



State of California
Franchise Tax Board

Audit / Protest / Appeals

(The process)

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Franchise Tax Board Mission

Our mission is to help taxpayers file tax returns timely, accurately, and pay the correct amount to fund services important to Californians.

Statement of Principles of Tax Administration

The primary function of Franchise Tax Board is to administer the Revenue and Taxation Code. Tax policy for raising revenue is determined by elected officials.

It is our duty to correctly apply the laws enacted by the Legislature; to determine the reasonable meaning of various Code provisions, and to perform in a fair and impartial manner.

Interpretation of the Code is the heart of administration. It is the responsibility of each person in the Franchise Tax Board, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when the true meaning of the statute is ascertained and applied.

We must also apply the law in a reasonable and practical manner. Issues are raised when they have merit, and are never raised arbitrarily or for trading purposes. Employees are encouraged to raise meritorious issues. We also exercise care not to raise an issue or to ask a court to adopt a position inconsistent with an established Franchise Tax Board position.

We believe in treating our taxpayers with courtesy and considerateness. As such, administration should be reasonable, vigorous, and timely. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

MyFTB

MyFTB provides online tax information and services to individuals, business representatives, and tax preparers. With a MyFTB account, you can view:

- › Account balances, wage and withholding information, estimated payments, and other credits.
- › Images of tax returns, notices, and correspondence.
- › Contact information.
- › A list of authorized representatives.

Online services include:

- › Update contact information.
- › Update your relationship with your representatives.
- › File a Power of Attorney (POA) Declaration.
- › Protest a *Notice of Proposed Assessment*.
- › Use tax calculators.
- › Secure Chat with an FTB representative about confidential matters.
- › Send a secure message with attachments.
- › Choose to receive an email when we send you a notice or correspondence by US mail.

To register for a MyFTB account, go to ftb.ca.gov and select **Register**. For more information, go to ftb.ca.gov and select **Learn More**.

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Introduction

Our tax system relies on self-assessment. It is your responsibility to accurately complete your return and report your tax liability on your tax return. Under the authority of the California R&TC, we developed audit programs to verify the correct amount of tax owed to the state of California. Our goal is to complete an audit within two years of our initial contact with you and four years from the date you filed your tax return, or within a reasonable time period, determined by audit circumstances.

Audit Objectives

We determine the correct amount of tax and applicable penalties and interest based on an analysis of relevant statutes, regulations, and case law applied to your facts and circumstances.

Audit Process

- › Identify potential tax issues.
- › Gather, evaluate, and document information.
- › Determine the correct tax amount and applicable penalties and interest under the law.

Each audit follows standards and resource considerations for:

Legality - Ensure audit activities and conclusions agree with established laws and regulations.

Objectivity - Examine all relevant, available facts fairly, and without bias.

Timeliness - Conduct and complete audits in a timely manner with a minimum of inconvenience to taxpayers.

Supportability - Adequately support recommendations with facts and law.

Our Auditors' Standard of Excellence

- › Correctly apply and administer the tax laws.
- › Conduct audits:
 - › In accordance with the law.

- › With sound administration, timeliness, courtesy, and respect.
- › With minimal burden and cost to you.

Before the Audit

When we receive your tax return, we must determine whether we should accept your tax return as filed, or open an audit. In order to make this decision, our auditors review the following items:

- › Federal and state tax returns.
- › Prior audit history.
- › Income exclusions and deductions.
- › Public information.
- › Internal Revenue Service data.

Audit Procedures

Desk or Field Audit

We may conduct desk or field audits. Most often, we perform a desk audit through correspondence and secure email. In contrast, a field audit takes place at your residence, place of business, or another location that facilitates the examination of your tax documents. The auditor reviews the complexity of your tax return and chooses the most effective and efficient manner to conduct the audit.

Field Audit Location

A field audit generally takes place at the location of the original books, records, and source documents. In the case of a sole proprietorship or business entity, this location is usually your place of business. We can conduct field audits at an FTB office, or your representative's office, if you do not have the appropriate work area or time available at your location.

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Right to Representation

You have the right to have someone represent you during an audit, for example, a certified public accountant, enrolled agent, tax attorney, etc. To designate a representative, you must have a POA Declaration on file, FTB 3520 PIT, *Individual or Fiduciary Power of Attorney Declaration* or FTB 3520 BE, *Business Entity or Group Nonresident Power of Attorney Declaration*. You or your designated representative can submit your completed POA online using MyFTB. If you or your designated representative do not have access to MyFTB, a paper copy of the Declaration may be completed and provided to the auditor. For more information and specific instructions on how to complete and file a POA Declaration, go to ftb.ca.gov/POA. For more information on MyFTB, go to ftb.ca.gov and search for **MyFTB**.

Initial Contact Letter

The letter:

- › Explains we selected your tax return for audit.
- › Identifies the issues under examination. (For field audits, see Audit Plan below.)
- › Provides the names and phone numbers of the auditor, supervisor, and manager.
- › Requests your contact information or the name and contact information of your designated tax representative.

For field audits, the initial contact letter also asks you to provide information to schedule an audit appointment. When appropriate, the auditor may enclose an Information Document Request(s) with the initial contact letter.

Audit Appointments

The auditor works with you to schedule convenient times and locations for your audit appointments. Throughout the audit, the auditor reviews deadlines with you and makes adjustments if needed to keep the audit moving towards timely completion.

Audit Plan

This plan establishes open lines of communication to promote understanding of commitments made and agreements reached between taxpayer and auditor. An audit plan is more commonly used in Multistate Audit (MSA) cases.

We strive to:

- › Provide a road map of how the audit begins, progresses, and ends.
- › Identify key potential audit issues.
- › Minimize burden, cost, and intrusiveness to you.

We encourage your participation and input during the development of the audit plan, which may reduce your concerns about what to expect during the audit.

Your participation contributes to:

- › Efficiently managing fact gathering and issue analysis.
- › Establishing deadlines and solving problems timely.
- › Providing solutions to issues, such as alternative supporting documents.

Opening Conference

The auditor may choose to hold an opening conference or you may request one.

This conference sets the groundwork necessary to conduct an effective and efficient audit. It establishes lines of communication, and helps build a partnership between you and the auditor. During the opening conference, the auditor will:

- › Introduce the audit participants.
- › Develop a general agreed-upon audit plan.
- › Discuss audit processes and procedures.
- › Develop expected time frames with you.
- › Establish a rapport with the individuals involved in the audit.
- › Discuss Information/Document Requests, Audit Issue Presentation Sheet, and Position Letter.

The auditor's supervisor may attend as needed or at your request.



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Information Document Requests

Information Document Requests (IDRs) serve to gather the facts and documents necessary to understand and verify the items you reported on your tax return. These written requests provide a record of communication between you or your representative and the auditor, and avoid possible misunderstandings that could result from verbal discussions. The auditor will make sure you or your representative:

- › Understand our requests.
- › Provide the necessary information to substantiate the items you reported on your tax return.

Failure to respond to an IDR does not relieve you of your responsibility to substantiate the items reported on your tax return. When the requested information is not readily available, you should discuss alternatives and a reasonable time frame to provide the information. If you fail or refuse to provide information timely, we may issue a Formal Demand.

The auditor maintains and updates a master IDR log and will provide a copy to you upon request.

Audit Issue Presentation Sheet

An Audit Issue Presentation Sheet (AIPS) details adjustments we propose to make to your reported tax. An AIPS includes a discussion of the facts, the relevant law, and the proposed adjustment. When examining several issues, the auditor may choose to prepare an AIPS for each issue upon completion of the examination of that particular issue. As such, you may receive several AIPS throughout the audit process.

The auditor maintains and updates a master AIPS log, and will provide a copy to you upon your request.

Status Conference

If needed, we will hold a status conference to:

- › Review the audit plan.
- › Discuss how the audit is progressing.

- › Efficiently manage the fact and information gathering.
- › Work with you to solve problems timely.

Closing Conference

We will hold a closing conference to:

- › Discuss any items not already covered in status conferences.
- › Review the final audit results.
- › Outline the technical review process.
- › Explain how we notify you of any changes made during the review process and how we issue notices.
- › Provide estimates of time frames for review, audit closure, and notices.

Depending on the complexity of the audit, the auditor may choose to hold the closing conference in person, or by phone, or mail the above issues in a closing letter.

Resolution of Disputes

At any time during the audit process, you can contact the auditor's supervisor or manager to express your disagreement with any proposed tax changes and to work toward a resolution. In accordance with California regulations, FTB provides the names and phone numbers of the auditor's supervisor and manager in our initial contact letter.

Conclusion of the Audit

At the conclusion of your audit, we will provide you with the results in writing, and issue one or more of the following notices¹ as applicable:

- › A *No Change* letter that states we accepted your tax return as filed and you do not owe additional tax.
- › A *Notice of Proposed Assessment* that proposes the additional tax based on the audit results.

¹ You or your designated representative can view notices online in MyFTB.



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- › A *Notice of Overassessment* or a *Notice of Proposed Overassessment* that indicates the refund/credit we may owe you.
- › A *Notice of Proposed Adjusted Carryover Amount* that proposes reduction of a carryover item which did not result in any additional tax for the tax year examined.

If you do not agree with our proposed adjustments, you may be able to file a protest or appeal. The auditor informs you of your protest or appeal rights, as applicable, either in a closing letter or during the closing conference. Written information about your protest or appeal rights will also accompany the audit notice, when applicable.

After the Audit

If you receive a *Notice of Proposed Assessment* and agree with the proposed change to your tax liability, there are various payment options available. Our free online Web Pay allows you to authorize payment from your bank account. For more information, go to ftb.ca.gov and search for **payment options**. For a fee, you can pay using a major credit card; call 800.2PAY.TAX (800.272.9829) or go to officialpayments.com.

We will update your account to reflect the audit changes. Do not submit amended tax returns to correct your account. Submitting these forms will delay closure of the audit.

Interest Charges

If we propose additional tax in a *Notice of Proposed Assessment*, interest accrues on the tax from the original due date of the tax return for that tax year. Applicable interest will also accrue on certain penalties, if assessed. If you pay the balance due as reflected in the notice within 15 days of the notice, no additional interest will be assessed. You do not lose your right to protest the proposed audit adjustments if you make a payment. If we withdraw or reduce the amounts on our notice following your protest or appeal, we will pay interest on the tax deposit or on any overpaid amount as the law allows.

Filing a protest or appeal without making payment of the additional tax will not stop the accrual of interest. It may take several months to resolve your protest or appeal and the accrual of interest will not stop during this period. However, to limit the accrual of interest, you may make payments during a protest and/or appeal which would be held in suspense pending the outcome of the protest or appeal.

Notice of Proposed Assessment Protest Process

If you disagree with our proposed assessment, you or your designated representative (with a POA Declaration) can submit a protest online through MyFTB or a written protest can be filed with us by the **protest by** date shown on the front of the *Notice of Proposed Assessment*. If you do not submit your protest by this date, the assessment will become final and we will bill you for the amount due, including penalties and interest.

Protest Letter

Your written protest must clearly state what you are protesting and must be submitted online, mailed with a postmark date, or faxed by the **protest by** date shown on the front of the *Notice of Proposed Assessment*.

Your protest letter must include the following:

- › Your name and address.
- › Your social security, taxpayer identification number, or business entity number.
- › The amounts and years you are protesting.
- › A statement of facts.
- › Your explanation of why you believe our assessment is wrong.
- › Evidence/documentation that substantiates your position.
- › Your signature or your authorized representative's signature.
- › Your daytime phone number or your authorized representative's name, daytime phone number, and mailing address.
- › A copy of the *Notice of Proposed Assessment* we sent you.
- › If you want someone to represent you during the protest process, complete FTB 3520 PIT, *Individual or Fiduciary Power of Attorney Declaration* or FTB 3520 BE, *Business Entity or Group Nonresident Power of Attorney Declaration*. Go to ftb.ca.gov/POA for specific instructions on how to complete and file this Declaration.

Note: If you submitted a POA Declaration during the audit and your authorized representative will represent you through the protest process, then you may not need an additional or new POA Declaration.



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If you registered for MyFTB, you may submit your protest online. If your designated representative registered for MyFTB and has a POA Declaration for the years in question, then they may also submit the protest online through MyFTB. For more information on MyFTB, go to ftb.ca.gov and search for **MyFTB**.

If you wish to submit your protest by mail or fax, send it to:

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

Fax: 916.364.2754

The Protest Process

The protest process is informal. It is the first step in the administrative and judicial review process where you can dispute proposed audit adjustments. It provides an opportunity for you to discuss your concerns with an FTB staff member assigned to resolve your protest, known as a hearing officer, and provide any additional documents or information to substantiate your position. The hearing officer reviews your position and information to ensure the changes made during the audit were correct and in compliance with the law.

After we receive your protest letter, we will mail you a letter to confirm receipt, this generally takes 30 days from receipt of the protest.

The hearing officer determines the correct amount of tax based on the information presented and the law. The protest process does not include negotiating the settlement of tax. The Legal Division's Settlement Bureau is responsible for settling tax, penalties, and interest when you enter the Settlement Program. Detailed information about requesting settlement and the settlement process can be found in FTB Notice 2007-2 at ftb.ca.gov.

You have the right to an oral hearing on a protest. However, there is no requirement you have an oral hearing on a protest, except at your request. If you wish to have an oral hearing, you must include the request in your protest letter. You or your authorized representative may attend the oral hearing to present your position on the audit issues and provide additional documentation or supporting tax law. We generally conduct hearings at an FTB field office nearest to you, and we work with you to schedule the hearing at a mutually convenient date and time. Hearings may

also be conducted by phone or video conference.

After we consider your protest and make a final decision, we will send you a *Notice of Action* (NOA) that documents our findings to: affirm, revise, or withdraw the proposed assessment.

If you agree with the change to your tax liability as shown on the NOA, there are various payment options available. Our free, online Web Pay allows you to authorize payment from your bank account. For more information, go to ftb.ca.gov and search for **payment options**. For a fee, you can pay using a major credit card. Call 800.2PAY.TAX (800.272.9829) or go to officialpayments.com.

If you disagree, you may appeal to the Office of Tax Appeals (OTA) within 30 days of the date of the NOA.

Office of Tax Appeals Appeal Process

OTA is a separate government agency that handles all personal and business entity income tax appeals. For more information on how to file an appeal, go to ota.ca.gov.

When you file an appeal within 30 days of the date of the NOA, you are given an opportunity to provide additional supporting information and file a brief in support of your position. FTB is given the same opportunity to sustain its position. You may also request an oral hearing before OTA.

Following OTA's consideration of the law and facts in your appeal, it will issue a decision in writing and either you or FTB may petition for a rehearing within 30 days of the decision. An OTA petition for rehearing will only be granted if the OTA determines there are grounds for a rehearing, such as irregularity in the proceedings, which prevented the party making the petition for rehearing from having a fair consideration of its case or an error in law. If no petition for rehearing is filed, OTA's decision becomes final in 30 days.

If FTB fails to give you notice on a claim for refund within six months after you file your claim, you may consider your claim disallowed and file an appeal with OTA. If no Notice of Action has been issued by FTB and you file an appeal with OTA before this six-month period has elapsed, OTA does not yet have jurisdiction to consider the matter as an appeal.

If you do not file an appeal within the prescribed time frame, the tax, penalties,

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and interest become due and payable. However, you may pay the balance due and file a claim for refund within the applicable statute of limitations; generally, it is one year from the date of payment.

You may contact OTA by mail at the following address:

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

Superior Court Action

If you appealed FTB's denial of your claim for refund and do not agree with the OTA's decision, you may file an action against FTB in California Superior Court within 90 days. A Suit for Refund on a Residency case must be filed within 60 days. Generally, a taxpayer must first pay any tax amounts owed before bringing **an action against the state**, but there are some exceptions. (R&TC Section 19381).

However, if you do not agree with OTA's decision and the tax remains unpaid, you can pay the tax liability and file a claim for refund. If FTB denies your claim, you may then file an action against FTB in California Superior Court within 90 days. After the California Superior Court makes a decision, either you or FTB may file an appeal of the decision to the California Court of Appeal.

Taxpayers' Rights Advocate's Office

The Taxpayers' Rights Advocate's Office is available to provide an independent review of your tax issues that have continued to go unresolved through normal channels. However, contacting us is not an appeal or protest and does not extend the period of time for filing one. Our goal is to protect your rights, to resolve your tax problems promptly and fairly, and to ensure the highest confidence in our state tax system.

Your Rights as a California Taxpayer

You have rights as a taxpayer when working with us. The following publications explain your rights. To view or download these publications, go to **ftb.ca.gov/Forms** and search for **4058** and **4058C** or call 800.338.0505 (enter form code **944**, when instructed).

You may also write to us at:

TAX FORMS REQUEST MS D120
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

FTB 4058 - California Taxpayers' Bill of Rights Information for Taxpayers, provides a basic overview of your rights and includes the major provisions of the 1988, 1997, and 1999 California legislation.

FTB 4058C - California Taxpayers' Bill of Rights, An Overview, describes the R&TC provisions of your rights.

- › If you have not been able to resolve a problem during prior contacts with us, or you are suffering a hardship as a result of our action, you may contact Executive and Advocate Services by:

Web: **ftb.ca.gov**

Phone: 800.883.5910

Fax: 916.843.6022

Mail: EXECUTIVE AND ADVOCATE SERVICES MS A381
FRANCHISE TAX BOARD
PO BOX 157
RANCHO CORDOVA CA 95741-0157

- › If you have comments about how we can provide better service to the taxpayers of California, go to **ftb.ca.gov** and search for **advocate** or **comment**.

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Contact Us

Web: **ftb.ca.gov**

Phone: 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

For general information:

taxes.ca.gov