

From: Christi Grab [REDACTED]
Subject: Item #8 for the Taxpayers Bill of Rights Meeting
Date: November 26, 2018 at 11:46 AM

To: FTB Advocate@FTB FTBAdvocate@ftb.ca.gov

Cc: Maples, Susan@FTB [REDACTED] Casey, Dawn@FTB [REDACTED] Smith, Chris@FTB [REDACTED]
[REDACTED] Stowers, Yvette@SCO [REDACTED] Buus, Barbara [REDACTED]
[REDACTED] Wallentine, Sean [REDACTED] Cohn, Ben [REDACTED]
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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.

Begin forwarded message:

From: "Maples, Susan@FTB" [REDACTED]
Subject: RE: More Questions and a Suggestion
Date: January 4, 2018 at 3:38:51 PM PST
To: 'Christi Grab' [REDACTED] >, "Casey, Dawn@FTB" [REDACTED] >

Hello Ms. Grab,

Happy New Year to you as well! I think since we last spoke, I have received two or three emails from you that I wanted to acknowledge and but I think only the last one that came on January 1st was actually a question for me. On the other two I was only listed in the cc line of the email, so I am not addressing those emails.

To answer your questions below, I needed to compile a bit of a summary of what transpired in your case and when. In addition, I want to explain in the simplest terms, "due process". In some cases, taxpayer's have the right to "Protest" and "Appeal" certain assessments of additional tax and penalties (CR&TC 18590 and 18593). There is a specified time period to do so and when that timeframe has been missed the taxpayer's remaining remedy is to pay the assessment and take it to court. For a claim denial there is no protest but a taxpayer may appeal a claim denial within 90 days. An appeal of a claim denial must be filed with OTA within 90 days (CR&TC 19082). Absent a claim denial, you do not have standing to file an appeal with OTA but could take your case to tax court.

It appears Christopher Calhoun sent you a denial of your claims for refund of penalties, fees, etc. for the years 2008, 2011, 2013, and 2014 in the letter dated 07/10/17. That letter also stated we did not assess any penalties, fees, or interest for 2010 and 2012.

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.

2008: In a letter to Michael Cohen you wrote that you had not received an accounting of the fees and penalties for 2008 and wanted to understand them and “possibly dispute” them, saying this is “a major violation of the law.” This on page 7 of the letter dated 08/11/14, which was included with this letter to Mr. Cohen.

2010 and 2011: In a letter forwarded to us from GovOps there is a copy of the 08/11/14 letter, in which you also request refunds of penalties and fees for 2010 and 2011. Note: there were no penalties for 2010.

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.

As far as your question about protest, the denial you received is for penalties such as the demand, and late filing. These penalties do not come with protest rights but do have a reasonable cause exception which Mr. Calhoun addressed. The appeal to OTA is the next step in your due process rights. Should you be unsatisfied with the decision by OTA, you could take your case to tax court.

Finally, I appreciate your suggestion about the Taxpayer's Rights Advocate Office and Executive and Advocate Services and I agree it can be confusing. We will see what can be done to remedy that situation.

Thank you,

Susan Maples, CPA
Taxpayers' Rights Advocate
[REDACTED] desk [REDACTED] cell

From: Christi Grab [mailto:[REDACTED]]
Sent: Monday, January 01, 2018 9:02 PM
To: Maples, Susan@FTB [REDACTED]; Casey, Dawn@FTB [REDACTED]
Subject: More Questions and a Suggestion

Hi Ladies,

Happy new year! I know you guys hate me and wish I would go away. Sorry to bug you again, but I have more questions and a suggestion.

I am working on my BOE (OTA? Whatever its called now) appeal. As you know, I believe that Mr. Calhoun has violated my taxpayer rights by turning down my abatement request for years that I had not yet submitted a request for. I am trying to figure out exactly what my taxpayer rights are in this area.

On the main Bill of Rights Page, it doesn't say anything specific about this issue. However, I ran across a whole slew of other things that the FTB did to me that are definitely violations that I can use in my appeal! Anyway, the Bill of rights page says to see FTB 4058 and 4058B for specific information about protests and appeals.

Form 4058 has some interesting information that gave rise to a few new questions. I did file a protest each time I was sent a notice and every single protest was ignored by the FTB. I have to go back and check the certified mail receipts, but I have no recollection of writing the words PROTEST SECTION MS F340. Is this address relatively new? If not, if I mailed my dispute in to the FTB general address, would it be forwarded to the proper department?

But, back to my original quest, 4058 says nothing specific about denying an abatement request for years that I had not yet applied for.

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4058B is mostly generic information about filing an appeal and refers you to BOE publication 70 for specific information. BOE publication 70 says basically the same thing as 4058B. There is nothing specific in there about a denial of abatement request for years not yet applied for.

So, my main question for you is: Is this situation addressed at all in the Taxpayer Bill of Rights? If so, where?

I very much appreciate all your help. I know my questions could have been shorter and more direct, but I wanted you to know that I did attempt to find the information by myself before I bugged you to help me.

Suggestion:

A couple weeks ago, I communicated via email with Ms. Stowers. She explained to me that the Taxpayer Rights Advocate is not the same thing as Executive and Advocate Services. I was astounded. I honestly thought that the departments were one and the same and that Taxpayer Advocate was short/slang for Executive and Advocate Services. At one point, Ms. Maples said that she and Mr. Calhoun worked in different departments, but I thought she meant sub-departments. I think the reason the distinction was unclear to me is because the FTB's own materials blurs the line between the two offices. Almost every publication I read is worded the same way, but here is an example taken from FTB 4058B (REV 05-2016) PAGE 1:

Help With Unresolved Tax Problems

You may contact the Taxpayers' Rights Advocate if you have an ongoing state income tax problem that you have been unable to resolve through normal channels.

You may contact Executive and Advocate Services for additional information or to submit your request for review. Call: [800.883.5910](tel:800.883.5910), fax: [916.843.6022](tel:916.843.6022), or mail: Executive and Advocate Services MS A381, PO Box 157, Rancho Cordova, CA 95741-0157.

See what I mean about the blurry line? There is no contact info for the Taxpayer Rights Advocate, just the Executive and Advocate Services. And from this blurb, it is reasonable to assume that the Taxpayer's Rights Advocate would see anything sent to Executive and Advocate Services. So I was shocked when Ms. Maples told me she had no clue about the ongoing drama that I had been having with Mr. Calhoun over the 'suspense' policy, as I (reasonably) thought the two offices were intertwined.

My suggestion is to change the name of one of the offices to make the fact that they are different entities clearer, and to also make this clearer within your own materials. I'll submit this again for next December's meeting, but wanted to give you a head's up about it.

Thank you again for all your help! Wishing you a happy 2018.

Christi Grab

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