). A trust or estate is usually involved in a conservatorship.

#### **Purpose**

---

Guardians and/or conservators act as legal representatives on behalf of the taxpayer.

#### **Responsibility**

---

FTB staff must establish the guardian and/or conservator relationship before disclosing information. Once the relationship has been established the guardian and/or conservator may act to resolve the case as Power of Attorney (POA).

#### **Action**

---

All those designated as either a guardian and/or conservator must:

- Establish the guardian and/or conservator relationship by submitting their authorization to receive information.
- Provide a written request for information if required by procedure or statute; e.g., requests under the [Information Practices Act](#), [Civil Code Section 1798.24 \(c\)](#).

#### **Reference**

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[Civil Code Section 1798.24-1798.24b](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.2.1.8 Providing Records To Authorized Representatives

#### **Background**

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Disclosure to taxpayers of their own records or related information is both lawful ([Civil Code Sections 1798.24 - 1798.24b](#)) and appropriate, provided the records do not contain information revealing the identities of third party informants who fear reprisal, other taxpayers, or a criminal investigation.

**NOTE:** Federal tax information is furnished to state tax agencies only for tax administration purposes and may not be disclosed without express written consent from the Internal Revenue Service (IRS).

#### **Purpose**

---

Individuals have a “right to know” what information is being collected about them and for what purposes.

#### **Responsibility**

---

Prior to providing records to the taxpayer, it is the duty of Franchise Tax Board (FTB) staff to ensure that they are communicating with the appropriate taxpayer.

#### **Action**

---

Requests from taxpayers for their case information must be in writing, and should be handled according to their specific request including, but not limited to:

- Payment documents
- Returns
- Audit narratives and related records
- Explanation of billing
- Third party contacts

#### **Reference**

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[FTB Disclosure Manual - Section 2000](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.2.1.9 Destruction Of Confidential Information

#### Background

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Franchise Tax Board (FTB) treats all information received, maintained, and generated as confidential unless it is specifically made public by statute. These records must be destroyed in accordance with FTB policy as outlined in the General Procedures Manual (GPM). ((\*\*\*)

#### Purpose

---

Proper destruction of confidential information ensures security of taxpayers' information.

#### Responsibility

---

FTB staff are to properly dispose of all confidential information unless it is specifically made public by statute.

#### Action

---

All written material containing information about an individual's case must be discarded in a destruct box labeled with ((\*\*\*)

This material includes:

- Copies of returns, forms, schedules, and W-2 forms
- Correspondence from or to the taxpayer
- Anything else that would contain the taxpayer's social security number, name, address, income, etc.

#### Reference

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((\*\*\*)

**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### **3.2.2 Privacy**

#### **3.2.2.1 Privacy Procedures**

##### **Background**

---

Right to privacy is a personal and fundamental right protected by [Section 1 of Article 1 of the California Constitution](#) and by the [United States Constitution](#); all individuals have a right of privacy in information pertaining to them.

[The Privacy Act of 1974](#), the [California Information Practices Act of 1977](#), and the Information Privacy Principles for Individuals [Civil Code Section 1798.24](#), require state agencies to follow prescribed procedures to safeguard the rights of individuals.

##### **Purpose**

---

Franchise Tax Board (FTB) staff must comply with the guidelines of State and Governmental Act/Principles set forth to protect the rights of taxpayers and to ensure the security and confidentiality of taxpayer records.

##### **Responsibility**

---

FTB staff must adhere to the administrative, technical, and physical safeguards to ensure compliance with the provisions of the Privacy Procedures.

##### **Action**

---

FTB shall maintain personal information relevant and necessary to accomplish the purpose of the agency.

When collecting this information from either a taxpayer or third party, FTB must provide the following:

- Whether submission of such information is mandatory or voluntary
- The authority, whether granted by statute, regulation or executive order
- The principal purpose(s) for which the information is to be used

We are also required to notify residents whose personal information may have been breached in the most expedient time possible and without delay. Effective July 1, 2003, Civil Code Sections [1798.29](#) and [1798.82](#) provide for disclosure to California residents of any security breach, or unauthorized acquisition of unencrypted computerized data, that compromises the security, confidentiality, or integrity of personal information.

These types of data include name (first or initial and last name) plus one or more of the following:

- Social security number
- California driver's license number
- Account number, credit or debit card number (along with password or other access code)

## Reference

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[FTB Disclosure Manual](#)

[The Privacy Act of 1974](#)

[California Information Practices Act of 1977](#)

**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.2.2.2 Right To Financial Privacy

#### **Background**

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The Right to Financial Privacy Act was enacted by Congress in response to a U.S. Supreme Court decision that found bank customers had no legal right of privacy for their financial information held by financial institutions.

The California Right to Financial Privacy Act governs the disclosure of financial records by financial institutions.

Financial institutions are defined as:

- Banks (state and national)
- Savings and Loan Associations (state and federal)
- Trust Companies
- Finance and Loan Companies
- Credit Unions (state and federal)

**NOTE:** Although federal law includes retail credit card issuers in its definition of financial institutions, state law does not. Since federal law does not preempt state law in this area, the Franchise Tax Board (FTB) does not consider retail card issuers as financial institutions.

#### **Purpose**

---

The Financial Privacy Act protects the taxpayers' right to financial privacy and provides criteria for requesting financial records. Additionally, financial privacy ensures that government agencies provide taxpayers notice and an opportunity to object before a bank or other institution can disclose personal financial information to a government agency as stated in [Financial Code Sections 4050-4060](#) (California Financial Information Privacy Act).

#### **Responsibility**

---

FTB staff must verify taxpayers have been provided notice prior to requesting information from a bank and/or other financial institution. By adhering to [privacy procedures](#) FTB will ensure the taxpayers' right to financial privacy is not compromised.

**Action**

---

In the administration of the FTB programs the following may be obtained from financial institutions in accordance with [Government Code Section 7480\(e\)](#), without a subpoena:

- Whether a taxpayer has an account and, if so, any identifying numbers of such account or accounts.
- The amount of any security interest held by the financial institution in a specified asset belonging to the taxpayer.
- Financial records in connection with the filing or audit of a tax return.
- Tax information return required to be filed by the financial institution.

**Reference**

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[Financial Code Sections 4050-4060](#) (California Financial Information Privacy Act)

[Government Code Section 7465](#)

[Government Code Section 7480\(e\)](#)

[FTB Disclosure Manual](#)

[Section 3.2.1.3 Penalties For Disclosure](#)

**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.2.3 Taxpayer Rights

#### 3.2.3.1 Due Process

##### Background

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The Fourteenth Amendment of the United States Constitution guarantees in part that no state shall deprive any persons of their property without due process of law.

Due process is best defined as giving notice. The essential elements of due process of law are reasonable notice of an action taken that affects an individual and an opportunity to be heard and present any claims or defenses, and in order to be heard, they must be given notice.

*Statutory due process* is where the law requires that notice be given before an action is taken. *Procedural due process* is when Franchise Tax Board (FTB) has a program or process in which we afford due process and then extend the same due process procedure to similar programs or processes.

##### Purpose

---

Due process is to ensure that:

- The FTB provides reasonable notice prior to any legal action being taken against a taxpayer.
- The individual be given an opportunity to be heard and to present any claims and/or defenses.

##### Responsibility

---

FTB staff must ensure that due process is afforded to taxpayers at all times. Before taking any collection action, a liability (tax or non tax) must be *due and payable*.

As long as the department mails a notice to the last known address supplied by the taxpayer, due process, as to notice, has been served. The mailing of an FTB notice to the last known address provided by the taxpayer is adequate notice whether or not the taxpayer actually received the notice. As a general rule, a taxpayer's last-known address is the address that appears on the taxpayer's most recently filed return, unless FTB is given clear and concise notice of a different address.

[Revenue and Taxation Code Section 19049](#) represents the only due process requirement (before collection action can commence) that exists after an assessment becomes final, or a no-pay return is filed. [Revenue and Taxation Code Section 19049](#) states, "When a deficiency is determined and the assessment becomes final, the FTB shall mail notice and demand to the taxpayer for the payment thereof. The deficiency assessed is due and payable at the expiration of 15 days from the date of the notice and demand."

FTB has additional notice requirements before a collection fee is assessed, before a Notice of State Tax Lien can be filed, and before taking any involuntary collection actions.

[Revenue and Taxation Code Section 19254](#), in part, says that a collection cost recovery fee shall be imposed if FTB has mailed notice for payment that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

[Revenue and Taxation Code Section 21019](#), in part, says that at least 30 days prior to the filing or recording of a tax lien, we must mail a notice stating by what authority we are filing the lien ([Section 7171 of the Government Code](#)), and what procedures are available to prevent us from filing it. The 30-day notice provision is not applicable where the collection of tax is determined to be in jeopardy.

[Revenue and Taxation Code Section 21015.5](#), in part, says that we must provide a notice in writing at least 30 days prior to taking a levy action. The notice shall be required only once for each taxable period to which the unpaid tax is specified.

If FTB holds in abeyance the collection of a liability (tax or non tax) that is final and otherwise due and payable, for a period in excess of six months from the date the hold is first placed on the case ((\*\*\*\*)), FTB must mail a notice to the taxpayer prior to issuing a levy or filing a notice of state tax lien.

It is the responsibility of FTB staff to ensure that due process is addressed and afforded to taxpayers during the collection process.

## Action

---

FTB staff are required to ensure that due process was provided. Due process consists of:

- Notifying the taxpayer of their balance due
- Notifying the taxpayer of possible collection action
- Ensuring the taxpayer is provided with the necessary legal language prior to taking involuntary actions (e.g., lien, levy)
- Disclosing the reasons for collection action
- Providing the right to a fair hearing
- Advising the taxpayer of the right to further appeal

**Reference**

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[California Taxpayers' Bill of Rights, A Comprehensive Guide](#)

[Revenue and Taxation Code Section 19049](#)

[Revenue and Taxation Code Section 19254](#)

[Revenue and Taxation Code Sections 21015.5 and 21019](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.2.3.2 Right To Public Information

#### Background

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The California Public Records Act (PRA), [Government Code Sections 6250 - 6270](#), protects the individuals right to privacy and provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

#### Purpose

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The right to public information, or giving access to public information, is to afford the right to any person (which includes any natural person, corporation, partnership, limited liability company, firm or association) to inspect any public record relating to the conduct of the public's business. Inspection of the public record is limited to businesses prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics, except when the disclosure is specifically exempt by law, or would jeopardize an individual's rights of privacy, or would reveal nonpublic information.

#### Responsibility

---

It is the responsibility of the department's ((\*\*\*\*)) to ensure that the California Public Records Act, pursuant to [Government Code Section 6250](#), be adhered to when any person requests a copy of the department's various handbooks, procedure manuals, training materials or policy files.

#### Action

---

It is the responsibility of Franchise Tax Board (FTB), upon a request for a copy of records, within ten days from receipt of the request, to determine whether the request, in whole or in part, seeks copies of public records in the possession of this agency and to promptly notify the person making the request of the determination.

In unusual circumstances, the time limit prescribed (10 days) may be extended by written notice by the head of the agency, or his or her designee, to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be reached.

**NOTE:** No notice shall specify a date that would result in an extension for more than 14 days.

Requests must be:

- Specified in writing

- Accompanied by payment of a fee not to exceed the direct cost of duplication

It is departmental policy that tax supported institutions and government agencies shall be exempt from these charges ((\*\*\*)).

## Reference

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### [FTB Disclosure Manual](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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### 3.2.3.3 Taxpayers' Bill Of Rights

#### **Background**

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The California Legislature enacted the "Katz-Harris Taxpayers' Bill of Rights Act" in 1988. The enactment became effective in 1989, and was added to the [Revenue and Taxation Code Sections 21001 - 21028](#).

[The Federal Taxpayers' Bill of Rights 2, 1997](#) was signed into law on July 30, 1996. California passed taxpayers' rights conformity legislation in an effort to conform to federal law, see the [California Taxpayers' Bill of Rights 2 - 1997](#). California's law contains provisions that are intended to provide increased protection of taxpayers' rights, including the most recently legislated Taxpayers' Bill of Rights Act of 1999, ((\*\*\*\*)).

#### **Purpose**

---

The Taxpayers' Bill of Rights ensures that the rights, privacy, and property of California taxpayers are adequately protected during the process of assessment (audit, protest, appeal) and collection of taxes. The Taxpayers' Bill of Rights instructs the Franchise Tax Board (FTB) to promote self-assessment by improving the clarity of the law, by keeping the taxpayers informed of its proper application, and by developing an education program that will raise the taxpayers' level of awareness.

The Taxpayers' Bill of Rights further specifies that:

- The purpose of any tax proceeding is to correctly determine the taxpayer's liability.
- FTB and taxpayers have the opportunity to present and consider all relevant information pertaining to the disputed liability.
- The taxpayer has a right to request and receive certain public written records.

#### **Responsibility**

---

FTB staff must ensure when performing their official duties the Taxpayers' Bill of Rights are addressed and afforded to all taxpayers.

#### **Action**

---

FTB staff will keep confidential the information that taxpayers provide to us on their state/federal tax returns and the amounts they owe us. We must inform taxpayers in simple, non-technical language of their rights, how to protest/appeal, and how to contact the Taxpayer Advocate. FTB staff can mail or refer taxpayers to the California Taxpayers' Bill of Rights, A Comprehensive Guide – form [FTB 4058C](#). FTB staff should be knowledgeable of the Taxpayers' Bill of Rights in reference to:

- [Taxpayer Advocate Office](#)
- Taxpayer Education
- Evaluating FTB Employees
- Joint Returns
- Information Returns
- Collection Procedures
- Interest
- Reimbursements and Awards
- Notices to Taxpayers
- Amended Return Claims for Refund, Protest and Appeals
- Written Advice
- Miscellaneous Provisions
- Comparison of California Taxpayers' Bill of Rights to Federal Law

## Reference

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[California Taxpayers' Bill of Rights - 1988, form FTB 4058](#)

[California Taxpayers' Bill of Rights 2 - 1997, form FTB 4063](#)

[California Taxpayers' Bill of Rights, A Comprehensive Guide, form FTB 4058C](#)

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**NOTE:** ((\*\*\*) = Indicates confidential and/or proprietary information.

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