

Christine Grab



February 1, 2021

Dear FTB Taxpayer Advocate, FTB Board of Directors, FTB Executive Staff, Governor Newsom's Staff, Gov Ops, Senate Governance and Finance Committee Members, and Assembly Committee on Revenue and Taxation Members:

Attached is FTB's Response to my 2020 Annual Taxpayer Bill of Rights Requests. Most of you received a copy of my requests via email in December 2020 or January 2021, but for those who did not, a copy can be found here: <https://gwsandiego.net/blog/wp-content/uploads/2020/12/2020-written-requests-ATBOR-redacted.pdf>

In the attached Response, FTB has committed multiple counts of collusion to cover up criminal activity. The purpose of this letter is to detail how the Interim Taxpayer Advocate, Chris Smith, attempted to cover-up of FTB's criminal activities.

Request #1: End Policy of withholding estimated tax payments made via credit elects

FTB Response:

The Franchise Tax Board previously addressed this issue in the 2018 Taxpayer Bill of Rights response to you, dated January 25, 2019. Please see link below.

https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2018_grab_response.pdf

My Rebuttal:

- Mr. Smith has not addressed the fact that this business practice directly violates Revenue and Tax Code 19363.
- Mr. Smith did not address the fact that in the 2018 response, FTB misrepresented what the law says. FTB cited *Commissioner v. Lundy*, 516 U.S. 235, in which the Lundys' filed their tax year 1987 return in 1990. The payments were made via income taxes withheld from Mr. Lundy's employer, and they had overpaid by \$3,537. Their refund of \$3,537 for 1987 was denied due to the statute of limitations expiring on refunds. **This has nothing to do with applying a credit elect from one tax year as an estimated tax payment on the following year.**

- Mr. Smith has not addressed the fact that FTB's own Disclosure Department denies that this policy exists.
- Mr. Smith has not addressed the fact that FTB did not deny that this practice was unlawful in my Office of Tax Appeal hearing and has yet to deny that it is unlawful in the case currently pending against FTB in San Diego Superior Court. Per California law, failure to deny constitutes admission: Any material allegation in the complaint that is not effectively denied is deemed admitted. [CCP § 431.20(a); see Hennefer v. Butcher (1986) 182 CA3d 492, 504, 227 CR 318, 325].
- **I believe that Mr. Smith has committed one count of collusion to cover up embezzlement and racketeering by not addressing the above issues.**

Request #2: End policy of withholding estimated tax payments from married couples

FTB Response:

The Franchise Tax Board previously addressed this issue in the 2018 Taxpayer Bill of Rights response to you, dated January 25, 2019. Please see link below.

https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2018_grab_response.pdf

My Rebuttal:

- Mr. Smith has not addressed the fact that FTB has misrepresented what the law says on this topic by cherry-picking words out of context. When read in context, the law says the opposite of what FTB claims. The full details of what the laws say versus FTB's gross misrepresentation of the laws can be found here in the Rebuttal to FTB's 2017 ATBPR Response: <https://gwsandiego.net/blog/wp-content/uploads/2021/01/Rebuttal-to-2017-ATBOR-Response.pdf>
- FTB has not disputed my interpretation of the assorted laws they falsely cited, nor offered any valid laws.
- Mr. Smith has not addressed the fact that FTB did not deny that this practice was unlawful in my Office of Tax Appeal hearing and has yet to deny that it is unlawful in the case currently pending against FTB in San Diego Superior Court. Per California law, failure to deny constitutes admission: Any material allegation in the complaint that is not effectively denied is deemed admitted. [CCP § 431.20(a); see Hennefer v. Butcher (1986) 182 CA3d 492, 504, 227 CR 318, 325].

- Mr. Smith has not addressed the fact that FTB's own Disclosure Department denies that this policy exists.
- I believe that Mr. Smith has committed another count of collusion to cover up embezzlement and racketeering by not addressing the above tissues.

Request #3: Put amortization schedules on each bill showing how the interest for the billing period was calculated

FTB Response:

The Franchise Tax Board offers a few ways for taxpayers to get information about the interest on tax liabilities. First, our billing notices include an insert, Form 1140, which provides information regarding the accrual of interest. Taxpayers can also find current and prior interest rates on ftb.ca.gov. Interest is compounded daily and interest rates are adjusted semi-annually. Lastly, taxpayers can request a breakdown of the computation of interest from the Franchise Tax Board.

Thank you for your suggestion to improve our tax programs. As we look for ways to improve our programs as a whole, including notice improvements, we will consider your suggestion.

My Rebuttal:

Mr. Smith stated that taxpayers can get a request a breakdown of the computation of interest from the Franchise Tax Board. This was not true for me. I would like to remind FTB that I requested amortization tables for many, many years, but FTB consistently violated the law by refusing to provide these amortization tables.

It took filing a lawsuit in San Diego Superior Court for me to gain access this information. And, since these amortization tables showed FTB is running four different schemes to systematically overcharge interest, it is now clear why FTB refused to provide this information for so many years.

I do not believe that my case is isolated; I believe that FTB likely denies this information to all taxpayers.

4. Fix flaws in the software which facilitate accounting irregularities

FTB Response:

There are no flaws in FTB software which facilitate accounting irregularities.

My Rebuttal:

- I have provided undisputable evidence of the following accounting irregularities which result in taxpayers being overcharged:
 - Applying payments to bills that never existed on a previous tax year that has already been zeroed out and closed. This leaves the tax year the payment was intended for underfunded. Penalties are then imposed that would not have been imposed had the payment been properly applied.
 - Excess interest of about \$1 per year is being automatically added to taxpayer's collection accounts.
 - For the purpose of calculating interest, FTB is not crediting all payments made, and thus charges more interest than they should.
 - For the purpose of calculating interest, FTB is only partially crediting some of the payments made, and thus charges more interest than they should.
 - It appears that interest can be manually changed to a higher amount by representatives in FTB's Collection Department.
- FTB has not denied any of these allegations that taxpayers are being overcharged in the above-listed manners. Per California law, failure to deny constitutes admission of truth.
- **By acknowledging that the various ways that FTB is overcharging taxpayers are not system flaws, FTB has admitted that it is intentionally overcharging taxpayers.**

5. Institute a policy requiring timely re-application of "misapplied" payments

FTB Response:

If payments have been misapplied and we discover it, those payments are moved and given the same effective date so as not to disadvantage the taxpayer.

My Rebuttal:

- FTB has not denied my allegations that FTB waits six-weeks to re-apply payments that are already in collections. I believe that this violates FTB's policy to timely re-apply payments on accounts that are in collections.
- FTB has also not denied that they do not correct misapplied payments until after an account has been moved into collections.
- FTB has not denied that the lag time between locating and re-applying a payment could result in penalties being imposed that would not have been had the payment been re-applied timely.
- Per California law, failure to deny constitutes admission of truth.
- **But not denying any of these allegations, FTB has essentially acknowledged this racketeering scheme exists.**

Request #6: Offer More Methods of Sending Information to FTB

FTB Response:

Unfortunately, we do not have resources to process incoming mail the same day that it arrives. We generally open express mail within 24 hours of receipt. Regarding secure email, FTB strives to develop effective tools for our customers. We will consider your feedback as opportunity for change arises.

For the Filing Division, customers can send information through multiple channels including USPS mail, private express service, faxination and their MyFTB account. Response timeframes depend on the method of submission of information. We strive to respond to information faxed directly to an agent within a week. Correspondence submitted through a MyFTB account is generally processed within 30 days and paper correspondence sent via USPS/express mail can take up to 90 days to process. This timeframe could be longer based on inventory volumes.

My Rebuttal:

Given the tight time limits that FTB imposes on taxpayers to respond to notices, I believe it is unconscionable that FTB would wait to open mail until long after its own imposed deadlines have passed, then blame the taxpayer for not responding timely when the taxpayer did, in fact, respond to the notice within FTB's imposed time frame.

A 90-day processing time on regular mail exceeds almost every deadline FTB imposes.

Most of the correspondence that I received from FTB had a deadline of 30-days from the date on the letter issued by FTB. It takes a week for that letter to arrive to the taxpayer in the mail, so I usually only had 3 weeks to respond. Then I had to dig up proof of payment, find time in my hectic schedule to make it to the post office/a fax machine, etc, so it usually took another week or so for me to respond.

A 30-day processing time on MyFTB submissions guarantees that any correspondence with a 30-day deadline will be processed after the deadlines have already passed.

Even a week processing time for faxes isn't fast enough because FTB habitually "loses" faxes. As I documented in my OTA case (via FTB's own records), I was required to fax the same information multiple times because FTB kept "losing" my faxes. If it takes a week for the letter to arrive, another week to get the information dug up and faxed over, that means it only takes one "lost" fax for the 30-day deadline to expire.

It is my belief that FTB's collections agents should be re-assigned to processing mail until FTB is caught up on processing mail the same day that it arrives. This is logical because once the mail is fully processed, the collection agents will have less work to do because they will no longer be unlawfully harassing people who had already responded to notices.

As I alluded to in my CA Supreme Court Accusation, it is my belief that FTB is deliberately targeting people of lower socio-economic status for imposition of false penalties, fees and interest.

Regular mail costs fifty cents for a four-page letter. That same fax would cost \$4.00. Private Express Mail would cost about \$20.00.

Often the packages of documentation that FTB demands are large. For example, the abatement request that I sent in 2014 for tax year 2011 was more than 70 pages. A large package sent via regular mail may cost three or four dollars. Private Express Mail for the same large package would cost about \$40. Fax services would be likely be even more than Private Express Mail.

For someone who is struggling to feed themselves and their children, \$20 represents a meal or

two for themselves and their children. Or the gas necessary to get to and from work, as most people who are of low socio-economic are “essential workers” who still drive to work every day.

Someone who doesn't have \$20 for Express Mail or fax services certainly does not have thousands of dollars for penalties, fees and interest that are falsely imposed by FTB as a result of FTB failing to process correspondence timely. I find it unconscionable that FTB is openly exploiting the weakest and most vulnerable members of our society; the ones who are incapable of protecting themselves or fighting back.

It makes me sick to my stomach when I watch the quarterly board meetings and hear FTB Staff and FTB's Board of Directors prattle on about how they are trying to protect those of low socio-economic status with assorted programs like AB 1876 and expanded Earned Income Credits. From my perspective, it looks to me like the real intent of these programs is to help FTB identify targets for FTB's exploitative business practices.

7. Remove “Final and Payable Clause” from the Notice of Proposed Assessment

FTB Response:

The use of “due and payable” language on Notices of Proposed Assessment is correct under the law.

My Rebuttal:

Mr. Smith did not address the concerns that I raised in my request. The Notice of Proposed Assessment is a critical tool in FTB's assorted racketeering schemes. Removing the “due and payable” language would remove the incentive for FTB to continue their unlawful day-to-day business practices:

- Per Revenue and Tax Code 19087, FTB is only authorized to issues Notices of Proposed Assessments on underfunded accounts.
- FTB has acknowledged above in their response to my Requests #1 and #2 that FTB does not apply all estimated tax payments collected for the tax year, thus making it falsely appear that the account is underfunded.
- FTB has a proven track record of sending these notices to addresses that FTB knows are invalid. Thus, the taxpayer never gets the notice to dispute it:

<https://sacramento.cbslocal.com/2017/11/21/franchise-tax-board-flaw/>

- NPA's have a 30-day deadline for response. As FTB acknowledged above in Response #6, FTB will not process the majority correspondence it receives prior to the expiration of the deadline.
- Even if the taxpayer sends the protest via express mail or fax, FTB misclassifies Protests to NPAs as "No Responses." The Protest is then unlawfully disregarded and penalties are unlawfully imposed.
- In their response to Request #8 below, FTB states that it will process the NPA Protest based on the received-on date. This deceptively makes it sound like the penalty would be retroactively removed if the Protest was approved. But, as stated above, the reality is that protests to NPAs are misclassified as "no responses." The protest is then unlawfully disregarded and penalties are unlawfully imposed.
- FTB has not denied any of my allegations regarding the improper use of the Notice of Proposed Assessment to falsely impose penalties. Per California law, failure to deny constitutes admission.

8. FTB's policy should be that all requests are approved unless a written denial is formally issued

FTB Response:

For general correspondence, FTB agents will usually respond with a phone call to quickly resolve the taxpayer's issue and then follow up in writing if necessary. For protests, mandatory e-pay requirement waiver requests, and claims for refund, FTB's practice is to always respond in writing whether affirming or denying the request. Regardless of the type, we strive to answer all correspondence in a timely manner. In those instances where we don't, we always work off the "received date" of the correspondence and treat timely mailed correspondence as such.

If a taxpayer has not received a response to their refund claim within six months, they may deem it denied and file an appeal with the Office of Tax Appeals per Revenue and Taxation Code section 19385. However, we would encourage the taxpayer to contact us first. Because it is our practice to respond to refund claims in writing, failure to receive a written response from us

could indicate there was a problem with processing your claim. By calling us at the number on the last notice received from us, the taxpayer may be able to resolve their issue without having to file an appeal.

My Response

I believe that Mr. Smith has made a false statement in claiming that FTB always responds in writing. Maybe Mr. Smith's statement could be viewed as true if you are utilizing FTB's strange internal vocabulary, where the definitions of words do not match standard-use English, but if you are using standard-use English, Mr. Smith has told a lie.

As I have experienced over the last four-years of making these Annual Taxpayer Bill of Rights Requests, FTB usually does not address the issues that I bring up. FTB generally changes topics and talks about different issues altogether. Then FTB will claim that they have suitably responded to my request/issue and the matter is now closed. I am sorry, but changing topics does not qualify as a suitable response, and the matter is not closed until a response addressing the request/issue brought forth has been issued.

This pattern of behavior is not isolated to Annual Taxpayer Bill of Rights Responses. Playing evasive games to not address the requests/issues raised by taxpayers is how FTB operates on the whole, and it is unacceptable behavior.

I can cite many examples from my own court cases, but my issues are now dated. Instead, I will refer to James Lovett as a current example of how FTB plays these evasive games. Mr. Lovett has sent numerous letters to FTB staff Protesting his Frivolous Filing Penalties and requesting a valid legal code to justify the imposition of the penalties.

FTB keeps telling Mr. Lovett that he owes the penalties "because FTB said so." FTB insists that "because we said so" fulfils their duty to respond to his request for a legal basis for the penalties. FTB is aggressively harassing Mr. Lovett for monies that FTB has yet to justify are actually owed. This is exactly the same experience that I had with FTB before I involved my legislators.

Since "because we said so" does not adequately address Mr. Lovett's Protest, Mr. Lovett is trying to get legal remediation. Rather than involving his legislators like I did, Mr. Lovett has utilized a different tactic. On October 18, 2019, he filed criminal charges against Kevin Wilkins and Jozel Brunett for failing to respond to his protests: <https://gwsandiego.net/blog/wp-content/uploads/2020/12/lovet-criminal-complaint-WilkinsBrunett.pdf>

On September 23, 2020, he filed criminal charges against Susan Maples and Jozel Brunett for failing to respond to his protests: <https://gwsandiego.net/blog/wp-content/uploads/2020/12/Lovett-Complaint-Brunett-Maples-PDF.pdf>

Mr. Lovett has contacted Selvi Stanislaus directly and states that he intends to file criminal charges against Ms. Stanislaus if she does not respond.

If Mr. Smith's statement about FTB responding to notices were true, then there would have been no need to file these criminal complaints. FTB would simply give the appropriate legal code and the issue would be closed.

9. Move the Taxpayer Advocate to work under GovOps

FTB Response:

The Franchise Tax Board previously addressed this issue in the 2018 Taxpayer Bill of Rights response to you, dated January 25, 2019. Please see link below.

https://www.ftb.ca.gov/about-ftb/meetings/taxpayer-bill-of-rights/2018_grab_response.pdf

My Rebuttal:

Senate Governance and Finance Committee Members and Assembly Committee on Revenue and Taxation Members: I hope that you now see why this is an important legislative change that must be made this year!

10. Re-record your automated system with a more pleasant voice and music

FTB Response:

The IVR plays hold music and provides periodic voice updates with the intent of keeping the caller informed that they are still connected to the call and in queue for assistance. The music choice is the same for all callers and we have received compliments for the most part until now. As music preference is not something we can control, we chose music that is neutral in genre. As far as the voice preference goes, we have numerous voice recordings with several differing voices so we are not sure which voice you are concerned with. An alternative to being on hold is the Virtual Hold option that allows a caller to leave a phone number for a call back instead of waiting on hold and listening to the music and voice updates.

My Rebuttal:

My personal experience with Virtual Hold is that I usually do not get a call back, so I do not like to use Virtual Hold. That said, there is no rebuttal needed regarding the recordings. If FTB doesn't want to change them, then so be it. However, I would encourage FTB to poll callers to get a better idea of what the general public thinks.

11. Stop your employees from online harassment

FTB Response:

Only authorized employees can respond on social media websites or other online forums on FTB's behalf. FTB has never authorized any employee to respond or post on Reddit on FTB's behalf.

Your personal information is protected under various California laws, including Revenue and Taxation Code section 19542 and the Information Practices Act (Civil Code section 1798, et seq). FTB will not disclose your personal information without your consent, unless authorized by law.

My Rebuttal:

This is a perfect example of the point that I made in Item #8. In his response, Mr. Smith has evaded the issue that I requested to be addressed by changing the subject. For over a year now, I have been harassed by someone on Reddit who had access to my personal information which only a FTB or OTA employee could have known. This person also posted this information publicly.

The issue is not – and has never been about -- whether FTB authorized this person to access my information and harass me online; the issue is what is FTB going to do to stop the unlawful activity being perpetrated by its employee(s).

FTB has violated the above referenced various California laws by not investigating the breach of duty to protect personal information when it was first brought to FTB's attention in December 2020.

FTB has also violated its duty to protect taxpayers from being harassed by FTB employees. It is

disheartening that FTB did not learn its lesson from Mr. Gilbert Hyatt. It is unbelievable that FTB would choose to open the door to another 25 years of litigation and millions of dollars in attorney's fees.

In Closing

I find it despicable that FTB has yet again set up the Taxpayer Advocate as a patsy to take the fall for FTB's criminal activities. Mr. Smith could face twenty-years in prison for his Response to me. Ms. Maples could face sixty-years in prison for the letters that she sent me in Response to the Requests I made in 2017, 2018 and 2019.

On FTB's website, it says:

“Our Values: We exemplify honesty, credibility, and accountability.”

If FTB truly valued these qualities, the people who authorized the unlawful day-to-day business practices would be the ones signing the portions of the letter regarding the practices that they authorized.

To each of you who is hiding behind the Advocate to protect yourself from personal accountability – including potential prison – I want you to know that I believe you are the lowest form of human being.

It does not surprise me that someone who would authorize nefarious day-to-day business practices – such as not timely processing mail in order to falsely impose penalties -- would also stab their fellow co-workers in the back. What does surprise me, though, is that people like Ms. Maples and Mr. Smith willingly allow themselves to be set up as patsies.

It is my goal to hold to accountability every person involved in authorizing/executing the criminal activities, every person who is complicit in stopping the criminal activities, and every person involved in the cover up of the criminal activities. I am hoping that accountability includes prison.

I can prove via medical records that there was a direct correlation between FTB's harassing me for money that was never due and the erosion of my health from my rare kidney disease. If I had not finally gotten my legislators involved to intervene on my behalf to stop the harassment, I likely would have suffered total renal failure. I got lucky because I am more educated and resourceful than the average person. Most of the other people who were in my same shoes probably did suffer devastating, permanent health consequences as a direct result of FTB's unlawful activities and subsequent aggressive harassment.

FTB has ruined hundreds of thousands of people's lives with its fraudulent business practices. Each and every one of you have the power to intervene and stop this activity. I expect you all to do so.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Grab". The signature is fluid and cursive, with the first letter "C" being large and prominent.

Christine Grab

cc: FBI

CA Auditor