

**ADDRESSING GAPS IN CURRENT NOTICE PROCEDURES: THE CASE FOR AN
AUDIT RECONSIDERATION PROGRAM FOR CALIFORNIA TAXPAYERS AND
CERTIFIED MAIL NOTICES¹**

Frank E. Medina

Reed Smith LLP

And

Saba S. Shatara

Reed Smith LLP

¹ The comments contained in this paper are the individual views of the authors who prepared them, and do not represent the position of the California Lawyers Association or of the Taxation Section.

I. INTRODUCTION

California's current audit notice procedures present significant challenges for taxpayers and the state alike. When taxpayers do not receive or inadvertently miss audit determination notices from state tax agencies such as the Franchise Tax Board (FTB) or the California Department of Tax and Fee Administration (CDTFA) they are often left without a meaningful administrative avenue to dispute the result of assessments. In these situations, taxpayers are typically required either to pay the assessed deficiencies in full and seek refund or initiate costly and time-consuming litigation to defend their filing positions and recover amounts they believe are incorrect.

In these instances, the lack of an accessible administrative remedy not only places an undue burden on taxpayers—many of whom may have missed notices due to address changes, mail delivery issues, departmental processing errors, or other circumstances—but also increases the administrative and legal costs borne by the state. The absence of a formal process for reconsidering audit assessments after the initial notice period has expired leads to more cases being escalated to state courts or the Office of Tax Appeals, further straining public resources, and undermining public trust in the fairness of California's tax system.

Additionally, the process for notice used by California tax agencies has the potential to exacerbate these issues. FTB and CDTFA rely primarily on regular mail as the primary method to transmit audit determination notices, and do not require certified or otherwise trackable mail that ensures receipt by the taxpayers, even though these notices provide strictly construed statutory response deadlines. This design results in significant risks that taxpayers may miss notices and are unable to exercise their rights to appeal for ordinary, non-negligent reasons. Together, the lack of a certified mailing requirement for assessment notices, and the lack of an administrative remedy for missed-notice disputes results in a system that lacks the guardrails that would prevent avoidable disputes at the outset and conserve public resources.

To address the identified gaps in California's current tax administration procedures, this proposal recommends the creation of a statewide audit reconsideration program and the implementation of a certified mail requirement for high-dollar audit notices. These reforms seek to promote administrative efficiency, alleviate costs for taxpayers and the state, and increase public trust in the state's tax administration.

II. BACKGROUND

a. California Tax Agency Notice Procedures

Both the FTB and CDTFA generally rely on regular mail to communicate final determinations, assessments, and appeal rights.² In fact, only in 2022 did FTB's three-member Board require that notices of action on proposed deficiencies of \$100,000 or greater be mailed with a proof of mailing known as a certificate of mailing.³ While this is a step in the right direction to show that mailing

² Cal. Rev. & Tax Code §§ 6486, 19033.

³ FTB Board Resolution 2022-01, September 26, 2022.

did, in fact, occur, it does not provide any proof of the receipt of such mailing by the taxpayer. Further, this action applied only to proposed deficiencies and does not address the denial of claims for refund—a notice which also provides appeal rights—of similar value.

Additionally, while both agencies offer online portals—myFTB and CDTFA Online Services—to view notices and communicate with auditors, enrollment is not automatic, the systems occasionally experience technological gaps and/or errors, and many taxpayers, particularly those without representation, may not be aware of portal activity or lack access.⁴

After conducting an audit and reaching audit determinations, the FTB and CDTFA send notices to taxpayer's last known address by regular mail.⁵ Deadlines to respond vary by agency and notice type, but are typically short and strictly construed. For example, the statute relevant to CDTFA actions provides a 30 day period for taxpayers to petition for redetermination after service of a notice, while the statute relevant to FTB actions provides 60 days to protest an income/franchise tax assessment from the date a notice is mailed.⁶ If no response is received within the prescribed window, the assessment becomes final and taxpayers are billed for the assessment amounts, including applicable penalties and interest.⁷

Although the Taxpayer's Bill of Rights provides statutory authority for both agencies to implement procedures that promote fair tax administration, and both agencies have Taxpayer's Rights Advocate offices tasked with ensuring access to relief mechanisms when standard procedures fail, there is no uniform, efficient administrative processes to assess cases where taxpayers miss audit determination notices.⁸ Accordingly, taxpayers must pay the billed amount before seeking further recourse by way of a refund, if the statute of limitations for the assessed tax year remains open, which restarts the audit review process for the assessed years.⁹ If taxpayers fail to pay the billed amounts, interest continues to accrue and further penalties may be assessed.¹⁰ Continued failure to pay will result in the agencies initiating collections proceedings, and imposing collection recovery fees on taxpayers, creating additional hardship.¹¹

b. IRS Notice Procedure and Audit Reconsideration Process

As a point of comparison, the Internal Revenue Service (IRS) uses similar mechanisms to provide notices. Specifically, the IRS is authorized to send notices of audit and deficiency to taxpayers by regular or certified mail.¹² Upon receipt of a notice of deficiency, taxpayers generally have 90 days

⁴ See FTB Pub. No. 985 (2025) and CDTFA Pub. No. 76 (2024).

⁵ *Id.*

⁶ Cal. Rev. & Tax Code §§ 6561, 19045.

⁷ See FTB Pub. No. 985 (2025) and CDTFA Pub. No. 54 (2024).

⁸ See Cal. Rev. & Tax. Code §§ 21001–21028 (Franchise Tax Board); §§ 7080–7099.1 (California Department of Tax and Fee Administration) (establishing taxpayer rights and empowering agencies to adopt procedures that protect due process, including mechanisms for dispute resolution and reconsideration of assessments).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See CDTFA Pub. No. 54 (2024) and Cal. Rev. & Tax Code § 19254(a). See also *Appeal of Auburn Old Town Gallery, LLC*, OTA Case No. 18093759, at 5 (Cal. Office of Tax Appeals Oct. 15, 2019) (precedential) (holding that the Franchise Tax Board is statutorily required to impose collection cost recovery fees once notice has been given and payment is not timely made, and that it has no authority to abate or modify the fee regardless of taxpayer circumstances).

¹² I.R.C. § 6212

to appeal the deficiency by filing a petition with the U.S. Tax Court. The Internal Revenue Code broadly empowers the IRS to abate the unpaid portion of any assessed tax or related liability that is (1) excessive, (2) assessed after the applicable limitations period has expired, or (3) erroneously or illegally assessed.¹³ Pursuant to this authority, the IRS has implemented an Audit Reconsideration process to reevaluate the results of a prior audit.¹⁴ This process provides relief to taxpayers who do not respond to audit communications and who have missed the window to petition the Tax Court.¹⁵ Crucially, the IRS provides that an audit reconsideration request can be made any time after an examination assessment has been made, and the assessment remains unpaid.¹⁶

Taxpayers may submit a reconsideration request without the need for a special form, though Form 12661 is recommended to clarify disputed issues.¹⁷ Upon receipt, the IRS delays any collection activities for the duration of the reconsideration process.¹⁸ Each issue is considered separately, and the IRS will notify the taxpayer of the outcome, which may result in full or partial abatement of the tax, or a determination that the assessment stands.¹⁹ The process is designed to be accessible, with clear communication of taxpayer rights and defined timelines for acknowledgment and review, ensuring fairness and due process without requiring payment of the tax or immediate recourse to litigation.

III. PROBLEM PRESENTED

The current procedures of the FTB and CDTPA of using predominately regular mail supplemented by agency portal communications to transmit notices of assessments to taxpayers, and the lack of an administrative safety-valve for taxpayers who did not receive crucial correspondence produce recurring, preventable failures.²⁰ Further, the use of regular mail (and in some limited cases certificates of mailing) rather than certified mail also increases the risk that taxpayers miss notices, by failing to provide a delivery confirmation mechanism. Agency portals mitigate this risk, but only if taxpayers are enrolled and check the portal, the portal functions perfectly, or if taxpayers have correctly linked access for their representatives. Federal oversight reports link missed deadlines and unresponsive taxpayers to process features such as combined or abbreviated letters, limited phone outreach, and reliance on outdated addresses, all of which elevate the risk that taxpayers never meaningfully participate in their audit.²¹ High abatement rates in such cases

¹³ I.R.C. § 6404(a). The

¹⁴ I.R.M. 4.13.1.2

¹⁵ See IRS Publication 3598. Although the IRS Audit Reconsideration process also provides relief in other circumstances, such as when taxpayers have new information to present that was not provided during the original audit, or simply if they disagree with audit results in audits to which they participated and responded, this proposal is solely focused on the Audit Reconsideration process as a safety valve for taxpayers who failed to receive audit determination notices and as a result did not have a meaningful opportunity to exercise their right to appeal.

¹⁶ IRS Publication 3598.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See *Appeal of Baez*, OTA Case No. 18010672, at 2–6 (Cal. Office of Tax Appeals Mar. 27, 2020) (nonprecedential); *Appeal of Black*, OTA Case No. 18011163, at 6–7 (Cal. Office of Tax Appeals Aug. 15, 2018) (nonprecedential) (both cases illustrate how failure to respond to audit-related notices sent via regular mail can result in penalties and reduced refunds, even when the underlying tax liability is later resolved, underscoring the procedural rigidity and financial hardship that can arise from missed correspondence).

²¹ National Taxpayer Advocate, 2007 Annual Report to Congress 289.

indicate that earlier, reliable notice would have produced more accurate outcomes at lower cost.²² This federal data highlights systemic reports that are likely mirrored in California tax administration given reliance on similar notice procedures.

The current design also imposes all-or-nothing consequences after short deadlines: once the notice response period lapses, assessments becomes final and collection activity may begin.²³ As a result, taxpayers who never had a meaningful chance to be heard must pay their assessments first and request refunds that will initiate another audit process, or retain counsel and commence litigation—options that are often inaccessible for many affected taxpayers.²⁴

While the state does not publicize data on the number of correspondence audits that go unanswered by taxpayers, Federal data shows that in FY 2019, 44% of the reconsiderations requested from correspondence audits were from audits closed without responses from taxpayers.²⁵ Further, the data shows that these problems disproportionately affect low-income taxpayers. In FY 2019, the IRS closed 35% of audits on individual taxpayers with income below \$50,000 without a response from the taxpayer.²⁶ More alarmingly, 14% of non-responsive audits on low-income individuals are attributable to audit notices that were returned as undeliverable, meaning these taxpayers were likely entirely unaware they were under audit.²⁷

This design is also inefficient for the state. Because there is no statewide standard for post-deadline administrative reconsideration and no requirement for certified or otherwise delivery-confirmed mail on high-dollar notices, the system lacks guardrails that would prevent avoidable disputes at the outset and conserve public resources. The lack of a predictable, efficient administrative avenue to correct missed-notice situations or to submit new documentation increases administrative and litigation costs, resulting in duplicative audits or actions in state court even where the underlying issues could be resolved through straightforward documentation review.

Finally, there is an erosion of trust: perceptions that taxpayers can lose their day in cost-friendly administrative procedures because of a missed piece of mail—rather than the merits of their case—undermines the fairness of outcomes and confidence in California’s tax administration system. In short, the current notice-and-deadline framework lacks a standardized, guaranteed administrative safety valve for taxpayers who missed notices or who can provide material information that they were unable to provide at audit. This gap elevates costs for taxpayers and the state, contributes to unnecessary litigation, and weakens public trust.

IV. PROPOSAL

This proposal advances a two-part reform to deal with these shortcomings: (1) a statewide audit reconsideration program, and (2) a requirement to use certified mail for high-dollar final determination notices. Together, these reforms may increase collection efficiency, provide a cost-

²² National Taxpayer Advocate, 2007 Annual Report to Congress 289; see also William P. Wiggins, Audit Reconsideration: An Effective, Low-Cost Means of Resolving Disputes with the IRS, *J. Tax Prac. & Proc.* 51, 52–54 (Aug.–Sept. 2008)

²³ See FTB Pub. No. 985 (2025) and CDTFA Pub. No. 54 (2024).

²⁴ *Id.*

²⁵ National Taxpayer Advocate, 2022, Annual Report to Congress 157.

²⁶ National Taxpayer Advocate, 2022, Annual Report to Congress 153.

²⁷ *Id.*

effective pathway to resolve missed notice cases, conserve judicial and agency resources, and promote accurate audit outcomes.

a. Establishing a Uniform Audit Reconsideration Program

California should adopt a statewide administrative reconsideration program, modeled on the IRS's Audit Reconsideration Process, and implement it consistently across FTB and CDTFA. The program would provide a clear, tested mechanism to resolve disputes on the merits after an assessment has become final due to missed notices or newly available information.

The proposed California program would offer a post-assessment administrative review in situations where a taxpayer did not receive or did not respond to an audit notice, failed to participate or provide information in audit procedures, or failed to act on a notice of determination within the statutory response period. To facilitate this process, taxpayers could submit requests via secure digital upload, mail, or fax, using a simple standardized form modeled on Form 12661 to identify disputed issues, tax periods, and the specific changes requested. Requests would include new information not previously evaluated, a credible explanation of non-receipt of notices, or identification of a clear error.

To increase efficiency in collection proceedings and avoid the reconsideration process from becoming a bureaucratic barrier to collections, taxpayers wishing to enter the reconsideration process would be required to place a deposit in escrow corresponding to a percentage of their assessment. Upon receipt of a facially complete request, active enforced collection actions, such as new liens or levies, would be paused while the request is pending, ensuring that these costly procedures are only initiated for actions that are finalized.

b. Require Certified Mailing for High-Dollar Notices

To reduce missed-notice disputes at the source, California should also require certified mail (or equivalent trackable delivery) for initial proposed assessments, as well as claim for refund denials and other notices with time-sensitive deadlines to begin/continue the administrative or judicial controversy process. To reduce the cost increase of this proposal, this requirement should apply to notices proposing or finalizing liabilities above a threshold set by statute or regulation—for example, \$20,000 for individuals and \$100,000²⁸ for businesses, adjusted for inflation—while allowing agencies flexibility to use certified delivery in other high-risk contexts.

V. RATIONALE

The following sections provide rationales for each of the respective proposals contemplated in this article.

a. Establish a Uniform Audit Reconsideration Program

The proposed audit reconsideration program would yield significant cost savings for both taxpayers and the state. First, it would provide an administrative remedy for taxpayers with issues that require simple resolution. As Federal data shows, 16,723, or 94% of the audit reconsiderations

²⁸ Note that this \$100,000 for businesses is consistent with FTB Board Resolution 2022-01; however, the Legislature may wish to undertake an economic analysis of the values for which this is appropriate both in the individual and corporate contexts when the denial of claims for refund are taken into account.

conducted by the IRS in FY 2019 resulted from correspondence audits, and 44% of these were from non-responsive audits.²⁹ This data suggests that implementing a similar program in California could serve as a cost-effective forum for taxpayers to handle simple disputes.

In turn, syphoning simple disputes into the reconsideration program could have the added benefit of reducing strain on the state's administrative appeal and judicial system by preserving such resources for substantive issues. The proposed program may have a similar effect on the resources of the FTB and CDTFA's refund units, eliminating the need for a duplicative audit review of claims associated with missed correspondence. Further, by pausing liens, levies and collections proceedings during reconsideration, the state will ensure that these proceedings are implemented judiciously and cost-effectively, and avoid sunk costs for collection efforts that may later be reversed.

The proposed program will also allow taxpayers a meaningful opportunity to participate in audit procedures and avoid unnecessary penalties, ensuring due process and confidence in the fairness of audit outcomes.³⁰ By allowing taxpayers to submit new documentation or clarify errors after an assessment becomes final, the program ensures that tax liabilities are based on substantive facts rather than procedural mistakes. It levels the playing field for individuals and businesses who may have missed notices due to circumstances beyond their control, such as mail delivery failures or outdated agency records. Moreover, it reinforces the principle that fairness in tax administration requires not just adherence to deadlines, but a genuine opportunity for taxpayers to engage with the process and correct mistakes before facing enforcement.

b. Require Certified Mailing for High-Dollar Notices

First, implementing this proposal is consistent with California administrative practice. Several California state agencies outside of the tax administration sphere rely on certified mail for official communications where legal proof of delivery is essential. The Department of Motor Vehicles (DMV) routinely uses certified mail to notify individuals of driver's license suspensions, revocations, and administrative hearings, ensuring that recipients are formally and verifiably informed of actions that may affect their driving privileges.³¹ The Employment Development Department (EDD) may also use certified mail when communicating about benefit overpayments, fraud investigations, or appeals, particularly when deadlines or penalties are involved.³² Additionally, agencies such as the Department of Consumer Affairs, Department of Social Services, and state courts employ certified mail to serve summons, subpoenas, disciplinary notices, and other legal documents that require a documented chain of custody and recipient acknowledgment.³³ In these contexts, certified mail serves not only as a compliance tool but also as a safeguard against disputes over non-receipt, helping agencies enforce statutory timelines and maintain procedural integrity.

²⁹ National Taxpayer Advocate, 2022 Annual Report to Congress 157.

³⁰ National Taxpayer Advocate, 2007 Annual Report to Congress 289; see also William P. Wiggins, Audit Reconsideration: An Effective, Low-Cost Means of Resolving Disputes with the IRS, *J. Tax Prac. & Proc.* 51, 52–54 (Aug.–Sept. 2008).

³¹ See e.g., Cal. Code Regs. § 551.24.

³² Cal. Ins. Code § 1206

³³ See e.g., Cal. Civ. Proc. Code § 1013.

Next, requiring certified mail for high-dollar audit notices and claim for refund denials would significantly enhance procedural fairness and administrative efficiency in California's tax system. Certified mail provides proof of delivery and establishes a presumption of receipt, which is critical for enforcing statutory deadlines and ensuring that taxpayers are properly notified of proposed assessments and claim denials. Unlike regular mail or certificates of mailing, which lack tracking and confirmation of receipt, certified mail ensures that taxpayers receive timely and verifiable notice, reducing the incidence of missed deadlines due to mail errors or outdated addresses.³⁴ When paired with a statewide audit reconsideration program, this requirement would create a complementary system of front-end and back-end safeguards: certified mail would reduce the number of disputes arising from non-receipt, while reconsideration could offer a structured remedy for those who nonetheless fail to respond. Together, these reforms could divert routine disputes from judicial forums and the refund process, allowing taxpayers to resolve issues administratively at the agency level through documentation rather than controversy procedure.³⁵ This would conserve judicial resources, reduce duplicative audits, and minimize the need for costly refund claims that require full payment and reexamination of the original assessment. In short, certified mailing and audit reconsideration work in tandem to ensure that disputes are resolved based on substance rather than procedural default, promoting fairer outcomes and more efficient collections.

VI. CHALLENGES TO IMPLEMENTATION

Both proposals entail incremental costs of implementation. An audit reconsideration program will require new procedures, staff training, standardized intake and screening, and an increase in auditor caseload. Certified mailing will add postage and handling expenses for high-dollar notices and may require modest systems changes to capture delivery data.

However, these are targeted, front-end investments. By investing in accurate first-touch notice and a calibrated backstop for post-deadline corrections, California can redirect resources from expensive rework to higher-value compliance activity. The anticipated offsets are substantial. High abatement rates in IRS Audit Reconsideration demonstrate that many initial assessments are materially revised when taxpayers are able to present information, which means earlier correction reduces futile collection actions, protests over erroneous liabilities, and litigation risk. In parallel, certified mailing for high-value assessments will provide verifiable service, which will reduce the volume of assessments under reconsideration. In short, the incremental costs of training, postage, and minimal systems work are outweighed by avoided rework, improved collections on correct liabilities, and enhanced procedural safety.

By pairing enhanced notice procedures with a safety valve for reconsideration, these two proposals work in tandem to improve accuracy, equity, and administrative efficiency in California's tax system. Certified mailing reduces the incidence of missed participation at the front end; audit reconsideration provides a principled backstop when, despite best efforts, errors or non-receipt still occur.

³⁴ U.S. Gov't Accountability Off., *U.S. Postal Service: Mail Delivery Efficiency Has Improved, but Additional Actions Needed to Achieve Further Gains*, GAO-09-696, at 11–24 (2009), <https://www.gao.gov/products/gao-09-696> (describing systemic delivery inefficiencies and lack of tracking in regular mail, which contribute to missed correspondence and procedural barriers—issues likely mirrored in California's tax administration).

³⁵ National Taxpayer Advocate, 2022, Annual Report to Congress 153-157.

VII. CONCLUSION

California's tax system functions best when assessments reflect accurate facts, taxpayers have a real opportunity to be heard, and agencies can collect efficiently with public confidence. Today's notice-and-deadline regime, absent a uniform administrative safety valve and a trackable delivery mechanism, too often forces missed-notice taxpayers into costly recourse procedures or hardship, while also straining state resources.

A statewide audit reconsideration program—paired with certified mailing for high-dollar notices—offers a practical, proven solution. It would reduce costs for taxpayers and the state, divert routine disputes from the courts, safeguard due process for those who missed notices through no fault of their own, and strengthen trust in California's tax administration. By implementing a clear, accessible process modeled on federal best practices, California can deliver timely corrections, fair outcomes, and more effective collections—advancing both administrative efficiency and the public's faith in the system.