Christine Grab

April 9, 2018

Governor Gerry Brown
c/o State Capitol
Suite 1173
Sacramento, CA 95814

Re: Proof of More Illegal Activity By the FTB

Dear Governor Brown:

I am writing to alert you to the fact that the FTB has committed two more counts of colluding to cover up racketeering. I am also alerting you to the fact that, in their effort to cover up one racketeering scheme – the "rollover" money issue that I have been writing to you about for a year and a half now – they have inadvertently exposed a second racketeering scheme: withholding estimated tax payments made from married couples. Furthermore, in trying to cover up the "rollover" scheme, the FTB also flagrantly violated my State's Rights.

I made several Formal Requests for a Policy Change to be addressed at the Annual Bill of Rights Meeting in December 2017. One of the things that I asked was to change was the policy of withholding estimated tax payments made via credit elects, or money that rolls over from one year to the next per line item 95 of the 540.

Enclosed is Ms. Maples, the Taxpayer Advocate, Formal Resolution to my requests. Please note that in the response, at no point in time did Ms. Maples address the topic that I asked about. Instead, she chose to address a different topic altogether: married couples.

I have confirmed that the FTB does indeed withhold payments made via credit elects from single people the same as married people, and that the policy is still in place to this day. Please remember that if a taxpayer files their returns late, the FTB demands additional payments of money that would not have been owed had the "rolled over" tax payment been applied to the taxpayer's account. The FTB then charged late fees, penalties and interest on this money that was never owed. **This is racketeering, which is a federal crime.**

If withholding estimated tax payments made via "rollover" money was a legal practice, the FTB would have provided a legitimate legal code by now. Instead, the FTB continues to play games to avoid accountability. Let me remind you of some of the games the FTB has already played so far:

- First the FTB let me think that my rollover money was "lost" and had me waste an inordinate amount of time looking for this "lost" money (verbal).

- When I complained to the governor's office, the FTB then told me that holding "rollover money" in suspense was required by law, but refused to disclose the legal code. (verbal)

- I sent a letter to the Board of Directors (June 2, 2017) and Governor (June 22, 2017) complaining about the "rollover" policy.

- The FTB responded with a nasty, accusatory letter clearly designed to intimidate me. In this letter, they lied to try to smear my credibility. They violated my State's Rights in multiple ways and essentially told me that I needed to shut up and go away for good. But the letter never addressed the "rollover" policy. (July 10, 2017).

- I sent another two letters (in the same envelope) to the Governor and Board of Directors pointing out that the FTB had not addressed the "rollover" issue in the July 10 letter. I demanded the FTB provide the relevant legal code(s) (July 21, 2017).

- The FTB responded with a letter in which they attempted to deliberately deceive me by misquoting the law (July 28, 2017). I sent a reply pointing out the blatant deception (December 13, 2017), and copied the governor and FTB Board of Directors.

- When I submitted a request to the Bill of Rights Meeting that this withholding "rollover money" policy be changed, the FTB tried to keep the issue off of the Bill of Rights Meeting's agenda (November 20, 2017). I notified the Board of Directors and governor of this attempt (November 21), so the FTB was forced to put it on the agenda.

- In their Formal Resolution to my policy change request, at no point did the FTB actually address the policy of holding "rollover" money in suspense. Instead, they addressed a different topic altogether: married couples. (January 30, 2018).

This evasiveness in Ms. Maples Formal Resolution was clearly a deceptive ploy to cover up the crime of illegally withholding rollover payments from Taxpayer's accounts. In addition to colluding to cover up the federal crime of racketeering, Ms. Maples has also violated my State's Rights. I requested a change in policy about withholding "rollover" payments, not about withholding payments from married couples. By not responding to the topic that I asked about, Ms. Maples has violated my State's Rights.

Now let's talk about the issue that Ms. Maples did address in her January 30, 2018 letter: why the FTB withholds all jointly made estimated tax payments from married couples. Here is what she wrote:

"Under federal law when taxpayers make joint estimated tax payments but they subsequently file separate returns, the taxpayers can apportion the joint estimated tax payments between them in

any manner they agree on. (Treas. Reg. § 1.6654-2(e)(5)(ii)(A).) If the spouses can't agree upon an allocation, there are rules in the Treasury Regulations on how to apply the joint estimated tax payments to the spouses' separate liabilities. (Treas. Reg. § 1.6654-2(e)(5)(ii)(B).) However, the Internal Revenue Service cannot make this allocation without the taxpayers filing returns. (See Chief Counsel Advice 201727007 (July 7, 2017), "As the credit elect came from a joint return . . . the [$Redacted Text] amount is considered on its face to be a payment for a joint account. . . . As the [taxpayer] has not filed for [Redacted Text (tax year)], the Service cannot yet determine the taxpayers' proportionate shares.")"

Just as Mr. Calhoun did in his July 28, 2017 letter to me, Ms. Maples just tried to deliberately deceive me by inaccurately representing what the legal code actually says.

Ms. Maples quote above insinuates that it is a federal requirement to hold jointly made estimated tax payments in suspense instead of applying it to the taxpayer's accounts. However, I know from personal experience that the IRS always immediately credits all payments made to my and my husband's accounts. I have mailed in/Web Paid the same number of joint estimated tax payments to the IRS as I have the FTB. I have had the same number of estimated tax payments rollover from one year to the next with the IRS as I have the FTB. I have never had to file a return to get any payment applied, no matter where the money came from or whether the payment was made jointly or individually.

In fact, every year that we were behind on filing our tax returns, we got a letter from the IRS reminding us that if we didn't file a return by X date (4 years from when the return was due), we would lose the refund they had waiting for us.

So, knowing the FTB's argument that this was a "federal requirement" was probably not legitimate, I looked up the federal legal codes and Council Advice that they provided. As you will read below, the FTB has obviously misinterpreted the legal codes, which is ethically murky. But with the Council Advice, the FTB committed an actual crime by artfully deleting critical words that changed the meaning of the text. In fact, when the text is read in context, it says the exact opposite of what the FTB claims above. It cannot be any more obvious this was a deliberate attempt to cover up crimes.

Here is a more complete text of the federal legal codes they cited:

Treas. Reg. § 1.6654-2- Exceptions to imposition of the addition to the tax in the case of individuals.

(e)Special rule in case of change from joint return or separate return for the preceding taxable year -

(5)Joint payments of estimated tax -

(i)In general. A husband and wife may make a joint payment of estimated tax even though they are not living together. However, a joint payment of estimated tax may not be made if the husband and wife are separated under a decree of divorce or of separate maintenance. A joint payment of estimated tax may not be made if the taxpayer's spouse is a nonresident

alien (including a nonresident alien who is a bona fide resident of Puerto Rico or a possession to which section 931 applies during the entire taxable year), unless an election is in effect for the taxable year under section 6013(g) or (h) and the regulations. In addition, a joint payment of estimated tax may not be made if the taxpayer's spouse has a taxable year different from that of the taxpayer. If a joint payment of estimated tax is made, the amount estimated as the income tax imposed by chapter 1 of the Internal Revenue Code must be computed on the aggregate estimated taxable income of the spouses (see section 6013(d)(3) and § 1.2-1), whereas, if applicable, the amount estimated as the self-employment tax imposed by chapter 2 of the Internal Revenue Code must be computed on the separate estimated self-employment income of each spouse. See sections 1401 and 1402 and § 1.6017-1(b)(1). The liability with respect to the estimated tax, in the case of a joint payment, shall be joint and several.

(ii)Application to separate returns.

(A) Although a husband and wife may make a joint payment of estimated tax, they, nevertheless, can file separate returns. If they make a joint payment of estimated tax and file separate returns for the same taxable year with respect to which the joint payment was made, the payment made on account of the estimated tax for that taxable year may be treated as a payment on account of the tax liability of either the husband or wife for the taxable year, or may be divided between them in such manner as they may agree.

(B) In the event the husband and wife fail to agree to a division of the estimated tax payment, such payment shall be allocated between them in accordance with the following rule. The portion of such payment to be allocated to a taxpayer shall be that portion of the aggregate of all such payments as the amount of tax imposed by chapter 1 of the Internal Revenue Code shown on the separate return of the taxpayer (plus, if applicable, the amount of tax imposed by chapter 2 of the Internal Revenue Code shown on the return of the taxpayer) bears to the sum of the taxes imposed by chapter 1 of the Internal Revenue Code shown on the separate returns of the taxpayer and the spouse (plus, if applicable, the sum of the taxes imposed by chapter 2 of the Internal Revenue Code shown on the separate returns of the taxpayer and the spouse).

(6)Example. The rule described in paragraph (e)(5) of this section may be illustrated by the following example:

Example.

(i) H and W make a joint payment of estimated tax of $19,500 for the taxable year. H and W subsequently file separate returns for the taxable year showing tax imposed by chapter 1 of the Internal Revenue Code in the amount of $11,500 and $8,000, respectively. In addition, H's return shows a tax imposed by chapter 2 of the Internal Revenue Code in the amount of $500. H and W fail to agree to a division of the estimated tax paid. The amount of the aggregate estimated tax payments allocated to H is determined as follows:

(A) Chapter 1 tax shown on H's return - $11,500

(B) Plus: Amount of tax imposed by chapter 2 shown on H's return - $500

(C) Total taxes imposed by chapter 1 and by chapter 2 shown on H's return - $12,000

(D) Amount of tax imposed by chapter 1 shown on W's return - $8,000

(E) Total taxes imposed by chapter 1 and by chapter 2 on both H's and W's - $20,000 returns

(F) Proportion of taxes shown on H's return to total amount - ($12,000/$20,000) 60% of taxes shown on both H's and W's returns

(G) Amount of estimated tax payments allocated to H (60% of $19,500) - $11,700

(ii) Accordingly, H's return would show a balance due in the amount of $300 ($12,000 taxes shown less $11,700 estimated tax allocated).

After reading the excerpt above, it is clear that there are several serious problems with the FTB's argument:

1. The title of Treas. Reg. § 1.6654-2(e) is "(e)Special rule in case of change from joint return or separate return for the preceding taxable year." Clearly, the federal law indicates that the FTB is to presume that a couple that filed jointly last year would file jointly this year unless the FTB is notified otherwise. The FTB takes the opposite approach – they assume people will file individually until the actual date of filing, no matter what the previous year's filing status was.

2. Treas. Reg. § 1.6654-2(e)(5)(ii)(A) indicates that the taxpayers can divide up the joint estimated tax payment any way they agree. In my interpretation of this, I believe this indicates that the FTB is required to ask at the time of submission how much money to apply to each account, then immediately apply the money accordingly.

3. Treas. Reg. § 1.6654-2(e)(5)(ii)(B) indicates that in the event that the taxpayers cannot agree on how to divide up the estimated tax payment, the IRS will divide it up for them proportional to each individual's tax liability. Using the above example: If H owes 60% of the taxes paid by the couple, then H gets credited with 60% of the estimated tax payment.

While the above example does use a couple that had each already filed an individual return, nowhere does it specify that a return must be filed to make this determination.

Currently, in cases where a couple files their returns late, the FTB makes determinations of how much income taxes are still due on each individual. In a situation where the couple disputes how the joint estimated tax payments were previously divided up (per A above where they designate how much money goes to each account), there is no reason why the FTB cannot re-allocate the disputed estimated tax money based upon percentages of income taxes due.

Where the FTB really gets deceitful is with the quotes from the Chief Counsel Advice 201727007 (July 7, 2017). For your reference, I have included the complete text below. This

Advice specifically addresses a complicated divorce situation in which the allocation of two estimated tax payments are being contested. One payment was made via "rollover" money and one made via a joint 4868 payment that one spouse claims belongs to only them and should not have been made jointly.

The first line of the Advice says: "We agree with the technical advisor's statement that since the $---------- overpayment for ------- was designated as a credit elect, it is then considered an estimated tax payment for the next year. IRC 6402(b) and Treas. Reg. 301.6402- 3(a)(5)."

Let's take a break from the text to discuss how "credit elects" are treated as estimated tax payments in California. R&TC Section 19363 requires the FTB to give credit for overpayments of estimated taxes on the last day prescribed for filing the tax return for the taxable year, without regard to any extension for filing the return. Therefore, to comply with this law, all estimated tax payments via "rollover" money are to be applied effective 4-15-of the tax year that the "rollover" money was designated for.

In California, we are also a community property state. Therefore, each spouse is automatically entitled to 50% of all marital assets, including income tax refunds. Therefore, unless the couple requests otherwise, all "rollover" money should be divided 50/50, credit on the date 4-15-YEAR, as per CA law.

If the spouses dispute the division of the "rollover" money, the FTB should allocate the payment proportional to income taxes due as per Treas. Reg. § 1.6654-2(e)(5)(ii)(B) above.

I am now returning back to the text of the Advice, and I am going to put the information that contradicts the FTB's arguments in bold: "As to the $---------payment made with the Form 4868 in connection with the extension of time to file provided by Treas. Reg. 1.6081-4, the application of that payment follows the same procedure as that for estimated tax payments. See Gabelman v. Commissioner, 86 F.3d 609, 612) ("Furthermore, the lump sum remittance of estimated taxes is analogous to the withholding of taxes and the payment of estimated taxes made in installments throughout the year. Both of the latter types of remittances have been characterized as payments.") See also, Action on Decision CC- 1997-006 (May 5, 1997) Re: Robert B. Risman and Eleanor Risman v. Commissioner, 1997 WL 218204, agreeing with Gabelman on this point…'

'Estimated tax payments made in a separate declaration are the separate property of the spouse making the declaration. Janus v. United States, 557 F.2d 1268, 1269–70 (9th Cir. 1977); Morris v. Commissioner, T.C. Memo. 1966-245 (Each spouse filed individual declarations of estimated tax and neither was entitled to any portion of the others payments). For those estimated tax payments made in a joint declaration of estimated tax for a year in which the taxpayers wind up filing separate returns, the taxpayers may allocate the payment in any consistent manner that they may agree upon. Treas. Reg. 1.6654-2(e)(5)(ii)(A). If the taxpayers cannot agree, the payment "shall be allocated between them" in proportion to the tax liability reported on the separate tax return for the current year. Treas. Reg. 1.6654-2(e)(5)(ii)(B). This estimated tax payment

allocation rule had been set out in Rev. Rul. 76-140 under obsolete Treas. Reg. 1.6015(b)-1(b). **That ruling addressed taxpayers who had had made a credit elect for an overpayment on a joint return, but divorced in that subsequent year and filed separate returns dividing the overpayment; the separate returns were determined to reflect an agreement and in the absence of evidence to the contrary, the allocation method in Treas. Reg. 1.6015(b)-1(b) was not applicable. The instructions for Form 4868 reflect this part of the estimated tax payment procedure: "If you and your spouse jointly file Form 4868 but later file separate returns for -------, you can enter the total amount paid with Form 4868 on either of your separate returns. Or you and your spouse can divide the payment in any agreed amounts." Taxpayers are directed not to make a joint payment of estimated tax if they are separated under a decree of divorce or of separate maintenance. Treas. Reg. 1.6654-2(e)(5)(i).'**

'As the credit elect came from a joint return, then as estimated payment for ---------- the $---------amount is considered on its face to be a payment for a joint account. As to the $---------payment made with the Form 4868, the technical advisor indicates that the documentation indicates the payment was for the joint account, and if so, we agree with the technical advisor's treatment.'

'TAS has verified that the funds for the payments came from TPW's separate account, but under the regulations referenced above, the source of the payment is not relevant to the allocation of an estimated tax payment made in a joint declaration of estimated tax. Circumstances, however, may show that payment submitted with a joint estimated tax voucher is not in fact a joint payment. See, e.g., United States v. Bell, 818 F. Supp. 444 (D. Mass. 1993) (the "joint" payment was made under a threat of violence).'

'As the TPH has not filed for -------, the Service cannot yet determine the taxpayers' proportionate shares. Under IRM 21.6.3.4.2.3.3 (10-01-2012) ES Joint Allocation, it seems documentation of contact with TPH is needed. ("IF Taxpayer has been previously advised the payments must be allocated; AND Both taxpayers cannot agree on an allocation of the joint payments; THEN Advise taxpayer to submit a computation indicating the allocation of the ES credit in proportion to each spouse's separate tax.") TPW may wind up having all of the payments applied to her ------- account; but if not, a disallowance letter would be issued.'

Once one has read the complete text, it is clear how deceitful the FTB was in omitting the middle two sentences of the last paragraph: "Under IRM 21.6.3.4.2.3.3 (10-01-2012) ES Joint Allocation, it seems documentation of contact with TPH is needed. ("IF Taxpayer has been previously advised the payments must be allocated; AND Both taxpayers cannot agree on an allocation of the joint payments; THEN Advise taxpayer to submit a computation indicating the allocation of the ES credit in proportion to each spouse's separate tax.")"

The FTB made it appear that the paragraph was saying that the returns needed to be filed in order to allocate the estimated tax payment. But taken in context, it says the exact opposite. The point of the paragraph was to explain that they needed to document that they had tried to get both sides

to agree on how to divide the payments, and if they could not agree, then they needed to both submit a "computation" — not a tax return — so that the IRS could divide the payments on their behalf.

It is clear that this particular case does not justify the FTB's position that a tax return must be filed in order to determine how much of an estimated tax payment should be applied to each spouse under normal circumstances. It is also clear that this attempt to deceive us is a deliberate attempt to cover up a practice that the FTB knows is illegal.

Enclosed is a spreadsheet summarizing the payments that I have found so far in my audit. I have already complained to you about most of the issues in several of my previous letters, but seeing all the issues together on one page is eye opening. As you can see on the spreadsheet, of the 17 payments that I have located so far as a part of my audit, there have been problems with 13 of the payments. Each one of these "problems" has been unbelievably difficult and time consuming to resolve.

Please note that my audit is currently ongoing and this spread sheet is not complete. I will send you an updated one when it is so you can see the final tally. In all honesty, I would never have made any progress at all in my audit/locating my lost $11,200 had it not been for various Members of the FTB Board of Directors intervening to help resolve the matter. The FTB actively tried to evade this money search. I have found $3,500 of the money so far, and I hope that I will be able to locate the remaining $7,700 without needing more intervention from the Board of Directors. Also note that I had made a typo on a previous letter where I wrote 2009 payment made with extension request; it should have said 2012. Most of the documentation was sent in previous letters, however, there are a couple that have not yet been documented, and the documentation is enclosed.

When 76% of payments have "problems" there is obviously something bigger going on. As I have said repeatedly, I believe that the FTB makes "mistakes" on purpose in order to collect extra fees in their coffers. The FTB kept telling me that my "rollover" money vanishing was a "mistake" that couldn't ever be resolved. When I finally complained to the governor's office, I found out it was a policy, not a "mistake," as I had been previously told.

I think the FTB "misapplies" estimated tax payments to previous, already closed years, then sends refunds as a deliberate ploy to ensure that the current year is underfunded. Then they charge fees for "paying late." This ploy has happened to me enough times that it is not unreasonable to wonder if it is indeed a secret policy.

I also believe that the FTB "loses" collection payments to waste the taxpayer's time, keeping the taxpayer from spending that time working on their tax returns. Thus, the taxpayers wind up filing even later than they would have and the FTB collects extra interest.

And let's not forget the scheme that CBS Sacramento exposed in November 2017 in which the FTB deliberately sent collection notices to invalid addresses. At first the FTB claimed these mis-

addressed notices were all mistakes, then claimed sending notices to incorrect addresses was required by federal law, then admitted that maybe the law didn't say that and agreed to change the policy.

At this point, it is painfully clear that the FTB is running several illegal money extraction programs and needs to be criminally investigated. I hope that you have already opened such an investigation. If not, it is time to do so. At this point, complicity in stopping the outrageous theft from innocent taxpayers means that you are also an accomplice in the matter.

I appreciate your attention to this matter.

Regards,

Christine Grab