CalCPA Committee on Taxation – Response to Questions

1. Disaster Extensions and Operational Lessons

Over the past three years, the FTB has managed disaster extensions impacting select regions of California.
- What lessons has the FTB learned from administering three consecutive years of these targeted extensions?
- What changes or procedural improvements will be implemented to better facilitate operations and avoid the issuance of extraneous notices to taxpayers?

Response:

Over the past three years, the Franchise Tax Board (FTB) has learned numerous valuable lessons about assisting taxpayers impacted by disasters. We made improvements in key areas including our customer service, communication, processing, and collaborative efforts with external stakeholders. We established a cross-functional team of subject matter experts to lead our disaster efforts, identify areas of improvement, and develop repeatable processes.

One important lesson is to share information with everyone as quickly as possible regarding disaster services and postponements. This includes News Releases, Tax News Flashes, and updating our external website with disaster information. We redesigned our webpage dedicated to disaster services. We clearly note all disasters eligible for California tax postponement. Additionally, if the California postponement period differs from the Internal Revenue Service (IRS), we will clearly note it. We update our disaster-related frequently asked questions (FAQ) page to reflect feedback we receive from taxpayers and tax professionals. Perhaps most importantly, we continue to share how to claim the disaster on a tax return across our outreach channels.

With disasters that impact large populations, we established dedicated communication channels. We include information in our recorded phone messaging to help direct people appropriately. We may also suspend mailing our informational notices to the impacted area. Our in-person outreach through Disaster Recovery Centers (DRC) and Local Assistance Centers (LAC) allows us to directly serve those impacted. For larger scale disasters, FTB participated with the California Department of Tax and Fee Administration and the Employment Development Department to streamline messaging for services at LACs and DRCs. These efforts ensure customers receive timely, clear information about available services and any changes to filing and payment deadlines.

We increased our collaboration with external partners, including direct communication with the IRS disaster team. In addition, when the legislature revised Revenue and Taxation Code (R&TC) section 18572 in June of 2024, we worked with our partners at the Department of Finance to establish a process to declare California tax postponement. We also worked with the tax professional community by soliciting feedback and implementing improvements such as updated FAQs. We continue to leverage education and outreach opportunities.

We collaborate with top computerized tax processors (CTP) software companies. We share vendor specific issues as well as real-time trends and annual reflections. This has led to several CTPs implementing improvements like clarifying directions and pop-ups or banners to draw attention to disaster information.

Finally, we implemented system enhancements and noted key functionality to improve disaster processing for the next phase of our Enterprise to Data Revenue project. Disasters bring an opportunity to truly serve our taxpayers. We want to make the process as easy as possible so they can focus on the things that matter most like their safety and loved ones.

2. Form 568, Schedule IW and Lower-Tier LLC Reporting

We are seeking clarification on proper completion of Form 568, Schedule IW in cases where a taxpayer owns lower-tier single-member LLCs.

The instructions provide that:
"The definition of total income for purposes of calculating the LLC fee excludes all allocations, distributions, or gains from another LLC that was already subject to the LLC fee."

Based on this, taxpayers have been excluding income from lower-tier single-member LLCs in their Schedule IW calculations. However, because the lower-tier single-member LLCs are properly included in Schedule B, taxpayers continue to receive notices that Schedule IW does not match Schedule B.

To address this, taxpayers have been attaching a PDF statement reconciling Schedule B and Schedule IW, but notices are still being generated.

We respectfully request clarification on the following:
- How should taxpayers report Schedule IW when lower-tier LLCs are present?

- Should the exclusion be reflected on Schedule IW even if it creates a discrepancy with Schedule B?
- Is there an alternative reporting method the FTB expects to ensure compliance with the instructions while avoiding mismatch notices?

Response:

A single member LLC (SMLLC) classified as a disregarded entity generally does not report their own income separately from their owner at the federal level. However, in California, a SMLLC is treated as a separate entity for purposes of the annual tax, LLC fee, tax return requirements, and credit limitations. This means that, if the taxpayer in the example provided is an LLC and is a 100 percent owner of a SMLLC, then the taxpayer-LLC and the SMLLC will each file a Form 568 to report and pay the respective annual tax and LLC fee. It is important to fill out the Schedule B, Schedule IW, and Schedule EO accurately. The taxpayer in this specific example can attach a statement. To the extent there is a concern about receiving a notice, and beyond filling out the Schedule B, Schedule IW, and Schedule EO accurately, the taxpayer may choose to attach a statement providing the **name** and **ID** of the LLC that already paid the LLC fee. Please refer to FTB Publication 3556 for additional information.

3. Reallocation of Estimated Tax Payments and Attestation Requirement

When a taxpayer requests to reallocate estimated tax payments between tax years, the FTB has recently begun requiring a specific attestation stating that the taxpayer acknowledges interest and penalties will apply, regardless of any mitigating circumstances. This appears to be an unusually rigid requirement for a routine administrative request. For example, the following statement has been deemed unacceptable by the FTB:

“I understand that I cannot claim the payment as an estimated payment for the 20XX tax year. I acknowledge that moving the erroneous estimated payment to another tax year may result in interest for the tax year where that payment was originally applied.”

What statutory or regulatory authority does the FTB rely on to mandate this specific language, and to reject alternative written statements that may more accurately reflect the taxpayer’s understanding and intent? FTB 4058B (Taxpayers’ Bill of Rights) states that penalties and interest may be abated in cases of erroneous action or inaction by the FTB. There is no publicly documented regulation that explicitly requires taxpayers to waive consideration of all facts when acknowledging potential penalties or interest for payment reallocations. While the FTB may require the request to be in writing, this raises a valid concern about whether the FTB's insistence on a specific attestation aligns with taxpayer rights and administrative fairness.

Response:

When a taxpayer inadvertently directs the application of a payment to be applied as an estimate payment, as a courtesy in limited situations, FTB will accommodate the taxpayer's request to correct the error to apply the payment as intended by the taxpayer.

Any request by the taxpayer must be submitted in writing and must include certain statements. The request must include the date and amount of the payment, what taxable year the taxpayer would like the payment moved from, what taxable year they would like it moved to, and the taxpayer's acknowledgement that reallocating the erroneous estimate payment to another liability may result in penalties and interest in the taxable year where the payment was originally applied. This is to help ensure the taxpayer is aware that penalties and interest may be imposed. For consistency and to avoid misinterpretation of a taxpayer's request, FTB has standard language that covers these points and is provided to the taxpayer to use in these situations.

The standard language does not include a waiver of administrative rights. It is to inform the taxpayer of the potential, unintended consequence of penalty and interest imposition. A taxpayer still has the administrative right to request a penalty and/or interest waiver based on the reasons set forth under the law.

4. CA LLC – Out-of-State Limited Partnership Income and LLC Fee

a) Facts: A California LLC receives a k-1 from an investment in an out-of-state limited partnership that generates interest, dividends, and capital gains from the sale of stock.

For purposes of determining income subject to the CA LLC fee, how do you determine whether such income was "derived from or attributable to California"? Do the new amended market-based rules for sales other than tangible personal property impact this at all? There seems to be confusion on this topic because typically portfolio income is generally sourced to the state of residency, but the source of the portfolio income is from an out-of-state limited partnership with no ties to California and also does not follow the situs rules for gain from the sale of a CA asset.

b) Facts: A California LLC gets a k-1 from an investment in an out-of-state limited partnership. The LLC gross receipts fee only applies to the extent the income was not already subject to the LLC gross receipts fee.

Typically, a practitioner might assume that the income from a limited partnership interest has not been subjected to the LLC fee (includable to the extent CA-sourced), while income from an LLC K-1 has already been subjected to the LLC gross receipts fee (exclude). Is this an appropriate assumption on the part of the practitioner? What is the upper-tier LLC's responsibility to find out where in the chain the income might not have been subject to gross receipts fees in a tiered entity structure?

Response:

a) The facts of Part A question involve a CA LLC that owns an interest in an out of state limited partnership that generates interest, dividends, and capital gains from stock. The questions in Part A then ask about how to determine income subject to the LLC fee. This means that we look at RTC section 17942 for purposes of determining income subject to the LLC fee, and not nonresident individual sourcing rules.

   For purposes of determining income subject to the LLC fee, RTC section 17942(b)(1)(A) looks to "total income from all sources derived from or attributable to this state," which means gross income as defined in RTC section 24271, plus cost of goods sold that are paid or incurred in connection with the business. RTC section 17942(b)(1)(B) then states that total income from all sources attributed to this state is determined using the assignment rules at RTC 25135 and 25136 and the associated regulations, as modified by section 25137.

   California Code of Regulations (CCR) section 25136-2(d) provides the rules of assignment for sales of intangible property. If a sale is assigned to California, then that amount is California gross income (plus associated COGS) subject to the LLC fee.

   The market-based rules for assignment of income differ for type of portfolio income. Please see CCR section 25136-2(d)(1)(A) for those specific rules. If the income is from **interest**, then CCR section 25136-2(d)(1)(A)2 provides for how to assign the interest. If the income is from **dividends**, or **capital gains from the sale of stock**, then CCR section 25136-2(d)(1)(A)1 applies, which looks at the assets owned by the corporation and uses either an average of the payroll or property factor, or the sales factor from the corporation. In addition, if the sales are from marketable securities, then those are assigned to where the customers or buyers of the securities are located. (CCR 25136-2(e)).

b) Pursuant to R&TC section 17942(b)(1)(A), when a practitioner calculates the "total income from all sources derived from or attributable to this state," they include allocation or attribution of income or gain or distributions made to an LLC in its capacity as a member of, or holder of an economic interest in, another LLC unless the practitioner is able to verify the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income subject to the payment of the LLC fee.

5. PTET Program Questions

A. PTET Underpayment Credit Reduction

- Can the FTB please confirm that if the PTET is underpaid as of June 15, the 12.5% reduction in the credit applies only to the underpaid portion at that time, rather than to the entire credit?
- What is the FTB's expectation of how the 12.5% credit reduction is to be allocated amongst the partners? If a partner did not participate in the prior year, could that reduction be allocated only to the now elected in partners?
- Can we walk through the FTB's interpretation of how the credit reduction will work? Is it the FTB's interpretation that if an entity had unusually high income year in 2025 and pays in only 100% of the projected 2026 PTET by 6/15/26, the 12.5% credit reduction would be on the shortfall and potentially eliminate the credit?

  Example: $5M of gain on sale of property in 2025 + $200k of operating income in 2025. 2025 PTET = $483,600

Required Payment 6/15/26 PTET payment (50% of PY)	$ 241,800
Actual projected 2026 PTET on $200k of operating income	$ (18,600)
Underpayment of 6/15/26 PTET estimate	$ 223,200
Credit Reduction	$ 27,900
Potential 2026 PTET Credit	$18,600
Less: Credit Reduction	$(27,900)
2026 PTET Credit is $0 due to reduction being higher than credit	$ -

B. PTET Program Expansion and Overpayment Application

- With the passage of the One Big Beautiful Bill (OBBB), the availability of qualified pass through entities (PTEs) to make pass through entity tax (PTET) payments continues past its original sunset date of December 31, 2025. Early on, comments from the Franchise Tax Board had indicated that its PTET procedures

were such that they were of "minimal enhancement (my words) because of the original short run period of the PTET program
With the OBBB extending the life of the PTET availability, does the Franchise Tax Board have any plans to make its PTET program more robust? An example of this would be to allow a qualified PTE with an overpayment of PTET from one year to be applied to the next.

PTET refunds have continued to be delayed. Having them to be available for application to the PTE's next year would be very helpful, and allow the funds to remain with the State.

C. PTET Program Overpayment Application more questions

- With the extension of the PTET for another 5 years, will the FTB reconsider looking into a solution to allow for PTET overpayments to be applied to the following year?

  If the FTB is not going to allow for PTET overpayments to be applied to the following year, is there a way to increase the speed for which the refunds are processed? The amount of cash that is being held up between not receiving the prior year PTET refund and having to make the next year’s 50% PTE payment by June 15th is hurting the cash flow of a lot of businesses and taxpayers.

Response: Response will be provided in PTET presentation

6. Trust and Web Pay

Last year, it was indicated that the FTB would look into publicizing the workaround for trusts to make payments using FTB webpay. Is that still on the radar? As shared last year, it would be really helpful for trusts to be able to epay, but I hesitate to make it part of our instructions to clients due to how odd it sounds (using “A TRUST” as first and last name). It would be helpful to have the FTB communicate this option so that it is more credible. Also, it would be helpful if there is a way to show the name of the trust when you enter the tax ID number (like when we enter the tax ID of an entity and the entity name shows up on the next page so that we can confirm it is for the right entity before making payment). The ability to make payments online for trusts is a request I often hear both from clients and from other practitioners.

Response:

We acknowledge we indicated we would evaluate how to publicize the process for trusts and estates to access the Web Pay application for payments.

However, due to other efforts and the moratorium to make changes to the website during the website redesign, we did not post instructions. Fortunately, after we launched the revised website at the end of September, in October we added instructions for trusts/estates. Go to https://www.ftb.ca.gov/pay/bank-account/help-with-bank-account-payments.html#Estates/trusts-return-payments

As we mentioned in the past, the Web Pay application was not designed for trusts/estates, but it could be used if the trust/estate knew what to enter to access the application. Since it was not designed for trusts/estates, we cannot show the name of the trust/estate in the application. We will evaluate to determine if this is feasible and/or allowed based on privacy and disclosure policies.

7. New procedures for issuing refunds

I would like to discuss possible new procedures for them to implement before issuing refunds for payments posted that they perceive is an excess payment.

There may be others, but I currently have two clients with FTB problems.

- The corporate client gets a refund, then a bill, then a refund, then a bill. It has been ongoing since October 2022. Client mailed back uncashed warrant in January 2025 and the FTB still hasn't posted that returned uncashed warrant and is sending ongoing bills.
- Individual client was issued a refund after deducting penalties for prior year. No notice was issued for that year, so I didn't know to call and get penalties corrected.

Response: Worked with the question submitter for their individual client scenario.

8. Real Estate withholding Form 593

Regarding real estate withholding. Current rules require the BUYER to withhold an amount from their monthly payment to the seller (3.3%) and then remit that amount to the FTB.

- The 593 form does NOT allow for the seller of the property to make a statement indicating they will issue a 1098 form annually, report all interest income, as well as the principal portion paid annually, and bypass this burdensome process on a 10 year or 30-year mortgage.
- **Bottom line:** the SELLER is responsible for reporting interest income and capital gain, yet unfortunately the FTB is sticking responsibility to the buyers for withholding a percentage of the payment and remitting to FTB. It's tedious, and sometimes the buyers do not understand, NOR do the sellers want their responsibility for payment falling to the buyers. (how do they know what's being paid???, or if it is?)
- We understand FTB wants their dollars paid in, but it seems like the form could be rectified to allow for a "check the box" for the seller to indicate it is an installment sale and will pay all required taxes when due. Buyers should not have to go through the garnishment process monthly with subsequent remittances. It is fraught for potential error and is a costly administrative burden for the buyer-taxpayers.
- Maybe there is a way the FTB can change these rules for only withholding over a certain amount? Maybe include a section on the 593 to exclude buyers from having to withhold for amounts under $50,000 or so?

Response:

R&TC 18662 outlines that the person or entity that has control of the payment of the item of income is required to withhold. For the sale of real property, the buyer is required to withhold, because they have control of the payment, regardless of the transaction type. When an escrow company is used, the escrow company will submit the withholding payment on behalf of the buyer. For an installment sale, except for the first payment, the escrow company is not involved, so the buyer must complete the withholding on all subsequent installment payments.

There is a method in place for sellers to elect out of withholding on subsequent installment payments. The seller can choose to report the entire gain from the transaction in the year of the sale, even though they did not receive all the sale proceeds in that year. After the return has been filed, the seller must send FTB a written request to release the buyer from the requirement to withhold on subsequent installment payments. FTB approves or denies the request within 30 days. The buyer is required to continue withholding until they receive approval from FTB.

9. SB 711 PITL

How will the FTB handle the SB 711 PITL drafting error regarding IRC Sec. 163(j)? We suggest releasing instructions with contingency language, which is how the IRS handles these uncertainties.

Response:

FTB forms and instructions will reflect the current version of the law and will not incorporate potential changes to law that may be introduced next year. FTB will monitor any legislative changes to modify conformity and if language is introduced next year, we will prioritize the analysis. If a bill is chaptered, the tax forms team will implement changes as applicable.

If you haven't already done so, we recommend subscribing and reviewing Tax News for legislative updates. In November, FTB will announce all form changes related to SB 711 on the What's New with Tax Forms webpage.

10. POAs

Regarding POAs, when will the FTB stop requiring practitioners to re-enter into MyFTB all fields completed on a POA, and then upload the POA. FTB should let us upload the POA without re-entering all the fields; otherwise, there are too many opportunities for error.

Response:

FTB continuously seeks opportunities to improve our processes and is actively researching a potential enhancement that would enable MyFTB to extract data directly from an uploaded PDF Power of Attorney (POA). This would eliminate the need for manual data entry. The scan capture capability is in the conceptual stage and while we are optimistic, we have not determined feasibility and implementation timelines.

MyFTB provides enhanced tools for both taxpayers and tax professionals, including the ability to submit POAs online and is still the fastest and preferred method for POA submissions. Using MyFTB eliminates the delays and uncertainty that can accompany mailed documents.

When a taxpayer submits a POA through their MyFTB account, it does not require a form nor a signature. The taxpayer can submit the POA from their mobile device or PC in as little as 5 minutes.

Although POAs can still be submitted by mail, this method takes longer to reach FTB, though this does not require any additional work from the tax professional.

Additionally, we recently released a how-to video, How to Submit a POA in MyFTB for Individuals, which provides the taxpayer a step-by-step walkthrough of the process to submit a POA using their MyFTB account. The process is fast, convenient, and requires no additional action from the tax professional. You can find this and other self-help how-to videos at ftb.ca.gov/onlineservices aimed to help with the POA submission process.

11. FTB and WVCP Teams short staffed

The FTB VDA and WVCP teams seem to be extremely short staffed, even though CA has economic nexus rules and, as a result, many new filers. When will the FTB increase resources to assist new CA taxpayers? This is "new money" for the state and should be given a priority.

Response:

The programs you mention assist existing California taxpayers that failed to meet either their filing or withholding tax obligations.

The Voluntary Disclosure Program and the Filing Compliance Agreement Program offers eligible out-of-state businesses who owe back taxes and haven't filed related returns the opportunity to come forward on an anonymous basis to file prior year tax returns with potential penalty relief.

The Withholding Voluntary Compliance Program (WVCP) offers eligible withholding agents an opportunity to come into compliance with California's nonwage withholding requirements by self-assessing their liability for failing to withhold as required for the previous two calendar years, plus interest. The withholding agent's liability for failing to withhold as required is calculated as 100 percent of the amount that should have been withheld.

While it is a small team, it is appropriately staffed based on the volume of applications received. Over the last three fiscal years we've received an average of approximately 200 applications per year for the three programs combined. In most cases taxpayers receive their agreement within 90 days of submitting their application.

To streamline the application process for you and your clients, we recently launched an online portal for the submission of VDP and FCA applications. Based on the information entered into the portal, we can determine at the time of application which program the taxpayer qualifies for and will submit the correct application for processing. Taxpayers that choose to apply by mail must use the application for the program they wish to apply. If they apply for VDP, and are determined to be ineligible, they must submit a separate FCA application.

We will continue to monitor these programs and our staffing levels to ensure we maintain our operational goals and effectively use our personnel resources.

12. FTB 2020-03/25137 Petitions

a) There are many more 25137 petitions being filed than in years past, but the FTB has been extremely slow to respond to them. Can the FTB issue timing guidance like FTB has for settlements under FTB 2020-03: https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-03.pdf?

b) Why won't the FTB rule on 25137 petitions when there is an ongoing audit and the audit issues have nothing to do with the apportionment formula?

c) What are your top audit programs?

Response:

a) There are many situations and circumstances when a 25137 petition is filed. FTB issued FTB Notice 2020-03 to outline the Settlement Bureau's process for requesting consideration for the settlement program and the settlement process for cases that are accepted into settlement.

   We strive to complete our audit examinations within two years, as provided in Regulation 19032. However, there may be times when it extends beyond this two-year time period. This can result from delays in documentation provided, extensive analysis of the issue needed for review, IRS audits in progress, or other issues. A 25137-petition review is a fact intensive process and FTB devotes many resources to ensure completion of the recommendation timely.

   If there are specific questions on cases, we encourage you to contact the supervisor, or manager to discuss the process and where you feel delays may be mitigated.

b) It is not our practice to hold or delay variance action requests until all issues under audit have been completed, especially when the other audit issues are not related to the apportionment formula or do not impact the distortion analysis. Our normal audit procedure is to work on the variance request and the audit of the other issues at the same time. There may be times when we cannot make final recommendations on the variance request until we resolve all issues impacting the applicable standard formula or the distortion analysis. But there should not be any delays when ongoing audits do not impact the variance request.

As indicated above, if there are specific questions on cases, we encourage you to contact the supervisor or manager to discuss the process and where you feel delays may be mitigated.

c) The FTB Audit Division employs staff nationwide that are involved in a variety of audit workloads/programs, which include workloads that support these programs and FTB criminal investigations. The majority of our resources are spent on our professional audit workloads for both individuals and businesses. We also have automated and semi-automated workloads that use information received from the IRS. The number of audits performed per year varies depending on the complexity of the audit issues, the number of tax years, taxpayers involved in each case, and the volume of data we receive from the IRS.

The audit issues addressed in our automated and semi-automated audit workloads have a wide range of topics since the majority derive from any IRS adjustments and adjustments on California Schedule CA.

For our professional audit workloads, some of the common audit issues include:

- Sales of personal or real property, including like-kind exchanges
- Owner's basis in a pass-through entity
- Sales of interests in a pass-through entity
- Multistate issues (apportioning, allocation, unity, Public Law 86-272, market-based sourcing rules.)
- Tax sheltering activities
- California residency status
- Credits (e.g., research, other state tax credits)

13. Status of RAR program

With all the changes at the IRS, what is the status of your RAR program?

Response:

FTB's program that issues notices based on Federal Revenue Agent Reports (RAR) adjustments continues to receive this information from the IRS on a weekly, monthly, quarterly, or annual basis, depending on the data type. Although there have been some delays with the receipt of certain information compared to the prior years, FTB continues to process the information when received and issues state notices accordingly. Taxpayers should continue to file an amended return with California based on their final RAR report, to limit the accrual of interest on the adjustment. For additional information on Federal Tax Adjustments and Your Notification Responsibilities, refer to [FTB Publication 1008 | FTB.ca.gov]

14. OTA decision in the *Appeal of R. Pomrehn*

In light of the precedential OTA decision in the *Appeal of R. Pomrehn* (Feb. 26, 2025) 2025-OTA 269P https://ota.ca.gov/wp-content/uploads/sites/54/2025/07/R.-Pomrehn-003.pdf, what is the FTB's review process for returns coming from a disaster victim? What training has been done to ensure taxpayers are not denied relief in the future?

Response:

FTB's longstanding procedure for taxpayers to receive deadline postponement disaster relief is for them to write the name of the disaster at the top of their tax return or use their tax preparation software to enter the disaster information. This alerts FTB that the taxpayer was affected by a covered disaster and allows FTB to apply the applicable disaster relief period. The most common reason taxpayers do not have disaster relief correctly applied to their account is that they did not indicate that they qualified for disaster relief on their return.

However, the *Appeal of R. Pomrehn* and other cases stemming from the disasters declared in recent years have highlighted a number of areas where FTB could improve both its external and internal communication to better administer disaster relief. For example, FTB added an explanation to its external website of how disaster postponement periods interact with statute of limitation periods. In addition, FTB launched special customer service communication channels for the San Diego County Floods in 2024 and the Los Angeles County Fires in 2025 to allow taxpayers to more quickly contact FTB about any issues with the application of deadline postponement disaster relief.

FTB is currently developing comprehensive training in collaboration with subject matter experts to ensure consistent understanding and application of tax relief rules by staff across all business areas. Our goal is to prevent future issues and ensure taxpayers receive the relief to which they are entitled.

15. Protest process for denied refund claims

Unlike CDTFA, the FTB does not have a protest process for denied refund claims. This means that FTB attorneys don't see a case involving a denied claim until it gets to the OTA, which wastes resources. What steps can be put in place for taxpayers to be able to discuss their case with an FTB attorney regarding a legal question before it is denied or before it is appealed to the OTA?

Response:

FTB's legal department (FTB Legal) is involved in ensuring the accuracy of FTB's position in refund claims before the appeals process begins. For instance, FTB Legal is often consulted when refund claims involve novel or complex issues. Legal also serves on enterprise-wide teams that meet regularly with other business areas to discuss how to consistently and accurately apply the law. It is also important to note that the business areas handling refund claims have well-trained staff with extensive expertise.

After a refund claim is denied, the taxpayer has the right to appeal to the Office of Tax Appeals. This process ensures that the taxpayer's case will be reviewed by FTB Legal. After an appeal is filed, FTB generally has 60 days to respond with its position. Generally, a supervising attorney will review a taxpayer's case and ensure that it is assigned to a staff member who is trained on the issues raised by the taxpayer.

Regarding concerns about the time commitment needed to file an appeal, filing an appeal with Office of Tax Appeals can be done by completing the one-page OTA form. If a taxpayer feels their refund claim has sufficient information to be approved, the taxpayer may choose to forgo submitting any additional correspondence or documentation in the appeals process and wait to informally discuss the matter with the assigned FTB Legal staff member. Once a case is in appeals, FTB Legal, similar to other FTB departments, handles cases with an emphasis on resolving matters with the taxpayers. For example, staff members often contact taxpayers to request additional information or clarify the taxpayer's position before determining FTB Legal's position. In summary, Legal has a substantial role both during the appeal stage and the refund claim processing stage.

16. Form 568 Clarifying Questions

a) What is the purpose of Question X - Is this LLC a direct owner of an entity that filed a federal Schedule M-3? Unless our firm prepared the returns of the underlying entity, we have no way of knowing.

b) Question GG(1) Has this LLC previously operated outside California? - This question has always struck me as a bit odd. For a first year entity that operates outside CA, I answer "no" to this because there is no prior year, and then I am always having to remind my staff to change to "yes" the following year. Should we read this question as "Has the LLC ever operated outside California?" (which would include the initial year)? If so, would you consider updating that question?

c) Schedule EO: The form instructs us to list entities owned less than 100% in Part I and those disregarded entities owned 100% in Part II. Where should we report a multi-member entity (not disregarded) in which the LLC owns 100% of the capital? [Ex: 2-member LLC with 1 member who contributed all the cash and another who manages the LLC and owns a carried interest]

Response:

a) If an LLC is a direct owner of an entity that filed a federal Schedule M-3, then the flow-through income is included in the LLC's Form 568. When an LLC files a Form 568, the LLC reports on Schedule K beginning with the federal reported income or loss, and then the California adjustments are added using California law. Question X ensures consistency between federal and state reporting for the flow-through income from the entity that filed the federal Schedule M-3, which improves tax compliance.

b) The term "previously" in Question GG (1) has the same meaning as the suggested word "ever." R&TC section 17941(g)(1) provides that every LLC doing business in California that organizes or registers with the Secretary of State on or after January 2021, and before January 1, 2024, shall not be subject to the tax imposed under this section for its first taxable year. This means that an LLC filing Form 568 for its first year of doing business in California can also check the box providing it has previously, or ever, operated outside of California before organizing or registering with the Secretary of State.

c) Part I of Schedule EO for Form 568 is titled "Partial Ownership" and instructs the taxpayer to list the entities in which the taxpayer holds ownership of less than 100 percent interest. Part II is titled "Full Ownership" and instructs the taxpayer to list the disregarded entities in which the taxpayer holds full ownership of 100 percent. If the taxpayer-LLC owns 100 percent of the capital, for example, a member contributed all the cash and another manages the LLC and owns a carried interest, then that taxpayer-LLC will fill out Part I only because it is no longer a disregarded entity in which the taxpayer holds full ownership of 100 percent.