



State of California
Franchise Tax Board

Legal Division MS A260
PO Box 1720
Rancho Cordova, CA 95741-1720
ftb.ca.gov

tel 916.845.3306
fax 916.845.3648

chair **John Chiang** | member **Jerome E. Horton** | member **Michael Cohen**

11.07.14

FTB NOTICE 2014-02

Subject: Procedures for reviewing the books and records of a taxpayer that was awarded a California Competes Tax Credit (CCC) in accordance with Revenue and Taxation Code sections 17059.2 and 23689.

Purpose: The purpose of this Notice is to inform taxpayers of the procedures the Franchise Tax Board (FTB) will use to review the books and records of taxpayers that are awarded a CCC by the Governor's Office of Business and Economic Development (GO-Biz).

Background: Subdivision (d) of Sections 17059.2 and 23689 of the Revenue and Taxation Code require the FTB to review the books and records of all taxpayers awarded a CCC, other than taxpayers that are small businesses. The purpose of the review is to ensure compliance with the written agreement between the taxpayer and GO-Biz. These statutory provisions also authorize FTB to review the books and records of small business taxpayers awarded a CCC. FTB will review the books and records of small business taxpayers when, in the sole discretion of the FTB, a review of those books and records is necessary. The review of books and records to determine contract compliance is not an audit of tax returns. The contracts negotiated between Go-Biz and the taxpayers incorporate the attached review procedures by reference to this Notice.

Procedures: The specific procedures FTB will use to conduct a review of a taxpayer's books and records to evaluate compliance with an agreement entered into pursuant to Revenue and Taxation Code sections 17059.2 and 23689 are attached.

For additional information concerning the CCC please visit FTB.CA.GOV and search "CCC."

The principal author of this notice is Kristen E. Kane of the Franchise Tax Board, Legal Division. For further information regarding this notice, contact Mrs. Kane at P. O. Box 1720, Rancho Cordova, CA 95741-1720.

**PROCEDURES FOR REVIEW OF BOOKS AND RECORDS
FOR THE CALIFORNIA COMPETES TAX CREDIT**

(a) General.

(1) The purpose of the review is to determine if the taxpayer is in compliance with the written agreement (herein referred to as contract) with the Governor's Office of Business and Economic Development (GO-Biz) with respect to the California Competes Tax Credit as provided in Revenue and Taxation Code Sections 17059.2 / 23689.

(2) In general, the review must be completed in a timely manner to allow Franchise Tax Board to provide timely information to GO-Biz that the taxpayer is, or is not, in compliance with the contract. A review of the books and records may take place once or multiple times depending on the terms of the contract.

(3) Power to Review. Franchise Tax Board has the power to review the books and records of the taxpayer to ensure that the taxpayer is in compliance with the contract as set forth in Revenue and Taxation Code Sections 17059.2(d) / 23689(d).

(4) Taxpayer's Duty to Respond. A taxpayer or the taxpayer's representative has the duty to make a timely and complete response to requests for information or documents by the Franchise Tax Board that are relevant and reasonable or provide an explanation as to why additional time is necessary to respond or state why the request is not relevant or reasonable.

The reviewer and the taxpayer or the taxpayer's representative should work together to make information requests relevant and reasonable including the use of alternative sources of information in order to substantiate the facts and circumstances of the issue under review. For example, the reviewer and the taxpayer or the taxpayer's representative may agree to a procedure in which the reviewer would draft an information request, discuss the information request with the taxpayer or the taxpayer's representative, and the reviewer would take into account such comments before issuing the formal information request. The reviewer shall be a Franchise Tax Board audit staff member.

(5) Duty of Franchise Tax Board Staff. Franchise Tax Board staff has the duty to:

(A) Conduct the review of the books and records, in a reasonable, practical manner consistent with applicable California law.

(B) Make relevant and reasonable information requests related to the contract terms or milestones under examination:

1. The reviewer shall explain the relevance or reasonableness of the request when asked to do so,
2. Requests for information are relevant if the requested information is germane to or applicable to the contract terms or milestones, and
3. The reviewer and the taxpayer or the taxpayer's representative should work together to make information requests relevant and reasonable including the use of alternative sources of information in order to substantiate the facts and circumstances of the contract terms of milestones under review.

(C) Timely analyze information received or responses submitted and to request additional relevant information.

(6) Duty to Maintain Records. Generally, it is the taxpayer who will be in possession or control of the necessary information, documents, books and records and who will have the knowledge regarding the circumstances of the relevant activities related to its business and the terms of the contract. The inability, or failure, of a taxpayer to supply requested relevant information in support of the contract terms under review, may result in the Franchise Tax Board notifying GO-Biz that there is a possible breach. A taxpayer has a duty to maintain relevant records and documents pursuant to normal accounting or regulatory guidelines set forth in the Revenue and Taxation Code as applicable to the contract items under review. The Franchise Tax Board recognizes that taxpayers are sometimes not able to respond to each and every request for information. The reviewer should work with the taxpayer to resolve difficult information requests.

(7) Application of Time Limits. These guidelines are intended to provide for an orderly process that leads to a quick conclusion to the review.

(A) The Franchise Tax Board recognizes that some Information Document Requests can be responded to in less than 30 days while other responses will require time in excess of 30 days. The reviewer has discretion to take into account the taxpayer's facts and circumstances in establishing the original response time or to allow reasonable extensions of time to respond.

(B) The reviewer shall take into account responses to Information Document Requests received after the established date for a response, prior to the closure of the review.

(b) Reviews.

(1) Type of Review. The Franchise Tax Board staff will determine if the review will be a field review or a desk review based on the size of the business, dollar amounts involved and complexity of the contract terms and which type of review will be more conducive under the circumstances. The taxpayer may

offer input on the determination of the type of review for the Franchise Tax Board staff to consider.

(2) Field Review.

(A) Definition of "Field Review". A "field review" is a review that takes place at the taxpayer's place of business or some other location that is not an office of the Franchise Tax Board. For field reviews, "initial contact" is the date of the first meeting between the taxpayer and/or the taxpayer's representative and a member of the Franchise Tax Board review staff.

(B) Location of Field Review. A field review will generally take place at the location where the taxpayer's original books, records, and source documents pertinent to the review are maintained. In the case of a sole proprietorship or business entity, this will usually be the taxpayer's principal place of business. Field reviews can be moved to a Franchise Tax Board office, or the office of the taxpayer's representative, if the taxpayer (or the taxpayer's representative) does not have the appropriate work area available or the taxpayer or the taxpayer's representative does not have time available for the review to be conducted at their location, or as circumstances of the taxpayer warrant.

(C) Site Visitations. Regardless of where the review takes place, the Franchise Tax Board staff may visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as asset verification. The Franchise Tax Board staff generally will visit for these purposes on a normal workday of the Franchise Tax Board during normal business hours.

(D) Requests by Taxpayers to Change Place of Review. The Franchise Tax Board staff will consider, on a case-by-case basis, written requests by taxpayers or their representatives to change the place that the Franchise Tax Board has set for a review. Reasonable requests to move a review to another of the taxpayer's offices or to the taxpayer's-representative's office will be granted unless doing so would impose an unreasonable burden to the Franchise Tax Board staff or significantly interrupt the review schedule.

If the taxpayer requests that the review be conducted at a Franchise Tax Board office, or the office of the taxpayer's representative, it is the taxpayer's responsibility to deliver all books and records necessary for the review.

(3) Definition of "Desk Review". A "desk review" is a review conducted primarily through mailed correspondence. For desk reviews, "initial contact" is the date of the first letter to the taxpayer regarding the review.

(4) Time of the Review. The Franchise Tax Board may schedule the day or days of the review during a normally scheduled workday or workdays of the Franchise Tax Board, during the Franchise Tax Board's normal business hours.

The Franchise Tax Board may schedule reviews throughout the year, without regard to seasonal fluctuations in the businesses of particular taxpayers or their representatives. However, the Franchise Tax Board will work with taxpayers or their representatives to try to minimize any adverse effects in scheduling the date and time of the review.

(5) The following procedures may be used either in field or desk reviews depending on the nature of the review.

(A) Opening Conferences. Items to be discussed during the opening conference include, but are not limited to, estimated timeframes to complete the review, the scheduling of future review appointments, discussion of the contract items under review, information document requests, and photocopying.

At the opening conference or via mail if no opening conference is held, the reviewer shall provide a written document stating the name and phone number of the review supervisor or manager.

(B) Review Plan. A written review plan may be drafted as appropriate, if agreed to by the reviewer and the taxpayer, documenting key dates related to conducting the review, identifying key points of the review, or identifying other items discussed during the opening conference. The review plan should be signed by the reviewer and either the taxpayer or the taxpayer's representative. The review plan is considered a guideline for conducting the review and can be amended as circumstances warrant.

(C) Information Document Request (IDR). The Franchise Tax Board may provide a taxpayer an Information Document Request requesting single or multiple documents. As a general rule, response times shall be determined on an IDR-by-IDR basis with a maximum response time of 30 days from the date the IDR was hand-delivered to the taxpayer or the taxpayer's representative by the reviewer or the date mailed by the reviewer.

1. As a general rule, where a reply by the reviewer is appropriate or the reviewer needs additional information, the reviewer will notify the taxpayer or the taxpayer's representative within 30 days of the reviewer's receiving the response to the IDR.

2. Failure to provide a timely and complete response to a request from the Franchise Tax Board for additional information may result in notification to GO-Biz that there is a possible breach. Before informing GO-Biz of a possible breach the reviewer will exercise discretion in a reasonable manner that is appropriate under the relevant circumstances related to that particular review.

(D) Photocopying. The Franchise Tax Board may, require either the submission of relevant photocopied documents, or that relevant information be made available for photocopying, scanning or other electronic reproduction at a specified time and place for the purpose of determining compliance with the agreement with GO-Biz. Photocopying is a benefit to both the Franchise Tax Board and the taxpayer as the photocopy provides objective evidence supporting a contract term under review.

(E) Review Conferences. Conferences may be held as necessary throughout the review to discuss the status of IDRs or to discuss findings and to ensure that the review is on track to finish in a timely manner.

(G) Closing the Review: At the conclusion of the review, a closing conference may be held at the discretion of the reviewer or at the request of the taxpayer or the taxpayer's representative. If held, items discussed will generally include an explanation of the reviewer's findings and recommendation to GO-Biz.

(H) Closing Letters. At the close of a review, the Franchise Tax Board will notify GO-Biz and the taxpayer or the taxpayer's representative of the results of the review:

(1) If the Franchise Tax Board finds compliance with the agreement, a letter to this effect will be sent to the taxpayer or taxpayer's representative. The Franchise Tax Board will also notify GO-Biz of its findings.

(2) If the Franchise Tax Board determines there is a possible breach, the Franchise Tax Board will notify GO-Biz and provide detailed information regarding the basis for that determination as required by Revenue and Taxation Code sections 17059.2 and 23689 subdivisions (d). The Franchise Tax Board will also notify the taxpayer or taxpayer's representative in writing of these findings. Please refer to the contract for information on breaches and recapture.