

2020 CalCPA Questions & Responses

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2020 CalCPA Committee on Taxation State Subcommittee Annual FTB Liaison Questions

Question #1:

Please update regarding any new electronic power of attorney submission procedures that have been implemented since September 2019, and please provide any available statistics regarding percentages of rejections. Do any of the procedures available for submitting powers of attorney have a lower incidence of rejection, and what are those?

FTB Response:

FTB has not made any changes to the electronic Power of Attorney (POA) submission process since September 2019. Our last major change was adding the MyFTB Full access request box to the forms in January 2019, which has been an overwhelming success.

Despite the change to the form in 2019, the patterns of rejected POAs have remained the same for several years. Here is a list of our top three rejection reasons:

- Submission Errors (39%) - This encompasses a variety of submission errors, however primarily they are:
 - Representatives listed on the uploaded declaration were not keyed into MyFTB
 - Representative information not keyed correctly into MyFTB; does not match what is on the form (name, address, professional ID, etc.)
 - Declarations altered or modified without the taxpayer initialing the change or providing a new signature and date
 - Taxpayer information on the declaration does not match our system, was incomplete, or illegible
- No Taxpayer Response from the Relationship Verification (RV) Letter (21%)
- Electronic/Digital Signatures – (5%, down from 6% last year)

To avoid these common reasons for rejection and ensure that POAs and TIAs are submitted without issues, FTB encourages representatives and taxpayers alike to observe the following Best Practices when submitting a POA or a Tax Information Authorization (TIA) form using MyFTB:

- Make sure that only one POA is included in the uploaded attachment
 - This POA must be for the client you enter into MyFTB
- Ensure that the information keyed for your client, exactly matches the information found on the POA declaration

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- This includes keying additional representatives listed on Page 4 of the declaration (TIP - to save time, you can create an Associates List in MyFTB for representatives you commonly use on declarations. You can then select representatives from your Associates List when adding your POA declaration in MyFTB.)
- We will not accept multiple declarations uploaded for a single taxpayer
- Declarations for spouses and registered domestic partners must be submitted separately
- Ensure that all representative names and authorizations listed on the POA declaration match what is keyed into MyFTB. For example:
 - If five representatives are listed on the declaration, all five should be keyed into MyFTB
- Ensure that the authorizations keyed into MyFTB match exactly what is listed on the declaration (no more and no less)
- Ensure the POA declaration is filed with the taxpayer's original or "wet" signature and that both the signature and date are complete and legible
 - The signature date is used to determine the expiration date of the declaration, so it is important our staff are able to clearly read this information
 - Currently, FTB does not allow electronic signatures when an individual or business files a POA declaration. The POA is a legal document that allows taxpayers to grant authority to a specific individual (the POA representative) to represent the taxpayer before FTB and to access and receive the taxpayer's confidential information online, by phone, in person, or in writing, with respect to any tax year or period specified. The broad scope of authority granted by a POA declaration increases the potential risk of fraud and unauthorized activity

Finally, FTB offers three ways for taxpayers and tax professionals to submit a POA Declaration:

- File electronically using MyFTB
 - Information is entered directly into the MyFTB application, and then approved electronically by the taxpayer
 - This method does not require a wet signature, however it does require the taxpayer to have a MyFTB account and to go back into their MyFTB account to approve the POA once submitted
- Upload the signed and completed paper POA Declaration into the MyFTB application, once the information is entered electronically
- Mail the signed and completed paper POA Declaration to FTB for processing

Question #2:

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The Franchise Tax Board has deemed 1031 exchanges to be a significant part of their audit program and are verifying that forms 3840 are being filed and reported appropriately. Has this generated additional revenue for the state? Have the results of the effectiveness of Form 3840 been determined and what is the rate of compliance (or estimated rate) of taxpayers who have participated in 1031 exchanges that have exchanged into properties outside of the state of California?

FTB Response:

Taxpayers must file FTB form 3840 for California Like-Kind Exchanges when they exchange real property located in California for like-kind property located outside of California and every year thereafter as long as the gain or loss is deferred.

Based on the data for the 2018 tax year, taxpayers who exchanged real property located in California for like-kind property located outside of California have an average filing compliance rate of Form 3840 of approximately 85% in the initial year. After the initial year, the filing compliance rate dropped to an approximate average of 70%.

In looking at this decline, FTB noticed that a significant number of the forms filed were incomplete, partly due to the omission of the California-specific information. Therefore, we have focused on education outreach by issuing various Tax News articles detailing taxpayers' California reporting requirements, tips for correcting, and sharing common error issues found within the filed forms.

In order to assist taxpayers with their filing obligations, the FTB plans to continue mailing annual Form 3840 Compliance Letters to taxpayers who either failed to file or filed an incomplete FTB 3840 for a tax year.

Question #3:

The COVID-19 emergency has required FTB and taxpayers to change their procedures in many ways. For example, many things are moving to being done electronically as opposed in-person or on paper. How has the COVID-19 emergency changed the longer-term plans on moving more to electronic methods by FTB?

Question #4:

During the COVID-19 emergency, the FTB allowed more documents to be signed electronically instead of signed by pen on paper copy of the document. How has this worked for the FTB? Is the FTB looking to allow continued electronic signing of documents and, if so, what documents?

FTB Response to Question 3 & 4:

As a result of the COVID-19 pandemic, the FTB originally advised taxpayers and their representatives that we would not require original signatures on returns and other documents filed with the FTB through July 15, 2020. For paper returns, FTB provided two electronic signature

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options and several other electronic signature options for other documents filed with FTB, including uploading a document with a signature into MyFTB. These options do not apply to Powers of Attorney, which still require an original signature. FTB also provided several electronic signature options for filing statute of limitation waivers.

All of these electronic signature options for returns and other documents filed with FTB, including the statute of limitations waivers, are now available through December 31, 2020. To date, we have not had any discussions about extending these options beyond December 31, 2020. We will continue to monitor the situation and communicate any changes, as necessary.

FTB is also holding virtual audits and protests hearings and participating in virtual oral arguments before the Office of Tax Appeals. We do not have an estimate of when FTB will conduct in-person audits or protest hearings or an estimate of when the OTA will commence in-person appeal hearings.

Question #5:

AB 85, which was enacted June 29, 2020, retroactively suspends NOLs for three years and retroactively limits the maximum amount of most credits to \$5M in the aggregate. The FTB has not released any guidance, nor has the FTB updated the 2020 estimated tax forms and instructions to reflect the new law. When will guidance or a Tax news story be released? We are trying to recalculate our clients' required estimated tax installments.

FTB Response:

After Assembly Bill (AB) 85 was signed into law, within two (2) weeks FTB released a Tax News article that informed taxpayers of the provisions. This bill provides, among other things, that:

- For taxable years 2020 through 2022, the limit of allowable business credits, as specified, is \$5 million; and
- Net operating loss (NOL) deductions for taxable years 2020 through 2022 are suspended for taxpayers with net business income or modified adjusted gross income (as defined) of \$1 million or more. The NOL carryover period is also extended as specified in the bill.

Applicable tax forms and instructions addressing the allowable business credits limitation and the NOL suspension are being updated in accordance with Revenue and Taxation Code Sections 17039.3, 17276.23, 23036.3 and 24416.23 to adhere to the passage of AB 85. The modifications to these instructions include, but are not limited to, adding a "What's New" paragraph and additional instructional changes as applicable.

It is unnecessary to revise the 2020 estimated tax forms (Form 540-ES, Form 100-ES, etc.) because these forms allow taxpayers to estimate their tax liability based on projected adjusted gross income. NOL is merely a line item utilized when calculating adjusted gross income. For this reason,

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NOL is not referred to in the instructions of either form and there is no NOL-specific line item that requires updating.

- <https://www.ftb.ca.gov/forms/2020/2020-540-es-instructions.html>
- <https://www.ftb.ca.gov/forms/2020/2020-100-es-instructions.html>

FTB is actively pursuing ways to keep our taxpayers continuously informed of any tax law changes. For additional guidance on AB 85 provisions please see the following outreach efforts below:

- FTB Tax News Article: <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/july-2020/legislative-bill-watchlist.html>
- FTB Legislative Services Bureau analysis of A.B. 85: <https://www.ftb.ca.gov/tax-pros/law/legislation/2019-2020/AB85-061020.pdf>
- FTB Legal Ruling 2011-04 application of NOL suspension provisions: <https://www.ftb.ca.gov/tax-pros/law/legal-rulings/2011-04.pdf>
- FTB Public Affairs and the FTB Taxpayer Advocate are working together on outreach efforts.

If you feel that your client(s) may have incorrectly estimated their 2020 California income tax liability, please note that taxpayers may complete Form FTB 5805/Form FTB 5806 and request a waiver of the Underpayment of Estimated Tax Penalty if an underpayment of an installment payment was made due to the passage of this new law during the middle of the tax year.

Question #6:

With so much nonconformity, many taxpayers are making California-only elections. While there are a few FTB rulings and notices available, there is no form similar to IRS Form 3115 for a change in accounting method, nor is there a form to do a California-only election. Why?

FTB Response:

For now, the FTB believes that the federal form is sufficient for California purposes. Form 3115 requires information that the FTB would also require. There is nothing in the federal form that we consider to be unnecessary. In addition, we don't want to burden taxpayers by requiring the completion of two separate yet redundant forms.

However, the FTB is aware that recent law changes at the federal level may result in a greater number of taxpayers seeking California-only changes in accounting method than historically requested. We will continue to internally monitor taxpayer needs in this area and be receptive to concerns and comments made by the public. If the need for a California-specific form is identified or brought to our attention by taxpayers or members of the general public, we would be inclined to consider the possibility of creating such a form.

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Question #7:

We are still experiencing problems with the FTB’s POA system, including a high rejection rate. Most rejections are due to a perceived problem with the taxpayer’s signature. We recently had a POA rejected because a CFO signed the POA for an LLC. While the FTB has reported that there has been a decrease in the rejection rate, this has not been our experience. What can be done to improve this process?

FTB Response:

The POA rejection rate has been decreasing steadily over the last several years and is at an all-time low of 24%, down from 60% in 2017. While many strides have been made in reducing the overall rejection rate, there are still areas in which we see consistent rejections, including taxpayer’s signatures for businesses.

The POA unit is responsible for verifying that the individual signing on behalf of a business is authorized to do so, and oftentimes this comes down to the signee’s title. When a Business Entity’s POA is received with a title that does not match the entity type, such as a C-Corp title on behalf of an LLC, we will verify the individual by other means, such as accessing information through the Secretary of State’s website. If we are unable to verify the signee through the Secretary of State or one of our other methods, we will reject the POA to ensure that the Businesses confidential tax information is protected.

If a POA is rejected because the POA unit does not recognize the title, we suggest attaching a document proving the signee is able to contractually bind the company. There are a variety of documents that will work. The following list contains examples of several, but not all, of the supporting documents we will accept:

- Corporate Bylaws
- Articles of Organization
- Official Meeting Minutes Naming the signee and their title
- Secretary of State documents naming the signee

If your FTB 3520-BE Business Entity or Group Non-Resident Power of Attorney does not contain a title matching its corresponding entity type below, supporting documents should be included in the initial packet to avoid rejection:

Corporation	<ul style="list-style-type: none">● President● Vice President● Chief Financial Officer (CFO)● Chief Executive Officer (CEO)● Chief Operating Officer(COO)
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LLC	<ul style="list-style-type: none"> • Managing Member • Managing Partner • Member • Owner • General Partner
Partnership	<ul style="list-style-type: none"> • General Partner • Tax Matters Partner • Partner

Much like Fiduciary POAs, supporting documents for a business should be submitted as part of the packet whether it is mailed or uploaded to MyFTB. This ensures smooth processing for BE POAs signed with unique titles or titles not typical of the submitting entity type. If you’ve received notification that a previously filed POA was rejected, feel free to resubmit the rejected POA with a copy of one of the suggested supporting documents above.

Question #8:

Please provide an update on the FTB addition of forms to the new ADA-compliant website.

FTB Response:

In December and January, we are adding current year forms. In addition, in December 2020, we are adding the 1997-2007 tax year forms to the website, which will be available through the request process. This will provide access to forms from tax year 1997 to current year.

Question #9:

With COVID-19, there will be a significant increase in the number of taxpayers requesting assistance from the Taxpayer Rights Advocate. What are the current staffing levels, and what are the projected staffing levels?

FTB Response:

The Taxpayers’ Rights Advocate’s Office (TRAO) and FTB’s Executive Services Section (ESS) both assist taxpayers and tax professionals when they are unable to resolve a problem through normal channels. TRAO currently has three Case Resolution Specialists and two Technical Assistants to the Advocate for this purpose while ESS has fourteen Senior Compliance Representatives performing similar functions. There are no anticipated changes to these staffing levels at this time.

Additionally, when appropriate, both TRAO and ESS may also refer taxpayers and tax professionals to our contact centers or other FTB business areas as part of the problem resolution process.

Question #10:

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Market-based sourcing of receipts became operative for the 2013 tax year, yet there is still a lack of guidance as the regulations under R&TC Sec. 25136 continue to evolve and change. The OTA has now begun ruling against non-resident taxpayers who are seemingly unclear on how to apply the rules, especially when they have no physical presence in California. How does the FTB intend to communicate taxpayers' California filing requirements to taxpayers across the country?

FTB Response:

FTB is actively pursuing ways to keep our taxpayers informed on how to comply with FTB's filing requirement. Please see the following outreach efforts below:

1. We issued Tax News articles back in July 2018, November 2018 and November 2019 that address market-based sales rules. For example, the article in November 2019 specifically addresses the application of the market-based sourcing rules to independent contractors.
 - a. <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/july-2018/discussion-on-market-based-rules-for-sales-other-than-sales-of-tangible-personal-property-continues.html>
 - b. <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/november-2018/market-based-sourcing-amendment-clarification.html>
 - c. <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/november-2019/market-based-sourcing-for-independent-contractors.html>
2. There is an active regulation project that is available on our website for Regulation 25136-2.
 - a. <https://www.ftb.ca.gov/tax-pros/law/regulatory-activity/index.html>
3. Interested party meetings are being held on this regulation, one as recent as 7/21/2020, to solicit taxpayer comments. Future meetings are publicized on the FTB website.
 - a. <https://www.ftb.ca.gov/tax-pros/law/regulatory-activity/index.html>.
4. Ask the Advocate Tax News:
 - a. <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/july-2019/ask-the-advocate.html>
5. FTB tax form products are being updated annually to provide taxpayers with the latest information regarding California's tax filing requirements. Some of the FTB tax products available to assist taxpayers are:
 - a. 540NR Booklet - Nonresident or Part-Year Resident Booklet

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b. Publication 1100 - Taxation of Nonresidents and Individuals Who Change Residency

Question #11:

FTB auditors continue to take aggressive and unreasonable positions against taxpayers who claim the R&D credit. Many of these taxpayers have appropriate substantiation and documentation, yet the auditors determine that there should be a 100% disallowance of the credit, resulting in expensive protests and appeals. Are auditors being sufficiently trained on the R&D credit rules?

FTB Response:

Our goal is to ensure the tax laws are properly followed and that the correct amount of tax is paid.

Training our auditors for all issues, including the research credit, is our highest priority in building a strong organization. Our auditors are provided with multiple resources and tools to conduct their research credit audits efficiently and effectively. Training includes instructor-led courses, collaborative workshops, hands-on learning provided by subject matter experts, and manuals as a resource. Additionally, our Research Credit Task Force and dedicated research credit consultants are available to assist our auditors on more complex research credit cases. We take a very collaborative approach to ensure our auditors are sufficiently trained and have a strong network of subject matter experts for guidance.

We recognize that the research credit is a complex issue and has very stringent tests that must be met before a taxpayer qualifies for the credit. Given this, we work closely with the taxpayer or representative to gain a full understanding of the research activities. Once we gain an understanding of the activities, we request and review all related documentation based on the unique circumstances of the business.

Question #12:

Receipts generally are sourced to California using the market-based sourcing rules, so a non-resident independent contractor must source receipts to California if the benefit of the services were received in California. For example, under the *Appeal of Bindley*, a precedential OTA decision, an Arizona resident was required to source receipts to California for services performed in Arizona for the benefit of a California LLC. The non-resident non-wage withholding rules require withholding agents to withhold only if the non-resident performs services in California. In the *Bindley* decision, it seems that the California LLC was required to withhold. Thus, there seems to be a disconnect between California's sourcing rules and California non-resident non-wage withholding rules. What is the FTB's position on this apparent disconnect?

FTB Response:

FTB is aware of the confusion surrounding the interplay of the sourcing and withholding rules for nonresidents earning California-sourced non-wage income and we are presently working on

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amendments to the regulations under 18662 of Title 18 of the California Code of Regulations to add clarification as to when withholding is required for this income.

Question #13:

The FTB uses the USPS to mail official notices. With COVID-19's stay-at-home order, many FTB notices are taking up to two weeks to get to taxpayers and their representatives. This includes notices that have statutory response deadlines. For example, an FTB Notice of Action affirming a protest dated June 1, 2020 reaches the taxpayer on June 12, 2020, only giving the taxpayer 18 days to file an appeal. Is there a way for the FTB to e-mail the notices, or post them on MyFTB, along with mailing them via USPS?

FTB Response:

For Security reasons, FTB is unable to email notices to taxpayers or their representatives. However, most FTB notices, including these, are available within MyFTB on the Notice Date.

Taxpayers with their own MyFTB account can set an electronic notification preference. When a notice is mailed, the taxpayer can elect to receive an email or text notification that a new notice is available in their MyFTB account. The electronic notification is sent as soon as the notice is available in MyFTB, regardless of the time it takes the USPS to deliver it.

Taxpayer representatives who submitted a POA with the representative's email address will also receive an email letting them know one of their clients has a new notice available. Representatives can log in to their MyFTB account to view the notices. The easiest way for a representative to find new notices is to select the "Client Notices" tab. The most recent 200 notices, up to 60 days old, are shown. Tax representatives who did not include an email address when they filed the POA can add it in MyFTB without filing a new declaration.

Question #14:

~~One of my firm's clients is a Physician who recently got married to a Military Officer. While her husband is stationed in California, he is a resident of Texas. She has been a resident of California ever since she was a medical resident and is an actively participating equity partner in a Regional Healthcare Provider in Southern California. She was considering using the Veterans Benefits and Transition Act (VBTA) to elect to change her residency to that of her husband's. Is she eligible to use the election even if she was previously a resident?~~

~~Under the Military Spouses Residency Relief Act (MSRRA), she would be considered a nonresident if the following were true:~~

- ~~• The service member and spouse have the same legal residence or domicile outside of California~~
- ~~• The spouse is in California solely to be with the service member who is serving in compliance with military orders.~~

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~~Also, her income would be considered not from California Sources if:~~

- ~~• The spouse is not a California legal resident or domiciliary because the spouse is in California solely to be with the service member serving in compliance with military orders~~
- ~~• Both have the same out-of-state legal residence or domicile~~

~~Assuming that she could change her domicile and residency to match her husband's, would the nature of her status as an equity partner of a California-based Medical Group with active participation as opposed to being a W-2 employee preclude her income from being classified as non-California source income? The grounds for such an argument would be that the nature of equity partnership in a California business establishes far more ties beyond being in-state solely to be with their military spouse.~~

Question #15:

Please describe how the FTB is planning to conduct Protest or Settlement Bureau meetings or hearings for which the taxpayer has requested to meet in person. What other options are available? What criteria need to be met before in-person meetings may resume?

FTB Response:

We are able to coordinate a protest hearing or settlement conference by phone or videoconference. We are working with taxpayer representatives to ensure that the telephone and videoconferences provide a meaningful opportunity for the representatives to be advocates for their clients. Our goal with any hearing, whether in person, by phone, or by videoconference, is to understand the taxpayer's point of view in order to properly determine whether a change in FTB's position is warranted.

We would like to have in-person meetings now, but in order to adhere to all recommended federal, state, and local health guidelines, we have determined it is not appropriate to have in-person protests or settlement conferences at this time. However, we continually are staying apprised of all guidelines and we will reevaluate the policy as new information is available. Our focus is on creating an effective environment to hold such meetings via teleconference and videoconferences.

Question #16:

I had a new client and called the Practitioner Hotline to ask if the taxpayer was subject to Web Pay requirements. I had the prior-year return but, because I didn't prepare the prior return, I was told the FTB was not allowed to answer the question. I understand not giving private information, but since there is a penalty if Web Pay is required, I think that this information should be reclassified as information that can be divulged to a verified preparer. Please explain the rationale for not disclosing Web Pay requirements.

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FTB Response:

Disclosing whether a taxpayer is subject to the mandatory e-pay requirement discloses confidential information that the taxpayer meets one of the two conditions for the mandatory e-pay requirement; that is, the individual either (1) makes an estimated tax or extension payment over \$20K, or (2) files an original return with a tax liability over \$80K.

We can share general information regarding the mandatory e-pay requirement and the two conditions, either of which, would trigger the requirement. However, we cannot disclose whether any specific taxpayer has the requirement on their account without specific authorization to disclose such information.

While we understand that there is a penalty consequence to a taxpayer whose tax preparer didn't know the taxpayer is subject to the mandatory e-pay requirement, the FTB is still prohibited from disclosing confidential information without taxpayer authorization, especially to a tax preparer who doesn't have a documented relationship to the taxpayer in our system, such as a TIA form or a POA declaration.

Question #17:

How is the FTB going to respond to residency and nexus issues as they relate to COVID-19? With shelter-in-place and stay-at-home orders commonplace, and with more people working remotely than ever before, will there be special relief or rules provided by the FTB to address these issues?

FTB Response:

At this time the Franchise Tax Board has not provided any specific guidance or relief related to how COVID-19 would impact the analysis of residency under CRTC 17014 and 17016, if at all; however, both CRTC 17014 and 17016 are written to allow circumstances such as COVID-19 to factor in the overall determination of residency.

Under CRTC § 17014(a), a California "resident" includes: (a)(1) every individual who is in this state for other than a temporary or transitory purpose; and (a)(2) every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

On the other hand, CRTC § 17016 establishes a statutory presumption if an individual spends in the aggregate more than nine months of the taxable year within California. But this presumption may be overcome if an individual is able to show that his presence in California is for a temporary or transitory purpose.

As such, whether or not an individual is a resident of California balances on whether the individual is inside (or outside California under CRTC 17014(a)(2)) for a temporary or transitory purpose. For

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the most part, determining what is (and what is not) temporary or transitory involves analyzing the connections an individual maintains within and without California.

The FTB and, through precedent, the courts, the Board of Equalization, and now the Office of Tax Appeal, have identified (and will continue to identify) factors, including physical presence, family abode, and ownership of real property, which are relevant in determining whether an individual maintained close connections with California and thus is enjoying the benefits and protections of California's laws and government. Consistent with this approach, an individual's COVID-19 experience will be an additional factor to consider.

And as the facts and circumstances relating to an individual's COVID-19 experience will likely differ from the COVID-19 experience of others, the weight given to this factor in the overall residency analysis may vary from individual to individual. This being said, the following may be relevant: when the individual entered California; whether the individual remained in California after the COVID-19 period (and if so, how long); whether the individual remained in California throughout the COVID-19 period; whether the individual provided COVID-19-related services in California; and whether the individual cared for an at-risk family member or friend.

For corporations that had no previous connection to California will not be treated as being actively engaged in a transaction for the purposes of financial or pecuniary gain or profit in California if their only connection to California is the presence of an employee who is currently teleworking in California due to Executive Order N-33-20. Furthermore, such an employee will not be counted when calculating the minimum payroll threshold at Revenue and Taxation Code 23101(b)(4). As many of you know, the FTB has also published COVID-19 related nexus issues in an FAQ on our website that may be a good additional tool. For more details please view FTB website at FTB's COVID-19 FAQ in the Teleworking and the "stay-at-home" order section.

Question #18:

Please discuss the FTB's plans for processing and matching income for a California taxpayer filing as an independent contractor for federal purposes but as an employee for California purposes. How will the FTB reconcile income transcripts shared by the IRS, which include income from Form 1099-MISC, to wage records shared by the EDD to ensure the taxpayer's return will be processed accurately and not generate automatic Notice of Tax Change letters?

FTB Response:

While AB 5 and AB 2257, chaptered in September 2020, possibly may result in possible differences between California law and federal law in terms of how a worker may be classified, either as an employee or an independent contractor, by a business, it is not uncommon for taxpayers to file their California tax return with both wage income and income reported on a Form 1099.

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In addition, it is not uncommon for taxpayers to have other income reporting differences between their federal and state return.

As a result, when taxpayers file their return it is important that they follow the instructions provided for reporting any differences on the Schedule CA. You should expect to see any necessary changes related to AB 5 in the upcoming release of our 2020 tax year forms at the end of the year.

Also, FTB has additional Frequently Asked Questions (FAQs) on the gig economy and the income tax differences between California and the Internal Revenue Service on its webpage.

Question #19:

Does the FTB distinguish between a superseded return and an amended return? If so, what is the criteria and format for a superseded return? Is there a difference in how they are processed?

FTB Response:

For California purposes, a second return filed on or before the original due date is generally treated as a superseding return. When a taxpayer files an original return before the original due date, there is no longer an automatic extension. Any second return filed after the original due date is an amended return. However, when a taxpayer files an original return after the original due date but before the extended due date, a second return filed on or before the extended due date is generally treated as a superseding return. Any second return filed after the extended due date is an amended return.

Current Processing of Superseding and Amended Returns:

For Business Entity Returns, we currently have procedures in place, including checkboxes on tax forms related to elections, to identify the return as being a “superseding” return.

However, for Personal Income Tax (PIT) returns we do not have a formal procedure to allow a taxpayer to designate a second return as a superseding return. Currently, during the processing of PIT Returns, FTB’s system is not able to distinguish between a superseding return and an amended return if the taxpayer filed using the Form 540 series without a Schedule X. Schedule X, California Explanation of Amended Return Changes, allows the system to identify it as an amended return, while also providing a reason for the second return.

Often, taxpayers file their original tax return electronically and subsequently submit a paper copy of the same return. Also, most tax software as well as FTB’s systems do not allow a taxpayer to file a second return electronically. As a result, a second return can only be filed on paper. Our processing system is set up to suspend this second return as a duplicate. It then requires our staff to review the first return and the second return line-by-line to determine whether it is in fact a duplicate of the e-filed return or an amended return.

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Procedurally, a second return received that is different from the first received return is processed as an amended return by default, regardless of whether the second return is received before the original due date or after. FTB generally processes a PIT amended return within three to five months of its received date. FTB generally processes an original return within days of receipt.

New Procedures for PIT Returns for the 2021 filing season:

FTB is working on modifying its procedures for the processing of a second return that is received before the original due date or, for original returns filed on extension, a second return received on or before the extended due date. This second return will generally be treated as a superseding return and the earlier return will be identified as “informational.”

Initially, because existing return validation services will be used to manually determine whether a second return should be treated as a superseding return, we anticipate that these returns will be processed in a timeframe consistent with our amended return processes.

At this time, we continue to analyze the frequency of taxpayers filing superseding returns versus amended or duplicate returns. Once that analysis is complete, we will determine whether any additional modifications should be made to our processing procedures for returns filed beginning in 2021.

Steps for a taxpayer or preparer when considering whether to file a superseding return:

In our preliminary analysis, we identified a few common scenarios where the processing result may differ depending on whether a second return is treated as a superseding or amended return.

To avoid delay and/or an unintended result, consider whether it is necessary to file a second return. Often, the quickest way to resolve any error or discrepancy on the first return filed, especially after a taxpayer has received a Notice of Tax Return Change, is to contact FTB by phone, chat, or correspondence when appropriate.

First and second return filed before the original due date:

Common scenario: Taxpayer would like to change their election to transfer an overpayment to next year's estimated tax, to receive a refund instead.

-File the second return on or before the original due date and write “Superseding Return” at the top in blue or black ink. Our modified procedures will post the second return as the superseding return. The previous return will be on record as informational.

-If taxpayer already received a Notice of Tax Return Change (NTRC) that resulted in an overpayment less than expected or an amount due, consider first resolving the issue with our contact centers as mentioned above. If that is not feasible, then file the superseding return before the original due date.

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First and second return filed after the original due date and on or before the extended due date:

Common scenarios: Taxpayer would like to make or change a business election, or needs to claim a deduction or business credit overlooked on the first return.

-File the second return on or before the extended due date and write "Superseding Return" at the top. Our modified procedures will post the second return as the superseding return. The previous return will be on record as informational.

-If taxpayer already received an NTRC that resulted in an overpayment less than expected or an amount due, consider first resolving the issue with our contact centers as mentioned above. If that is not feasible, then file the superseding return on or before the extended due date.