

From: Christi Grab [REDACTED]
Subject: 2 Different Suggestions for Changes to R&TC 19133
Date: October 19, 2020 at 7:14 AM



To: Smith, Joel [REDACTED]
Cc: Stowers, Yvette [REDACTED]; Reguindin, Joemil J. [REDACTED]; irena.asmundson@ [REDACTED]; jay.chamberlain [REDACTED], FTB Advocate@FTB FTBAdvocate@ftb.ca.gov, Stanislaus, Selvi [REDACTED]; [REDACTED], Brunett, Jozel [REDACTED]; jennifer.fowler [REDACTED]; Mellor, Denise [REDACTED]; [REDACTED]; jeanne.harriman@ [REDACTED]; Stuart.Drown [REDACTED]; Julie.Lee [REDACTED]; colin.grinnell [REDACTED]; carlos.anguiano@ [REDACTED]

Hi Mr. Smith,

Suggestion 1 – Clarification of When a Penalty is NOT to be Imposed

As 19133 (a) and (b)(2) are currently written, it is unclear that Demand Penalties are to be imposed only when a taxpayer’s account has been underfunded. It is my belief that if the FTB genuinely cared about its mission to “...pay the correct amount,” or its value “We exemplify honesty, credibility, and accountability” or its goal to “Fairly administer the law to ensure taxpayers file and pay the correct amount,” then FTB would make it clear to the taxpayers about when penalties and fees are *not* to be imposed.

Here are my proposed changes (bolded and underlined):

(a) In general. Revenue and Taxation Code section 19133 provides that if any taxpayer **whose account is underfunded as assessed by FTB** fails or refuses to file a return upon notice and demand by the Franchise Tax Board (FTB), unless the failure is due to reasonable cause and not willful neglect, the FTB may add a penalty of 25 percent of the amount of tax assessed pursuant to Revenue and Taxation Code section 19087 or of any deficiency tax assessed by the FTB concerning the assessment for which the return was required.

Rationale for Suggestion 1

As you may be aware, I have recently filed an Accusation in the CA Supreme Court against FTB employee Eric Yadao. In the Accusation, I clearly laid out

that FTB exploits this unclear wording of R&TC 19133 to falsely impose penalties and fees on taxpayers.

Here is an excerpt from [pages 4 – 5 of the Accusation](#):

Revenue and Taxation Code 19133 says:

(a) In general. Revenue and Taxation Code section 19133 provides that if any taxpayer fails or refuses to file a return upon notice and demand by the Franchise Tax Board (FTB), **unless the failure is due to reasonable cause and not willful neglect**, the FTB may add a penalty of 25 percent of the amount of tax assessed pursuant to Revenue and Taxation Code section 19087 or of any deficiency tax assessed by the FTB concerning the assessment for which the return was required (emphasis added).

(b) Imposition of Penalty. For individuals subject to tax under Part 10 (Personal Income Tax Law), the notice and demand penalty under Revenue and Taxation Code section 19133 will only be imposed by the FTB if:

(1) the taxpayer fails to timely respond to a current Demand for Tax Return in the manner prescribed, and

(2) **the FTB has proposed an assessment of tax under the authority of Revenue and Taxation Code section 19087**, subdivision (a), after the taxpayer failed to timely respond to a Request for Tax Return or a Demand for Tax Return in the

manner prescribed, at any time during the four-taxable-year period preceding the taxable year for which the current Demand for Tax Return is issued (emphasis added).

CA Rev & Tax Code § 19087 says:

(a) If any taxpayer fails to file a return, or files a false or fraudulent return with intent to evade the tax, for any taxable year, the Franchise Tax Board, at any time, may require a return or an amended return under penalties of perjury *or* may make an estimate of the net income, from any available information, and may propose to assess the amount of tax, interest, and penalties due. **All the provisions of this part relative to delinquent taxes shall be applicable to the tax, interest, and penalties computed hereunder (emphasis added).**

As noted above in R&TC 19087, Demand Notices and the accompanying Demand Penalties are only applicable relative to *delinquent* taxes (as assessed by FTB). If a taxpayer files late, but their tax liability is paid in full, no Notice of Proposed Assessment Demand Notices can be issued, nor Demand Fees imposed.

The three racketeering schemes detailed below all involve falsely making a taxpayer's account appear to be underfunded so that, should the taxpayer file late, a Notice of Proposed Assessment (NPA) and Demand Notice can be falsely issued, then Demand Penalties, late fees and interest falsely imposed.

On [page 10 – 11 of the Accusation](#), I wrote:

On page 14 of my [SCB](#) (exhibit 2, page 16), I detailed that FTB confirmed multiple times that they had received two payments from us, one for ██████████ and one for ██████████, that had been designated for tax year 2010. None of the representatives could explain why the payments were not reflected on any of the written notices that FTB issued, including the Notice of Proposed Assessment (NPA).

The NPA is the precursor to the Demand Notice. As I detailed above in the section titled Revenue and Tax Codes 19133 and 19087, R&TC 19133(b)(2) states that a Demand Notice cannot be issued until after a proposed an assessment has been made. This proposed assessment form is called the NPA. This form only goes out to taxpayers that FTB believes have underpaid their tax liability for the year...

In January 2018, FTB told us that ... every estimated tax payment made by a married couple is not immediately applied to their account. Instead, the money is placed into a general fund. The money is not moved from the general fund to the taxpayer's account until that year's tax return has been filed.

If a taxpayer files their return late, their account falsely appears to be underfunded. A NPA and Demand Notice are falsely issued, then a Demand Fee falsely imposed.

On [page 23 of the Accusation](#), I explained how one of the tactics Mr. Yadao used to cover up FTB's federal crimes of embezzling and racketeering was via omission of critical portions of R&TC 19133:

1. In his ROB, Mr. Yadao omitted portion (2) from R&TC 19133, which states: the FTB has proposed an assessment of tax under the authority of Revenue and Taxation Code section 19087, subdivision (a), after the taxpayer failed to timely respond to a Request for Tax Return or a Demand for Tax Return in the manner prescribed, at any time during the four-taxable-year period preceding the taxable year for which the current Demand for Tax Return is issued.

As I discussed above in the section titled Tax Codes 19133 and 19087, in hiding this portion of the law, he hid the fact that penalties are only to be imposed on delinquent accounts. Mr. Yadao does not deny that we were never delinquent on tax years 2010 – 2016. By hiding this portion of the law, he hid that the NPA and Demand Notices were falsely issued and the Demand Penalties falsely imposed.

Because this Accusation was only against Mr. Yadao, I did not mention TAAP's role in this criminal cover-up. However, I do intend to file a Bar Complaint against Craig Shaltes, TAAP's Supervisor, for not disclosing to me sections (a) and (b)(2) of 19133.

Given FTB's history of exploiting this vague wording to falsely impose penalties and fees, and their reluctance to fully disclose the portions of the law that disclose this, I am insisting that this flaw be corrected immediately.

Suggestion 2 – Opportunity to File a Dispute

I am also requesting that FTB's wording of "prescribed manner" in portions (b)(1) and (b)(2) to be altered. The current policy is that only a tax return is an acceptable response to a Demand Notice/Request for Information. However, this policy is unclear due to the wording "prescribed manner."

Since the opportunity to dispute an NPA is written on the notice, it is logical for the taxpayer to believe that filing a dispute to the NPA will exempt them from the Demand Notice requirement and from the Demand Penalties.

Rather than simply changing the wording to “file a tax return,” FTB should instead change their policy to include disputes as an acceptable response to a NPA and/or Demand Notice and/or Request for Information for avoidance of Demand Penalties.

It is my belief that imposing Demand Penalties on taxpayers who have disputed an NPA and/or Demand Notice and/or Request for Information goes against FTB’s missions, values and goals that I listed above. I documented in my [OTA case](#) that I called FTB 33 times and sent 38 letters to dispute the inaccurate NPAs and the Demand Notices that would not have been issued had the NPA’s been accurate. My disputes were disregarded and, as documented above, Demand Fees and penalties were improperly imposed in violation of R&TC 19807.

If FTB genuinely cared about being fair to taxpayers, there would be a hold placed on a disputed account until the review of the dispute was completed. If the dispute was denied by FTB, a new Demand Notice would be issued based on the dates of the denial. It is my belief that not affording the taxpayers the right to dispute is a violation of state and federal laws.

As such, I am proposing the following word changes to 19133 sections (b)(1) and (b)(2) (bolded and underlined):

(b) Imposition of Penalty. For individuals subject to tax under Part 10 (Personal Income Tax Law), the notice and demand penalty under Revenue and Taxation Code section 19133 will only be imposed by the FTB if:

(1) the taxpayer fails to timely respond to a current

Demand for Tax Return in ~~the manner prescribed~~ either by

~~Demands for Tax Return in the manner prescribed, either by~~
filing the return or disputing the NPA/Demand
Notice/Request for Tax Return

(2) the FTB has proposed an assessment of tax under the authority of Revenue and Taxation Code section 19087 subdivision (a), after the taxpayer failed to timely respond to a Request for Tax Return or a Demand for Tax Return ~~in the manner prescribed by~~ **filing a return or by disputing the NPA/Demand Notice/Request for Tax Return**, at any time during the four-taxable-year period preceding the taxable year for which the current Demand for Tax Return is issued (or however you intend to change the wording to clarify the four-year parameter).

There will also need to be language added to clarify that if FTB sides with the taxpayer on a dispute, that disputed item will be excluded from the four-year taxable period described above when looking at NPA's/Request for Information/Demand Notices that may be sent in subsequent years.

I appreciate your attention to and consideration of this matter.

Regards,

Christine Grab