



Tax News

December 2021

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Criminal Investigation Bureau

FTB's Criminal Investigation Bureau (CIB)

While you may be familiar with the Franchise Tax Board (FTB) and their Audit and Legal program areas, you may not know about FTB's Criminal Investigation Bureau (CIB). Their mission is to serve the people of the State of California through investigation of violations of the California Revenue and Taxation Code in a manner that maintains the public's trust and encourages compliance. CIB investigates state income tax evasion, state income tax fraud, asset concealment, and many other crimes.

To enforce the criminal provisions of the California Revenue and Taxation Code, CIB has fully sworn peace officers (special agents) who conduct criminal investigations of the most egregious cases of tax evasion, tax fraud, refund fraud, and preparer fraud. As part of their investigations, special agents may also uncover other financial crimes such as money laundering, embezzlement, and theft. Through the investigation process, special agents write and execute search and arrest warrants, interview witnesses and subjects, complete investigative reports with recommendations for criminal felony charges, and testify as expert witnesses in criminal proceedings.

CIB also employ non-sworn staff positions that support criminal investigations by analyzing bank records, preparing tax computations, processing payments, monitoring probation, and collecting on court ordered restitution.

Once an investigation is complete, special agents will continue to work collaboratively with prosecutors from the local District Attorneys (DA's) Office or the Attorney General's (AG's) Office as needed.

Cases are referred to CIB from a variety of sources. These sources include referrals from other areas within FTB such as: Collections, Audit, and Fraud and Discovery Section, and externally from informants, DA's Offices, the AG's Office, other state agencies, and local law enforcement agencies.

“Intent” can often be the key factor to differentiate a criminal case from a civil audit or collection case. CIB will consider and review a number of questions to determine whether an investigation should be initiated. Here are a few of the questions that may be considered;

- Did the individual intentionally under-report their income, or over-report their deductions?
- If a return was not filed, was the intent to evade tax?
- If a tax liability exists, is the individual working actively to pay off the debt?

These are just some of the factors considered. Stay tuned for future Criminal Corner articles in Tax News for relevant case studies, trends, tips, and more!

Power of Attorney (POA) Expiration Date for Old Declarations

FTB sets an expiration date for older POA relationships

Certain older POA forms that listed specific tax year authorizations did not have an expiration date. Therefore, they had to be revoked, either by filing a new POA with overlapping tax year authorizations, or by submitting a revocation request. To ensure these relationships do not remain active indefinitely, POA declarations processed prior to December 31, 2017, that did not have an expiration date will expire on December 31, 2023.

- POA declarations processed prior to December 31, 2017, that had an expiration date are not impacted and will expire as intended.
- POA declarations processed from January 1, 2018, forward automatically expire after six years and are not impacted.

To assist in identifying your client's active POAs on file, starting this year we will begin to send FTB 3912, *Power of Attorney - Active Representatives on File* letter annually.

What you should do if your client receives an FTB 3912 letter:

- Review the Active POA Representatives on File list provided on the letter with your clients to verify they still want each POA representative to have access to confidential tax information and represent them in matters before FTB.
- If there are no changes necessary, then there is no need to take any action.

If your client would like to revoke one or more of the listed POA Representatives on File, they must take one of the following actions:

- Log in to their online MyFTB account to view, edit, or revoke their POA Declaration(s).
- Call us at 1-800-852-5711 and reference the associated Declaration ID number provided on the letter.
- Send us a completed [FTB 3520 RVK, Power of Attorney Declaration Revocation](#).

Note: FTB 3912 should not be submitted to revoke a POA.

You can learn more about [MyFTB](#), including the features available in MyFTB and how to create your own account. Find more information about [Power of Attorney](#).

State Reports on Median Income for 2019

California's median income for 2019 was \$41,870 based on all state income tax returns filed

Median income represents the point at which half of tax returns show more income, and half show less. The data lags by one year because FTB does its analysis only after all returns are filed by the end of the year, and to include those from taxpayers who received an extension.

California taxpayers filed nearly 19 million 2019 state income tax returns, reporting nearly \$1.71 trillion of adjusted gross income. This is an increase of 8.5 percent from the 2018 figure of \$1.57 trillion. Adjusted gross income is total income increased or reduced by specific adjustments before taking the standard or itemized deduction.

California's median income for 2019 was \$41,870 based on all state income tax returns filed. This is an increase of 2.1 percent over 2018 median income of \$41,023. For joint filers, the median income was \$86,623, a 4.1 percent increase over 2018's \$83,221.

Over the past 46 years, the Bay Area counties of Marin, San Mateo, and Santa Clara have consistently reported the highest median incomes in the state. In 2019, Marin County continued to lead, reporting a median of \$178,755 for joint returns - an increase of 5.3 percent over 2018.

Los Angeles County taxpayers filed nearly a quarter (24.5 percent) of all 2019 income tax returns in California. Their reported median incomes of \$38,371 for individual returns, and \$79,904 for joint returns, rank 30th and 24th respectively.

Top 10 Counties Reporting Highest **Joint Tax Return** Median Income

Rank	County	Medium Income (Joint Returns)
1	Marin	\$178,755
2	Santa Clara	\$164,794
3	San Mateo	\$159,894
4	San Francisco	\$140,716
5	Alameda	\$137,588
6	Contra Costa	\$122,292
7	Placer	\$115,231
8	El Dorado	\$103,696
9	Santa Cruz	\$102,894

Rank	County	Medium Income (Joint Returns)
10	Orange	\$100,491

For more details, go to [FTB's Open Data Portal](#) to view both the interactive California Median Income by County map, and the 2020 Annual Report, Schedule B-6 for Median Income.

2020 Tax Return Payments

FTB recently became aware of an issue that affected 2020 tax year returns

We are working to identify and correct affected accounts; however, some notices may be sent out before we can apply the correction.

FTB recently became aware of an issue that affected 2020 tax year returns that:

- Included an extension payment made after April 15, but on or before May 17, or
- Included a request to transfer an overpayment to the 2021 tax year

Due to the COVID pandemic, the filing due date was delayed to May 17, 2021. This change in date affected extension payments, and requests to transfer an overpayment, that were made **after the normal filing due date of April 15, but on or before May 17**. The extension payments and requests to transfer an overpayment were not recognized as current year payments or requests to transfer.

We are working to identify and correct the affected accounts; however, some notices may be sent out before we can apply the correction.

Although, no further action is required from the taxpayer, you may verify the correction was made through your MyFTB account, or by calling to speak with an agent on our Tax Practitioner Hotline at 916-845-7057.

Pass-Through Entity (PTE) Elective Tax and Payment Information

Web Pay Available for PTE Elective Tax

In the September and October edition of Tax News, we provided two consecutive articles for [Pass-Through Entity \(PTE\) Elective Tax](#), which is part of AB 150, commonly referred to as *the SALT cap workaround*.

On November 1, 2021, Franchise Tax Board (FTB) published [PTE Elective Tax Payment Voucher](#) (FTB 3893) on our website. Partnerships and S corporations may use FTB 3893 to make a PTE elective tax payment by printing the voucher from FTB's website and mailing it to us. See instructions attached to voucher for more information.

Alternatively, the PTE elective tax payment can be made electronically using [Web Pay](#) on FTB’s website. Entities can use [Web Pay](#) to pay for free, and to ensure the payment is timely credited to their account.

To make the elective tax payment, taxpayers must make payments as follows:

- For taxable year 2021, the elective tax payment must be made on or before the original due date of the tax return.
- *For taxable years 2022 to 2025 use the following table:*

Payment Dates	
Due	Payment
On or before June 15th of the taxable year of the election	Payment 1 Pay \$1,000 or 50% of the elective tax paid in the prior taxable year, whichever is greater.
On or before the due date of the original return without regard to extensions	Payment 2 Pay the remaining amount.

My FTB

Payments are not yet available to be displayed in [MyFTB](#) accounts. If your client makes a PTE elective tax payment before January 2022, please wait until January 2022 to verify it has posted to their account if using [MyFTB](#) to view.

Beginning January 2022, these payments will be shown in two places within the PTE’s MyFTB account:

1. Payment History – This page will list the date, amount, and account period for the payment.
2. Estimate Payments & Credits – This page will include PTE elective tax payments, along with estimates, extensions, and credits that can be claimed on the entity’s tax return.

MyFTB does not display the amount of credit the owner of the PTE can claim on their 2021 individual income tax return. The credit amount will be included on the Schedule K-1 (100S, 541, 565, or 586) the owner receives from the PTE.

For more information about PTE Elective Tax and Web Pay, go to ftb.ca.gov.

Homeless Hiring Tax Credit

Employers will need to meet eligibility requirements

The new Homeless Hiring Tax Credit begins in January. The credit will be available for taxable years beginning January 1, 2022, through December 31, 2026. Employers will need to meet eligibility requirements to claim the Homeless Hiring Tax Credit based on the hours eligible employees work during the taxable year.

We updated our Homeless Hiring Tax Credit webpage with eligible employee requirements, eligible employer information, credit amount information, obtaining the required certification, and certifying organizations. More updates to come for credit reservation.

For more information, go to our website and review [Homeless Hiring Tax Credit](#).

Franchise Tax Board (FTB) Hosts Virtual Stakeholder Meetings

FTB hosted two legislative stakeholder meetings to gain input from the public

On Wednesday, November 17, 2021, FTB hosted two legislative stakeholder meetings to gain input from the public. FTB appreciates attendees taking the time to participate and share their thoughts.

Legislative Proposal (LP) Stakeholder Meeting

FTB hosted its annual LP Stakeholder Meeting virtually. Participants joined the meeting to submit or discuss their comments about the LP.

FTB presented the Installment Agreement (IA) Expansion LP, summarized here:

This proposal would make changes to the current IA authority to allow more taxpayers the right to enter into an IA with FTB if they meet specified requirements, and extends the time for full payment of an IA in certain situations.

Additional proposed changes would clarify when FTB is required to enter into an IA and also clarify when FTB may alter, modify, or terminate an IA under certain circumstances.

Next Steps for LP

The LP will be presented for approval at the next three-member FTB Board Meeting, scheduled on December 2, 2021. If the FTB Board approves the LP, FTB will begin to look for legislative sponsors for the approved proposals.

FTB will also continue to seek authors for several prior board-approved proposals in the coming year.

Conformity Stakeholder Meeting Highlights

FTB hosted its Conformity Stakeholder Meeting to gain feedback and input on conformity topics. This year's meeting was also held virtually. During the meeting, topics included a brief history of conformity and the annual report, Public Laws (PL) enacted in 2021 that amended the Internal Revenue Code (IRC), and the department's updated Summary of Federal Income Tax Changes (SOFITC) report.

The report allows users to access an interactive version of the report by filtering SOFITC report years, in addition to providing search capabilities by the public law number, the Revenue and Taxation Code section, or other key words.

Revenue & Tax Citation section 19522 requires FTB to submit an annual report to outline IRC changes and the impact to California. Federal laws discussed during the conformity meeting included:

- American Rescue Plan Act (ARPA) (PL 117-2)
- Paycheck Protection Program Extension Act of 2021 (PL 117-6)

Following a demonstration of the new Conformity Report Tool, attendees participated in the conformity discussion. Although FTB does not advance conformity policy, it does annually provide a forum for a conformity discussion to gain stakeholder input with the goal of sharing this input with policy-making partners.

Several themes were mentioned, including a desire from attendees for additional federal/state conformity as a way to ease taxpayer compliance; as well as other items such as adding one-time penalty abatement similar to the federal procedure.

Next Steps for the SOFITC Report

FTB plans to release the SOFITC report for additional provisions by the March 15 due date, unless that date is extended further, and will continue to monitor developments at the state and federal level.

At the conclusion of both meetings, we provided the Legislative Services Bureau's email address FTBLegislativeServices@ftb.ca.gov for stakeholders to contact us to provide additional comments.

The annual report can be found at [Summary of Federal Income Tax Changes](#).

Real Estate Withholding

1031 (Like-Kind) Exchanges with Insufficient Funds

Effective January 1, 2022, a Qualified Intermediary's (QI) withholding obligation will be limited to available funds in those situations where the QI does not receive sufficient funds from escrow, or the QI disbursed funds for the purpose of completing an exchange under Internal Revenue Code section 1031.

If a QI does not receive sufficient funds from escrow to pay the withholding (cash-poor exchange), the QI must provide supporting documentation for this transaction and attach it to [Form 593](#). The QI must also enter the amount that should have been withheld on Form 593, *Real Estate Withholding Statement*, line 34, and certify this is a cash poor transaction by checking the appropriate box and sign on Side 3 of Form 593.

For more information, please go to [Real estate withholding](#).

Suspended or Forfeited Business Entities

Inform your business clients about steps to take to revive a suspended or forfeited business entity

As the year comes to a close, this may be a good time to inform your business clients about steps they can take to revive a suspended or forfeited business entity. A business entity is typically suspended, or forfeited, by Franchise Tax Board (FTB) for failure to meet its tax requirements, such as;

- File a state tax return
- Pay
 - Taxes
 - Penalties
 - Fees
 - Interest

If your client's business entity is suspended or forfeited, the Secretary of State (SOS) cannot accept termination documents until the following requirements are satisfied;

- Pay all outstanding balances due
- File any delinquent tax returns
- File an Application for Certificate of Revivor

In order to revive an entity, you would have to contact our Revivor Unit. You can find more information to [revive your business](#).

Ask the Advocate

Annual Liaison Meetings

California Society of Enrolled Agents (CSEA) and the California Society of Certified Public Accountants (CalCPA)



Brenda Voet, EA.
Taxpayers Advocate

As you were industriously preparing and filing tax returns to meet the extended filing due date, my team was once again very busy coordinating our annual liaison meetings with CSEA and CalCPA.

Each year our annual liaison meetings provide an opportunity for FTB and the tax professional community to meet and review concerns and issues identified through our interactions over the past year. With this information, we then work to improve our processes, and services, in support of everyone.

A good portion of each meeting is dedicated to FTB responding to questions submitted by each organization prior to the meeting. Questions for this past year were primarily concerned with; Power of Attorney, MyFTB updates, withholding, and guidance on new legislation. We worked diligently to provide answers during the meeting with our resident subject matter experts, and followed up with written responses to additional questions.

We appreciate your attendance at the meetings, and especially those of you who brought forward questions, and shared your insight. We look forward to returning to meeting in-person next year.

The Retirement of Marc Narlesky

33 Years of Dedicated Service



In what has become a regular feature, I once again get to share a change to our team. I have the privilege of announcing the retirement of Marc Narlesky after 33 years of dedicated service to the citizens of California.

Marc's professional career began with public accounting for a multi-service firm, and as a financial auditor for non-profit organizations. During his time with FTB, he provided years of service in the Audit Division, Audit Budget and Support Department, and Finance and Executive Services Division where his experiences provided Marc countless opportunities to perfect and apply his technical knowledge and customer service skills.

We are grateful to have benefited from his excellent public speaking talent as he provided useful information over the years for taxpayers and tax professionals, and mentored up-and-coming team members. Marc has nourished many wonderful collaborative relationships

fostered both within FTB and with you, our tax practitioner partners which have contributed greatly to a wonderfully successful career.

Congratulations Marc!

Tax News Survey

We need your input!

One of our organizational goals is to adopt a digital first platform. We strive to make our information easily accessible and use best practices. We currently provide an HTML and PDF version to our Tax News readers. Unfortunately, information published in a PDF is more difficult to find, use, and maintain. Additionally, we are required to ensure our PDFs are accessible which takes a great deal of time and resources.

Due to these issues, FTB is considering to eliminate the PDF version to help us streamline our processes and provide only an HTML version of Tax News. You will still be able to print the HTML version.

Please complete the [Survey](#) and let us know your thoughts to help us make an informed decision.

Thank you for your time.

Event Calendar

As part of our education and outreach to the tax professional community, we participate in many different presentations and fairs. We provide a [calendar](#) that shows the events we attend, as well as other events happening with us, such as interested party and board meetings.