

**MAP 17
SETTLEMENT & OFFER IN COMPROMISE**

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SETTLEMENT**

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**17.1.1
Introduction**

R&TC Section 19442 provides the Franchise Tax Board with the authority to enter into settlement agreements to settle civil tax matters in dispute consistent with a reasonable evaluation of the costs and risks associated with the litigation of these matters. Effective January 1, 2003, a settlement agreement may include matters that may be included in a closing agreement pursuant to R&TC Section 19441. The settlement procedure does not take into account a taxpayer's ability or inability to pay.

Civil tax matters in dispute include:

- The protest of a Notice of Proposed Assessment
- An appeal to the Office of Tax Appeals
- An outstanding claim for refund

The settlement agreements provide the Franchise Tax Board and the taxpayer an opportunity for a quick and expedient resolution. Depending on when the agreements were approved and whether specific issues were addressed in the agreements, the agreements may impact current or subsequent examinations.

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**17.1.2
Settlement
Process**

Taxpayers must submit a written request to initiate settlement consideration. Refer taxpayers to [FTB Notice 2007-02](#) for the address to send a request and a list of information that should be in the settlement request.

Following is a summary of the taxpayer and auditor's responsibilities, depending on the type of civil tax matter in dispute.

Civil Tax Matters in Dispute	Taxpayer's Responsibilities	Auditor's Responsibilities
Protest of Notice of Proposed Assessment	Taxpayers must first file a protest and then send a written settlement request to the Settlement Bureau.	If you receive a settlement request in writing after the case has been closed, contact the Settlement Bureau at 916.845.5034.
Appeal to the Office of Tax Appeals (OTA)	Taxpayers must first appeal with the OTA and then send a settlement request to the Settlement Bureau along with a copy of their appeal letter. If the case is already on appeal, then only a settlement request is necessary.	Refer taxpayers to FTB 1087 (Business Entities), FTB 1084 and FTB 7277 (Personal Income Tax) for appeal procedures. Also, see MAP 15.12 Appeals .
Claim For Refund	Taxpayers can request settlement after a determination that all or part of the claim will be denied.	Refer any settlement request in writing to the Settlement Bureau. Before the case can be considered for settlement, it will have to go through the review process. If the case does not meet review criteria, then send the case directly to the Settlement Bureau after you have completed your work. If there are NPAs to be issued along with action on a claim, then the steps for protest would apply.

The Settlement Bureau reviews all requests for settlement consideration to determine if the case is a proper candidate for the settlement program. After reviewing the taxpayer's file and the taxpayer's good faith settlement offer, the Settlement Bureau will contact the taxpayer or the taxpayer's representative with its determination as to whether the case will be accepted into the settlement program.

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However, acceptance of a dispute for settlement is discretionary. Upon review, a case may be rejected for a variety of reasons. For example, if the Settlement Bureau staff determines there is a negligible litigation risk to FTB's position in the case, or if the case has not been sufficiently factually developed to allow proper settlement consideration, the case would most likely not be accepted into the settlement program.

If there is no civil tax matter in dispute, the taxpayer will not be accepted into the Settlement program and the file will be returned to the unit that worked the case prior to receipt of the settlement request. The auditor will need to complete the case and follow normal closing procedures (See MAP 7 Closing an Audit).

For more information on the settlement process, see [FTB Notice 2007-02](#) or the Settlement Bureau's Frequently Asked Questions.

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17.1.3 Audit Guidelines

If you receive correspondence from a taxpayer requesting settlement after a notice is issued or a case is closed, contact the Settlement Bureau at 916.845.5034.

If you discover a pending settlement for the same year you are examining (secondary examination), contact the assigned Settlement officer immediately.

If available, review the Sticky Note in the primary case unit. The Sticky Note will inform Audit of the actions affecting the settlement years or subsequent years.

You may assist the Settlement officer by disclosing information in the initial audit narrative of any anticipated secondary audits.

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At times, you may not be able to open the case file because the taxpayer is in settlement negotiations. Under these circumstances, contact the Settlement officer.

For more information, see the Settlement Bureau's Frequently Asked Questions.

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**17.1.4 Impact
of Settlement
on Audit
Determination**

The settlement agreement may address how a specific settlement adjustment will be treated in subsequent years or if an adjustment will affect any other pending audits.

All settlements entered into are considered final and may not be appealed, unless upon a showing of fraud or misrepresentation of a material fact. Settlement years are generally closed to further actions, except for final federal determinations, adjustments due to any abusive tax avoidance transactions not covered by the settlement agreement, and amounts due and payable as of the date the taxpayer signs the settlement agreement. Generally, the FTB is barred from making further assessments, and the taxpayer is barred from filing any claims for refund. For answers on how a specific settlement may affect a matter under review contact the Settlement Bureau Director.

If the agreement does not address how the settlement adjustments will affect other years, the settlement adjustments are disregarded for subsequent years. If an agreement is final and a closes the years and secondary examination for the same year is not addressed, any other adjustments may be barred from an assessment. An exception is provided upon showing of fraud or misrepresentation with respect to a material fact.

Following are impacts of a settlement agreement on a subsequent or secondary examination:

- Unity determinations are based on the strengths and facts of a current year cycle and not on a prior settlement determination.
- Agreed adjustments affecting carryover adjustments are only considered if addressed in the settlement agreement. Examples:
 1. Suppose the audit schedules were revised by the protest hearing officer and the settlement officer. However, the final settlement agreement does not address the effect of the Alternative Minimum Tax on the tax credit for the subsequent year. The auditor for the subsequent year examination would use the Alternative Minimum Tax Credit based on the Alternative Minimum Tax determined by the hearing officer.

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2. The Internal Revenue Service completes its examination and issues a final federal audit report after the settlement agreement is approved. The settlement agreement does not specify that the revised apportionment formula is to apply to the federal audit adjustment. The auditor is required to use the apportionment percentage from the last determination to compute the additional tax on the federal audit adjustment.

3. A secondary examination was completed after a settlement agreement was approved for the same year. The settlement agreement does not address the secondary audit. The assessment likely may not be issued because a settlement agreement generally bars any additional assessments with the exception of fraud or material misrepresentation of a material fact. Check with the Director of the Settlement Bureau to see if the assessments can be issued.

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**17.2 OFFER IN
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AGREEMENT**

R&TC Section 19443 authorizes the Franchise Tax Board to enter into compromise agreements with taxpayers regarding final tax liabilities. The term tax liabilities, includes interest, penalties, and other additions to tax.

If a taxpayer is seeking only relief from the duty to pay an undisputed tax liability based on an inability to pay, refer the taxpayer to the Offer in Compromise program at 916.845.4787. See also the [Offer in Compromise](#) webpage on the FTB Public website.

For more information on Offer in Compromise for Business Entities, see FTB Form 4905BE.

For more information on Offer in Compromise for Individuals, see FTB Form 4905PIT.

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