



chair **John Chiang**
member **Jerome E. Horton**
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State of California
Franchise Tax Board

02.11.13

Lynn Freer
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PO Box 61044
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Dear Ms. Freer,

Thank you for your presentation at the Taxpayers' Bill of Rights Hearing held on December 5, 2012. I am responding to the proposals you submitted.

Reasonable Cause Regulation

Following the release of a report by the U.S. Treasury Inspector General for Tax Administration critical of the Internal Revenue Service (IRS) penalty abatement procedures (<http://www.treasury.gov/tigta/auditreports/2012reports/201240113fr.pdf>), the IRS indicated it is reviewing its procedures for its first-time abate policy. Therefore, we decided to defer any further action for proposing a California equivalent until the IRS completes its review.

Cutler Decision

We drafted the quoted instructions to circulate to software developers after the release of FTB Notice 2012-03 <[FTB Notice 2012-03](#)> – Implementation of Court of Appeal's Decision in *Cutler v. Franchise Tax Board* (2012) 208 Cal. App. 4th 1247. FTB issued the Notice after the Court of Appeal's decision of the Court of Appeal became final.

Amended Returns & Mandatory E-Payment

Regarding pending Notice of Proposed Assessment (NPA) payments, FTB already has that as a payment option within Web Pay. The problems surrounding NPA payments generally centers on taxpayers selecting the wrong payment type within the Web Pay application. FTB's main accounting system's processing rules are based on types of liabilities. Within Web Pay, taxpayers should select the NPA payment type if the NPA is not final. If taxpayers chose NPA payment type, the payment would "sit in suspense" in our accounting system until the assessment is final, and then apply to the liability. However, taxpayers often select Bill or Return as the payment type, and these payment types process differently in the accounting system. Although Web Pay provides instructional help for what payment types to select, we will review these instructions to see if we can make them even clearer.

We are evaluating how best to modify our accounting system to include special processing rules for payments associated with an amended return, which would have characteristics similar to an NPA payment type. The amended return payment type would "sit in suspense" until we process an amended return and post to the accounting system. Thereby, reducing the number of payments erroneously refunded (we may not be able to resolve the issue

entirely due to taxpayer's still selecting the wrong payment type). In the interim, we will update our website instructions to include a workaround to avoid the refunding of amended return payments received prior to receipt of the amended return.

Identity Theft

FTB takes every opportunity to leverage relationships with other agencies in order to enhance our ability to service taxpayers. Specific to identity theft, this year the Internal Revenue Service (IRS) and FTB started to pilot a new sharing agreement related to identity theft and refund fraud. IRS invited FTB to participate in this pilot due to our robust refund fraud and identity theft program. IRS and FTB will evaluate the pilot and leverage this opportunity to share information, including data and best practices.

Additionally, this year FTB opened up discussions regarding identity theft issues at the quarterly federal/state meeting that includes, FTB, BOE, EDD, and IRS representatives. Both, IRS and FTB, shared information concerning our refund fraud and identity theft programs.

FTB is very sensitive to and aware of identity theft and other potential risks to taxpayers and their personal information. FTB places both automated and user generated calls to taxpayers as a means to make contact and resolve outstanding collection issues. FTB's new Collection Automated Dialer (automated calls) provides a prerecorded one-way message that instructs taxpayers to go to our website (ftb.ca.gov) or call our Interactive Voice Response Outbound Contact Response Line at 1.888.895.8125 to self-serve or for information on resolving their delinquent account.

FTB updated the information on our website homepage regarding our automated calls. The link below is listed under Popular Topics on our homepage and provides an overview on our new Automated Dialer to help prevent collection actions.

https://www.ftb.ca.gov/aboutFTB/automated_dialer.shtml?WT.mc_id=HP_Popular_AutomatedCalls

If any taxpayer at any time is concerned that they may be speaking with anyone other than the FTB, we encourage them to end the call and call us back directly at 1.888.895.8125, or any of our published numbers. We can then validate if it was FTB calling them and assist them with their case resolution.

With the launch of FTB's Taxpayer Folder, tax professionals without a Power of Attorney (POA) will not be given greater access to taxpayer data than what currently exists. For example, tax professionals will still have access to their client's account balance summary, summary of payments (e.g., estimated tax payments), and tax year detail summary (e.g., total tax, payments, transfer amounts, penalty amounts, etc.). However, tax professionals who that have a POA for certain years will have access to additional information, for example, access to notices sent to their client or access to copies of returns.

A couple of security enhancements FTB plans to implement with Taxpayer Folder is the ability for taxpayers to access their Folder, and see who else (e.g., tax professionals) accessed their account. They will also have the ability to block that professional from accessing their account.

FTB is very concerned with identity theft and takes precautions to prevent hackers from accessing data. The incident in South Carolina was the case of a hacker accessing the taxpayer's records. Within MyFTB Account (Taxpayer Folder), tax professionals must provide the specific data (e.g., SSN, name, information from a tax return) to gain access to an account.

Sincerely,

Steve Sims, EA
Taxpayers' Rights Advocate

cc: Hon. John Chiang, Chair
Hon. Jerome E. Horton, Member
Hon. Ana J. Matosantos, Member