

Taxpayer Bill of Rights Request #7

Last year, Ms. Torie Charvez made several Requests at the Annual Taxpayer Bill of Rights Meeting. One of her Requests was to change the FTB's policy of assuming that all people who hold licenses earn income.

If no evidence exists that a Licensee has earned income via said license, the FTB assesses the Licensee with a tax liability based on the average income that those types of Licensees earn. It is up to the Licensee to prove that they didn't earn this money, which is a difficult task, as getting through the bad automated phone system to reach a human being in the correct department is a monumental effort. Meanwhile, the FTB aggressively attempts to collect these "unpaid taxes."

It seems to me that this policy can't possibly be legal. So, naturally, I was curious about which legal codes the FTB provided to justify this policy in their Formal Resolution to her. A copy is attached.

As you can see, the FTB provided no legal justification for this policy. They simply said this policy makes them a lot of money in extra tax revenue that would not have been collected otherwise. Obviously, forcing people pay taxes that they don't actually owe will increase the amount of tax revenue collected. "It makes us a lot of money" is not an acceptable legal basis for a policy.

I am requesting that the FTB provide the legal codes that justify this policy. If there is no valid legal basis for this practice, I am Requesting that the FTB immediately cease this practice.

8: Establish Clear Guidelines As To What Constitutes an Abatement Request

Below is an email exchange between myself and Ms. Maples (I have added highlights to the emails to make it easier for you to see the pertinent portions). I asked Ms. Maples how it could be legal for the FTB to turn down Abatement Requests for years that I had not yet applied for. This was her response:

"As to what constitutes a valid claim for refund, that is a great question. We have traditionally been very flexible/lenient as to what constitutes a "claim". In your case, here are what I believe we deemed to be claims for refund for the various years.

... 2013 and 2014: In a same letter (above) forwarded to us from GovOps, you also said you will be sending abatement requests to the Governor for 2013 and 2014.

2013: In another letter received by us around 02/24/16, you said 2013 was paid under protest (in an earlier letter dated 01/09/16 – cc included) and that you are "due a refund for 2013".

2014: In a letter to Governor Brown received by us around 11/22/16, you said you didn't owe what we were asking for 2014, included a copy of the 2014 Filing Enforcement notice, and asked the Governor's office to intervene.

Therefore, I feel as though I can reasonable say you requested refunds for 2008, 2011, 2013, and 2014 – and these are the years for which Christopher Calhoun sent a denial letter due to lack of reasonable cause.'

Ms. Maples confirmed that I was turned down for tax years 2013 and 2014 because I told GovOps that I was *going to submit* an Abatement Request to the FTB. And that this turn down was considered “reasonable” under the FTB’s “loose guidelines!”

Here is what the law says: From: LAW SUMMARY REASONABLE CAUSE ABATEMENT DELINQUENT FILING PENALTY NOTICE AND DEMAND/FAILURE TO FURNISH PENALTY: “In order to overcome the presumption of correctness of the penalties, the taxpayer must provide credible and competent evidence to support the claim of reasonable cause.”

The documentation that Ms. Maples mentioned in the following two points was proof that the FTB was committing the crime of Racketeering (See Item 1 of My Requests). Alerting the FTB's oversight bodies of illegal activity was a separate issue from an Abatement Request.

Had I not been turned down prematurely, I would have sent my Abatement Request to the FTB before the deadline, not sent it to the Governor or GovOps as Ms. Maples stated. I would have included the required documentation explaining why we filed late, including proof of my illness, my husband's extensive work travels, and our obligation to care for our elderly parents.

It seems to me that **this policy of “loose guidelines” is actually a tool to deny due process for Taxpayers**: they turn down a Taxpayer's “request” before the Taxpayer submits documentation, and this “request” is therefore denied because no documentation was provided.

Please hold the FTB accountable to providing due process to Taxpayers by creating clear guidelines of what defines an Abatement Request.