

MR. CALHOUN admitted he
never reviewed the
Abatement request docs
before issuing turn-down

chair **Betty T. Yee** | member **Diane L. Harkey** | member **Michael Cohen**



STATE OF CALIFORNIA
Franchise Tax Board
EXECUTIVE AND ADVOCATE SERVICES MS A381
PO BOX 157
RANCHO CORDOVA CA 95741-0157

07.28.2017

Christine M Grab

Dear Mrs. Grab,

Selvi Stanislaus, Executive Director of the Franchise Tax Board, asked me to respond to your letter dated 07.21.2017, regarding your 2008, 2010, 2011, 2013, and 2014 tax years.

You wrote in response to my previous letter to you, dated 07.10.2017. In your letter, you stated that I failed to address your complaints. You stated that Franchise Tax Board (FTB) set up a racketeering scheme. You stated that the FTB:

1. Set up ludicrous and unfair policies. (i.e. putting money in suspense rather than applying it to the tax year the money was designated for).
2. Charged penalties, fees, and interest based on these unfair policies.
3. Made it impossible to fight these fees (disregarding all written correspondence, having bad automated phone systems with long hold times, frequent hang-ups upon transfer to agent, poorly trained agents that are unable to help or give misinformation).

You also commented that:

1. People get frustrated with the system, give up, pay unfair fees and go away.
2. For the few that don't get frustrated and go away, the FTB stonewalls them until the deadline passes, then they have no choice but to pay and then go away.

You stated that you wanted to know how the FTB operates. The FTB's primary function is to administer the law, the Revenue and Taxation Code (R&TC), as it is written by the California Legislature. The FTB does not make tax law or charge penalties that have not been mandated by law. The FTB basically operates by administering personal and corporate tax law under the R&TC.

In your 07.21.2017 letter, responding to my 07.10.2017, you stated that I cited R&TC Section 19131. You stated, and I quote, "In your letter to me, you cited that per R&TC Section 19131, 'a penalty is assessed when the taxpayer fails to pay the amount of tax due by the original due date of the return.' But from 2010 on, we had not only paid before it was due (via money collected in previous years), but also paid in excess of what was due".

However, in actuality, the 07.10.2017 letter states, on page 1 that we are required to assess a delinquent penalty, not just "a penalty" or any penalty, when a taxpayer fails to file a tax return by the original or extended due dates of the return, and fails to pay the amount of tax due by the original due date of the return. Basically, a delinquent penalty is assessed when a tax return is filed late and the amount of tax due is not paid by the original due date of the return.

Also, note when I referenced R&TC Section 19131 delinquent penalty, information, (page 1, last paragraph), I was summarizing your 2008 tax year activity, which included the assessment of a delinquent penalty. We did not assess a delinquent penalty against your 2010 to 2015 tax years.

You stated that you did not understand how the FTB calculated penalties, and that it took you nine years to get someone to explain to you how penalties are assessed. FTB issued several notices to you over the course of several years. Our notices include an explanation of how penalties are calculated, and offer contact info for further questions.

For example, our *Income Tax Due Notices* and our *Final Notices Before Levy and Lien* contain a penalty code, which identifies which penalty is being assessed. Additionally, we include FTB 1140 MEO, *Personal Income Tax Collections Information*, with our notices, which explains in detail why the penalty was assessed and how the penalty was calculated. These notices are also located on our website, along with additional information. I have enclosed *Income Tax Due Notices*, *Final Notices Before Levy and Lien*, and *Personal Income Tax Collections Information*, for your records.

In your letter, you alluded that it is your belief that the FTB is placing rollover payments into suspense on purpose, and then charging penalties, fees, and interest on money that was "paid late". You referenced a conversation you had with a Ms. Goff in our office, regarding payments held in suspense instead of being applied to the designated tax year. You stated Ms. Goff advised you it is the law that requires the FTB to place rollover money in suspense instead of being applied to the designated tax year. You asked me to identify the law in question.

R&TC Sections 19363 and 19304 addresses credit of overpayment of estimated tax to a succeeding tax year. R&TC Section 19363 requires the FTB to give credit for overpayments of estimate taxes on the last day prescribed for filing the tax return for the taxable year, without regard to any extension for filing the return.

19363 Confirms money should be applied
(4-15 of each year)
on a particular date - nothing about \$ being
held in suspense until a tax return is
filed.

19304 is completely irrelevant

Once again,
money was
paid on
time via
rollover
money

For example, if a taxpayer files a 2010 tax return with a refundable credit, and instructs the FTB to apply the refundable credit to the 2011 tax year, that credit is held in suspense until the 2011 tax year return is filed. Once the 2011 tax return is filed, the FTB will apply this payment effective as of the original due date of the 2011 tax return, or in this case, 04.15.2012.

— DOES NOT Address late Fees, PENALTIES OF SUSPENSE TAX CODES

R&TC Section 19304 requires the FTB to apply overpayments of estimated tax to a succeeding year. It states, in part, that the effective date of overpayment claimed as a credit against estimated tax on a timely filed return will be credited to the first estimated tax installment due for the taxable year following the original due date of the return. A similar credit claimed on a delinquent filed return will be credited to estimated tax for the year designated by the taxpayer in the delinquent return.

Based on the above referenced tax laws, we cannot apply overpayments of estimated tax to a succeeding year unless and until the income tax return for the succeeding year has been filed. Since your returns for these tax years were not filed timely, your overpayments of estimate tax to a succeeding year were held in suspense. Once the returns were filed and processed, these overpayments of estimated tax were applied to the designated tax years and given the correct effective dates.

In my previous letter, I explained to you why each penalty was assessed for each tax year. I referenced the appropriate tax law, and explained to you how to file an appeal with the Board of Equalization (BOE) if you disagreed with my decision not to abate any of the penalties we assessed. As a reminder, you have 90 days from the date of my previous letter to file your appeal with the BOE. If you fail to do so, my decision will become final.

In your letter, you stated that the FTB has a policy to disregard and ignore notices sent by taxpayers. I want to assure you that it is not FTB policy to disregard and ignore correspondence from taxpayers.

You stated that you sent in several notices that were ignored. You referenced a 70 page document you that you said you mailed to the FTB. However, during my review of your account, I was unable to locate this 70 page document.

You also stated that you attempted to call the FTB, but you were either put on hold for hours at a time, or the call dropped, or the line would be busy. Our management team is aware that taxpayers are having difficulty getting through on the phone, and are in the process of working to resolve this issue.

Finally, during my review of your account, I found that the FTB followed the law in the assessment and collection of your tax liability. The FTB protected your rights as defined by the Taxpayers' Bill of Rights, and provided you with due process. There is no scheme against you or any California taxpayer that is contrary to us upholding and enforcing the laws that dictate enforcement of the tax filing and correct payment of taxes due to California.

If you are unhappy with the way the law is currently written, you may wish to contact your local legislative office and work with them to effect changes to the current tax law. You can find out who your local State Senator or Assemblymember is by visiting **legislature.ca.gov**.

I apologize for the frustration you have incurred in trying to resolve these tax years with the FTB. At this point, I cannot be of further assistance to you in this matter.

Sincerely,



Christopher Calhoun
Executive and Advocate Services

Enc.

cc: Betty Yee, California State Controller
Michael Cohen, Director, Department of Finance