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**6.1 PURPOSE OF AN
AUDIT**

The purpose of an audit is to effectively and efficiently determine the correct amount of tax based on an analysis of relevant tax statutes, regulations, and case law as applied to the taxpayer's facts. Experience has shown that we can

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	<p>achieve the best results through cooperation, effective communications, and setting and adhering to goals throughout the audit process.</p> <p>This section discusses techniques, practices, and procedures that you may need to successfully conduct an audit.</p> <p style="text-align: right;">Rev. 7/17</p>
6.2 WORKING WITH TAXPAYERS	<p>Establishing a positive working relationship with the taxpayer is conducive to the effective and timely completion of the audit.</p> <p>During your interaction with the taxpayer, ensure that:</p> <ul style="list-style-type: none">• The purpose of the audit and the legitimate need for information requested are conveyed to, and understood by, the taxpayer.• You evaluate the audit data and determine the tax liability fairly and impartially.• The audit progresses with a minimum of inconvenience to the taxpayer.• The final audit recommendations are supported by both the facts and the law and are discussed with, and understood by, the taxpayer.• You always communicate the results of the audit in writing to the taxpayer, and provide the taxpayer with the opportunity to rebut any findings. <p>The following are suggestions on receiving cooperation from taxpayers and tax representatives:</p> <ul style="list-style-type: none">• Be courteous and professional. Your tone in letters and on the telephone is very important. You want to be treated politely and with respect and so does the tax representative and taxpayer.• When the taxpayer is verbally abusive and uncooperative, be cooperative and professional. If you respond with an equally abrasive

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	<p>attitude, you will not gain cooperation. If you are cooperative, it is difficult for taxpayers to remain uncooperative.</p> <ul style="list-style-type: none"> • Timeliness in your audit sets the tone for all follow-ups in the audit, and your ability to close the audit. For example, if you take six months to reply to the taxpayer, the taxpayer will not give your next request for information a high priority. You should set a comparable response timeframe (same as we require from taxpayers) and stick to it. This shows the taxpayer that the case is a high priority to you, and the taxpayer will respond timely. • Always set the taxpayer's response date to a specific due date (e.g. June 15, 2006) to reply. A specific due date avoids the confusion that setting the response date at 30 days can cause (e.g. calendar days vs. workdays). <p style="text-align: right;">Rev. 7/17</p>												
<p>6.3 AUDIT PLAN</p>	<table border="0"> <tr> <td>MAP 6.3.1</td> <td>Purpose of an Audit Plan</td> </tr> <tr> <td>MAP 6.3.2</td> <td>Examinations Requiring an Audit Plan</td> </tr> <tr> <td>MAP 6.3.3</td> <td>When Do You Develop an Audit Plan?</td> </tr> <tr> <td>MAP 6.3.4</td> <td>Who Develops the Audit Plan?</td> </tr> <tr> <td>MAP 6.3.5</td> <td>What Should Be in the Audit Plan?</td> </tr> <tr> <td>MAP 6.3.6</td> <td>Taxpayer Involvement in the Audit Plan</td> </tr> </table> <p style="text-align: right;">Rev. 3/19</p>	MAP 6.3.1	Purpose of an Audit Plan	MAP 6.3.2	Examinations Requiring an Audit Plan	MAP 6.3.3	When Do You Develop an Audit Plan?	MAP 6.3.4	Who Develops the Audit Plan?	MAP 6.3.5	What Should Be in the Audit Plan?	MAP 6.3.6	Taxpayer Involvement in the Audit Plan
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<p>6.3.1 Purpose of an Audit Plan</p>	<p>The purpose of the audit plan is to establish open lines of communication and to promote understanding of commitments made and agreements reached. The audit plan is a tool that provides a road map of how the audit begins, how the audit is progressing, where the audit is going, and identifies key potential audit issues. It allows the auditor and the taxpayer to work together to resolve problems as early as possible in the audit process and establishes a partnership relationship. The audit plan helps ensure an effective and efficient audit that is less burdensome, less costly, and less intrusive.</p> <p style="text-align: right;">Rev. 3/19</p>												

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<p>6.3.2 Examinations Requiring an Audit Plan</p>	<p>All audits will use some type of audit plan, though the complexity of the audit plan will differ based on circumstances.</p> <p><u>NBA Examinations</u></p> <p>An audit plan is required for all NBA examinations regardless of either the type of audit (field or desk) or the complexity of the audit (examination with numerous identified issues, examination consisting of only one or two issues, audit of a claim for refund, audit of an RAR, etc.).</p> <p><u>All Other Audit Examinations</u></p> <p>Use a formal or detailed audit plan:</p> <ul style="list-style-type: none">• For cases which are either large or contain sensitive audit issues.• At the advice of the audit supervisor.• At the request of the taxpayer.• As a result of the auditor's judgment. <p>For certain audits, the audit plan might be a simple Scope Sheet (e.g., single-issue audit cases).</p> <p style="text-align: right;">Rev. 3/19</p>
<p>6.3.3 When Do You Develop an Audit Plan?</p>	<p>The audit plan is a communication tool between the auditor and the taxpayer which provides pertinent information regarding the tax years, tax returns, and tax issues under examination. The audit plan is updated throughout the course of the audit to reflect any changes to the scope of the examination as well as the progress of the audit issues.</p> <p><u>Initial Development of the Audit Plan</u></p> <p>The audit plan sets forth the road map for the audit and therefore would be completed prior to the commencement of the audit. Upon completing the preliminary audit procedures and scope, prepare a draft audit plan. The draft audit plan should be discussed during the opening conference to provide the</p>

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taxpayer with an understanding of the scope of the examination and to obtain their input on issues affecting the audit plan.

Consider the following:

- You may want to include the draft audit plan in the initial contact letter to the taxpayer in order to initiate discussions during the opening conference.
- Discuss the draft audit plan with the taxpayer during the opening conference. Emphasize to the taxpayer that the audit plan is a guide for the examination. It is subject to revision as progress indicates the need for more, less, or different work than originally planned.
- Finalize the draft audit plan incorporating changes made as a result of discussions with the taxpayer.
- Obtain supervisor approval on the draft audit plan and/or changes to the audit plan, if required.

Updating the Audit Plan

The audit plan should be updated throughout the audit to reflect changes to the original audit scope and to reflect the progress of the examination. It is routine for new issues to be added during the course of the examination and/or for issues to be withdrawn. The auditor should periodically assess the issues under review in light of potential non-compliance and materiality. Auditors have discretion to discontinue analysis of audit issues (and even the entire audit) if available information indicates that review is no longer necessary or viable. Supervisory approval may be required.

Discuss changes to the audit plan as well as status updates with the taxpayer. Updated copies of the audit plan should be provided to the taxpayer.

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6.3.4 Who Develops the Audit Plan?

The auditor develops the audit plan. In a team audit, the lead auditor prepares a preliminary draft of the audit plan, with team members providing comments, and submits the plan to the immediate supervisor for review and approval. The supervisor and program manager might also provide input on planning, the role of the team members, involvement of the supervisor and/or industry specialist, or anything vital to management's role and approval. In addition, consider the input provided by the taxpayer at the opening conference.

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**6.3.5 What Should Be
in The Audit Plan?**

NBA Examinations

All NBA examinations will use the following PASS templates for the Audit Plan:

- **NBA Audit Plan (PASS Template 6432)**
The NBA Audit Plan (a Word document) provides specific details on the taxpayer under examination, the assigned personnel, and pertinent audit process details. The Audit Plan is intended as a discussion document to establish communication and expectations between the audit staff and the taxpayer. This template is available in both the Administration Folder and the Draft Correspondence Folder.
- **Audit Issue Log (PASS Template 6433)**
The Audit Issue Log (an Excel document) is a tool used throughout the examination to identify and to monitor the progress of the specific items under examination. The Log identifies the tax years and tax returns (original, amended) included in the examination. The Log also lists the specific issues under examination, as well as the status and resolution of each. The Audit Issue Log is provided to the taxpayer at the start of the examination as an attachment to the Audit Plan.

During the course of the examination, the Audit Issue Log is updated by the audit staff to reflect both the progress on the audit issues and any additions/deletions to the items, tax returns, and/or tax years included in the examination. Copies of the updated Audit Issue Log may be provided to the taxpayer during the course of the examination. This template is available in the Administration Folder.

All Other Audit Examinations

The following items are typically included in an audit plan although not necessarily all-inclusive. Additions to or deletions from these items when developing the audit plan should be made on a case-by-case basis.

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- **Audit Scope** –The audit scope shows the years being examined, office conducting examination (MSA Cases), results of prior years, how examination began.
- **List of Key Personnel** -Identify key Franchise Tax Board staff and taxpayer personnel, including representatives. Show addresses and telephone numbers. If applicable, explain the role and responsibility of each FTB audit team member. Confirm that the taxpayer personnel identified in the audit plan are authorized to provide the Franchise Tax Board with records or enter into preliminary and final discussions with the Franchise Tax Board.
- **Timeframes** - Establishing timeframes and adhering to them is critical in completing cases timely. Throughout the audit process, these timeframes serve as benchmarks against which progress can be measured. Establish timeframes for:
 - Estimated starting date and estimated completion date.
 - Expected response timeframes on IDRs, AIPS, and correspondence.
 - Schedule of tentative field appointments.
 - Status Conferences – to periodically meet and discuss audit issues, emerging problems, how the flow of information is progressing, and the general status of the audit.
 - Waivers – Current statute of limitations and policy for managing the SOL throughout the audit.
- **Status of Federal Audits** - If applicable, include in the plan the status of any federal audit. To ascertain current status of the federal audit, follow-up periodically with the taxpayer.
- **Amended Returns Filed by the Taxpayer** - Ask the taxpayer whether any amended returns have been filed of which you may not be aware. Also, it may help to manage the audit if you are informed of any amended returns that the taxpayer intends to file.
- **Audit Issues** - Identify known audit issues and the potential tax effect. Inform the taxpayer that additional issues may arise, and that you may make changes during the course of the audit.
- **Audit Procedures** - Explain procedures for issuing IDRs, AIPS, and closing letter.

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	<ul style="list-style-type: none">• Audit Logistics - Discuss logistic issues with the taxpayer. For example:<ul style="list-style-type: none">○ Location of the audit records.○ Taxpayer's record retention policy.○ Availability of photo copying equipment and procedures for photocopying.○ Adequate accommodations – audit room, storage of taxpayer's records, telephones, rest rooms, cafeteria facilities, etc. <p style="text-align: right;">Rev. 3/19</p>
<p>6.3.6 Taxpayer Involvement in the Audit Plan</p>	<p>If possible, involve the taxpayer in developing the audit plan. Be receptive to the taxpayer's suggestions of what are we doing well, and what can we do to make it better?</p> <p>The advantages of involving the taxpayer in developing the audit plan are:</p> <ul style="list-style-type: none">• Both parties will efficiently manage the gathering of facts and analysis of the issues.• Taxpayers can anticipate deadlines and provide alternative solutions to issues, such as alternative documents and sampling.• Reducing any concern the taxpayer may have about what to expect which in turn may foster communication and cooperation in the audit process. <p style="text-align: right;">Rev. 3/19</p>

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6.4 OPENING CONFERENCE	MAP 6.4.1 Purpose of an Opening Conference MAP 6.4.2 What Do You Discuss During an Opening Conference? <p style="text-align: right;">Rev. 3/19</p>
6.4.1 Purpose of an Opening Conference	<p>The purpose of the opening conference is to establish the groundwork necessary to conduct an effective and efficient audit. The opening conference establishes lines of communication and helps build a partnership between the auditor and taxpayer. During the opening conference, you will introduce the participants of the audit; agree on a general audit plan; discuss audit processes and procedures; agree upon expected timeframes; and start developing a rapport with the individuals that will be working on the audit.</p> <p>You may choose to hold an opening conference on a case-by-case basis, or if taxpayer requested. Your supervisor may attend the opening conference as needed or if taxpayer requested.</p> <p style="text-align: right;">Rev. 7/17</p>
6.4.2 What Do You Discuss During an Opening Conference?	<p>Listed below are topics that you can discuss during an opening conference. Choose the topics that are applicable to your situation.</p> <ul style="list-style-type: none">• Introduction of Personnel• General Discussion• Audit Plan• Potential Audit Issues• Tax Return Preparation• Status of IRS Audits and Audits by Other States• Company Records• Information/Document Requests• AIPS and Position Letter• Status Conferences• Waivers• Scheduling Future Audit Appointments• Photocopying• Use of Taxpayer's Facility

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- Closing Conference

Introduction of Personnel

Introduce all FTB staff involved in the audit. Provide the taxpayer the names and telephone numbers of your audit supervisor and program manager and explain the reporting lines.

If applicable, know and understand the taxpayer's tax department. You may find an organization chart helpful if the taxpayer has a large tax department. Obtain the phone numbers of the people involved in the audit.

General Discussion

The general discussion should be relaxed and informal. The purpose of the general discussion is to open communication and to begin forming a professional relationship with the taxpayer's staff. This is an opportunity to:

- Provide a copy of the Statement of Principles of Tax Administration if it was not already provided with the contact letter.
- Provide the taxpayer with a copy of the audit regulation or refer them to it for more detailed information about the conduct of the audit.
- Emphasize our expectation of completing the audit within two years from the initial contact according to the audit regulation.
- If appropriate, discuss questions you have on the general history of the taxpayer. Are there unusual activities during the audit years? Is the taxpayer undergoing current changes that might impact your audit?
- Determine other issues that the auditors should know about such as whether the company is in the process of shutting down their tax department and outsourcing.

Audit Plan

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Discuss and provide a copy of the audit plan to the taxpayer. See MAP 6.3 Audit Plan for more details.

Potential Audit Issues

Inform the taxpayer of the potential audit issues identified during the scoping process. Explain that additional issues might arise from the review of information in support of the tax return. Ask the taxpayer if they have changes or issues that they want to submit for consideration. The earlier that you discover potential claim issues the easier it is to adhere to your audit timeline.

If the taxpayer had been audited previously, discuss recurring issues as well. Determine the status of recurring issues if the prior audit determination is being protested or was changed during the protest and appeal process. Discuss if there has been a change to the statutory treatment of these items since the last audit. Consider whether agreement to facts developed in prior audits would assist the examination of recurring issues. In making this determination, consider if the prior auditor comprehensively developed the issue, if there are other facts you need to develop and whether the facts in the prior audit are applicable to the current years. If you determine that agreement to facts developed in prior audits would assist in the current audit, discuss with the taxpayer.

Tax Return Preparation

These are some topics you may want to discuss with the taxpayer:

- Who prepared the return? If the return preparers are not currently involved in the audit, are they still available for questions or information?
- Was the tax return prepared by the taxpayer or outsourced?
- What part did the tax department prepare? If applicable, what part did the divisions prepare?
- What instructions were issued to people who prepared parts of the return? Are the return preparation guidelines available.
- If applicable, how was apportionment information compiled?

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- Where are the tax preparation workpapers located and what lead-time is needed to obtain them?
- Are the tax preparation workpapers stored electronically? If so, in what format? Can they be exchanged electronically?
- Have state or federal amended returns been filed? If so, what is the status of these amended returns?

Status of IRS Audits and Other State Audits

These are some topics you may want to discuss with the taxpayer:

- What years did IRS audit? What is the status? How will the taxpayer convey the final federal determinations?
- Determine whether the RAR for the most recent IRS audit has been submitted to the Department.
- Discuss any outstanding controversies at the federal/state level. Do any of the years/issues affect your audit cycle?
- Have any other states audited the years under examination? You may be able to save yourself, and the taxpayer, time and effort by obtaining copies of audit work performed by other states.

Company Records

Company records provide the foundation for developing facts. These are some topics you may want to discuss with the taxpayer:

- What are the taxpayer's recordkeeping practices? What areas of the taxpayer's organization have responsibility for the records you need to examine?
- What electronic records might be available and in what format?
- What is the taxpayer's record retention policy?
- What documents have actually been retained? It can be helpful to obtain the document that lists the actual records in storage.

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- Generally, how long will it take to retrieve documents from storage?

Information/Document Requests

Discuss the general response timeframes and follow-up process for IDRs. Emphasize that it is important to meet timeframes in order to complete the audit timely. Inform the taxpayer of our practice to issue an IDR, one follow-up, and then, if necessary, a formal demand for the information citing possible application of the failure to furnish information penalty.

Establish who will receive the IDRs and whom you may contact to secure additional records or information. See MAP 6.10.5 Information/Document Request for more details.

Audit Issue Presentation Sheet (AIPS) and Position Letter

During the opening conference:

- Explain what the Audit Issue Presentation Sheet (AIPS) and position letter contain. See MAP 6.10.6 Audit Issue Presentation Sheets and MAP 6.10.7 Position Letter for more details.
- Explain that you expect the taxpayer to respond to the factual write-up as presented in the AIPS or closing letter. While the taxpayer may disagree with the application or conclusion of law at a minimum, the taxpayer should agree with the facts set forth in the AIPS.
- Discuss the timeframes appropriate for responses. The general timeframe is 30 days.

Status Conferences

Discuss if you expect to hold a status conference. See MAP 6.6 Status Conference for more details.

Waivers

The Audit Regulation sets forth the expectation that the audit will be completed within the normal statute of limitations or two years after initial

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contact. However, there may be some situations where waivers are appropriate. It is the auditor's responsibility to assure the statute of limitations has not expired. During the opening conference you should:

- Determine if there is a federal waiver and if so, the status.
- Explain how waivers, if necessary, will be handled throughout the audit. See MAP 4.1 Statute of Limitations for information on handling waivers during the audit.

Scheduling Future Audit Appointments

To complete the audit timely, plan the entire audit through the expected completion date. Include anticipated field visits that you will need to complete the audit so both parties understand the expectations and resources that will be needed to complete the task.

In order to complete the audit within the agreed timeframe, establish future audit appointment dates with the taxpayer. Work out a timeline identifying future audit appointments, blackout dates, review time, etc. to get an understanding of the commitments needed in order to meet the expected completion date.

Photocopying

You may need photocopies of taxpayer records to support the facts as set forth in the audit report. Photocopy only relevant portions you need for the specific issue. Establish what procedures the taxpayer would like for photocopying. If the taxpayer requests that their staff do all the photocopying, address follow-up procedures if there are any problems. If you photocopy documents, provide a copy to the taxpayer upon their request.

Use of Taxpayer Facility

Some taxpayers assign permanent space to auditors until the audit is completed or for the duration of a field visit. If an auditor is provided with an

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office, the auditor should find out who has access to the office, if keys will be provided and what hours the auditor can enter the office.

If temporary space is assigned, you might want to request a locking file cabinet to store records or make an agreement with the taxpayer that records will be made available at the beginning of each day for the duration of the field visit.

For security reasons, many taxpayers require that an auditor obtain and wear an identification or access badge. The badge might provide entry access into the taxpayer's building and certain office areas. Auditors are not authorized to sign any confidentiality agreements in order to obtain an access or identification badge. You should inform the taxpayer that any information provided is confidential and protected by R&TC Section 19542.

If the taxpayer wishes to take its case to appeal or litigation, it may seek a protective order from the OTA or the courts in order to protect proprietary or otherwise secret information from disclosure to the public. R&TC Section 19504 gives FTB a right to examine the information without precondition or restriction. Therefore, FTB will not enter into any agreement, which could potentially restrict our ability to use information to which we are entitled.

Closing Conference

Discuss with the taxpayer if you are planning a closing conference, so that the taxpayer knows what to expect. See MAP 6.9 Closing Conference for more details.

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**6.5 Follow-Up and
Keeping the Audit
Current**

When the requested information is not readily available, you should discuss and agree upon with the representative a reasonable timeframe for a response. While the general timeframe for a response is 30 days, exceptions may be made on a case-by-case basis, as long as the audit is progressing to the scheduled completion date. If the information is not provided by that date, promptly follow up on the request. It is your responsibility to keep the audit process going and prevent unnecessary delays.

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As a general rule, field audit activity should not be delayed as a result of any of the following pending actions:

- Court decisions on prior years
- Board of Equalization decisions on prior years
- Protest decisions on prior years
- IRS examinations of prior or current years
- IRS appeals

If a representative cites one of the above reasons for delaying the audit, explain that we do not delay audits for that reason. If the representative refuses to cooperate in commencing or continuing the audit, consider the use of a formal demand for information. The template is available in PASS (Demand Letter, FTB 1513). If the taxpayer still fails to respond to the audit, see MAP 6.7 Taxpayer Fails to Respond.

Your failure to follow up on deadlines sends a message to the taxpayer that you are not serious about the request and will possibly accept less than what was requested. It also establishes an unacceptable precedent that could impact your credibility and ultimate recommendations.

Keep your supervisor or lead auditor aware of the status of the audit when continual follow-ups are necessary. A verbal follow-up to the taxpayer, with written confirmation of the discussion, is usually the most effective method of obtaining information and providing documentation for the audit file.

Use the Tickler function in PASS to help you manage follow-ups. Refer to PASS Help or see MAP 25.4.8 Ticklers for additional information on setting up ticklers.

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6.6 STATUS CONFERENCE	MAP 6.6.1 Purpose of a Status Conference MAP 6.6.2 Planning a Status Conference <p style="text-align: right;">Rev. 7/17</p>
6.6.1 Purpose of a Status Conference	<p>The purpose of the status conference is to measure expectations against benchmarks and to expedite the audit process. Use the status conference to keep the communication open between you and the taxpayer. During the status conference, discuss any outstanding Information/Document Requests and Audit Issue Presentation Sheets, and scheduling of audit appointments.</p> <p>Although a status conference is more commonly used in MSA cases, you may find that this is helpful in other complex cases. A telephone call to the taxpayer or representative may be sufficient for other cases.</p> <p>If conducting a status conference is appropriate in your situation, see MAP 6.6.2 Planning a Status Conference for details.</p> <p style="text-align: right;">Rev. 7/17</p>
6.6.2 Planning a Status Conference	<p>Frequency of the Status Conferences</p> <p>It is a good audit practice to hold meetings periodically throughout the course of the audit. You may meet with the taxpayer during your scheduled weeklong field audit appointments, or at other intervals. For NBA cases, it is recommended to hold a status conference no less than twice a month.</p> <p>Agenda for Status Conference</p> <p>Consider including the following items in the Status Conference Agenda:</p> <ul style="list-style-type: none">• Information/Document Request (IDRs)• Audit Issue Presentation Sheets (AIPS)• Status of Audit Issues

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- Scheduling of Audit Appointments
- Resolution of Disputes Related to the Conduct of the Audit
- Need for Authorization for Single Billing (MSA Cases)

Information/Document Request (IDRs)

Follow-up on IDRs during the status conference using these general guidelines:

- Review outstanding IDRs and new requests. You can accomplish this by providing the taxpayer with a copy of the Master IDR Log (if used).
- Review timeframes for outstanding and new IDRs. If the taxpayer is not meeting the timeframes, solicit the taxpayer's cooperation to resolve the problem.
- Materiality – Address any questions the taxpayer has regarding the materiality of an issue that is the subject of an IDR.
- Communicate to the taxpayer the specific timeframes for follow-up IDRs. The taxpayer should understand that noncompliance could lead to a failure to furnish penalty and a request for subpoenas.
- Follow-up any verbal discussion with a taxpayer by written confirmation of what was agreed to during the meeting.

Audit Issue Presentation Sheets (AIPS)

Provide the taxpayer with a copy of the Masters AIPS Log (if used) to facilitate review of outstanding and any new AIPS that have been issued since last discussion. Other aspects of AIPS you can address during status conference:

- Discuss and try to reach agreement on the facts related to the audit issue or describe what facts are still not agreed to, even if you don't agree on the application of the law.
- Discuss follow-up requests on outstanding AIPS, with specific expectations for completion. Inform the taxpayer of the benefits of providing their position to any proposed adjustments. Incorporate the taxpayer's comments or response in the revised AIPS.

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- Provide follow-up written confirmation of any agreements or understandings that resulted from the meeting.

Status of Audit Issues/Changes in Audit Plan

Discuss with the taxpayer the status of the issues under examination and any changes to the Audit Plan. For NBA audits, provide the taxpayer with an updated copy of the Audit Issue Log (PASS template 6433).

Scheduling of Audit Appointments

Review any dates that were previously established and add, delete, or adjust the dates to keep the audit moving towards completion. If you need an appointment at a location other than the corporate office of the taxpayer, direct the scheduling of such appointment with the taxpayer.

Resolution of Disputes Related to the Conduct of the Audit

Immediately discuss with the taxpayer any disputes concerning the conduct of the audit. If the dispute is not resolved between you and the first line taxpayer representative, request assistance at the next level. If the audit supervisor or next level manager of the taxpayer (identified in the audit plan) is unable to resolve the issue, the taxpayer has the alternative to request assistance from program managers to resolve the case. You are not limited in going to the taxpayer's next level or above to resolve any disputes. Explore all possibilities.

Need for Authorization for Single Billing (MSA Cases)

If the taxpayer has filed on a separate return basis or failed to include various subsidiaries in a unitary combined return, and it appears that the audit will be recommending combination of such subsidiaries, you should discuss with the taxpayer the need to obtain a signed Authorization for Single Billing.

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6.7 TAXPAYER FAILS TO RESPOND

If the taxpayer fails to respond to an initial contact letter (ICL) or Information/Document Request (IDR), you can issue:

- A failure to furnish information penalty (See MAP 6.7.1 Failure to Furnish Information Penalty), or

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	<ul style="list-style-type: none">• An administrative subpoena (see MAP 6.7.2 Administrative Subpoena). <p>MAP 6.7.1 Failure to Furnish Information Penalty MAP 6.7.2 Administrative Subpoenas</p> <p style="text-align: right;">Rev. 7/17</p>
6.7.1 Failure to Furnish Information Penalty	<p>R&TC Section 19133 states that if any taxpayer fails or refuses to furnish any information requested in writing, through a formal demand, FTB may add a penalty of 25 percent of the additional tax.</p> <p>Generally, the following events will take place before the Failure to Furnish Information Penalty can be assessed:</p> <ol style="list-style-type: none">1. The Auditor will send an initial contact letter (ICL) or Information/Document Request (IDR) to the taxpayer.2. If the taxpayer does not respond, the auditor will send a follow-up letter. The Follow-Up Letter PASS templates (FTB 1511, 1512, 1514, or 1522) should be used, and a copy of the ICL or IDR previously sent should be attached. Note: Before sending a follow-up letter make sure to consider whether the requested information/documentation is available through internal or external resources. If so, an attempt should be made to obtain the requested information/documentation using those resources. The relevance of the request should also be examined before re-requesting the information or making a formal demand.3. If the taxpayer does not respond to the follow-up letter, a formal demand letter may be required. Refer to MAP 11.4 Failure to Furnish Information Penalty for guidance on how to compose and issue a formal demand letter.

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	<p>4. If the taxpayer does not respond to the formal demand letter, the Failure to Furnish Information penalty may apply. Refer to MAP 11.4 Failure to Furnish Information Penalty for guidance on assessing the Failure to Furnish Information Penalty.</p> <p>Send a final letter that includes an explanation of your adjustment(s), a schedule of revised tax, and computation of the penalty. Also, see MAP 11.4 Failure to Furnish Information Penalty.</p> <p style="text-align: right;">Rev. 7/17</p>
6.7.2 Administrative Subpoenas	<p>An administrative subpoena may be necessary in some cases where the representative refuses to cooperate in furnishing information. Consider a subpoena for significant issues where failure to furnish information is an issue. For guidance in these cases, your supervisor or manager should consult the designated program specialist in the Technical Resource Section.</p> <p>Identify cases where legal support may be necessary to obtain information, and conduct depositions to preserve testimony or profound discovery such as subpoenas duces tecum in order to preserve documentary evidence.</p> <p style="text-align: right;">Rev. 7/17</p>
6.8 CONCLUDING THE AUDIT WITH THE TAXPAYER	<p>Before proposing any audit adjustments, discuss the audit results with the taxpayer or representative. Discuss points of disagreement with the taxpayer and determine if you need more information. Give taxpayers or representatives the opportunity to submit all facts in support of their position. You must evaluate any new information before making a final determination.</p> <p>Tell the taxpayer or representative about all possible adjustments before you submit the final adjustment schedules for review or release of the NPA. If your schedules are revised, either by your supervisor or at the technical review level, notify the representative of the revision and provide revised schedules to the taxpayer. These revised schedules should reconcile the audit adjustments with the NPA.</p> <p>It is important that you and the representative agree on the facts regarding the audit issues, even if the taxpayer does not agree with your conclusion or adjustment.</p> <p>If the representative does not agree with the proposed adjustments, explain the protest or appeal procedures. Ideally, the representative will provide the auditor a position statement identifying the basis for their disagreement. Note the taxpayer's agreement or disagreement in the Audit Report, FTB 6430 (see MAP 13.4.4 Audit Report) and Narrative Report, FTB 6431.</p>

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	<p>See MAP 7.3.1 Narrative Report 6431 (PIT, C Corp, PTE, & MSA). Write a summary of the closing discussion and mail it to the taxpayer or representative, seeking agreement to all of the facts. You can use the format for a Position Letter (See MAP 6.10.7 Position Letter) or Audit Issue Presentation Sheet (see MAP 6.10.6 Audit Issue Presentation Sheet).</p> <p style="text-align: right;">Rev. 2/19</p>
<p>6.9 CLOSING CONFERENCE</p>	<p>MAP 6.9.1 Purpose of a Closing Conference MAP 6.9.2 Planning the Closing Conference MAP 6.9.3 Agenda for Closing Conference MAP 6.9.4 Goals of the Closing Conference MAP 6.9.5 Who Should Attend the Closing Conference? MAP 6.9.6 Documenting the Closing Conference</p> <p style="text-align: right;">Rev. 7/17</p>
<p>6.9.1 Purpose of a Closing Conference</p>	<p>The purpose of a closing conference is to discuss any items not already covered in the status conferences and to review the final audit results. The discussion should include both an explanation of the process and rough estimates of timeframes for technical review and issuing notices. Discuss how you will notify the taxpayer of any changes from the review process.</p> <p>You can hold a closing conference on large cases, at a taxpayer's request, or on any other case where you find it to be an effective communication tool with the taxpayer. You can hold a closing conference in person or by phone, depending on the complexity of your case.</p> <p>A closing conference is also an excellent opportunity to obtain feedback on what worked well in the audit process and for obtaining suggestions from the taxpayer on things that could be improved.</p> <p style="text-align: right;">Rev. 7/17</p>
<p>6.9.2 Planning the Closing Conference</p>	<ul style="list-style-type: none"> • Timing of the Conference – The timing of the closing conference might vary with the type of audit conducted. You can hold a meeting with the taxpayer on the last day of the fieldwork before you provide

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the position letter and the revised tax schedules. Or, you can hold a meeting after you have issued the position letter and revised tax schedules and the taxpayer had time to review them.

- **Position Letter** – A position letter can be issued before or after the closing conference.
- **Audit Issue Presentation Sheets (AIPS)** – Provide copies of the AIPS if requested by the taxpayer for the closing conference. At a minimum, you should plan to discuss any AIPS to which the taxpayer has not provided a response.
- **Preliminary Audit Schedules** – Before the closing conference, prepare and send to the taxpayer any preliminary audit schedules that incorporate all of the proposed audit adjustments.

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**6.9.3 Agenda for
Closing Conference**

You can prepare an agenda for the closing conference with input from the taxpayer. Provide copies to each person attending. The items below are suggested topics for the closing conference.

- **General explanation of proposed adjustments** – The taxpayer should already have a good understanding of the proposed adjustments as communicated through the AIPS and the closing letter. This conference provides an opportunity to clarify any remaining issues the taxpayer might have. If the taxpayer has not responded to the AIPS, at least get the taxpayer to agree to the facts of the issue.
- **Flow of Proposed Adjustments** – The auditor should review the audit schedules to ensure that the taxpayer understands how the adjustments flow through the schedules.

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- **Notices** – Explain what the taxpayer can expect in the form of notices. If appropriate for MSA cases, discuss an Authorization for Single Notice (see MAP 13.4.1 Authorization for Single Notices).
- **Handling new information that the taxpayer wants to provide** – If the taxpayer makes a request to provide additional information or documentation at this time, address how you will handle the resulting changes.
- **Review Process** – Explain the review process by the audit supervisor and by the Technical Resource Section (TRS). Provide estimates of the dates when you will submit the audit for review to the audit supervisor and TRS, and the expected dates the notices will be issued. The Audit Regulations provide a guideline that any notices should be issued with 90 days of the closing of the case and submission to TRS.
- **Protest, Appeal, and Settlement** – If not already included in the closing letter, provide an explanation of the taxpayer's protest (see MAP 15 Protest); appeal (see MAP 15.12 Appeals); and settlement rights (see MAP 17.1.2 Settlement Process).
- **Status of Federal Audits** – Update any developments on the status of federal audits and the issuance of any subsequent Revenue Agent Reports.
- **Subsequent Audit Cycles** – Discuss subsequent audit cycles that might be pending. Inform the taxpayer if you know that another office will be doing the audit. If appropriate, discuss the estimated start date of the next cycle.
- **Other** – Seek input from the taxpayer on the audit process. Discuss what worked well and what improvements could be made. Provide the taxpayer an opportunity to discuss any items he/she might have.
- **Address** – Obtain confirmation from the taxpayer of where notices should be sent. If this address differs from the primary address in

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	<p>BETS, it is the auditor's responsibility to update all systems of record with the correct address.</p> <p style="text-align: right;">Rev. 7/17</p>
6.9.4 Goals of the Closing Conference	<p>The auditor should be able to determine the following by the end of the closing conference:</p> <ul style="list-style-type: none">• Whether the taxpayer agrees or disagrees with each AIPS and audit schedules.• Whether the taxpayer will file a formal protest. If so, attempt to obtain and document a full understanding of the taxpayer's position or request that the taxpayer provide the position in writing, prior to submitting the case for review.• Whether the taxpayer will need additional time to review the audit findings or audit schedules. You should reach an agreement with the taxpayer as to the amount of additional time the taxpayer needs for review. Consider an extension of time to respond that is consistent with the timing requirements of the Audit Regulations.• Whether you will need a waiver to provide the taxpayer with additional time for review. If the taxpayer intends to submit additional information or documentation following the closing conference, advise the taxpayer that a statute of limitations waiver might be necessary to review any supplemental information.• That the taxpayer understands what the process will be for communicating any changes made to the audit adjustments during the review process. <p style="text-align: right;">Rev. 7/17</p>
6.9.5 Who Should Attend the Closing Conference?	<ul style="list-style-type: none">• Whenever possible, the audit supervisor should attend with the auditor/audit team. The audit supervisor may want to introduce the lead auditor for the next audit cycle during the closing conference.• Through the course of the audit, the auditor will have learned the names of the taxpayer's staff involved with the audit process. At a minimum, the auditor should request that the person who primarily handled the audit (e.g. tax manager, tax director, CFO) attend along with his or her direct superior.

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6.9.6 Documenting the Closing Conference	<p>Put the summary of the closing conference in writing and include in the audit file. Mail a copy to the taxpayer.</p> <p>Rev. 7/17</p>
6.10 CORRESPONDENCE	<p>MAP 6.10.1 Composing Letters MAP 6.10.2 Initial Contact Letter (ICL) MAP 6.10.3 Confirmation Letters MAP 6.10.4 Public Contact MAP 6.10.5 Information/ Document Requests (IDR) MAP 6.10.6 Audit Issue Presentation Sheets (AIPS) MAP 6.10.7 Position Letter</p> <p>Rev. 7/17</p>
6.10.1 Composing Letters	<p>PASS provides templates for standard letters routinely used during an audit. A complete list of available templates is in the Draft Correspondence Folder. The templates conform to the departmental standards concerning the safeguarding of confidential taxpayer information. Refer to PASS FAQs about correspondence or refer to PASS Help (templates) for more information.</p> <p>When a standard letter or paragraph will not fit a particular situation, write your own letter, or paragraph. Maintain uniformity in presentation, and ensure the product is professional.</p> <p>The Departmental Writing Guidelines provide guidance for writing both internal documents and correspondence with taxpayers and their representatives. Use this guide to compose your correspondence.</p> <p>Outgoing Mail</p>

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Any outgoing United States mail sent by any state agency, **cannot display the Taxpayer Identification Number (TPID) or any other confidential information** on the outside of the envelope. Follow these guidelines:

- Use Franchise Tax Board letterhead only for the first page of the letter. Use blank pages for all other pages. Include a header with the recipient's name, the taxpayer's account number, the date, and the page number. You may include the state seal on the non-letterhead pages.
- Type the date three or four lines below the Department's letterhead.
- Include reply directions in the upper right corner, opposite the date, including your Payroll Unit Code and initials.
- Type the recipient's name, company, and address three to four lines below the date field.
- Type the subject line two lines below the recipient's address using the taxpayer's name, the years under audit, and the taxpayer's identifying number. **Be sure the TPID or any other confidential information is not visible through the envelope window.**
- Begin the body of the letter one to two lines under the subject lines.
- You should state your name, position, telephone number, and fax number three to four lines below the last line of text.

Margins should be:

- Top: One half ($\frac{1}{2}$) inch between top and the header. The text should begin two lines after the header on page two and on subsequent pages.
- Side: One inch on both sides of the text.
- Bottom: No less than one inch.

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6.10.2 Initial Contact Letter (ICL)

In the initial contact letter (ICL) you must communicate to the taxpayer the reason for your correspondence. You must state the taxpayer's return is under examination and provide specific direction. The ICL sets the tone of the audit and helps establish a positive working relationship between you and the taxpayer or representative.

Send the following inserts or publications with the ICL:

Types of Cases/Areas	Publication/Inserts
Fed/State Examination Section	<ul style="list-style-type: none"> • Audit, Contact, and Privacy Notices (Form FTB 1015C)
Residency Case	<ul style="list-style-type: none"> • Frequently Asked Questions About Your Residency Tax Audit (Form FTB 1015R)
MSA Cases	<ul style="list-style-type: none"> • Mission and Principle Statements (FTB 7899A). • Notice of Audit (FTB 1015C). • Optional: <ul style="list-style-type: none"> ○ Frequently Asked Questions About Your Tax Audit (FTB 1015B). ○ California Taxpayers' Bill of Rights pamphlets (FTB 4058).
All Other Cases	<ul style="list-style-type: none"> • Frequently Asked Questions About Your Tax Audit (FTB 1015B).

In addition, provide the taxpayer the names and telephone numbers of your supervisor and manager.

Where appropriate, you may enclose an Information/Document Request(s) with the initial contact letter.

For a field audit of MSA cases, the initial contact is followed up with a letter confirming the field appointment, the opening conference with the taxpayer's representative, or any request for records.

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6.10.3 Confirmation Letters	<p>Always provide a confirmation letter after verbally scheduling an audit appointment, extending a response date, or requesting documents. The letter should confirm the information discussed such as appointment date, extension date, documents requested, and that the taxpayer agreed to provide the documents.</p> <p>PASS has an available template (Appointment Confirmation, FTB 1500) which you may send to the taxpayer.</p> <p style="text-align: right;">Rev. 7/17</p>
6.10.4 Public Contact	<p>Document all contact with the taxpayer. You can use the Public Contact toolbar button in PASS or the Public Contact Memo (FTB 6622), if the information is more extensive. The Public Contact Memo is available in PASS.</p> <p>Examples of contacts that you can document:</p> <ul style="list-style-type: none">• Telephone conversations• Field office visits• Visits at taxpayer's or representative's location• Email* <p>*Only permitted if the message does not contain information regarding an audit issue (e.g., field audit scheduling, general information, etc.). Emails providing information on an audit issue are considered received correspondence and must be recorded and stored in the PASS Received Correspondence folder. Refer to MAP 28.6.2.1 Correspondence Received via Email.</p> <p>Always follow up any conversation with a letter documenting the items discussed. See MAP 6.10.3 Confirmation Letters for more information.</p> <p style="text-align: right;">Rev. 4/19</p>

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<p>6.10.5 Information/Document Requests (IDR)</p>	<p>The purpose of an Information/Document Request (IDR) is to gather the relevant facts necessary to address the audit issues timely and efficiently. Written requests provide a record of communication between the auditor and the taxpayer and avoid possible misunderstandings that could result from verbal discussions. Document on an IDR all requests for information.</p> <p>MAP 6.10.5.1 Preparing IDRs MAP 6.10.5.2 Verifying Key Corporations (MSA Cases) MAP 6.10.5.3 Requesting Information in Electronic Format</p> <p style="text-align: right;">Rev. 7/17</p>
<p>6.10.5.1 Preparing IDRs</p>	<p>The following is information you may need to prepare IDRs:</p> <ul style="list-style-type: none">• Writing Guidelines• Request Relevant Information• Privacy Notice• Timely Follow-up• Single Question IDR (MSA Cases)• Tracking IDR Status• Special Language in Follow-Up IDRs (Optional) <p>Writing Guidelines</p> <p>All information and document requests should have:</p> <ul style="list-style-type: none">• A professional appearance. Check spelling and grammar.• Explanation of all abbreviations• Consistent paragraph structure

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- If you number the questions listed under one heading, then list and number the questions under every heading.

Use the PASS template (FTB 1515) to create Information/Document Request(s). The template is populated with data from the case unit, including the return address, case number, case unit number, regarding field, account number, taxpayer name, your signature information and reply to information. Following are the relevant fields that you should fill out:

- **Taxable Years**- TYE 06/2004 – 06/2005
- **IDR #**- number the IDR sequentially as you have provided to the taxpayer
- **Subject**- Examination of NAME OF TAXPAYER Tax Returns
- **Response Date**- put a specific date
- **Description of Request**- Identify the item you are examining as it is shown on the return. Clearly state the reason for the request.

For team audits, coordinate with team members the methods of generating IDRs, numbering and logging IDRs, and presenting the history on unanswered IDRs.

Request Relevant Information

The Audit Regulations specify that we request only relevant information. Requests for information are relevant if the requested information is germane to or applicable to the audit issue. If helpful to the taxpayer, discuss the applicable laws, regulations, and department policies that need to be verified or satisfied with the requested information.

Discuss the content of the IDR with the taxpayer. Make sure that the taxpayer understands what information or document you are requesting. Discuss whether the taxpayer should provide alternative documentation if the information you are requesting is not available or will not resolve the audit issue. You and the taxpayer or the taxpayer's representative should work together to make information requests relevant and reasonable.

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Privacy Notice

When requesting information from a taxpayer about a year for which the taxpayer has not filed a California return, include the following sentence at the end of the letter: For **Privacy Act Notice**, see form FTB 1131. Include the form with the letter.

If you already opened an examination on the taxpayer, and provided a version of the form FTB 1015 with the initial contact letter, you do not need to send form FTB 1131. See MAP 6.10.2 Initial Contact Letter.

Timely Follow-up

Normal taxpayer response times to IDRs are a maximum of 30 days from the date of delivery. You can accommodate the taxpayer's requests for extensions of time depending on the applicable facts and circumstances. Keep in mind the benchmarks that you must reach in order to complete the audit timely. Set a mutually agreeable reasonable date for the taxpayer to respond to an IDR, but emphasize that the taxpayer should respond timely in order for you to complete the case within the two-year expectation set forth in the Audit Regulation.

You are expected to adhere to comparable timeframes for responding to taxpayers. CCR Section 19032(b)(5)(C)(1) provides that as a general rule the auditor should contact the taxpayer within 30 days of receiving a response to an IDR. The auditor contact with the taxpayer should be to (1) issue additional IDRs; (2) issue an AIPS or position letter; or (3) notify the taxpayer that you need additional time to respond, and provide a date for future contact.

CCR Section 19032(a)(6) states that the timeframes in the regulations are intended to provide an orderly audit process and cannot be used to limit the taxpayer's right to provide information. This does not mean that the taxpayer has an unlimited amount of time to provide requested information. However, if the taxpayer does provide information while the audit is still open, even if it is after the time period set in the IDRs, you have to analyze the information and apply to the audit findings.

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Following are guidelines when following up with taxpayers:

- Follow-up on outstanding items according to the timeframe you agreed upon with the taxpayer.
- Use the **tickler** feature in PASS to help you manage the timeframes for following-up. See PASS Help for additional information on how to use this tool.
- Reissue the IDR if there is an incomplete response, no response, or information was not provided by the agreed date. Include the **History** of prior requests at the bottom of the IDR, or attach a copy of the IDR previously issued. Indicate the original issue date, follow-up dates, and other applicable information.
- You can use the templates available in PASS as cover letters for your follow-up IDRs. These are FTB 1511, 1512, 1514, and 1522.
- Document all contact with the taxpayer. You can use the **Public Contact toolbar button** in PASS or the **Public Contact Memo** (FTB 6622), if the information is more extensive.
- Send a brief letter summarizing all telephone contact with taxpayers regarding extensions of IDR due dates, scheduling of field visits, or other matters affecting the progress of the audit.
- When a taxpayer fails or refuses to furnish information timely, a Formal Demand may be required. The Audit Regulation provides for the issuance of the Formal Demand after the second IDR. This is appropriate when a response to a request for information is unreasonably delayed, incomplete, refused or ignored. You need to communicate to the taxpayer in writing the consequences of not providing the requested information. See MAP 6.7.1 Failure to Furnish Information Penalty for a full discussion of the steps necessary to issue a formal demand for information.

Single Question Information/Document Request (MSA Cases)

A single question IDR is more commonly used in MSA cases.

In most instances, request information and documents in writing. Where appropriate, your request should only contain a single question per individual IDR. The IDR should specify the agreed date for the taxpayer to respond.

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The general format of the IDR is the single question as opposed to single issue IDR. This format assists the taxpayer if the question(s) needs to be distributed to different departments or staff, provides for better organization in monitoring and following up on IDRs, and provides for better organization of the audit work papers. Separate IDRs make it easier to document the history of a request (i.e., date of the original request, follow-up dates, extensions granted, etc.) if you are assessing a penalty.

Include in your written IDR any verbal requests for documents, including requests you made while you are at the audit location. Prepare single question IDRs for any verbal requests that are still outstanding at the end of the field visit. Provide these to the taxpayer with specific response dates.

Number the IDRs sequentially when you provide them to the taxpayer. Retain the same number when you reissue or follow-up (unless the nature of the information request has changed). You may assign numbers differently in order to facilitate team audits, but it is important that the taxpayer understands the numbering system.

You may discuss drafts of IDRs before you issue them at a taxpayer's request.

Tracking IDR Status

For more complex cases such as MSA cases, prepare an IDR Log (PASS template 9924 found in the Administration Folder). In team audits, tracking the status of IDRs is the responsibility of the Lead Auditor.

Special Language in Follow-up IDRs (Optional)

If taxpayers are unable to provide information you requested, they should be able to explain the procedures they used to attempt to locate the information. If the taxpayers withhold information that has been located they should explain why they are withholding the information. Document the

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	<p>explanation in your workpaper file and in your communications with the taxpayers.</p> <p>Consider using this language in your follow-up IDRs:</p> <p>NOTE: If the requested information could not be located, please provide a description of the search procedures used in the attempt to locate this information. If the requested information was located but was not provided due to a claim of privilege, please provide a privilege log for the documents withheld, including the nature of the privilege claimed, and the names, titles and roles of all individuals who prepared or received the documents (including cc's and bcc's).</p> <p>If the taxpayer routinely provides the information you request, you may choose not to use this note.</p> <p style="text-align: right;">Rev. 7/17</p>
<p>6.10.5.2 Verifying Key Corporations (MSA cases)</p>	<p>If you suspect there is an invalid key corporation (does not meet the requirements set forth in CCR Section 25106.5 and CCR Section 25106.5-11) for any return that is appropriate for audit, you will need to verify the key corporation. You should send an IDR to the taxpayer to verify the key corporation. Once you obtain the corrected information, contact the Key Corporation Contact of the Business Entities Section via email with the following information:</p> <ul style="list-style-type: none">• Name of the invalid Key Corporation and number• Name of the valid Key Corporation and number• Tax years involved <p>The Business Entities Section will work with you to ensure that any money needing to be moved will be, or any incorrect return information will be updated properly on BETS. It is imperative that this is done prior to notices being issued.</p>

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If you determine an audit is not warranted, it is not necessary to send an IDR to verify the Key Corporation even if you determine there is an invalid Key Corporation. The Taxpayer Service Center Section (TSCS) or ARM Division will handle any situation that might arise with respect to the invalid Key Corporation if an audit does not take place.

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**6.10.5.3 Requesting
Information in
Electronic Format**

You can analyze issues more efficiently if you work with data in an electronic format. Therefore, to be more efficient, request the supporting detailed information electronically early in your audit.

Before issuing IDRs, discuss with the taxpayer what type of records exist, and if the taxpayer uses Excel or other software. Use the standard IDRs below unless you are certain the taxpayer only has the detail you need in hard copy. We do not intend for the taxpayer to create information for us. If the taxpayer refuses to provide information electronically, we will accept hard copies.

In follow-up IDRs, consider adding a note in the paragraph. See Special Language in Follow-up IDRs.

Below are four sets of IDRs. The IDRs have highlighted fields for the tax years, due dates, your name, telephone number, etc. Replace these highlights with the appropriate information. Also, remove the **Note to Auditor** from the IDR that you will send to the taxpayer. Use common sense to revise these IDRs according to the information you need, the issue, your taxpayer facts, etc.

IDRs for Any Audit Issue

IDRs for Any Audit Issue (Claims)

IDRs for Enterprise Zone (EZ) Issue

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IDRs for Enterprise Zone (EZ) Issue (Claims)

IDRs for Research Credit (R&D) Issue

IDRs for Any Audit Issue

- IDR #1 – The initial IDR. This IDR asks for the information in an electronic (Excel or other comparable worksheet software program) format.
- IDR #1A – Same as #1, except it asks for the information in Excel. You can use this when you know the taxpayer uses Excel.
- IDR #2 – After the taxpayer responds, you may want additional detail support for the taxpayer's response to IDR #1. You can use IDR #2 to request additional detail in an electronic format. This IDR asks for the information in an electronic (Excel or other comparable worksheet software program) format similar to IDR #1.
- IDR #2A – Same as #2, except it asks for the information in Excel. You can use this when you know the taxpayer uses Excel.
- IDR #3 – You can use this IDR when the taxpayer provides the requested information in hard copy, not in soft copy as you requested.
- IDR #4 – This is a follow-up IDR that you can use when the taxpayer does not respond to IDR #1, #1A, #2 or #2A.
- IDR #5 – This IDR is the formal legal demand for information, and explains the failure to furnish information penalty.

IDRs for Any Audit Issue (Claims)

This set of IDRs deals with any issue set forth in a claim for refund. This set is similar to the above set, except the language discusses a claim. Also, IDR #5, the formal legal demand, does not discuss the failure to furnish information penalty. Instead, it explains that if the information is not provided, the claim may be disallowed in whole or in part.

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- IDR #1
- IDR #1A
- IDR #2
- IDR #2A
- IDR #3
- IDR #4
- IDR #5

IDRs for Enterprise Zone (EZ) Issue

- IDR #1 – The initial EZ IDR. This IDR asks for the information in an electronic (Excel or other comparable worksheet software program) format.
- IDR #1A – Same as #1, except it asks for the information in Excel. You can use this when you know the taxpayer uses Excel.
- IDR #2 – After the taxpayer responds, you may want additional detail support for the taxpayer's response to IDR #1. You can use IDR #2 to request additional detail in an electronic format. This IDR asks for the information in an electronic (Excel or other comparable worksheet software program) format similar to IDR #1.
- IDR #2A – Same as #2, except it asks for the information in Excel. You can use this when you know the taxpayer uses Excel.
- IDR #3 – You can use this IDR when the taxpayer provides the requested information in hard copy, not in soft copy as you requested.
- IDR #4 – This is a follow-up IDR that you can use when the taxpayer does not respond to IDR #1, #1A, #2 or #2A.
- IDR #5 – This IDR is the formal legal demand for information, and explains the failure to furnish information penalty.

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IDRs for Enterprise Zone (EZ) Issue (Claims)

This set of IDRs is for claim for refund with an EZ issue(s). This set is similar to the above set, except the language discusses a claim. Also, IDR #5, the formal legal demand, does not discuss the failure to furnish information penalty. Instead, it explains that if the information is not provided, the EZ may be disallowed in whole or in part.

- IDR #1
- IDR #1A
- IDR #2
- IDR #2A
- IDR #3
- IDR #4
- IDR #5

IDRs for Research Credit (R&D) Issue

- IDR #1 – The information you receive in response to this IDR may be in hard copy.
- IDR #2 – The information you receive in response to this IDR may be in hard copy.
- IDR #3 – This IDR asks for the information in an electronic (Excel) format.
- IDR #4 – This IDR asks for the information in an electronic (Excel) format.
- IDR #5 – The information you receive in response to this IDR may be in hard copy.

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**6.10.6 Audit Issue
Presentation Sheets
(AIPS)**

The purpose of the Audit Issue Presentation Sheet (AIPS) is to communicate to the taxpayer and all other users the issues for which adjustments are currently proposed to be made. AIPS include discussion of the specific audit

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issue, the facts developed, the relevant law and the audit recommendation on the issue. Issuing an AIPS provides the opportunity to conclude and resolve discreet issues while the audit is ongoing. The AIPS is an important tool that keeps the taxpayer fully informed about the FTB's position on each issue.

The following is information you may need or consider in preparing AIPS:

- Preparing and Issuing the AIPS
- Draft AIPS
- Numbering AIPS
- Tracking AIPS
- Taxpayer Response to AIPS
- Revising AIPS
- Withdrawing AIPS
- AIPS as Exhibit to Position Letter and Narrative

Preparing and Issuing the AIPS

Use the PASS template (FTB 1501 and 1541). You can modify the format to meet the specific needs of your case. Generally, you should prepare a separate AIPS for each issue. You need to include the following information in the AIPS:

- **Issue** – Describe the issue and how the item was originally reported in the return.
- **Amount of Proposed Adjustment, Year, and Approximate Tax Effect** – Show the specific amount of the proposed adjustment and the approximate tax effect. Include supporting schedules. This

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adjustment amount will be the source of the number directly transferred to the final audit schedules.

- **Summary of Facts** – Limit the statement of facts to information developed without analysis, commentary or conclusion.
- **Application of the Law/Authority** – Apply relevant statutory, administrative, and case law to the stated facts.
- **Conclusion** – Base your conclusions on the relevant law and facts.

Issue an AIPS as soon as you have completed developing an issue. If you have a single-issue audit, you may issue the AIPS and position letter at the same time.

The AIPS provide the sole basis for the construction of the Principal Audit Schedules or the Revised Tax Schedule. Therefore, the adjustment amounts in the AIPS should reconcile with the numbers in the Principal Audit Schedules or the Revised Tax Schedule.

Draft AIPS

You can use **Draft AIPS** to communicate the **facts** developed on an issue with the understanding that the application of the law and conclusions will be forthcoming. For example, the taxpayer could be asked to confirm the accuracy of the listed facts and whether any additional facts need to be considered. Application of the law and your conclusion would follow any submission of additional facts or corrections.

Numbering AIPS

AIPS are numbered sequentially based on the date they are issued. Refer to MAP 28.5.2.3 Audit Issue Presentation Sheets (AIPS) for specific numbering procedures.

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Tracking AIPS

For more complex cases you may need to issue more than one AIPS. Therefore, it is important to keep track of the dates you issued the AIPS and the expected response dates so you can follow up timely. The AIPS Log (FTB 9925) is available in the PASS Administration Folder.

Taxpayer Response to AIPS

Upon issuing the AIPS, give the taxpayer an opportunity to clarify facts and provide rebuttal arguments to the legal analysis and conclusions. Encourage the taxpayers to respond, as this can result in resolving the issue at the lowest level and minimizing time and costs for both the FTB and the taxpayer. At a minimum, attempt to obtain the taxpayer's position with respect to the facts.

Request that the taxpayer indicates agreement or disagreement with the facts, application of the law and the adjustment. On the last page of the AIPS, check-box options are provided for the taxpayer's response. If the taxpayer prefers, the taxpayer can respond in a separate letter. Or if the taxpayer prefers not to respond, the taxpayer can check the **withheld** box.

Advise the taxpayer that agreement to the facts and/or interpretation of law does not preclude protest or other administrative rights (the template also contains this statement).

Address the taxpayer's responses either in a revised AIPS, subsequent correspondence, or in the position letter. Do not simply include the taxpayer's responses in the audit package without addressing them.

Response times will vary depending upon the difficulty of the issue and the amount of discussion between the auditor and the taxpayer. Generally, the Audit Regulations provide for **a maximum of 30 days** for a response to an AIPS. However, auditors may use discretion and consider complexity in allowing less or more time than 30 days as set forth in CCR Section 19032(a)(6)(A).

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Revising AIPS

Once you have issued an AIPS and the taxpayer has a clear understanding of the proposed adjustment, the taxpayer might provide additional documentation or rebut the legal arguments presented in the AIPS. This may require issuing a revised AIPS and providing a copy to the taxpayer for response. Issue a revised AIPS when:

- Additional material facts are provided.
- A different section of the law is applicable other than the one(s) stated in the original AIPS.
- The adjustment amount is revised due to documentation provided or revised legal interpretation.

If you determined that a revised AIPS does not need to be issued in regards to a taxpayer's response, address the taxpayer's responses either in subsequent correspondence, or the closing letter. Do not simply include the taxpayer's responses in the audit package without addressing them.

Use the same numbering for the revised AIPS as the original AIPS but, with some indication that it is a later version. Refer to MAP 28.5.2.3 Audit Issue Presentation Sheet (AIPS) for the specific styling of the document. Note in the AIPS Log that you have issued a revised AIPS. Do not delete reference to any original AIPS that you have issued to the taxpayer. Record all copies of AIPS that you have provided to the taxpayer.

Withdrawing AIPS

This generally applies to MSA cases.

While you make every effort to make a correct determination before issuing an AIPS, there are times when you need to withdraw an AIPS. In some cases, the taxpayer might provide additional information after being provided with the AIPS. If the taxpayer fully supports a position, withdraw the AIPS.

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You can withdraw the AIPS by sending the taxpayer the original AIPS with a section added at the beginning of the document briefly explaining the reason for the withdrawal.

The withdrawn AIPS would also retain the same number as the original AIPS. Update the AIPS Log to reflect that you have withdrawn the AIPS.

AIPS as Exhibit to Position Letter and Narrative

At the close of the audit, include with the position letter any new AIPS not previously provided to the taxpayer. If the taxpayer requests, provide the taxpayer another complete set of all the AIPS you previously issued. Otherwise, it is sufficient to reference the AIPS previously provided in your position letter.

To shorten your narrative, you can refer to the AIPS as exhibits to the narrative.

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6.10.7 Position Letter

The purpose of the position letter is to notify the taxpayer that the audit fieldwork is complete and to provide the taxpayer or representative with the audit results. Generally, a position letter summarizes the issues that you examined and your position concerning those issues.

If you resolve an issue before completing the entire audit, you can issue an Audit Issue Presentation Sheet (AIPS) at that time. See MAP 6.10.6 Audit Issue Presentation Sheets for more information on AIPS. To reduce redundancy, you may include as exhibits to your position letter any AIPS previously issued.

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Before issuing a position letter, discuss the audit results with the taxpayer or representative. It is more important that taxpayers agree with the facts than with the application of the law.

The following is information you may need or consider to prepare a position letter:

Steps in Writing the Position Letter

Items to Address in the Position Letter

Items to Include with the Position Letter

Taxpayer Response Time to Position Letter

Responses by the Taxpayer

Position Letter as Exhibit to the Narrative

Steps in Writing the Position Letter

The following steps are recommended when writing your position letter:

1. Define the Problem or Issue- The first step in writing a position letter or answering correspondence is to define the problem or issue. In many instances there is only one problem, even though the taxpayer has raised several questions.
2. Determine the Essential Facts- After the problem has been defined; determine the essential facts that should be communicated to the taxpayer. Be careful not to include facts that are unrelated to the problem at hand.
3. Organize the Facts- Sort the essential facts into a logical sequence. Present the facts in a concise, well organized manner. Usually it is

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best to get to the heart of the problem in the first paragraph. The taxpayer may only skim the rest of the letter and not pay any attention to our explanation.

4. List the supporting laws, regulations, and legal interpretations.

5. Analyze how the law applies to the issues under examination.

6. Make a recommendation/conclusion based upon the facts, law, and analysis.

Generally, the position letter should also include wording like this:

This is your opportunity to provide any additional information that you would like us to consider regarding the proposed adjustments. If you disagree with these adjustments, provide specific reasons why you disagree. Include appropriate substantiation, citation of applicable law, and case authority. We will review any additional information submitted by [date]. We suggest that you do not amend the returns under examination, as that will only delay the completion of this audit.

You will have an opportunity to file a protest after the Notice of Proposed Assessment (NPA) has been issued. The NPA will contain specific instructions on how to file a protest.

To ensure proper handling, please mail your response to:

Your Full Name, Mail Stop

FRANCHISE TAX BOARD

Your Office Address

PASS paragraphs contain a similar closing paragraph titled **P25560** – Closing. To insert PASS paragraphs into correspondence, see **PASS Help**.

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Items to Address in the Position Letter

- **AIPS Issued-** Summarize the Audit Issue Presentation Sheets (AIPS) that you have previously provided to the taxpayer, and those that are enclosed in the final report. Tie the adjustments to the attached schedules.
- **Other Adjustments-** Include an explanation of any adjustments for which no AIPS have been issued, such as other audit adjustments or computations. Examples include: alternative minimum tax, limitations on tax credits, and NOL carryover.
- **Administrative Items-** If applicable, explain any administrative items, such as identification of suspended corporations, explanation of the application of pending payments, or proposed actions on outstanding claims. Explain that payment of the proposed assessments will stop the accrual of interest on additional tax due.
- **Audit Subject to Review-** State in the position letter that the audit is subject to review both by your supervisor and the Technical Resource Section. The review might disclose the need for more documentation, or changes to your recommendations. If the supervisor or reviewer requires changes to the audit report, notify the representative of the revisions. Include the timeframes for closing the case and issuing any notices.
- **Protest Rights-** A two sentence reminder regarding protest rights, see sample above.
- **Mailing Address-** Confirm with the taxpayer where the notice should be mailed. This address may differ from the primary address in BETS or TI. Remember to update the address information in the PASS address book, as well as BETS and TI, when you receive more current information from the taxpayer.
- **Request for Authorization for Single Billing (MSA Cases)** – If taxpayer has filed on a separate return basis or failed to include various subsidiaries in a unitary combined return, and the audit has recommended combination of such subsidiaries, ask the taxpayer to complete and sign an Authorization for Single Billing, if a single billing is needed or requested by the taxpayer.

Items to Include With the Position Letter

Provide the taxpayer with various documents and information the taxpayer may need to review the final audit schedules and the completed case result.

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These documents may also assist the taxpayer in making changes to subsequent period returns, with post-audit activities including payment of additional taxes, protest action, and preparation for potential, subsequent audits.

The following is a list of items that you can include with the position letter if not previously provided:

- Schedule of Revised Tax- Enclose a schedule of adjustments detailing the tax effect of all proposed adjustments with the position letter or AIPS. The schedule should reconcile the tax liability as shown on the return with the tax liability shown on the Notice of Proposed Assessment. See MAP 7.4 Schedules Folder for additional information on preparing schedules.
- Principal Audit Schedules and supporting audit schedules. See MAP 7.4.4 MSA Principal Schedules.
- Tax effect by issue.
- AIPS Log, if used.
- Copies of any newly issued AIPS, revised AIPS, and previously issued AIPS (if taxpayer requests).
- Copy of any work papers, reconciliations of as-reported amounts to revised amounts, or any other information the taxpayer will need to understand the proposed adjustments.

Taxpayer Response Time to Position Letter

Provide the taxpayer with a reasonable amount of time to respond to the position letter. You may coordinate the response time with the scheduling of the closing conference, if appropriate. The amount of time will vary with the complexity of the audit and the number of newly issued AIPS included with the position letter. If you issued AIPS throughout the duration of the audit, the taxpayer should already have had an opportunity to address each issue individually.

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Discuss with the taxpayer the appropriate amount of time for the taxpayer to respond. The following are general guidelines for response times:

- The Audit Regulation initially sets a response time at a maximum of thirty (30) days. If the position letter includes a significant number of AIPS, you can extend the timeframe to include a 30-day response timeframe on the AIPS and an additional 30-day response time for the position letter.
- You may allow extensions if the taxpayer requires additional time, however, the overall goal is still to complete the case within the prescribed timeframes.
- It is important that you close and submit the case to TRS for review with at least six months before the expiration of the statute of limitations. In this situation, you may need to shorten the general response time or request an extension of the statute of limitations. If a taxpayer requests an extension to reply to the position letter, your agreement to the request may depend on your receiving the signed waiver.

Responses by the Taxpayer

Ideally, the taxpayer or representative sends you a written statement of agreement or disagreement. However, the taxpayer's agreement does not waive protest rights or other administrative rights.

You must record the taxpayer's position on the Audit Report (Form FTB 6430) (see MAP 13.4.4 Audit Report), and in the Narrative Report. See MAP 7.3.1 Narrative Report 6431 (PIT, C Corp, PTE, & MSA).

- **Written Response Provided** – If the taxpayer provides a written response, you should acknowledge receipt of the response in writing and address the points raised in the response.
- **Additional Information or Documentation Provided** – If the taxpayer provides additional information or documentation with the response, analyze the information to determine if it has an effect on the previously issued AIPS or on any proposed audit adjustments. If

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it does not have an effect, inform the taxpayer that we have considered the information, but that we are not changing our determination. If it does have an effect, issue a revised AIPS and audit schedules. The individual circumstances will determine whether you would give the taxpayer additional time to review the revised AIPS and audit schedules.

- **Verbal Responses at Closing Conference** – If the taxpayer provides a verbal response at the closing conference summarize the response and provide a written copy to the taxpayer for verification.
- **No Written Response Received From Taxpayer** – If the taxpayer does not provide a written response to the closing letter, note in the audit narrative your understanding of the taxpayer's position on each of the audit issues.
- **Statement Regarding Protest**- Sometimes the taxpayer may respond to a position letter or AIPS with statements like **I protest this assessment**. This does not constitute a protest of the Notice of Proposed Assessment. You should explain to taxpayers that they cannot file a written protest until **after** we issue the **Notice of Proposed Assessment**.

Position Letter as Exhibit to the Narrative

Attaching the position letter, the taxpayer's position letter, and subsequent rebuttal as exhibits to the Audit Narrative may substantially shorten the Audit Narrative. The effectiveness of this technique will depend on the complexity of the case and the number of closing letters and rebuttals.

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6.11 THIRD PARTY CONTACT

- MAP 6.11.1 What is a Third Party Contact?
- MAP 6.11.2 General Guidelines for Third Party Contact
- MAP 6.11.3 Audit Record Keeping Responsibilities

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	<p>For more information on Third Party Contacts, refer to the Third Party Contacts Guide.</p> <p style="text-align: right;">Rev. 7/17</p>
<p>6.11.1 What is a Third Party Contact?</p>	<p>R&TC Section 19504.7 and IRC Section 7602 provide that the FTB may not contact any person other than the taxpayer with respect to determination or collection of the tax liability of such taxpayer.</p> <p>We follow IRS procedures that define a third party contact as a contact that is:</p> <ul style="list-style-type: none">• Initiated by our employee• Made with a person other than the taxpayer• Made with respect to the determination or collection of a specific taxpayer's tax liability• Where we reveal the taxpayer's identity to the third party <p>Since the language of R&TC Section 19504.7 does not specifically define third party contacts, here are some examples:</p> <p>Example 1: Computer Database/Internet/Electronic Research</p> <p>Getting information from a computer database is not a third party contact that needs prior notification since no person is contacted. This includes getting the taxpayer's annual report or magazine articles from online public resources or searching the Internet.</p> <p>Example 2: Contacts With Government Officials</p> <p>Contacting another governmental entity is not a contact within the meaning of the statute. This includes getting information through our partnerships with other federal, state, or local governmental agencies; i.e., tape exchange</p>

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programs with IRS and Secretary of State, or requesting taxpayer specific information from the Employment Development Department or Department of Motor Vehicles.

Example 3: Employees of the Taxpayer

Contacting the taxpayer's employees who are acting in the scope of their employment during normal business hours on the business premises is not a contact requiring prior notification, since the employees are an extension of the taxpayer. Accordingly, asking the payroll clerk from what bank the paychecks are drawn is not a contact. However, asking a janitor about the corporate officers is not within the scope of the janitor's employment and is a contact requiring prior notification.

Example 4: Scoping Activities

Scoping activities including only contacts with other governmental entities, getting public information, or using in-house records, need no taxpayer notification.

However, we must notify a taxpayer before contacting any third party, regardless of whether the audit is open. If we are gathering information with respect to an identified taxpayer before we have opened an audit in order to determine whether to open an audit, we must notify the taxpayer before we contact any third party.

Example 5: Authorization to Contact Another Party

Contacts authorized by the taxpayer or the taxpayer's representative do not require prior notification to the taxpayer. For example, an interview with a former employee of the taxpayer is a third party contact requiring prior notification unless the taxpayer has authorized us to contact that person. The taxpayer's authorization cannot be blanket, or general, and should be in writing. If the taxpayer gives verbal authorization, we must follow up with a confirmation letter.

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**6.11.2 General
Guidelines for Third
Party Contact**

We must notify taxpayers before contacting third parties. This requirement is part of the **Taxpayer Bill of Rights**. By notifying the taxpayer, we give the taxpayer the opportunity to provide whatever information we intend to request from third parties (R&TC Section 19504.7). Each notification is effective for contacts made up to 12 months after the notification date.

Important Notes: Under the California Right to Privacy Act (Government Code sections 7460-7493), there are special guidelines that should be followed when contacting financial institutions (as defined under Section 7465(a) of the Act) regarding its customers. Financial institutions include:

- State and national banks
- State and federal savings and loan associations
- Trust companies
- Industrial loan companies
- State and federal credit unions

Government Code Section 7465(a) specifically excludes title insurance underwriting companies and escrow companies from the definition of financial institutions.

"Customer" includes any individual, partnership, corporation, limited liability company, association, trust or any other legal entity who has transacted business with or has used the services of a financial institution or for whom a financial institution has acted as a fiduciary.

To make a third party contact to a financial institution, we must either 1) have the taxpayer's written consent (PASS Form 9921) or 2) subpoena the records (See the Subpoena Manual for more information on requesting a subpoena).

Additionally, if the third party is going to charge a reasonable fee for providing the documents, approval must be obtained prior to making the

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request (whether or not the third party is a financial institution). Contact the third party to determine if there will be a fee and, if so, the estimated amount. Follow Service Agreement Procedures to obtain approval (see Responsible Party: "Auditor"). An STD 204 is also required to be completed before the documents can be requested. Upon receipt, provide original invoices to Audit Procurement for processing of payment.

As a guide, use the amounts listed in Evidence Code Section 1563 to determine what is "reasonable":

- Standard reproduction - \$0.10 per page
- Microfilm copying - \$0.20 per page
- Actual reproduction cost - oversize documents
- Clerical costs incurred in locating and making the records available - \$24 per hour, computed on the basis of six dollars (\$6) per quarter or fraction thereof
- Actual postage charges
- Actual cost of charges to the subpoenaed party by a third person for the retrieval and return of records

Notify Audit Procurement immediately if the costs do not seem reasonable.

In summary, you must:

- Notify the taxpayer before contacting any third party. It is not sufficient to send the notification only to the authorized representative. Additionally, the notification should go to each taxpayer who is affected. For example, if spouses filed married filing separate, a separate notification should be sent to each spouse.

Use PASS template 1586A – Third Party Contact Notification

- A copy may be sent to the taxpayer's authorized representative.

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	<ul style="list-style-type: none">• Give the taxpayer a reasonable period to answer the notice before you contact a third party. Our normal waiting period is 10 calendar days.• If you plan to contact a third party 12 months after the notice date, you must issue another notice.• Record all third party contacts in the case file.• Give a record of contacts to the taxpayer upon request. The taxpayer must request the record from the Disclosure Office no later than 60 days after the 12-month period.• Only notify taxpayers of third party contacts if you intend to contact third parties. Do not issue notifications if you do not intend to contact third parties. <p>Use the following language in your notification. This language is included in PASS template 1586A:</p> <p>We may contact third parties to determine or collect your tax liabilities. Subject to privacy laws and your rights as a taxpayer, you may obtain a list of those contacts. For more information, please contact our DISCLOSURE OFFICE, PO BOX 1468, SACRAMENTO CA 95812-1468.</p> <p>Third party contact notification procedures do not replace normal security and disclosure rules.</p> <p style="text-align: right;">Rev. 7/17</p>
6.11.3 Audit Record Keeping Responsibilities	Audit record keeping responsibilities include: <ul style="list-style-type: none">• Documenting the need for a third party contact.• Documenting that you have properly notified the taxpayer.

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- Keeping the needed information in case it's needed to prove that the taxpayer's rights are protected.

Follow these procedures when contacting third parties and documenting your contacts in the working paper file:

- When contacting third parties, you must provide the following notice in the contact letter to the third party:

If you believe there may be reprisal from the taxpayer if your identity is released as a source contacted for information, you must advise the Franchise Tax Board and your identity will not be disclosed, unless otherwise required by law.

- Use PASS Template 1520 "Letterhead" when contacting the third party.
- After contacting a third party, record the following information regarding each contact:
 - Name of the third party contacted (Agency or entity name will suffice if applicable. If name not known, use position or title; i.e. neighbor, teller.)
 - Date of the contact.
 - Whether good cause exists to conclude that reprisal may occur if the taxpayer is notified.
 - Whether there is good cause that collection efforts may be jeopardized if the taxpayer is notified.
 - Whether the taxpayer authorized the contact.
 - Name, phone number, and unit of the person contacting the third party.
- The Event Log must show that the third party notice was given to the taxpayer, the date, and how notified. Keep the letter in the Sent Correspondence folder.
- A separate PASS Issue Folder must be created to hold all the documentation regarding third party contacts. Document clearly each contact within that folder with the information noted above,

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including whether there is fear of reprisal. Refer to MAP 28.8 Recording Third Party Information in PASS.

- If the taxpayer or the taxpayer representative gives you written or verbal authorization to contact a third party, document it clearly in the Issue Folder.
- Establish a tickler to remind you when the 12 months from notification date expires. This will remind you to send another notification to the taxpayer, if you plan to contact third parties after 12 months.

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**6.12 AFFIDAVITS AND
DECLARATIONS**

Affidavits and declarations are two different means of providing statements of facts that are admissible in court and binding. The terms affidavit and declaration are sometimes used interchangeably.

Affidavit is a sworn statement in writing made under oath or on affirmation before an authorized magistrate or officer.

A **declaration** is an unsworn statement, which usually include the phrase:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

We typically use declarations and not affidavits in our audits.

A taxpayer might want to submit a declaration in support of their case (often in residency cases). Typically, the declaration(s) are from third parties, and can be submitted in any tax matter.

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	<p>You can inform the taxpayer that they can submit declarations from third parties anytime during your audit. If the taxpayer submits a declaration during the audit, it is your responsibility to review the declaration. If you need further clarification, follow up with the person that provided the declaration. The purpose of the declaration is to provide additional information that can be useful in understanding a taxpayer's situation or facts.</p> <p style="text-align: right;">Rev. 7/17</p>
<p>6.13 AUDIT WORKING PAPERS</p>	<p>MAP 6.13.1 Purpose of Audit Working Papers MAP 6.13.2 What Do We Include in the Working Papers MAP 6.13.3 Preparing Working Papers MAP 6.13.4 Markings on Documents MAP 6.13.5 Cross-Referencing MAP 6.13.6 Standard Working Papers MAP 6.13.7 MSA Cases Required Working Paper MAP 6.13.8 PIT and PTE Required Working Paper</p> <p style="text-align: right;">Rev. 7/17</p>
<p>6.13.1 Purpose of Audit Working Papers</p>	<p>The working papers record permanently that an examination was performed or considered on a taxpayer. It is essential that you maintain an accurate, thorough, and usable record not only of the information developed during the audit but also of the procedures used to obtain and evaluate this information. This record of both what has been done and what has been found is necessary in order to support the auditor's recommendation.</p> <p>Note that the term "working papers" refers to both the electronic (PASS) <u>and</u> physical documentation.</p> <p>We may not be able to sustain audits with recommendations that we do not clearly support with a good working paper file. If you must supplement the</p>

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	<p>working papers with verbal explanations, the working papers are not complete.</p> <p style="text-align: right;">Rev. 7/17</p>
<p>6.13.2 What Do We Include in the Working Papers</p>	<p>A complete working paper file should include:</p> <ul style="list-style-type: none">• A summary of the work done• The audit recommendation• All the supporting documents and schedules <p>If discontinuing a case, refer to MAP 7.15 Discontinued Issue(s)/Case.</p> <p>The volume of working papers will vary from case to case. A general guideline is to include all relevant data and material that you prepared or obtained during the examination. This will involve several distinct kinds of documents including:</p> <ul style="list-style-type: none">• Index to Audit File• Scope Sheet• Audit Issue Sections• Event Log• Correspondence• Information/Document Requests (IDRs)• Audit Issue Presentation Sheets (AIPS)• Notes or other narrative material prepared by the auditor• Copies of documents obtained from the taxpayer or third parties• Other data as needed• PASS and Non-PASS Audit Schedules

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**6.13.3 Preparing
Working Papers**

Good working papers ensure that you:

- Perform all necessary audit steps.
- Get all material facts.
- Do not duplicate information and effort.
- Examine all pertinent supporting documents.
- Fully explain assumptions.
- Apply the appropriate law to the facts of the case.
- Know and document the taxpayer's position.
- Make information in the audit file easy to find.

Auditors have considerable latitude in preparing working papers, as long as the following guidelines are met:

- Working papers must be neat and legible.
- Cross-reference all working papers in accordance with MAP 28.9 Cross Referencing Correspondence, Documents, and Returns.
- Include notations to identify the source of all data included in the working papers. Indicate on the documents when you received the documents and who provided them. If necessary for identification, note their position. In large audits, you may receive information from numerous people. Comments like **received from taxpayer** are not sufficient.
- If not self-evident, note the significance of each working paper. Explain each symbol or tick marks used for indicating the verification of amounts or totals. This applies to copies of taxpayer documents included as audit work papers. See MAP 6.13.4 Markings on Documents for additional information.

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- Keep work papers current at all times, so no one has to redo work. Remember that a second auditor will only have the work papers to determine what you have done.

The taxpayer may request copies of working papers and other documents. Your work paper and other documentation should reflect an objective and unbiased audit.

Working Papers for Discontinued Cases

If discontinuing a case, refer to MAP 7.15 Discontinued Issue(s)/Case.

Working Papers From Transferred Cases

When you receive a case from a prior auditor, you **must** retain the prior auditor's working papers. Follow these procedures:

- Create a new Audit Issue Section (AIS)/issue file within the same Issue Folder.
- Name the old AIS/issue file and the new AIS/issue file appropriately to keep the previous work without making the completed audit confusing. For example: **Audit Issue – Prior Auditor** and **Audit Issue – Second Auditor**.
- In the Event Log and in the old AIS/issue file, explain why a new AIS/issue file is created and indicate the steps necessary to complete the audit.

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6.13.4 Marking on Documents

Do not write on, mark, or highlight any documents received from the taxpayer. The only writing allowed on taxpayer provided documents is:

- Cross-referencing at the bottom of the page.
- Date received by Franchise Tax Board at top of page.
- The word **voluntary** on IRS audit information provided to us by the taxpayer

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If you want to make notations to documents:

1. Copy the document received from the taxpayer.

2. Note on the document that it is a copy.

3. Make your notations on the copy.

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6.13.5 Cross-Referencing

Cross-referencing facilitates the review of the audit file and ensures that the information you relied upon for your audit conclusion can be accessed.

If discontinuing a case, refer to MAP 7.15 Discontinued Issue(s)/Case.

Cross-reference all related documents to each other in accordance with the MAP 28 Working Paper Procedures. For example, cross-reference an IDR to the taxpayer's response, and cross-reference the response to the IDR. Cross-reference audit schedules to the documents from which you derived the figures, and cross-reference the supporting documents to the audit schedules where the information is utilized. If a figure in the audit schedule represents a sum of more than one number, prepare supporting schedule to show how the figure was added. Cross-reference this supporting schedule to the other audit schedules. When referencing multi-page document, identify the specific pages that are relevant to your analysis.

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6.13.6 Standard Working Papers

The following are some commonly used PASS templates.

FOLDER	TEMPLATE (FTB/ PASS Form #)
001 - Administration	IDR Log (9924)
	AIPS Log (9925)
	Audit Working Paper Index (9922)

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	<p>Index to Audit Files (9923)</p> <p>Request for Federal Tax Information (8796-A)</p> <p>Audit Report (6430)</p> <p>Auditor's Recommendation – Formal claim (6638)</p> <p>BCT NPA Worksheet Audit (6830)</p> <p>Authorization for Single Notices (4523B)</p> <p>Free Form (9904) (Word)</p> <p>Blank Free Form Excel</p>
002 - Reports	<p>Narrative (6431)</p> <p>Free Form (9904) (Word)</p> <p>Blank Free Form Excel</p>
004 - Preliminary Analysis	<p>PIT Scope Sheet (8600)</p> <p>MSA Scope (1316)</p> <p>Research Information (9901)</p> <p>Free Form (9904) (Word)</p> <p>Blank Free Form Excel</p> <p>Pre-Audit Schedules</p>
005 - Draft Correspondence	<p>Appointment Confirmation Letter (1500)</p> <p>Audit Issue Presentation & Cover Ltr. (1501)</p> <p>Demand Ltr. Re: Corporation (1506)</p> <p>Extension of Time (1509)</p> <p>Follow-up Ltr. – Claims (1511)</p> <p>Follow-up Ltr. – General (1512)</p> <p>Information Document Request (1515)</p>

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	<table border="1"> <tr> <td data-bbox="500 189 711 741"></td> <td data-bbox="711 189 1427 741"> <p>Initial Contact Ltr. To Corporations (1516)</p> <p>Letterhead (1520) (freeform)</p> <p>Follow-up Ltr. To Initial Contact Ltr. (1522)</p> <p>Letters (1521)</p> <p>No Change (1524)</p> <p>Power of Attorney and Cover Letter (1532)</p> <p>State Waiver for Corps. (3570)</p> <p>NPACA Letter (1542)</p> </td> </tr> <tr> <td data-bbox="500 741 711 1144">008 - Notes</td> <td data-bbox="711 741 1427 1144"> <p>Public Contact Memo (6622)</p> <p>Research Information (9901)</p> <p>Corp./Sub Relationship (9903)</p> <p>Notes (6871D)</p> <p>Free Form (9904) (Word)</p> <p>Blank Free Form Excel</p> </td> </tr> <tr> <td data-bbox="500 1144 711 1476">Issue Folders</td> <td data-bbox="711 1144 1427 1476"> <p>Audit Issue Section (6870B)</p> <p>Audit Issue Verification (9910)</p> <p>Research Information (9901)</p> <p>Free Form (9904) (Word)</p> <p>MSA Blank Free Form Excel</p> </td> </tr> </table> <p>For a complete listing of templates available in PASS, refer to PASS Help.</p> <p align="right">Rev. 10/18</p>		<p>Initial Contact Ltr. To Corporations (1516)</p> <p>Letterhead (1520) (freeform)</p> <p>Follow-up Ltr. To Initial Contact Ltr. (1522)</p> <p>Letters (1521)</p> <p>No Change (1524)</p> <p>Power of Attorney and Cover Letter (1532)</p> <p>State Waiver for Corps. (3570)</p> <p>NPACA Letter (1542)</p>	008 - Notes	<p>Public Contact Memo (6622)</p> <p>Research Information (9901)</p> <p>Corp./Sub Relationship (9903)</p> <p>Notes (6871D)</p> <p>Free Form (9904) (Word)</p> <p>Blank Free Form Excel</p>	Issue Folders	<p>Audit Issue Section (6870B)</p> <p>Audit Issue Verification (9910)</p> <p>Research Information (9901)</p> <p>Free Form (9904) (Word)</p> <p>MSA Blank Free Form Excel</p>
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<p>6.13.7 MSA Cases Required Working Paper</p>	<p>The uniform format for all MSA cases requires use of the following items:</p> <ul style="list-style-type: none"> • Audit Issue Section (FTB 6870B) 						

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	<ul style="list-style-type: none">• Audit Issue Section- Verification (FTB 9910)• Event Log• Index to Audit File (FTB 9923) <p>Note: Exceptions to this format may exist:</p> <ul style="list-style-type: none">• Surveyed Case - The working papers within a surveyed case may be limited to a scope document and supporting scoping schedules.• Discontinued case - If discontinuing a case, refer to MAP 7.15 Discontinued Issue(s)/Case. <p>MAP 6.13.7.1 Audit Issue Section (FTB 6870B) MAP 6.13.7.2 Audit Issue Section – Verification (FTB 9910) MAP 6.13.7.3 Event Log MAP 6.13.7.4 Index to Audit File (FTB 9923)</p> <p style="text-align: right;">Rev. 6/18</p>
6.13.7.1 Audit Issue Section (FTB 6870B)	<p>The Audit Issue Section divides the working paper file by topic, provides sub-indexes for each Audit Issue Section, and provides a summary and record of the audit process for each Audit Issue Section.</p> <p>Following are the general guidelines:</p> <ul style="list-style-type: none">• Create and name PASS folders for each issue section in accordance with MAP 28 Naming PASS Folders.• Use the PASS template FTB 6870B.• Complete the segments as the audit progresses, beginning with the pre-audit activity.• Cross-reference supporting working papers within the text of the document. <p>Complete the following fields:</p> <ul style="list-style-type: none">• Taxable Year• Issue• Tax Potential

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	<ul style="list-style-type: none">• Taxpayer Agreed or Disagreed• Tax Adjusted• Workpaper Reference <p>FTB 6871D (Notes) and FTB 9904 (Free Form) are other PASS templates which you can use to summarize and reference groupings of information that do not lend themselves to the As Reported and Conclusion format of FTB 6870B. Examples would include the following:</p> <ul style="list-style-type: none">• Background Data• Planning• Pre-Audit Information• Documents that require cross-referencing to more than one program item. <p style="text-align: right;">Rev. 7/17</p>
<p>6.13.7.2 Audit Issue Section - Verification (FTB 9910)</p>	<p>The purpose of Audit Issue Section – Verification is to provide auditors with a means of documenting audit activity on specific audit issues. Documenting our activity is the basis for supporting audit determinations as cases move through various stages of the audit lifecycle.</p> <p>Use PASS template FTB 9910. Complete the following fields:</p> <ul style="list-style-type: none">• Summary Explanation of Items Reported – Use this section to explain how the issue was reported (or not reported) on the state return, how it was identified and why the decision was made to pursue (or not to pursue) the issue.• Verification Procedures – Use this section to document steps taken in identifying, developing and reaching the audit conclusion. Mention all sources relied upon such as annual reports, unitary questionnaire or meeting minutes in support of the audit

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	<p>determination. Also mention any research conducted along with the sources and results of the research.</p> <ul style="list-style-type: none">• Conclusion – Clearly state the results of the examination. Include references to any law sections, regulations, SBE cases, or District Court decisions in support of your conclusion. Also mention any policy considerations relied on in supporting the audit conclusion.• W/P Reference- Include all working paper references in the column labeled W/P REFERENCE. Working paper references should be in accordance with MAP 28 Working Paper Procedures. <p style="text-align: right;">Rev. 7/17</p>
6.13.7.3 Event Log	<p>Use the Event Log to record your progress and events throughout the course of the audit. PASS automatically records some events as you perform certain audit tasks, such as sending correspondence.</p> <p>Print the Event Log only in extremely unusual situations such as a subsequent user of the file not having access to PASS. If printed, attach the Event Log to the working paper file under the Index to Audit File (FTB 9923) and ensure it is properly labeled and cross-referenced.</p> <p>For additional information on how to print the Event Log, refer to PASS Help. For additional information on the other functions of Event Log, see MAP 25.2.2 PASS Event Log.</p> <p style="text-align: right;">Rev. 7/17</p>
6.13.7.4 Index to Audit File (FTB 9923)	<p>For more information see MAP 28.10.1 Index to Audit File (Form 9923).</p> <p style="text-align: right;">Rev. 7/17</p>
6.13.8 PIT and PTE Cases Required Working Paper	<p>The uniform format for PIT and PTE cases requires use of the following:</p>

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- Audit Issue Section (FTB 6870B)
- Event Log
- Index to Audit File (FTB 9923)
- Narrative Report (For all changed cases)

MAP 6.13.8.1 Audit Issue Section (FTB 6870B)

MAP 6.13.8.2 Event Log

MAP 6.13.8.3 Index to Audit File (FTB 9923)

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6.13.8.1 Audit Issue Section (FTB 6870B)

The Audit Issue Section divides the working paper file by topic, provides sub-indexes for each Audit Issue Section, and provides a summary and record of the audit process for each Audit Issue Section. The general guidelines are as follows:

- Create and name PASS folders for each issue section in accordance with MAP 28.4 Naming PASS Folders.
- Use PASS template FTB 6870B.
- Complete the segments as the audit progresses, beginning with the pre-audit activity.
- Cross-reference supporting workpapers within the text of the document.

Complete the following fields:

- **Taxable Year**
- **Issue**
- **Tax Potential**
- **Taxpayer Agreed or Disagreed**

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- **Tax Adjusted**
- **Workpaper Reference**
- **Summary Explanation of Item as Reported**- Explain how the issue was originally reported on the state return.
- **Facts**
 - Give a clear and concise explanation of the facts and circumstances with enough detail so that a reader unfamiliar with the case can understand the situation as it relates to the audit issue.
 - Differentiate fact from opinion or assertion. Identify clearly any assumptions.
 - Cross-reference your key points to the pertinent documents, schedules, etc., in the audit file.
 - Do not include Event Log items such as, **Called Taxpayer, Requested Return**, etc.
- **Law**
 - Cite the applicable law sections (i.e. code, regulations, case law, and rulings).
 - Do not analyze how the law applies.
 - When copying law citations from on-line research, make sure you copy a text version and not the other graphics.
- **Analysis**
 - Show how the law sections apply to the facts in your particular case.
 - Explain why the taxpayer does or does not meet the requirements of the law.
 - Include a discussion of applicable case law, regulations, Legal Rulings, and Revenue Rulings to support your position.
 - Discuss your recommendation.

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	<ul style="list-style-type: none">○ Include a copy of research material as needed in the audit file.○ Address the law or case cites relied upon by the taxpayer. Explain how they support or rebut the taxpayer's or our position.● Conclusion<ul style="list-style-type: none">○ Discuss your determination based upon the Facts, Law, and Analysis.○ Discuss the taxpayer or representative's position, and why it does or does not apply. <p>FTB 6871D (Notes) and FTB 9904 (Free Form) are other PASS templates which you can use to summarize and reference groupings of information that do not lend themselves to the As Reported and Conclusion format of FTB 6870B. Examples would include the following:</p> <ul style="list-style-type: none">● Background Data● Planning● Pre-Audit Information● Documents that require cross-referencing to more than one program item <p style="text-align: right;">Rev. 7/17</p>
<p>6.13.8.2 Event Log</p>	<p>Use the Event Log to record your progress and events throughout the course of the audit. Some events are automatically recorded by PASS as you perform certain audit tasks, such as sending correspondence.</p> <p>Print the Event Log only in extremely unusual situations such as a subsequent user of the file not having access to PASS. If printed, attach the Event Log to the working paper file under the Index to Audit File (FTB 9923) and ensure it is properly labeled and numbered for cross-referencing purposes.</p> <p>For additional information on how to print the Event Log, refer to PASS Help. For additional information on the other functions of Event Log, See MAP 25.2.2 PASS Event Log.</p> <p style="text-align: right;">Rev. 7/17</p>

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6.13.8.3 Index to Audit File (FTB 9923)	For more information see MAP 28.10 Index to Audit File (9923). Rev. 6/18
6.14 AUDIT TOOLS	Pivot Tables If you need to evaluate large amounts of taxpayer information, such as credits or deductions, you can use the Pivot Table function in Excel. It allows you to sum, count, and sort detailed data to determine your audit plan. Once you obtained the detail support for a credit or deduction, you typically have numerous columns of information. Pivoting allows you to sort these columns of information as many times as needed. Once sorted, you can also sum and count the components of the information. For example you can sort by dollar amount, or by descriptions. Other features also include inserting detail into charts and filtering your information. Filtering provides for sorting of the data without summing and counting. These instructions show you step by step how to pivot your data. It also shows you how to set up this tool in Excel. Rev. 7/17
6.15 UNFILED RETURNS RECEIVED DURING AN AUDIT	Occasionally, we receive returns during an audit, including amended or original returns. Follow these procedures: <ol style="list-style-type: none">1. If the returns are related to an ongoing audit, make a copy of the return to aid in ongoing audit. Do not upload the copy of the return to CM or TPF.2. Route original returns to Receiving and Data Storage Section, Mail stop L-160.3. Once the returns are processed and accessible in CM or TPF, update the PASS case unit with the Document Locator Number and any other information available. Electronic copies of the return received by email, fax or on a storage media device, are not acceptable as a method of filing a return. If a taxpayer provides a return by these means, do not accept the return. Instead, inform the taxpayer to mail the physical copy of the return to the department for processing.

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Mailing address for the returns can be found on the FTB's public website at [Mailing Address for Tax Returns and Payments.](#)

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**6.16 INDIVIDUAL
TAXPAYERS SERVING
IN COMBAT ZONES**

Tax relief is available for military personnel deployed overseas or serving in a Presidential declared combat zone. The California provisions mirror the federal relief provisions suspending deadlines for filing certain documents. We automatically extend the period for performing the following acts for 180 days after the taxpayer returns to the United States:

- Filing a protest
- Appealing FTB's action on a protest to the Office of Tax Appeals
- Filing a claim for refund
- Appealing FTB's denial of a claim for refund
- Replacing property under IRC Section 1031
- Paying tax bills
- Responding to audit requests

The extension is free from interest or penalties. If an audit is in progress, we suspend the audit unless the taxpayer designates someone else to take over. The taxpayer must notify us immediately upon return. This relief is for **individual** taxpayers only.

Use the following procedures to update the taxpayer's account upon notification they are serving in a combat zone or are stationed overseas.

IF:	THEN:	RESPONSIBILITIES:
Taxpayer contacts employee outside of Audit	Employee forwards contact information to Audit Business Support.	Audit Business Support will forward: <ul style="list-style-type: none"> • Audit Correspondence to the unit/maker. • Correspondence regarding a pending NPA to the Protest Unit, other than notices issued by Unit 348.

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		<ul style="list-style-type: none"> • Correspondence regarding Unit 348 notices to maker.
Taxpayer calls employee outside of Audit and there is audit activity	Employee will obtain name of audit staff from the caller.	<p>Employee will:</p> <ul style="list-style-type: none"> • Update TI account. • Notify audit staff of call via email. <p>If employee cannot ascertain the name of the audit staff, the employee will send the email to the manager of the Technical Resource Section. That section will assume the responsibility of identifying the proper audit staff.</p>
<p>Taxpayer contacts audit staff directly,</p> <p>OR</p> <p>Audit staff receives taxpayer contact information from Audit Business Support,</p> <p>OR</p>	Audit staff obtains from the taxpayer (or person calling on behalf of taxpayer) necessary information to complete responsibilities.	<p>Audit staff will:</p> <ul style="list-style-type: none"> • Check the taxpayer's TI account to see if the military data field says Yes (Audit Business Support can assist with TI transactions). If so, verify the Begin Date and End Date on the Military Service Display screen (CID ML). • Add a comment to the entity's Taxpayer Folder: Taxpayer is serving in a combat zone. • Record the caller's name and relationship to the taxpayer. • Suspend audit action on the account until

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	<p>Audit staff receives email from FTB employee regarding taxpayer's call</p>		<p>180 days after taxpayer returns from combat.</p> <ul style="list-style-type: none"> • If audit is in progress, and the taxpayer requests it, delay any action and provide follow-up dates. • Add a note to the PASS file and keep the case in your PASS inventory. Follow-up with taxpayer when they return and continue the audit. • Determine if the taxpayer will benefit from receiving Publication 1021 California Tax Information for Military Personnel. It provides information about filing returns, signing on behalf of a spouse, what to do if owing back taxes, and if military pay is taxable. • Follow up any discussions with a letter documenting status.
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6.17 AMERICANS WITH DISABILITIES ACT - REQUESTS FOR ALTERNATIVE FORMATS

If you receive a request for tax forms or other material in alternative formats (Braille, audiocassette, or large print), contact the Franchise Tax Board ADA Coordinator, Equal Opportunity Employment Office at 916.845.4659.

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	<p>If a taxpayer contacts you through the California Relay Service or TTY/TDD to respond to an initial letter, you should first verify the taxpayer's identity by asking for:</p> <ul style="list-style-type: none">• Taxpayer name and address.• Taxpayer identification number.• Tax years in question.• Initial letter mail date. <p style="text-align: right;">Rev. 7/17</p>
<p>6.18 ADJUSTMENTS AFFECTING FUTURE YEARS</p>	<p>If the audit results in an adjustment that will affect any future year or other taxpayers, such as the disallowance of a bad debt that is deductible in another year, you should request the other returns and make the appropriate adjustments. If tax returns are not yet filed for the years affected, indicate in the position letter how the items are to be treated in the future. Create a reminder for these items using the PASS Follow-up Flag feature (See MAP 25.5.3 Follow-up Flag Procedures). Also, see MAP 7.7 Notice of Proposed Adjusted Carryover Amounts (NPACA).</p> <p style="text-align: right;">Rev. 7/17</p>
<p>6.19 CLOSING AGREEMENT</p>	<p>The taxpayer and the Franchise Tax Board may enter into a closing agreement to close the audit year for further activity (audit, protest, appeal and claims for refund) other than RAR adjustments, fix the proper treatment of an item, and end the factual development of an issue.</p> <p>R&TC Section 19441 authorizes the Franchise Tax Board or a designated member of its staff to enter into a closing agreement with any person to settle any matter pertaining to tax.</p>

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Due to the legal and binding nature of closing agreements, they are drafted by Legal Department staff and reviewed by the Legal Affairs Bureau. The final agreement is generally signed by the FTB's Executive Officer.

The agreement is considered final and conclusive, and except in case of fraud or malfeasance, or misrepresentation of a material fact, the case may not be reopened, modified, annulled, set aside or disregarded.

Electronic copies of the Closing Agreements cannot be accepted. The original "pen-on-paper" signature is required for all Closing Agreements. Closing agreements must be sent to Legal staff using the following address:

State of California

Legal Division MS A260

Franchise Tax Board

P.O. Box 1720

Rancho Cordova CA 95741-1720

Legal staff will do the final processing and record keeping for all closing agreements.

For more information on closing agreements, contact Technical Resource Section.

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