3. CASE ADMINISTRATION SECTION

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Last Revision: 10/25/2018

3.0.1.1 Confidentiality and Security of Data

Background

As an employee of the Franchise Tax Board (FTB), you are required to read and sign a ((****)). By signing this statement, you agree to follow the privacy and security program policies of the department. Each employee is required to sign form FTB 7809 annually.

The Revenue and Taxation Code Sections 19542, 19542.1, and 19552, the Internal Revenue Code, and the California Civil Code govern the confidentiality of the information collected and maintained by the department. Detailed information can be found in the FTB Disclosure Manual.

Purpose

Security and disclosure aids the department in the administration of income tax laws by placing accountability on employees.

The purpose of employees maintaining confidentiality and security of data is to aid in the administration of income tax laws by encouraging taxpayers to:

- Make full and truthful disclosure on their tax returns and/or claims.
- Understand that the information cannot be revealed or used against them for some other purpose.

Responsibility

All FTB employees must ensure confidentiality of all information regarding taxpayers and their accounts.

This includes, but is not limited to:

- Federal Tax Information (FTI)
- Personal Income Tax Return Information
- Bank and Corporation Tax Returns
- Information obtained from third parties

Action

FTB employees are required to complete the Disclosure Education Training course and to sign a confidentiality statement ((****)) upon being hired and every year thereafter.

As a general rule, FTB employees should treat all tax and non-tax information received, maintained, and/or generated as confidential. Positively identify and confirm that the requester has the right to know before disclosing any confidential information.

Federal Tax Information (FTI) can be disclosed to the taxpayer or their designated Representative.

The following *must* be considered:

- Before any confidential information may be disclosed, it is essential that the positive identification of the requester be determined in order to confirm the "need to know" and the "right to know" basis.
- As a general rule, FTB can re-disclose FTI to the taxpayer or their designated Representative. However, FTB **cannot** re-disclose FTI to other agencies, or subdivisions of agencies, without first executing exchange Agreements and obtaining IRS approval.

Note: (( )) = Indicates confidential and/or proprietary information.

Reference

FTB Disclosure Manual
Revenue and Taxation Code Sections 19542 - 19570
((****))
((****))
((****))
((****))
The Revenue and Taxation Code Sections 19542, 19542.1, and 19552
((****))
((****))
((****))
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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Last Revision: 06/13/2018

3.0.1.2 Confidential Information and Disclosure and Denial of Confidential Information

Background

Confidential information is defined as any item of information that is not specifically made public by statute.

We receive and maintain a large volume of data that is classified as confidential. All information received, maintained, and generated is considered confidential unless it is specifically made public by statute. Government Code Section 90005 directly imposes the prohibitions on disclosure, relating to the Political Reform Act of 1974. There are also provisions in the Revenue and Taxation Code Section 19542.

There are several types of information, which includes, but not limited to:

- Federal Tax Information (FTI) – Any return or return information received from the IRS. This includes Personal Income Tax (PIT) and Business Entity (BE).
- State Tax Information – Any return or return information, reports, or documents required to be filed under the R&TC 19542. This includes Personal Income Tax (PIT) and Business Entity (BE).
- Personally Identifiable Information (PII) – Information that identifies or describes an individual.
- Employee's Personal Information – Information that is recorded in personnel employment files, performance assessments, medical and benefits records, FTB identification badges, etc.
- Proprietary Information – Information owned or developed by the department to administer our programs.
- Sensitive information – Information that requires a higher level of protection from unauthorized use, access, disclosure, modification, loss, or deletion. Examples of sensitive information are FTI, audit logs, legal documents, investigation evidence, and personal examinations.
- Criminal offender record information.
- Computer Master File information, including case transcripts and printouts.
- Documents obtained from the Internal Revenue Service.
- Political Reform Audit Information.

Purpose

The purpose of defining confidential information is to ensure that employees are able to quickly identify information that is protected from disclosure. Authorized disclosure and denial of confidential information ensures that the privacy of the taxpayer will not be violated. It will also ensure the protection of internal Franchise Tax Board (FTB) data may not be disclosed under provisions of the Information Practices Act of 1977.

Prohibiting disclosure of confidential information is intended to facilitate the administration of Business Entity Tax and Personal Income Tax. This encourages taxpayers to make full and truthful disclosures without apprehension that this information may be revealed or utilized against them for purposes outside of tax administration.

Responsibility

It is the responsibility of FTB employees to:

- Know whether or not accessed information is public or confidential
- Protect the confidentiality of taxpayers information by adhering to the department's privacy and security guidelines
- Understand that unauthorized access, inspection, use, modification, or disclosure of confidential information may result in disciplinary, civil and/or criminal action

Note: SB 1386 (July 1, 2003) requires FTB to notify an individual if an unauthorized disclosure occurs.

Action

FTB employees are required to complete the Disclosure Education Training course and to sign a confidentiality statement ((****)) upon being hired and every year thereafter.

Employees are not authorized to disclose confidential information to an individual or agency without the proper authorization and business need-to-know and the right-to-know.

The law allows FTB employees access to information classified as confidential only when that information is necessary to perform their job. This provides a business right-to-know.

The business need to know means that FTB employees may only request or access information in order to perform official responsibilities as an employee or agent of the FTB, or as an authorized requester. This means that the confidential information FTB employees receive should relate to the assigned job duty. FTB employees must never access information out of curiosity, personal gain or use, monetary gain, or intentional harm.

Prior to any confidential information being disclosed, it is imperative that positive identification of the requester be verified in order to confirm the business need-to-know and right-to-know. For information that cannot be disclosed, refer to Information Practices Act of 1977.

Confidential information must always be protected from unauthorized disclosures and/or unauthorized access. FTB employees must always verify a requester's business need-to-know and right-to-know before sharing any confidential information. Confidential information can be released to third parties (unrelated to the taxpayer) only if the law specifically allows for such disclosure. (See CPM Section 3.0.1.5)

Important Reminder: If in doubt, do not disclose the information. FTB employees must contact his or her supervisor or the Disclosure Section for clarification.

Note: Federal Tax Information (FTI) is furnished to state tax agencies by the Internal Revenue Service (IRS) only for tax administration purposes and may not be disclosed without express written consent from the IRS.

Reference

FTB Disclosure Manual, Confidential Information Defined, Section 1100
Revenue and Taxation Code Sections 19542 and 19542.1
((****))
((****))
((****))
((****))
((****))
FTB Disclosure Manual
Revenue and Taxation Code Sections 19542-19570
Revenue and Taxation Code Section 21023
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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Last Revision: 06/13/2018

3.0.1.3 Penalties for Disclosure

Background

Under Revenue and Taxation Code Sections 19542, 19542.1, and 19552, it is a misdemeanor to make unauthorized disclosure of confidential tax information, including information received through an electronic medium.

Under IRS Internal Revenue Manual 11.3.1.5, it is a felony to make unauthorized disclosure of federal tax information.

(IRS Internal Revenue Manual 11.3.1.1)

Purpose

The purpose of enforcing penalties for unauthorized disclosure is to ensure that confidential information is not accessed, used, or disclosed by or to unauthorized individuals.

Responsibility

Franchise Tax Board (FTB) employees must:

- Sign the FTB Confidentiality Statement ((****)) annually.
- Understand that unauthorized access, inspection, use, modification, or disclosure of confidential information may result in disciplinary, civil and/or criminal action.

Action

The type and severity of disciplinary action imposed for unauthorized disclosure, unauthorized transactions or unauthorized computer access is based on an evaluation of the individual case.

The following disciplinary actions may be taken:

- Informal discussion
- Corrective interview
- Formal reprimand
- Suspension
- Salary reduction
- Demotion

- Dismissal
- Criminal prosecution (see Laws and Penalties for Unauthorized Access Acquisition and Disclosure)

You may lose your job, your retirement benefits, and be subject to the consequences listed below if you access, acquire, and/or disclose confidential state or federal information inappropriately:

California:	**Federal:**
Misdemeanor charge	Felony charge
Up to $500 fine	Up to $5,000 fine per occurrence, punitive damages, and attorney fees
Up to six months in jail	Up to five years in prison
Civil lawsuit	The cost of prosecution
You may be charged with a felony if you misuse a state computer	Civil lawsuit

Commingled IRS and FTB data is classified as Federal Tax Information (FTI) and subject to federal law. Restrictions and penalties apply even after FTB employment ends.

Note: ((****)) = Indicates confidential and/or proprietary information.

Reference

FTB Disclosure Manual
Revenue and Taxation Code Sections 19542, 19542.1, and 19552
IRS Internal Revenue Manual 11.3.1.1
((****))
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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Last Revision: 07/5/2018

3.0.1.4 Power Of Attorney (POA)

Background

The Franchise Tax Board (FTB) automated the Power of Attorney (POA) process in August 1999. This resulted in the creation of the POA Unit, a ((****)), and revisions to form FTB 3520 PIT.

Beginning October 1, 2014, FTB began entering processed POA declaration data into the EDR system and discontinued using the POA legacy database. Active POA declarations processed prior to October 1, 2014 are available in the TPF with a "Processed As – Legacy" status. These POA declarations are still valid, however POA Representatives will not have access to client information through MyFTB unless the POA declaration is resubmitted and reprocessed through Case Management.

Beginning January 4, 2016, taxpayers or representatives are encouraged to submit POA Declarations through the MyFTB service. However, if taxpayers or representatives meet one of the Paper Filing Exceptions, they can use form FTB 3520 Power of Attorney Declaration and submit through fax, mail, or hand deliver to a field office.

Active POA relationships established on or before June 24, 2018, will be grandfathered in; retaining Full Online Account Access. If a representative has both an active POA and Tax Information Authorization (TIA) relationship with a taxpayer their full online access will apply to both relationships.

Beginning June 24, 2018, FTB began processing POA and TIA forms. A POA or TIA representative can request Full Online Account Access for their clients' accounts through MyFTB in order to review all notices, correspondence, or accounting information relevant to the years covered by their POA. This will trigger an FTB 3911, Full Online Account Access Requested notice. The FTB 3911 will provide the Taxpayer with an authorization code to approve or deny the relationship. Refer to ((****)).

Starting June 25, 2018, Tax Professionals that establish a new relationship with a taxpayer or reestablish and existing relationship following a break in service will be granted limited Online Account Access to their client's confidential tax information. POA representatives with Limited Online account Access will be able to view notices and correspondence, including FTB's response to Send Secure Message, as long as it was issued from FTB within the last 12 months and was marked Visible External in Taxpayer Folder.

When a taxpayer appoints a representative, FTB must work directly with the representative regarding all matters within the scope of the representative's authorization. The taxpayer's right to representation must be respected by FTB employees at all times. However, employees' should continue to be responsive to any direct communication (phone call or correspondence) from the taxpayer, and employees' include them in written correspondence sent to the representative, when appropriate.

If a notice or correspondence is not marked Visible External, the Tax Professional will not be able to view it online in MyFTB.

A taxpayer's right includes the right to be represented. ((****)).

POA Declaration is a legal document that allows taxpayers to grant a specific person or tax professional/representative permission to obtain information and represent a taxpayer on FTB matters. FTB is prohibited from disclosing confidential information to anyone other than the taxpayer, the taxpayer's authorized representative, or a representative that has established Implied Consent.

FTB no longer mails copies of most notices to POA representatives. POA representatives who provide a valid email address on the POA Declaration will receive electronic notifications each time we send a notice to one of their clients. Tax Professionals with a MyFTB account, who do not provide an email address, may be able to view the notices for their clients. They will not receive a notification when a notice is issued. Employee must provide paper copies of notices to representatives who are not able to register for MyFTB.

Note: Generally, the processing timeframe for declarations submitted via MyFTB or mail is 15 days. However, processing time frames vary depending on the method of submission and exceptions indicated on the POA Declaration. Refer to ((****)).

Note: If a notice or correspondence is not marked Visible External, the Tax Professional will not be able to view it online in MyFTB.

Note: This does not include sending copies of notices that were issued more than 12 months ago or when an FTB employee member makes a notice that was issued more than 12 months ago Visible External.

Purpose

A POA declaration is a legal instrument, which allows a third party to act on behalf of taxpayers for specific tax years.

FTB offers two options for taxpayers to submit POA. The first option is through MY FTB with the POA wizard. The second is to complete (PIT Form FTB 3520) or (BE Form FTB 3520) *Power of Attorney Declaration for the Franchise Tax Board,* and is used by individuals and business entities to authorize representatives to act on their behalf with FTB.

The POA program facilitates administration of the tax by assisting the department in confirming and tracking valid authorized representative information.

Responsibility

It is the responsibility of the FTB employee to first verify a POA declaration status and privileges of the authorizations of a representative prior to disclosing any confidential taxpayer's tax or non-tax information.
A POA declaration grants authority to an individual by the taxpayer to:

- Receive confidential tax information.
- Receive information for the nontax programs we administer.
- Represent a business entity or taxpayer before FTB.

Beginning January 2, 2018, FTB will accept and process the following POA declarations:

- FTB 3520 PIT, *Individual or Fiduciary Power of Attorney Declaration*
- FTB 3520 BE, *Business Entity or Nonresident Power of Attorney Declaration*
- General/Durable Power of Attorney Declaration (with a completed 3520 PIT or 3520 BE)
- Military Durable Power of Attorney declarations will be accepted as standalone documents, however it is recommended an FTB 3520 PIT be completed to provide faster processing.

FTB accepts and processes POA declarations using the following methods:

- MyFTB (POA Wizard)
- Fax
- Mail
- Hand delivered (Beginning January 1, 2018, FTB no longer process handwritten declarations)

Note: For faxed or mailed POAs, the processing timeframe is 90 business days. If the POA meets one of the exceptions, the processing time frame is 45 business days.

After January 1, 2018, FTB **no** longer accepts and process the following POA Declarations:

- FTB 3520, Power of Attorney Declaration
- IRS Form 2848, Power of Attorney and Declaration of Representative
- IRS Form 8821 accepted for Authorization to Receive Confidential Info only
- BOE-392, Power of Attorney
- CDTFA 392, Power of Attorney
- ((****))

Note: General the processing timeframe for declaration submitted via MyFTB is 15 days. However processing time frames vary depending on the method of submission and exceptions indicated on the POA Declaration. Refer to ((****)).

The following POA forms are commonly used in situations where a signature is not timely available. (Primarily for military, and when state tax matters have not been specified.)

- A complete general or durable POA Declaration. (If all required information is not included, an FTB 3520 PIT will need to be attached.)
- A complete handwritten authority document. (If all required information is not included, an FTB 3520 PIT will need to be attached.)

Required information includes:

- The name, address, and telephone number.
- Business Identification Number (e.g., California Corporation, Federal Employer or Secretary of State Numbers).
- Social security number or business identification number.
- The representative(s) name, address, telephone number, and fax number.
- A clear statement that grants a person (or persons) authority to represent the business entity before the FTB, and that specifies the actions authorized.
- The specific matters and tax years or income periods.
- Signature of an owner, officer or partner of the business entity.
- Taxpayer signature and date. Regarding married/RDP, each individual needs a signed and dated declaration.

- For estate matters, the decedents name and date of death, and the representative's authorization.

A durable POA is the only POA that will not terminate due to the passage of time or the incompetence of the taxpayer/debtor.

One-Time Release Authorization is when taxpayers use FTB 3518, One-Time Release of Confidential Tax Information Authorization Form to authorize a one-time release of confidential tax information to an authorized representative specified on the form.

The one-time release authorization is good for that one request only.

Verbal Authorization is when taxpayers give authorization to us to discuss their account, or specific years on their account to someone who is representing them. The representative must pass Security and Disclosure, Determining the Positive Identification of Requestor to request or provide account information.

Verbal authorization is limited to each contact. Any new contact or issues require an additional verbal authorization. Please request a formal POA if continued contact develops or complexities to the situation occur.

You may provide verbal information **only**.

Implied Authorization (AKA Implied Consent) Implied Consent is used when the taxpayer's representative does not have a valid POA declaration but is able to verify information specific to the reason for the call. It is FTB policy to provide information and make necessary account adjustments without a valid POA declaration when the representative is able to establish Implied Consent.

Once Implied Consent is established, with or without a notice, employee can discuss and complete transactions on the taxpayer's account for issues related to the reason for the call. Never make any changes to the taxpayer address with Implied Consent. Review the Implied Consent procedures for more information. The FTB employee must ensure positive identification of the contact based on specific notice details or account information before any confidential information is disclosed. When in doubt, contact your lead or supervisor. They need to make the decision to allow Implied Consent. Make every effort possible to provide service to the representative. You may need to request a POA.

Once Implied Consent is established, FTB employees are allowed to provide account information when contacted by a representative only when:

- They quote specific information from an FTB notice.
  - You may discuss information in regards to the notice only.

Or

- They pass Security and Disclosure and you determine the positive identification of the Requestor and they can provide detailed account information.

With implied consent you are allowed to provide verbal information only. No written information can be provided to a representative without a POA or FTB 3518, One-Time Release of Confidential Tax Information.

Implied authorization is limited to each contact. Any new contact or issues require confirming implied authorization exists. Please request a formal POA if continued contact develops or complexities to the situation occur.

Third Party Designee is someone who is authorized by the taxpayer to speak with us on their behalf regarding a specific year's tax return. Beginning with the 2008 tax returns, taxpayers were able to designate a Third Party Designee on the tax return.

The Third Party Designee is authorized to discuss:

- Any information that is missing from the specific year's tax return.
- Information about the processing of the tax return, or status of a refund or payment for that year.
- Certain notices about math errors, offsets, and tax return preparation regarding that tax year.

The Third Party Designee is **not authorized** to:

- Discuss information regarding an audit case.
- Discuss any other tax year.
- Bind the taxpayer to anything (including additional tax liability).
- Discuss information regarding a collection-assigned account.
- Receive refund checks.
- Represent the taxpayer before FTB.
- Discuss the specific tax year after the April 15 due date (without regard to extensions) of the next year's tax return.

Third Party Designee information can be viewed on the:

- Taxpayer Folder
- Tax Return (Detailed information)
- Taxpayer Information System (TI) (Indicator and tax years only)
- Business Entities Tax System (BETS) (Indicator and tax years only)

If a business entity wishes to designate an additional Third Party Designee, the business entity must fill out an FTB 3520be.

When in doubt, contact your lead or supervisor, they need to make the decision to allow Implied Consent. Make every effort possible to provide service to the representative.

Action

If you receive a call from a representative whose POA is not on file, please review steps under the Responsibility Section.

If the POA is on file but not processed, the FTB employee may request a rush process. This will bypass the normal processing timeframe. A rush processing is not done on a regular basis and is only limited to specific scenarios, which include:

- Statute of Limitation (SOL) or Deadline Date is approaching (time sensitive for business needs).
- Legal Proceedings (time sensitive for business needs).
- Tax Preparer Hotline has an irate representative.
- Jeopardy assessments.
- Court litigation.
- Sensitive cases.
- Information Practices Act requests.
- Case is in the POA or TIA workbasket and the normal processing timeframe has passed.
- The audit cycle is near completion and the representative is requesting copies of audit letters for taxpayer's representation.
- Never request a rush processing of a POA or TIA if one of the above scenarios is not applicable.
- Never suggest rush processing of a POA or TIA to a taxpayer or representative.

If an authorized representative calls to revoke a POA, the FTB employee must ensure that the taxpayer does one of the following:

- Advise the representative/taxpayer they can revoke a POA through MyFTB, go to **ftb.ca.gov** and search for **3520 RVK**.
- Advise representative/taxpayer to complete and submit FTB 3520 RVK
- If contact is unable or unwilling to submit the 3520 RVK:

Advise entity to fax you a copy of the POA Declaration they want to revoke or fax a signed statement, ((****)), Revoking a POA declaration for more information.

If there is any doubt regarding the status of the requester, the FTB representative should request a current POA form.

When in doubt, contact your lead or supervisor, they need to make the decision to allow Implied Consent. Make every effort possible to provide service to the representative.

The FTB employee must properly identify the authorized POA before confidential account information is disclosed by verifying that the POA status is current in the ((****)).

Upon receipt of a completed POA, the FTB employee must upload the POA into the Taxpayer Folder and forward to the POA unit for processing. For additional information and routing, see ((****)).

If you receive a call from a representative and they don't have a valid POA on file do the following:

- Have the representative submit the POA through MyFTB, Mail, or fax. When the fax is received do the following:
- Upload to TPF and route to the POA unit or,
- Route the faxed POA to the POA Unit/Receiving to mail stop F-283 so it can be added to the database.
- DO NOT require them to send the fax to the POA unit.
- Until the POA form has been updated, you must follow the ((****)). Letters cannot be issued to the representative until the POA has been processed by the POA unit and updated in the POA tab located in the Taxpayer Folder.

If they cannot fax it to the FTB employee immediately, they can fax it directly to the FTB employee unit's general fax line.

When in doubt, contact your lead or supervisor, they need to make the decision to allow Implied Consent. Make every effort possible to provide service to the representative.

Note: If there is any doubt regarding the status of the requester, FTB representatives should request a current POA form or written authorization before disclosing any information, contact your lead or supervisor for direction.

Reference

Frequently Asked Questions Power of Attorney
Power of Attorney form FTB 3520 PIT
Power of Attorney form FTB 3520 BE
((****))
Power of Attorney - General Information
((****))
((****))
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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Last Revision: 10/01/2018

3.0.1.5 Providing Records to Authorized Representatives and the General Public

Background

Disclosure to taxpayers of their own records or related information is both lawful (Civil Code Sections 1798.24 - 1798.24b) and appropriate, provided the records do not contain information revealing the identities of third party informants who fear reprisal, other taxpayers, or a criminal investigation. The law further restricts information the Franchise Tax Board (FTB) employees may disclose to the general public.

Note: Federal tax information is furnished to state tax agencies only for tax administration purposes and may not be disclosed to anyone other than the taxpayer without express written consent from the Internal Revenue Service (IRS).

Purpose

The purpose of limiting the type of information that employees may provide is to ensure that disclosure of taxpayer records is only made to individuals or business entities who have a right to know. Individuals have a "right to know" what information is being collected about them and for what purposes.

Responsibility

It is the responsibility of FTB employees to ensure that the disclosure of information is made only to appropriate authorized individuals. Limited information may be disclosed to the general public as required by law.

Action

FTB employees must obtain written authorization from a taxpayer or business entity owner, officer, partner, or third party.

Employees may disclose taxpayer or business entity information to authorized individuals provided the records do not contain information that reveals the identities of third party informants, other debtors, or criminal investigation records.

Note: In questionable situations, signatures of individuals requesting confidential tax return information may be verified against the signatures on the tax return.

Personal Income Tax

Requests should be handled according to their specific request including, but not limited to:

- Payment documents
- Returns
- Audit narratives and related records
- Explanation of billings

Public Information

Information that may be disclosed to the general public for corporations, Limited Liability Companies (LLC), and Limited Partnerships is limited to the following:

- Exact entity title/name, address and business entity number (e.g., corporation number)
- Date of commencement (registration, incorporation) of business in this state
- Tax year adopted
- Due date of the return
- Whether a return was filed
- Filing date of the return
- Total unpaid amount (tax, penalty, and interest combined). A total balance can be given for each year.
- Status of business entity (e.g., active, suspended, etc.)
- Name, date, and title of persons signing the return
- Private addresses of corporate officers and directors (if address is on the return only)
- Industry Code
- Published court information (e.g., bankruptcy notices)
- Lien information
- Information published in newspapers or magazines

Specific business matters, such as how much income was generated, the types and/or locations of property owned by the corporation or any other vital business information, is not considered public information.

General Partnerships

All FTB information on the general partnership is confidential and cannot be released to the public.

Note: "Person" is defined as individuals, fiduciaries, partnerships, limited liability companies, limited liability partnerships, and corporations.

Authorized Representative Information

Corporations

Information from a tax return of a bank or corporation may be disclosed (upon written authorization) to:

- Any person designated by action of the Board of Directors or similar governing body.
- Any officer or employee of a corporation designated by any principal officer.
- Any person who was authorized to inspect the tax return at the date of dissolution of the entity.
- Additional authorized representatives including:
  - Individuals designated by the business entity.
  - Trustee or guardian of an estate of a taxpayer who is declared legally incompetent.
  - Administrator, executor or trustee of a decedent's estate.
  - Decedent's next of kin for purposes of filing final returns when there is no estate subject to probate.
  - Receiver or trustee if the debtor is in bankruptcy.

When it comes to partnerships, there are differences regarding what can be disclosed based on whether it is a general partnership or a limited partnership.

General Partnerships
General partnerships are subject to Personal Income Tax disclosure provisions. The authorized representative of the general partnership and each partner are entitled access to the complete partnership return (Form 565) and all supporting schedules, including Schedules K-1, filed with the return.

Limited Partnerships and Limited Liability Partnerships
Limited partnerships are subject to the same disclosure provisions that corporations are subject to. A partner's access to information depends on whether the partner is a general partner or a limited partner. Limited

Liability Partnerships do not have general partners and are all considered to be limited partners.

Note: Names and addresses of partners are **not** public information. Information on an individual partner's tax return (Form 540) *cannot* be disclosed to the partnership or the other partners regardless of the type of partnership or type of partner.

> **General Partners** – The authorized representative of the limited partnership and the general partners are entitled access to the same information as those of a general partnership.
>
> **Limited Partners** – The limited partners are entitled access to limited information. This includes the partnership return (Form 565) including supporting schedules with the *exception of Schedule K-1*. The limited partner is only entitled to the Schedule K-1 pertaining to them. The limited partner is not allowed access to the Schedule K-1 pertaining to the other partners. The partner is also entitled to FTB information pertaining to pass-through adjustments that affect the shareholder's Schedule K-1.

Other types of entities, such as limited liability companies (LLC) and real estate mortgage investment conduits (REMICs) may elect to be treated as a partnership for tax purposes. Generally, these entities have more characteristics in common with limited partnerships than with general partnerships. Therefore, the disclosure guidelines on limited partnerships will also apply to these entities. Investors in these entities may be known as members or owners, rather than partners.

Limited Liability Companies (LLC)

The member is entitled to information regarding only their individual Schedule K-1. Members are not entitled to Schedule K-1 information for any other member. The member is also entitled to FTB information pertaining to pass-through adjustments that affect the shareholder's Schedule K-1.

Note: If you are unable to determine if you should disclose the information, then *do not* disclose the information. Discuss the issue with your supervisor and, if necessary, contact the Disclosure Office.

Reference

FTB Disclosure Manual, Authorized Disclosure of Information, Section 2000

Conditions of Disclosure, Civil Code 1798.24

FTB Disclosure Manual, Procedures and Responsibilities, Section 3000
FTB Disclosure Manual, Information Practices Act of 1977, Section 4000
Information Privacy Principles for Individuals
Revenue and Taxation Code Sections 19542 and 19543
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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3.0.1.6 Destruction of Confidential Information

Background

Franchise Tax Board (FTB) treats all information received, maintained and generated as confidential unless it is specifically made public by statute. These records must be destroyed in accordance with FTB policy as outlined in the General Procedures Manual (GPM). ((****)).

Purpose

Proper destruction of confidential information ensures security of taxpayers' information.

Responsibility

FTB employees have the responsibility to properly dispose all confidential information unless it is specifically made public by statute. ((****))

Action

Consistent with the GPM, all written material containing information about taxpayers' accounts must be discarded in a locking destruct bin on a daily basis. FTB employees should refer to Confidential Destruct for a detailed list of confidential information.

The following are some examples of confidential material:

- Documents containing an entity's name or number
- Anything containing the taxpayer's social security number, name, address, income, etc.
- Copies of returns, forms, schedules, and W-2 forms
- Correspondence from or to the taxpayer
- Computer printouts or account transcripts
- Case notes or work papers
- Audit reports
- Information collected from outside sources (e.g., Internal Revenue Service, Board of Equalization or Department of Motor Vehicles)
- Investigation reports
- Collection progress reports

All confidential information should be covered with FTB Form 7805 until it is determined that it can be destructed.

Reference

((****))
((****))
FTB Form 7805
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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3.0.2.1 Privacy Procedures

Background

Right to privacy is a personal and fundamental right protected by Section 1 of Article 1 of the California Constitution and by the United States Constitution; all individuals have a right of privacy in information pertaining to them.

The Privacy Act of 1974, the California Information Practices Act of 1977, and the Information Privacy Principles for Individuals Civil Code Section 1798.24, require state agencies to follow prescribed procedures to safeguard the rights of individuals.

Purpose

Franchise Tax Board (FTB) employee must comply with the guidelines of State and Governmental Act/Principles set forth to protect the rights of taxpayers and to ensure the security and confidentiality of taxpayer records.

Responsibility

FTB employee must adhere to the administrative, technical, and physical safeguards to ensure compliance with the provisions of the Privacy Procedures to:

- Secure confidential information
- Educate FTB employees on the importance of protecting taxpayers personal information
- Protect taxpayer information against unauthorized access, disclosure, duplication, use, modification, and loss or theft.
- FTB review practices to ensure adequate protection are in place.

Action

FTB shall maintain personal information relevant and necessary to accomplish the purpose of the agency.

When collecting this information from either a taxpayer or third party, FTB must provide the following:

- Whether submission of such information is mandatory or voluntary
- The authority, whether granted by statute, regulation or executive order
- The principal purpose(s) for which the information is to be used

FTB will not provide or share the taxpayer information unless:

- We have a legal authority to do so.
- Taxpayer give us permission, or other party has legal authority
- FTB provide privacy protection education before sharing your information.

The taxpayer has the right to know what types of personal information we gather, use and share with other organizations and the authority to share this information. The taxpayer has the right to inspect the personal information we maintain about them and to request FTB correct any errors. If the taxpayer believes FTB has failed to adhere to our principles, the taxpayer has a right to file a complaint through our complaints process.

If the taxpayer has questions or want to file a complaint, contact the FTB Privacy and Disclosure Office by:

U.S. Mail

DISCLOSURE OFFICE MS A 181
FRANCHISE TAX BOARD
P.O. BOX 1468
SACRAMENTO, CA 95812-1468

We are also required to notify residents whose personal information may have been breached in the most expedient time possible and without delay. Effective July 1, 2003, Civil Code Sections 1798.29 and 1798.82 provide for disclosure to California residents of any security breach, or unauthorized acquisition of unencrypted computerized data, that compromises the security, confidentiality, or integrity of personal information.

These types of data include name (first or initial and last name) plus one or more of the following:

- Social security number
- California driver's license number
- Account number, credit or debit card number (along with password or other access code)

Reference

FTB Disclosure Manual
The Privacy Act of 1974
California Information Practices Act of 1977

Note: (( )) = Indicates confidential and/or proprietary information.

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3.0.2.2 Right to Financial Privacy

Background

The United States Constitution and Article 1, Section 1, of the California Constitution protect the taxpayer's right to privacy.

The Right to Financial Privacy Act was enacted by Congress in response to a U.S. Supreme Court decision that found bank customers had no legal right of privacy for their financial information held by financial institutions.

The California Right to Financial Privacy Act governs the disclosure of financial records by financial institutions.

Financial institutions are defined as:

- Banks (state and national)
- Savings and Loan Associations (state and federal)
- Trust Companies
- Finance and Loan Companies
- Credit Unions (state and federal)

Note: Although federal law includes retail credit card issuers in its definition of financial institutions, state law does not. Since federal law does not preempt state law in this area, the Franchise Tax Board (FTB) does not consider retail card issuers as financial institutions.

Purpose

The Franchise Tax Board (FTB) recognizes the public's concern about its right to financial privacy. The Financial Privacy Act protects the taxpayers' right to financial privacy and provides criteria for requesting financial records. Additionally, financial privacy ensures that government agencies provide taxpayers notice and an opportunity to object before a bank or other institution can disclose personal financial information to a government agency as stated in Financial Code Sections 4050-4060 (California Financial Information Privacy Act).

Responsibility

It is the responsibility of FTB employees to adhere to the following Privacy Principles. FTB employees must verify taxpayers have been provided notice

prior to requesting information from a bank and/or other financial institution. Although these principles refer to individual privacy, they also extend to the protection of a business entity's privacy. FTB will ensure the taxpayers' right to financial privacy is not compromised.

- Information Gathering and Use Principle
- Information Sharing Principle
- Information Retention Principle
- Information Security Principle
- Right to Know Principle
- Right to Inspect & Correct Principle
- Right to Be Heard Principle
- Commitment Principle

Action

In the administration of the FTB programs the following may be obtained from financial institutions in accordance with Government Code Section 7480(e), without a subpoena:

- Whether a taxpayer has an account and, if so, any identifying numbers of such account or accounts.
- The amount of any security interest held by the financial institution in a specified asset belonging to the taxpayer.
- Financial records in connection with the filing or audit of a tax return of the financial institution.
- Tax information return required to be filed by the financial institution.

FTB is required to:

- Maintain only information that is relevant and necessary to accomplish the agency's purpose as required by law.
- Attempt to collect information directly from the taxpayer that is the subject matter of the information.
- Maintain the source of information in a readily accessible form.
- Provide the source of information to the taxpayer, upon request, unless such records are exempt from disclosure.
- Maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness.
- Ensure that vendors who handle or maintain FTB records adhere to the same guidelines.

- Establish rules of conduct for individuals involved in the design, development, operation, disclosure, or maintenance of records containing confidential information.
- Establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance for privacy.
- Designate an employee to be responsible for ensuring compliance.

Reference

California Civil Code Sections 1798 - 1798.78
Financial Code Sections 4050-4060 (California Financial Information Privacy Act)
Government Code Section 7465
Government Code Section 7480(e)
Information Privacy Principles for Individuals
((****))
((****))
FTB Disclosure Manual
The Privacy Act of 1974
California Information Practices Act of 1977
Section 3.0.1.3 Penalties for Disclosure

Note: (( )) = Indicates confidential and/or proprietary information.

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3.0.3.1 Due Process

Background

The Fourteenth Amendment of the United States Constitution guarantees in part that no state shall deprive any persons of their property without due process of law.

Due process is best defined as giving notice. The essential elements of due process of law are reasonable notice of an action taken that affects a taxpayer and provides an opportunity to be heard and present any claims or defenses, and in order to be heard, they must be given notice.

Statutory due process is where the law requires that notice be given before an action is taken. *Procedural due process* is when FTB has a program or process in which we afford due process and then extend the same due process procedure to similar programs or processes.

Purpose

Due process is to ensure that:

- FTB provides notice to the taxpayer prior to taking legal actions, and
- Gives the taxpayer the opportunity to present any claims and/or defenses.

Responsibility

FTB employees must ensure that due process is afforded to taxpayers at all times. Before taking any collection action, a liability (tax or nontax) must be *due and payable*.

Due process comes into play when we are required to issue notice, or when taking a collection action. FTB must advise the taxpayer of their opportunity to be heard or present any claims or defenses to avoid the action by complying within a set time limit.

As long as the department mails a notice to the last known address supplied by the taxpayer, due process, as to notice, has been served. The mailing of an FTB notice to the last known address provided by the taxpayer is adequate notice whether or not the taxpayer actually received the notice. As a general rule, a taxpayer's last-known address is the address

that appears on the taxpayer's most recently filed return, unless FTB is given clear and concise notice of a different address.

Revenue and Taxation Code Section 19049 represents the only due process requirement (before collection action can commence) that exists after an assessment becomes final, or a no-pay return is filed. Revenue and Taxation Code Section 19049 states " When a deficiency is determined and the assessment becomes final, the Franchise Tax Board shall mail notice and demand to the taxpayer for the payment thereof. The deficiency assessed is due and payable at the expiration of 15 days from the date of the notice and demand."

FTB has additional notice requirements before a collection fee is assessed, before a Notice of State Tax Lien can be filed, and before taking any involuntary collection actions.

Revenue and Taxation Code Section 19254, in part, says that a collection cost recovery fee shall be imposed if FTB has mailed notice for payment that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

Revenue and Taxation Code Section 21019, in part, says that at least 30 days prior to the filing or recording of a tax lien, we must mail a notice stating by what authority we are filing the lien (Section 7171 of the Government Code), and what procedures are available to prevent us from filing it. The 30-day notice provision is not applicable where the collection of tax is determined to be in jeopardy.

Revenue and Taxation Code Section 21015.5, in part, says that we must provide a notice in writing at least 30 days prior to taking a levy action. The notice shall be required only once for each taxable period to which the unpaid tax is specified.

If FTB holds in abeyance the collection of a liability (tax or non tax) that is final and otherwise due and payable, for a period in excess of six months from the date the hold is first placed on the account ((****)), FTB must mail a notice to the taxpayer prior to issuing a levy or filing a notice of state tax lien.

It is the responsibility of FTB employees to ensure that due process is addressed and afforded to taxpayers during the collection process.
For instance, California law requires us to give notice before assessing a collection fee, yet we are not required to do so for other fees. We notify taxpayers of these fees as part of procedural due process.

Action

FTB employees are required to ensure that due process was/is provided. ((****))

Due process consists of:

- Notifying the taxpayer of their balance due
- Notifying the taxpayer of possible collection action
- Ensuring the taxpayer is provided with the necessary legal language prior to taking involuntary actions (e.g., lien, levy)
- Disclosing the reasons for collection action
- Providing the right to a fair hearing
- Advising the taxpayer of the right to further appeal

Reference

California Taxpayers' Bill of Rights - 1988
California Taxpayers' Bill of Rights 2 - 1997
California Taxpayers' Bill of Rights, A Comprehensive Guide
Revenue and Taxation Code Section 19049
((****))
California Taxpayers' Bill of Rights, A Comprehensive Guide
Revenue and Taxation Code Section 19049
Revenue and Taxation Code Section 19254
Revenue and Taxation Code Sections 21015.5 and 21019
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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3.0.3.2 Taxpayers' Bill of Rights

Background

The California Legislature enacted the "Katz-Harris Taxpayers' Bill of Rights Act" in 1988. The enactment became effective in 1989, and was added to the Revenue and Taxation Code Sections 21001 - 21028.

The federal Taxpayers' Bill of Rights 2, 1997 was signed into law

July 30, 1996. California passed taxpayers' rights conformity legislation in an effort to conform to most federal laws, see the California Taxpayers' Bill of Rights 2 - 1997. California's law contains provisions that are intended to provide increased protection of taxpayers' rights, including the most recently legislated Taxpayers' Bill of Rights Act of 1999, ((see Highlights of California Taxpayers' Bill of Rights Act of 1999, form FTB 4058.))

In general, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2001. However, there are continuing differences between California and federal law. It should be noted that California does not always conform to the entire provisions of a public law. For more information regarding California and federal law, view the Franchise Tax Board (FTB) public website and select "Law and Legislation" or "Forms and Publications."

Purpose

The Taxpayers' Bill of Rights ensures that the rights, privacy, and property of California taxpayers are adequately protected during the process of assessment (audit, protest and appeal) and collection of taxes. The Taxpayers' Bill of Rights instructs the FTB to promote self-assessment by improving the clarity of the law, by keeping the taxpayers informed of its proper application, and by developing an education program that will raise taxpayers' level of awareness.

The Taxpayer's Bill of Rights provide the Taxpayer's Advocate Office with the authority to ensure fair and equal treatment of taxpayers under the law. If the taxpayer has been unable to resolve problems with FTB through regular channels, or if the taxpayer will suffer an irreparable loss, the taxpayer may write to the Taxpayers' Rights Advocate. The Taxpayer's Rights Advocate reports directly to the Executive Officer and enforces the Taxpayer Bill of Rights. The advocate or designee coordinate the resolution of the taxpayer complaints and problems. The Advocate or designee will review the case

and, if appropriate, postpone enforcement action while the case is under review.

Responsibility

Under the Taxpayers' Bill of Rights, it is the responsibility of FTB employee to adhere to the provisions of the Taxpayers' Bill of Rights, Taxpayers' Bill of Rights 2, and the California Taxpayers' Bill of Rights, A Comprehensive Guide.

FTB employee must ensure when performing their official duties that the Taxpayers' Bill of Rights are afforded to all taxpayers. FTB employee can mail or refer taxpayers to the California Taxpayers' Bill of Rights. A Comprehensive Guide – Form FTB 4058C.

With respect to the collection of taxes, employee should be aware the Taxpayer Bill of Rights requires:

- The issuance of pre-requisite notices prior to involuntary collection action, including the issuance of notices at least 30 days prior to the involuntary collection action and at least 60 days prior to the suspension or forfeiture of a business entity.
- The Taxpayers' Rights Advocate review whether FTB properly followed its normal practices and procedures during the collection of taxes and non-tax debt
- The Taxpayer Rights Advocate's authority to review the propriety of FTB's collection activity, including involuntary collection activities, installment agreement determination and seizure of property.
- If the taxpayer request a review of FTB's collection practices, we will suspend the proposed levy or collection actions while the review is pending.
- The taxpayer must be treated fairly with courtesy and respect.

The Taxpayers' Bill of Rights further specifies that:

- The purpose of any tax proceeding is to correctly determine the taxpayer's liability.
- FTB and taxpayer have the opportunity to present and consider all relevant information pertaining to the disputed liability.
- The taxpayer may also request an independent review by the Advocate if FTB rejects an offer of an installment agreement or after FTB terminates an existing installment agreement.
- The taxpayer has a right to request and receive certain public written records.

- Except under certain circumstances, if a taxpayer owes a delinquent tax liability, then we must mail written notice at least once a year, of the amount owed as of the date of the notice.

In addition, the Taxpayers' Rights Advocate has been given authority to abate penalties, fees, additions to tax, or interest under certain circumstances which are attributable to an FTB error or delay, erroneous action or erroneous inaction or erroneous written advice. The relief is limited to $10,000.00. Relief granted under this section is limited to narrow circumstances and only available if the taxpayer did not contribute to the error or delay in any significant way and relief is not otherwise available under the law, including under any regulation or FTB announcement. If the taxpayer wishes to apply for advocate relief refer the taxpayer to form FTB 3705.

Action

Business Entities

We must inform business entities in simple, non-technical language of their rights, how to protest/appeal, and how to contact the Taxpayer Advocate. FTB employees should be knowledgeable of the Taxpayers' Bill of Rights in reference to:

- Taxpayer Advocate Office Review Functions
- Taxpayer Education
- Collection Procedures
- Interest
- Notices to Taxpayers
- Amended Return Claims for Refund, Protests and Appeals
- Written Advice
- Miscellaneous Provisions
- Comparison of California Taxpayers' Bill of Rights to Federal Law

Personal Income Tax

We must inform taxpayers in simple, non-technical language of their rights, how to protest/appeal, and how to contact the Taxpayer Advocate. FTB employees can mail or refer taxpayers to the California Taxpayers' Bill of Rights, A Comprehensive Guide – form FTB 4058C. FTB employee should be knowledgeable of the Taxpayers' Bill of Rights in reference to:

- Taxpayer Advocate Office Review Functions
- Taxpayer Education

- Joint Returns
- Information Returns
- Collection Procedures
- Interest
- Notices to Taxpayers
- Amended Return Claims for Refund, Protest and Appeals
- Written Advice
- Miscellaneous Provisions
- Comparison of California Taxpayers' Bill of Rights to Federal Law

Reference

Revenue and Taxation Code Sections 21001 - 21028
California Taxpayers' Bill of Rights - 1988, form FTB 4058California Taxpayers' Bill of Rights 2 - 1997, form FTB 4063
California Taxpayers' Bill of Rights, A Comprehensive Guide, form FTB 4058C
((****))
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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3.0.3.3 Right to Public Information

Background

The California Public Records Act, Government Code Sections 6250 - 6270, mindful of the right of individuals to privacy, provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

Purpose

The right to public information, or giving access to public information, is to afford the right to any person (which includes any natural person, corporation, partnership, limited liability company, firm or association) to inspect any public record relating to the conduct of the public's business. Inspection of the public record is limited to businesses prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics, except when the disclosure is specifically exempt by law, or would jeopardize an individual's rights of privacy, or would reveal nonpublic information.

Responsibility

It is the responsibility of the department's ((****)) to ensure that the California Public Records Act, pursuant to Government Code Section 6250, be adhered to when any person requests a copy of the department's various handbooks, procedure manuals, training materials, or policy files.

Action

It is the responsibility of Franchise Tax Board (FTB) upon a request for a copy of records, within ten days from receipt of the request, to determine whether the request, in whole or in part, seeks copies of public records in the possession of this agency and to promptly notify the person making the request of the determination.

In unusual circumstances, the time limit prescribed (ten days) may be extended by written notice by the head of the agency, or his or her designee, to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be reached.

Note: No notice shall specify a date that would result in an extension for more than 14 days.

Requests must be:

- Specified in writing
- Accompanied by payment of a fee not to exceed the direct cost of duplication

It is departmental policy that tax supported institutions and government agencies shall be exempt from these charges ((****)).

Reference

FTB Disclosure Manual
((****))
((****))
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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3.0.3.4 Information not to be Disclosed

Background

Generally, confidential information is any item of information submitted to, or developed within the department to administer its program responsibilities and not specifically made public information by statute. Included are federal and state tax return information, property tax and renter assistance claim information, political reform audit information, personnel records, informant and investigative files, and proprietary information. Employees have no authority to use such records and information for any purpose not specified by law.

While the primary mission of the department is administration of tax law, there are many other programs, such as renter assistance, collections for other government entities, and financial audits of lobbying and political campaigning activities for which the department has responsibility, including the required to safeguard of information.

Taxpayer or Business entities and their authorized representatives are entitled to copies of records.

It is departmental policy to permit taxpayer or business entities, claimants and employees to review their own records and/or to obtain copies of documents. To request any information, the request must be in writing.

Purpose

The purpose of not disclosing any confidential information is to ensure the privacy and confidentiality of taxpayer or business entities.

Responsibility

It is the responsibility of Franchise Tax Board (FTB) employees not to disclose certain confidential information to unauthorized representatives or to those that do not have the right to know.

FTB employees should withhold disclosing public taxpayer or corporate information if there is a reason to believe that it will be used for commercial reasons.

Action

The following information must not be disclosed:

- Information pertaining to other debtors, claimants or employees.
- Information from informants, including the identity of informants.
- Information involving pending or open investigation cases and illegal activities files.
- Proprietary information (e.g., write-off limits, specific audit selection criteria, etc.).
- Social Security Numbers (SSN)
- Federal Employer Identification Number.
- Breakdown of the total balance due.

Note: If confidential information has been inadvertently disclosed, notify your supervisor immediately. The Disclosure Access Reporting and Tracking System (DARTS) must be completed for all Unauthorized Disclosures (UADs).

Reference

FTB Disclosure Manual
((****))

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3.2.1.1 Administrators and Executors

Background

Administrators and executors are personal representatives that act in a fiduciary capacity of a deceased taxpayer's (i.e., the decedent) estate.

Ordinarily, a decedent's estate is administered and settled by either an "executor" or an "administrator," who, by the granting of general letters testamentary or general letters of administration (i.e., a will), is empowered to take charge of the decedent's estate. These two terms are synonymous to the extent that each refer to a representative who possesses and manages both the real and the personal estate of the decedent and represents all beneficiaries of the estate.

Technically, however, there is a concrete distinction between an "executor" and an "administrator." The former is one who is designated in or by the terms of the decedent's will and is charged with fulfilling and executing that which is directed by the testator in his or her testament or other last disposition. On the other hand, an "administrator" is one who is appointed by the probate court to administrate and settle either an intestate estate or a testate estate that lacks a competent executor designated by the testator.

An estate is a taxable entity that comes into existence upon the death of the taxpayer. The estate is comprised of all the decedent's assets, and will be distributed on behalf of the decedent by one of the following methods:

- In a court process known as probate
- By way of a trust or similar legal device that was established prior to the death
- In some instances, the assets may be transferred directly to the beneficiaries of the estate.

Purpose

Franchise Tax Board (FTB) employees must ensure that confidential information is disclosed to the administrator and executor in a manner consistent with California laws and FTB's policies.

Responsibility

FTB employees are responsible for disclosing confidential information to an administrator or executor that is authorized to receive such information and, otherwise, has the "right to know."
In addition, FTB employees are responsible for educating administrators and executors of all filing requirements or outstanding liabilities of the decedent and/or estate.

Note: An individual who acts in a fiduciary capacity for the decedent may be held personally liable for failing to pay the tax liabilities prior to distributing the proceeds of the estate. The fiduciary's liability may not exceed the amount of the distribution. See Revenue and Taxation Code Section 19516.

Action

FTB must identify the authorized administrator and/or executor by requesting a completed Power of Attorney (POA) declaration, form FTB 3520, or a court order identifying the authorized administrator and executor as the decedent's representative before disclosing confidential account information to that person or entity.

Demands for payment of the decedent's debts are filed through the probate of the estate, and are to be paid before the distribution of assets to any beneficiaries or other groups of creditors holding a lesser priority for payment.

Reference

Revenue and Taxation Code Sections 18505, 18505.3, 18505.6, 18508, and 18509
Power of Attorney form FTB 3520
Additional information for decedents
Decedent filing requirements
((****))
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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3.2.1.2 Next of Kin

Background

Individuals who qualify as a dependent and/or relative of a deceased individual are referred to as next of kin. Next of kin is defined as the nearest blood relative(s) of a person who has died, including the surviving spouse or anyone who would receive a portion of the estate by the laws of descent and distribution if there is no will.

Purpose

Next of kin have the ability to act on behalf of a deceased taxpayer once proper verification has been established.

Responsibility

Franchise Tax Board (FTB) employees must obtain a copy of the death certificate to verify next of kin, or obtain Letters of Administration, or Letters Testamentary (Probate) which name the executor appointed to settle the taxpayer's estate.

Note: A Power of Attorney (POA) executed by the taxpayer ceases to be valid at death.

Action

Upon verification of next of kin and when appropriate documents have been received, FTB employees will verify the decedent's account has been coded in the Taxpayer Information System (TI) as deceased. ((****))

FTB employees should obtain probate information, attorney information and enter history comments into Tax Payer Folder (TPF), the Accounts Receivable Collections System (ARCS) and TI.

Reference

For additional information, see the Special Processes section of this manual.

Note: (( )) = Indicates confidential and/or proprietary information.

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3.2.1.3 Guardians and/or Conservators

Background

Certain individuals cannot legally represent themselves and are unable to resolve their issues with the Franchise Tax Board (FTB). In these cases, third parties known as guardians and conservators are designated.

A guardian is defined as an individual acting on behalf of another party. The court usually grants a guardianship when the other party is legally incompetent.

A conservator is defined as an individual appointed to conserve or protect the assets of another. Conservatorships are normally granted when another party is incompetent to perform (generally because the other person is mentally or physically disabled). A trust or estate is usually involved in a conservatorship.

Purpose

Guardians and/or conservators act as legal representatives on behalf of the taxpayer.

Responsibility

FTB employees must establish the guardian and/or conservator relationship before disclosing information. Once the relationship has been established the guardian and/or conservator may act to resolve the account as Power of Attorney (POA).

Action

All those designated as either a guardian and/or conservator must:

- Establish the guardian and/or conservator relationship by submitting their authorization to receive information.
- Provide a written request for information if required by procedure or statute; e.g., requests under the Information Practices Act, Civil Code Section 1798.24 (c).

Reference

Civil Code Section 1798.24-1798.24b
((****))

Note: (( )) = Indicates confidential and/or proprietary information.

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