



# FTB 7281 PLLC Partnership and Limited Liability Company Collections Information

In this document, we refer to the California Revenue and Taxation Code as R&TC.

We divided this document into three sections. **Section A** applies to all general partnerships, limited partnerships, real estate mortgage investment conduits, and limited liability companies. **Section B** has additional information for limited partnerships and real estate mortgage investment conduits. **Section C** has additional information for limited liability companies.

**Section A: This applies to all general partnerships, limited partnerships, real estate mortgage investment conduits, and limited liability companies.**

## Bill of Rights Highlights

The California Taxpayers' Bill of Rights requires that we adequately protect the rights, privacy, and property of all California taxpayers during the process of assessing and collecting taxes. The following information may be helpful if we begin collection actions on your entity's unpaid liability.

### Alternatives to Collection Actions

You can prevent collection actions if you do any of the following:

- Pay your entity's unpaid liability in full.
- Enter into an installment agreement.
- File required entity returns or provide proof that your entity has no filing requirement.

### Offer in Compromise

We provide an Offer in Compromise program for entities that cannot pay their unpaid liability. The program allows you to offer a lesser amount in payment of an undisputed final liability. For more information regarding this program, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **4905BCT**. (R&TC Section 19443)

## Laws Regarding Collection Actions

### Third Party Contacts

We may contact third parties to determine or collect your entity's liabilities. Subject to privacy laws and your rights as a taxpayer, you may obtain a list of those contacts within the 12-month period following the date of the enclosed notice. We must receive your request no later than 60 days after the 12-month period has ended. For more information, write to: DISCLOSURE OFFICE, **FRANCHISE TAX BOARD**, PO BOX 1468, SACRAMENTO CA 95812-1468. (Revenue and Taxation Code (R&TC) Section 19504.7)

### Installment Agreement Rejection or Termination

If we deny your request for an installment agreement or terminate your formal installment agreement, we will notify you in writing 30 days prior to the denial or termination of our intent. We will include an explanation for the denial or termination. If you received an Installment Agreement Cancellation Notice, and wish to reset your installment agreement, write to **FRANCHISE TAX BOARD**, PO BOX 942857, SACRAMENTO CA 94257-0511 or call 888-635-0494. If we deny or terminate your installment agreement, you have a right to an administrative review. To stop collection actions, you must send us your written request for an administrative review within 30 days after the date of your denial notice or termination. Collection actions will resume after a determination of the administrative review has been made. If you would like to request an administrative review, see the Taxpayers' Rights Advocate Review section.

### Tax Liens

If we record a notice of state tax lien, you can get it released by paying the total tax liability (including any penalties and accrued interest) for the tax years represented by the lien. We record a certificate of release in the office of the county recorder where we filed the tax lien and/or with the California Secretary of State no later than 40 days after you pay the liability. If you pay by check, the 40-day period does not begin until your entity's financial institution honors the check. (Government Code Sections 7174(c)(1) and 7174(e) (1))

Unfortunately, we sometimes record a notice of state tax lien in error. If this happens to your entity, please write to us and explain why the notice of state tax lien was recorded in error. If we agree with you, we will send a notice to the applicable county recorder's office and to credit reporting companies stating that we filed the tax lien in error. (R&TC Section 21019)

### Bank, Wage, or Other Levies

If we take your property and you believe our action is improper, you have the right to a hearing. To request a hearing, you must contact the Accounts Receivable Management Division within 30 days after we seize your property. At the hearing, you should provide information that demonstrates the need to change or withdraw our levy or stop the sale of your entity's property.

If we seize your bank account in error, and you did not contribute to that error, we may reimburse you for related bank charges. You must file your reimbursement claim within 90 days of the levy. (R&TC Section 21018)

The California Code of Civil Procedure Sections 700.010 through 704.995, and R&TC Sections 18670 and 18671 governs the seizure and sale of real and personal property.

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## Claim for Refund – Time Limit

There is a time limit for to request a refund from us. Generally, you can file a claim for refund until the later of four years from the due date of your return, or one year from the date of overpayment. (R&TC Section 19306)

Generally, you may only request a refund when you have paid the full amount due. For claims filed on or after January 1, 2002, even if you have not yet paid the amount due in full, you can file an informal claim for refund within the time frames indicated above. An informal claim for refund will protect your right to file an appeal with the California State Board of Equalization or to file suit against us in court until you have paid the total amount due. However, amounts paid more than seven years ago cannot be refunded. (R&TC Section 19322.1)

## Internet and Telephone Assistance

Website: [ftb.ca.gov](http://ftb.ca.gov)  
Telephone: 800.852.5711 from within the United States  
916.845.6500 from outside the United States  
TTY/TDD 800.822.6268 for persons with hearing or speech impairments.

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## Collection Cost Recovery Fees

### Collection Fee

We charge a collection fee to entities that require us to take collection action to resolve filing and payment delinquencies. (R&TC Section 19254)

### Lien Fee

We charge a lien fee to entities with delinquent liabilities when we file a state tax lien with the county recorder or the California Secretary of State. (R&TC Section 19221 and Government Code Section 7171)

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## Penalties

### 40 Percent Accuracy Penalty

For tax years that were eligible for tax amnesty (beginning before January 1, 2003), we may impose an accuracy-related penalty if you understated your entity's liability. The penalty is equal to 40 percent of the related underpayment. (R&TC Section 19164)

### 50 Percent Interest-Based Amnesty Penalty

We impose a penalty because your entity had a past-due tax liability that qualified for tax amnesty, but it did not resolve its tax obligations. Check [ftb.ca.gov](http://ftb.ca.gov) for more information. The penalty is equal to 50 percent of the interest that accrued on the balance from the original due date of the tax to March 31, 2005. You can file a claim for refund only on the grounds that the amount of the penalty was not properly computed by us. (R&TC Section 19777.5(a)(1))

## Dishonored Payment Penalty

We impose a penalty if your entity's financial institution does not honor a payment you make to us by check, money order, or electronic funds transfer. For a payment of \$1250 or more, the penalty is 2 percent of the payment amount. For a payment less than \$1250, the penalty is \$25 or the payment amount; whichever is less. (R&TC Section 19134)

## Late Filing Penalty – Partnership and Limited Liability Company

We impose a penalty if you do not file your tax return by the due date. The penalty is \$18 per member/partner for each month or part of the month the tax return is late. The maximum penalty is \$216 per member/partner. We impose the penalty from the original due date of the tax return. (R&TC Section 19172)

## Post-Amnesty Penalty

We impose a penalty when your entity owes new or additional tax on a tax year that qualified for amnesty. The penalty is equal to 50 percent of the interest that accrued on the tax assessment from the original due date of the tax to March 31, 2005. You can file a claim for refund of this penalty only on the grounds that the amount of the penalty was not properly computed by us. (R&TC Section 19777.5(a)(2))

## Information Return Penalty

We assess a penalty for failure to file complete, correct, and timely information returns. The penalty is calculated per payee:

- \$15 if filed 1 to 30 days after the due date.
  - \$30 if filed 31 days to 6 months after the due date.
  - \$50 if filed more than 6 months after the due date.
- (R&TC Section 19183)

## Nonnotification Liability

We assess a liability when the real estate escrow person fails to provide written notice of the withholding requirements to the buyer. The penalty is the greater of \$500 or 10 percent of the required withholding. (R&TC Section 18662 and 18668)

## Intentional Disregard Penalty

We assess a penalty on any person, including the withholding agent, who intentionally disregards the filing or correct information reporting requirements. The penalty assessment is the greater of \$100 or 10 percent of the required withholding. (R&TC Section 19183 and Internal Revenue Code 6721(e))

## Failure to Remit Withholding

We assess a liability for failure to remit withholding. Any person, including the withholding agent, who fails to remit or under remits withholding, is liable for the greater of:

- The amount actually withheld, plus interest.
  - The amount of taxes due from the nonresident, but not more than the amount required to be withheld, plus interest.
- (R&TC Sections 18662 and 18668)

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## Failure to Withhold

We assess a liability for failure to withhold. Any person, including the withholding agent, who fails to withhold or underwithholds withholding is liable for the greater of:

- The amount actually withheld, plus interest.
- The amount of taxes due from the nonresident, but not more than the amount required to be withheld, plus interest.  
(R&TC Sections 18662 and 18668)

## Interest

Interest accrues on unpaid taxes from the original due date of the return until the date we receive full payment. Interest accrues on penalties from the effective date of the penalty until the date we receive full payment. (R&TC Section 19101) To find current and prior interest rates, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **interest rates**, or call the telephone number in the enclosed notice.

**Section B: This applies specifically to limited partnerships and real estate mortgage investment conduits. For information on general partnerships, please see Section A. For information on limited liability companies, please see Section C.**

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## Collection Cost Recovery Fee

### Filing Enforcement Fee

We charge a filing enforcement fee to entities that do not file a tax return by the date indicated on our written demand to file a tax return. (R&TC Section 19254)

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## Penalties

### Accuracy and Fraud Penalty

Under certain circumstances, if you substantially understate your tax liability, we may impose one of the following penalties:

- An accuracy penalty equal to 20 percent of the related underpayment.
- A fraud penalty equal to 75 percent of the related underpayment. (R&TC Section 19164)

### Late Filing Penalty

If you do not file your entity's income tax return by the due date, we impose a penalty of 5 percent 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 percent. We impose the penalty from the original due date of the return. (R&TC Section 19131)

### Demand to File Penalty

If we send you a demand to file your income tax return or to provide us with information, and you do not comply, we impose a penalty of 25 percent of the tax on our assessment before applying any payments or credits. **Therefore, you may owe penalties and interest even if your tax return shows that a refund is due.** (R&TC section 19133) The demand to file penalty is in addition to the 25 percent late filing penalty imposed pursuant to R&TC section 19131.

## Underpayment and Monthly Penalty – Corporation and Partnership

We impose a penalty if you do not pay the total amount due shown on your entity's tax return by the original due date. The penalty is 5 percent of the unpaid tax, plus .05 percent of the unpaid tax for each month or part of a month it remains unpaid - not to exceed 40 months. The maximum penalty is 25 percent of the unpaid tax. (R&TC Section 19132)

**Section C: This applies specifically to limited liability companies.**

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## Fees and Tax

### Filing Enforcement Fee

We charge a filing enforcement fee to entities that do not file a tax return by the date indicated on our written demand to file a tax return. (R&TC Section 19254)

### Limited Liability Company Fee

For tax years beginning on or after January 1, 2007, every LLC subject to the LLC annual tax shall also pay an annual fee based on total income from all sources derived from or attributable to California. The LLC fee is no longer based on total income from worldwide sources. We treat the annual fee like a tax for purposes of assessment, collection, and penalties. (R&TC Sections 17941 and 17942)

### Nonconsenting Nonresident Member's Tax

Every nonresident individual member or foreign entity member must sign the Limited Liability Company's List of Members and Consents (FTB 3832), and return it with Form 568 (Limited Liability Company Return of Income). If a member does not sign the List of Members and Consents, the company must pay tax on the member's distributive share of income at the highest marginal rate. We consider any amount the company pays as payment from the member. (R&TC Section 18633.5)

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## Penalties

### Accuracy and Fraud Penalty

Under certain circumstances, if you substantially understate your tax liability, we may impose one of the following penalties:

- An accuracy penalty equal to 20 percent of the related underpayment.
- A fraud penalty equal to 75 percent of the related underpayment. (R&TC Section 19164)

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## Late Filing Penalty – Limited Liability Company

We impose a penalty if you do not file limited liability company returns by the extended due date or if the returns fail to contain the required information (incomplete). For returns filed before January 1, 2011, the penalty is \$10 per member for each month or part of the month the return is late or incomplete, not to exceed five months. For returns with original due dates on or after January 1, 2011, for taxable years beginning on or after January 1, 2010, the penalty is \$18 per member for each month or part of the month that the failure continues, but not to exceed 12 months. The maximum penalty is \$216 per member. We impose the late filing penalty in addition to the delinquent penalty. (R&TC Sections 18633.5 and 19172)

## Demand to File Penalty

If we send you a demand to file your income tax return or to provide us with information, and you do not comply, we impose a penalty of 25 percent of the tax on our assessment before applying any payments or credits. **Therefore, you may owe penalties and interest even if your tax return shows that a refund is due.** (R&TC Section 19133) The demand to file penalty is in addition to the 25 percent late filing penalty imposed pursuant to R&TC Section 19131.

## Estimated Tax Penalty – LLCs with Form 568 Requirement

We assess a penalty if your LLC fails to estimate and pay its annual fee by the 15th day of the 6th month of the tax year. The penalty amounts to 10 percent of the unpaid fee. We will not assess this penalty if your LLC pays a fee that equals or exceeds the amount it paid for the previous year. This provision affects tax years that begin on or after January 1, 2009. (R&TC Section 17942)

## Secretary of State Penalty

The California Secretary of State imposes a penalty on corporations and limited liability companies that do not timely file their Statement of Information with the Secretary of State. (Corporations Code Sections 1502, 2117, 6210, 8210, 9660, and 17060)

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. (R&TC Section 19141 and Corporations Code Sections 2204, 2206, 6810, 8810, 9690, 17651(b), and 17653)

You must file the required Statement of Information with the Secretary of State as follows:

- **Domestic Stock Corporation:** Due within 90 days of filing the original Articles of Incorporation and every year thereafter.
- **Domestic Nonprofit Corporation:** Due within 90 days of filing the original Articles of Incorporation and every two years thereafter. However, credit unions and consumer cooperative corporations are required to file every year instead of every two years.
- **Foreign Corporation:** Due within 90 days after the filing of its initial Statement and Designation and every year thereafter.
- **Limited Liability Company:** Due within 90 days of filing the original Articles of Organization or Application for Registration and every two years thereafter.

These statements are required every one or two years (as applicable to your entity type) even if there are no changes to your information. Contact the Secretary of State with questions regarding filing the statements or assessment of the penalty at:

**STATEMENT OF INFORMATION UNIT  
ATTENTION PENALTY  
CALIFORNIA SECRETARY OF STATE  
PO BOX 944230  
SACRAMENTO CA 94244-2300  
916.657.5448**

Contact us with questions regarding payment of the penalty at the numbers shown on this insert or at [ftb.ca.gov](http://ftb.ca.gov).

## Late Payment Penalty – Limited Liability Company

We impose a late payment penalty if your limited liability company does not timely pay the following:

- Annual tax by the 15th day of the fourth month of its taxable year.
- Fee or nonconsenting nonresident members' tax by the 15th day of the 4th month after the end of its taxable year.

The failure-to-pay penalty begins at 5 percent of the total unpaid tax or fees. Every month or part of a month the amount is not paid the penalty increases 0.5 percent. The penalty continues to increase for 40 months, maximizing at 25 percent. (R&TC Section 19132)

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## Rights as a Taxpayer

The California Taxpayers' Bill of Rights (R&TC Sections 21001-21028) requires that we adequately protect the rights, privacy, and property of all California taxpayers during the process of assessing and collecting taxes. Our goal is to make certain we protect your rights. We want you to have the highest confidence in the integrity, efficiency, and fairness of our state tax system. FTB 4058, California Taxpayers' Bill of Rights, includes information on state taxpayers' rights and how to request written tax advice from us. Get FTB 4058 at [ftb.ca.gov](http://ftb.ca.gov) or call us at 800.338.0505 (select Personal Income Tax), or mail us at FRANCHISE TAX BOARD, PO BOX 942840, SACRAMENTO CA 94240-0040.

### Taxpayers' Rights Advocate Review

You may contact the Taxpayers' Rights Advocate if you have an ongoing state income tax problem that you have been unable to resolve through normal channels. Contacting the Taxpayers' Rights Advocate, however, is not an appeal and does not extend the period of time for filing one. You have the right to an independent administrative review if we notify you that we may levy your income or assets, file or record a notice of lien, or reject your request for an installment agreement. You must submit your request for review within 30 days of the date of Final Notice Before Levy or within 30 days of the date of the Notice of State Tax Lien. (R&TC Sections 19008(e), 19225, and 21015.5) You may contact Executive and Advocate Services for additional information or to submit your request for review.

Call: 800.883.5910, fax: 916.843.6022, or mail: Executive and Advocate Services MS A381, PO Box 157, Rancho Cordova, CA 95741-0157.