

## California: Taxpayer fails to get name off tax delinquency list



David M. Kall | Thursday, September 1, 2016

California [law](#) requires the state's Franchise Tax Board (FTB) to publish, twice per calendar year, a list of the 500 largest tax delinquencies in excess of \$100,000. The law defines a tax delinquency a total amount owed to the state for which there is a notice on record with the county recorder's office.

Each year, the FTB posts notice on its website about its process. This year, in April, the FTB's [bulletin](#) informed the public that it would be mailing 500 *Notice of Public Disclosure of Tax Delinquency* letters on Aug. 12, 2016, and that it intends to publish this information on its website during the week of Oct. 3, 2016. The bulletin also warns that taxpayers appearing on the list are subject to having their occupational, professional, and driver licenses suspended by the issuing agencies. What is more, state agencies are precluded from entering into contracts for the acquisition of goods or services with taxpayers on the list.

Not surprisingly, this policy is controversial. In one lawsuit, the [appeal](#) of which concluded in July, a taxpayer who is an attorney licensed to practice in California, received a notice of delinquency in the amount of \$242,000. He petitioned the court for an order demanding that the FTB cease publishing his name on the list.

In his initial complaint, filed in federal court in March 2014, the taxpayer claimed his name should not have been on the list, and that the publication violated his federal constitutional rights, including his rights under the Privileges and Immunities Clause of the 14th Amendment; his substantive and procedural due process rights; and his right to equal protection. The trial court dismissed the case in favor of the FTB

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because the taxpayer failed to assert sufficient facts that, if shown to be true, would entitle him to legal relief.

In March 2015, the taxpayer filed a second action against the same defendants, again seeking removal of his name from the delinquency list. But this time he justified his demand on his right to privacy under the state's constitution.

The appellate court affirmed the trial court's conclusion that the second action was both frivolous and groundless, and also agreed with the trial court's \$5,000 sanction, pointing out that the taxpayer could have brought all his claims in the first lawsuit. This is because both actions involved the same parties, stemmed from the same set of operative facts, and most importantly, the claims in both suits involved the same primary right, that is, the right not to have his name and other personal information placed on the List. The court characterized the taxpayer as an experienced litigator who had no excuse for not knowing this. Making clear its disapproval, the trial court noted that the tactic "suggest[ed] a premeditated effort... to reserve a second bite at the apple."

As for the trial court's sanctions against the taxpayer, the appellate court stated that the taxpayer's conduct "rais[ed] more questions than it answer[ed]," because a "reasonable attorney looking at the applicable law and the shared facts in the First and Second Actions would not have instituted the Second Action after the First Action was dismissed."



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