



December 22, 2020

FTB Notice – 2020 – 03

SUBJECT: Settlement of Administrative Civil Tax Matters in Dispute

PURPOSE:

The purpose of this Notice is to discuss the Franchise Tax Board's ("FTB") settlement program, the process for requesting consideration for the settlement program and the settlement process for cases that are admitted into the settlement program.

This Notice contains the following information:

- 1) Form and Manner for Taxpayer Requests for Settlement
- 2) Review of Settlement Requests
- 3) Information and Documentation to Provide within 45 Days of Acceptance
- 4) Payment Requirement
- 5) Settlement Approval Process
- 6) Public Record Statements
- 7) Contacts

BACKGROUND:

AUTHORITY: Revenue and Taxation Code section 19442 authorizes the settlement of civil tax matters in dispute that are the subject of protests, appeals, or refund claims, including matters before the Office of Tax Appeals ("administrative civil tax matters in dispute"). The FTB's Settlement Bureau is the part of the FTB responsible for negotiating the settlement of these administrative civil tax matters in dispute. The settlement of litigation cases in state and federal courts is not handled by the Settlement Bureau.

PURPOSE OF SETTLEMENT: The purpose of the Settlement Bureau's settlement program is to negotiate settlements of administrative civil tax matters in dispute consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters. The settlement program should be distinguished from the FTB's Offer in Compromise program as the settlement program is not able to offer any concession based on a taxpayer's ability to pay. The settlement program should also be distinguished from a payment plan as taxpayers must pay the full settlement amount at the time the parties reach a tentative settlement. Detailed information for the FTB's Offer in Compromise program and payment plan options can be found on the FTB's website at www.ftb.ca.gov.

SETTLEMENT TIMELINES: The settlement program is intended to provide taxpayers with an expedited method of resolving administrative civil tax matters in dispute. It is expected that settlement negotiations will have concluded and a tentative settlement been approved by the Settlement Bureau director and Chief Counsel no later than nine months after a case is accepted into the settlement program. A tentative settlement becomes final upon approval by the Franchise Tax Board, itself, or for small case settlements, the FTB's Executive Officer. Cases in which tentative settlements have not been reached within the nine-month timeframe will be removed from the settlement program and returned to their pre-settlement status (i.e., protest, appeal, or claim for refund), unless the Settlement Bureau director approves a case remain in the Settlement Bureau based on extraordinary circumstances. Requesting that additional taxable years, issues, or claims for refund be added to a case already in the settlement program will be treated as a new settlement request.

The following general timeframes apply to the settlement process:

Milestone	General Maximum Timeframe in Terms of Month(s)	Action from which Time Period Begins
Review Settlement Request, and Acknowledge Whether the Case Is Being Accepted into the Settlement Program	1	From Receipt of Settlement Request
First Contact by Assigned Settlement Bureau Staff Member	2	From Date Accepted by the Settlement Bureau
Bureau Director and Chief Counsel Approval of Settlement	7	From First Contact by the Assigned Settlement Bureau Staff Member
Attorney General Approval	1	From Chief Counsel Approval Date
Franchise Tax Board Approval	2	From Attorney General Approval Date
<u>Total Time for Settlement Process</u>	<u>13</u>	

PROCEDURE

1. FORM AND MANNER FOR TAXPAYER REQUESTS FOR SETTLEMENT: Any taxpayer desiring to initiate settlement of an administrative civil tax matter in dispute must submit a written request, which must include the following information:

- 1) Taxpayer's name and current address (if no representative, also include the taxpayer's telephone number and email address);
- 2) Representative's name, current address, fax number, telephone number and email address;
- 3) Taxpayer's social security number or taxpayer identification number;
- 4) Taxable year(s) involved;
- 5) Tax amount in dispute;
- 6) Present status of dispute (i.e., protest, appeal, or claim for refund);
- 7) Representative's power of attorney (form FTB 3520-PIT or form FTB 3520-BE, as applicable), unless a valid form is already on file with the FTB;
- 8) Good faith settlement offer, including the grounds in support of the offer;
- 9) Identification and discussion of all issues in contention, including legal and factual grounds for positions taken by the taxpayer. Due to the expedited timeframes for the settlement program, a complete and full analysis must be included with the request; and
- 10) A listing of all Notice(s) of Proposed Assessment ("NPA") and claim(s) for refund for the taxable years involved that are not part of the settlement request. Provide the present status of each NPA and claim for refund and the amount(s) involved.

The written request may be sent:

By email to: RequestSettlement@ftb.ca.gov

By mail to: Director, Settlement Bureau, Mail Stop A270
Franchise Tax Board
P.O. Box 3070
Rancho Cordova, CA 95741-3070

By facsimile to: (916) 845-4747

2. REVIEW OF SETTLEMENT REQUESTS: All requests for settlement consideration are reviewed by the Settlement Bureau to determine if the case is a proper candidate for the settlement program. Upon receiving a settlement request of a matter before the Office of Tax Appeals ("OTA"), the Settlement Bureau will send the OTA a request for a 30-day deferral to provide time for the Settlement Bureau to review the settlement request. If the matter is accepted into the settlement program, the Settlement Bureau will request an additional nine-month deferral from the OTA to provide time for the settlement process.

Generally: After reviewing the taxpayer's case file and the taxpayer's settlement request, including the taxpayer's good faith settlement offer, the Settlement Bureau will contact the taxpayer or the taxpayer's representative with the Settlement Bureau's determination as to whether the case will be accepted into the settlement program. If it is determined that there is a bona fide factual or legal dispute, a case will generally be accepted into the settlement program. However, acceptance of a dispute into the settlement program is discretionary. Upon review, a case may not be accepted for a variety of reasons. For example, if it is determined there is a negligible litigation risk to FTB's position, the case would most likely not be accepted into the settlement program. Further, a request for a variance from the standard allocation or apportionment provisions under Revenue and Taxation Code section 25137 will not be considered for the settlement program until a request for such variance has been considered by FTB staff. In addition, a protest near the end of the protest process ordinarily will not be considered for the settlement program. Instead, a taxpayer ordinarily will be required to file an appeal with the OTA after the Notice of Action has been issued, then the taxpayer may request settlement consideration after the appeal has been acknowledged by the OTA.

Undeveloped Cases: The Settlement Bureau evaluates the costs and risks associated with a case based on the evidence available in the case file at the time the case is accepted into the settlement program. The Settlement Bureau does not factually develop cases and generally does not consider new information to support the taxpayer's position. Therefore, any information a taxpayer wants the Settlement Bureau to consider should be provided to the appropriate FTB staff member who is responsible for the taxpayer's case before the taxpayer requests the case comes into the settlement program. A case may be rejected from the settlement program if the case has not been sufficiently factually developed to allow proper settlement consideration. Similarly, a case will generally not be accepted into the settlement program if there are outstanding information and documentation requests at the time the taxpayer requests settlement consideration.

3. INFORMATION AND DOCUMENTATION TO PROVIDE WITHIN 45 DAYS OF ACCEPTANCE: In order to meet the expedited timeframes for the settlement program, certain information and documentation must be in place early in the settlement process. Accordingly, acceptance into the settlement program will be conditional based on the information and documentation noted below being completed within 45 calendar days of the date the below information and documentation is requested. Taxpayers who are rejected from the settlement program due to not providing all required information and documentation may be reaccepted into the settlement program if all of the required information and documentation is submitted within 45 days of rejection. The settlement timeframe will restart for these cases that are reaccepted. Submission of the required

information and documentation after 45 days of rejection will require a new application for the settlement program.

Nondisclosure Agreement: Upon acceptance into the settlement program, the FTB will provide a Nondisclosure Agreement which must be executed by the FTB, the taxpayer, and the taxpayer's representative prior to the start of negotiations. The purpose of the Nondisclosure Agreement is to allow both parties the opportunity to negotiate without the concern that the settlement negotiations, or the results thereof, will be used in any subsequent administrative or judicial proceedings, or disclosed to third parties, except as required by law or as otherwise agreed by the parties.

Power of Attorney: While a power of attorney form is required to be filed at the time a taxpayer requests settlement (unless one is already on file), the power of attorney form may ultimately not be accepted if the form is improperly completed. When a power of attorney form is not accepted, a new power of attorney form must be filed with the FTB before the Settlement Bureau is able to commence settlement negotiations with the taxpayer's representative. Further, if a taxpayer changes representatives during the settlement process, the taxpayer must also file a new power of attorney form before the Settlement Bureau is able to continue settlement negotiations with the taxpayer's new representative. The Settlement Bureau may reset the timeframe for the settlement process when a taxpayer changes representatives so there is sufficient time for productive settlement negotiations to take place within the nine-month timeframe.

Agreement on Amounts in Dispute: Agreement on the amount in dispute is necessary for productive settlement negotiations to be able to commence. For example, an amount in dispute is uncertain when a taxpayer requests settlement consideration of a claim for refund for "\$1 or more." When a taxpayer requests settlement consideration, the amount of the claim for refund needs to be the specific dollar amount the taxpayer asserts should be refunded so there is a foundation to commence settlement negotiations.

4. PAYMENT REQUIREMENT: When a tentative settlement has been agreed to between a taxpayer and Settlement Bureau staff, the taxpayer will be required to pay the full settlement amount prior to the tentative settlement moving through the approval process. Taxpayers that are required to make tax liability payments via Electronic Funds Transfer ("EFT") are also required to make their settlement payments via EFT.

5. SETTLEMENT APPROVAL PROCESS: Under the provisions of Revenue and Taxation Code section 19442, a settlement recommendation must be approved by the Franchise Tax Board except where the settlement is a small case settlement:

Settlements Approved by the Franchise Tax Board: The Executive Officer, or the Chief Counsel of the Franchise Tax Board, if authorized by the Executive Officer, may recommend to the Franchise Tax Board, itself, a settlement of any administrative civil tax matter in dispute. Any such recommendation must first be submitted to the Attorney General. Within 30 days following receipt of a recommendation, the Attorney General is required to review the recommendation and advise in writing of the Attorney General's conclusions as to whether the recommendation is reasonable from an overall perspective. The members of the Franchise Tax Board must approve or disapprove the settlement recommendation within 45 days of the submission of the recommendation to the members. Disapproval must be made by majority vote of the members of the Franchise Tax Board. Any settlement that is not either approved or disapproved within 45 days following its submission shall be deemed approved.

Small Case Settlements: Revenue and Taxation Code section 19442 allows the Executive Officer and the Chief Counsel of the Franchise Tax Board, jointly, to approve the settlement of any administrative civil tax matter in dispute involving a reduction in tax or penalties, when the total reduction of tax and penalties does not exceed eleven thousand five hundred dollars (\$11,500), indexed annually.¹ When such small case settlements are approved, the Executive Officer is required to notify the members of the Franchise Tax Board.

6. PUBLIC RECORD STATEMENTS: Whenever a reduction in tax and penalties in excess of five hundred dollars (\$500) is approved, a public record statement is required to be placed on file in the office of the Executive Officer of the Franchise Tax Board with respect to that settlement.

A public record statement will contain the following information:

- 1) The name or names of the taxpayers who are parties to the settlement;
- 2) The total amount in dispute;
- 3) The amount agreed to pursuant to the settlement;
- 4) A summary of the reasons why the settlement is in the best interests of the State of California; and
- 5) For any settlement approved by the Franchise Tax Board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

¹ The \$11,500 amount applies to all settlements approved on or after January 1, 2020. On January 1 of each calendar year, this amount will be increased based on the percentage change in the California Consumer Price Index and rounded to the nearest \$100.

7. CONTACTS: Taxpayers can find additional information about the settlement program and contact the Settlement Bureau by:

- Internet: Search using the term "settlement program" on www.ftb.ca.gov
- Telephone: Calling the General Settlement Message Line at (916) 845-5034
- Mail: General Settlement Inquiry, Settlement Bureau, Mail Stop A270
Franchise Tax Board
P.O. Box 3070
Rancho Cordova, CA 95741-3070

This notice supersedes FTB Notice 2007-2 (June 27, 2007).²

The principal author of this Notice is Ciro M. Immordino of the Franchise Tax Board, Legal Division. For further information regarding this Notice, contact Mr. Immordino at P.O. Box 3070, Rancho Cordova, CA 95741-3070.

² HISTORY: Other prior notices relating to the FTB's settlement authority and process:
FTB Notice 92-3 (August 14, 1992);
FTB Notice 92-8 (September 9, 1992);
FTB Notice 97-3 (April 1, 1997), supersedes FTB Notice 92-8 (September 9, 1992);
FTB Notice 98-11 (July 13, 1998), supersedes FTB Notice 92-3 (August 14, 1992) and FTB Notice 97-3 (April 1, 1997);
FTB Notice 99-7 (July 14, 1999);
FTB Notice 2000-06 (July 25, 2000), supersedes FTB Notice 99-7 (July 14, 1999);
FTB Notice 2001-03 (April 21, 2001), supersedes FTB Notice 98-11 (July 13, 1998) and FTB Notice 2000-06 (July 25, 2000);
FTB Notice 2003-2 (March 14, 2003), supersedes FTB Notice 2001-03 (April 21, 2001);
FTB Notice 2006-2 (February 14, 2006) supersedes FTB Notice 2003-2 (March 14, 2003); and
FTB Notice 2007-2 (June 27, 2007) supersedes FTB Notice 2006-2 (February 14, 2006).