

CA

California Taxpayers' Bill of Rights

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(Eschscholzia)



STATE OF CALIFORNIA
Franchise Tax Board

The California Taxpayers' Bill of Rights publication, FTB 4058, now includes the 1997 and 1999 Bill of Rights updates. We obsoleted FTB 4063 and FTB 4064 and neither will be available publications.

In 1988, the California Legislature enacted the Taxpayers' Bill of Rights. For the first time, legislation spelled out your rights as California taxpayers as well as our obligations to you.

In response to the federal Taxpayer Bill of Rights 2, in 1997 the California Legislature enacted California's Taxpayers' Rights Conformity Legislation. This legislation provided additional protection of your rights as a California taxpayer.

To further guarantee your rights as state taxpayers, California's lawmakers enacted the Taxpayers' Bill of Rights Act of 1999.

The following are major highlights of these important legislations.

1988

Your Rights to Confidentiality

We keep confidential the information you provide us on your state income tax returns and the amounts you owe us. If, however, you are no longer married or living with your spouse/registered domestic partner (RDP) and you previously filed a joint return with an amount due, then upon request in writing by either party, we will tell the requesting spouse/RDP whether we tried to collect from the other, the general nature of the collection activities, and the amount collected.

Your Tax

We work cooperatively with you so you can compute and pay the correct amount of tax.

In some cases, you may disagree with us about the correct amount you owe, the method we used to compute your tax, or the interpretation of the law. In these cases, you can appeal our actions. You will find more information about your appeal rights later in this pamphlet.

Bills You Receive From Us

If you owe state income tax and do not pay the full amount due with your tax return, we send you a bill for the amount you owe. Or, if you made an error on your tax return, we correct it and send you a notice explaining the change.

The bill includes the amount of tax, interest, and penalties (if any) you owe, and the date you must pay in full before additional interest accrues.

Your Payment Responsibilities

You should promptly pay the full amount of taxes that you owe. We do not take collection action on an amount you owe until after we give you an opportunity to pay. We prefer to work out an arrangement with you to pay your tax rather than take enforcement action such as filing tax liens or levying and seizing your property. For this reason, you should promptly respond to us. If you do not respond, we may have no choice but to proceed with enforcement actions.

Your Rights During a Tax Audit

If we select your tax return for audit, you are entitled to a fair examination and a written explanation of all changes we make to your tax return as a result of the audit.

What you can expect from our audit or contact:

- Courteous treatment by our employees.
- Clear and concise information requests.
- Confidential treatment of any personal and financial information that you provide to us.
- Completion of the audit within a reasonable amount of time.

We will notify you in writing when we conclude this process. At that time one of the following determinations will apply to your case:

- We accepted your return as filed.
- You owe additional tax.
- You overpaid your tax and are entitled to a refund.

What we expect from you:

- Respond to our requests promptly and completely. If you fail to do so, the law allows us to adjust your tax return and assess penalties for not furnishing the information we requested.
- You may represent yourself or have someone else represent you. You may designate a representative by completing an FTB 3520, *Power of Attorney Declaration for the Franchise Tax Board*.

If we propose any changes to your tax return, it is important that you understand the reason for the change. Contact the employee assigned to your case if you have any questions.

The privacy of your income tax return information is of the utmost importance to us. You have a right to see our records that contain your personal information. We must tell you why we ask for your income tax information and to whom we may provide it. You also have the right to question the accuracy of the information contained within your file.

Your Protest Rights

A Notice of Proposed Assessment advises you that we intend to assess additional tax or penalties. To allow you time to review and respond to the notice, we take no further action before the “protest by” date shown on the front of the notice.

If you disagree with the proposed assessment, you can file a protest with us by the *protest by* date shown on the front of the accompanying notice. If you do not file your written protest by this date, the assessment will become final and we will bill you for the amount due, including penalties and interest.

Filing a protest will not stop the accrual of interest. Due to workload constraints, it may take several months to resolve your protest. We will not charge additional interest if we receive payment in full within 15 days of the accompanying notice date. If you pay the additional tax, penalties, and interest due, or pay the full amount under our tax deposit procedure, you will stop the further accrual of interest without losing your right to contest the disputed amount. If we withdraw or reduce the amounts on our notice, we will pay interest on any overpaid amount as the law allows.

Protest Procedure

Your written protest must clearly state what you are protesting and must be filed by the *protest by* date shown on the front of the accompanying notice. Include:

- Your name and address.
- Your social security or taxpayer identification number.
- The amounts and taxable years you are protesting.

- A statement of facts.
- Points in support of your position.
- Your explanation of why our assessment is wrong.
- Your signature or your authorized representative's signature.
- Your daytime telephone number or your authorized representative's name, daytime telephone number, and mailing address.
- A copy of the Notice of Proposed Assessment.
- A completed FTB 3520, *Power of Attorney Declaration for the Franchise Tax Board*, if you want someone to represent you during the protest process. Specific instructions for completing and filing a Power of Attorney declaration are available at ftb.ca.gov.

Mail or fax your protest to:

PROTEST SECTION MS F340
FRANCHISE TAX BOARD
PO BOX 1286
RANCHO CORDOVA CA 95741-1286

Or to expedite your protest, fax it to: 916.364.2754

We will grant you a hearing if you request it in your protest. Your authorized representative may represent you at the hearing. Once we consider your protest and make a decision, we will send you a written notification.

How FTB Handles Your Protest

If we receive your protest letter by the *protest by* date shown on the front of the notice, we review your facts and supporting information. After this review, we may request additional information or, at your request, we may schedule a hearing at one of our offices.

At the conclusion of our protest review, we either withdraw, revise, or affirm the proposed assessment. We notify you of the results by sending you a formal Notice of Action.

Your Appeal Rights

If you disagree with our decision, you can file an appeal with the Office of Tax Appeals by the *appeal by* date shown on the front of our Notice of Action. If you do not file your appeal by that date, our Notice of Action will become final and we will bill you for all amounts due, including penalties and interest.

Filing an appeal will not stop the accrual of interest. We will not charge additional interest if we receive payment in full within 15 days of the date we mailed the notice. If you pay the additional tax, penalties, and interest due under our tax deposit procedure, you will stop the further accrual of interest without losing your right to contest the disputed amount.

Office of Tax Appeals Appeal Procedure

You must clearly state in writing that you are filing an appeal and include the following information:

- Your name and address.
- Your social security or taxpayer identification number.
- A copy of the accompanying Notice of Action.
- A copy of the original Notice of Proposed Assessment.
- The amounts and taxable years you are appealing.

- A statement of facts.
- Points and legal authorities in support of your position.
- Your explanation of why our assessment is wrong.
- Any portion of the amount at issue that you concede.
- Your signature or your authorized representative's signature.
- Your telephone number or your authorized representative's name, address, and telephone number.

You must mail or hand-deliver your written appeal and a copy of the notice and supporting documents by the appeal by date shown on the front of the Notice of Action to:

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

If you need additional information about filing an appeal, go to ota.ca.gov. Contacting the Office of Tax Appeals for this information will not extend the time period for you to appeal. (R&TC Sections 19045 and 19046)

Your appeal must explain and document in detail why you believe our assessment is wrong, as well as why you believe your position is correct. Include all the relevant documentation you received from or submitted to the Franchise Tax Board, because the Office of Tax Appeals has no record of that documentation.

Your appeal must be handwritten or typed in a font or type size of at least 12 characters per inch or the equivalent. It must be on only one side of 8½ by 11 inch sheets of paper. Your appeal must not exceed 30 pages double-spaced or 15 pages single-spaced, not counting a table of contents and exhibits such as copies of supporting documents.

Collection Actions

If you do not pay your tax, interest, and penalties (if any) by the notice date shown on the bills we send you, we will begin to collect the money you owe. We may file a tax lien against your property or levy and seize your property. We may assess cost recovery fees in conjunction with collection and/or filing enforcement activities. During all collection activities, you can expect fair and courteous treatment.

Tax Liens

If we file or record a lien in violation of our administrative procedures or in violation of the terms of an installment agreement, we must release the lien as though we filed or recorded it in error.

At least 30 days prior to recording or filing a tax lien, we must mail you a notice stating by what authority we are filing the lien, and what procedures are available to you to prevent us from filing it. The lien will not be filed or recorded if, within the 30 days, you prove that such filing or recording would be in error. However, the 30-day notice provision is not applicable where the collection of tax is determined to be in jeopardy.

Unfortunately, we sometimes file a tax lien in error. If this happens to you, please write to us and tell us why you think we are wrong. If we agree with you, we will send a release stating that the lien was filed in error. At your request, we will also mail a copy of the release to the major credit reporting companies in the county where the lien was filed.

Wage and Bank Levies

You may file a claim with us for reimbursement of charges or fees you paid which were imposed by an unrelated business because of our erroneous levy, erroneous processing action, or erroneous collection action. To grant your claim, we must determine the following:

- The erroneous levy, erroneous processing action, or erroneous collection action was caused by our error.
- You responded to all our contacts and provided any requested information before the erroneous levy, erroneous processing action, or erroneous collection action.
- The charge or fee has not been waived by the unrelated business or otherwise reimbursed.

Reimbursed charges and fees are limited to the usual and customary charges and fees imposed by a business in the ordinary course of business. Your claim must be filed within 90 days from the date of the erroneous levy, erroneous processing action, or erroneous collection action.

Property Seizure and Sales

In order to satisfy your tax debt, we may seize and sell most real or personal property you own or in which you have an interest. If we seize your property, you have a right to an administrative hearing to present your case to show why we should not sell your property to satisfy your tax debt. You may redeem your property at any time prior to the time it is sold. To redeem your property, you must pay the tax due, including penalties and interest, as well as any expenses we incurred to seize and store the property.

Penalties

We have discretion to either refrain from imposing or waive penalties authorized under R&TC Section 19011 (Electronic Funds Transfer Penalty) and R&TC Section 19141.5(a)(4)(A) (IRS Form 5472/Record Maintenance Penalty), where we determine your noncompliance did not jeopardize the best interests of the state and is not due to your willful neglect or intent not to comply.

1997

Changing Your Filing Status

You may discover after you file your tax return using the separate filing status that it would be to your advantage to file jointly with your spouse/RDP. For tax years after 1996, under certain conditions, you may file an amended joint tax return even though you have not paid the full tax liability reflected on the separate return.

Information Reported from Third Parties

We receive income information from third parties, such as payers of wages, interest, or dividends. We use this information to verify income and wage information you report on your income tax return. Third parties must now include their name, address, and telephone number when submitting information about you. As a result, you have direct access to these individuals to resolve any questions about the submitted data.

If you file an appeal because you disagree with information provided to us by a third party and you have fully cooperated with us in a reasonable attempt to resolve the discrepancy, we must prove that the tax we assessed is correct.

Bills You Receive From Us

When you receive a bill from us, you have 15 days to pay the amount due without accruing additional interest or an underpayment penalty.

Interest

We may cancel all or a portion of interest you owe if you can show that we erred or delayed in performing certain acts, which caused a delay in your payment. We may also cancel all or a portion of interest if you can show the interest accrued because we made an unreasonable error in performing certain kinds of acts. If we deny your request, you have the right to appeal our action.

Reimbursement of Costs

If you appeal to the State Office of Tax Appeals, you may be entitled to reimbursement of reasonable fees and expenses if we cannot substantially justify our position. This applies to fees incurred after the date of a notice of proposed assessment, or a denial of a claim for refund.

Levies and Liens

We can issue wage and bank levies and file tax liens to collect the money you owe us.

If we issue a levy or file a lien in error, we must correct it. We are in error if we issue the levy or file the lien prematurely and do not follow our administrative procedures. We are also in error if you have an installment agreement in good standing with us to satisfy the tax liability for which we are issuing the levy or filing the lien, unless the levy is allowed by agreement.

Under these circumstances, we will return your property if we took it. If we filed a lien, we will send a copy of the notice of withdrawal to you. You may request that we send a notice of release to specified third parties.

If we ordered your employer to withhold your earnings in order to pay delinquent taxes and we then find that your liability is not collectible, we must notify your employer to stop withholding your earnings.

Outstanding Delinquent Accounts

Except under certain circumstances, if you owe a delinquent tax balance, then we must mail you written notice at least once a year of the amount owed as of the date of the notice.

1999

Employee Relief/Unremitted Withholdings

We may order your employer or any person to withhold and send us a portion of your earnings to pay your delinquent taxes. If your employer withholds the amount we order but does not send it to us, your employer may be liable for the ordered amount, plus interest.

Suspension of Interest/Fail to Notify

We must send you a notice when we believe your individual tax return is not correct. The notice states your tax liability and the basis for that liability. If your return was timely filed, and if we do not send you a notice within 36 months of the date you filed your return or the date your return was due, whichever is later, then we must suspend interest and certain penalties. We also suspend interest on amended returns you file if we have not previously notified you of the additional tax. The period of suspension begins at the end of the 36 months and ends after we provide you with a notice or you file the amended return. Special rules apply if the Internal Revenue Service changes your tax liability or if your liability is the result of the use of potentially abusive tax shelters or similar types of transactions.

Procedures for Imposing Penalties

If you receive a notice from us that imposes a penalty, the notice must include the name of the penalty, the section of law under which we imposed the penalty, and a description of the penalty computation. Also, we will provide you with a penalty computation at your request.

Notice of Interest Charges

If you receive a notice from us that states you must pay interest, the notice must include the section of law under which we imposed the interest and a description of how we computed the interest. Also, we will provide you with an interest computation at your request.

Abatement of Interest/Disaster Areas

If you live in a presidentially declared disaster area or a California county or city which the Governor declares a disaster area, we may not require you to pay interest on a late-paid tax liability. To qualify, you must have lived in a declared disaster area and we extended the time for you to file a tax return and pay the income tax.

Waiver of Early Withdrawal Penalties

If you become subject to an early withdrawal penalty because we took money from your retirement plan (including individual retirement accounts) to collect on your delinquent taxes, we will not assess an early withdrawal penalty for California purposes.

Notice Include Deadlines

We must tell you the last date by which you can protest or appeal certain notices. Your protest or appeal must be filed by that date to be considered timely filed.

Related Franchise Tax Board Publication

FTB 4058C California Taxpayers' Bill of Rights - An Overview

This publication describes your rights as a California taxpayer.

To request this publication:

- Go to **ftb.ca.gov**.
- Telephone 800.338.0505.
- Write to us at:

FRANCHISE TAX BOARD
TAX FORMS REQUEST UNIT
PO BOX 307
RANCHO CORDOVA, CA 95741-0307

Taxpayers' Rights Advocate

Taxpayers unable to resolve their problems with us through regular channels may contact our Taxpayers' Rights Advocate.

You can contact the Taxpayers' Rights Advocate by:

Website: **ftb.ca.gov**

Telephone: 800.883.5910

Fax: 916.843.6022

Mail: EXECUTIVE LIAISON SECTION MS A381
FRANCHISE TAX BOARD
PO BOX 157
RANCHO CORDOVA CA 95741-0157

If you write to the Taxpayers' Rights Advocate, be sure to include your daytime telephone number so we can respond to you as quickly as possible. Contacting the Taxpayers' Rights Advocate does not constitute a protest or an appeal, and it does not extend the time for you to protest or appeal.

