

**MAP 4
SOL & WAIVERS**

4.1 STATUTE OF LIMITATIONS

4.2 STATUTE OF LIMITATIONS CHARTS

4.3 EIGHT YEAR SOL FOR ATAT

4.4 BARRED REFUND

4.5 ERRONEOUS REFUNDS

4.5.1 Erroneous Refund Examples

4.6 SPECIAL STATUTES

4.7 CARRYOVER ADJUSTMENTS ON CLOSED YEARS

4.8 FINANCIAL DISABILITY - INDIVIDUAL TAXPAYERS

4.9 INDIVIDUAL TAXPAYER WAIVERS

4.9.1 Receiving the Signed Waiver for Individual Taxpayers

4.10 CORPORATION WAIVERS

4.10.1 Combined Return Waivers

4.10.2 Former Members of a Combined Return

4.10.2.1 Waiver Policy, Prior to 1992

4.10.3 Suspended Corporations

4.10.4 Waivers for Corporate Groups in Diverse Business Activities

4.10.5 Receiving the Signed Waiver for Corporations

4.11 WAIVERS ON DELINQUENT RETURNS

4.12 FEDERAL WAIVERS

4.12.1 SOL for Federal Waiver

4.12.2 Waivers for Consolidated Groups

4.13 RECORDING RECEIPT OF WAIVERS

**MAP 4
SOL & WAIVERS**

4.14 MODIFIED WAIVERS

Rev. 7/17

NOTE: ((* *)) = Indicates confidential and/or proprietary information that has been deleted.

4.1 STATUTE OF

The Statute of Limitations (SOL) is a time limit imposed by law on the right of both the state and taxpayer to increase or decrease the taxpayer's self-assessed taxes. The SOL for different circumstances is summarized in a chart below (see MAP 4.2 Statute of Limitations Charts).

When we create a case unit, PASS automatically calculates a Statute date based upon the external accounting systems. When one case involves several case units, with different Statute dates, each case unit's General Information window must show its Statute date.

You must review the returns to verify that the date on PASS is correct. When verifying the Statute date for the case or case unit, consider whether the taxpayer is a fiscal year-end taxpayer. Do not assume the Statute date is March 15, April 15, or October 15.

We deem an application, tax return, claim, etc., as filed on the date postmarked. If it is mailed after the due date, it is date stamped with the date that it is received by the department. If the SOL expires on a Saturday, Sunday, or holiday, the statute expiration is effectively extended to the next business day. **Filing an amended return does not change the Statute date.**

The auditor should avoid opening an audit within 6 to 12 months of the expiration of the statute of limitations. The department's practice is to use good judgment, taking into consideration the taxpayer's compliance history, revenue impact, estimated time for completion, etc.

NOTE: Corporations Only

Auditors should avoid opening an audit within 24 months of the expiration of the statute of limitations.

It is the auditor's responsibility to assure that the statute of limitations does not expire. The earliest statute date should be entered into PASS (General Information Window). The auditor should also look ahead to future open years not yet assigned to audit to ensure that the statute is maintained for these years as well.

**MAP 4
SOL & WAIVERS**

Waivers

R&TC Section 19067 is based on and substantially similar to Internal Revenue Code Section 6501(c). As explained in Treas. Reg. Section 301.6501(c)-1, the extension becomes effective when the agreement has been executed by both parties (i.e., upon signature). There is no requirement in the statute that the signed waiver be mailed or transmitted to the Franchise Tax Board once a faxed or scanned copy has been received.

NOTE: We do not accept electronic signatures for purposes of waivers, e.g., DocuSign, Adobe Sign, etc.

Audit activities must be planned and carried out so a reasonable effort on the part of the taxpayer can result in the completion of our audit within the normal statute of limitations. **Waivers are not an acceptable substitute for prompt, timely audits.** If the taxpayer's circumstances are such that this would create a substantial burden, the department will generally allow a reasonable extension of the statute of limitations expiration date. Since our objective is to obtain the information necessary to verify or correct the taxpayer's self-assessed tax, this alternative may at times be preferable to closing the case with insufficient information to support the audit conclusion.

When seeking a waiver is necessary, it is preferable to have a valid California waiver. Statutorily, we can and will assess an NPA based on an open federal waiver, if we do not have a valid California waiver. However, with the reliance of a federal waiver, there comes some uncertainty; federal-state differences that have not been tested in the courts, such as:

- The termination date of the federal form 872A waiver
- Members included on the combined report versus the consolidated return
- Schedule R-7 issues
- Questions raised by a suspended corporation status
- Whether a federal waiver covers the state-only issues

The better approach, especially with large-dollar assessment is to acquire a state waiver.

Situations Where a Waiver May Be Acceptable:

MAP 4
SOL & WAIVERS

- The FTB has delayed the audit per the taxpayer's request.
- An audit of earlier years is currently in process and the taxpayer does not wish to allow follow-up cycles to occur simultaneously, or FTB resource limitations exist.
- A federal audit is ongoing.
- There is a failure to adequately disclose information on the return.

Just as our work must be done in accordance with the statute of limitations, we are entitled to expect a reasonable degree of cooperation from taxpayers so that we can complete our work promptly. Taxpayers that are unable or unwilling to comply with legitimate audit requests cannot be allowed postponement just because they are **willing** to sign waivers; there must be a reasonable expectation on the part of the auditor that the necessary data will be forthcoming. If this is not the case, waivers are not a viable alternative. Uncooperative taxpayers should receive formal demands for information and, if necessary, penalties for failure to comply with these demands, within the normal SOL period.

Explanation of the Statute in the Workpapers:

For any year being adjusted which the normal statute has expired, application of a special statute or type of extension (open state waiver, federal waiver, etc.) must be explained in the narrative and on any Notices. The explanation must include any dates upon which the statute is based, such as date of final determination of a federal change or date of the renegotiating payment.

The statute date must be entered on FTB 6430 (See MAP 13.4.4 Audit Report) and FTB 6833. For all PASS cases subject to TRS Review, you must write the Statute of Limitations date on the notes section of the Batch Control Worksheet (Form FTB 6148) in red and circle it.

You must submit completed cases to the Technical Resource Section at least six months before the Statute of Limitations expires. They need enough time to review the case fully and to contact the taxpayer with any issues.

If the statute expires fewer than six months after the examination is completed, complete the RUSH Action Slip (Form FTB 7011). Circle the Statute date in red, on the Rush tag. Attach this form to the physical file for rush processing. Route the physical file.

Transfer the electronic file to the appropriate Audit Business Support Group Worklist (see MAP 7.8.4 Routing the Physical and Electronic Files). Send an email message to the Technical Resource Section group email to tell Audit Business Support that the statute of limitations is pending and that you have transferred the physical file.

**MAP 4
SOL & WAIVERS**

Refer also to FTB Legal Division's webpage, which summarizes the various

Rev. 7/17

4.2 STATUTE OF LIMITATIONS CHARTS	Condition:	Notice of Proposed Assessment Must Be Issued Within:	Notices of Proposed Overpayment, Credit or Claim for Refund Filed Within:
	Normal	<p>The later of four years after:</p> <ul style="list-style-type: none"> • Original due date, or • Date filed (R&TC Section 19057 R&TC Section 19066). 	<p>The later of:</p> <ul style="list-style-type: none"> • Four years from the date the return was filed, but only if the return is filed by the original or extended due date (R&TC Sections 18601 and 18604); • Four years from the original due date, without extensions; or • One year from the date of overpayment. <p>(R&TC Sec. 19306, effective January 1, 2000, for any taxable years with open Statutes on that date).</p>
	State Waiver	Period agreed upon (R&TC Section 19067).	Period agreed upon (R&TC Section 19308 and R&TC Section 19309).
	Omission of 25 percent of gross income	<p>Later of :</p> <ul style="list-style-type: none"> • Six years after date return filed, or • Original due date. <p>(R&TC Section 19058 R&TC Section 19066).</p>	N/A
	Bad Debt Erroneous Inclusion of certain recoveries	N/A	7 years from the due date of the return or the date filed (if timely) (R&TC Section 19312)

**MAP 4
SOL & WAIVERS**

Involuntary conversion (deficiency attributable to gain on conversion)	4 years after notification by the taxpayer of replacement or intention not to replace. (R&TC Section 24945 and R&TC Section 19061)	N/A
Involuntary conversion (deficiency attributable to other gain on conversion)	At any time before the expiration of the period within which a deficiency for the last taxable year may be assessed. (R&TC Section 24946)	N/A
Patronage Dividends (noncash dividends elected to be excluded)	4 years from the date the taxpayer notifies the department that gains from noncash dividends are realized. (R&TC Section 24273.5(f))	N/A
Bankruptcy	Running of statute suspended up to two years or 30 days after FTB receives notice. (R&TC Section 19089)	Federal courts have held statute is not tolled (extended). (United States v. Neary (5th Cir. 2000) 206 F.3d 465)
Married Filing Joint individual return, after filing Married Filing Separate	One year, in addition to time period under R&TC Section 19057-19067, after joint return filed. (R&TC Section 18529)	
Request fiduciary (See LR 082)	18 months after written request to invoke provisions of R&TC Section 19517 made subsequent to or concurrently.	N/A
Substantially Disproportionate Redemptions	One year after notice by taxpayer of reacquisition of stock. (R&TC Section 17322)	N/A
Fraud; or no return filed	No statute of limitations. May assess at any time. (R&TC Section 19087)	The later of: <ul style="list-style-type: none"> • Four years from the date the return was filed, but only if the return is filed on time by the due date or extended due date;

**MAP 4
SOL & WAIVERS**

		<ul style="list-style-type: none"> • Four years from the original due date, without extensions; or • One year from the date of overpayment. <p>(R&TC Section 19306, effective January 1, 2000, applicable to any taxable years with open statutes on that date)</p>
Unreported installment income (corp.)	Four years after taxpayer ceases to be subject to tax (R&TC Section 24672 – Corp.)	N/A
TRANSFEEEE Original Transferee –corp	One year beyond the normal statute of limitations (R&TC Section 19074)	N/A
TRANSFEEEE Transferee of a Transferee – corp	One year after the expiration of the period of limitation of the preceding transfer. For exceptions see R&TC Section 19074(b), (c), & (d).	N/A

Federal Waivers and Changes

Condition:	Notice of Proposed Assessment must be issued within:	Notices of Proposed Overpayment, Credit or Claim For Refund filed within:
Federal Waiver signed	Later of: <ul style="list-style-type: none"> • Normal California statute, or • Six months after Federal waiver expires. <p>(R&TC Section 19065).</p>	Later of: <ul style="list-style-type: none"> • Normal California statute, or • Six months after Federal waiver expires. <p>(R&TC Section 19308).</p>
Federal change reported by taxpayer (or State return amended)	Later of: <ul style="list-style-type: none"> • Normal statute, or 	Later of:

**MAP 4
SOL & WAIVERS**

<p>for federal change) or provided by IRS within six months of federal determination.</p>	<ul style="list-style-type: none"> Two years from the date the notice or amended return is filed with the Franchise Tax Board. <p>Applies to Federal adjustments only. (R&TC Section 19059)</p>	<ul style="list-style-type: none"> Two years from the date of final federal determination, or Four years from due date of return or one year from overpayment. <p>(R&TC Section 19311)</p>
<p>Federal Change reported by taxpayer (or State return amended for federal change) or provided by IRS more than six months after the final federal determination.</p>	<p>Four years after the date the taxpayer notifies us. Applicable for Federal adjustments only. (R&TC Section 18622, R&TC Section 19060)</p>	
<p>Federal change not reported, or amended State return for federal change not filed.</p>	<p>Any time; Statute of limitations does not expire. (R&TC Section 19060)</p>	

Any change resulting to any tax year as a result of the federal change follows the rules above. For example, if the IRS made a change to a 1996 credit amount that was carried over, if the change affected the 2000 tax year, we would adjust the 2000 tax year, even though **normal** statute of limitations has lapsed.

Oftentimes, taxpayers report RAR adjustments with offsetting adjustments or the auditor may want to bring up non-RAR issues to offset RAR refund adjustments. ***** is intended to give guidance on rules for offsetting RAR adjustments, especially when the offsetting adjustments are state issues that are otherwise barred by SOL.

**MAP 4
SOL & WAIVERS**

	<p>Protest and appeals to the Tax Court, Circuit Court, etc. do not extend the Federal waivers.</p> <p>If an RAR or a 100X is included in an audit file, the date the RAR or 100X was received should be stamped on the RAR or 100X.</p> <p style="text-align: right;">Rev. 7/17</p>
<p>4.3 SOL FOR ATAT</p>	<p>FTB has 12 years after a taxpayer files a return to mail a proposed deficiency assessment relating to an abusive tax avoidance transaction as defined under R&TC section 19777. This extended period is applicable for notices mailed beginning August 1, 2011, for tax years not closed as of August 1, 2011.</p> <p>For notices issued prior to August 1, 2011, R&TC Section 19755 allows the Franchise Tax Board (FTB) eight years after a taxpayer files a return to mail a proposed deficiency assessment relating to an abusive tax avoidance transaction (ATAT). This extended period is applicable for returns filed on or after January 1, 2000. For purposes of this section, ATAT is defined under R&TC Section 19753 as a plan or arrangement devised for the principal purpose of avoiding tax, including, but not limited to listed transactions as described in R&TC Section 18407(a). (Also, see <u>Chief Counsel Announcement 2003-1, Abusive Tax Shelters – California Listed Transactions.</u>)</p> <ul style="list-style-type: none">• For open or closed years where there is substantive evidence that tax benefits claimed relate to ATATs, the auditor can assert the eight-year or twelve year statute of limitations (SOL). Auditors must obtain supervisor approval before opening otherwise closed years in reliance on R&TC Section 19755 or R&TC Section 19777.• For open years where there is no substantive evidence that tax benefits claimed relate to ATATs, auditors should request waivers to extend the normal SOL rather than rely on R&TC Section 19755 and R&TC Section 19777. Auditors cannot rely on R&TC Section 19755 or R&TC Section 19755 to open otherwise closed years if there is no evidence that tax benefits claimed relate to ATATs. <p>A complete discussion of the eight-year ATAT SOL is available in the Abusive Tax Shelters & Transaction website.</p> <p style="text-align: right;">Rev. 7/17</p>

**MAP 4
SOL & WAIVERS**

4.4 BARRED REFUND	<p>A taxpayer may offset a barred refund (barred because of expired SOL) against a deficiency from:</p> <ul style="list-style-type: none">• A transfer of items of income, deductions, or both, from one year to another for the same taxpayer. (R&TC Section 19314).• A transfer of items of income, deductions, or both, for the same year for a related or affiliated taxpayer described in R&TC Section 19110. <p>Taxpayers must file the offset before seven years after the due date of the return on which they find the overpayment. This statute does not extend the SOL for a claim for refund.</p> <p>If the taxpayers are claiming overpayment pursuant to R&TC Section 19314 and the issues in question deal with straddle investments or tax shelters, the auditor should be aware of the following:</p> <ul style="list-style-type: none">• If the straddles entered into were shams, then R&TC Section 19314 is inapplicable because there was never any item of income to report, let alone transfer; and• If the straddles were disallowed because the transactions were not entered into for profit, then R&TC Section 19314 is inapplicable because the closing of each straddle transaction is considered a separate transaction. (Smith v. Commissioner, 78 T.C. 350 (1982).) <p style="text-align: right;">Rev. 7/17</p>
4.5 ERRONEOUS REFUNDS	<p>An erroneous refund is any improper payment of government funds. We may assess or collect the amount mistakenly made or allowed as a refund, in whole or part, after we issue a notice and demand for repayment under R&TC Section 19368.</p> <p>We send an erroneous refund letter when we determine the taxpayer received a refund in error. Common reasons for an erroneous refund:</p>

**MAP 4
SOL & WAIVERS**

- We issued duplicate refunds
- We applied payments to an incorrect TPID
- We erroneously refunded estimate payments
- We issued a refund to the wrong taxpayer

For amounts assessable as deficiencies, issue a Notice of Proposed Assessment. An NPA to recover an erroneous refund can be issued before the later of two years after the erroneous payment was refunded or the normal NPA SOL. If the normal SOL for issuing an NPA has expired, the NPA must state on its face that it is being issued within two years of the date of the erroneous refund. For more information see AIC 2015-07.

Under R&TC Section 19411, we may bring an action for recovery of an erroneous refund or credit (payment) by the later of:

- Until two years after the refund or credit was made, **OR**
- During the period in which we may mail a Notice of Proposed Assessment.

R&TC Section 19104(c) provides for the abatement (grace period) of interest assessment on certain recoveries of erroneous refunds where the taxpayer did not in any way cause the erroneous refund. The grace period for interest on the erroneous refund is 30 days after the repayment demand (letter or Notice of Proposed Assessment).

A paid amended referral that is later audited and adjusted should not be treated as an erroneous refund if the normal statute of limitation for issuing assessments is still open.

MAP 4.5.1 Erroneous Refund Examples

Rev. 7/17

**MAP 4
SOL & WAIVERS**

4.5.1 Erroneous Refund Examples

California law does not define an "erroneous refund." However, federal references provide a broad definition of an erroneous refund as a refund which the taxpayer was not entitled to receive. (IRM 21.4.5.1 (06-25-2013).)

If the correction of the error involves reconciling a mathematical or clerical error, either a billing notice or an NPA may be issued to seek repayment of the amount erroneously refunded. If the correction of the error involves a determination where the correct tax exceeds the amount of tax previously assessed, an NPA must be issued.

Following are examples of four scenarios to illustrate the recommended approach for FTB to seek repayment of an amount erroneously refunded after the filing of an amended return.

Example 1, Scenario: Previously Surveyed Amended Return

The taxpayer files an amended return claiming a refund of \$9,000. FTB performs a clerical review of the amended return, and determined that the claimed refund should be automatically issued without review by an auditor because the amount claimed is under FTB's audit referral threshold.

Later, as a result of an audit on a related taxpayer (partners/shareholder from the same pass-through entity), FTB opened an audit of the amended return and determines that the claim should not have been allowed. The determination that the claim on the amended return was incorrect involves a determination where the correct tax exceeds the amount of tax previously assessed (not a math error.)

Example 1, Recommended Approach:

- Is the refund of \$9,000 an erroneous refund?

Yes. The audit revealed that the taxpayer was not entitled to the refund, and thus it is an erroneous refund under the broad federal definition.

- Assuming the statute of limitations has not expired, what remedy does the FTB have to recover the amount erroneously refunded?

NPA. In this case, the determination that the taxpayer was not entitled to the refund is based on a determination where the correct tax exceeds the amount of tax previously assessed. Accordingly, an NPA should be issued which allows the taxpayer protest and appeal rights.

- Should FTB abate interest on the amount erroneously refunded?

No. The taxpayer significantly contributed to the erroneous refund by filing an amended return which did not provide a proper basis for

**MAP 4
SOL & WAIVERS**

issuance of the refund. Therefore, the interest abatement provision of R&TC Section 19104(c) does not apply to this matter.

Example 2, Scenario: Previously Surveyed Amended Return

Taxpayer files an amended tax return claiming a refund of \$120,000 which is over the threshold amount to automatically allow a refund. The amended return was referred to Audit. After scoping the return, the auditor determines that an audit of the amended return is not necessary and a refund in the amount of \$120,000 is allowed.

Later, additional information obtained by FTB indicates that the facts, which were the basis for the amended return, are false.

Example 2, Recommended Approach:

- Does the "one-touch" policy prohibit an assessment based on an audit of the amended tax return and the facts related to the claim for refund?

No. The "one-touch" policy does not apply to the amount erroneously refunded in this scenario because the initial scoping of the return is not considered a "touch."

- Is the refund of \$120,000 an erroneous refund?

Yes. The audit reveals that the facts are false and the taxpayer is not entitled to the refund.

- Assuming the statute of limitations has not expired, what remedy does FTB have to recover the amount erroneously refunded?

NPA. In this case, the determination that the taxpayer may not be entitled to the refund is based on the discovery of contradictory facts related to a determination where the correct tax exceeds the amount of tax previously assessed. An NPA should be issued.

- Should FTB abate interest on the amount erroneously refunded?

No. The taxpayer significantly contributed to the erroneous refund by filing an amended return which did not provide a proper basis for issuance of the refund. Therefore, the interest abatement provision of R&TC Section 19104(c) does not apply to this matter.

Example 3, Scenario: Previously Audited and Allowed Amended Return

The taxpayer files an amended return claiming a refund of \$95,000, which is over the threshold to automatically allow a refund. An auditor opens the audit and

MAP 4
SOL & WAIVERS

determines that the amended tax return is correct as filed. A refund in the amount of \$95,000 is issued.

Later, there are indications the refund may have been issued in error. Therefore, audit would like to perform another examination of the amended return.

Example 3, Recommended Approach:

- Can FTB perform another examination of the amended tax return to determine if the refund was issued erroneously?

It depends. Due to the "one-touch" policy (MAP 5.4 Guidelines for Re-Opening an Audit), unless the situation meets one or more of the exceptions of the one-touch policy, FTB cannot re-open the claim even if the refund shouldn't have been issued. Refer to MAP 5.4.1 Re-Opening an Audit: General Rules for exceptions.

Example 4, Scenario: Math Error

The taxpayer files an amended return claiming a refund of \$9,000. FTB performs a clerical review of the amended return, and determines that the claimed refund should be automatically issued without review by an auditor because the amount claimed is under FTB's audit referral threshold. However, a clerical error in inputting the proper amount of the refund results in the taxpayer receiving a refund of \$29,000.

Later, prior to the expiration of the statute of limitations under R&TC Section 19368, FTB discovers the keying error that resulted in the excessive refund of \$20,000. There are no indications the \$9,000 claimed by the taxpayer is improper.

Example 4, Recommended Approach:

- Is the refund an erroneous refund?

Yes, partly. The taxpayer was not entitled to the amount of the refund that exceeded the amount properly claimed on the amended tax return. Thus, \$20,000 was erroneously refunded.

- What remedy does FTB have to recover the amount erroneously refunded?

NPA or billing notice. In this case, the correction of the erroneous refund is clerical. Either a billing notice (which may be substituted with an erroneous refund letter and followed by a billing notice, if necessary) or an NPA may be issued to seek repayment of the amount erroneously refunded. However, an erroneous refund letter or an NPA is preferred in

**MAP 4
SOL & WAIVERS**

	<p>this scenario to provide some notice prior to the collection of the amount erroneously refunded.</p> <ul style="list-style-type: none">• Should FTB abate interest on the amount erroneously refunded? <p>Yes. The taxpayer did not contribute to the erroneous refund. Therefore, the interest abatement provision of R&TC Section 19104(c) applies and interest should be abated on the amount erroneously refunded from the date of the refund to 30 days after the date of the erroneous refund letter.</p> <p style="text-align: right;">Rev. 7/17</p>
4.6 SPECIAL STATUTES	<p>If the normal four-year statute is open when a special statute becomes effective, the special statute will apply. An exception is R&TC Section 19517 (request by fiduciary), which supersedes both the normal statute and the statutes relating to federal waivers and federal changes. (R&TC Section 19060 & R&TC Section 19059)</p> <p style="text-align: right;">Rev. 7/17</p>
4.7 CARRYOVER ADJUSTMENTS ON CLOSED YEARS	<p>We cannot issue a Notice of Proposed Assessment on a year barred by statute. However, adjustments can be made on the barred year to revise any carryover (deductions and/or credits) claimed on an open year. (REV.RUL. 56-285; Springfield Street Railway Co. v. U.S., 312 F.2d 754; State Farming Co., Inc. v. Comr., 40 T.C. 774 (1963).)</p> <p style="text-align: right;">Rev. 7/17</p>
4.8 FINANCIAL DISABILITY - INDIVIDUAL TAXPAYERS	<p>Statute of limitations is suspended for individual taxpayers for a refund claim during any period that the individual is financially disabled. This provision applies to both original and amended returns as well as claim for refund correspondence, if the statute of limitations had not expired by September 23, 2002 (R&TC Section 19316).</p> <p>A taxpayer is considered financially disabled if the individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed terminal, or is expected to last for a continuous period of not less than 12 months.</p>

MAP 4
SOL & WAIVERS

	<p>An individual taxpayer is not considered financially disabled if, for any period, the individual's spouse or any other person, is legally authorized to act on that individual's behalf in financial matters.</p> <p>Taxpayers must complete Financially Disabled – Suspension of the Statute of Limitations – Form FTB 1564 in order to support their qualification under this provision.</p> <p style="text-align: right;">Rev. 7/17</p>
4.9 INDIVIDUAL TAXPAYER WAIVER	<p>We always want to complete our audits within the normal statute of limitations. In addition, Regulation 19032 requires us to complete our audits in a timely manner. Occasionally, this is not possible. We can extend the statute of limitations by having the taxpayer sign a waiver.</p> <p>To extend the statute of limitations expiration date for issuing deficiency assessments or refunds, we must get authorization on the Waiver Extending Statute of Limitations, FTB 3570D or 3570E. These forms should be created and issued from PASS using the following guidelines:</p> <ul style="list-style-type: none">• R&TC §19067 requires FTB to notify the taxpayer of their right to refuse to sign the waiver and to limit the extension period. Our current waiver forms include this notification.• The waiver should extend the SOL for a length of time sufficient to complete the audit. Generally, we extend the statute for one year, or until the normal SOL expires for the following tax year. However, the length of the extension is determined based on the facts and circumstances of the particular case. Work with the taxpayer to determine an extension date that will allow the audit to be completed in the most efficient manner.• The waiver must include the tax year(s) to which the waiver applies. Be specific. If the waiver covers a fiscal year taxpayer, indicate TYE MM/DD/YYYY.• All waivers should, if possible, have an expiration date that is the same as the statute date on the subsequent year's return. This will minimize the number of statute dates to be controlled.• A reasonable follow-up date on the cover letter must be used. This is necessary to assure that a protective NPA can be issued in the event a signed waiver is not received prior to the statute expiration date.

**MAP 4
SOL & WAIVERS**

- The request for a waiver should not include the statement that the waiver will extend the time for claiming a refund if the statute of limitation for filing a claim has already expired.
- For joint personal income tax returns:
 - The waiver must include both the taxpayer and spouse/RDP's full name and account number.
- If the taxpayer and spouse/RDP are no longer associated, separate waivers must be issued to each individual.
- If one of the spouses/RDPs is deceased, issue separate waivers to the surviving spouse/RDP and the estate of the deceased taxpayer. The NPA will be issued to both the surviving spouse/RDP and estate.

NOTE: If a case is subject to TRS end review, the completed case needs to be submitted to TRS at least 6 months before statute expires. Plan accordingly to ensure the waiver allows adequate time for TRS end review process.

If a waiver cannot be secured for a short statute case, please provide an explanation on the work papers and issue a protective NPA. A protective NPA (also known as a Provisional NPA) is an NPA that is issued prior to the audit work being completed. The NPA is issued because the SOL for the tax year is about to expire and we are unable to get a signed waiver in time. The audit work can be completed after the NPA is issued and the taxpayer has protested the assessment.

MAP 4.9.1 Receiving the Signed Waiver for Individual Taxpayers

Rev. 7/17

**4.9.1 Receiving
the Signed
Waiver for
Individual
Taxpayers**

Once a signed waiver is received, the auditor must review the document to ensure the waiver is valid.

- Auditor can accept electronic, faxed or photocopied waivers unless the auditor has reason to suspect that the form has been forged or is otherwise invalid. For assistance with authenticating the waiver:
 - Refer to the Department's Taxpayer Signature and Authentication Policy (FTB Policy File 9140).
 - Contact the Technical Resource Section.

**MAP 4
SOL & WAIVERS**

	<ul style="list-style-type: none">• Make sure the waiver is not modified. Our general policy is not to accept a modified waiver. See MAP 4.14 Modified Waivers.• Confirm the waiver was signed on or before the date the existing statute would expire.• Waivers signed by a representative must be accompanied by a power of attorney authorizing such signature. Check that the power of attorney is valid and has not expired. Refer to MAP 3.4 Locate and View Details for a POA Declaration.<ul style="list-style-type: none">○ Review the "Other Acts" option from the POA Details page to verify that the POA declaration is does not limit the POA representative from signing SOL waivers. The following paragraph is an example of a POA declaration with limited authority granted: "[The] tax representatives cannot make any management decisions, including decisions related to the final settlement of a tax matter, agreeing to a tax liability or extending a statute of limitations." <ul style="list-style-type: none">• If the waiver is for a joint personal income tax return, it is preferable to have both the taxpayer and spouse's/RDP's signatures on the waiver. However, if only one spouse/RDP signs the waiver, that waiver is still valid because each spouse/RDP is liable for 100 percent of the tax liability. <p>Once the waiver is determined valid, refer to MAP 4.13 Recording Receipt of Waivers</p> <p style="text-align: right;">Rev. 7/17</p>
4.10 CORPORATION WAIVERS	<p>We always want to complete our audits within the normal statute of limitations. In addition, Regulation 19032 requires us to complete our audits in a timely manner. Occasionally, this is not possible. We can extend the statute of limitations by having the taxpayer sign a waiver.</p> <p>To extend the statute of limitations expiration date for issuing deficiency assessments or refunds, we must get authorization on the Waiver Extending Statute of Limitations, FTB 3570 or 3570C. These forms should be created and issued from PASS using the following guidelines:</p>

**MAP 4
SOL & WAIVERS**

- R&TC §19067 requires FTB to notify the taxpayer of their right to refuse to sign the waiver and to limit the extension period. Our current waiver forms include this notification.
- The waivers must cover all affiliated California taxpayers. Either separate waivers or one waiver covering all corporations (attach list if necessary) must be obtained.
- The waiver should extend the SOL for a length of time sufficient to complete the audit. Generally, we extend the statute for one year, or until the normal SOL expires for the following tax year. However, the length of the extension is determined based on the facts and circumstances of the particular case. Work with the taxpayer to determine an extension date that will allow the audit to be completed in the most efficient manner.
- The waiver must include the tax year(s) to which the waiver applies. Be specific. If the waiver covers a fiscal year taxpayer, indicate **TYE MM/DD/YYYY**.
- All waivers should, if possible, have an expiration date that is the same as the statute date on the subsequent year's return. This will minimize the number of statute dates to be controlled.
- The request for a waiver should not include the statement that the waiver will extend the time for claiming a refund if the statute of limitation for filing a claim has already expired.
- A reasonable follow-up date on the cover letter must be used. This is necessary to assure that a protective NPA can be issued in the event a signed waiver is not received prior to the statute expiration date.
- The auditor should consult with their supervisor or manager before requesting waivers.

NOTE: If a case is subject to TRS end review, the completed case needs to be submitted to TRS at least 6 months before statute expires. Plan accordingly to ensure the waiver allows adequate time for TRS end review process.

If a waiver cannot be secured for a short statute case, please provide an explanation on the work papers and issue a protective NPA. A protective NPA (sometimes called a Provisional NPA) is an NPA that is issued prior to the audit work being completed. The NPA is issued because the SOL for the tax year is about to expire and we are unable to get a signed waiver in time. The audit work can be completed after the NPA is issued and the taxpayer has protested the assessment.

MAP 4
SOL & WAIVERS

	<p>If a corporation has filed a timely claim and the SOL has not expired, the auditor may want to request an extension to keep the statute open if additional issue(s) have been identified.</p> <p>MAP 4.10.1 Combined Return Waivers MAP 4.10.2 Former Members of a Combined Return MAP 4.10.3 Suspended Corporations MAP 4.10.4 Waivers for Corporate Groups in Diverse Business Activities MAP 4.10.5 Receiving the Signed Waiver for Corporations</p> <p style="text-align: right;">Rev. 7/17</p>
<p>4.10.1 Combined Return Waivers</p>	<p>Auditors may obtain blanket waivers for taxpayers that were included in an original Schedule R-7 group return. The taxpayer name on the waivers should be shown as (key corporation) and Schedule R-7 Electing Members.</p> <p>As long as a Schedule R-7 was executed, the blanket waiver will generally be acceptable even if the auditor is proposing to de-combine the taxpayers or if one or more of the taxpayers have been sold. Use judgment. If a taxpayer is asking to terminate their R-7 relationship, the auditor should obtain separate waivers to avoid potential problems. (Likewise, single notices can be mailed to taxpayers filing on a Schedule R-7 regardless of whether a taxpayer has been de-combined or sold, but the auditor should consider issuing separate notices if the taxpayer so requests.)</p> <p>Separate waivers will be needed for taxpayers that did not file as part of the Schedule R-7 group return. If the audit includes returns from more than one R-7 group of corporations, the key corporation of each Schedule R-7 group must execute a separate waiver on behalf of that group.</p> <p style="text-align: right;">Rev. 7/17</p>
<p>4.10.2 Former Members of a Combined Return</p>	<p>Since 1992, taxpayers that make a Schedule R-7 election to file a group return agree that the key corporation will act as agent and surety on behalf of the other electing taxpayers. This gives the key corporation authority to sign waivers on behalf of affiliates included on the R-7. The Schedule R-7 authority continues to be valid for that taxable year even if the taxpayers are later disaffiliated unless the taxpayer informs the FTB that they are terminating the R-7 relationship.</p> <p>Because there are no instructions for how to terminate the R-7, it's appropriate to use some judgment to determine whether they want to terminate the R-7. But, if the key corporation has indicated that they are not on good terms with the sold subsidiaries and want them to be separately billed, then written confirmation must be obtained as to whether they wish to terminate the R-7 relationship.</p>

MAP 4
SOL & WAIVERS

	<p>When a federal waiver exists, the state SOL is extended under R&TC Section 19065. This provision applies even if the former parent on behalf of the subsidiary signed the federal waiver.</p> <p style="text-align: right;">Rev. 7/17</p>
4.10.2.1 Waiver Policy, Prior to 1992	<p>Prior to 1992, the terms of the Schedule R-7 did not include an express authorization by the taxpayers for the key corporation to sign waivers on their behalf. In order to avoid potential controversy, the department's waiver policy was revised to require auditors to obtain either separate waivers, from each taxpayer in the combined report, or powers-of-attorney authorizing the corporation handling the audit to execute waivers on behalf of the other members.</p> <p>An exception to this policy is permitted if all of the following criteria are met:</p> <ul style="list-style-type: none">• The audit is not expected to result in de-combination.• All of the taxpayers are still affiliated with the key corporation.• The key corporation is a California taxpayer qualified with the Secretary of State.• The key corporation is financially stable, has substantial net assets to pay the affiliates' deficiencies, and has not shown any indication that they would be unwilling to pay the affiliates' portion of the tax.• The key corporation has acted in good faith in fulfilling its obligations to pay under the terms of the Schedule R-7 in the past (i.e., they have not tried to terminate an R-7 relationship, refused to pay the tax of a combined subsidiary, attempted to disregard a waiver executed on behalf of a subsidiary, etc.). <p>If all of the above criteria are met, the auditor may accept a blanket waiver signed by the key corporation on behalf of taxpayers included in the Schedule R-7 election. Separate waivers must still be obtained from any taxpayers that have been disaffiliated or are expected to be de-combined. An explanation of how the above criteria were satisfied should be included in the audit narrative. Even if the above criteria applies, auditors should still consider obtaining separate waivers in cases where intrastate apportionment would result in a large potential tax liability being attributed to a taxpayer other than the key corporation.</p> <p style="text-align: right;">Rev. 7/17</p>

**MAP 4
SOL & WAIVERS**

4.10.3 Suspended Corporations	<p>Although a waiver signed by a suspended corporation will be accepted by the department, there are risks involved, which would cause the waiver to be subject to be void. Therefore, the auditor must ensure that the key corporation that signs the waiver on behalf of itself or a group is not suspended.</p> <p style="text-align: right;">Rev. 7/17</p>
4.10.4 Waivers for Corporate Groups in Diverse Business Activities	<p>Situations may occur where corporate groups are involved in diverse business operations. A group of subsidiaries of the grandparent may be unitary, but not with other affiliated segments. State law provides that a waiver is only valid with respect to entities in the combined group. For this reason, the waiver should indicate the grandparent's corporate name and state and Schedule R-7 electing Subsidiaries.</p> <p style="text-align: right;">Rev. 7/17</p>
4.10.5 Receiving the Signed Waiver for Corporations	<p>The Department's Taxpayer Signature and Authentication Policy (FTB Policy File 9140) gives internal guidance on the level of authentication required on specific documents, including whether FTB can accept an electronic, photocopy or facsimile of a document.</p> <p>Taxpayer authentication means any method that can be used to verify a taxpayer's identity. Auditors can accept electronic, faxed or photocopied waivers unless the auditor has reason to suspect that the form has been forged or is otherwise invalid. If unsure, contact the Technical Resource Section.</p> <p>Once a signed waiver is received, the auditor must review the document to ensure the waiver is valid.</p> <ul style="list-style-type: none">• Make sure the waiver is not modified. Our general policy is not to accept a modified waiver. See MAP 4.14 Modified Waivers.• Confirm the waiver was signed on or before the date the existing statute would expire.• If the waiver was signed by an officer,<ul style="list-style-type: none">○ The waiver must state the title of the signor.○ The officer must have been a current officer of the corporation on the date the waiver was signed.○ The officer must have the authority to bind the taxpayer to the waiver. Examples of officers who have the authority to sign the waiver are:

MAP 4
SOL & WAIVERS

- President
- Vice President
- Chief Financial Officer (CFO)
- Chief Executive Officer (CEO)
- Chief Operating Officer (COO)

If the officer signing the waiver is not one of the officers listed above, the auditor must verify if the officer has the authority to sign the waiver. Below are examples of documents to review to determine if the officer has the authority to sign the waiver:

- Articles of Incorporation
- Charter
- Bylaws
- Annual Reports

The above list is not all inclusive. If the auditor is unable to determine the officer in context, has the appropriate authority, the auditor should request the waiver to be signed by the President, Vice President, CFO, CEO, or by the COO.

- Waivers signed by a POA representative must be accompanied by a POA declaration authorizing such signature. Check that the declaration is valid and has not expired. Refer to MAP 3.4 Locate and View Details for a POA Declaration.
 - Review the "Other Acts" option from the POA Details page to verify that the POA declaration is does not limit the POA representative from signing SOL waivers. The following paragraph is an example of a POA declaration with limited authority granted:

"[The] tax representatives cannot make any management decisions, including decisions related to the final settlement of a tax matter, agreeing to a tax liability or extending a statute of limitations."

- Update the extended SOL date for the respective tax year account(s) in BETS (R208). For detailed instructions, refer to MAP 27.3.1 How to Change the SOL Date on BETS.

Once the waiver is determined valid, refer to MAP 4.13 Recording Receipt of Waivers

**MAP 4
SOL & WAIVERS**

**4.11 WAIVERS
ON DELINQUENT
RETURNS**

The normal statute for issuing Notices of Proposed Assessment for **delinquent** returns expires four years from the **date filed**. However, for issuing refunds, the statute expires four years from the **due date** of the return or one year from the date of payment, whichever is later. This, in effect, creates a **gap** between the SOL for refunds and deficiency notices. Therefore, the request for a waiver (Form 3570) should **not** include the statement that the extension will extend the time for claiming a refund unless the period for claiming a refund has not yet expired. If necessary to request a waiver, auditors should request waivers that will keep the statute open for both assessments and refunds, when possible.

A taxpayer must generally file a **refund** claim within the later of:

- Four years of the original due date.
- Four years of the date the return was **timely** filed (including extensions).
- One year of the date of overpayment.

The one-year from date of overpayment rule limits the amount that may be claimed after the normal statute of limitations has run to amounts paid within one year of the date the claim was filed.

Rev. 7/17

**4.12 FEDERAL
WAIVERS**

The Internal Revenue Service has two types of statute of limitations waivers. They are:

- **Form 872** provides for specific taxpayers, specific taxable years, and an extended statute date.
- **Form 872A** provides for an open-ended statute with no specific extension date. The IRS uses this form for cases at the appeal level since it eliminates the need to keep track of extended statute dates.

If the normal state SOL has expired for any year and there appears to be a possible adjustment, the auditor should ascertain from the taxpayer or the taxpayer's representative whether there is a federal waiver. If the taxpayer claims there is no federal waiver, inquiry should be made as to whether a federal audit is in progress, whether a federal audit was completed, and whether an RAR was issued. If an RAR was issued, the auditor should ask the taxpayer whether any

**MAP 4
SOL & WAIVERS**

	<p>issues were protested. If an IRS audit is either in progress or if an RAR was issued which the taxpayer contested, a federal waiver will almost always be present.</p> <p>If the auditor has reason to believe that a federal waiver might be present and the taxpayer is not being cooperative, the auditor should request an IRS IMF or BMF transcript. This transcript will disclose whether a federal waiver is present. To obtain an IRS IMF or BMF transcript, fill out form 8796-A and send it to the IRS Coordinator who is in the RAR Unit. The RAR Unit is within the Federal and State Special Audit Section.</p> <p>The supervisor should always be kept informed of the earliest statute date. This is particularly important if an adjustment is being proposed and the normal statute is extended due to an existing Form 872 or 872A. There must be evidence in the file to substantiate that the statute is open before notices can be issued.</p> <p style="text-align: right;">Rev. 7/17</p>
4.12.1 SOL for Federal Waiver	<p>R&TC Section 19065 provides that the state SOL remains open for 6 months after the expiration of the federal waiver. The question arises as to whether the 6-month period begins to run on the stated expiration date of the federal waiver or the date of the earlier final federal determination. SOL remains open for 6 months after the stated expiration date even if there has been an earlier final federal determination. However, to protect the state's interest, it is always best to issue the assessments within the 6 months of the final federal determination. If the 6-month period has passed before you discover that the final federal determination was reached, Legal will still defend the assessment as long as it is issued within 6 months after the stated expiration date on the federal waiver. Based on this analysis, claims for refund should be considered timely if they are received within 6 months after the stated date on the federal waiver even if a final federal determination occurred prior to that date.</p> <p>In all cases involving an overpayment, when the statute would have normally expired prior to the date the Claim for Refund was filed (or the date credit is allowed) but for the existence of a federal waiver, it will be the responsibility of the auditor to have the taxpayer submit a copy of the waiver document.</p> <p>Summary of SOL for Federal Changes</p> <ul style="list-style-type: none">• Federal changes reported by the taxpayers within six months of federal determination: FTB has two years from the notice or amended return date to issue the NPA. (R&TC Section 19059.)

**MAP 4
SOL & WAIVERS**

	<ul style="list-style-type: none"> • Federal changes reported by the taxpayers after six months of federal determination: FTB has four years from the notice or amended return date to issue the NPA. (R&TC Section 18622, R&TC Section 19060.) • Federal changes not reported by the taxpayers, statute is suspended: FTB can issue the NPA any time. (R&TC Section 19060.) <p> Oftentimes, taxpayers report RAR adjustments with offsetting adjustments or the auditor may want to bring up non-RAR issues to offset RAR refund adjustments. ((*****)) is intended to give guidance on rules for offsetting RAR adjustments, especially when the offsetting adjustments are state issues that are otherwise barred by SOL.</p> <p style="text-align: right;">Rev. 7/17</p>
<p>4.12.2 Waivers for Consolidated Groups</p>	<p>Corporations filing consolidated 1120s will have one Form 872 for the consolidated group. If there are two or more California qualified corporations in the group, the federal waiver will apply to all corporations in the group. The IRS uses Form 872A for cases that have been appealed. The form precludes the need of keeping track of extended statute dates and provides that the IRS can issue a notice 90 days after final determination at the appeal level. Since the department does not coordinate extended statute dates with the IRS, the auditor should always try to secure a state waiver even though there is an existing federal waiver. If the taxpayer will not execute a state waiver, prompt action should be taken by the auditor to complete the case.</p> <p style="text-align: right;">Rev. 7/17</p>
<p>4.13 RECORDING RECEIPT OF WAIVERS</p>	<p>When a waiver is received, there are tasks that needs to be completed in CM, PASS and BETS (for corporations). Perform the following steps to complete these tasks:</p> <p>STEP 1:</p> <p>Determine if the waiver is valid:</p> <ul style="list-style-type: none"> • For Individual Taxpayers, refer to MAP 4.9.1 Receiving the Signed Waiver for Individual Taxpayers. • For Corporate Taxpayers, refer to MAP 4.10.5 Receiving the Signed Waiver for Corporations.

MAP 4 SOL & WAIVERS

STEP 2: (Corporations only)

Update the extended SOL date for the respective tax year account(s) in BETS (R208). For detailed instructions, refer to MAP 27.3.1 How to Change the SOL Date on BETS.

STEP 3:

Perform the following tasks to update the GI window in PASS:

- Revise the **Statute of Limitations Date** field in the GI window.
- Check the **Waiver Indicator** box in the GI window.
- Record an Event, entering in the subject line "SOL Waiver received MM/DD/YY"

STEP 4:

The waiver must be stored in two places within the primary case unit in PASS:

1. **Received Correspondence Folder**
Waivers are considered received correspondence and must be recorded and stored in PASS using Form 9900 Correspondence Received. Refer to MAP 28.6 Recording Received Correspondence in PASS.
2. **Audit Support Folder**
A copy of the waiver must be stored in this folder for Audit Business Support staff to easily locate the waiver.
 - Create the Free Form (9904) document, and name the document following MAP 28.5.1 Naming Non-Correspondence Documents
 - Insert the waiver into the document as an object (DO NOT "drag and drop" or "copy and paste" to insert files. These functions may not properly insert the files for other PASS users to access).
 - Insert the declaration as an object if an authorized representative (POA) signed the waiver. If the image of the declaration is not available (i.e., declaration was submitted online without an upload of the declaration), record an event in PASS Event Log "POA received for [enter representative's name(s)] and authorized tax years."

NOTE: If the waiver is part of an electronic correspondence that contains documents in addition to the waiver, separate the waiver from the

**MAP 4
SOL & WAIVERS**

correspondence before uploading a copy to the Audit Support Issue folder. Refer to MAP 29.6.2.1 Splitting Correspondence.

STEP 5:

If the waiver is signed by the taxpayer, proceed to Step 6.

STEP 6:

The respective CORR case assignments must be completed if the waiver is received via CM/MyFTB.

- If the CORR case is a Process Assignment, refer to MAP 29.4.5 Process Assignment. Otherwise, refer to MAP 29.4.2 Correspondence Received via CM.
- If a taxpayer sends the waiver via MyFTB Message, but the respective CORR case is not on the auditor's Worklist, refer to MAP 29.7.4 MyFTB Message Not Received in Worklist.

Rev. 7/17

**4.14 MODIFIED
WAIVERS**

A modified waiver is any waiver that has been altered in any manner from that which was originally sent by the auditor to the taxpayer or representative. Our general policy is **not** to accept a modified waiver. The following are examples of modifications:

- Alterations on the waiver form which change the extended statute date.
- Alterations to the waiver outlined in a cover letter and included with the signed waiver.
- Alterations on the waiver form which limit the applicability of the extended statute (i.e., to certain issues or dollar amounts).

A modified waiver is considered invalid. If the auditor requests the taxpayer sign a waiver extending the statute of limitations and in return the auditor receives a modified waiver, the auditor must consider the waiver invalid. The auditor must then complete the case within normal statute or seek an unaltered waiver. In

**MAP 4
SOL & WAIVERS**

addition, the auditor must inform the taxpayer in writing that the modified waiver is not being accepted.

However, it is understood that there may be some factual circumstances where it may be in the state's best interest and the taxpayer's best interest to accept a waiver that limits the applicability of the extended statute. Therefore, in these very limited situations, the auditor must follow the approval procedures outlined below prior to accepting a modified waiver.

1. The auditor will inform his/her supervisor that a modified waiver has been proposed and/or received which seeks to limit the applicability of the extended statute and discuss the reasons why the limitations should be accepted.

2. Once the auditor and supervisor agree that it is in everyone's best interest to accept the proposed limitations, the auditor will contact the Technical Resource Section (TRS) member, and provide:
 - All facts, circumstances, and risks associated with accepting the modified waiver, and
 - The basis and recommendation as to why the waiver should be accepted.

3. The TRS member will review the request and seek Legal approval to determine whether or not the recommendation is appropriate.

4. If it is appropriate, the TRS member and Legal will ensure the modified waiver contains the necessary language to sustain challenges of validity. The TRS member will use the facts and circumstances of each contact to monitor the policy for consistency and application of the exception rule.

5. The auditor and the audit supervisor will work with the taxpayer to sign the agreed upon modified waiver which will be unique to that particular taxpayer's facts and circumstances.

MAP 4
SOL & WAIVERS

6. The waiver must be signed and returned with the approved modified wording unaltered.

Rev. 7/17