



# Tax News

October 2019

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## How to file a Partnership Technical Termination Election

Assembly Bill 91, Loophole Closure and Small Business and Working Families Tax Relief Act of 2019 (AB 91), passed on July 1, 2019. AB 91 conforms to certain changes to federal income tax law under the Tax Cuts and Jobs Act (TCJA). AB 91 also added California Revenue and Taxation Code (R&TC) Section 17859 which conformed to the TCJA's repeal of the technical termination rules for a partnership.

R&TC Section 17859 applies for taxable years beginning on or after January 1, 2019. However, taxpayers may also elect to apply R&TC Section 17859 for taxable years beginning on or after January 1, 2018 and before January 1, 2019.

If a taxpayer would like to make this election, the taxpayer must:

1. Include a statement with their original or amended California tax return for the appropriate tax year, stating the taxpayer's intent to make an election under Revenue and Taxation Code Section 17859(d)(1).
2. On top of the first page of the original or amended tax return, write or print "AB 91 – Section 17859(d)(1) Election" in blue or black ink.
3. Mail all "AB 91 – Section 17859(d)(1) Election" returns to:  
Franchise Tax Board  
P.O. Box 1570  
Rancho Cordova, CA 95741-1570

Note: The taxpayer must mail their return to this address even if they are required to file electronically (e-file) to ensure proper handling. If a taxpayer has an e-file requirement,<sup>1</sup> the taxpayer may file a paper return for the purposes of making the election and shall also include a statement with the return stating that the taxpayer is filing a paper return in lieu of an electronic return pursuant to [FTB Notice 2019-04](#).

## How to make an election regarding Small Business Method of Accounting

Assembly Bill 91 – Loophole Closure and Small Business and Working Families Tax Relief Act of 2019 (AB 91) provides some conformity to federal Tax Cuts and Jobs Act of 2017, including conformity to certain amendments to the federal Small Business Method of Accounting provisions. [A summary of California's Small Business Method of Accounting provisions](#) was provided in our September edition of Tax News.

California's conformity to these federal Small Business Method of Accounting provisions applies for taxable years beginning on or after January 1, 2019. However, taxpayers may elect to apply one or more of those provisions for taxable years beginning on or after January 1, 2018 and

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<sup>1</sup> Under R&TC Section 18621.10

before January 1, 2019. In order to make the election(s), a taxpayer must complete all of the following:

1. Include a statement with their original or amended California tax return stating the taxpayer's intent to make one or more of the elections along with the specific election(s) being made.
2. On the top of the first page of the original or amended tax return, write or print "AB 91 – Small Business Method of Accounting Election" in blue or black ink.
3. Mail all "AB 91 – Small Business Method of Accounting Election" returns to:  
Franchise Tax Board  
P.O. Box 942857  
Sacramento, CA 94257-0500

If a taxpayer has an electronic filing requirement,<sup>2</sup> the taxpayer may file a paper return to make the election. In that case, the taxpayer must include a statement with the return stating they are filing a paper return in lieu of an electronic return according to [FTB Notice 2019-03](#).

### Innocent spouse (joint filer)

When California taxpayers file a joint tax return, both taxpayers are equally responsible for paying any:

- Taxes
- Penalties
- Interest

In some cases, a spouse or registered domestic partner may get relief from paying all or part of what is owed.

The Innocent Spouse Program reviews and evaluates applications for innocent spouse relief from taxpayers who believe they should be relieved from their joint tax liability. Under federal and state income tax laws, when a joint tax return is filed, both individuals are treated as agreeing to the joint liability. However, the law also provides that a taxpayer may receive tax relief from a joint and several liability if that individual qualifies as an innocent spouse.

In order for a taxpayer to request innocent spouse relief, a valid joint return must be filed. A taxpayer must complete and submit an application and provide a supporting statement explaining why they believe they qualify for relief. If you represent an individual that may qualify, go to our updated [Innocent Spouse webpage](#) for more information.

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<sup>2</sup> Under Revenue and Taxation Code Section 18621.10

Also, check out our new [informational video](#) to help you and your clients learn more about the program. For those who qualify, this may be the opportunity they are looking for to resolve their outstanding tax liabilities.

## California Healthcare Mandate

The State of California adopted a new state individual health care mandate that requires individuals to maintain health insurance beginning January 1, 2020. Individuals who do not obtain health insurance for themselves and their dependents will be subject to a penalty unless they qualify for an exemption.

To help keep you and your clients up to date on this important topic, we now have a [California Healthcare Mandate](#) webpage. We will be updating the information on this page periodically, with the first update anticipated in October as more information becomes available.

Visit the [Covered California](#) website to find out more about health insurance options and financial assistance.

## Form 540NR Short Eliminated for 2019 Taxable Year

Effective with the 2019 taxable year, we eliminated Form 540NR Short, California Nonresident or Part-Year Resident Income Tax Return because:

- Less than 3% of all nonresident or part-year taxpayers file Form 540NR Short and usage of this form continues to decline each year.
- Very few tax preparation software developers support the use of Form 540NR Short.
- Taxpayers that manually prepare their tax returns represent 2% of the Form 540NR Short population.

Form 540NR Long is now renamed to Form 540NR, California Nonresident or Part-Year Resident Income Tax Return. Taxpayers who previously filed Form 540NR Short will need to use Form 540NR to file their 2019 tax returns.

## What's new for HOH for the 2019 tax year?

Historically, if a taxpayer did not qualify for the Head of Household (HOH) filing status, we issued a Notice of Proposed Assessment (NPA) to deny their HOH filing status. This generally occurred several months after the return was filed and if the taxpayers disagreed, they were required to go through a sometimes lengthy protest process in order to resolve the issue. For many of these taxpayers, they had received a refund when they filed their return only to have FTB come asking for some or all of that refund back months later due to an NPA. This frustrated many taxpayers as they wondered why we didn't inform them they didn't qualify for HOH when they filed their return and issued the refund.

We are always committed to improving a taxpayer's experience, so we looked for ways to improve this process. Beginning with tax year 2019 returns processed in 2020, if a taxpayer does not qualify for HOH based on the information provided on their form 3532 or if they do not provide a form 3532, they will receive a Notice of Tax Return Change (NTRC) during return processing to deny their HOH filing status. If the taxpayer disagrees with that change, they will be able to resolve that issue by contacting us via:

- Phone
- Chat
- Correspondence

This resolution process will be much timelier than having to protest their NPA, and in most cases can be resolved in one contact. We believe this will provide a better experience for Head of Household taxpayers.

What's next?

As the 2020 filing season approaches, we will be increasing communication to ensure taxpayers and tax practitioners understand this change, including additional:

- Tax News articles
- Posts on social media
- Information available on our website

### Reminder: update your client's address

In order for us to effectively communicate with your client, please remind them to make sure that we have their most current address. This will help your client receive:

- Important notices or other correspondence.
- Refunds in a timely manner.

Each year, we receive a large amount of returned refunds due to incorrect addresses.

We understand that there are many responsibilities when moving and changing their address with us may not be first on your client's list. We ask for your assistance to ensure we have your client's current address, even if it is out of state.

Here are a few ways for your client can report a change of address:

- Create an account on [MyFTB](#). Complete a [one-time registration process](#) to create a login account. You can then login to view your account information or update your address and phone number online.
- Timely file a personal income tax return with the correct and up to date address information.

- If they pay estimated tax, mail your estimate voucher ([Form 540-ES](#)) with the full and correct address information.
- Mail a change of address form, for individuals ([FTB 3533](#)) and for businesses ([FTB 3533-B](#)).

## Notices of Proposed Dissolution mailed to Nonprofit Corporations

We recently sent more than 8,500 proposed dissolution notices to certain nonprofit corporations.

As of January 1, 2016, California nonprofit public benefit, mutual benefit, religious, and registered foreign nonprofit corporations are subject to the FTB administrative dissolution (California nonprofit corporations) or administrative surrender (registered foreign nonprofit corporations) if the entity's corporate powers have been suspended or forfeited by us at least 48 continuous months.

Once the administrative dissolution process is initiated by us, the nonprofit corporation has 60 calendar days to act before the corporation administratively is dissolved/surrendered permanently.

A searchable list of the 8,500+ nonprofit corporations was posted to the California Secretary of State's (SOS) website on September 9, 2019, the same day the letters were mailed. The list includes the corporation name on record and corporation file number issued by the SOS. The website also provides information about how to avoid administrative dissolution or surrender.

If one or more of your clients are nonprofit corporations, and they have not been active for a while, it may be a good idea to check whether they are on the list.

## Ask the Advocate



Susan Maples, CPA.  
Taxpayers' Rights Advocate.  
Follow me on Twitter at  
[twitter.com/FTBAdvocate](https://twitter.com/FTBAdvocate)

### The filing season is coming to an end

It seems like just yesterday that we were preparing for the 2019 filing season, anticipating the challenges ahead due to the significant changes in the tax laws. From conversations I have had with many of you, I learned that this filing season was in fact quite a bit more difficult than in prior years. But, you met the challenges head on and were able to get your clients' returns filed.

FTB did its part too, doing everything possible to make the filing season go smoothly. I am especially proud of the efforts made this year by our Filing Division, both in making the necessary revisions to the forms you needed to file and in getting the returns you filed processed quickly and accurately, with refunds going out as soon as possible. Thankfully, we are

now approaching the extended or final filing deadline, which means this year's filing season will come to a close soon. Then, after a brief respite, we will begin to prepare for next year.

Annual preparations for filing season require a major effort on the part of our Filing Division. We need a gap between one year's filing season and the next in order to make the necessary changes and updates to our systems and processes. I mention this because we have had several requests recently to extend the due date for filing a C corporation return by one additional month to November 15. Unfortunately, we cannot extend the due date beyond the October 15 extended due date for filing a C corporation return due to year-end processing limitations. If you would like to know more about the California extended deadline for corporate taxpayers, we discussed this in depth in the [October 2018 Tax News](#).

If a taxpayer files a return beyond the extended due date and receives a penalty for filing late, the penalty will be calculated back to the original due date, which is the 15<sup>th</sup> day of the fourth month following the close of the tax year. For calendar year corporations, this is normally April 15. A taxpayer may request abatement of the penalty upon a showing of reasonable cause. Requests for penalty abatement for reasonable cause are considered on a case by case basis. Hopefully though, you won't have to avail yourself of this process.

## MyFTB Corner

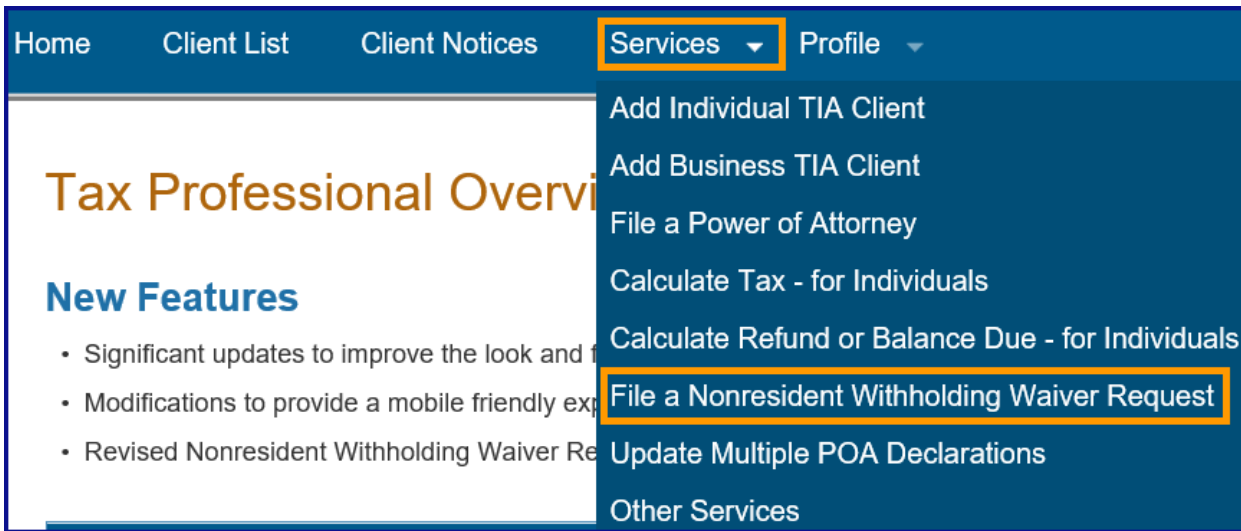
### File a Nonresident Withholding Waiver Request

MyFTB File a Nonresident Withholding Waiver Request service (WASS Wizard) is now available. We updated and improved the WASS Wizard to make it more user friendly and provide a better user experience for everyone. Updates include:

- New look and feel.
- Added a new progress bar and page titles.
- Edit buttons replaced with more descriptive links.
- Added a successful submission confirmation page.

To access the WASS Wizard:

1. Select Services from your Main Navigation Menu.
2. Select File a Nonresident Withholding Waiver Request from the Services dropdown menu.



Additionally, the WASS Wizard is now mobile-friendly! It will automatically resize and adapt to your screen size. The type of mobile device you use to access MyFTB will determine how it displays.

## MyFTB Corner

### Manage active Power of Attorney (POA) declarations

When the POA Wizard was updated to align with the new POA declarations, it was inadvertently modified to allow a representative's name and ID number(s) to be edited on an active POA declaration. It also allowed you to edit this information for another listed representative.

The ability to edit a representative's name and ID number(s) on an active POA declaration has been removed. You can no longer edit your name or ID number(s) or that of another representative.

However, you can still edit your contact information and the contact information of another listed representative. This information includes:

- Address
- Phone and Fax Number
- Email Address

If you or another listed representative need to edit your name or ID number(s), you must file a new POA declaration.

For more information, refer to [How-To Add or Edit an Email Address](#) or [How-To Submit Form 3520 \(PIT or BE\)](#).



## MyFTB Corner

### How to locate “MyFTB How-To Guides”

We recently redesigned our FTB website with a new look and feel. You may have noticed that some content has moved. This includes the MyFTB How-To Guides (you will need to update your bookmarks).

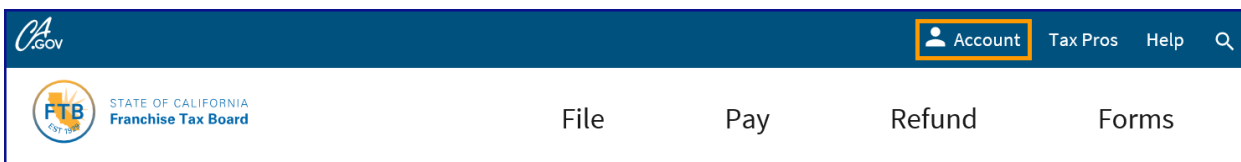
MyFTB How-To Guides provide step-by-step instructions for the most commonly used key functions in MyFTB. Topics include, How-To:

- Submit a Power of Attorney (POA) Declaration
- Add a Client to Your Client List
- And much more

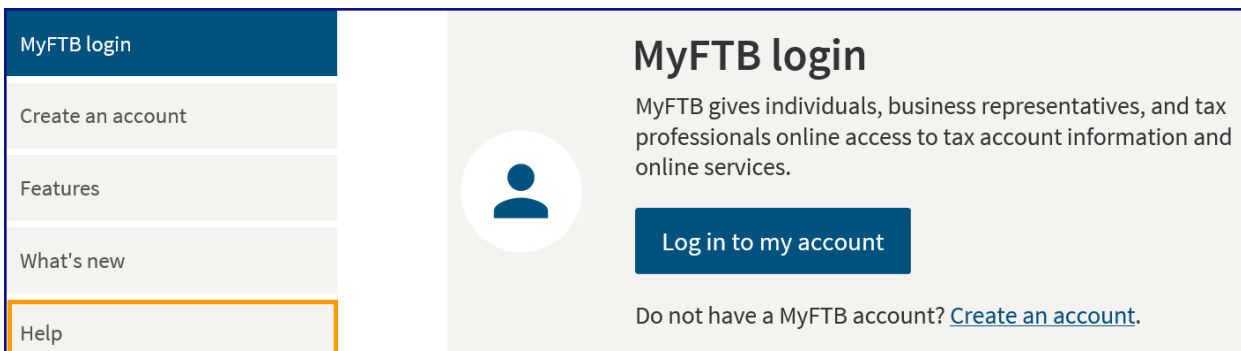
To view the list of available MyFTB How-To Guides for tax professionals, go to [ftb.ca.gov](http://ftb.ca.gov), and follow the steps below.

### Steps

Step 1: Select the Account link from the blue vertical bar that runs across the top of the page.



Step 2: Select the Help link from the MyFTB login menu on the left-hand side of the MyFTB account page.



Step 3: Select the How to guides link in the On this page section on the MyFTB Help page.

## On this page

- [Registration](#)
- [Activate your account](#)
- [Login](#)
- [How to guides](#)
- [Contact us](#)

Step 4: Select the MyFTB how-to guides link in the How to guides section of the MyFTB Help page.

## How to guides

We provide how-to guides for individuals, business representatives, and tax professionals. Topics include how to register, submitting a Power of Attorney Declaration, and more.



Visit [MyFTB how-to guides](#) if you need more detailed help using MyFTB.

Step 5: Select the Tax professional link in the On this page section on the How to guides page.

## On this page

- [Individual](#)
- [Business representative](#)
- [Tax professional](#)

Step 6: View the list of available *MyFTB How-To Guides* for Tax Professionals in the Tax professional section on the How to guides page and select the *How-To* guide link you are looking for.

Note: MyFTB How-To guides display as a PDF and open with a Bookmarks menu to the left of the page.

## All About Business

### More about the LLC fee

In our March 2019 All About Business article, [Schedule IW, Limited Liability Company \(LLC\) Income Worksheet](#), we addressed the use of the Schedule IW to calculate an LLC's "Total California Income" to determine the amount of the LLC fee. We also explained 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.

In that article we explained a very common error is to enter the figure from line 23 of the Form 568, Schedule B, onto line 1 of the Form 568, which in many cases causes us to increase the LLC fee amount when processing Form 568. Form 568, line 1 should not contain the figure from line 23 of the Form 568 Schedule B, but instead must match the amount from line 17 of the LLC Income Worksheet Schedule IW.

We also stated that, in many instances, a parent LLC will incorrectly include total income from a lower-tiered single-member limited liability company (SMLLC) that is a disregarded entity without backing it out, and pay the fee only at the parent level. We also stated that, in many instances, a parent LLC will incorrectly include total income from a lower-tiered SMLLC that is a disregarded entity without backing it out, and pay the fee only at the parent level. As discussed in our March 2019 article, the SMLLC pays the fee at the SMLLC level and the parent LLC are to exclude receipts that were already subject to the fee.

We have received several calls asking about the proper calculation of a parent LLC's fee when the parent LLC owns an SMLLC that is a disregarded entity. SMLLC level and the parent LLC excludes receipts that were already subject to the fee.

### Filing requirements

Under California law, every LLC doing business and subject to tax under Revenue and Taxation Code (R&TC) Section 17941 is required to file a form 568. Additionally, a SMLLC that is disregarded for federal income tax purposes is still subject to the annual LLC tax under R&TC Section 19741, the LLC fee under R&TC Section 19742, and LLC return requirement under R&TC Section 18633.5 for California tax purposes. (R&TC Section 23038(b)(2)(B)(iii)).

A SMLLC subject to the annual LLC tax is required to file Form 568 and complete Schedule IW. Disregarded SMLLC's that do not meet the filing requirements to complete Schedule B or Schedule K are required to prepare a Schedule IW by entering the California amounts attributable to the disregarded SMLLC from the member's federal Schedule B, C, D, E, F (Form 1040) if the member is an individual, Form 1120/1120-S if the member is a corporation, or additional schedules associated with other activities. For example, if a SMLLC has IRC Section 1231 gains, the SMLLC will need to get the amount from the schedule containing that information, such as Form IRS 4797 or FTB Schedule D-1 (540), and enter the amount on line 14 of the Schedule IW.

If the LLC conducts business within and outside of California, the LLC must assign its total income on Schedule IW, item by item, to California.

#### LLC fee

If an LLC will have "total income" of \$250,000 or more, the LLC will have to pay a fee. As discussed further below, LLCs must estimate and pay the fee by the 15th day of the 6th month of the current tax year.

#### California Income Rounded

If the total California income rounded to the nearest whole dollar is:	The fee amount is:
\$250,000 - \$499,999	\$900
\$500,000 - \$999,999	\$2,500
\$1,000,000 - \$4,999,999	\$6,000
\$5,000,000 or more	\$11,790

When it comes to determining the LLC fee that the parent LLC will pay, the law states “total income from all sources derived from or attributable to this state' shall not include allocation or attribution of income or gain or distributions made to a limited liability company in its capacity as a member of, or holder of an economic interest in, another limited liability company if the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income that is subject to the payment of the fee described in this section.” (See R&TC Section 17942, subdivision (b).)

LLCs with an ownership interest in a pass-through entity other than an LLC, e.g., a general or limited partnership interest, must report their distributive share of the pass-through entity’s “total income from all sources derived from or attributable to this state.”

The fee imposed by R&TC Section 17942 is to be estimated and paid on or before the 15th day of the 6th month of the current taxable year. (See R&TC Section 19742(d)(1).) This generally is June 15<sup>th</sup> as most LLC are required to file on a calendar year. For fiscal year LLCs, the estimated fee is due on the 15th day of the sixth month of the current fiscal year.

A penalty of 10% of the amount of any underpayment by law is to be added to the fee. (See R&TC Section 19742(d)(2).) There is no reasonable cause exception to the imposition of this penalty. The law provides an exception, which states, “A penalty shall not be imposed with respect to any fee estimated and paid under this section if the amount paid by the date prescribed in this subdivision is equal to or greater than the total amount of the fee of the limited liability company for the preceding taxable year.”

When making estimated fee payments, LLCs should use Estimated Fee for LLCs ([Form 3536](#)). LLCs also have the option to pay by using [Web Pay for Businesses](#) or registering for a MyFTB account.

## Event Calendar

As part of education and outreach to our tax professional community, we participate in many different presentations and fairs. We now provide a [calendar](#) that shows the events we attend, as well as other events happening with us, such as interested party and board meetings.