

4. CASE PROCESSING SECTION

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Last Revision: 05/15/2018

4.1.1.1 General Information

Background

Generally, a corporation will fall into one of the following categories:

- **Public Corporations** – Those created by State or Federal Governments to function as governmental instruments such as the Federal Deposit Insurance Companies (FDIC).
- **Quasi–Public** – Combines a public corporation and a private corporation into a corporation such as a utility company.
- **Private** – Is owned by a small group, or members of a family, where the stock is not available to be purchased by the general public. This type of corporation is also known as a **closed corporation**.
- **Publicly Traded Corporation** – A public corporation whose ownership is dispersed among the general public in many shares of stock which are freely traded on a stock exchange.
- **Cooperatives** – Cooperatives are organizations formed to provide its members with goods and or services. Most cooperatives are in the farming industry. Cooperatives are not taxable on income received from its members. However, they are subject to minimum tax.

Types of Corporation

- **General Corporations** – All corporations other than financial corporations or corporations expressly exempted from taxation which do business within the limits of California.
 - **Allocation Corporations** – Corporations which do business in California and one or more states or foreign countries. These corporations can also be general, foreign or financial corporations.
- **Exempt Corporation** – All corporations exempted from taxation by sections 23701 through 23701(z) of the Revenue and Taxation Code (R&TC).
- **Banks** – Organizations formed in accordance to the State or Federal Banking laws. Banks are not considered corporations per the Revenue and Taxation Code for Corporate Income Tax purposes
- **Financial Corporations** – All corporations which are insubstantial competition with banks such as:

- Credit Unions
- Saving and Loan Associations
- Finance Companies
- **Insurance Companies** – An insurance company is an entity or arrangement (i) that is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the company does business; (ii). The gross income of which (for example, gross premiums and gross investment income) arise from ,insurance, reinsurance, and annuity contracts for the immediately preceding calendar year exceeds 50 percent total gross income for such year; or (iii). The aggregate value of the assets of which associated with insurance, reinsurance, and annuity contracts at any time during the immediately preceding calendar year exceeds 50 percent of total assets at any time during such year. Treas. Reg. 1.147-1(a)(65). Insurance companies are subject to a tax imposed upon insurance companies known as a **Gross Premium Tax** (alternatively, they pay the minimum franchise tax). Insurance companies are per se corporations under Treas. Reg. 301.7701-2(b)(4).
- **“S” Corporation** – Corporations that elect “S” status are subject to a reduced tax rate, but are still subject to the minimum tax. In 2002, California generally conformed to federal law so corporations electing S corporation treatment for federal purposes are treated as S corporations for state tax purposes. R&TC Section 23802.
- **Q Sub (Qualified Subchapter S Subsidiaries)** – A Qsub is owned by “S” corporation (Owner/Parent). (It is a federal election, which a “C” or “S” corporation elects to be recognized as a Q sub).
- **Domestic Corporations** – Domestic Corporations include all corporations incorporated in the State of California.
- **Foreign Corporations** – Foreign Corporations include all corporations incorporated in foreign countries or states other than California. Determination of tax is based on activity in California and qualification through the Secretary of State.
 - A Foreign corporation doing business in California is required to file Form 100 and pay Franchise Tax whether or not it has qualified through the Office of the Secretary of State. A Foreign Corporation deriving income from California sources, but not doing business in California, is required to file the

Form 100 and pay income tax if it has not qualified through the Office of the Secretary of State.

- **Non-Qualified Corporation (NQ)** – Nonqualified corporations are those corporations which are either doing business in California or deriving income from California sources and who have not qualified to do business here through the Office of the Secretary of State. The two types of nonqualified corporations are:
 - **Nonqualified Franchise Tax (NQFT)**: These are corporations doing business in California and are required to pay Franchise Tax.
 - **Nonqualified Income Tax (NQIT)**: These are corporations deriving income from California sources and are required to pay tax based on income derived in this state.

Purpose

A California corporation generally is a legal entity which exists separately from its owners. While normally limiting the owners from personal liability, taxes are levied on the corporation as well as on the shareholders. The sale of stocks or bonds can generate additional capital and the longevity of the corporation can continue past the death of the owners.

Responsibility

There are several terms that may be helpful for Franchise Tax Board staff in reviewing corporation documents including those discussed below.

To form a corporation in California, Articles of Incorporation must be filed with the California Secretary of State's office.

Articles of Incorporation:

The Articles of Incorporation are a matter of public record and are filed at the Office of the Secretary of State. The Articles of Incorporation contain the following information:

- Name of the corporation
- Purpose of the corporation

- Name and Address of the incorporation attorney or agent for service of process
- Stock Issuance Authorization
- The Articles of Incorporation also set forth other provisions such as:
 - Granting the power to levy assessments upon shares.
 - Granting shareholders preemptive rights to subscribe to any or all issues of stock or securities.
 - Special qualifications of persons who may be shareholders.
 - A provision limiting the duration of the corporations existence to a specified date.

Corporate By-Laws

The by-laws are the internal rules of the corporation. They may limit, but not alter the charter provisions. Typically, the by-laws define the internal organization and administration of the company and specify the functions and duties of the officers.

Corporate Directors

The directors, the officers, and the stockholders control the corporation. The direct link between the stockholders and the officers who manage the corporation is the Board of Directors. The directors are trustees appointed by the stockholders to guide the company in the best interest of the stockholders. The power of the directors belongs to the board as a whole, not to individual directors. The Board of Directors can determine the policies of the corporation within the limits of the by-laws, appoints officers, declares dividends, makes contracts in the name of the corporation, issues stock, and exercises any other power granted by the by-laws.

Corporate Officers

Officers of corporations generally operate the day to day activities of the corporation. When attempting to contact the corporation, if there is no other representative who has been granted a power of attorney, you should always ask to speak to a corporate officer.

Corporate Stockholders

The stockholders are the actual owners of the company with each share of stock representing an ownership interest. The degree of ownership of a stockholder is based on the number of capital or common stock shares held by the individual in relation to the total number of shares outstanding.

Stocks

Preferred stock, as well as, common stock, represent ownership. As the name implies, preferred stock is given some preference over common stock with respect to either assets or dividends. There are

many varieties of preferred stock, but generally the term means that the holder has a claim prior to that of the holder of common stock to dividends. The claim of a bondholder, however, will be considered ahead of the preferred stockholder. Preferred stock generally does not carry voting privileges. Stockholders have the right to be informed of the company's financial and business status. They normally have the right to transfer shares of stock freely. Liability for corporation debts is normally limited to the capital a stockholder has invested in the corporation.

Bonds

Corporations often issue bonds as well as stock as a means of raising capital. **Stocks represent ownership (equity interest) in the company, but a bond is a contractual debt obligation.** It represents a promise of the corporation to pay a fixed sum of money to the bondholder at the date of maturity and to pay a stipulated amount of interest at periodic intervals. The bondholder is not usually a part of the corporate organization with respect to voting privileges and ownership.

Pre-incorporation Activities

1. Pre-incorporation activities are not considered as doing business.

These activities may include:

- Preparation of incorporation documents
- Opening bank accounts
- Electing officers
- Holding directors' meetings
- Negotiating leases
- Securing insurance policies

2. Because pre-incorporation activities are not considered doing business, a corporation may avoid the minimum tax on a short period of less than one half month (15 days or less) in its initial income year if the only activities are "pre-incorporation" in nature.

Cessation of Business as a Corporation and Continuation as a Sole Proprietorship

- Corporation property taken over by the principal will be considered as liquidating distributions and a return of capital.
- Sole proprietors may be held liable as a transferee of delinquent corporation taxes unpaid before the change of transfer.

- The sole proprietor should report the income from the business on his personal income tax return (schedule C).
- Stockholders may wish to terminate a corporation and operate as a sole proprietor for the following reasons:
 - To take advantage of future trade or business losses on their individual income tax return.
 - To avoid paying the corporate minimum tax.
 - The realization that there is no practical reason to be incorporated.

Voluntary Dissolution of California Corporations

Corporate dissolution usually occurs when either the purpose of the organization has been fulfilled or when it is in financial difficulties and it does not expect to make a profit. The customary procedure is for the Board of Directors to recommend dissolution, which is then voted upon by the stockholders at a meeting. Generally, it requires a majority of the voting stock to adopt such a resolution. The assets are sold, liabilities paid, and any excess divided among the stockholders.

Action

Every corporation doing business within the limits of California, and not expressly exempted from taxation by the California Constitution or by the Revenue and Taxation Code, shall pay annually, for the privilege of exercising its corporate franchise within California, a tax according to, or measured by its net income under Chapter 3 of the Revenue and Taxation Code. In addition, each corporation under Chapter 2 of the Revenue and Taxation Code shall pay annually, a minimum tax.

Corporation

- 1st year – measured tax
- 2nd year and after - \$800 minimum tax

The tax and minimum tax rates are:

YEAR	S CORP RATE	BANK AND FINANCIAL S CORP RATE	C CORP RATE	BANK AND FINANCIAL C CORP RATE

1997 to current	1.5	3.5	8.84	10.84
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Note: For 1996 and prior, refer ((***)

Business entities not classified as a corporation such as: LLC or Limited Partnership, see ((***) for filing requirement and tax purposes.

Limited Liability Company (LLC) and Limited Partnership

- 1st year and after - \$800 minimum

Reference

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/04/2018

4.1.1.2 Prepayment Tax/Commencing Tax

Background

Secretary of State (SOS) Prepayment Tax

Prior to January 1, 2000 a prepayment tax was paid to the SOS at the time of incorporation or qualification. The prepayment was for the privilege of "doing business" during the business entity's first income year and could not be claimed as an estimate tax payment or credit against the tax liability shown on the return for any given year.

Note: The corporation's first year would appear as if the minimum tax was paid twice.

Qualified New Corporations (QNC)

For income years beginning in 1997 and 1998, QNC's were eligible for a reduced prepaid minimum tax of \$600. A QNC is defined, for the purpose of the reduced prepaid minimum tax, as a corporation that:

- Estimates gross receipts (less returns and allowances) to be \$1 million or less on the first tax return [FTB 100](#).
- Estimates the tax liability to be \$800 or less on the first Franchise Tax Board (FTB) tax return ([Form 100 California Corporation Franchise or Income Tax Return](#)) per [Revenue and Taxation Code Section 23151](#).
- No more than 50% of the corporate stock is owned by another corporation.

For income years beginning in 1999, QNC's were eligible for a reduced prepaid minimum tax of \$300. A QNC is defined, for the purpose of the reduced prepaid minimum tax, as a corporation that:

- Begins operations at or after the time of incorporation.
- Estimates gross receipts (less returns and allowances) to be \$1 million or less on the first tax return form FTB 100.
- Estimates the tax liability to be \$800 or less on its first tax return form FTB 100.
- Does not begin business operations as a sole proprietor, partnership or other business entity prior to incorporation.

Reduced Prepayment Minimum Tax

For income years beginning prior to January 1, 1997 the corporation's prepayment to SOS was equivalent to the franchise minimum tax.

Incorporate or Qualify in 1997 and 1998:

- Must be a QNC
- Have Gross Receipts less than \$1 million
- Tax liability \$800 or less on first year's return
- The reduced amounts are:
 - Prepayment of \$600
 - First year tax \$800

Incorporate or Qualify in 1999:

- Must be a QNC
- Was not in business (of any type) prior to date of incorporation
- Gross Receipts less than \$1 million
- Tax liability \$800 or less on first year's return
- The reduced amounts are:
 - Prepayment of \$300
 - First year tax \$500-\$800

Note: If a corporation paid the \$300 prepayment, and the \$500 first year tax, but did not qualify for the reduced prepayment minimum tax, a SOS prepay adjustment of usually \$800 is performed on the return. The first year's tax return will show a total tax of \$1,300. This is viewable in the return details on the Business Entities Tax System. (BETS) or the Taxpayer Folder (TPF)

Incorporate or Qualify in 2000:

- No qualifications (the zero pre-payment to SOS is for any corporation which registers through SOS).
- No Prepayment for any corporation which registers through SOS.
- First year tax has no minimum tax requirement and is based on measured tax.

If a corporation's SOS prepayment is a dishonored check, SOS will cancel the corporation number and post the status as "Canceled."

Limited Liability Companies (LLCs) and partnerships are not required to pay an SOS prepayment.

Commencing Tax

Non-Qualified Franchise Tax (NQFT) entities "doing business" in California are required to pay to the FTB a commencing tax for the privilege of doing business within the state. The commencing tax is equal to the minimum tax for the year covered by the entity's first return. This commencing tax is similar to the prepayment tax paid to the SOS at the time of incorporation or qualification. The commencing tax may not be claimed as an estimate tax payment or credit against the tax liability shown on the return for any given year.

A reduction in tax was not allowed for tax years beginning in 1997-1999. NQFT entities "doing business" in California on or after January 1, 2000 are not subject to commencing tax, but are subject to the minimum tax on their first return.

Note: An LLC not registered with SOS electing to file as a corporation would be subject to the commencing tax prior to January 1, 2000.

Purpose

The prepayment and commencing tax is assessed for the privilege of "doing business" in California.

Action

FTB employees should recognize and resolve situations where the corporation's commencing tax or prepayment tax was assessed incorrectly.

Reference

((****))

[Revenue and Taxation Code Section 23153](#)

[Revenue and Taxation Code Section 23221](#)

[Assembly Bill 10](#)

[Assembly Bill 2798](#)

((****))

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.1.1.3 Income Tax

Background

Business entities have various taxation requirements. They are as follows:

- **Corporate Income Tax - C Corporation** – C corporations pay an annual tax for the privilege of exercising its corporate franchises within California measure by its net income or the minimum franchise tax. C corporations that incorporated or qualified to do business prior to January 1, 2000 may also be subject to a Secretary of State (SOS) ((***)).

General tax rate links:

((***))

[Revenue and Taxation Code Section 23151](#)

Minimum franchise tax links:

((***))

[Revenue and Taxation Code Sections 23151](#) and [23221](#)

- **Corporate Income Tax - S Corporation** – Subchapter S of the Internal Revenue Code allows a corporation's election S status to pass through income, losses, deductions, and credits to its shareholders. In California, the annual tax for S corporations is the greater of 1.5% of the corporation's net income or the franchise tax. For taxable years beginning on or after January 1, 2002, a corporation with a valid federal S corporation election is considered an S corporation for California purposes and is deemed to make the California S election on the same date as the federal election. This law applies to all corporations, whether or not they are registered with the SOS.

General tax rate links:

((***))

[Revenue and Taxation Code Sections 23800, 23800.5, and 23802](#)

Minimum franchise tax links:

((***))

[Revenue and Taxation Code Section 23151](#)

- **Qualified Subchapter S Subsidiary (QSub)** – California has conformed to the sections of the Internal Revenue Code that allow an S corporation to own a QSub. A QSub is a domestic corporation that is not an ineligible corporation. Additionally, S corporations must meet the following requirements to become a QSub:
 - The parent S corporation must hold 100 % percent of the stock of the eligible subsidiary corporations.
 - The parent S corporation must elect to treat the subsidiary as a QSub.

A QSub is not treated as a separate entity and all assets, liabilities, and items of income, deduction, and credit of the QSub are treated as belonging to the parent S corporation. The activities of the QSub are treated as activities of the parent S corporation. An election made by the parent S corporation under Internal Revenue Code Section 1361(b) to treat the corporation as a QSub for federal purposes is treated as a binding election for California purposes and a separate election is not required to be filed for California. If the parent S corporation is unitary with its QSub, then the parent S corporation reports income, losses, deductions, and credits and additionally adds income earned from the QSubs to the income earned of the parent. California imposes taxes based on the combined income earned from both the parent and its QSub.

If the parent S corporation and its QSubs are not unitary, then the QSubs are treated as a separate division and the business income must be apportioned to California for each separate entity.

((***)

[Revenue and Taxation Code Section 23800.5](#)

- **Non-Qualified Corporation** – Corporations not qualified through SOS but doing business in California are subject to the franchise tax. The entity may be a C corporation or an S corporation. Non-Qualified corporations may also be subject to the commencing tax prior to January 1, 2000. They are assigned a corporate number by Franchise Tax Board (FTB) ranging from 9500001 through 9549999. There are two types of non-qualified entities:

- **Non-Qualified Franchise Tax (NQFT)** – These are corporations that are not qualified to do business in California but are doing business in the state and are subject to the minimum franchise tax.
- **Non-Qualified Income Tax (NQIT)** – These are corporations that are not qualified to do business in California and are not doing business in California (unless they are a homeowner's association), but are deriving income from within the state. These corporations are liable for measured tax on the income derived from California, and are not subject to minimum franchise tax.

Note: NQIT corporations are not subject to the commencing tax.

General tax rate links:

((** **))

[Revenue and Taxation Code Section 23151](#)

Minimum franchise tax/commencing tax:

((** **))

((** **))

((** **))

((** **))

((** **))

[Revenue and Taxation Code Sections 23101, 23151, and 23153](#)

- **General Partnership** – In a general partnership all of the partners are general partners and are entitled to participate in the operation of the business. As a result, all partners in a general partnership are liable for the full amount of the partnership's debts. There is no income tax assessed against general partnerships, because items of, income, deductions and credits flow through from the partnership to each partner and is reported on each partner's individual income tax return. General partnerships also do not pay the annual minimum tax. Any partnership that does not satisfy state law requirements to be a limited partnership is a general partnership. Every partnership that is doing business in California, or has a California source income, or has filed certificate or registered with the Secretary of State must file a Form 565, Partnership Return of Income, in addition to providing each partner with a California Schedule K-1.

((***)

((***)

[Revenue and Taxation Code Section 18633](#)

- **Limited Partnership (LP)** – An LP is a partnership that has at least one general partner and at least one limited partner. The general partners have an active role in management and are liable for partnership debts while limited partners have a passive role in management and are liable only for the amount each invested in the LP. An LP doing business in California, that has a certificate on file, or is registered with the California SOS (whether or not doing business in California) must file a return and pay the annual minimum tax. There is no income tax assessed against LP because the income flows through each partner is reported on each partner's individual income tax return.

Note: Between January 1, 1988 and December 31, 1992 only LPs actually" doing business" in California were required to pay minimum tax.

((***)

((***)

[Revenue and Taxation Code Section 17935](#)

- **Limited Liability Partnership (LLP)** – An LLP is a partnership in which all partners, limited and general have limited liability. LLPs are limited to either the practice of public accountancy, architecture, law, and related services. California also recognizes out of state LLPs doing business in California. An LLP doing business in California, that has a certificate on file, or is registered with the California SOS (whether or not doing business in California) must file a return and pay the annual minimum tax.

((***)

((***)

[Revenue and Taxation Code Section 17948](#)

- **Investment Partnerships** - An investment partnership is a partnership that meets the following criteria:
 - No less than 90% of assets consist of qualifying investment securities (stocks, bonds, currency, future

contracts, etc.), bank deposits, and office space and equipment.

- o No less than 90% of income is from interest, dividends, and gains from sale of qualifying investment securities.

Investment partnerships must file partnership tax returns and pay tax as other partnership.

Note: For nonresident partners, income derived from “qualifying investment securities: of investment partnership is generally considered as income from sources other than California.

((***)

[Revenue and Taxation Code Section 17955](#)

- **Limited Liability Company (LLC)** – An LLC may be classified for tax purposes as a partnership, a corporation, or a disregarded entity. An LLC will be classified as a partnership if it has more than one owner. The term LLC means and LLC classified as a partnership for state and federal tax purposes unless otherwise stated. An LLC will be disregarded as separate from its owner if it has only one member. An LLC may also elect to be taxed as a corporation. California conforms to the federal entity classification regulations known as check-the-box regulations, which allow an LLC to elect to be taxed as a corporation.
- LLC filing as a partnership. An LLC filing as a partnership is subject to the annual tax if it is “doing business” in California or registered with SOS. An LLC that elects to be taxed like a partnership will have the following features:
 - o All members have limited liability.
 - o The number of members is unlimited.
 - o Members may include individuals, corporations, partnerships, LLCs, and estates or trusts.
 - o Special income/loss allocations are allowed.
 - o Flexible management arrangements; all members may actively participate in management.

((***)

((***)

[Revenue and Taxation Code Sections 17941, 17942, 17944, and 18633.5](#)

- **LLC filing as a corporation** – An LLC filing as a corporation is subject to the same taxation as a corporation if it is “doing business” in California or registered with SOS. If the LLC elects to file as a corporation, SOS registration will be as an LLC, not a corporation. An LLC taxed as a corporation may file Form 100 (California Corporation Franchise or Income Tax Return), Form 100S (California S Corporation Franchise or Income Tax Return), or Form 100W (California Water’s Edge Franchise or Income Tax Return). LLC’s taxed as corporations are also not subject to the LLC fees, are not required to file FTB Form 3832 (Limited Liability Company’s List of Members and Consents), and do not pay tax on Schedule T for non-consenting nonresident members.

((***) and S-corporation above.

[Revenue and Taxation Code Section 23153](#) corporation minimum tax)

- **Single Member LLC (SMLLC)** – An SMLLC is considered a disregarded entity by the IRS and has no federal filing requirement. An SMLLCs is required to pay the LLC annual tax and fee if registered with the SOS or “doing business” in California.

((***)

[Revenue and Taxation Code Section 23038\(b\)\(2\)\(B\) iii](#)

- **LLC Fee** – In addition to the annual tax, LLCs are also subject to an annual fee based on total income from all sources derived from or attributable to California ((see fee schedule in links below)). Total income for the LLC fee purposes is California sourced gross income plus cost of goods sold from the LLCs trade or business if the LLC is a dealer in real property. Total income from all sources derived from or attributable to California is determined by applying existing rules for assigning sales to California for income apportionment purposes.

((***)

[Revenue and Taxation Code Sections 17941, 17942 and 17944](#)

- **LLC Nonconsenting Nonresident Tax (NCNR)** – An LLC with nonresident members is required to file [Form 3832](#) with [Form 568](#). Form 3832 is an agreement signed by the nonresident members of the LLC requiring them to:
 - File a California income tax return
 - Pay all taxes imposed on their share of income from the LLC on time
 - Be subject to jurisdiction in California for the collection of income taxes, interest, and penalties.

If the LLC fails to file form FTB 3832 timely (by the extended return due date) on behalf of any nonresident member, then the LLC is responsible for payments of tax, interest and penalties on each of its nonresident member's distributive share of income. The NCNR tax is computed on Schedule T of form FTB 568 by multiplying the non-consenting nonresident member's distributive share of income by the highest marginal tax rate for the applicable year:

- C Corporation tax rate if the member is a C corporation.
- S Corporation tax rate if the member is an S corporation.
- Personal Income Tax (PIT) single tax rate if the member is an individual, partnership, LLC, estate or trust.

((***)

[Revenue and Taxation Code Sections 17851-17860](#)
[Revenue and Taxation Code Sections 18633, 18633.5, 18662 and 18666](#)

- **Banks and Financial Institutions** – Banks and financial institutions “doing business” in California are subject to a special tax rate, consisting of the general tax rate specified in Revenue and Taxation Code section 23151 plus two percent (2%) for tax years beginning after December 31, 1995. Prior to 1995, the financial rate was determined by computing the percentage of personal property tax and business license tax paid by general corporations to their net income and adjusting the franchise tax rate to account for this additional tax to be assessed against banks and financial corporations.

General tax rate links:

((***)

[Revenue and Taxation Code Section 23186](#)

Minimum franchise tax links:

((***)

[Revenue and Taxation Code Sections 23186\(f\)](#) and [24251](#)

- **Non-Admitted Insurance Company** – If a person is determined to be a California home state insured, then all premiums related to all insurance policies obtained from a non-admitted insurer are subject to a 3% tax as long as the premiums are for policies related to risks within the United States. Not all contracts with non-admitted companies are subject to the Non-Admitted Insurance Premiums Tax. They are as follows:
 - Non-admitted insurance that is obtained through a California insurance surplus line broker is not taxable to the purchaser.
 - Reinsurance of the liability of an admitted insurer.
 - Insurance of ship-owner interests.
 - Aircraft insurance.
 - Interstate railroad insurance and life insurance.

((***)

[Form 570 Non-admitted Insurance Tax Return](#)

[Revenue and Taxation Code Sections 13201-13222](#)

- **Real Estate Mortgage Investment Conduit (REMIC)** – A qualified entity that has made a REMIC election is provided special tax treatment allowing income to flow through to investors without taxation at the entity level. A REMIC may file as an LLC, partnership, corporation or trust. REMIC's issue mortgage-backed securities to investors. A REMIC is not required to make estimated tax payments. If a corporation is a REMIC for federal purposes, it will generally be a REMIC for California purposes. REMICs doing business in California must pay the minimum annual franchise tax, regardless of type of entity. A REMIC is not subject to the income of franchise tax because the income of REMIC is taxable to the holders of the REMIC interests. In order to qualify substantially all of the assets of the entity must consist of "qualified mortgages" and "permitted investment".

[Revenue and Taxation Code Sections 23036, 24870, 24873, and 24874](#)

- **Real Estate Investment Trust (REIT)** – A REIT is a special entity created under federal tax law that is taxed as a corporation for both federal and California purposes. Although REIT's have the word 'trust' in their name, they are formed as domestic corporations, trusts or associations. A REIT can be a corporation, and association, or a trust, but it cannot be a financial institution or an insurance company. To qualify as a REIT certain organizational, income, asset and distribution requirements must be met. REITs are subject to the California franchise tax and income tax.

((***)

Revenue and Taxation Code Sections [19147](#), [24870](#), and [24872-24872.7](#)

- **Regulated Investment Company (RIC)** – A RIC is a special entity created under federal tax law that is taxed as a corporation for both federal and California purposes. RIC's are formed as domestic corporations, trusts or associations. To qualify as a RIC, certain organizational, income, asset and distribution requirements must be met. RICs are generally subject to the California Franchise tax and income tax. Chief Counsel Ruling 2016-01 and 2016-02 states FTB will not require a RIC organized as a Massachusetts and Delaware Business Trust to pay minimum franchise tax because it is a corporation under California Revenue and Taxation Code section 23038(a) only for purposes of the corporation income tax and not the corporation franchise tax.

Revenue and Taxation Code Sections [17145](#), [24870](#), and [24871](#)

- **Financial Asset Securitization Investment Trust (FASIT)** – A FASIT is a qualified pass-through entity that may be used to secure debt obligations such as credit card receivables, home equity loans, and auto loans. Upon making the federal election, the entity is provided special tax treatment that allows all tax attributes of the FASIT to be considered those of the single ownership interest holder. As a result, a FASIT is treated similar to a disregarded entity. The ownership interest holder is treated similar to the single owner of a disregarded

entity and is not subject to tax on its income or loss. A FASIT is subject to the minimum franchise tax imposed under Revenue and Taxation Code section 23153.

[Revenue and Taxation Code Sections 24870, 24875, and 24875.5](#)

- **Water's Edge** – For taxable years beginning on or after January 1, 1988, taxpayers may elect to file on a water's-edge basis. Under a water's-edge election, affiliated foreign corporations are generally excluded from the combined report. However, the election does not supersede the concept of unity; it merely limits the unitary entities included in the report.

((***)

((***)

[Revenue and Taxation Code Sections 23036\(c\), and 25110 – 25113](#)

- **Exempt** – Refer to ((***)).

Purpose

There are various entity types and each entity type may be subject to income or franchise tax.

Responsibility

FTB employees must understand the various types of entities.

References

((***)

[FTB PUB. 1060, A Guide for Corporations Starting Business in California](#)

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 04/15/2018

4.1.1.4 Accounting Period (Taxable Year)

Background

A business entity "doing business" in California must select an accounting period. This accounting period must be the same for state and federal purposes, unless otherwise initiated or approved by Franchise Tax Board (FTB).

If no prior notification is sent, the entity, in its first return, may adopt any income year ending without approval from the FTB. The income period may not exceed 12 months, unless a 52-53 week filing period is chosen.

The accounting period ending determines the entity's due date for returns and payments.

Note: If the entity does not choose a filing period, the return will automatically receive a calendar year ending accounting period, as stated at the top of the [Form 100](#). See ((***) for information on due dates for filing returns.

Purpose

A business entity should notify FTB of its accounting period as soon as possible so it may receive the proper forms needed to meet the filing requirements specified in the law.

Responsibility

FTB employees are responsible to ensure the entity's tax returns cover all accounting periods from their incorporation, qualification, or start date. It is also important to educate the taxpayer of the importance to remember their accounting period.

Note: There should be no missing short period returns. A short period is any accounting period of less than twelve months. It can occur in the first or subsequent accounting period.

If the accounting period is 15 days or less, it may be disregarded provided the business entity was not doing business and received no income from sources within California during that period.

In order for a portion of a month to be disregarded under this rule, the Articles of Incorporation would have to be filed with the Secretary of State based on the following:

- A 28-day month- 14th or after.
- A 29-day month- 15th or after.
- A 30-day month- 16th or after.
- A 31-day month- 17th or after.

Action

FTB employees must identify and notify the entity of any missing accounting periods. The emphasis should be on verifying with the entity the date that they actually began doing business in California. If a missing period is identified, FTB employees should issue the appropriate notice to request the return depending on the entity type. If no response, and unit procedure criteria are met, FTB employees should pursue assessment of the missing year tax.

Reference

((***)

((***)

[Revenue and Taxation Code Section 24632](#)

((***) , Notice to File Corporation Tax Returns

((***) , Limited Partnership Demand to File Tax Returns

((***) , General Partnership Demand

((***) , Limited Liability Company – Demand to File Tax Returns

((***)

((***)

((***)

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 04/15/2018

4.1.1.5 Due Dates for Filing Returns

Background

Every business entity shall file a return within the time frames listed below after the close of its income year with the Franchise Tax Board (FTB). The entity may choose either to file as a calendar filer with a December 31 year-end, or as a fiscal filer with the tax year ending on any other month. The entity's filing period must coincide with the Internal Revenue Service (IRS) filing period.

The filing date changes according to the entity type. Listed in the chart below are the different types of business entities and their filing due dates. The due dates in the chart for the 2016 tax year and forward are a result of Governor Brown signing AB1775 on September 14, 2016 to conform with federal due dates:

Business Entity Return Due Date Chart (IRS Conformity)

Entity Type	2015 Tax Year & Previous	2016 Tax Year & Forward
C-Corporation (100 & 100S)	15th day of Third Month	15th day of Fourth Month
S-Corporation (100S)	15th day of Third Month	No change
LLC (filing as a PTSP 568)	15th day of Fourth Month	15th day of Third Month
LLC (filing as a C-Corp 100)	15th day of the Third Month	15th day of Fourth Month
LLC (filing as a S-Corp 100S)	15th day of the Third Month	No change
Partnerships (565)	15th day of the Fourth Month	15th day of Third Month
SMLLC (single member is an Individual, Estate or Trust)	15th day of the Fourth Month	No change
SMLLC (single member is a S-Corp, LLC dba Partnership or Partnership)	15th day of the Fourth Month	15th day of the Third Month

Exempts (109)	15th day of the Fourth Month	No change
Exempts (199)	15th day of the Fourth Month	No change

- All extensions to file a return, for an entity in good standing, will be 6 months.
- Returns due in March will have an extension to September.
- Returns due in April will have an extension to October.
- All estimate, annual tax and LLC fee payment dates for all business entities remain the same.

Note: An extension to file is not an extension to pay. Tax is due on or before the original due date of the tax return, regardless of an extension to file.

Note: If the first income period is 15 days or less and the entity was not doing business, the filing requirement may be disregarded.

Purpose

If a business entity is doing business in California, the entity is required by law to file a tax return by the specified due dates.

Responsibility

FTB employees are responsible for being knowledgeable of the return due dates for each entity type and request tax returns for any missing periods.

Action

FTB employees should educate the entity of their due date requirements and request any missing returns.

If an NQ entity questions whether or not their business activity is considered "doing business", FTB employees should request the entity fill out [4684A MEO](#) ((or ***)). (Refer to your unit procedures for the form being used.)

Note: The business activity questionnaire specific for Partnerships and Limited Liability Companies is not available at this time.

Reference

Revenue and Taxation Code Sections [18601](#), [18633](#), and [18633.5](#)

[Public Law 86-272](#)

[California Corporation Tax Law – A Guide for Corporations – FTB 1063](#)

[Guide for Corporations Starting Business in California - FTB Publication 1060](#)

[4684A MEO](#)

[FTB 4684A](#)

((***)

((***)

[Limited Liability Company Taxation and Return Requirements](#)

[Partnership Filing Requirements](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.1.6 Suppression – Business Entities Tax System (BETS)

Background

The Business Entities Tax System (BETS) allows for Franchise Tax Board (FTB) employees to place a manual or automatic suppression on the account for specific tax years. Suppression stops refunds and billing notices from being issued by BETS.

Note: FTB employees must follow up on the account to release a manual suppression.

Purpose

Suppressions allow FTB employees to review and check for inconsistencies on the account without having the business receive erroneous bills or refunds.

Responsibility

FTB employees must recognize when an account may need more time to be reviewed, and know their unit procedures for placing or requesting suppressions.

Action

FTB employees should choose an automatic end date when possible to avoid accounts no longer meeting suppression criteria.

The suppression is set up in conversation ((***) of BETS. FTB employees are able to locate a suppression by viewing the suppression indicator line in the period summary detail of conversation ((***)), or going to conversation ((***.)) All suppressions should be noted to the account in conversation ((***) and comment the Taxpayer Folder (TPF).

Note: Collectors should follow their unit procedures when placing suppressions.

Reference

((****))

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.1.7 Case Hold – Accounts Receivable Collection System (ARCS)

Background

Accounts Receivable Collection System (ARCS) allows for Franchise Tax Board (FTB) employees to place a hold on any account for payment deferral, entity response time, processing time frames, collector discretion, etc. ((***)

Purpose

A case hold will defer all collection actions, which allows the business entity time to comply and/or produce information, as well as allow FTB time for processing and review.

Responsibility

FTB employees will need to recognize when an account may need more time for processing or review. This is based on case history, compliance, payments made, etc.

The collector must comment the account in the BE ARCS or BETS and Taxpayer Folder (TPF) according to unit procedures with details on why the case hold is being place such as:

- Return to process
- Payment to process
- Financial statement
- Court case paperwork
- etc.

Action

FTB employees should place holds on accounts according to their unit procedures.

Reference

((***)

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 04/15/2018

4.1.1.8 Statute Of Limitations (SOL)

Background

The Statute of Limitations (SOL) tax laws define a period of time limit imposed by law on the right of both the State and the entity to increase or decrease the entity's self-assessed taxes, assessment, movement of credits, a lien may be filed, or for the entity to file a claim for refund.

These are the most common SOL issues:

- Assessments Revenue and Taxation Code Sections [19057-19061](#), [19066](#)
- Refunds [Revenue and Taxation Code Section 19306](#)
- Liens [Government Code Section 7172](#) and [Revenue and Taxation Code Section 19221](#)
- Erroneous Refunds – Revenue and Taxation Code section 19368
- Transferee
- Assumers

Purpose

For income tax purposes, the SOL establishes a time frame for business entity to claim refunds, file return, and allowed for actions to be taken by, for, or against the entity.

Responsibility

FTB employees are responsible for understanding and be able to:

- Identifying accounts that SOL applies
- Educating business entities on the various SOL dates/criteria.
- Recommend the appropriate actions for accounts within the statute.

Action

FTB employees will educate the business entity and for collection purposes these are the most common SOL dates:

- Normal Statute - Notice of Proposed Assessments (NPA) - must be mailed within four (4) years from the date the return was filed, or four (4) years from the original due date of the return or extended due date of the return, whichever is later.
- Missing Year NPA:
 - No statute of limitations for false returns or no returns filed
- Fraud or No Return Filed – If any taxpayer fails to file a return, or files a false or fraudulent return with the intent to evade the tax for any taxable year, there is no SOL as to when FTB may issue an NPA.
- Erroneous Refunds - [Revenue and Taxation Code Section 19411](#)
 - Two years from the date the erroneous refund was issued or, normal statute for Franchise Tax Board (FTB) to issue an NPA
- Normal Claim For Refund – [Revenue and Taxation Code Section 19306](#)
 - A claim for refund must be made 4 years from the original or extended due date of the return or one year from the date of payment, whichever is later.
- Transferee - [Revenue and Taxation Code Sections 19074, 19074\(b\)](#)
 - One year beyond the normal statute.
 - Transferee of a transferee is one year after the expiration of the statute for the preceding transferee (see CPM section 7.1.3.1).
- Assumers - [Revenue and Taxation Code Sections 19071-19074](#)
 - One year beyond the normal statute.
- Liens - [Government Code Section 7171](#)
 - 10 years from the date of the assessment.
 - Overpayments - [Revenue and Taxation Code Section 19306.](#)
 - Normal statute or, one year from the date of payment, whichever is later.
- Electronic Funds Transfer (EFT) Penalty - [Revenue and Taxation Code Section 19306](#)

- One year from the date of the payment or, one year from the transaction date, whichever is later.
- Decertified Secretary of State Penalty - [Revenue and Taxation Code Section 19306](#)
 - One year from the date of decertification or, one year from the payment date, whichever is later.
- Fees - [Revenue and Taxation Code Section 19306](#)
 - One year from the date of the payment or the transaction date, whichever is later.

((The normal SOL provisions do not apply when, in the course of involuntary collection action, FTB has over collected.

((****)) ((****)) ((****))

Involuntary collection actions include:

- Earnings Withholding Orders for Taxes (EWOT) (assumers or transferee).
- Continuous Order to Withhold (COTW).
- Orders to Withhold (OTW).
- Offset of other year overpayments.
- Intercepts, such as interagency offsets from and to the Employment Development Department, Internal Revenue Service, and Board of Equalization.
- A combination of the above.

Reference

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((****))

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 04/13/2018

4.1.1.9 Ceasing Business in California

Background

Business Entities qualified or registered with the [Secretary of State \(SOS\)](#) must take specific steps to terminate their legal existence here when they cease operations. The type of entity determines these specific steps. Beginning September 29, 2006, business entities that file dissolution, surrender, or cancellation papers with the California Secretary of State, no longer require a Tax Clearance Certificate from the FTB. Please refer to the [Public Service Bulletin](#) for more information.

Specifically, to dissolve or cancel a California business entity registered or qualified with the SOS, the entity must cease doing business in the state, file a final tax return, and file one of the following types of documents with the SOS.

Corporations

To **dissolve** a domestic corporation, the entity must file the following with the SOS:

- SOS Dissolution documents

To **surrender (withdraw)** a qualified foreign (out of state or country) corporation's right to transact business in the state of California, the corporation must file the following with the SOS:

- SOS Surrender documents

Limited Liability Companies (LLC)

To **cancel** a domestic LLC, or a foreign LLC registered with the SOS the entity must file the following with the SOS:

- SOS cancellation documents

Note: An LLC filing as a corporation must file LLC cancellation documents with SOS.

Limited Liability Partnerships (LLP)

To **cancel** a domestic, or foreign LLP registered with the SOS the entity must file the following with the SOS:

- SOS cancellation documents

Limited Partnerships (LP)

To **cancel** a domestic LP, or a foreign LP registered with the SOS the entity must file cancellation documents with SOS.

Note: Although a Tax Clearance Certificate is not required, an LP should file and pay through the cancellation date.

General Partnerships (G/P)

Registration with the SOS is optional and is not required. If the G/P registered with the SOS, the G/P must file a dissolution document with the SOS. Otherwise the only cancellation requirement is marking the final return as final.

Entities not Qualified/Registered with SOS

Entities not qualified or registered with the SOS must:

- Cease doing business in the state
- File a final return and check the final return box

Responsibility

Franchise Tax Board (FTB) employees are responsible for being knowledgeable of the requirements for business entities to properly terminate their legal existence here when they cease doing business in California.

Action

FTB employees must collect the return(s) and proper amount(s) due until the business has ceased doing business in California filed a final tax return, and if the business entity registered or qualified with the SOS, filed the appropriate dissolution or cancellation document with the SOS.

Reference

[Revenue and Taxation Code Sections 23331-23335](#)

[California Secretary of State](#)

[FTB Pub. 1038, Guide to Dissolve, Surrender, or Cancel a California Business Entity](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.1.10 Protest Rights

Background

Notices of Proposed Assessment (NPA) inform business entities that the Franchise Tax Board (FTB) is proposing to assess tax and penalties on a tax year(s) on a business entity. NPA's also provide instructions for protesting the proposed assessment.

There are two types of NPA's for deficiency assessments:

- Filing Enforcement
- Audit

A business entity has 60 days from the date of the Notice of Proposed Assessment (NPA) to file a protest of the NPA. If a protest is not filed within 60 days, the assessment becomes final and a notice of balance due is issued. There is no provision in the law for granting an extension of time for filing a protest after the 60 day timeframe.

Note: For suspended business entities, they must revive and file the protest within the 60-day time period.

There are two types of protests, docketed and undocketed:

- A docketed protest involves a question of law supporting an NPA.
- An undocketed protests question the facts supporting an NPA.

FTB handles the protest in the following manner:

- The Legal Division handles docketed protests for Business Entity or Personal Income Tax protests over One Million Dollars.
- NPA is for an audit assessment, audit will handle the protest.
- Filing enforcement, FADS will handle the protest.
- Jeopardy Assessment (JA) the unit that issued the NPA will handles the undocketed protests.

To protest a Jeopardy Assessment (JA), business entities have 30 days from the date of the NPA to protest the jeopardy portion, and 60 days to protest the NPA basis. Business entities may protest a JA to dispute:

- Whether the collection of tax is in jeopardy.
- The basis of an assessment.

The FTB's action on the protest is final upon the expiration of the 30 days from the date FTB mails the Notice of Action to the taxpayer, unless within that 30-day period the taxpayer appeals in writing to the Office of Tax Appeals (OTA). A copy of the appeal must be addressed and mailed at the same time to FTB.

Note: This process does not stop the accrual of interest on the proposed assessment and applicable penalties. Liens are not filed on protested assessments. However, liens can be filed on protested J/As.

Purpose

Allowing taxpayers to protest assessments adheres to California tax law, [Revenue and Taxation Code Section 19041](#) providing business entities time to dispute an assessment.

Responsibility

FTB employees will educate taxpayers on procedures to file a protest.

If a protest is filed on a non JA NPA within the 60-day protest period, it suspends billing and collection action on the protested tax year until the protest is closed. However, protesting a JA does not stop collection action. To stop JA collection actions, a business entity must submit:

- A cash bond, or other security (FTB determines the necessary amount); or
- Sufficient evidence that shows that the collection of tax is not jeopardized

In addition to collecting taxes, FTB employees are responsible for informing taxpayers of their rights and assuring their rights are protected. When a protest is filed, FTB shall reconsider the assessment of the deficiency and, if the taxpayer has so requested in the protest, shall grant the taxpayer or the taxpayer's authorized representative an oral hearing.

Action

An NPA protest must be submitted in writing and state that a protest is being made. The protest must include:

- Business entity name and address.
- Business entity number.
- The amount and year involved.
- A detailed description and the supporting documentation substantiating the protest.
- The signature of a business entity officer, partner, or other authorized representative, as well as a daytime telephone number.
- A copy of the NPA.

The taxpayer may submit the protest to FTB.

Mail: PROTEST CONTROL DESK MS F340
FRANCHISE TAX BOARD
PO BOX 1286
RANCHO CORDOVA, CA 95741-1286

Fax: 916.364.2754

Upon receipt of an NPA protest, FTB will send the business entity a notice acknowledging that the protest was received and will be processed.

After a protest is closed and a determination has been made by the hearing officer, a Notice of Action (NOA) is issued informing the business entity that the NPA is affirmed, revised, or withdrawn. Business entities in disagreement with an NOA may:

- Pay the assessment and file a claim for refund.
- File an appeal with the OTA within 30 days from the date on the NOA ((****)).

If an appeal is not filed within 30 days, a demand for payment is mailed to the business entity. The NOA amount is due and payable within 15 days of the demand notice. Interest on the demand notice is computed to the date of the NOA; however, no additional interest will accrue if the balance is paid within 15 days of the notice.

An NPA paid under protest, during or after the 60-day protest period, is considered a claim for refund. A statement of facts in support of the claim must also be included.

Reference

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[Revenue and Taxation Code Sections 19041 and 19044](#)

[Revenue and Taxation Code Sections 19084](#)

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 0/23/2018

4.1.1.11 Appeal Process to the Office of Tax Appeals (OTA)

Background

If a business entity protest of an assessment has been denied the business entity may dispute Franchise Tax Board's (FTB) decision by filing a written appeal to the Office of Tax Appeals (OTA) within 30 days from the date FTB mails the Notice of Action (NOA) ((****)). ([Revenue and Taxation Code Sections 19045, and 19046](#))

Following a briefing schedule determined by the OTA, the OTA then holds a formal hearing open to the public. The business entity, through its officer, or its representative, and a member of FTB's legal staff attend the hearing and present their positions. The business entity may also waive hearing and have the matter submitted for decision by the OTA based on the written briefs. The OTA notifies the parties once a determination is made. ([Revenue and Taxation Code Section 19047](#))

Purpose

The appeal process to the OTA allows taxpayers the opportunity to appeal the FTB's decision regarding the protest to a neutral party, whereby the proposed assessment may be reduced, withdrawn, or sustained.

Responsibility

FTB is responsible for informing taxpayers of their rights to the appeal process.

Action

FTB staff will advise taxpayers of the appeal procedures.
An appeal must:

- Be submitted in writing to the OTA, with two copies of the appeal and the supporting documents.
- State the specific grounds on which the appeal is being made, and include the following:

- The entity's name, address, phone number, and entity ID.
- The amounts and account periods involved, as well as any amounts conceded by the taxpayer.
- A copy of the Notice of Action (NOA).
- A statement of facts, including points and authorities in favor of the taxpayer's position.
- An explanation of why FTB's action is incorrect.
- The signature of the person filing the appeal or the entity's authorized representative, and
- The entity's officer's daytime telephone number or the authorized representative's daytime telephone number and address.

The business entity may file its appeal electronically by email or fax pursuant to the instructions on the OTA website; hand delivered to the Board's headquarters in Sacramento; or by mail to the OTA at:

BOARD PROCEEDINGS DIVISION, MIC: 81
STATE BOARD OF EQUALIZATION
PO BOX 942879
SACRAMENTO CA 94279-0081

Reference

[Revenue and Taxation Code Sections 19041, 19042, 19044, 19045, 19046, and 19047](#)

Cal. Code Regs. tit.18, sections 5420, 5421, and 5422

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.1.12 Financial Hardship Evaluation

Background

When a business entity is unable to pay its tax liability in full, FTB 9310, Business Entity Financial Condition Statement is required to substantiate ability to pay and determine the most appropriate case resolution.

Purpose

A Business Entity Financial Condition Statement and supporting documentation assist FTB employees in assessing the overall financial condition of the business entity and the entity's ability to pay.

Responsibility

FTB employees are responsible for determining when a Business Entity Financial Condition Statement is required. After thorough analysis of the financial statement, supporting documentation, and account history, FTB employees will assess the financial condition of the business entity and its ability to pay.

Action

Business entities may be eligible to make payment arrangements to satisfy their tax obligation without completing a Business Entity Financial Condition Statement. When a business entity claims to have a financial hardship and is unable to negotiate a reasonable payment arrangement as determined by FTB employees, a financial statement must be completed for FTB employees to evaluate the business entity's ability to pay.

Evaluating Ability to Pay

A completed Business Entity Financial Condition Statement will provide the most current and relevant financial data to assist FTB employees in analyzing the entities ability to pay, and additionally whether further verification may be required. The financial statement requires all current financial activity of the business, such as a Cash Flow Statement, a Balance Sheet and any other relevant events that should be considered in the financial condition review of the business.

Making the Collection Decision

All FTB employees will utilize the same methods to evaluate ability to pay. Seasonal fluctuations in business income will be considered, as well as extraordinary events that can lead to excessive increases or decreases in income or expenses at a particular time to determine a course of action. The Business Entity Financial Condition Statement includes a section to address these unique situations.

All attempts to negotiate a reasonable payment arrangement will be carefully considered by FTB employees. A financial hardship may be denied if the Business Entity Financial Condition Statement was not provided, the applicant failed to remit the required documents or FTB determined the requested payment amount is not sufficient based on the analysis of ability to pay. If a financial hardship is denied, or FTB employees are unable to negotiate a reasonable payment arrangement with the business entity, or the business entity is unresponsive, involuntary collection actions will be pursued.

Reference

[Form FTB 9310 - Business Entity Financial Condition Statement](#)
(currently in revision process)

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Last Revision: 04/15/2018

4.1.2.1 Associated Accounts

Background

Business Entities (BE) associated accounts are those assigned by the business area, through the Accounts Receivable Collection System (ARCS) to a Franchise Tax Board (FTB) employee or a specific group. Associated accounts are identified on the main case window of ARCS. The name of the person responsible for the account will appear in the "user" field.

Purpose

BE associated accounts create a division of labor via a series of work states that allows specialization in each functional area. The functional area defines the type of work or action to be performed in that state. This allows the responsible FTB employee to have the highest level of familiarity with the account; working the account from the time it enters the functional area until resolution.

Responsibility

FTB employees will be able to identify an associated account on the ARCS main case window. If the account is assigned to a FTB employee, the individual's name will appear in the "user" field. If the account is not assigned to a specific individual, the "user" field will be blank and grayed out. The telephone number of the FTB employee that the account is associated to can be obtained by clicking on the "State Management" icon.

Action

- Associated accounts should be processed in accordance with the [Statement of Principles of Tax Administration](#). ((***) Exceptions will be made when it is necessary to concentrate collection efforts to address areas of noncompliance.

- Collection accounts should be worked as soon as the account becomes associated.
- Accounts over ((****)) will automatically route to the complex accounts' (CA) functional area in ARCS. The BE Complex Account Resolution Team (BE CART) works these accounts. Follow-up action should be within 30-45 days from the last action, depending on the nature of the last action. Correspondence and telephone messages should be responded to according to unit procedures.
- FTB employees work accounts in the Manual Process (MP) functional area, which includes both pooled and employees associated work lists. Since the implementation of ARCS, individual unit guidelines and work plan goals outline the expectations of FTB employees.
- ((****)) ((****))
- Before taking collection action, each account should be carefully scoped and analyzed on the ((****)) For more on scoping an account see [Section 5.1.1.1 Scoping an Account](#).
 - For BE assigned accounts, the approach of FTB employees should be:
 - Designed to resolve the account at the earliest point and make the best possible use of collection resources
 - Designed to prevent repetitive actions
 - Individually tailored to the facts of the account (FTB employees should examine account history to determine the course of action)
 - To address missing tax returns in the first action. For more on Missing Years see [Section 4.1.1.4 Due Dates for Filing Returns](#).
- FTB employees should use the most expeditious method possible to resolve their accounts. FTB employees should use the telephone as their primary tool in obtaining asset information and in contacting the entity to secure a commitment to resolve the account. The following are critical guidelines for working accounts:
 - FTB employees should not, as a general rule, repeat actions already taken by ARCS or pervious collector.
 - If due process is in question, an attempt must be made to contact the entity by mail prior to taking further collection action.
 - If attachable asset information is readily available and due process has been established, assets may be seized. If not, FTB employees should use the telephone

to contact the entity. Third parties may also be contacted to locate any information on the entity. Effective interviewing techniques should focus on obtaining asset information and/or information on the current location of the entity. FTB employees should determine the objective of the call and plan pertinent questions that will lead to account resolution. They should also attempt to obtain all information needed from initial contact, as the first contact may be the last.

- If attempts to contact the entity, representative, or third party are unsuccessful during normal work hours, FTB employees should communicate via mail.

Note: Before a third party contact is made, a notice, [form FTB 1131J](#) or annual notice, must be mailed to the entity advising of such contact. The notice must include the language informing the entity of possible contacting 3rd party.

- All telephone numbers that are potential leads including legal actions should be exhausted prior to recommending discharge or field office transfer.
- Accounts that are associated should be referred to the field as soon as it is determined that all reasonable actions have been taken to resolve the account. For field office referral criteria, see [Section 6.0.2.1 Field Office Transfers](#).
- As a general rule, FTB field employees should not repeat actions already taken by a central office collection group. FTB employees should utilize public records, third party contacts and, when warranted, a Subpoena Duces Tecum to identify seizable assets. FTB employees are responsible to bring final resolution on accounts by taking appropriate enforcement actions in the field. Appropriate enforcement actions may vary based on each circumstance.
- Seizure and sale of real property should always be considered when the action is anticipated to be the most cost effective way to collect the balance due. Although a lien filed in the

county where real property is located may secure the tax liability, collection of the balance is delayed until the property is transferred or a refinance of the property is complete.

- When resolving an account, FTB employees should account for all missing tax years that were not identified through the automated systems. If FTB employees are unable to get the entity's cooperation in filing returns, income information should be located through FTB resources, and an assessment made in accordance with [Section 4.1.1.4 Due Dates for Filing Returns](#). If the liability resulted from failure to make estimated tax payments, an effort should be made to ensure that current withholding is correct or that the entity is making correct and timely estimated tax payments.

Reference

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Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.1.2.2 Accounts Receivable Collection System and Taxpayer Folder Account Documentation

Background

The Accounts Receivable Collection System (ARCS) is an online system that supports the collection of delinquent franchise and income tax accounts. ARCS allows Franchise Tax Board (FTB) employees to record permanent documentation of account activity through the use of history text, notes and for temporary notes use primary memos. All documentation with the exception of the scope, skip tracing, and plan of action should be entered into the Taxpayer Folder (TPF). Once the information is saved, ARCS and TPF automatically records a permanent history line for all automated or manual actions or events. Having a history record of entity interactions and correspondence will assist all FTB employees who work on an account. In addition, this will ensure that there is no duplication of collection efforts.

Purpose

ARCS and TPF account documentation allow FTB employees to document account history and contacts. Documentation also ensures permanent and accurate account history used to assist with future interactions with, or pertaining to, business entities.

Responsibility

FTB employees are responsible for ensuring clear and concise account documentation of all account interactions are entered into ARCS and TPF.

Action

FTB employees will input the complete, detailed history pertaining to the account. See unit procedures for specific information to be documented.

Reference

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.2.3 Account Review

Background

Leads and supervisors conduct periodic reviews of accounts for quality assurance and adherence with the [Statement of Principles of Tax Administration](#). During the review process, attention will be focused on the quality of work in four areas:

- Effective development of facts
- Correct technical conclusions
- Effective preparation of the account
- Customer service; equitable and considerate treatment of the entity representative(s)

Purpose

The account review process focuses attention on the quality of work performed on accounts processed in the Accounts Receivable Management (ARM) Division. The purpose of this process is to ensure conformity with the department's [Statement of Principles of Tax Administration](#) and the collection program policies and procedures.

Responsibility

The reviewer's role is to verify adherence to state governmental and departmental policies and procedures. Quality control is the responsibility of the Franchise Tax Board (FTB) employee, their lead, and supervisor. Additionally, the reviewer's role is to ensure that accounts achieve resolution in the most expeditious method within the scope of collection activities.

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- Concentration on these areas will measure the:
 - Conformance to standards, policies and procedures
 - Consistency with standards, policies and procedures
 - Effectiveness of FTB collection techniques
 - Results of the mandated and discretionary programs in both quality and production

Action

The account review of supervisors, leads, and other appropriate employee will include, but is not limited to:

- Review all accounts ((over \$100,000)) submitted for discharge

- Review on a random basis, discharge accounts ((under \$100,000)) submitted for discharge
- Review all decreases in account liability that result in closed accounts
- Review accounts submitted for transfer to the field office
- Return accounts to originating units when accounts need additional work, are incomplete or do not meet the criteria for discharge, field office or abatement
- Perform an in-progress review of accounts for conformance with the Collection Program Policies
- Provide the appropriate bureau directors, section managers and collection supervisors with feedback on quality of completed accounts

Accounts closed by payment in full, abatement, or balances resolved as a result of applied credits are reviewed to ensure compliance with policies and procedures. This is done by verifying that:

- Taxpayers' rights are addressed
- Account status shows "closed" on the Accounts Receivable Collection System (ARCS)
- All information received from the Internal Revenue Service (IRS) in response to the department's request via [form FTB 6227](#) is destroyed and records marked accordingly
- Missing tax returns are accounted for in the summary in the ARCS history comments
- All outstanding orders have been released

Discharge Functional Area:

- All reasonable steps have been taken to resolve the account
- Facts indicate no future collection potential within a reasonable period of time
- Lien filed, or the reason for not filing stated
- Correct discharge reason code

Transfer to Field Office:

- There is no obvious manual or automated action available to resolve the account from the central office
- The summary supports the necessity for a field office transfer
- The correct field office code is used

Accounts in process:

- Accounts are being worked into the employee's inventory correctly and timely
- Correspondence and follow-ups are processed on a current basis
- Collection procedures are applied appropriately

[See Section 4.1.2.1 BE Associated Accounts.](#)

Reference

[Statement of Principles of Tax Administration](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.2.4 Complex Account Resolution Team (CART)

Background

The Complex Account Resolution Team (CART) resolves assigned accounts with:

- Open balances due ((in excess of \$25,000))
- Accounts that are complex
- Fortune 500 companies
- Accounts that are sensitive in nature

((****))

Purpose

CART allows designated Franchise Tax Board (FTB) employees to work accounts that meet specific requirements.

Responsibility

FTB employees should request accounts that meet the open liability criteria be routed to CART to be worked in their functional area.

Action

When an account meets CART criteria, FTB employees should refer to unit procedures to request an inter-office transfer or work the account once it has been auto routed.

Reference

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.2.5 Field Action Requests

Background

To resolve some tax accounts, desk collectors need field collector assistance. This occurs because some business entities evade tax collection, while others ignore it. But our field collectors give Franchise Tax Board (FTB) a physical presence in our communities. Performing field on-sites (e.g. Field Action Request (FAR)), field collectors visit business entities, encourage compliance, verify income activity, document asset information, and identify assets for possible seizure when appropriate.

Purpose

If business entities do not voluntarily resolve their tax accounts, we must compel compliance, which can include FAR actions. However, we try to use the most reasonable actions possible to resolve their tax accounts. Some of examples of FAR request include:

1) Financial Evaluation

Identify, locate, and evaluate assets for collection action, or to confirm a business entity's financial hardship. This can involve examining a business for income and other assets.

2) Broken Promise

Gain compliance from business entities that default on promises to file tax returns or pay tax balances ((****)).

3) Evasive Taxpayers

Gain compliance from business entities that avoid our calls and ignore our correspondence and are engaged in an active business.

4) COTW/EWOT Non-compliance

Follow-up when a payor will not respond to our levy and ignores/evades our phone requests for compliance.

Note: A desk collector must attempt to verify that a business entity is entitled to receive funds from a payor before the collector requests this action. The field collector can hand-deliver the levy notice along with a non-compliance notice, form FTB 4931.

5) ((*) Final Evaluation**

Evaluate the collection potential of an ((***)) account before recommending a discharge.

6) Field Transfer Evaluation

Confirm whether an account meets the field transfer criteria when available information makes this determination uncertain. (See CPM section 6.0.2.1)

7) Rush Actions

Deliver a demand notice to an escrow company, or a lien to a county recorder.

8) Record Verification

- Check the status of a pending or active court case.
- Examine bankruptcy archives for financial disclosure documents.

9) Field Support Referral – ((*)**

- Clarify a lien's status when we lack a lien record, yet public records indicate a lien exists.
- If a lien does not appear to be recorded three months after it was filed, examine the public records.
- Visit county courts to obtain information for the Attorney General or for the Collection Advisory Team.

Responsibility

Desk collectors should perform the following actions before requesting a FAR:

- Confirm appropriate actions have been taken.

- All reasonable collection actions have been exhausted (i.e. liens, bank levies, etc.).
- Identified assets/income for possible warrant actions.
 - Exception: when an account is at risk (such as a business entity liquidating assets to avoid collections), then a collector can request a FAR before exhausting collection actions.
- Verify that the account has ((****)) a valid address.
- Ensure there is a reasonable expectation that a FAR will help resolve an account.

Action

Desk collectors should document ARCS with a new history text with a descriptor input "FAR" and the information described below:

- Address. For multiple addresses, indicate which one to visit first.
- Due process status.
- Delinquent tax issues.
- Any pending items, such as NPA, etc.
- Business entity status (i.e. active, suspended, etc.)
- Any DBAs.
- Liens filed.
- Collection actions taken.
- Document the reason for the field visit, and the criteria met.
- List the corporate officers' names, their social security numbers, and their verified phone numbers and physical addresses (business, home, etc.).

If the officer has a PIT balance, include:

- Tax Year(s)
- Total balance owing
- Due Process
- Legal action(s)
- Vehicle(s)
- Other asset(s)

- Include business activity (e.g. business operation facts), bank information, and other asset information.
- Include a descriptive and concise summary. Describe what you want the field collector to find out for you. Active or non-active business, assets, bank, etc.
- Identify the field office that is requested to perform the on-site.

Field collectors and leads ensure the following is performed:

FAR Timeframe

- Attempt to complete an on-site within 21 days or less of being assigned to it.
- If an FAR location is far from the field office and the FAR may take more than 21 days to perform, communicate any delay to the desk collector by phone or email.

Field Collector Preparation

- Examine the case history, the previous collection actions, and the on-site request. If necessary, contact the desk collector for additional information.

Execute the FAR

- Perform the requested actions, or note why any actions were not taken.
- Follow standard FAR procedures. Ask all pertinent questions; note critical observations; search for assets and information; take any appropriate actions.

Process the FAR Results

- Document the FAR results, the basis for those results (if applicable) and any field recommendations.
- Address any phone calls prompted by the FAR.
- If an account qualifies for a field transfer, the field supervisor/lead will notify the Central supervisor/lead.

Field Action Request Field Office Location

Field Action Request (FAR)	
Northern Region	Oakland Sacramento San Francisco
Southern Region	Los Angeles Santa Ana San Diego

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To locate a field office by zip code:

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.2.6 Referring Taxpayers to Field Offices

Background

Franchise Tax Board (FTB) employees should attempt to resolve accounts by telephone, mail or fax whenever possible to avoid requiring taxpayers to travel to a field office. If necessary, or if the taxpayer requests to go to a field office, FTB employees will provide field office information and place a comment in Accounts Receivable Collection System (ARCS) and Taxpayer Folder (TPF).

Purpose

Referring taxpayers to a field office allow taxpayers who prefer transferring sensitive Business Entity (BE) documents, making payments, and responding to correspondence in person to be aided. Additionally, this provides FTB employees the opportunity to have taxpayers make payments, file returns, revive, and respond to correspondence in person when departmental collection procedures have been unsuccessful in achieving resolution.

Responsibility

FTB employees should make every attempt at account resolution with the provided resources prior to a field office referral. When account analysis reveals a history of non-compliance and/or the taxpayer has been unresponsive to telephone contact, correspondence, or fax, it may be merited to require the taxpayer to travel to a field office. See a lead for unit procedures.

Action

In the event a taxpayer requests or has been recommended to visit a field office the employee will provide Field Office information and place a comment in ARCS and TPF. Comments should state the purpose for the visit and request actions for field office personnel to perform. Before any transaction is completed by the field office, the field office employee should contact the desk collector for approval. After the field

office visit, the field employee should contact the desk collector with the outcome of the office visit and comment TPF.

Reference

[Franchise Tax Board Field Offices](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.2.7 Investigation Referrals

Background

The Criminal Investigation Bureau (CIB) is responsible for the criminal enforcement activities within the department. The bureau's principal mission is to identify, investigate and effect the prosecution of income tax evasion, fraud and employee misconduct to encourage compliance with the California income tax laws. For further information about CIB, go to: ((****))

A referral to CIB should be considered when a taxpayer's business is suspected of committing a criminal offense regarding the business state income tax obligations, or by making misrepresentations to FTB or by taking assertive steps to evade the collection of his/her business liabilities with FTB. Income tax related violations could involve the failure to file income tax returns, the filing of false income tax returns, furnishing false documents, and/or concealing assets in order to evade the collection of tax (i.e. registering vehicle or other business assets in the name of a friend or relative).

Purpose

The purpose of an investigation referral is to enable CIB to evaluate the criminal potential of an account and decide whether a criminal investigation should be initiated.

Responsibility

After a referral is forwarded to CIB, normal collection activities should continue until instructed otherwise by CIB. The CIB employee reviewing the referral will contact the assigned collector and provide guidance on collection activities permissible.

The presence of any of the following indicators could justify referring an account to CIB.

In addition, for business entity who is the responsible party for the business such as:

- The Share Holder(s)
- President
- CEO
- Family Member
- Brother and Sister
- Friend
- Office manager running the business

Note: Remember, the business entity cannot be arrested, but the individual who maintains or controls the business and controls the bank accounts and/or the assets.

Referral Indicator:

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All CIB referrals are determined on a case by case basis. This referral guideline is designed to help determine whether a case should be referred to CIB. There may be other indicators that justify referring an account to CIB.

Note: No Comments should be entered into ARCS, TI, BETS, or TPF, when the account is being reviewed by CIB for possible referral.

Use the following to determine if an account meets referral criteria:

- Complete a skip and scope of the account including the responsible party
- Complete required action (taxpayer contact, demands, COTW, OTW, etc.)
- Submit account for lead review
- The account will remain in collector's inventory until CIB either accepts or rejects referral. Continue working the account

Action

All cases of suspected criminal violations (accounts that contain one or more of the above) should be discussed with your lead prior to being referred to CIB. The lead may make arrangements for a meeting with CIB in order to discuss the taxpayer's actions or behavior. During the meeting, the lead and/or collector can share information and documents associated with the account with the CIB employee(s). The lead and the CIB employee can determine what actions are permissible on the account while the account is under evaluation by CIB.

During the referral process, the CIB employee may seek the following information about the taxpayer:

1. Verbal information or correspondence provided by the taxpayer
2. Whether income tax returns were solicited from the taxpayer
3. Observations about the taxpayer's age, health (physical and mental) and education

If it is determined that a referral is warranted, then the following action should be taken:

- Complete a skip and scope of the account
- Complete required action (taxpayer contact, demands (FTB form 4973), COTW, OTW, On-Site/Field call, etc.)
- Submit account for lead review
- File all liens
- Attach INC transcripts or other types of income sources for the year(s) to be investigated
- Attach payer information to the file or information regarding number of employees
- Attach a Department of Motor Vehicle printout to the file
- Attempt to obtain current business address and officer(s) information

- Answer all account correspondence and phone calls
- Make any necessary account adjustments
- Apply all known credits

Once the account is referred to CIB for evaluation, CIB will promptly evaluate the referral to determine if a criminal investigation should be initiated. Upon the completion of the evaluation, the CIB employee will then contact the lead to inform him/her that the case referral is being accepted or rejected. If the account is accepted, the CIB employee may require further discussion with the referring collector and/or lead.

Accounts that should not be referred to Investigations:

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Note: The account should NOT be considered for a CIB referral as a last resort before discharge.

Reference

Investigation Website – ((****))

[Revenue and Taxation Code Section 19704](#) - Statute Of Limitations (6 years from offense) [Revenue and Taxation Code Section 19705\(a\)\(1\)](#) - False Return (Income Tax Fraud)

Revenue and Taxation Code Section 19705(a)(4) – Concealing Assets with Intent to Evade Collection (Concealment)

Revenue and Taxation Code Section 19706 – Failure to File (Income Tax Evasion)

[Penal Code Section 67.5](#) - Bribery

[Penal Code Section 118](#) - Perjury

[Penal Code Section 476\(a\)](#) - Checks, Drafts, or Orders on Banks; Insufficient Funds; Intent to Defraud

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4.1.2.8 Investigation Assigned Account

Background

The Criminal Investigation Bureau (CIB) is responsible for the criminal enforcement activities within the department. The bureau's principal mission is to identify, investigate, and pursue the prosecution of income tax evasion, income tax fraud, employee misconduct, and to encourage compliance with the California income tax laws. For further information about CIB go to ((***)

The goals of the CIB are:

- Successful Prosecution and Conviction of Revenue & Taxation Code Violations
- Incarceration and/or Probation
- Order for Restitution of Tax, Penalties, Interest and Cost of Investigation and Prosecution
- Publicity - Media Coverage

Purpose

The CIB encompasses all criminal enforcement activities within the department.

Responsibility – Current Investigation Status

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If collection staff is contacted by a taxpayer/representative who wants to enter into an installment agreement (I/A), the collector must contact the assigned investigator. The investigator may want to coordinate with the collection staff during this process.

Note: FTB cannot prevent a taxpayer from applying for an installment agreement due to the Taxpayer's Bill of Rights. However, it is

imperative that the assigned investigator be aware of or involved in this process.

Action – Post Investigation – Court Ordered Restitution

CIB prosecutions commonly result in defendants being ordered to pay restitution to FTB by the court. The court ordered restitution (COR) is typically for tax, penalties and interest owed. The court can also order investigative costs (COI). Both of these amounts can be displayed on TI as a taxpayer liability penalty.

Court ordered restitution can only be modified by the court. These amounts are generally not dischargeable in bankruptcy; all issues related to the effect of a bankruptcy on these amounts must be referred to the Bankruptcy Unit. In addition, they are not subject to be abated in part or in full under FTB's OIC program. Court ordered restitution orders are also not subject to the statute of limitations or claims for refund or credit, have no protest rights, and cannot be refunded or credited toward another delinquent tax liability.

Reference

[Revenue and Taxation Code Section 19704](#) - Statute Of Limitations (6 years from offense)

[Revenue and Taxation Code Section 19705\(a\)\(1\)](#) - False Return (Income Tax Fraud)

Revenue and Taxation Code Section 19705(a)(4) – Concealing Assets with Intent to Evade Collection (Concealment)

Revenue and Taxation Code Section 19706 – Failure to File (Income Tax Evasion)

[Penal Code Section 67.5](#) - Bribery

[Penal Code Section 118](#) - Perjury

[Penal Code Section 476\(a\)](#) - Checks, Drafts or Orders on Banks; Insufficient Funds; Intent to Defraud

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4.1.3.1 Payment Due Dates

Background

A business entity subject to franchise tax must pay at least the required minimum franchise tax as an estimated tax installment on the 15th day of the fourth month after the income year begins.

The following business entities being taxed as a corporation are required to make estimated tax payments:

- Corporations qualified or incorporated in California
- S corporations
- Qualified subchapter S corporation subsidiary (Q-Sub)
- Foreign corporations doing business in California
- Out of state corporations having income from sources within California
- Limited Liability Companies (LLCs) that are treated as a corporation
- Regulated Investment Companies (RIC's)
- Real Estate Investment Trusts (REIT's)
- Exempt organizations or trusts with unrelated business income
- Exempt homeowners' associations
- Inactive corporations

EXCEPTION: The first year's tax is based on measured tax for income years beginning January 1, 2000 and subsequent. The estimate payment needs to be determined from the estimate of the first year's tax.

If the estimated tax exceeds the minimum franchise tax, the business entity must pay the estimated tax in four installments. The payments are due on the 15th day of the fourth (4th), sixth (6th), ninth (9th), and 12th month of the income year. S corporations are required to pay the \$800 annual tax for Qualified Subchapter S Subsidiaries. [Form FTB 100ES](#) is used to file or pay the estimate payments.

Note: The first installment cannot be less than the minimum tax.

The following business entities are **not** required to make estimated tax payments:

- Real Estate Mortgage Investment Conduits (REMICs) (An exception to the requirement to file form 100)
- General Partnerships
- Limited Partnerships
- LLCs that are treated as a partnership
- Limited Liability Partnerships
- Exempt Organizations filing the form FTB 199 only

Note: The entities in the above list do NOT have to make estimated tax payments on overall income, but some (most) are required to pay the minimum franchise tax or Annual Tax \$800 prior to the end of the fourth (4th) month of the beginning of their tax year. See the paragraphs immediately following the list.

REMIC's are generally not subject to taxation. REMIC's doing business in California must pay the minimum franchise tax of \$800 prior to the end of the fourth (4th) month from the beginning of the taxable year.

LLCs filing as a partnership are subject to an \$800 annual tax. The Annual Tax is prepaid for the privilege of doing business in California and is due on the 15th day of the fourth (4th) month after the beginning of the taxable year. [Form FTB 3522](#) is used to pay the annual tax. LLC's must pay the Annual Tax for each tax year or part of a tax year until they are cancelled with the Secretary of State (SOS).

LLC's are also subject to a graduated fee based on total income reportable to California. The [Revenue and Taxation Code Section 24271](#) defines total income as the sum of worldwide gross income plus the cost of goods sold in connection with the entity's trade or business calculated after the **end** of the entity's tax year.

The LLC fee is due on the original due date of the return, which is the 15th day of the fourth (4th) month after the **end** of the taxable year using the tax return [form FTB 568](#).

If an LLC has nonresident members, the LLC is required to file [form FTB 3832](#), Limited Liability Company's List of Members and Consent with the tax return form FTB 568.

If the LLC fails to file form FTB 3832 timely on behalf of any nonresident member, the LLC is responsible for payments of tax on each nonresident member's distributive share of income.

General Partnerships, Limited Partnerships (LP) and Limited Liability Partnerships (LLP) are subject to pay the \$800 minimum franchise tax on the original due date of the return, which is the 15th day of the fourth (4th) month after the end of the taxable year using [form FTB 565](#).

Tax, other than the minimum franchise tax, is not assessed against General Partnerships, Limited Partnerships (SP), and Limited Liability Partnerships (LLP) because the income flows through to the partners and is reported on each partner's income tax return.

Purpose

If a business entity is doing business in California, the entity is required by law to pay taxes by the specified due dates depending on the entity type.

Responsibility

Franchise Tax Board (FTB) employees are responsible for being knowledgeable of the payment due dates for each entity type.

Action

FTB employees should educate the entity of the payment due dates and collect all past due amounts. In addition, FTB employees may need to research missing or misapplied payments.

Reference

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[Revenue and Taxation Code Section 19025](#)

[Revenue and Taxation Code Section 24271](#)

[Instructions for Form 100-ES](#)

[LLC TAX PAYMENT DUE DATES](#)

[LP and LLP PAYMENT DUE DATES](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.3.2 Payment Methods

Background

Franchise Tax Board (FTB) acknowledges the following as acceptable payment methods:

- Personal or business check
- Cashier's or Certified check
- Electronic Funds Transfer (EFT) - Excluding Partnerships and Limited Liability Companies filing as Partnerships
- Wire Transfer
- Money Order
- Cash with completed [FTB 3711 PC, No Cash Policy Exemption Request](#) (per [Public Service Bulletin 16-22](#)) - Only through the Field Office
- Tax Withheld at Source
- Credit card payments

FTB **does not** accept the following types of payments from business entities:

- Foreign (out of country) checks

Responsibility

FTB employees must request an acceptable payment form to ensure funding and terms of negotiation.

Note: FTB employees should **not** request payment via check if the entity is EFT mandatory. A payment received by check of a corporation that is EFT mandatory will create an EFT penalty.

Action

FTB employees must advise business entity taxpayers of acceptable payment methods to resolve the account.

Reference

[Revenue and Taxation Code Section 19011](#)

((***)

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.1.4.1 Interest Assessed on Tax

Background

Interest is imposed on unpaid tax and water's-edge fees from the original due date of the return to the date fully paid. Interest is charged at a rate established by statute and compounded daily. The interest rate is determined semi-annually and it is based on the federal short-term rate plus three percentage points. If the balance due shown on the bill is paid in full within 15 days of the billing date, no additional interest will be imposed.

Note: Prior to July 1, 1983, simple interest was assessed on interest bearing liabilities. Starting July 1, 1983 interest is compounded daily.

Purpose

To provide information regarding FTB's authority to charge interest, the method of computing interest on tax, and the effective date of interest on tax, Revenue and Taxation Code Section 19101 mandates that interest be imposed on tax at the rate established under Revenue and Taxation Code section 19521 if it is not paid on or prior to the last date prescribed for payment. The last date prescribed for payment is the due date of the tax return, as indicated below.

Responsibility

Franchise Tax Board (FTB) employees must have the ability to communicate the basis of interest (California Tax Law) being assessed and how it is computed. Additionally, FTB employees must inform taxpayers that interest does not stop accruing on unpaid tax and penalties.

Action

Generally, Business Entities Tax System (BETS) automatically assesses interest. When BETS is not able to correctly calculate interest, FTB employees should correct the account with manual interest calculations.

Interest is assessed on the unpaid tax from the last date prescribed for payment (i.e. original due date of the return) until the date the tax is paid in full. The original due date of the return varies with each entity. Taxable years beginning on or after January 1, 2016, the original due dates of each entity is as follows:

- **Corporation** - (Including Limited Liability Company (LLC) filing as a corporation) - 15th day of the fourth month following the close of its tax year.
- **S Corporation** – or LLC filing as an S corporation – 15th day of the third month following the close of its tax year.
- **Water's Edge Filer** - 15th day of the fourth month following the end of its tax year.
- **General Partnership (GP)** – 15th day of the third month following the close of its tax year. (GP pays no tax.)
- **Limited Partnership (LP)** - 15th day of the third month following the end of its tax year.
- **Limited Liability Partnership (LLP)** - 15th day of the third month following the close of its tax year.
- **Investment Partnership** - 15th day of the third month following the end of its tax year.
- **Limited Liability Company (LLC) Annual Tax** - 15th day of the fourth month from the beginning of the tax year.
- **LLC Fee** - 15th day of the third month following the end of its tax year.
- **LLC Non-Consenting Non-Resident Tax** - 15th day of the third month following the close of its tax year.
- **Single Member LLC Annual Tax** - 15th day of the fourth month from the beginning of the tax year.
- **Single Member LLC Fee** – that is owned by an individual or a non-pass-through entity - 15th day of the fourth month following the close of its tax year.
- **Single Member LLC Fee** that is owned by a pass-through entity – 15th day of the third month following the close of its tax year.
- **Real Estate Investment Trust (REIT)** - 15th day of the third month following the close of its tax year.
- **Real Estate Mortgage Investment Conduit (REMIC)** - It can be organized as any entity type including LLC, partnership, corporation, or trust.
- **Regulated Investment Company (RIC)** - 15th day of the third month following the close of its tax year.
- **Banks and Financial Institutions** - 15th day of the fourth month following the close of its tax year.

- **Financial Asset Securitization Investment Trust (FASIT)**
- 15th day of the third month following the end of its tax year.
- **Non-Admitted Insurance Company** – First day of the third month following the end of the quarter.

Note: [Tax Exempt Organizations are covered in Section 4.1.7.1.](#)

Reference

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[Publication 1060 - A Guide for Corporations Starting Business in California](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.1.4.2 Interest on Penalties

Background

Franchise Tax Board (FTB) assesses interest on outstanding penalties from the interest effective date to comply with state and federal laws and rulings. The interest effective date varies according to the penalty and entity type. If the entire balance is paid within 15 days of the date of the notice, interest will not be charged from the date of the notice to the date paid.

Note: Prior to July 1, 1983, simple interest was assessed on interest bearing liabilities. Starting July 1, 1983 interest is compounded daily.

Purpose

Interest is the premium charged for the use of money. As such, various statutes and legal rulings have established criteria for assessing interest on penalties.

Responsibility

FTB employees must have the ability to communicate the basis of interest and penalty assessed and how it is computed.

Action

The interest effective date varies with the penalty:

- **Delinquent Penalty for Partnerships and Corporations** - Interest accrues from the original due date of the return.
- **Delinquent Penalty for Limited Liability Company (LLC) (Fee and Non Consenting Non Resident (NCNR) tax)** - Interest accrues from the original due date of the return.
- **Demand Penalty/Failure to furnish information** - Interest accrues from the Notice of Proposed Assessment (NPA) issue date.
- **Dishonored Payment Penalty** - Interest accrues from the date of notification.

- **Electronic Funds Transfer (EFT) Penalty** - Interest accrues from date of notification.
- **Estimate Penalty** - Interest accrues from the notification date.
- **Exempt Penalties** - Interest accrues from the original due date of the return.
- **Late filing penalty for LLC's and Partnerships** - Interest accrues from the date of notification.
- **Monthly penalty** – Non-interest bearing.
- **Secretary of State (SOS) Certification penalty** – Non-interest bearing.
- **Suspended/Forfeiture; Failure to File (\$2,000 penalty)** - From the NPA issue date.
- **Underpayment Penalty (LLC Annual Tax, NCNR and Fee)** – From the later of the original return due date, the extended return due date for timely filed, returns or from the original return due date for late filed returns.
- **Underpayment Penalty (Corporation)** - From the later of the original return due date or the extended return due date for timely filed returns or from the original return due date for late filed returns.
- **Underpayment Penalty (Partnerships)** – From the original due date.

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Last Revision: 05/23/2018

4.1.4.3 Interest Allowed On Overpayments

Background

Interest is allowed on overpayments from the date of overpayment to a date preceding the refund warrant by not more than 30 days. This ensures that the interest is allowed to a date within 30 days of the refund issue date as mandated by law. Interest is also allowed on credit transferred to another tax year from the date of the overpayment to the date of transfer date of transfer. ([Revenue and Taxation Code section 19340](#))

Interest must be allowed on overpaid returns if the refund warrant is not issued or a credit is not allowed within 45 days of the return due date or the received date of the return, whichever is later. In the case of a late filed return, no interest will be allowed for any time prior to the return filing date. ([Revenue and Taxation Code Section 19341](#))

Note: An overpayment is an amount in excess of the amount due, including tax, interest, and penalties.

Note: Prior to July 1, 1983 simple interest was assessed on interest bearing liabilities. Starting July 1, 1983 interest is compounded daily.

Purpose

Allowing interest on overpayments adheres with the California [Revenue and Taxation Code Sections 19340-and 19341](#) that mandates timeframes in which interest is allowable on overpayments.

Responsibility

Franchise Tax Board (FTB) employees are responsible for recognizing when interest should be allowed on overpayments. If the Franchise Tax Board disallows interest on any claim for refund, it shall notify the taxpayer accordingly.

Interest Is Allowed on:

- Payments not claimed on the return (estimates, extensions, etc.).

- Payments received with the return.
- Billing payments.
- Overpayments of tax and applicable penalties.
- Limited Liability Company fees.
- Payments requested by collections.
- Tax rate adjustments (ex: bank tax rate) credit balances created when FTB has applied an overpayment to a balance due on another year and the taxpayer also pays the balance due.

Interest Is Not Allowed on:

- Overpayments applied as an estimate payment for the year immediately following.
- Over payments of exempt return fees.
- Overpayments on decertified Secretary of State (SOS) certifications or overpayments of SOS certifications.
- Overpayments sent to FTB in error (e.g., payments meant for Internal Revenue Service, Employment Development Department, Board of Equalization, etc.).
- Prior to July 1, 1983.

Action

FTB employees should be aware when to request interest allowed on overpayments, and make the appropriate support request. (Refer to your unit procedures regarding submitting a support request).

Reference

[Revenue and Taxation Code Sections 19340 & 19341](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.4.4 Interest on Credit when an Assessment or Amended Return is Present (Avon)

Background

In the federal case of Avon Products, Inc. vs. United States, the court ruled, that if there is a subsequent assessment (Notice of Proposed Assessment (NPA) or amended return with additional tax due) on the same tax year that had an overpayment that was refunded or transferred to another tax year without interest being allowed, the entity must be given credit in the interest calculation for the period of time we held the overpayment. This ruling effects interest assessed on corporation accounts for any open tax year or income year whether the original return was filed timely or delinquent.

Avon applies when all of the following are met:

- The additional tax is the result of an amended return or an NPA
- There was an overpayment on the original return
- The overpayment was refunded or credited to another year without interest allowed

Note: Prior to July 1, 1983 simple interest was assessed on interest bearing liabilities. Starting July 1, 1983 interest is compounded daily.

Purpose

The Avon decision is based on the “use of money” principle. This principle states that for any period during which the government has the use of the taxpayers’ money, interest on a subsequent assessment should not be charged if during the same period the government had use of the overpayment.

Responsibility

FTB employees are responsible for being aware of the interest provisions affected by the federal court case, Avon Products, Inc. vs. United States, and insuring that accounts are corrected if the interest calculation results in a significant difference ((***)).

Action

Once FTB employees determine that Avon applies, interest will be computed on the amount of the deficiency in excess of the overpayment from the original return due date to the refund issue date or effective date of an offset to another liability, whichever is applicable. No interest should be charged on the amount of the deficiency equal to the original overpayment from the effective date of the payment to the date of refund or transfer.

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Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.1.4.5 Additional Interest on Large Corporation Underpayments – Two Percent (2%) Interest

Background

Generally, California conforms to federal laws by charging an additional two percent (2%) to the current interest rate, if the unpaid tax exceeds \$100,000 for any tax year and is not paid within 30-days (applicable date) of the first notice.

The additional two percent (2%) is due if the corporation:

- Is a "C" corporation.
- Meets the cumulative threshold tax amount of \$100,000.
- For tax years beginning on or after January 1, 1992, the threshold amount is a cumulative amount of \$100,000 in unpaid tax. The unpaid tax is *any* unpaid tax after the original due date of the return. The threshold amount includes regular tax and alternative minimum tax, but does not include any penalties, interest or add-on taxes, like installment sales, recapture tax, or look back tax.
- Has an established applicable date 30 days after the first notice.

Note: The additional two percent (2%) does not apply to tax years beginning prior to January 1, 1992.

Note: Prior to July 1, 1983 simple interest was assessed on interest bearing liabilities. Starting July 1, 1983 interest is compounded daily.

Purpose

The two percent (2%) interest is assessed for failure to pay the total balance for any unpaid tax year within 30 days of the first notice. The additional 2% rate is designed to encourage taxpayers to pay taxes in dispute during the administrative process or after an initial billing notice, whichever is applicable.

Responsibility

Franchise Tax Board employees must be able to identify why the additional two percent (2%) is assessed.

Reference

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[FTB Pub. 1138](#)

Revenue and Taxation Code Sections [19101](#) and [19521](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.1.4.6 Automated Interest Program (****)

Background

The Automated Interest Program (****) is used to manually compute:

- Estimate penalty
- Interest on tax and penalties
- Interest on overpayments
- Detailed computation of historical interest rates
- Additional payments or debits to be added to the account
- Business entity balance due
- Additional interest of two percent (2%) charged to certain large corporations who meet certain requirements

Note: ((ADINT)) will not work for computing interest on accounts based on AVON. [See Section 4.1.4.4.](#)

Purpose

((****)) allows Franchise Tax Board (FTB) employees to calculate and forecast balances due for each tax year.

Responsibility

FTB employees are responsible for using ((****)) to assist with computing the proper amount of total liability due.

Note: Fees are non-interest bearing.

Action

FTB employees should utilize ((****)) when a manual computation is appropriate.

Reference

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.5.1 Penalties – Common

Background

Penalties are assessed on a tax year when a business entity fails to comply with California tax law. Penalties may be assessed manually, automatically, or both. The following are the most common business entity penalties:

- **Contract Voidability Penalty** (Revenue and Taxation Code (R&TC) Sections [23304.1](#) and [23305.1](#))

During or after reviving the corporation to good standing, the corporation may request relief from contract voidability. Clarification of the penalty will be given when contract void is requested.

Note: See Section 7.1.4.1 [Suspension and Forfeiture](#) for additional information.

- **Delinquent Penalty for Partnerships and Corporations (Late Filing)** ([R&TC Section 19131](#))

If an income tax return is not filed by the extended [due date](#), the Franchise Tax Board (FTB) will impose a penalty of five percent (5%) of the tax due, after applying any payments and credits made on or before the original return due date, for each month or part of a month the return is late. The maximum penalty is 25% that FTB will impose the penalty from the original due date of the return.

- **Delinquent Penalty for Limited Liability Companies (LLC's)** ([R&TC Section 19131](#))

If an LLC's income tax return is not filed by the extended [due date](#), FTB will impose a penalty. After FTB applies timely payments and credits, FTB will charge a five percent (5%) monthly penalty on the fee and/or on the Non-Consenting Nonresident (NCNR) members' tax indicated on the return, not to exceed 25%. FTB will impose the penalty from the original return due date.

- **Demand Penalty-Failure to File Return** ([R&TC Section 19133](#))

If a demand to file an entity's income tax return is issued, and the return is not filed, FTB will impose a penalty of 25% of the tax liability before applying any payments or credits. For LLCs, the penalty is 25% of the LLC annual tax and LLC fee shown on the return (without regard to timely or refundable credits).

- **Demand Penalty/Failure to Furnish Information** ([R&TC Section 19133](#))

If a demand to file an entity's income tax return or provide FTB with information is issued, and the entity does not comply, FTB will impose a penalty of 25% of the tax liability before applying any payments or credits. The LLC penalty is 25% of the LLC annual tax and LLC fee shown on the return (without regard to timely or refundable credits).

- **Dishonored Payment Penalty** ([R&TC Section 19134](#))

FTB will impose a penalty if an entity's financial institution does not honor a payment made by check, money order, or electronic funds transfer (EFT). For a payment of \$1,250 or more, the penalty is two percent (2%) of the payment amount. For a payment less than \$1,250, the penalty is \$25 or the payment amount; whichever is less.

- **Electronic Funds Transfer (EFT) Penalty** ([R&TC Section 19011](#))

Once an entity remits an estimated tax or extension payment in excess of \$20,000 or has a total tax liability in excess of \$80,000 in any taxable year beginning on January 1, 1995, it must make all future payments, regardless of the taxable year or amount, through an EFT. Payments made by other means will result in a penalty of ten percent (10%) of the amount paid.

Note: LLC and Partnerships are not set up to make EFT payments at this time.

- **Estimate Penalty** ([R&TC Section 19142-19161](#))

If an entity does not pay, pays late, or underpays an estimated tax installment, it is assessed a penalty. The penalty is assessed on the unpaid amount from the due date of the estimated tax installment to the date the payment is received or to the due date of the return, whichever is earlier.

Note: LLCs and Partnerships are not assessed this penalty.

- **Exempt Penalties** (See [Section 4.1.7.7 Exempt Penalty](#) and [Section 4.1.7.8 Registry of Charitable Trusts](#))

- **Late Filing Penalty for LLCs and Partnerships** ([R&TC Section 19172](#))

FTB will impose a penalty if an entity does not file a partnership or LLC return by the extended due date. The penalty for returns due prior to January 1, 2011 is \$10 per partner or member for each month or part of the month the return is late. The penalty shall not exceed 5 months or \$50 per partner or member. The penalty for returns due January 1, 2011 and after is \$18 per partner or member for each month or part month the return is late. The penalty shall not exceed 12 months, or \$216 per partner or member. The penalty is imposed from the original due date of the return.

- **Underpayment of Estimated LLC Fee** ([R&TC Section 17941\(d\)](#)(2))

Section 17941 requires LLCs to estimate and pay their fee no later than the 15th day of the 6th month of the current taxable year. Under section 17941(d) a penalty equal to 10-percent of any underpayment shall be added to the fee unless the amount paid by the date prescribed is equal to or greater than the total amount of the fee paid in the preceding taxable year.

- **Secretary of State (SOS) Certification Penalty** ([R&TC Section 19141](#)) (Corporations Code Sections [1502](#), [2117](#), [2204](#), [2206](#), [6210](#), [6810](#), [8210](#), [8810](#), [9660](#), [9690](#), 17060, 17651(b), and 17653)

The California Secretary of State (SOS) imposes a penalty on corporations and limited liability companies that do not timely file their [Statement of Information](#) with the SOS. Domestic stock corporations, foreign corporations, and limited liability companies are subject to a \$250 penalty, and domestic nonprofit corporations are subject to a \$50 penalty.

- **Suspended/Forfeiture; Failure to File (\$2,000 penalty)** ([R&TC Section 19135](#))

FTB will impose a \$2,000 penalty on nonqualified, suspended, or forfeited corporations "doing business" in California if the

entities do not file a tax return within 60 days after FTB sends a demand to file.

- **Underpayment/Monthly Penalty for Partnerships and Corporations** ([R&TC Section 19132](#))

FTB will impose a penalty if the entity does not pay the total amount due shown on the return by the original due date. The penalty is five percent (5%) on the unpaid tax, plus one-half percent (1/2 %) on the unpaid tax for each month or part of a month it remains unpaid. The maximum penalty is 25% of the unpaid tax.

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- **Underpayment/Monthly Penalty for LLCs** ([R&TC Section 19132](#))

FTB will impose a penalty if the LLC does not pay the:

- Annual tax by the 15th day of the fourth month of its taxable year.
- Fee and NCNR tax by the fifteenth day of the fourth month after the end of its taxable year.

The penalty is five percent (5%) on the unpaid tax or fee, plus one-half percent (1/2 %) on the unpaid tax or fee for each month or part of a month it remains unpaid. The maximum penalty is 25% percent of the unpaid tax or fee.

Purpose

Penalties are punitive assessments that deter non-compliance and lessen FTB's collection costs.

Responsibility

FTB employees must verify the accuracy of existing penalties, and identify when penalties need to be assessed.

Action

FTB employees will manually assess penalties when appropriate, and abate penalties assessed in error.

Reference

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.5.2 Penalties - Other

Background

Penalties are assessed on a tax year when a business entity fails to comply with California tax law. Penalties may be assessed manually, automatically or both.

- **Accuracy Related Penalty** ([Revenue and Taxation Code Section 19164](#))
- ((****))
- **Aiding And Abetting By A Understatement of Tax Liability** ([Revenue and Taxation Code Section 19178](#))
- **Failure To Comply With Ownership Disclosure Penalty (for Real Estate Investment Trusts (REIT))** ([Revenue and Taxation Code Section 24872.7](#))
- **Failure to Disclose Ownership Penalty** ([Revenue and Taxation Code Section 24872.7](#))
- **Failure to Include Information on Reportable Transaction Penalty** ([Revenue and Taxation Code Section 19772](#)) ((****))
- **Failure to File Education Individual Retirement Accounts (IRA) Report Penalty** ([Revenue and Taxation Code Section 19184](#))
- **Failure to File IRA Report Penalty** ([Revenue and Taxation Code Section 19184](#))
- **Failure To Furnish Copy Of Return To Taxpayer Penalty -** [Revenue and Taxation Code Section 19167\(a\)](#)
- **Failure To Furnish Identification Number Penalty -** [Revenue and Taxation Code Section 19167\(b\)](#)
- **Failure to Maintain Investor List Penalty** ([Revenue and Taxation Code Section 19173](#)) ((****))
- **Failure to Register Penalty** ([Revenue and Taxation Code Section 19173](#)) ((****))
- **Failure To Retain A Copy Or List Penalty -** [Revenue and Taxation Code Section 19167\(c\)](#)

- **Filing A Frivolous Return Penalty (\$500)** ([Revenue and Taxation Code Section 19179](#)) ((***)
- **Failure to Furnish Information About a Foreign Owned Corporation Penalty (\$10,000 Per Foreign Corporation)** - ([Revenue and Taxation Code Section 19141.5](#)) ((***)
- **Fraud Penalty** ([Revenue and Taxation Code Section 19164](#)), ((***) - Penalties, Fraud Penalty
- **Fraud Delinquent Return Penalty** ([Revenue and Taxation Code Section 19131\(d\)](#))
- **Frivolous Submission Penalty** ([Revenue and Taxation Code Section 19179](#)) ((***)
- **Interest Based Penalty** ([Revenue and Taxation Code Section 19777](#)) ((***)
- **Late Payment Penalty for Non-Admitted Insurance Companies** - 10% of the tax due for late filing and paying.
- **Negligence Penalty** (Revenue and Taxation Code Section [12634](#) and [30204](#))
- **Negotiation of Taxpayer Check by Tax Preparer** ([Revenue and Taxation Code Section 19169](#))
- (AKA Tax preparer endorsing penalty)
- ((***)
- **Noneconomic Substance Transaction Understatement Penalty** ([Revenue and Taxation Code Section 19777](#)) ((***)
- **Failure to File Report Regarding Tax Deferred Savings Accounts Penalty** ([Revenue and Taxation Code Section 19184](#))
- **Personal Property/Business License Tax Penalty (\$5,000)** ([Revenue and Taxation Code Section 23186](#)) ((***) 23186 is the Rate of Tax Section.
- **Promotion Of Abusive Tax Shelter Penalty** ([Revenue and Taxation Code Section 19177](#)) ((***)
- **Reportable Transaction Understatement Penalty** ([Revenue and Taxation Code Section 19164](#))
- ((***)

- **Small Business Report Penalty** ([Revenue and Taxation Code Section 19133.5](#))
- **Substantial Understatement Of Tax Penalty/Accuracy Related Penalty** ([Revenue and Taxation Code Section 19164](#))
- **Tax Promoter Delinquency Penalty** ([Revenue and Taxation Code Section 19177](#))
- **Tax Promoter Information Penalty** ([Revenue and Taxation Code Section 19177](#))
- **Tax Promoter Required Records Penalty** ([Revenue and Taxation Code Section 19177](#))
- **Tax Promoter Required Statements Penalty** ([Revenue and Taxation Code Section 19177](#))
- **Understatement Of Tax By A Tax Preparer Penalty** ([Revenue and Taxation Code Section 19166](#)) ((***)
- **False Withholding Penalty** ([Revenue and Taxation Code Section 19176](#))

Purpose

Penalties are punitive assessments that deter non-compliance and lessen Franchise Tax Board's (FTB) collection costs.

Responsibility

FTB employees must verify the accuracy of existing penalties, and identify when penalties need to be assessed.

Action

FTB employees will manually assess penalties, when appropriate, and abate penalties assessed in error.

Reference

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4.1.6.1 Collection Cost Recovery Fees

Background

Collection Cost Recovery Fees are assessed as a method to reimburse Franchise Tax Board (FTB) for costs incurred in the process of collection activity.

The most common fees assessed are:

- **Collection Fee** ([Revenue and Taxation Code Section 19254](#)): Assessed to business entities that require FTB to take collection action.
 - ((***) (***))

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- **Filing Enforcement Fee** ([Revenue and Taxation Code Section 19254](#)):

Assessed to entities that do not file tax returns by the date indicated on our written Demand for Tax Return notice.

- **Lien Fee** ([Revenue and Taxation Code Section 19221](#) and [Revenue and Taxation Code Section 19209](#)):

Assessed to entities with delinquent liabilities when FTB files a state tax lien with the [county recorder](#) or the [Secretary of State](#).

- **Out of State Collection (OSCAR) Fee** ([Revenue and Taxation Code Section 19376](#)):

Assessed to entities with delinquent liabilities when FTB assigns the liability to an outside collection agency.

- **Sheriff Fee**

The Sheriff fee is assessed when a warrant has been issued to enforce collection of unpaid tax. See CPM Section 7.0.2.18 ((***) for additional information.

Purpose

Collection cost recovery fees are assessed as a method to reimburse FTB for costs incurred in the process of collection activity.

Responsibility

FTB employees are responsible for understanding all cost recovery fees and ensure the fees are properly assessed.

Action

FTB employees must assess or abate fees when appropriate.

Reference

((***)

[Form FTB 7265](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.7.1 Exempt Organizations Overview

Background

The Franchise Tax Board (FTB) has special designations that allow organizations to be exempt from paying California franchise or income tax. [Revenue and Taxation Code \(R&TC\) Section 23701](#) contains 23 types of exempt classifications. Many of the Revenue and Taxation Code (R&TC) Section 23701 are patterned after the [Internal Revenue Code \(IRC\) Section 501\(c\)](#).

There are two ways an organization can apply for tax-exempt status:

- File form [FTB 3500](#), *Exemption Application*, pay the \$25 fee, and provide any supporting documents required.
- File form [FTB 3500A](#), *Submission of Exemption Request*, if the entity has an Internal Revenue Service (IRS) determination letter under IRC Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7).

If the organization was previously revoked, they cannot use the form FTB 3500A, but must use the form FTB 3500.

Until FTB issues an Exempt Determination Letter or Exempt Acknowledgement Letter, they are considered a taxable entity.

Note: Nonprofit and tax-exempt are not the same.

Nonprofit corporations generally incorporate under one of the following parts of the California Nonprofit Corporation Law:

- Nonprofit Public Benefit Corporations.
- Nonprofit Mutual Benefit Corporations.
- Nonprofit Religious Corporations.

Tax-exempt means the organization is not required to pay California franchise or income taxes on the money the organization receives related to its exempt activities.

As of January 1, 2003, FTB will allow certain Limited Liability Companies (LLCs) to file for tax-exempt status. (No retroactive exemptions will be granted prior to January 1, 2003.)

LLC's may apply for California exemption under [R&TC Section 23701](#), specifically subsections (h) and (x).

A LLC is eligible for tax-exempt status with FTB, if it meets one of the following:

- Classified as an association, taxable as a corporation with the Internal Revenue Service (IRS).
- Qualified for tax-exempt status under R&TC Section 23701h or 23701x as a title holding company.

Purpose

Tax-exempt status allows organizations to fulfill their nonprofit purpose, without having the requirement of paying California franchise or income tax on the money the organization receives related to its exempt activities.

Responsibility

FTB staff must be able to differentiate between non-profit and tax-exempt, and be able to advise taxpayers of the proper procedures for becoming tax-exempt and remaining compliant.

Responsibility

If unable to answer questions regarding obtaining tax-exempt status, have them contact the Exempt Organizations Unit at their public telephone number (See FTB Internal Contact List) from 7:00 a.m. – 4:30 p.m. weekdays except state holidays.

Reference

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[FTB Publication 927](#)

[FTB Publication 1068](#)

[Charities and Nonprofits \(Exempt Organizations\) webpages on ftb.ca.gov](#)

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4.1.7.2 Application for Exemption Processing

Background

Organizations that are either unincorporated or incorporated and seeking tax-exempt status, must be organized and operated to meet the specific requirements for the R&TC Section 23701 that the organization is seeking exemption under.

There are two ways an organization can apply for tax-exempt status:

- File form [FTB 3500](#), *Exemption Application*, pay the \$25 fee, and any supporting documents required.
- File form [FTB 3500A](#), *Submission of Exemption Request*, if the entity has an Internal Revenue Service (IRS) determination letter under IRC Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7).

If the organization was previously revoked, they cannot use the form FTB 3500A, but must use the form FTB 3500.

Until Franchise Tax Board (FTB) issues an Exempt Determination Letter or Exempt Acknowledgement Letter, they are considered a taxable entity.

Political organizations

Political organizations meeting the requirements of R&TC Section 23701r are not required to file form FTB 3500. The organization must obtain a letter from the FTB certifying tax-exempt status if it wants to incorporate and avoid the annual payment of the minimum franchise tax.

To get the letter, the organization must submit a written request that includes a description of the political organization's activities and, if incorporated, a copy of the articles of incorporation and any amendments.

Some trusts and organizations covered under a parent's group exemption do not have to file for tax-exempt status.

Note: An unincorporated association with tax-exempt status must reapply for exemption if they incorporate with the California Secretary of State. Tax-exempt status is not transferable.

Note: Entities needing immediate exemption can, in very limited situations, apply for rush exemption. See unit procedures and the link below for details.

Note: Entities needing immediate exemption can, in very limited situations, apply for walk-through exemption. See unit procedures and the link below for details.

Purpose

Organizations file form FTB 3500, or form FTB 3500A to become tax-exempt from California franchise or income tax on the money the organization receives related to its exempt activities.

Responsibility

FTB employees must understand the difference between tax-exempt and taxable.

Action

FTB employees will advise organizations of the ability to be tax-exempt and give the corporation the [public web site](#) to view the Charities and Nonprofit (Exempt Organizations) webpages and appropriate forms, such as form FTB 3500 or form FTB 3500A.

If you are unable to answer questions regarding obtaining tax-exempt status, have them contact the Exempt Organizations Unit at their public telephone number (See FTB Internal Contact List) from 7:00am – 4:30pm weekdays except state holidays.

Reference

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[FTB Publication 927](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.7.3 Gross Receipts and Three Year Rule

Background

Most organizations exempt under [Revenue and Taxation Code Section 23701](#) are required to file either the form FTB 199, Exempt Organization Annual Information Return or FTB 199N, e-Postcard under [Revenue and Taxation Code Section 23772](#).

Gross receipts are defined as the total amounts the organization received from all sources during its annual account period– without subtracting any costs or expenses (includes costs of goods sold, costs of operations, or expenses to earn, raise, or collect such amounts).

Beginning with the tax year 2010, most tax-exempt organizations are required to file the form FTB 199 or FTB 199N e-Postcard.

To determine which form to file is based on the normal gross receipt average.

Determine which form to file (Form FTB 199 or FTB 199N *California e-Postcard*)

Use the charts below to determine the gross receipts average. The gross receipt average changed beginning with the tax year 2012.

Tax year 2012 and subsequent

If your organization has existed:	File Form 199 if the gross receipts exceed:
1 year or less	\$75,000 or less
More than 1 year but less than 3 years	\$60,000 or less (average for current year and immediately preceding year)
3 years or more	\$50,000 or less (average for current year and immediately

Tax years 2011 and prior:

If your organization has existed:	File Form 199 if the gross receipts exceed:
1 year or less	\$37,500 or less
More than 1 year but less than 3 years	\$30,000 or less (average for current year and immediately preceding year)
3 years or more	\$25,000 or less (average for current year and immediately preceding 2 years)

Use the chart below to determine which form to file.

Exempt under all R&TC §23701 except R&TC §23701r	Form 199 or FTB 199N Filing Requirement	
	Form 199	FTB 199N
Tax year 2012 and subsequent – Gross receipts normally equal to or less than \$50,000		Yes
Tax year 2010 and 2011 – Gross receipts normally equal to or less than \$25,000		Yes
Tax year 2009 and prior – Gross receipts normally equal to or less than \$25,000.	No requirement to file	
Tax year 2012 and subsequent – Gross receipts greater than \$50,000	Yes	
Tax year 2011 and prior – Gross receipts greater than \$25,000	Yes	
Private foundations (regardless of gross receipts amount)	Yes	
Nonexempt charitable trusts described in IRC Section 4947(a)(1) (regardless of gross receipts amount)	Yes	
You are one of the following organizations: <ul style="list-style-type: none"> • Churches, interchurch organizations of local association units of a church, conventions or associations of churches, or integrated auxiliaries of churches. • Religious orders (such as Franciscan Friars or Sisters of Charity). 	No requirement to file	

<ul style="list-style-type: none"> • Organizations formed to carry out a function of a state, or public body that is carrying out that function and is controlled by the state or public body. <ul style="list-style-type: none"> • Political organizations. • Pension trusts. • Coverdell Education Savings Accounts (ESAs), formerly called education IRAs. • Qualified state tuition programs. • Subordinate organization included in the parent's group return. 	
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Organizations eligible to file FTB 199N may choose to file a complete Form 199.

Note: Exempt organizations coded as private foundations must file form FTB 199 regardless of yearly gross receipts and pay the filing fee. ((These entities will have a class code of 300 in R112 in the Business Entities Tax System.))

Organizations required to file the form FTB 199 may complete Side 1 of the Form 199, and provide one of the following as substitute information for Part II:

1. A complete copy of federal Form 990-PF, with appropriate schedules.
2. A complete copy of the current report filed with the Registry of Charitable Trusts, Include federal Form 990.
3. Labor organizations, a copy of Federal form LM-3 can be submitted.

Purpose

An explanation of gross receipts gives Franchise Tax Board (FTB) employees and taxpayers an understanding of the different filing requirements that apply to each entity.

Responsibility

An understanding of the gross receipts allows FTB employees to explain specific requirements, and gives a basis for administering applicable penalties.

Action

To enforce a filing requirement for the [form FTB 199](#) and [FTB 199N](#), FTB employees will need to use the “three year” average to determine the filing requirement for each year.

If you are unable to answer questions regarding the filing requirements, have them contact the Exempt Organizations Unit at their public telephone number (See FTB Internal Contact List) from 7:00am – 4:30pm weekdays except state holidays.

Reference

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[FTB Publication 927](#)

[FTB Publication 1068](#)

[Charities and Nonprofits \(Exempt Organizations\) – Filing requirements on \[ftb.ca.gov\]\(http://ftb.ca.gov\)](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.7.4 Filing Fees for Exempt Organizations

Background

Exempt organizations do not have to pay any tax on their gross receipts once they are tax-exempt, but there are a few fees that are applicable throughout the exemption process. These fees are:

- Exempt Application fee ([form FTB 3500](#))
- Exempt Organization Annual Information Return fee ([form FTB 199](#))

Note: Exempt entities used to be charged a revivor fee but that is no longer applicable. Exempt entities are not assessed a collection fee, given their exemption is valid.

Only Franchise Tax Board (FTB) employees in the exempt unit can review the exempt application.

The filing fee amount depends upon when the return is filed, and when the payment is made ([R&TC Section 23772](#)). The filing fee is not required for organizations with the FTB 199N filing requirement.

File the Return	Filing Fee Paid	Fee Amount
By original due date.	By original due date.	\$10.00
After original due date, but on or before the extended due date.	After original due date, but on or before the	
By original due date.	After original due date.	\$25.00
After original due date, but on or before the extended due date.	After the extended due date.	

Exceptions

The filing fee does not apply to the following organizations exempt under R&TC Section 23701d:

If the organization is:	And
Religious organization.	Organization has exclusively religious activities of any religious order. Organization is operated, supervised, or controlled by or in connection with a religious organization.
Educational Organization.	Organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on.
Charitable organization or an organization for the prevention of cruelty to children or animals.	Organization is supported, in whole or in part, by funds contributed by the United States or any state or political subdivision thereof, or is primarily supported (50% or more) by contributions of the general public. Must mark the filing fee exception box on the form FTB 199.

Private foundations are required to pay the filing fee.

Purpose

Filing fees give FTB employees the ability to understand which fees are applicable for each exempt corporation.

Responsibility

It is the responsibility of FTB employees to ensure that entities pay all applicable fees.

Action

FTB employees will advise corporations of the appropriate fees needed pending the exempt requirements of the entity.

If you are unable to answer questions regarding the filing fees, have them contact the Exempt Organizations Unit at their public telephone number (See FTB Internal Contact List) from 7:00am – 4:30pm weekdays except state holidays.

Reference

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[FTB Publication 927](#)

[FTB Publication 1068](#)

[Charities and Nonprofits \(Exempt Organizations\) – Filing Fees on \[ftb.ca.gov\]\(http://ftb.ca.gov\)](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.7.5 Filing Requirements for Exempt Organizations

Background

An organization that has applied for and has been granted tax-exempt status by the Franchise Tax Board (FTB), may be required to file one or more returns that may have different filing dates.

Tax Returns for Exempt Organizations:

- [Form FTB 199](#) – California Exempt Organization Annual Information Return. This return reports annual gross receipts, and must be filed on or before the 15th day of the fifth month (within 4-1/2 months) following the close of the organization's annual accounting period.
- [Form FTB 109](#) – California Exempt Organization Business Income Tax Return. This return reports unrelated business taxable income. The return due date is determined by the organization's formation which is determined by the exempt unit.
 - Exempt organization other than Pension Trusts - Must be filed on or before the 15th day of the fifth month (within 4-1/2 months) following the close of the organization's annual accounting period.
 - Pension Trusts – Must be filed on or before the 15th day of the fourth month (within 3-1/2 months) following the close of the organization's annual accounting period.
- [Form FTB 100](#) – California Corporation Franchise or Income Tax Return. This return reports the taxable income for homeowners associations, mutual water companies, and political organizations. The return due date depends on the return tax year:
 - Tax year 2016 and forward: This return must be filed on or before the 15th day of the fourth month (within 3-1/2 months) following the close of the organization's annual accounting period.
 - Tax year 2015 and prior: This return must be filed on or before the 15th day of the third month (within 2-1/2 months) following the close of the organization's annual accounting period.

All corporations will receive an automatic extension to file all returns if their corporate status is active at the time of the original due date. This is an extension to file, not pay. All tax must be paid in full at the time of the original due date. The length of the extension depends on the return tax year.

- Tax year 2016 and forward: 6 month extension
- Tax year 2015 and prior: 7 month extension

Note: A homeowners association will never have a requirement to file a form FTB 109. No other exempt organization but homeowners associations, mutual water companies and political organizations, will file a form FTB 100, unless the organization's exempt status has been revoked.

Purpose

Filing requirements give the corporation a timeline for when the return and tax or fee must be filed and paid.

Responsibility

FTB employees must be familiar with all returns and their corresponding due dates to ensure the highest level of customer service.

Action

FTB employees will need to educate the business entity of their need to file return(s) for each accounting period.

Reference

[Revenue and Taxation Code Sections 23772 and 23774](#)

[Revenue and Taxation Code Sections 23711 and 18506](#)

[Revenue and Taxation Code Section 23701t](#)

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[FTB Publication 927](#)

[FTB Publication 1068](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.7.6 Unrelated Business Income

Background

Organizations exempt under [Revenue and Taxation Code Section 23701](#) and pension trust entitled to exemption under [Revenue and Taxation Code Section 17631](#), with income from unrelated business activities (including income from leases of debt-financed property), may be required to file the Unrelated Business Income (UBI) tax return, [form FTB 109](#). This may be in addition to filing [form FTB 199](#) annually.

Any income from a trade or business that does not conform to the organization's exempt purposes, even though the profits are used for exempt purposes, is subject to taxation.

For Exempt Unrelated Business Income Account type (form FTB 109), the estimate penalty will be computed on the underpaid amount from:

- Income years beginning prior to January 1, 1991 - the installment due date to the earlier of the date paid or the entity's original return due date.
- Income years beginning January 1, 1991 and later - the installment due date to the earlier of the date paid or the UBI Account original return due date.

Note: If the unrelated business income for a single year does not exceed \$1,000.00, the exempt organization will not be required to file form FTB 109.

Note: Organizations that may have a requirement to file form FTB 109 will never file form FTB 100 while their exemption is valid.

Purpose

Form FTB 109 allows Franchise Tax Board (FTB) to differentiate between an exempt organization's gross receipts and unrelated business income, giving FTB the ability to collect tax on income that does not conform to the organization's exempt purposes.

Responsibility

FTB employees must understand the filing date and penalty differences between gross receipts (form FTB 199) and unrelated business income (form FTB 109).

Action

FTB employees will advise exempt organizations of the possible requirements to file form FTB 199/199N and/or form FTB 109, and be able to apply all appropriate penalties.

Reference

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.7.7 Exempt Penalties

Background

Exempt organizations have three possible tax returns that can be filed in an income year. These returns have a variety of penalties associated for late filing and late payment. They are as follows:

- **Delinquent (late filing) Penalty** – failure to file a timely return.
 - [Form FTB 199](#), Exempt Organization Annual Information Return - \$5 for each month the return is late - \$40 maximum
- **Delinquent Penalty** – failure to file a timely return and there is unpaid tax.
 - [Form FTB 100](#), California Corporation Franchise or Income Tax Return – Calculated the same as for nonexempt corporations.
 - [Form FTB 109](#), Exempt Organization Business Income Tax Return – Calculated the same as for nonexempt.
- **Underpay/Monthly Penalty** – late payment of tax with a timely filed return.
 - FTB 199 – Does not apply
 - FTB 100 – Calculated the same as for non-exempt corporations.
 - Form 109 – Calculated the same as for non-exempt corporations.
- **Estimate Penalty** – not making timely estimated tax payments.
 - FTB 199 – Does not apply.
 - FTB 100 – There is no minimum tax for exempt organizations. Tax-exempt Political Action Committees are not subject to the estimate penalty. The estimate penalty is calculated the same was as a nonexempt income tax filer.
 - FTB 109 – There is no minimum tax for exempt organizations. The estimate penalty is calculated the same

was a nonexempt income tax filer. The estimate penalty will be computed on the underpaid amount from:

- Income tax years beginning prior to January 1, 1991 – the installment due date is the earlier of the date paid or the entity's original return date.
- Income years beginning January 1, 1991 and later – the installment due date is the earlier of the date paid or the Unrelated Business Income account's original return due date.
- **Secretary of State (SOS) Penalty** – failure to file statement of information with SOS.
 - \$50 for domestic nonprofit entities
 - \$ 50 for SI-CID
 - \$250 for foreign nonprofit entities
- **Failure to Furnish Information Penalty** (private foundations)
 - \$5 per month up to a maximum of \$25

Note: The return due date determines the date a penalty becomes applicable. Not all returns due for exempt corporations have the same due date.

- FTB 199
 - due the 15th day of the fifth month (within 4-1/2 months) following the close of the organization's annual accounting period
- FTB 100
 - Tax year 2016 and future: due the 15th day of the fourth month (within 3-1/2 months) following the close of the organization's annual accounting period.
 - Tax year 2015 and prior: due the 15th day of the third month (within 2-1/2 months) following the close of the organization's annual accounting period.
- FTB 109
 - Other than Pension Trust due the 15th day of the fifth month (within 4-1/2 months) following the close of the organization's annual accounting period.

- o Pension Trusts due the 15th day of the fourth month (with 3-1/2 months) following the close of the organization' annual accounting period.

Purpose

Penalties are punitive assessments that deter noncompliance and reduce Franchise Tax Board's (FTB) collection costs.

Responsibility

To identify penalties that need to be assessed and verify existing penalties are accurately assessed.

Action

FTB employees will monitor automated penalties, manually assess penalties when appropriate, and abate penalties that are incorrectly assessed.

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.7.8 Registry of Charitable Trust

Background

The Registry of Charitable Trust (RCT) is a part of the [Attorney General's](#) office. [Government Code 12580](#) allows the Attorney General to supervise, investigate, and audit all charitable assets in California. These organizations are granted California tax-exempt status [Revenue and Taxation Code Section 23701](#). [Government Code 12583](#) excludes hospitals, churches, and schools from filing with the Registry of Charitable Trust.

Per [Revenue and Taxation Code Section 23703](#), corporations that do not comply with the RCT filing requirements, will have their tax-exempt status revoked by Franchise Tax Board (FTB). Here is the process if the corporation does not comply with RCT's filing requirements:

- After the corporation fails to file with the RCT, RCT will notify FTB.
- FTB will notify the organization of the failure to comply with RCT.
- The organization will have 120 days from the date of the FTB letter to comply with RCT.
- If the entity does not comply, the tax-exempt status will be revoked.

To reinstate tax-exempt status, the organization must complete the form FTB 3500, Exemption Application with \$25 fee and all required documents and comply with the RCT filing requirements.

Purpose

This filing allows the State of California to monitor corporations that are designated as charitable entities.

Responsibility

Exempt corporations are required to file a form [RRF-1](#) with the Registry of Charitable Trust.

Note: The RRF-1 was formerly known as the CT-2.

Action

FTB employees will advise corporate representatives to comply with the RCT filing requirements.

If a corporation has questions regarding the RCT filing requirements, they need to contact the Attorney General's Office, Registry of Charitable Trusts at their public telephone number 916.445.2021.

If you are unable to answer questions regarding the revocation of their tax-exempt status, have them contact the Exempt Organization Unit (See FTB Internal Contact List).

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[Registry of Charitable Trusts Website](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.7.9 Exemption Revocation

Background

If an unincorporated or incorporated exempt organization fails to file a return or statement on time or pay the filing fee, its exemption from tax may be revoked. Technically, an organization that has its exemption revoked is subject to taxation if it continues to operate. Organizations should reapply for exemption within one year of revocation, as provided in Revenue and Taxation Code Sections [23775](#) and [23778](#).

Purpose

Revocation allows Franchise Tax Board (FTB) to ensure exempt corporations are staying in compliance with the requirements defined by their exemption.

Responsibility

FTB employees must understand the effect of revocation, and how to view the status in conversation ((***)).

Action

FTB employees will advise corporations that they are a taxable entity, give only general tax requirements, and advise them of the need to file a new [form FTB 3500](#). If a corporation has questions regarding their loss of exemption, they need to contact the Exempt Audit Unit at their public telephone number 916-845-4171.

Reference

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.7.10 Mutual Water Companies

Background

Mutual water companies include businesses that operate wells, electric generating facilities, and/or other utilities. They do not have a specific exemption designation under the Revenue and Taxation Code, but have been included under [Revenue and Taxation Code Section 23701\(t\)](#), and will be treated as a homeowners' association.

Purpose

Mutual Water Companies are set up as homeowners' associations to monitor companies that own or maintain facilities that provide electricity or water to homes, businesses, or agricultural enterprises.

Responsibility

Franchise Tax Board (FTB) employees must recognize that a mutual water company follows the requirements of a homeowners' association, and understand what is expected from those organizations.

Action

FTB employees will advise corporate representatives of their filing requirements, as well as the associated penalties for failure to file timely returns.

Reference

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[Form FTB 3500 – Exemption Application](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.1.7.11 Confidential Information for Exempt Entities

Background

The department's policy regarding exempt organizations is basically the same as for taxable corporations. The exception is that any information disclosed in an exemption application that has been granted is public information. If the exemption was denied, this information is confidential. If a person requests information and Franchise Tax Board (FTB) employees are not sure of the taxpayer's qualifications to receive such information, a Power of Attorney should be required to verify the individual's authorization to receive the account information. The corporation's representative can send a [form FTB 3516](#), Request for Taxpayer Return Information, to request information from the corporate folder.

Purpose

Defining confidential information ensures that employees are able to quickly identify information that is protected from disclosure. Adherence to the confidentiality requirements alleviates concerns that information may be illegally used against business entities or third parties.

Responsibility

It is the responsibility of FTB employees to:

- Know whether or not accessed information is confidential
- Ensure 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 the business entity if an unauthorized disclosure occurs.

Action

FTB employees are required to complete the ((***) course and to sign a confidentiality statement (([FTB 7912](#))) upon being hired and every year thereafter. FTB employees should also be able to advise any individual or business that the information on the exempt application does not become public until the State of California grants exemption.

Reference

[FTB Disclosure Manual Section 1133](#)

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

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4.1.7.12 Exempt Corporations Suspension/Revivor

Background

An exempt corporations may go into a suspended status whenever they fail to file the appropriate return ([form FTB 199](#), [form FTB 109](#), [form FTB 100](#)) or fail to pay the balance on any fee, penalty, or tax assessment. Occasionally, suspension will occur for failure to meet general corporation requirements that were due and payable prior to the effective date of the entity's tax exempt status granted by the Exempt Audit Unit.

Note: It is not necessary for a corporation to revive before applying for an exemption.

Purpose

Suspension makes voidable all contracts that an exempt corporation enters into after the suspension or forfeiture date. When a corporation is suspended they have no rights to protect their name, and cannot pursue any legal actions. This aids the Franchise Tax Board (FTB) in assisting the suspended entity in reviving to become compliant.

Note: Corporations can protect against voided contracts by purchasing relief from contract voidability. The relief period can start on either the:

- Beginning of the tax year of suspension
- Beginning of any tax year after the tax year of suspension

The relief period ends on the date of revivor.

Responsibility

FTB employees must determine if all general and/or exempt corporation requirements have been met prior to the corporation's revivor.

Note: If the tax exempt status effective date is after the incorporation date the corporation will have requirements to file as both a general and exempt corporation.

Action

If corporation tax requirements have not been met, FTB employees will obtain the required returns including payment of all tax, penalties and interest due.

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Note: (()) = Indicates confidential and/or proprietary information.

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4.1.8.1 Requesting Documents

Background

Documents, including tax returns and pay documents, are maintained and controlled by various sources:

- Data Services and Storage Section (DSSS) – returns, folders, limited retention files (LIM)
- Image Delivery Application Expansion ((IDAX)) - images of returns, checks, pay documents
- FRED – images of pay documents (e.g., 100ES, 3522) Corporation Document Tracking System (CDTS) – Enterprise - Wide network based document tracking system to track corporation and Limited Liability Company (LLC) returns
- Microfiche- purged account information, condensed files

Retention dates have been established to determine the date when returns and other documents are destroyed.

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Purpose

The purpose of storing documents is to allow Franchise Tax Board (FTB) employee the ability to request copies and validate the accuracy of the entity's records and claims.

Responsibility

It is the responsibility of FTB employee to be familiar with all systems when there is a need to request documentation.

Action

FTB employee will follow unit procedures when requesting documents.

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4.1.9.1 System Conversions

Background

As the Franchise Tax Board (FTB) implements new computer systems to replace obsolete systems, the information from one system is converted onto the new system. The following systems have been converted:

- Collection Account Processing System (CAPS) was the collections system for corporations that was converted into the Accounts Receivable Collection System (ARCS). (CAPS can no longer be viewed)
- Bank and Corporation Master file (BCM) was the accounting system for corporations that was converted into the Business Entities Tax Systems (BETS). (BCM is view only)
- Partnership Master file (WHPAR) was the accounting system for partnerships that was converted into BETS. (WHPAR is view only)
- FOXPRO was the accounting system for Limited Liability Companies (LLC) that was converted into BETS. (FOXPRO is view only)

Purpose

FTB switches to new computer systems to increase productivity, enhance security, and to expand data capacity.

Responsibility

FTB employee must be aware of what information is located on what computer system.

Action

FTB employee should utilize the systems available to locate information needed to assist in achieving account resolution.

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Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.1 Manual Process and Complex Account Functional Areas

Background

Collection accounts enter the Manual Process (MP) or the Complex Account (CT) Functional Area of the Accounts Receivable Collections System (ARCS) once the automated collection process is complete. ((Accounts without a collection fee are identified and routed out of the MP functional area accordingly.)) ((All other accounts are routed to work lists based on regional area and assessment type.))

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Assessment types are:

- Audit assessments (Head of Household (HOH), Revenue Agent Report (RAR), and Franchise Tax Board (FTB) Audits)
- Self-assessed returns
- Filing Enforcement (FE) and all other [assessments](#)
- Self-employed (SE) FE assessments
- Jeopardy-accounts with one or more J/A (FAN does not issue J/A)

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Purpose

The MP or CT functional area allows accounts to be worked by FTB employees to collect delinquent tax liabilities on accounts that have completed the automated process without proper resolution. Therefore, the accounts require manual intervention in order to achieve resolution and/or compliance.

Responsibility

MP accounts are routed to work lists based on regional area and assessment type. Within each functional area there is a series of work states that define the type of work or action that is to be performed

within the state. FTB employees will refer assigned MP accounts to their appropriate area and/or assigned representative.

CT accounts are routed to initial hold lists to be assigned to collectors for resolution.

Action

If a FTB employee receives a telephone call from a taxpayer whose account is assigned to a MP or CT collector, they must:

- Provide the taxpayer with the assigned collector's direct telephone number
- Place the taxpayer on hold and contact the assigned collector to announce the transferring of the call
- Transfer the call to the assigned collector's direct telephone number

If a FTB employee receives information or telephone call from a taxpayer in a MP state and the account is not associated, provide the taxpayer with the appropriate MP Automated Call Distributor (ACD) line and transfer the call to the ACD extension.

Note: Once the account is assigned to an MP functional area, these calls are not distributor to an ACD line.

Once in the MP functional area, collectors will work the accounts to achieve an account resolution. Accounts in the MP area are either assigned to an MP collector or they are unassigned and worked in a work list environment. ((****))

If an FTB employee receives information or a telephone call from a taxpayer in a CT X initial hold list, the employee should tell the taxpayer someone in the unit the account is assigned to will call them back and send an email to their lead to have the lead contact a lead in the CT X unit to have the case assigned and a callback completed.

FTB's response to contacts from taxpayers regarding MP and CT unassigned accounts should be consistent with the [Statement of Principles of Tax Administration](#) with the following objectives:

- Resolution of the taxpayer's entire account will be attempted during the first taxpayer contact.

- Emphasis will be placed on educating taxpayers regarding their obligations in an effort to encourage compliance.

The following guidelines have been established to implement these objectives:

- Correspondence will be answered within 21 days of FTB's receipt. If an extensive search for files and/or information required would result in a delayed response, the taxpayer will be sent an acknowledgment of receipt of the inquiry within 21 days.
- Discretionary resources will be redirected when necessary to ensure timeframes are met during peak periods.
- Consideration will be given to taxpayers requesting additional time to pay on accounts by deferring billings or granting Installment Agreements. ((***)
- Accounts in the MP functional area with large balances ((***) are routed to the Complex Account Resolution Team functional area. Only accounts with specific criteria approved by a supervisor/lead will be associated to collectors.
- Resolution of MP or CT functional area accounts will include an effort to correct underpayment of estimated taxes, under withholding, and to account for missing year tax returns.

Note: ((***) ((***) ((***) If a lien was filed in error, it should be released as issued in error. ((***)

Reference

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Add a link to the CART Reference Guide

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.2.1.2 Unauthorized Acquisition of Confidential Taxpayer Information

Background

The purpose of the provisions in the Revenue and Taxation Code is to aid in the administration of the income tax laws and certain other programs under the department's jurisdiction, by encouraging taxpayers to make full and truthful disclosures on their income tax returns without fear that the information will be revealed or used against them for some other purpose.

Unauthorized acquisition of confidential taxpayer information, or Unauthorized Disclosure (UAD), is the acquisition of computerized information that would compromise the security, confidentiality, or integrity of personal information. This means acquiring personal information that is not required to perform the duties of your job or unknowingly giving confidential information to an individual, entity, or agency who does not have a right to know this information. This includes information on any of the systems you are able to access (e.g., the Taxpayer Folder (TPF), Taxpayer Information (TI) System, Business Entity Tax System (BETS), Accounts Receivable Collection System (ARCS), Integrated Non-filer Compliance System (INC), Department of Motor Vehicles (DMV), etc.)

Confidentiality Provisions

Personal income tax return information which is protected by the confidentiality provisions in the law includes:

- All information contained in a tax return
- Information that is contained in any audit, collection or investigation report
- Information submitted by the taxpayer in connection with the taxpayer's income or tax liability
- Information submitted by a person other than the taxpayer concerning the taxpayer's income tax liability or financial affairs
- Information contained in or extracted from a federal tax return, federal audit or investigation report, or any other documents obtained from the Internal Revenue Service (IRS)
- Information whether a personal income tax return has been filed by an individual

- Information processed electronically or maintained in an electronic format that contains tax return information

Bank Corporation Tax Return Information

Bank and corporation tax return information which is protected by the confidentiality provisions in the laws includes:

- Any information contained in a tax return, other than the exceptions in Revenue and Taxation Code section 19543
- Information contained in any audit or investigative report
- Information submitted by the taxpayer in connection with its income or tax liability.
- Information with respect to a taxpayer's business affairs submitted by a person other than the taxpayer, if such information was furnished pursuant to the provisions of the Revenue and Taxation code
- Information contained in or extracted from a federal tax return, federal audit or investigation report, or any other documents received from or translated from tape to various documents
- Information processed electronically or maintained in electronic form that contains tax return information

Purpose

The purpose of prohibiting unauthorized acquisition of confidential taxpayer account information is to restrict disclosure of confidential information.

Responsibility

Franchise Tax Board (FTB) employees must adhere to the policy of the "need" and the "right" to know before accessing taxpayer account information. See Section 3.2.1.1 Confidentiality and Security of Data. Effective July 1, 2003, any state agency or business that owns or maintains computerized personal information is required to notify the taxpayer when an unauthorized person acquires certain personal information.

Accidental Unauthorized Disclosure.

FTB takes great pride in protecting taxpayer information. However, if an unauthorized disclosure happens, FTB employee must:

- Report the incident to their supervisor immediately
- Follow your area's procedures to determine who fills out a Disclosure Access & Reporting Tracking System (DARTS) report
- Report all unauthorized disclosures in DARTS within 24 hours

Note: DARTS is a tracking system for unauthorized disclosures. It allows you or your supervisor to report an incident any time there has been an unauthorized disclosure. You should fill out a DARTS report when you have given information to the wrong person or you know of someone else giving information to the wrong person.

Do not discuss what you see or hear unless you have a business need that includes:

- Return information, cases, or calls
- Sensitive, confidential, & proprietary information
- Employee information

Talk about confidential information in secure areas only:

- At your desk
- In a conference room
- In a quiet room

Inappropriate Areas:

- Public Transit
- Outside of work
- Hallways & Elevators

Common threats to information security are:

- Casual attitude towards security policies, passwords, and procedures
- Opening unknown email attachment(s)
- Plugging unauthorized devices into workstation or laptop
- Failing to secure your workstation and confidential materials
- Off-site locations:
 - Leaving laptop or mobile devices unattended or unsecured
 - Not securing laptop with a locking cable
 - Leaving laptops visible - the laptop should be hidden or locked

Note: Avoid disclosure by using discretion.

Note: The Information Security Audit Unit (also known as ISAU) monitors all system accesses in order to preserve the confidentiality and integrity of FTB data information assets.

Action

In the event of an unauthorized acquisition of confidential information FTB will notify the taxpayer. Unauthorized browsing, use, or disclosure of confidential taxpayer information may result in disciplinary action. See Section 3.2.1.3 Penalties for Disclosure.

When to report through DARTS:

- Conversations with wrong taxpayer
- Faxes sent to the wrong fax number
- Emails sent to the wrong person
- Loss or Theft of State Property – computer or laptop containing confidential information is lost or stolen

DART Information:

- Employee and Supervisor information
- Taxpayer information
- Incident description and information
- IRS information disclosed
- Name(s) of third parties to whom information was disclosed

Remember: Accidental accesses are done with an email to your supervisor and through the Online Notification System (ONS) to Security Audit. Accidental disclosures are reported in DARTS.

If you have done or know of an unauthorized disclosure, you must complete a DARTS report.

Note: California Civil Code sections 1798.29 and 1798.82 require notification of any breach of security of data to residents whose personal information may have been acquired by unauthorized persons.

Reference

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

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Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.2.1.3 Case Hold – Accounts Receivable Collection System (ARCS)

Background

The Accounts Receivable Collection System (ARCS) allows for Franchise Tax Board (FTB) employees to place a hold on the account for payment deferral, taxpayer response time, processing time frames, FTB discretion, etc. ((***)

Purpose

The purpose of a case hold is to defer all collection actions and notices from being generated during a specific period of time. Certain notices (i.e. annual notices and FTOP notices) will be generated with a case hold in place.

Responsibility

FTB employees must use discretion to recognize when a case may need more time for processing or review. This determination is based on case history, compliance, payments made, returns awaiting to be updated, etc.

Action

FTB employees should place holds on cases according to their unit procedures.

Reference

((***)

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.4 Filing Requirements

Background

An individual must file a return if either their [gross income](#) or their [adjusted gross income \(AGI\)](#) was more than the amount defined by law. California residents must consider their total worldwide gross income to determine their filing requirement.

Part-year residents must file a return if they have any income taxable by California (which includes income from all sources while a resident and California source income while a nonresident), and their income from all sources is more than the filing requirement amounts for residents, or they owe \$1 or more in tax.

Nonresidents must file a return if they have any California source income and their income from all sources is more than the filing requirement amounts for residents, or they owe \$1 or more in tax.

Purpose

[Revenue and Taxation Code Sections 18501-18572](#) ensures that the proper amount of tax revenue is collected when the filing requirement exceeds the minimum filing threshold.

Responsibility

Franchise Tax Board (FTB) is responsible for the enforcement of filing requirements and educating taxpayers on their obligation to comply within California Tax Law. For information regarding disaster and tax relief information, please refer to ((***)).

Action

FTB employees will identify if a filing requirement exists and instruct the taxpayer on how to fulfill their obligation to file a California State Tax Return.

Reference

[Franchise Tax Board Frequently Asked Questions
Revenue and Taxation Code Sections 18501-18572
Dependent and Income Definitions](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.5 Due Date for Filing Returns and Extension of Time for Filing

Background

Due dates for filing returns are based on the calendar year or fiscal year. Return due dates based on calendar year shall be filed on or before the fifteenth day of April following the close of the calendar year. Fiscal year returns shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year.

Individuals who cannot file their returns by the due date will receive an automatic six-month extension, to October 15th of the calendar year. Since the extension is automatic, there is no extension request form. This paperless extension applies to returns required to be filed on or after April 15, 1992. ((****)).

If filed after the extended due date, the return is considered late and penalties are based on the original due date. A [Delinquent Penalty](#) will be assessed if there is a balance due on the return.

Note: An extension to file is not an extension to pay. Tax is due on or before the original due date of the return regardless of an extension to file.

Purpose

Taxpayers are automatically allowed additional time to file returns. The taxpayer must file the return by the extended due date to be granted the automatic six month extension. There will be no extension of time if the return is filed after the extended due date.

Responsibility

Franchise Tax Board (FTB) employees will educate the taxpayer on the ability to file returns beyond the original due date as defined in [Revenue and Taxation Code Section 18567](#).

Action

FTB employees will communicate to taxpayers that the automatic extension is not an extension to pay taxes; it is an extension to file returns.

Reference

[Revenue and Taxation Code Section 18566](#)

[Important Due Dates](#)

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((***)

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.6 Self-Assessed Returns

Background

Individuals must file a California income tax return if their income meets the filing requirements for a certain year. A personal income tax return is a self-assessment of tax prepared by or on behalf of a taxpayer and submitted to the Franchise Tax Board (FTB) on the appropriate form in accordance with the [Revenue and Taxation Code Sections 18501-18572](#). The returns are separated into the following categories:

- Fully Paid Returns – Returns received with payments equaling the self-assessed tax. Payments can be a combination of withholding credits, remittance with the return, and estimated tax payments.
- Part-Pay Returns – Returns received with an amount insufficient to pay the full amount of tax due.
- No-Pay Returns – Returns received without payments or credits.
- Refund Returns – Returns received where credits and/or payments exceed the self-assessed tax and the taxpayer requests a refund of the overpayment or transfer the overpayment to another tax year.

Note: Any overpayment or refund will not be refunded as long as there is an outstanding balance from any other tax year liability.

Purpose

Allows taxpayers the opportunity to openly and honestly report all income and pay the appropriate tax due on a timely basis.

Responsibility

FTB employees will educate taxpayers of their obligations to file timely and accurate California State Tax Returns per [Revenue and Taxation Code Sections 18501-18572](#).

Action

Once the return is filed, FTB will examine the self-assessed return and verify the correct amount of tax.

Reference

[Filing Requirement Information](#)

[Revenue and Taxation Code Sections 18501-18572](#)

((***)

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.7 Head of Household (HOH)

Background

Head of Household (HOH) is a filing status available for taxpayers with dependents who meet legal requirements. A taxpayer is entitled to the HOH filing status if all of the following apply:

- The taxpayer is unmarried/not in a registered domestic partnership (RDP), meets the requirements to be “considered unmarried” or meets the requirements to be “considered not an RDP” on the last day of the tax year; and
- The taxpayer paid more than half the cost of keeping up their home for the year, and
- Taxpayer’s home was the main home for the taxpayer and a qualifying person who lived with taxpayer for more than half the tax year; and
- The qualifying person was related to the taxpayer and met the requirements to be a “qualifying child” or a “qualifying related; and
- Taxpayer was entitled to a dependent exemption credit for his or her qualifying person; and
- The taxpayer was not a non-resident alien at any time during the year.

The Automated Audit performs the HOH filing status audit. The selected taxpayer must substantiate that they qualify for HOH by completing the audit questionnaire. If the information the taxpayer provides indicates the taxpayer is not entitled to HOH or if the taxpayer does not provide enough for a determination to be made, a Notice of Proposed Assessment (NPA) is issued denying the HOH filing status.

Note: For California purposes, beginning in 2007, an RDP must meet the same requirements as a married individual in order to qualify for the HOH filing status. For tax years prior to 2007, if the HOH filing status is used on the federal tax return, it must also be used on the California tax return. (R&TC 18521). Legally separated from a “Registered Domestic Partner” is a new term for 2007 and later. Refer to Pub. 1540 for the definition of this term.

Purpose

The HOH filing status provides a lower tax rate and a higher standard deduction than either single or married filing separate filing statuses. Additionally, thresholds on the limitation of itemized deductions and the phase-out of the deduction for personal and dependent exemptions are higher than those who select the single or married filing separate filing status.

Responsibility

Franchise Tax Board (FTB) reviews the tax returns of taxpayers who claim the HOH filing status to determine if all the statutory requirements are met.

Action

FTB employees will educate taxpayers on the [requirements](#) to qualify for the HOH status. Annually, FTB issues a Public Service Bulletin to FTB employees. The bulletin will advise FTB employee of the tax year that can be worked for HOH issues. For any tax year not listed on the bulletin, these HOH contacts must be referred to Audit.

HOH information may be taken over the telephone or by fax from the taxpayer. For taxpayers using My FTB, their information should be uploaded to their Taxpayer Folder (TPF) account. ((***) In addition, any taxpayer claiming HOH can fill out the questionnaire as part of the tax return. Refer to unit procedures for performing transactions on HOH questionnaires not submitted online. All HOH information needs to be commented in TPF.

Note: Refer to the ((***)

Reference

Head of Household Filing Status

Head of Household Self-Test

((***)

FTB Pub 1540 Tax Information for Head of Household Filing Status

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Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.8 Viewing Returns

Background

Personal Income Tax (PIT) returns can be viewed in Taxpayer Folder (TPF).

Purpose

The purpose of viewing returns is to allow Franchise Tax Board (FTB) employees the ability to validate the accuracy of the taxpayer's records.

Responsibility

FTB employees are responsible for viewing PIT returns when there is a need to review information (e.g., withholding credits, HOH issues, taxpayer/asset location, verify filing status, etc.).

Action

FTB employees should use TPF when viewing returns.

Reference

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((***)

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.9 Withhold Master File

Background

Prior to July 31, 1993, the *Withhold Master File* was used to retain taxpayer name and address information, along with certain tax return information for original and amended returns filed in the three most current process years. The file consisted of the entity and tax years. The file could retain up to nine tax years. Information for returns filed prior to the three most current process years was purged and retained on microfiche.

Purpose

When a return has not been filed and a balance is due on an account, W-2 withholding credits must be applied for tax years for which the credits were withheld ([Revenue and Taxation Code Section 19002](#)). In addition, adjustments should also be made any time unapplied withholding credits are discovered, and any estimate payments currently held in suspense should be released.

Responsibility

Franchise Tax Board (FTB) employees should review the microfiche of prior Filing Enforcement (FE) information for W-2 withholding credits not previously taken into consideration. Only W-2 withholding credits for tax years prior to 1993 must be reviewed. For all subsequent years, the FE Program takes into consideration any W-2 withholding credit information available in determining the amount of the assessment.

Action

FTB employee should review tax years for W-2 withholding credit information for each tax year prior to 1993 that contains a FE assessment and meets either of the following conditions:

- The amount due for the tax period has not been Paid in Full (PIF)

- The amount due for the tax year has been PIF and the effective date of the last payment applied to the tax year is not more than one year prior to the current date

Note: Follow your local procedures to obtain Microfiche information.

It is not necessary to review department records for W-2 withholding credits when the tax year is PIF **and** it is more than four years after the return was last due **and** more than one year after the effective date of the last payment applied to the tax year. Under these circumstances, any credit balance created by an adjustment for W-2 withholding credits cannot be refunded or credited to another year since the adjustment would not change the current amount due, no adjustment should be made.

Reference

((***)

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.10 Withhold Purge File – Microfiche Requests

Background

The Withhold (W/H) Purge File is a microfiche record of information of what was purged from the [Withhold Master File](#). A copy of the W/H Purge File may be obtained for returns processed prior to decommission of the W/H Master File (July 31, 1993) and implementation of the Taxpayer Information (TI) System.

The Receiving Data Service & Storage Unit (RDSS) Collection Support Unit (CSU) maintains a microfiche record of purged withhold account information. The information is requested through an email and includes:

- Filing Enforcement information
- Purged account information
- Miscellaneous information
- Social Security Number information

Note: RDSS email address – ((****))

Purpose

A copy of the W/H Purge File allows Franchise Tax Board (FTB) employees to interpret the following W/H information:

- Verification of tax returns filed
- Selected information from the returns
- Dispositions of refunds
- Codes on a Notice of Tax Change (NTC), which would indicate that the withholding was disallowed or no W-2 was attached. The NTC will have a corresponding paragraph code that will indicate if there is a problem with the withholding.

Responsibility

FTB employee should request a W/H Purge File upon identification of tax years for which withholding credits were not applied and make adjustments accordingly.

Adjustments should be made only when the W-2 withholding credits will change the current amount due or establish a refundable credit balance. DO NOT make adjustments that create credit balances barred by law from refund or from being moved to another tax year.

Action

FTB employees will access the ARCS history text ((and request a secondary state (SS22) to initiate the appropriate system request)). FTB employees will allow 24 to 48 hours to allow support employee to satisfy the request.

To request this information, provide the following information:

- Tax year
- Primary taxpayer and spouse
- Taxpayer social security number

FTB employees can also obtain a copy of a W/H Purge File or other information for BE and PIT ((by sending an email to Receiving Data Services and Storage Section (RDSS). Email address 790DSSREQ. In the subject line type Microfiche))

Note: Check unit procedures for other methods of obtaining W/H purge information.

The manner in which accounts are adjusted to compensate for W-2 withholding credits varies under certain circumstances:

- ((****)) – ((****)), ((****)) ((****))
- ((****)) - For circumstances other than those described above, adjustments should be made only to the extent necessary to correct the amount due and/or to free payments not barred from refund or movement to another tax year. In order to avoid creating a credit balance that is not refundable or allowable as a credit against an amount due for a different tax year, it may be necessary to calculate an adjustment sufficient to close the tax year.

To avoid duplication of actions on accounts transferred between sections or offices, comments should be entered on ARCS history text or the

Taxpayer Folder (TPF) to note the results of checking for W-2 withholding credits. (For example, the comment could indicate "No W-2 W/H for 82, 83 or 84" or "83 and 84 adjusted for W-2 W/H".)

Reference

((***)

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.11 Accounts Receivable Converted Accounts

Background

Prior to the implementation of the Taxpayer Information (TI) System, Franchise Tax Board (FTB) used the [Withhold Master File](#) and Accounts Receivable (A/R) files to process and maintain taxpayer, return, and tax year information.

Taxpayers only had an A/R file if the taxpayer:

- Made estimated tax payments
- Filed a balance due return
- Had unclaimed payments
- Had a partial interagency intercept
- Were issued a Filing Enforcement (FE) or other type of Notice of Proposed Assessment (NPA)

The A/R File provided both a billable and non-billable portion, and required both paper and video transactions to adjust accounts. It was used to record and store information on liabilities, payments, credits, tax returns, and account credit/debit balances.

On July 31, 1993, the A/R system was placed inactive and is no longer used to process information. However, the A/R file remains today just as it was July 31, 1993. An automatic conversion process was done to convert tax years (from A/R to the TI system) which were most likely to have future activity.

Tax years automatically converted to TI had one or more of the following conditions:

- A debit or credit balance
- A debit balance in non-billable status
- A pending NPA
- A credit/payment in suspense
- A discharged tax year with a lien

FTB employees can manually convert unconverted tax year information contained on A/R to TI. This generally occurs when adjustments to the tax year are necessary. Accounts that were purged from the A/R file

while it was active are available on microfiche from the Receiving Data Service & Storage Unit (RDSS).

Purpose

The purpose of having the A/R converted account information available is to assist FTB employees in properly working accounts for years prior to July 31, 1993.

Responsibility

FTB employees should be aware of the A/R file and how to access the information.

Action

FTB employees should utilize the A/R system to locate information needed to assist in achieving account resolution.

To identify converted accounts on TI, you will see the following items on the Tax Year Current Values Display ((***) and the Tax Year Monetary Display ((***)):

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- ((***)
- ((***)
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- ((***)
- ((***)

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Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.12 Proposed Assessments

Background

A Notice of Proposed Assessment (NPA) informs the taxpayer of Franchise Tax Board's (FTB) intent to assess additional tax, penalties, and interest as the result of an audit, adjustment, or income reported. The original notice sent to the taxpayer is called an NPA. However, the assessments stored on the Taxpayer Information (TI) system are referred to as Proposed Assessments (PA).

A PA may be assessed as a result of:

- A desk or field audit conducted by FTB
- FTB's interpretation of the law differs from the taxpayers or their authorized representative
- Errors made by the taxpayer or tax preparer when completing the return
- ((The Selection of Tax Returns for Automated Audit Review System (STARS) program))
- Internal Revenue Service (IRS) assessments, adjustments or information
- The taxpayer's failure to:
 - File a return
 - Report all income
 - Return questionnaires
 - Provide additional information upon request

Purpose

FTB issues an NPA to notify taxpayers of liabilities while allowing them time to review and respond to the assessment without further actions being taken prior to the "protest by" date shown on the NPA.

Responsibility

FTB employees must ensure the taxpayer has been given due process, communicate how the PA was derived, and instruct the taxpayer of the procedures to respond to the assessment.

Action

FTB employees will explain the basis and type of the PA as well as how to resolve the PA. In the event an individual disagrees with the validity of the department's assessment, FTB employees will advise the taxpayer of their protest rights and procedures.

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Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.13 Revenue and Filing Enforcement Revenue Codes

Background

Revenue codes used for transactions are the statistical method the Franchise Tax Board (FTB) uses to distinguish where revenue has been generated. When a tax year is created, a revenue code is assigned to the tax year based on what created the tax year (return, proposed assessment, etc.). ((The revenue code is comprised of the payroll unit, program budget code, and/or audit profile.))

((A filing enforcement revenue code has priority over a self-assessment revenue code. If a tax year is created through a filing enforcement, the filing enforcement revenue code remains on the tax year even after the return is filed.))

Purpose

The revenue code is used to monitor assessment activity. All assessment transactions entered into a taxpayer's account are identified by the revenue code.

Responsibility

FTB employees should review and be aware of the revenue code assigned to the tax year when working an account.

Action

Revenue codes are changed when assessing additional tax and/or penalties, abating tax and/or penalties, or making monetary account adjustments. ((****))

Reference

((****))

((****))

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.1.14 Protest Rights

Background

Notices of Proposed Assessment (NPAs) inform taxpayers of the Franchise Tax Board's (FTB) intent to assess additional tax, penalties, and interest on a tax year(s). NPAs also provide instructions for protesting an assessment.

There are different types of NPAs for deficiency assessment including:

- Filing Enforcement
- Audit (including automated audits)

Taxpayers who do not agree with the NPA have the right to protest the assessment within 60 days from the date printed on the NPA. If a protest is not filed within 60 days, the assessment becomes final, due, and payable and a notice of balance due is issued. There is no provision in the law for granting an extension of time for filing a protest beyond the 60 day timeframe.

There are two types of protests. They are docketed and undocketed:

1. A docketed protest involves a question of law supporting an NPA.
2. An undocketed protest challenges the facts supporting an NPA.

FTB handle the protests in the following manner:

- If the basis for the protest appears to be a question of law supporting an NPA or the NPA amount is over one million dollars, the protest will generally be referred to the legal division for consideration as a docketed protest.
- If the NPA is for an Audit assessment, Audit Division will handle the protest.
- Filing enforcement, FADS will handle the protest.
- Jeopardy Assessment (JA) the unit that issued the NPA will handles the undocketed protests.

To protest a Jeopardy Assessment (JA), business entities have 30 days from the date of the assessment to protest the jeopardy portion, and 60

days to protest the NPA basis. Business entities may protest a JA to dispute:

- Whether the collection of tax is in jeopardy
- The basis of an assessment

FTB's action on the protest is final upon the expiration of the 30 days from the date FTB mails the Notice of Action to the taxpayer, unless within that 30-day period the taxpayer appeals in writing to the Office of Tax Appeals in Sacramento.

Note: This process does not halt the accrual of interest. Liens are not issued while the assessment is being protested. However, liens can be filed on protested JAs.

Purpose

Allowing taxpayers to protest assessments adheres to California tax law and the [Taxpayer Bill of Rights](#) and [Revenue and Taxation Code Section 19041](#) that allows taxpayers' time to dispute an assessment.

Responsibility

FTB employees will educate taxpayers on procedures to file a protest.

If a protest is filed on a regular NPA within the 60-day protest period, it suspends billing and collection action on the protested tax year until FTB employees resolves the protest. However, protesting a JA does not stop collection action. To stop JA collection actions, a taxpayer must submit:

- A cash bond or other security. (FTB determines the necessary amount.)
- or
- Sufficient evidence that shows that the collection of tax is not jeopardized

Liens may be filed on protested JAs once the JA is assessed, but liens must not be filed on regular protested assessments until due process is served.

In addition to collecting taxes, FTB employees are responsible for informing taxpayers of their rights and assuring their rights are protected. When a protest is filed, the department shall reconsider the

assessment of the deficiency and, if the taxpayer has so requested in the protest, shall grant the taxpayer or the taxpayer's authorized representative an oral hearing.

Action

A protest of an NPA must be submitted in writing. The protest must include:

- Taxpayer name and address
- Social Security Number (SSN)
- The year involved
- The grounds upon which the protest is based
- The signature of the taxpayer or authorize representative

The taxpayer may submit the protest to FTB.

Mail: PROTEST CONTROL DESK MS F340
FRANCHISE TAX BOARD
PO BOX 1286
RANCHO CORDOVA, CA 95741-1286

Fax: 916.364.2754

Upon receipt of an NPA protest, FTB will send the taxpayer a notice confirming that the protest was received and will be processed.

After a protest is reviewed, a Notice of Action (NOA) is issued informing the taxpayer that the NPA is affirmed, revised, or withdrawn. Taxpayer in disagreement with a NOA may:

- Pay the assessment and file a claim for refund
- File an appeal with the Office of Tax Appeals (OTA) within 30 days from the date on the NOA ((***)

If an appeal is not filed within 30 days, a demand for payment is mailed to the taxpayer. The NPA amount is due and payable within 15 days of the demand notice. Interest on the demand notice is computed to the date of the NOA.

An NPA paid under protest, during or after the 60-day protest period, is considered a claim for refund. A statement of facts in support of the claim must also be included.

Reference

[Revenue and Taxation Code Sections 19081-19093](#)

[Revenue and Taxation Code Sections 19031-19067](#)

[Revenue and Taxation Code Sections 19041 and 19044](#)

[Revenue and Taxation Code Section 19084](#)

[Form FTB 5821](#)

((***)

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.2.1.15 Appeal Process to the Office of Tax Appeals (OTA)

Background

If a taxpayer's protest of an assessment has been denied, a taxpayer may dispute Franchise Tax Board's (FTB) decision by filing a written appeal to the Office of Tax Appeals (OTA) within 30 days from the date of FTB mailing the Notice of Action (NOA) [Form FTB 4321D](#). ([Revenue and Taxation Code Sections 19045, and 19046](#))

OTA then holds a formal oral hearing open to the public. The taxpayer, their representative, (if one is retained by the taxpayer), and two or more members of FTB's legal staff (and on rare occasion, a member of FTB's audit staff) attend the hearing. The taxpayer and FTB each presents their positions and is notified by OTA once a determination is made. ([Revenue and Taxation Code Section 19047](#))

Purpose

The appeal process to the OTA allows taxpayers the opportunity to appeal the FTB's action to a neutral party in which their tax will be reduced, withdrawn, or sustained.

Responsibility

FTB employees are responsible for informing taxpayers of their rights to the appeal process.

Action

FTB employees will advise taxpayers and their authorized representatives of the appeal procedures.

An appeal must:

- Be submitted in writing to the OTA, with two copies
- State the specific grounds on which the appeal is being made
- Include the following:

- The name, address, phone number, and SSN (or TIN) of each taxpayer filing the appeal, or if applicable, the address and telephone number of each taxpayer's authorized representative.
- The amounts, including tax, penalties, fees, and interest, and tax years involved.
- A copy of the notice from which the appeal is made, unless the FTB has failed to act on a claim for refund or a request for interest abatement, in which case the taxpayer must provide a copy of the claim for refund or request for interest abatement, in which case the taxpayer must provide a copy of the claim for refund or request for interest abatement.
- A statement of facts, and the legal authorities upon which the taxpayer relies, including any relevant statutes, regulations, and judicial and administrative decisions.
- Any portion of the amount at issue conceded by the taxpayer.
- The signature of each taxpayer filing the appeal or the signature of an authorized representative made on behalf of each taxpayer who is filing the appeal.

The taxpayer must mail their appeal to OTA at:

STATE OF CALIFORNIA
OFFICE OF TAX APPEALS
PO BOX 989880
WEST SACRAMENTO CA 95798-9880

Reference

[Revenue and Taxation Code Sections 19041, 19042, 19044 and 19045](#)

[Revenue and Taxation Code Sections 19046 and 19047](#)

[18 CCR section 5420](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.2.1.16 Statute of Limitations (SOL)

Background

The statute of Limitations (SOL) provisions of the tax code provide the time period for which a taxpayer may be entitled to a credit or refund of an overpayment, the State may propose a tax liability, or the period of time in which a lien may be filed or a tax liability collected.

These are the most common SOL issues:

- Assessments [Revenue and Taxation Code Sections 19057-19061, 19066, 19065, 19067](#)
- Refunds [Revenue and Taxation Code Section 19306, 19311](#)
- Liens [Government Code Section 7172](#) and [Revenue and Taxation Code Section 19221](#)
- Collection [Revenue and Taxation Code Section 19255](#)
- Erroneous Refunds
- Transferee
- Assumers

Purpose

The various SOL provisions establish a period of time in which an individual may file a claim for refund, or the FTB may take various actions against an individual.

Responsibility

FTB employees are responsible for understanding and be able to:

- Identify accounts that the SOL applies
- Educate the taxpayer on the SOL dates/criteria
- Recommend the appropriate actions for accounts within the statute

Action

FTB employees will educate the taxpayer on the general SOL provisions. For collection purposes the most common SOL dates are:

- General Statute of Limitations to Assess – Revenue and Taxation Code section 19057 – A Notice of Proposed Assessment (NPA) must be mailed within four (4) years from the date the return was filed. If the return was filed before the original due date. Four (4) years from the original due date of the return.
- Missing Year NPA:
- No statute of limitations for false returns or no returns filed
- Fraud or No Return Filed – If any taxpayer fails to file a return, or files a false or fraudulent return with the intent to evade the tax for any taxable year, there is no SOL as to when FTB may issue an NPA.
- General statute of Limitations to Claim For Refund – Revenue and Taxation Code Section 19306 – A taxpayer may file a claim for refund within four (4) years from the original due date or within four years from the date the return was filed if the return was filed on or before the extended due date or within one year from the date of the overpayment, whichever is later.
- Erroneous Refunds - [Revenue and Taxation Code Section 19411](#)
 - Two years from the date the erroneous refund was issued or, normal statute for Franchise Tax Board (FTB) to issue an NPA
- Extended Statute – (Omission of 25% of gross Income) – Revenue and Taxation Code Section 19058 - An NPA may be mailed within six (6) years from the date the return was filed. If the return was filed on or before the original due date, six (6) years from the original due date.
- Transferee - [Revenue and Taxation Code Sections 19074, 19074\(b\)](#)
 - One year beyond the normal statute
 - Transferee of a transferee is generally one year after the expiration of the statute for the preceding transferee (see CPM section 7.1.3.1)
- Liens - [Government Code Section 7171](#)
 - 10 years from the date of the assessment
 - Overpayments - [Revenue and Taxation Code Section 19306](#)

- Normal statute or, one year from the date of payment, whichever is later
- Electronic Funds Transfer (EFT) Penalty - [Revenue and Taxation Code Section 19306](#)
 - One year from the date of the payment or, one year from the transaction date, whichever is later
- Fees - [Revenue and Taxation Code Section 19306](#)
 - One year from the date of the payment or the transaction date, whichever is later

((***) (***) (***))

Involuntary collection actions include:

- Earnings Withholding Orders for Taxes (EWOT) (assumers or transferee)
- Continuous Order To Withhold (COTW)
- Orders to Withhold (OTW)
- Offset of other year overpayments
- Intercepts, such as interagency offsets from and to the Employment Development Department, Internal Revenue Service, and Board of Equalization.
- A combination of the above

Note: For taxable income years beginning on or after January 1, 1992, the due date is determined without regard to any extension of time for filing the returns.

Reference

[Revenue and Taxation Code Sections 19057, 19066](#)

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((***)

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.2.1.17 Financial Hardship Evaluation

Background

In instances where taxpayers are unable to pay in full (PIF) their tax liability or make installment payments within Installment Agreement (I/A) criteria, substantiation of their financial situation is merited. A Financial Statement, FTB Form 3561, is utilized for this purpose.

Franchise Tax Board (FTB) will accept any financial statement furnished by the taxpayer or their representative that adequately reflects the taxpayers' **true and complete** financial condition. All statements must be completed, signed under penalty and perjury, and dated by the taxpayer.

Purpose

Financial statements assist FTB staff in assessing the financial position of the taxpayer within a specified timeframe. It will provide data for determining if there is a partial, temporary or permanent hardship, or facts that justify an I/A.

Responsibility

FTB staff is responsible for determining when a financial statement is required, evaluating assets, income, and expenses along with adding payor information to the Accounts Receivable Collection System (ARCS).

Action

Three Broken Promises

((***)

Documenting Three Promises

((***)

Financial Statement Requirement Criteria

The majority of taxpayers may be eligible to make payments based on their ability without completing a financial statement. To determine when a financial statement is required criteria has been developed, known as Financial Statement Requirement Criteria. A taxpayer will need to document their current financial status to enter a formal I/A, reduce the amount of an existing I/A, or modify an existing bank or wage levy after three failed broken promises to resolve a debt.

Generally, a broken promise is agreeing, then failing to:

- File a tax return; or
- Pay in full or partial balance due; or
- Make payments through an I/A; or
- Provide financial statement; or
- Provide documentation supporting collection or cancellation of tax; or
- Provide information for I/A request.

The following situations **will** require a documented financial statement:

1. A total balance greater than \$25,000; or
2. A payment amount that will not pay their balance within 60 months; or
3. Claims they do not have the ability to pay; or
4. Return/release of assets seized by warrant; or
5. ((****))

The following situations **may** require a documented financial statement:

6. 12 month re-evaluation of an I/A amount outside of criteria; or
7. 12 month re-evaluation of a modified EWOT/COTW outside of criteria.

Determining Expenses Necessary to Provide for Taxpayer's Health and Welfare

In evaluating a taxpayer's ability to pay FTB, FTB will determine whether expenses are necessary to provide for the taxpayer's (and his or her family's) health and welfare (and, therefore, allowable) using

the [Internal Revenue Service Collection Financial Standards](#). The standards are also known as Collection Financial Standards and can be located at irs.gov. The standards effective March 27, 2017 are described below.

The following are IRS Collection Financial Standards for Food, Clothing and Other Items:

National Standards have been established for five necessary expenses: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous. The standards are derived from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey (CES) and defined as follows:

- Food includes food at home and food away from home. Food at home refers to the total expenditures for food from grocery stores or other food stores. It excludes the purchase of nonfood items. Food away from home includes all meals and snacks, including tips, at fast-food, take-out, delivery and full-service restaurants, etc.
- Housekeeping supplies includes laundry and cleaning supplies, stationery supplies, postage, delivery services, miscellaneous household products, and lawn and garden supplies.
- Apparel and services includes clothing, footwear, material, patterns and notions for making clothes, alterations and repairs, clothing rental, clothing storage, dry cleaning and sent-out laundry, watches, jewelry and repairs to watches and jewelry.
- Personal care products and services includes products for the hair, oral hygiene products, shaving needs, cosmetics and bath products, electric personal care appliances, and other personal care products.
- The miscellaneous allowance is for expenses taxpayers may incur that are not included in any other allowable living expense items, or for any portion of expenses that exceed the Collection Financial Standards and are not allowed under a deviation. Taxpayers can use the miscellaneous allowance to pay for expenses that exceed the standards, or for other

expenses such as credit card payments, bank fees and charges, reading material and school supplies.

- Taxpayers are allowed the total National Standards amount monthly for their family size, without questioning the amounts they actually spend. If the amount claimed is more than the total allowed by the National Standards for food, housekeeping supplies, apparel and services, and personal care products and services, the taxpayer must provide documentation to substantiate those expenses that are necessary to provide for a taxpayer's (and his or her family's) health and welfare. **Deviations from the standard amount are not allowed for miscellaneous expenses.**
- Generally, the total number of persons allowed for National Standards should be the same as those allowed as exemptions on the taxpayer's most recent year income tax return.

Expense	One Person	Two Persons	Three Persons	Four Persons
Food	\$334	\$646	\$742	\$888
Housekeeping supplies	\$35	\$64	\$63	\$75
Apparel & services	\$89	\$142	\$185	\$264
Personal care products & services	\$38	\$69	\$71	\$75
Miscellaneous	\$151	\$281	\$323	\$392
Total	\$647	\$1,202	\$1,384	\$1,694

More than four persons	Additional persons amount
For each additional person, add to four-person total allowance	\$357

Note: The standard amounts change. Staff should check the Internal Revenue Service website to assure the most current amounts are used.

The following are IRS Collection Financial Standards for Out-of-Pocket Health Care:

The table for health care expenses, based on Medical Expenditure Panel Survey data, has been established for minimum allowances for out-of-pocket health care expenses.

- Out-of-pocket health care expenses include medical services, prescription drugs, and medical supplies (e.g. eyeglasses, contact lenses, etc.). Elective procedures such as plastic surgery or elective dental work are generally not allowed.
- Taxpayers and their dependents are allowed the standard amount monthly on a per person basis, without questioning the amounts they actually spend. If the amount claimed is more than the total allowed by the health care standards, the taxpayer must provide documentation to substantiate those expenses that are necessary to provide for a taxpayer's (and his or her family's) health and welfare.
- Generally, the number of persons allowed should be the same as those allowed as exemptions on the taxpayer's most recent year income tax return.
- The out-of-pocket health care standard amount is allowed in addition to the amount taxpayers pay for health insurance.

	Out-of-Pocket Costs
Under 65	\$52
65 and Older	\$114

Note: The standard amounts change. Staff should check the Internal Revenue Service website to assure the most current amounts are used.

The following are IRS Collection Financial Standards for Housing and Utilities:

The housing and utilities standards are derived from U.S. Census Bureau, American Community Survey and Bureau of Labor Statistics data, and are provided by state down to the county level. The standard for a particular county and family size includes both housing and utilities allowed for a taxpayer's primary place of residence.

- Housing and utilities standards include mortgage or rent, property taxes, interest, insurance, maintenance, repairs,

gas, electric, water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service. The tables include five categories for one, two, three, four, and five or more persons in a household.

- The taxpayer is allowed the standard amount, or the amount actually spent on housing and utilities, whichever is less. If the amount claimed is more than the total allowed by the housing and utilities standards, the taxpayer must provide documentation to substantiate those expenses that are necessary to provide for a taxpayer's (and his or her family's) health and welfare.
- Generally, the total number of persons allowed for determining family size should be the same as those allowed as exemptions on the taxpayer's most recent year income tax return.

The tables for the Housing and Utilities standards are found through the following link: [Local Standards - Housing and Utilities](#).

The following are IRS Collection Financial Standards for Transportation:

The transportation standards for taxpayers with a vehicle consist of two parts: nationwide figures for monthly loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs. The operating costs include maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking, and tolls. (These standard amounts do not include personal property taxes.)

Ownership Costs

The ownership costs, shown in the table referenced below, provide the monthly allowances for the lease or purchase of up to two automobiles. A single taxpayer is normally allowed one automobile. For each automobile, taxpayers will be allowed the lesser of:

1. The monthly payment on the lease or car loan, or
2. The ownership costs shown in the table referenced below.

If a taxpayer has no lease or car loan payment, the amount allowed for Ownership Costs will be \$0.

Operating Costs

In addition to Ownership Costs, a taxpayer is allowed Operating Costs, by regional and metropolitan area, as shown in the table. For each automobile, taxpayers will be allowed the lesser of:

1. The amount actually spent monthly for operating costs, or
2. The operating costs shown in the table referenced below.

Public Transportation

There is a single nationwide allowance for public transportation based on Bureau of Labor Statistics expenditure data for mass transit fares for a train, bus, taxi, ferry, etc. Taxpayers with no vehicle are allowed the standard amount monthly, per household, without questioning the amount actually spent.

If a taxpayer owns a vehicle and uses public transportation, expenses may be allowed for both, provided they are needed for the health and welfare of the taxpayer or family, or for the production of income. However, the expenses allowed would be actual expenses incurred for ownership costs, operating costs and public transportation, or the standard amounts, whichever is less.

If the amount claimed for Ownership Costs, Operating Costs or Public Transportation is more than the total allowed by the transportation standards, the taxpayer must provide documentation to substantiate those expenses that are necessary to provide for a taxpayer's (and his or her family's) health and welfare.

The tables for the IRS Collection Financial Standards for Transportation can be located through the following link: [Local Standards - Transportation.](#)

Other Expenses (not included in National and Local Standards)

In addition to the expenses covered by the IRS Allowable Living Standards, FTB may allow the following expenses to the extent they are being paid, if they are reasonable and if the taxpayer provides documentation to substantiate such expenses:

- Accounting and legal fees for representation of the taxpayer before FTB.

- Accounting and legal fees if necessary to provide for the taxpayer's (or his or her family's) health and welfare.
- Charitable contributions (donations to tax exempt organizations) if such donations are a bona fide condition of employment.
- Child care (baby-sitting, day care, nursery and preschool) expenses if necessary for the taxpayer's (or his or her family's) health and welfare.
- Court-ordered payments for alimony, child support or restitution for victims.
- Dependent care expenses for elderly, invalid or handicapped persons if necessary to provide for the dependent's health and welfare and (and if there is no alternative to the taxpayer paying the expenses).
- Education expense if required for a physically or mentally challenged child and no public education providing similar service is available.
- Education expenses if such expenses are a bona fide condition of employment.
- Involuntary deductions that are a bona fide condition of employment including, but not limited to, union dues, uniforms, and work shoes.
- Life insurance expenses for a term policy on the life of the taxpayer.
- Required payments and withholdings for current year federal, FICA, Medicare, state, and local taxes.
- Payments under agreements with the Internal Revenue Service, other states or other state agencies for delinquent taxes.
- Payments on student loans guaranteed by the federal government if for the taxpayer's post-high school education.
- Payments for health insurance for the taxpayer (or his or her family) if necessary for the taxpayer's (or his or her family's) health and welfare.
- Other expenses if necessary to provide for the taxpayer's (or his or her family's) health and welfare.

Determining Expenses Necessary for the Production of Income

In evaluating a taxpayer's ability to pay, FTB will allow, upon substantiation, reasonable expenses that are necessary for the operation of the taxpayer's trade or business that produces income for the taxpayer, including, but not limited to, a trade or business that is separate, community or quasi-community property of the taxpayer.

Assets and Income

Assets

In evaluating a taxpayer's ability to pay, FTB will consider the following assets of the taxpayer: all real property, including, but not limited to cash; cash equivalents; deposits; shares in credit unions; publically traded stocks; mutual funds; investment accounts; money market accounts; non-publicly traded stocks; municipal bonds; interests in incorporated and unincorporated businesses, including, but not limited to an interest in a corporation, limited liability company, partnership, and joint venture; government and corporate bonds; other negotiable and non-negotiable instruments such a personal checks, cashier's checks, promissory notes, and money orders; pre-paid debit cards; Individual Retirement Accounts, Keogh Plans, Simplified Employee Pension, 401(k) Plans, and any other retirement or pension accounts and profit sharing plans; annuities; trusts, equitable or future interests in property; rights or powers exercisable for the benefit of the taxpayer or their community or quasi-community; mineral rights; licensing agreements; tax refunds; interests in insurance policies; soft and hard commodities including, but not limited to, precious metals and agricultural products; jewelry; gems; artwork; vehicles, including, but not limited to, automobiles and trucks; aircraft; vessels; collectables; antiques; Bitcoin; funds deposited by crowd-sourced websites; accounts receivable; notes receivable; obligations owed to the taxpayer or their community or quasi-community; real estate, including, but not limited to, rental property; trust accounts; furniture; factories; fixtures; buildings; inventories; merchandise; stock in trade; raw materials; work in progress; finished products; supplies; machinery; tools; equipment; intangible assets, including, but not limited to, good will, patents, copyrights, trademarks, franchises, licenses, domain names of websites and customer lists; and any other property or interest.

Income

In evaluating a taxpayer's ability to pay, FTB will consider the following income of the taxpayer: payments that the taxpayer or taxpayer's community or quasi-community, receives or is entitled to receive from any source (irrespective of whether such payments would be treated as gross income for tax purposes to the taxpayer), including, but not limited to, assets; wages, salary, tips, meal allowance, parking allowance, or any other monetary or non-monetary compensation as an employee for services rendered; interest; dividends; the conduct of

a trade or business; pensions; social security; child support, including, but not limited to, the actual amount received in addition to other debts or bills the non-custodial parent is paying pursuant to a child support order; alimony, including, but not limited to, the debts or bills the other spouse is paying pursuant to an alimony order; royalties; gambling winnings; oil subsidies; and payments made by others on behalf of the taxpayer or the taxpayer's community or quasi-community.

Generally, supporting documentation of income is required. If there is no income other than wages and those wages can be confirmed, documentation may not be necessary. However, if the taxpayer is self-employed or receives other forms of income, documentation is required. The type of income or compensation determines what documentation is needed.

Determining Payment Amount

Subject to the standards above, FTB staff will make a reasonable determination based on the unique facts and circumstances of each case. The difference between the approved income and reasonable and necessary expenses is generally the minimum payment amount FTB amount that FTB will approve.

Financial Statement Methods

All FTB staff will utilize the same methods to evaluate an ability to pay. Financial statements may be mailed, faxed, provided by telephone, or delivered to the local FTB Field Office. All financial statements provided by telephone must have a note stating it was provided by telephone. Taxpayers may also choose to send a completed and signed IRS Form 433F or 433A, dated within the previous 12 months. When faxing or mailing a financial statement it must be completed, signed, dated and, if using the IRS 433A/433F, the monthly proposal amount must also be provided.

Telephone: ((***)

3561C: Financial Statement – Coming Soon

Effective Date of a Financial Statement

Information provided on a financial statement and any required supporting documentation is generally valid for 12 months from the date received. If, during the review process, the information becomes older than 12 months, update the information. Updates should be performed

over the telephone or in a field office to obtain current information and supporting documents. If there is reason to believe the taxpayer's financial situation has materially changed, a new financial statement should be obtained.

Denial of Hardship

A hardship is generally denied where the financial statement form was incomplete or inaccurate, the applicant failed to provide required documents or we determined the requested monthly payment amount is not sufficient based on an ability to pay. If the taxpayer is unresponsive or you are unable to negotiate a reasonable monthly payment amount send ((***)

When Form FTB 4121 is sent, allow 30 days before taking new involuntary action.

Reference

R&TC 19008

Form FTB 3561C – Financial Statement (coming soon)

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Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/09/2018

4.2.2.1 Assigned Accounts

Background

Personal Income Tax (PIT) assigned accounts are those accounts assigned by the Accounts Receivable Collection System (ARCS) to Franchise Tax Board (FTB) employees or a specific group. ((***)

Purpose

PIT assigned accounts create a division of labor, via a series of work states, that allows specialization in each functional area. The functional area defines the type of work or action to be performed. This allows the responsible FTB employee to have the highest level of familiarity with the account; working the account from the time it enters the functional area until resolution.

Responsibility

FTB employees should be able to identify an assigned account ((***) If the account is assigned, the employee's name will appear in the "user" field. If the account is not assigned to a specific individual, the "user" field will be blank and grayed out. ((***)

Action

Assigned accounts should be processed in accordance with the [Statement of Principles of Tax Administration](#). Exceptions will be made when it is necessary to concentrate collection efforts to address areas of noncompliance.

Collection accounts should be worked as soon as the account becomes assigned. ((***) A follow-up action should be within 30-45 days from the last action, depending on the nature of the last action. Correspondence and telephone messages should be responded to according to unit procedures.

FTB employees work accounts in the Manual Process (MP) functional area, which includes both pooled and staff assigned work lists. Since

the implementation of ARCS, individual unit guidelines work plan goals outline the expectations of FTB employees.

((***)

((Before taking any collection action(s), each account should be carefully analyzed and documented on the collector review screen.)) See section 5.2.1.1 Scoping an Account.

For PIT assigned accounts, the FTB collector's approach should be:

- Designed to resolve the account at the earliest point and make the best possible use of collection resources.
- Designed to prevent repetitive actions.
- Individually tailored to the facts of the account (account history and the amount and basis of assessment to determine the course of action).
- To identify missing year tax returns. For more information on Missing Years see section 4.2.1.5 Filing Requirements.

FTB collectors should use the most expeditious method possible to resolve their assigned accounts. FTB collectors should use the telephone as their primary tool in obtaining asset information and in contacting the taxpayer to secure a commitment to resolve the account. The following are critical guidelines for implementing this policy:

- As a general rule, collections should not repeat actions already taken by ARCS, unless a missed opportunity exists.
- If due process is in question, an attempt must be made to contact the taxpayer prior to taking further collection action.
- If attachable asset information is readily available and due process has been established, assets may be seized. ((***) Effective interviewing techniques should focus on obtaining asset information and/or information on the current location of the taxpayer. FTB employees should determine the objective of the call and plan pertinent questions that will lead to account resolution. They should also attempt to obtain all information needed from initial contacts, as the first contact may be the last.
- If attempts to contact the taxpayer, employer, or third party are unsuccessful during normal work hours, FTB employees should communicate via mail.

Note: Before third party contacts can be made, taxpayers must have received prior notice of such contact within the past 12 months. Taxpayers receive these notices from ARCS automated system notices or manually using form FTB 1140-L Collection Information Notice. FTB employees must allow 10 calendar days after the mailing before contacting third parties. If contact of third parties is via mail form FTB 1131J must be included in the mailing. Verbal contact with third parties must include reprisal language prior to requesting information.

All telephone numbers are potential leads and should be exhausted prior to recommending discharge or field office referral.

Accounts should be referred to the field office as soon as it is determined that all reasonable actions have been taken to resolve the account. For field office referral criteria see Field Office Transfers.

As a general rule, FTB field staff should not repeat actions already taken by a Central Office collection group, unless a missed opportunity exists. FTB employees should utilize public records, third party contacts, and when warranted, a Subpoena Duces Tecum to identify seizable assets. FTB collectors are responsible for bringing accounts to a final resolution by taking appropriate enforcement actions in the field. Appropriate enforcement actions may vary based on individual circumstances.

Installment Agreements (I/A) for Personal Income Tax (PIT) accounts will be approved in the case of financial hardship if there is evidence the taxpayer can meet the terms of the arrangement. For I/A guidelines refer to section 6.2.3.1 Installment Agreement Information.

Seizure and sale of real property may be considered when such action is anticipated to be the most cost effective way to collect the balance due. Although a lien filed in the county where the real property is located may secure the tax liability, collection of the balance is delayed until the property is transferred or refinanced. As a general rule, a taxpayer's principal residence will not be seized and sold unless the taxpayer is actively evading payment of tax liabilities. The field must approve actions of this nature.

When resolving an account, FTB employees should account for all missing year tax returns that will not be accounted for through the automated system. If FTB employees are unable to get the taxpayer's cooperation in filing returns, income information should be located and

an assessment made in accordance with section 4.2.1.5 Filing Requirements.

If the liability resulted from under-withholding or failure to make estimate payments, an effort should be made to ensure that current withholding is correct or that the taxpayer is making estimated tax payments.

FTB employees may be the first to notice new trends in tax avoidance schemes. To curb abuse, FTB employees should report recurring non-compliant behavior promptly to supervisors.

Reference

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[FTB Form 1140-L](#)

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.2.2.2 Accounts Receivable Collection System (ARCS) Account Documentation

Background

The Accounts Receivable Collection System (ARCS) is an online system that supports the collection of delinquent income tax accounts. With its use, the majority of FTB staff no longer use the Collection Progress Report [FTB 6452](#) to document activity on an account. ARCS and the Taxpayer Folder (TPF) allow Franchise Tax Board (FTB) employees to make permanent documentation of account activity through the use of history text, notes and primary memo. Once the information is saved, ARCS and TPF automatically record a permanent history line for all automated or manual actions or events. Having a history record of taxpayer interactions and correspondence will assist all FTB employees that work on an account. In addition, this will ensure there is no duplication of collection efforts.

Note: There are certain instances where form FTB 6452 may still be in use. Refer to your unit procedures for specifics on form usage.

Purpose

ARCS and TPF account documentation allow FTB employees to document account history and contacts. It also ensures permanent account history to assist with future interactions with or pertaining to the taxpayer.

Responsibility

FTB employees are responsible for ensuring clear and concise account documentation of all account interactions. The documentation is inputted into ARCS and TPF.

Action

FTB employees will input the complete, clear, and detailed history pertaining to the account including:

- Information gathered or provided
- Action and reason for actions
- Summary
- Deadlines

See unit procedures for specific information to be documented.

Reference

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Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.2.2.3 Account Review

Background

Periodically leads and supervisors conduct a review of accounts. During the review process, the appropriate employee or unit will focus attention on the quality of work in four areas:

- Effective development of facts
- Correct technical conclusions
- Effective preparation of the account
- Customer service, equitable and considerate treatment to the taxpayer

Purpose

The account review process focuses attention on the quality of work performed on the tax and non-tax, assigned and unassigned accounts processed in the Accounts Receivable Management (ARM) Division. The purpose of this process is to ensure conformity with the department's [Statement of Principles of Tax Administration](#) and the collection program policies and procedures.

Responsibility

The reviewer's role is to verify adherence to state, governmental, and departmental policies and procedures. Quality control is the responsibility of FTB employees, leads, and supervisors. The reviewer's role ensures that accounts achieve resolution in the most expeditious method. The criteria below is among those utilized during account review that Franchise Tax Board (FTB) employees are responsible for:

- Effective development of facts
- Conducting proper analysis
- Timely and appropriate actions
- Fully developed facts and ensuring those facts are documented
- Expanding issues if original statements were inadequate
- Verifying for accuracy the information that was obtained/received

- Not requesting/gathering information that is unnecessary or irrelevant
- Prompt follow-ups
- Adequate documentation of the collection process
- Applying objective judgment in deciding proposed actions
- Correct technical conclusions
 - Were decisions made on what actions to take as soon as information became available?
 - Were established procedures and policies followed in initiating recommended actions?
- Effective preparation of the account
 - Were the scope and skip tracing clear and concise?
 - Did the reports contain full factual development of significant issues or documentation of all facts and circumstances attributable to the taxpayer that affect conclusions on proposed actions?
 - Did the progress report contain full information on conversations with the taxpayer?
- Customer service - equitable and considerate treatment to the taxpayer.
 - Are we being responsive in a timely manner?
 - Is our rate of accessibility acceptable?
 - Were commitments made to the taxpayer kept?
 - Are collection efforts pursued in an equitable and fair manner?

Concentration on these areas will measure the:

- Conformance to standards, policies, and procedures.
- Consistency with standards, policies, and procedures.
- Effectiveness of FTB collection techniques.
- Results of the mandated and discretionary programs in both quality and production.

Action

The account review performed by supervisors, leads, and other appropriate employee will include, and is not limited to:

- Review all accounts over ((\$100,000)) submitted for discharge.

- Review on a random basis, discharge accounts under ((\$100,000)) submitted for discharge.
- Review all decreases in account liability, which result in closed accounts.
- Review accounts submitted for transfer to a field office.
- Return accounts to originating units when accounts need additional work, are incomplete or do not meet the criteria for discharge, field transfer or abatement.
- Perform an in-progress review of accounts for conformance with the Collection Program Policies.
- Provide the appropriate bureau directors, section managers, and collection supervisors with feedback on quality of completed accounts.

Accounts closed by payment in full (PIF), fully canceled, or balances resolved as a result of applied credits are reviewed to assure compliance with policies and procedures. This is done by assuring that:

- Taxpayers' rights are not violated. [See Section 3.0.3.2 Taxpayers' Bill of Rights.](#)
- Account status shows "closed" on Accounts Receivable Collection System (ARCS).
- All information received from the Internal Revenue Service (IRS) in response to department's request ((****)) is destroyed and records marked accordingly. [See Section 3.0.1.6 Destruction of Confidential Information.](#)
- Missing year tax returns are accounted for in the summary in the ARCS or the Taxpayer Folder (TPF) history comments.
- All outstanding orders and liens have been released.

Installment Agreements (I/A) - The following items must be completed before a collection account may be considered for an I/A:

- All missing year tax returns are accounted for
- Summary indicates amount and date of payments
- Actions to be taken in the event of a default
- Financial statement, if required, is complete and reflects a financial hardship, not mere inconvenience [See section 4.2.1.17 Financial Statements.](#)

Manual Process Functional Area:

- Taxpayer's rights are not violated
- All reasonable steps have been taken to resolve the account

- Facts indicate good future collection potential
- Lien filed, or the reason for not filing stated
- Actions are proper and timely

Discharge Functional Area:

- All reasonable steps have been taken to resolve the account
- Facts indicate no future collection potential within a reasonable period of time
- Lien filed, or the reason for not filing stated
- Correct discharge reason code

Transfer to Field Office:

- There is no obvious manual or automated action available to resolve the account
- The facts support the necessity for field office transfer
- The correct Field Office code is used

Accounts in process (periodic sampling):

- Accounts are being worked into inventory correctly and timely
- Correspondence and follow-ups are processed on a timely basis
- Collection procedures are applied appropriately
([See section 4.2.2.1 PIT Assigned Accounts](#))

Reference

[Statement of Principles of Tax Administration](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.2.4 Complex Account Resolution Team (CART)

Background

There is a Complex Account Resolution Team (CART), within the Field and Complex Account Collection Bureau for Personal Income Tax and one within the Business Entity Collection Bureau for business entities accounts. They resolve assigned accounts with large open balances due ((in excess of \$25,000 on non-discharged tax years)).

Once a case has gone through the automated collection cycle and all voluntary compliance activities have been exhausted, accounts ((****)) will automatically route to the CART functional area in the Accounts Receivables Collection System where they are assigned to a collector. These accounts will be reviewed for involuntary collection actions, using the least intrusive collection measures.

Purpose

CART allows designated Franchise Tax Board (FTB) collectors to work accounts that meet departmental open balance due requirements.

Responsibility

FTB employees should request accounts that meet the open balance due criteria be routed to CART to be worked in their functional area.

Action

When an account meets CART criteria, FTB employees should refer to unit procedures to request an inter-office transfer to CART or work the account once it has been auto-routed out of CART's functional area.

Reference

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.2.5 Field Action Requests (FAR)

Background

To resolve some tax accounts, desk collections need field collection assistance. This occurs because some taxpayers evade tax collection, while others ignore it. But our field collectors give Franchise Tax Board (FTB) a physical presence. Performing Field Action Request (FAR), FTB field collectors visit taxpayers and employers, encourage compliance, identify income activity, document asset information, and seize assets when appropriate.

Purpose

If taxpayers do not voluntarily resolve their tax accounts, we must compel compliance, which can include a FAR actions. However, we always use the most reasonable actions possible to resolve tax accounts. Some of examples of FAR request include:

1) Financial Hardship Evaluation

Identify, locate, and evaluate assets for collection action; or confirm a taxpayer's financial hardship. This can involve examining a taxpayer's business for income and other assets.

2) Broken Promise

Request compliance from taxpayers who default on promises to file tax returns or pay tax balances (when their balances exceed \$5,000).

3) Evasive Taxpayers

Request compliance from taxpayers who avoid our calls and ignore our correspondence.

4) EWOT/COTW Non-compliance

Follow-up when an employer/payer will not respond to our levy and ignores/evades our phone requests for compliance.

Note: Desk collectors must attempt to verify a taxpayer's employment before requesting this action. The field collector can hand-deliver the EWOT/COTW along with a non-compliance notice, form FTB 4931.

((****))

((****))

6) Field Transfer Evaluation

Confirm whether an account meets the field transfer criteria when available information makes this determination uncertain. (See CPM section 6.0.2.1)

7) Field Support Referral - Not subject to a dollar amount threshold

- Clarify a lien's status when we lack a lien record, yet public records indicate a lien exists.
- If a lien does not appear to be recorded three months after it was filed, examine the public records.
- Visit county courts to obtain information for the Attorney General or for the Collection Advisory Team.

8) Rush Actions

Deliver a demand notice to an escrow company, or a lien to a county recorder.

9) Record Verification

- Check the status of a pending or active court case.
- Examine bankruptcy archives for financial disclosure documents on discharged bankruptcy cases.

Responsibility

Desk collectors should perform the following actions before requesting a FAR:

- Confirm appropriate actions have been taken
- All collection actions have been exhausted (i.e. Liens, EWOTs, COTWs, OTWs, etc.).

- **Exception:** when an account is at risk, such as a taxpayer liquidating assets to avoid collections, then a collector can request an on-site before exhausting collection actions.
- Verify that the account has at least a \$5,000 balance and a valid address.
- Ensure there is a reasonable expectation that a FAR will help resolve an account.
- Identified assets/income for possible warrant actions

Action

Desk collectors perform the following:

Document ARCS/Taxpayer Folder (TPF) with a new history text with a descriptor input "FAR" and the information described below:

- Note the case history, the basis of the FAR, and the criteria met.
- Due Process status
- Delinquent tax issues
- Any pending items, such as NPA, etc.
- Any Doing Business As (DBA)
- Lien file
- Summary of collection action taken
- List the verified phone numbers and physical addresses (home, business, etc.). For multiple addresses, which to visit first.
- Include employment information, bank information, and other asset information.
- Include a descriptive and concise summary. Describe what you want the field collector to find out for you.

Field collectors and leads ensure the following is performed:

On-site Timeframe

- Attempt to complete an on-site within 21 days or less of being assigned to it.
- If an FAR location is far from the field office, the FAR may take more than 21 days to perform. Any delays should be communicated to the desk collector by phone or email.

Field Collector Preparation

- Examine the case history, the previous collection actions, and the on-site request. If necessary, contact the desk collector for additional information.

Execute the FAR

- Perform all requested actions, and note why any actions were not taken.
- Follow standard FAR procedures. Ask all pertinent questions; note critical observations; search for assets and information; take any appropriate actions.

Process the FAR Results

- Document the FAR results, the basis for those results (if applicable), and any field recommendations.
- Address any phone calls prompted by the FAR.
- If an account qualifies for a field referral, the field supervisor/lead will notify the Central supervisor/lead.

Field Action Request Field Office Location

Field Action Request (FAR)	
Northern Region	Oakland Sacramento San Francisco
Southern Region	Los Angeles Santa Ana San Diego

((***)((***)

Locate a field office by zip code:

((***)

Reference

((***)

((***)

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Note: (()) = Indicates confidential and/or proprietary information.

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4.2.2.6 Referring Taxpayers to Field Offices

Background

Franchise Tax Board (FTB) employees should attempt to resolve accounts by telephone, mail or fax whenever possible to avoid requiring taxpayers to travel to a field office. If necessary, or if the taxpayer requests going into a field office, FTB employees will provide field office information and place a comment in Accounts Receivable Collection System (ARCS) and Taxpayer Folder (TPF).

Purpose

Referring taxpayers to a field office allows taxpayers who prefer transferring sensitive Personal Income Tax (PIT) documents, making payments, and responding to correspondence in person to be aided. Additionally, this provides FTB employees the opportunity to have taxpayers make payments, file returns, and respond to correspondence in person when departmental collection procedures have been unsuccessful in achieving resolution.

Responsibility

FTB employees should make every attempt at account resolution with the provided resources prior to a field office referral. When account analysis reveals a history of non-compliance or the taxpayer has been unresponsive to telephone contact, correspondence, or fax, it may be merited to require the taxpayer to travel to a field office. See your lead for unit procedures.

Action

In the event a taxpayer requests or has been recommended to visit a field office, the FTB employee will provide Field Office information and place a comment in ARCS and TPF. Comments should state the purpose for the visit and request actions for field office personnel to perform. Before any transaction is completed by the field office, the field office employee should contact the desk collector for approval.

After the field office visit, the field office employee should contact the desk collector with the outcome of the office visit and comment TPF.

Reference

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

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4.2.2.7 Investigation Referrals

Background

The Criminal Investigation Bureau (CIB) is responsible for the criminal enforcement activities within the department. The bureau's principal mission is to identify, investigate and pursue the prosecution of income tax evasion, income tax fraud, employee misconduct, and to encourage compliance with the California income tax laws. For further information about CIB, go to: ((***)).

A referral to CIB should be considered when a taxpayer is suspected of committing a criminal offense regarding his/her state income tax obligations, or by making misrepresentations to FTB or by taking assertive steps to evade the collection of his/her liabilities with FTB. Income tax related violations could involve the failure to file income tax returns, the filing of false income tax returns, furnishing false documents, and/or concealing assets in order to evade the collection of tax (i.e. registering vehicle in the name of a friend or relative).

Purpose

The purpose of an investigation referral is to enable the CIB to evaluate the criminal potential of an account and decide whether a criminal investigation should be initiated.

Responsibility

After a referral is forwarded to CIB, normal collection activities should continue until instructed otherwise by CIB. The CIB employee reviewing the referral will contact the assigned collector and provide guidance on collection activities permissible.

The presence of any of the following indicators could justify referring an account to CIB:

Referral Indicator

- ((***)
- ((***)
- ((***)

If it is determined that a referral is warranted, then the following action should be taken:

- Complete a skip and scope of the account
- Complete required action (taxpayer contact, demands (FTB form 4973), EWOT, COTW, OTW, On-Site/Field call, etc.).
- Submit account for lead review
- File all liens
- Attach INC transcripts or other types of income sources for the year(s) to be investigated
- Attach payer information to the file
- Attach a Department of Motor Vehicle printout to the file
- Attempt to obtain current address and spouse information
- Answer all account correspondence and phone calls
- Make any necessary account adjustments
- Apply all known withholding credits.

The account will remain in the collector's inventory until CIB accepts the referral.

Once the account is referred to CIB for evaluation, CIB will promptly evaluate the referral to determine if a criminal investigation should be initiated. Upon the completion of the evaluation, the CIB employee will then contact the lead to inform him/her that the case referral is being accepted or rejected. If the account is accepted, the CIB employee may require further discussions with the referring collector and/or lead.

Accounts that should not be referred to Investigations:

- ((***)
- ((***)
- ((***)
- ((***)
- ((***)

Reference

((***)

[Revenue and Taxation Code Section 19704](#) – Statute Of Limitations (6 years from offense) [Revenue and Taxation Code Section 19705\(a\)\(1\)](#) – False Return (Income Tax Fraud)

Revenue and Taxation Code Section 19705(a)(4) – Concealing Assets with Intent to Evade Collection (Concealment)

Revenue and Taxation Code Section 19706 – Failure to File (Income Tax Evasion)

[Penal Code Section 67.5](#) – Bribery

[Penal Code Section 118](#) – Perjury

[Penal Code Section 476\(a\)](#) – Checks, Drafts or Orders on Banks; Insufficient Funds; Intent to Defraud

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4.2.2.8 Investigation Assigned Account

Background

The Criminal Investigation Bureau (CIB) is responsible for the criminal enforcement activities within the department. The bureau's principal mission is to identify, investigate and pursue the prosecution of income tax evasion, income tax fraud, employee misconduct, and to encourage compliance with the California income tax laws.

The goals of the Criminal Investigation Bureau are:

- Successful prosecution and conviction of Revenue & Taxation Code violations
- Incarceration and/or probation
- Order for restitution of tax, penalties, interest and cost of investigation and prosecution
- Publicity - media coverage

Purpose

The Criminal Investigation Bureau encompasses all criminal enforcement activities within the department.

Responsibility – Current Investigation Status

((***)

FTB employees need to refer to comments/notes placed by the assigned investigator on TI or the Taxpayer Folder (TPF) to determine if any collection action is permitted on the account. If it is unclear regarding collection action(s), contact the assigned investigator for direction. Comments by the investigator will give direction on whether the taxpayer/representative can be informed if they are under investigation or not.

Collection Staff should do the following when contacted by a taxpayer or representative when an account is assigned to CIB ((***)

1. Refer to the comments/notes on the TP or TI do determine if the taxpayer can be referred to the assigned investigator.
2. Make thorough and precise notes of all contacts and conversations in BETS, TI, ARCS, and (TPF).
3. **Do not** initiate contact with the taxpayer or representative once the account is assigned to CIB.
4. Comments/notes placed by the investigator will inform FTB employees if they can inform the taxpayer/representative if the taxpayer is under investigation
5. All contact by the taxpayer/representative should be communicated to the assigned investigator.

If collection staff is contacted by a taxpayer/representative who wants to enter into an installment agreement (I/A), the collector must contact the assigned investigator. The investigator may want to coordinate with the collection staff during this process.

Note: FTB cannot prevent a taxpayer from applying for an installment agreement due to the Taxpayer's Bill of Rights. However, it is imperative that the assigned investigator be aware of or involved in this process.

Action – Post Investigation Status – Court-Ordered Restitution

CIB prosecutions commonly result in defendants being ordered to pay restitution to FTB by the court. The court ordered restitution (COR) is typically for tax, penalties and interest owed. The court can also order investigative costs, or cost of investigation (COI). Both of these amounts can be displayed on TI as a taxpayer liability penalty.

Court ordered restitution can only be modified by the court. These amounts may, under certain circumstances, not be dischargeable in bankruptcy. Any questions related to the discharge ability of obligations under restitution orders should be referred to the Bankruptcy Unit. In addition, they are not subject to be abated in part or in full under FTB's Offer in Compromise program. Court-ordered restitution orders are also not subject to the statute of limitations or claims for refund or credit, have no protest rights, and cannot be refunded or credited toward another delinquent tax liability.

Reference

[Revenue and Taxation Code Section 19704](#) – Statute Of Limitations (6 years from offense)

[Revenue and Taxation Code Section 19705\(a\)\(1\)](#) – False Return (Income Tax Fraud)

[Revenue and Taxation Code Section 19705\(a\)\(4\)](#) – Concealing Assets with Intent to Evade Collection (Concealment)

[Revenue and Taxation Code Section 19706](#) – Failure to File (Income Tax Evasion)

[Penal Code Section 67.5](#) – Bribery

[Penal Code Section 118](#) – Perjury

[Penal Code Section 476\(a\)](#) – Checks, Drafts or Orders on Banks; Insufficient Funds; Intent to Defraud

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4.2.3.1 Payment of Tax

Background

Franchise Tax Board (FTB) allows taxpayers to satisfy their tax obligations through various methods of payment. The effective date of the payment is usually the date FTB received the payment or the date the payment is taken to a field office. Taxpayers may also designate the application of a payment to a specific tax year balance, penalty, or interest. ((****)).

Payments to FTB are received in several different forms:

- Personal, cashier, or certified checks
- Money Order
- Electronic Fund Transfer (EFT)
- [Web Pay](#)
- [Credit card](#)
- Interagency Intercept
- Cash bond
- Cash with completed [FTB 3711](#) (per [Public Service Bulletin 16-22](#))
- Wire transfers
- Federal Treasury Offset Payment (also known as FTOP)

Purpose

Payment of tax allows taxpayers the ability to fulfill their tax obligations through an assortment of methods.

Responsibility

FTB employees will educate taxpayers on the payment methods and policies of FTB while obtaining pertinent account information.

Action

FTB employees will advise taxpayers on the payment options available and instruct them to include the following:

- FTB Identification number (10 digits) / Taxpayer Identification Number (TPID) / Business Entity Identification Number
- Name, address, and telephone number including area code
- Tax years
- Type of payment (e.g., estimate, bill, return, etc.)
- Indicate the account (e.g., personal or business entity)

Reference

((***)

((***)

Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.2.3.2 Estimated Tax

Background

State income tax is due on income as it is earned. There are two methods of paying tax on income, as it is earned through withholding and estimated tax payments.

Individuals, estates, and trusts that have taxable income not being paid by withholding, pay tax on the income as it is earned by making quarterly payments of the estimated tax.

An estimate penalty will be charged for the underpayment or late payment of any estimate installment. Estimated tax payments do not have to be made if the taxpayer is a new resident, nonresident, or had no California tax liability for the previous tax year.

Purpose

Estimating tax allows individuals to make payments on tax they expect to owe after subtracting expected withholdings and credits.

Responsibility

Franchise Tax Board (FTB) employees strive to educate taxpayers of their obligation to make quarterly estimated tax payments when they do not have their taxes withheld directly from California sourced income.

Action

FTB employees provide guidance to taxpayers on how to compute quarterly estimated tax payments and proper. See: [form usage and instructions](#).

Estimate payments must be applied to the tax year for which they are designated. There is no provision in the law that authorizes the application of an estimate payment designated for one tax year to be applied to a liability for a different tax year until a return is filed and the excess credits are available.

Estimate payments designated for a particular year should be applied to the existing Filing Enforcement (FE) assessment for that year, and any adjustments made to reflect the application of such timely credits, prior to taking any collection action.

Any credits that result from the application of estimate payments designated for a particular tax year to a FE assessment for that same year cannot be applied to other year's liabilities, applied to subsequent year estimates, or refunded to the taxpayer until a tax return is filed for that year.

Reference

[540-ES Vouchers](#)

FTB 4410 Payment Received - No Return on File

((***)

Revenue and Taxation Code Sections [19002](#) and [19136](#)

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.3.3 Electronic Funds Transfer (EFT) Payments

Background

Electronic Funds Transfer (EFT) is a method used to move money electronically from a taxpayer's bank account into the state's bank account, eliminating the use of paper documents. This method is available for taxpayers to make payments using an Installment Agreement (I/A), EFT mandatory estimate payments, wire transfer, [credit card](#), and [Web Pay](#).

Purpose

EFT payments reduce paper processing time and the errors associated with them. Additionally, it reduces costs related to postage and decreases response time to inquiries regarding the status of tax payments.

Responsibility

Franchise Tax Board (FTB) employees are responsible for informing taxpayers of the various methods of payment available through the use of EFT payments.

Action

FTB employees will provide taxpayers who meet EFT I/A criteria a [form FTB 3567 or 4023](#) and instruct them how to follow FTB EFT guidelines to maintain an I/A.

Reference

[What is Electronic Funds Transfer?](#)
[Installment Agreements - Individuals \(ftb.ca.gov\)](#)
[Revenue and Taxation Code Section 19011](#)
[Form FTB 3817](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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4.2.3.4 Purged Payments

Background

In some cases, taxpayers paid a filing enforcement (FE) assessment in full, but we later purged the tax year in accordance with TI data retention policies. Subsequently, the taxpayer files a self-assessed, no pay return for the same tax year and wants to apply the purged payment credit to the balance due.

Purpose

Provide procedures to address purged payment(s) from paid FE assessments.

Responsibility

Franchise Tax Board (FTB) employees must identify the missing payment(s), determine if the situation meets the criteria of purged payment(s) from paid filing enforcement assessments, and follow the procedures set forth in the action.

Action

If the situation meets purged payment criteria, then perform the following steps:

STEP 1. Ask the taxpayer for a copy of the cancelled check. The check must be made payable to FTB.

Note: Without a copy of the cancelled check, no credit will be applied.

STEP 2. Attempt to locate the payment using all resources available.

STEP 3. If you are unable to locate a payment. Submit a copy of the cancelled check, and any other available documentation, to Fiscal Control. Fiscal Control returns the cancelled check copy to you if they fail to locate a payment.

STEP 4. Using the documentation received from the taxpayer and Fiscal Control, determine if the credit should be applied. If yes, submit memorandum and FTB Form 6350A to Administrator II level for signature approval.

(For an example, see the sample memorandum.)



Memorandum_for_p
urged_payments.pdf

STEP 5. Submit signed memorandum, form FTB 6350A, a copy of the cancelled check, and any other documentation to Fiscal Control. Fiscal Control creates the fund credit on the taxpayer's case and notifies you upon completion. Fiscal Control keeps the documents for their records.

Reference

Collection Advisory Team (CAT)
Mail Stop: A240

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.4.1 Interest Rates and Taxpayer Information (TI) System Application

Background

The California [Revenue and Taxation Code Sections 19101, 19113 and 19114](#) contain numerous provisions for the assessment of interest in various situations where taxpayers have underpaid their liability. Revenue and Taxation Code section 91901 provides for the mandatory charging of interest on tax and penalties. Revenue and Taxation Code section 19521 establishes the rate of interest, adjusted semi-annually. In addition various legal rulings and court decisions have established the rules for charging interest on unpaid liabilities. Specifically, the federal court case Avon Products Inc. vs United States established the way interest must be computed when a subsequent assessment (NPA or Amended Return) is made and an overpayment previously existed for the same tax year. In such a case, no interest should be charged on an additional tax assessment up to the amount of the refund/credit for the period of time that FTB held the overpayment which existed prior to the assessment of additional tax.

A liability must be both due and unpaid before interest can be charged. When FTB receives a payment that is subsequently deemed an overpayment, FTB has the interest free use of the taxpayer money prior to the date a refund (that is processed timely) is issued. No interest is allowed on any overpayment if a refund/credit is issued within 45 days of the return filing date under Revenue and Taxation Code section 19341.

Purpose

Interest is compensation for the use of money. It is assessed pursuant to statutory authority and is utilized as an instrument to encourage prompt payment and deter non-compliance.

Responsibility

Franchise Tax Board must ensure interest is applied in accordance with the Revenue and Taxation Code, legal rulings and federal and state case law.

TI will automate assessment of interest using a standard method of calculation. After an interest computation is completed, if conditions on the account period changes, the earlier interest computation will be re-computed to determine if an adjustment is required.

TI will apply payments within an account period by following the departmentally approved liability priority order. Because payments are generally applied first to tax, then penalties, and lastly interest, money previously used to pay a return liability may, at a later date, be used to pay an additional tax assessment. In such case, previously applied payments are reapplied first to the total tax, including the additional tax then penalties and interest. This has the effect of reducing the amount of interest charged on subsequent assessments or adjustments.

All tax assessments, penalties and interest fees, are subject to interest and will be included in the interest base. Non-interest bearing liabilities will not be included in the interest base. All fees (indicated below) and the monthly portion of the late payment of tax penalty are non-interest bearing. Those liability types will not incur interest charges or be included in the interest base.

NPA's and amended assessments will require specific processing to determine the interest base for the purposes of interest calculation.

NON-INTEREST BEARING LIABILITIES (PIT)
Collection Fee
Collection Cost Fee
Discharge*
Filing Enforcement Fee
Filing Fee
Lien Fee
Installment Fee
Monthly Penalty
Sheriff Fees

Action

Interest rates are determined on a semi-annual basis. The determination may result in no change to the [current interest rates](#).

Interest is compounded daily and is calculated using the following formula: (Principle balance less non-interest bearing liabilities) x Daily Interest Rate x number of days underpaid.

The daily interest rate used in the interest formula is the interest rate divided by the number of days in the year. 365 days will be used unless it is a leap year, then 366 days will be used. If interest rate changes between a 365 day year and a 366 day year, the daily interest will be adjusted accordingly.

Interest is assessed on unpaid tax from the original due date of the return to the date balance is paid in full. If the balance due (which could include penalties and interest) shown on a bill is paid in full within 15 days of the date of the billing, no additional interest will be assessed.

Interest is assessed on a penalty from the penalty effective date until fully paid. For example, interest due on the delinquent penalty is computed from the original return due date balance is paid in full. Interest on a demand penalty accrues from the NPA date.

FTB employees may forecast the additional interest past the billing or notice date to a future date at the taxpayer request by using the ADINT program or the BP command in TI. To provide the correct interest amount, FTB employees will need to remove the non-interest bearing fees or penalty amounts. To provide the new corrected balance amount, the employees will need to add the fees and/or non-interest bearing penalties back into the additional interest calculation. The employees should quote this new amount to the taxpayer and place a comment in ARCS and/or the taxpayer folder (TPF) listing the date of the calculation. See ((****)) for interest application and computation.

Reference

((****))

Note: (()) = Indicates confidential and/or proprietary information.

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4.2.4.2 Interest Imposed On Tax

Background

Interest is imposed on unpaid tax from the original due date of the return to the date fully paid. Interest is charged at a rate established by statute and compounded daily. The rate is determined semi-annually and it is based on the federal short-term rate plus three percentage points. If the balance due shown on a bill is paid within 15 days of the date of the billing, no additional interest will be assessed.

Purpose

To provide information regarding FTB's authority to charge interest, the method of computing interest on tax, and the effective date of interest on tax. [Revenue and Taxation Code Section 19101](#) mandates that interest be imposed on tax at the rate established under Revenue and Taxation Code Section 19521, if it is not paid on or prior to the last date prescribed for payment. The last date prescribed for payment is established under Revenue and Taxation Code section 19001, which is April 15th for the vast majority of individuals. [Revenue and Taxation Code Section 19521](#)

Responsibility

Franchise Tax Board (FTB) employees must have the ability to communicate the authority under which FTB can impose interest (California Tax Law) and how it is computed. FTB employees must inform taxpayers that interest does not stop accruing because of an Installment Agreement or wage garnishment; rather, it continues to accrue on the balanced due, compounded daily, until it is fully paid.

Action

FTB employees will explain the basis of interest assessed on tax and provide options on how to resolve the account.

Note: The taxpayer may disagree with the assessment and request interest be waived. FTB employees will inform the taxpayer when they should send a written request to have interest waived:

- When the taxpayer is unable to pay solely because of extreme financial hardship resulting from a catastrophic incident or significant disability (Revenue and Taxation Coded Section 19112).
- When the Internal Revenue Service (IRS) has waived interest for its error or delay in making an assessment that we have followed (Revenue and Taxation Code Section 19101(a)).
- When a taxpayer, after submitting a formal written request for advice to FTB and after receiving a written response from the chief counsel, thereafter reasonably relies on that advice and fails to make a timely return or payment. (Revenue and Taxation Code section 21012).
- When an unreasonable error or delay is attributed to an FTB employee while performing specific duties. (Revenue and Taxation Code section 19104(a)).
- Interest relief is also available for disaster victims and members of the military (Revenue and Taxation Code Sections 19109 (Disaster relief), 19570 and 18571 (Special Rules for Military)).
- When no other relief is available under any other section, the Advocate may provide relief under certain circumstances such as erroneous action or inaction in processing documents, and unreasonable delay committed by FTB or erroneous written advice that does not qualify under Revenue and Taxation Coded section 21012.

Reference

Revenue and Taxation Code Section [19001](#) and [19101](#)
[Revenue and Taxation Code Section 19521 \(Interest rate\)](#)

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[Form FTB 1140-Personal Income Tax Collections Information](#)
[FTB 3701- Request for Abatement of Interest](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.2.4.3 Interest on Penalties

Background

Interest is assessed on penalties from the interest effective date to the date payment is received per [Revenue and Taxation Code 19101](#). Interest is charged at an [annual rate](#) compounded daily.

Purpose

California Tax Law mandates that interest be assessed on penalties (with the exception of the monthly portion of the late payment of tax penalty).

Responsibility

Franchise Tax Board (FTB) employees must have the ability to communicate how interest and penalties are assessed and on how they are computed.

Action

FTB employees will explain to taxpayers the basis of interest assessed on penalties and provide options on how to resolve their account. In instances where a taxpayer disagrees with the assessment of interest, a written request for abatement may be submitted.

Reference

[Form FTB 1140-Personal Income Tax Collections Information](#)

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[Form FTB 3701- Request For Abatement of Interest](#)

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Note: (()) = Indicates confidential and/or proprietary information.

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Last Revision: 05/23/2018

4.2.4.4 Interest Allowed on Overpayments

Background

Interest is allowed on an overpayment from the date of overpayment to a date preceding the refund warrant by not more than 30 days. This ensures that the interest is allowed to a date within 30 days of the refund issue date as mandated by law. Interest is also allowed on credit transferred to another tax year from the date of the overpayment to the date of transfer. ([Revenue and Taxation Code Sections 19301-19368](#)).

Interest must be allowed on overpaid returns if the refund warrant is not issued or a credit is not allowed within 45 days of the return due date or the received date of the return, whichever is later. In the case of late filed returns, no interest is allowed for any time prior to the return filing date. (Revenue and Taxation Code Section 19341.)

Interest is allowed on:

- Payments not claimed on the return (estimates, extensions, and misc.)
- Payments received with the return
- Billing payments, including duplicate billing payments for the same amount
- Overpayments of penalties and/or interest
- Tax rate adjustments (e.g., bank tax rate) credit balances created when Franchise Tax Board (FTB) has applied an overpayment to a balance due on another year and the taxpayer also pays the balance due

Purpose

Assessing interest on overpayments adheres with the [Revenue and Taxation Code Sections 19340 and 19341](#) that mandates timeframes in which interest is allowable on overpayments.

Responsibility

FTB employees must have knowledge of situations in which interest allowed on overpayments is applicable and how to compute it.

Action

FTB employees should perform interest computations via the Automated Interest Program ((***) in instances where overpayment interest is allowable.

Reference

[Revenue and Taxation Code Sections 19340 & 19341](#)

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4.2.5.1 Penalty Assessments

Background

[Revenue and Taxation Code \(R&TC\) Sections 19131 – 19187](#) provide for the assessment of penalties for taxpayers who fail to meet their filing and/or payment requirements. Penalties are assessed manually or automatically on a tax year when a taxpayer fails to comply with California tax law.

Purpose

The assessment of penalties encourages taxpayers to adhere to California tax law and enforces compliance as well as full and truthful disclosure on Personal Income Tax (PIT) returns.

Responsibility

Franchise Tax Board (FTB) employees are responsible for educating taxpayers how various penalty assessments are computed and applied to their account. FTB employees will also identify penalties that need to be assessed and verify existing penalties are accurately assessed. ((***)

Action

FTB's Taxpayer Information (TI) System will automatically assess penalties. In some rare instances, FTB employees will manually assess penalties when appropriate and abate penalties that are incorrectly assessed. The following are the types of commonly assessed penalties:

- **Delinquent Penalty** ([R&TC Section 19131](#)) - late filing of a tax return The delinquent penalty is imposed on the unpaid tax from the due date of the return, without regard to extension or late payments. The delinquent penalty is computed on the total tax due less timely payment and credits. The penalty is five (5) percent per month, elapsing between the due date of the return (without regard to any extension of time for filing) and the date on which the tax return was filed, up to a maximum of

25 percent. The delinquent penalty may be increased or decreased based on adjustments to the tax after the original return is filed. Example. The taxpayer has a filing enforcement (NPA) and files the original return after the NPA has gone final.

- **Demand Penalty** ([R&TC Section 19133](#)) – failure to respond to a notice of demand to file a tax return. The penalty is computed as 25 percent of the lesser of Franchise Tax Board (FTB) assessment or the tax shown on the return, when filed. The demand penalty is assessed with a Notice of Proposed Assessment (NPA) after the notice has been sent and is legal due and payable.
- **Accuracy-Related Penalty** ([R&TC Section 19164](#)) – Placed into effect on January 1, 1991, the accuracy-related penalty replaced the negligence penalty. The accuracy-related penalty is imposed if an underpayment is due to any of the following:
 - Negligence or disregard of rules or regulations
 - Substantial understatement of franchise/income tax
 - Substantial valuation overstatement
 - Substantial overstatement of pension liabilities

Note: The accuracy-related penalty is also called the penalty for failure to make a reasonable attempt to obey the tax law. The penalty is 20 or 40 percent of the underpayment of tax.

- **Underpayment and Monthly** ([R&TC Section 19132](#)) – late payment of tax due. If the taxpayers file their return on or before the extended due date, they will not be assessed a delinquent penalty. However, if the tax is not paid by the original due date, an underpayment or monthly penalty will be assessed.
- **Estimated Tax Penalty** ([R&TC Section 19136](#)) – late payment or underpayment of required estimated tax payments. Income tax is due on income as it is earned. There are two methods of paying tax on income to avoid the estimated tax penalty:
 - Withholding
 - Estimated tax payments
- **Dishonored Payment Penalty** ([R&TC Section 19134](#)) – provides for the assessment of a penalty when any payment remitted by check, money order, or electronic funds is not honored for payment by the financial institution on which it was

drawn. The penalty is two percent (2%) of the amount of the payment. From January 1, 2011, and after, if the payment is \$1,250 or less, the penalty is \$25 or the amount of the payment, whichever is less. If more than \$1,250 the amount is 2 percent of the dishonored payment. From May 26, 2007, through December 31, 2010, if the payment is \$750 or less, the penalty is \$15. If more than \$1,250 the amount is 2 percent of the dishonored payment.

- **Under-Withholding (Form W-4) Penalty** – The under-withholding penalty is imposed on individuals for making false withholding declarations. This penalty is most commonly assessed on individuals that claim an excessive number of exemptions to lower their withholding rate.
- **Withholding at Source Penalty** – (R&TC Section 18662) withholding of tax at source is to ensure that tax is paid on California sourced income. Dispositions from the sale or exchange of California real estate are generally subject to 3 1/3% withholding of the sales price unless the seller qualifies for a waiver or exemption.
 - Any person making payments on California source income to nonresidents individuals and non-California Business entities is required to withhold seven percent (7%) of gross payment or distribution amount if the payments are for:
 - Services performed by independent contractors
 - Rents or lease payments
 - Royalties
 - Trust income
 - Partnership income
 - Other types of California source income as set forth in the regulations
- **Amnesty Penalties**
 - **50% Amnesty Penalty** – This penalty was imposed against taxpayers that had a past-due tax liability that qualified for amnesty, but either did not participate in amnesty or filed for amnesty and did not complete amnesty by filing required returns and paying the balance due, or entering into an amnesty installment agreement by May 31, 2005. The penalty was equal to 50% of the interest computed on the entire tax year balance from the original due date of the tax to March 31, 2005.

- **Post Amnesty Penalty** – This penalty was imposed against taxpayers that owed a new or additional tax on a tax year that qualified for tax amnesty. The penalty was equal to 50% of the interest that accrued on the tax assessment from the original due date of the tax to March 31, 2005.
- **Fraud Penalty** ([R&TC Section 19164](#)) – The fraud penalty is assessed if the tax deficiency is due to fraud with intent to evade tax. If the department establishes that any portion of an underpayment is due to fraud, the entire underpayment is treated as due to fraud. FTB may impose a 75 percent fraud penalty on any portion of the underpayment that is attributable to fraud.
- **Frivolous Submission Penalty** (Revenue and Taxation Code Section 19179(d)) – The frivolous submission penalty is imposed when a taxpayer submits material that meets any of the following conditions:
 - Based on a position FTB identifies as frivolous
 - Reflects a desire to delay or impede the administration of federal or state income tax laws determined by IRS, or California income or franchise tax laws determined by FTB.

Any person who submits a “specified frivolous submission” must pay a \$5,000 penalty unless the person withdraws the submission within 30 days of FTB’s notice confirming that it is a “specified frivolous submission.”

- **PIT e-Pay Penalty** – Beginning January 1, 2009, individuals who meet certain conditions are required to make their payments electronically (mandatory e-pay). Individuals who are required to make electronic payments but pay by other means are assessed a penalty unless their failure to e-pay was for reasonable cause and not willful neglect.

Reference

[Revenue and Taxation Code Section 19131-19187](#)

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4.2.6.1 Cost Recovery Fees

Background

In 1992 Senate Bill 617 was passed. The bill included several provisions, one of which was, the Franchise Tax Board (FTB) would impose a Cost Recover Fee when taxpayers failed to pay their delinquent tax or failed to file tax return upon demand. The cost recovery fee is two separate fees, the collection fee and the filing enforcement fee.

The bill did not specify the collection fee by tax year but by account. At implementation FTB decided to assess the collection fee at the time the account entered the collection area.

FTB assesses cost recovery fees on taxpayers' accounts who fail to fully pay their taxes, penalties, or interest by the date provided on written notifications or billing statements, and that continued failure to pay results in collection action. This allows FTB to recover the cost of collection actions incurred by FTB directly from the taxpayer. In other word, these fees are borne by the delinquent customer, rather than the general public. These fees are collected in the same manner as a delinquent liability.

Per Revenue and Taxation Code (R&TC) section 19254, the fees are based on actual costs, and the legislature sets the fees annually through passage of the budget. Interest shall not accrue on these fees and, generally, no provisions of the law allow for waiver of a fee.

Fee Definitions:

Collection Cost Recover Fee, a fee charged to a customer when the department must take action to collect delinquent taxes from that customer.

The collection fee is assessed to a customer who meets the following criteria:

- Customer has a liabilities in excess of ((\$***)), and
- Customer has been mailed notice of the collection fee prior to it being assessed
- Customer has a new liability while a current liability is outstanding and a Collection Cost Recover Fee has been

imposed a second fee will not be assessed. However, a previous liability has been paid in full and a new liability is assessed a new Collection fee may be imposed.

The collection fee will not be imposed until after the final notice. This was a policy decision based on the intent of the bill. FTB may allow from 3 – 5 notices depending on which functional area the account resides.

The most common collection fees assessed are:

- **Collection Cost Recovery Fee** ([Revenue and Taxation Code Section 19254](#)): The Collection Cost Recovery Fee is assessed one time on collection accounts where the taxpayer has received due process regarding the assessment of the collection fee. This fee is assessed when FTB must take action to collect delinquent taxes.

The only instance an account may have two Collection Cost Recovery fees is when:

- A Collection Cost Recovery Fee has been assessed and the account was then closed by payment or application of credits and
 - A new liability is incurred and not paid causing FTB to take an action to collect delinquent taxes.
- **Filing Enforcement Fee** ([Revenue and Taxation Code Section 19254](#) and [19209](#)): Beginning October 1994, this fee is assessed on taxpayers that do not file tax returns by the date indicated on a written Demand for Tax Return notice. The fee attempts to collect the entire cost of the filing enforcement program.
 - **Lien Fee** ([Revenue and Taxation Code Section 19221](#)): The fee is assessed when it becomes necessary for FTB to file a state tax lien to ensure collection of the balance due on an account. **Out of State Collection (OSCAR) Fee** ([Revenue and Taxation Code Section 19376](#)): Assessed to taxpayers with delinquent liabilities when FTB assigns their liability to private out of state collections. The out of State Collection Fee (Oscar or Vendor fee) is assessed to reimburse the Department the cost of services provided by a debt collection agency to collect delinquent liabilities from taxpayers who reside outside California. The private collection agency could

be in/or of state. The taxpayer's address must be out of state. See [Section 9.2.4.2 Out Of State Collection Account Referral \(OSCAR\)](#).

Note: There are no fees associated with In State Collection Account Referral (ISCAR) collections.

- **Sheriff Fee:** The Sheriff fee is assessed when a warrant has been issued to enforce collection of unpaid tax.

Purpose

Cost Recovery Fees are assessed as a method to reimburse FTB for costs incurred in the process of collection activity.

Responsibility

It is the responsibility of FTB employees to ensure the fees are properly assessed and explained to taxpayers. The collector should:

- Review every case to ensure FTB has assessed a collection fee.
- Ensure a one-time collection fee is assessed on a collection case where the taxpayer has received due process
- If a taxpayer is assessed a collection fee for an unpaid tax liability and another year becomes billable before the taxpayer pays the previous liability in full, do not assess an additional collection fee.
- Ensure lien fee(s) have been assessed on the correct tax year(s)
- Ensure the appropriate sheriff fees have been assessed for a warrant action

Action

FTB employees must assess or cancel fees when appropriate. ((****))
 See the follow chart:

Name	Type	R&TC	Definition	Form #
Collection Fee	Collection Cost Recovery Fee	19254	We impose a fee to recover the costs of our collection action taken against you.	FTB 7265BC, FTB 7268LLC
Collection Fee	Collection Cost Recovery Fee	19254	We impose a fee to recover the costs of our collection action taken against you.	
Collection Fee	Collection Cost Recovery Fee	19254	We impose a fee to recover the costs of our collection action taken against you.	
Filing Enforcement Fee (FE)	Filing Enforcement Cost Recovery Fee	19254	We impose a filing enforcement cost recovery fee when you fail to file a tax return by the date indicated on our Demand to File notice.	
	Filing Enforcement Cost Recovery Fee	19254	We impose a fee when you fail to file a tax return by the date indicated on our Demand to File notice.	FTB 7269E

	Filing Enforcement Cost Recovery Fee	19254	We impose a fee when you fail to file a tax return by the date indicated on our Demand to File notice.	
Lien Fee	County Lien Fee	19221; GC 7171	We impose a fee due to filing a state tax lien with the county recorder to collect delinquent liabilities.	
Lien Fee	County/SOS Lien Fee (Adjustment)	19221; GC 7171	We impose a fee due to filing a state tax lien with the county recorder and/or Secretary of State to collect delinquent liabilities.	
Lien Fee	SOS Lien Fee	19221; GC 7171	We impose a fee due to filing a state tax lien with the Secretary of State to collect delinquent liabilities.	
Filing Fee	Exempt Organization Filing Fee	23772	We impose a fee if we require your organization to file Form 199. The	

			<p>amount depends upon when you file and when you make the payment. The fee is \$10 if: You file and pay by the original due date, or you file and pay after the original, but on or before, the extended due date. The fee is \$25 if: You file by the original due date but pay after that date, or you file and pay after the extended due date.</p> <p>Exception: The filing fee does not apply to the following organizations exempt under R&TC Section 23701d: *An exclusively religious organization. *An organization that is controlled by a religious</p>	
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			organization. *A school. *A public charity.	
ISCAR Fee	In-State Collection Account Referral Fee	19377	We impose a fee to recover costs incurred in contracting with a collection agency within California.	
OSCAR Fee	Out of State Collection Account Referral Fee	19376	We impose a fee to recover costs incurred in contracting with a collection agency outside of California.	
Revivor Fee	Revivor Fee	19591(a)(2)(A) & (C)	We impose a fee for providing processing services for your corporation revivor request.	
Sheriff Fee	Sheriff Fee	19231 - 19236	We impose a fee to cover the expenses of issuing a warrant to enforce collection of a liability.	
	Dissolution			
Installment Agreement Fee	Installment Agreement Fee	19591(a)(1)	We impose a fee for the cost of servicing an	

			installment agreement for collection of liabilities.	
FTOP Fee	Federal Treasury Offset Program (FTOP) Fee	16583.1; IRC 6402(e)	We impose a fee to cover costs incurred collecting delinquent liabilities from the Federal Treasury Offset Program.	
Appraisal Costs	Appraisal Costs	19235	We impose a fee to recover appraisal costs related to a warrant for the seizure of assets and the subsequent sale.	
Advertising Costs	Advertising Costs	19235	We impose a fee to recover advertising costs related to a warrant for the seizure of assets and the subsequent sale.	

Note: Taxpayers cannot protest the collection cost recovery fee. Taxpayers may protest the filing enforcement fee.

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Note: (()) = Indicates confidential and/or proprietary information.

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