



STATE OF CALIFORNIA  
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**FTB NOTICE 2006-6**

**October 27, 2006**

**SUBJECT: Processing of Docketed Protests**

A taxpayer that receives a Notice of Proposed Deficiency Assessment may request an administrative review by the department of that proposed assessment by filing a "protest" as provided for in Revenue and Taxation Code section 19041. Protests are assigned to a hearing officer either in the Audit Division or the Legal Department. Protests assigned to the Legal Department are designated as "docketed protests." The purpose of this notice is to notify the public of recently revised internal procedures for processing docketed protests. These internal procedures are intended to reduce the length of time necessary to process docketed protests.

This Notice supersedes FTB Notice 99-1 (March 3, 1999).

**The Goal**

The goal of the internal procedures is to have the department's legal staff evaluate the merits of the protest of the proposed deficiency (and any included claims for refund), conduct a hearing if requested, and issue a Notice of Action within 24 months or less of the filing date of the protest for those docketed protests filed on or after July 1, 2006. Clearly some docketed protests may take longer to conclude, but ordinarily the timeframes for closure of a docketed protest should not need to be extended.

**Categorizing Docketed Protests**

To facilitate reducing the length of time necessary to process docketed protests, staff will categorize each protest filed after July 1, 2006, according to the following guidelines:

- **12-Month:** The docketed protest involves only a legal issue or issues for which the department's litigating position is established in a Legal Ruling, an FTB Notice, a Board of Equalization decision, or a judicial decision. If any factual development is necessary, it will typically be specific and limited in scope.
- **18-Month:** The docketed protest involves a limited number of legal issues, some factual development is required, or the department's litigating position is not established with respect to any issue included in the case.

- **24-Month:** The docketed protest involves more than a limited number of legal issues or legal issues of greater complexity, factual development probably will be required, or the department's litigating position is not established with respect to any issue included in the case.

The new timeframes do not apply to cases in existing inventory filed before July 1, 2006, but special efforts will continue to be made to take action on these cases as soon as possible.

## **Staff Procedures**

### Case Development Plan

For cases in the 18-month and 24-month time frame, Legal Department staff has been instructed to contact taxpayers and taxpayer representatives in each assigned docketed protest to establish a case development plan. Staff is to work together with the taxpayer to design a plan to accomplish all necessary factual development, if required, and conduct any requested hearing within a timeframe that will allow the processing of a docketed protest to be completed within the above timeframes. A 12-month case by its nature will normally not require a case development plan.

### Initial Contact and Processing Docketed Protests

For docketed protests falling under the new timeframes, staff has been instructed to make initial contact with the taxpayer or the taxpayer's representative within 120 days, or less, of the filing of the protest. At the least, this initial contact will take the form of an initial letter with pertinent schedules and, if applicable, any preliminary information/document requests, together with a request to establish an agreed hearing date if a hearing has been requested. Granting requests for extensions of time to respond to information/document requests, if needed, will be kept to a minimum in order to complete processing of the docketed protest in a timely manner. Staff will endeavor to substantively follow-up as necessary on all information/document requests within 30 days of receipt of requested information.

### Secure Electronic Communication

Secure Electronic Communication (SEC) is available as a means to communicate with assigned staff during the protest process. This is an email system that allows the exchange of confidential case-related documents without compromising taxpayer privacy. Taxpayers interested in using SEC should contact the department to initiate the registration process. An SEC fact sheet, which provides more information about SEC and the system requirements, is included with the first communication from the department acknowledging receipt of the protest.

### Scheduling The Docketed Protest Hearing

Ordinarily, confirmation of the agreed hearing date will be made in response to the initial contact letter. Hearings will be scheduled at an office of the department that is convenient to the taxpayer when possible or, when appropriate, may be held by electronic means, including videoconferencing and telephone.

### **Staff Procedures for Docketed Protests Regarding the Introduction of Issues Not Raised in the Protest Letter**

Revenue and Taxation Code section 19041 provides that a written protest may be filed within 60 days after the mailing of each Notice of Proposed Deficiency Assessment. The protest shall "specif[y] . . . the grounds upon which it is based." Issues that were not raised by the taxpayer or tax representative in writing within the 60-day protest limitation period ordinarily will not be considered unless these issues can be considered and resolved within the above timeframes for processing docketed protests. Taxpayers or taxpayer representatives are not precluded from raising new issues. However, they may have to raise those issues by filing a claim for refund, which will be addressed separately from the protest or in an appeal to the State Board of Equalization from action on the protest.

### **Request for Administrative Settlement Consideration**

Once a protest hearing has been held and a determination has been made, docketed protests ordinarily will not be considered for admission into the administrative settlement program. Review of a request for consideration by the administrative settlement program will ordinarily be deferred until the Notice of Action has been issued and an appeal to the Board of Equalization has been filed.

### **Deferral of Docketed Protests**

Staff has been instructed that docketed protests may be deferred, or may not be originally docketed, for the following reasons:

- (1) The file has been referred back to the field because--
  - (a) the taxpayer has not supplied information requested at audit;
  - (b) the Notice of Proposed Deficiency Assessment was issued because of an impending expiration of the statute of limitations such that the audit was not completed; or
  - (c) the protest letter has raised issues that were not considered during the audit.

- (2) New issues have been raised that were not set forth as a ground or grounds in the protest letter. However, although the new issues cannot be resolved in the established timeframes, management has determined that it is appropriate to resolve the new issues during the docketed protest process.
- (3) Other years are pending before the State Board of Equalization or the courts with respect to the same taxpayer involving the same issue or issues, or another case involving another taxpayer is pending with respect to an issue where there is no existing precedent and the decision in the other case is expected to be controlling with respect to the protest. In such cases, a deferral normally will be conditioned upon the taxpayer and the department agreeing that the case upon which the deferral is based is expected to be controlling.
- (4) A petition in bankruptcy has been filed and the automatic stay has not been lifted.
- (5) A dispute is pending between the taxpayer and the Internal Revenue Service that is, or may be, central to the determination of the state tax liability.
- (6) The case has been referred to the department's administrative settlement program.
- (7) There is a request for consideration by the three-member Franchise Tax Board of a petition under Revenue and Taxation Code section 25137.
- (8) The case has been referred to the Special Investigations Section of the Franchise Tax Board.

Staff has been instructed to expedite any case that has been in deferred status, once that case is returned from deferred status, and to give such cases priority so that every effort is made to complete those cases within the above timeframes. The period of time during which a case was in deferral will not be taken into account in computing the time the case was in a docketed protest status.

### **Drafting Information**

The principal author of this notice is Frederick W. Campbell-Craven of the Franchise Tax Board, Legal Department. For further information regarding this notice, contact Mr. Campbell-Craven at the Franchise Tax Board, Legal Department, P. O. Box 1720, Rancho Cordova, CA 95741-1720.