



03.09.2018

FTB NOTICE 2018 – 01

SUBJECT: Processing of Docketed Protests

Purpose

A taxpayer receiving a Notice of Proposed 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 Division. Protests assigned to the Legal Division 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 complement the Legal Division's continuing efforts to reduce the length of time necessary to review and make a final determination on docketed protests.

This notice supersedes FTB Notices 2006-5 and 2006-6 (Oct. 27, 2006).

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 make a final determination within 36 months or less of the filing date of the protest. Achieving this goal is premised upon taxpayers and taxpayer representatives fully and timely providing FTB requested information regarding the protest. Some docketed protests may take longer to conclude due to external factors, but the timeframes for closure of a docketed protest ordinarily should not need to be extended. Docketed protests involving only a limited number of legal issues of lesser complexity, where the department's litigating position is established with respect to any issue included in the case, and that are fully factually developed may take less time to conclude, and the department will continue to make special efforts to take action on these cases as soon as possible.

Staff Procedures

Case Development Plan

In general, Legal Division staff will contact taxpayers or their representatives in each assigned docketed protest to establish a case development plan. The goal is for staff to work together with the taxpayer or taxpayer's representative to design a plan to accomplish all necessary factual development, if required, conduct any requested hearing, and issue a

determination in the protest within a timeframe that will allow the processing of a docketed protest to be finally determined within 36 months.

Initial Contact and Processing Docketed Protests

The goal will be for staff to make initial contact with the taxpayer or the taxpayer's representative within 120 days, or less, of the filing of the protest. At a minimum, this initial contact will take the form of an initial letter with contact information for the attorney assigned to work the case, identification of the issues involved in the case, and a request to establish an agreed hearing date if a hearing has been requested. It may include a preliminary information/document request (IDR). Granting requests for extensions of time to respond to IDRs, if needed, will be kept to a minimum in order to complete the docketed protest in a timely manner. Staff will endeavor to substantively follow-up as necessary on all IDRs within 30 days of receipt of requested information.

Scheduling the Docketed Protest Hearing

Ordinarily, confirmation of the agreed hearing date will be made in response to the initial contact letter. Hearings are usually held in Sacramento either in person or by telephone but, in some cases, can be scheduled at an office of the department that is more convenient to the taxpayer when possible, either in person or by videoconferencing.

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 Assessment. The protest shall "specify . . . the grounds upon which it is based." Issues not raised by the taxpayer or taxpayer 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 timeframe 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.

Request for Administrative Settlement Consideration

Once a protest hearing has been held (when requested), and a determination has been made, docketed protests ordinarily will not be considered for admission into the administrative settlement program. Instead, taxpayers or taxpayer representatives ordinarily will be required to file an appeal with the Office of Tax Appeals (OTA) after the Notice of Action has been issued, then request settlement after the appeal has been acknowledged. It is anticipated that the OTA will defer proceedings on appeal on acceptance into the administrative settlement program.

Deferral of Docketed Protests

Protests may not be docketed at all, or if docketed may be deferred (and thus the period of time for completing the protest in a timely manner tolled), 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 Assessment was issued because of an impending expiration of the statute of limitations such that the audit could not be completed under the department's normal business practices and the taxpayer would not agree to a waiver of the statute of limitations; or
 - (c) the protest letter has raised issues that were not considered during the audit, and further factual development is required.
- (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 in its discretion that it is appropriate to resolve the new issues during the docketed protest process.
- (3) Other years are pending before the OTA 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 binding 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 relevant, controlling, or determinative of an issue or issues raised in the protest, or otherwise have bearing on the determination of the state franchise or income 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 Criminal Investigation Bureau of the Franchise Tax Board.
- (9) A deferral has been requested by the taxpayer or taxpayer's representative and has been approved, in its sole discretion, by FTB.

The goal is for Staff 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 for purposes of this Notice.

Drafting Information

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