



Tax News

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Administrative remedies if the post amnesty penalty is miscalculated.

A recent change in the law allows taxpayers to file a claim for refund for amounts paid in connection with the amnesty penalty, on the issue that the penalty was computed incorrectly (R&TC Section 19777.5(e)(2)).

A taxpayer cannot file a formal protest of the post amnesty penalty before payment. Although there are no formal prepayment protest rights, FTB will administratively review and correct the penalty before payment, if the taxpayer believes that it was computed incorrectly. Here are the steps you should take if your client believes the penalty was computed improperly:

- If your client is under audit, or has filed a protest or appeal, please notify the auditor or hearing officer, who will review the computation. Note that the post amnesty penalty is not actually computed or imposed until there is a final, due, and payable amount determined for the tax year. Amounts shown on proposed assessments, protests, or deficiency appeals are only estimated amounts that may not take into account payments, other adjustments or interest netting allowed by R&TC Section 19777.5(a)(3).
- If your client is neither under audit, nor has filed a protest or appeal, please contact us. You can reach us Monday through Friday, from 7 a.m. until 7 p.m., at (800) 852-5711 within the United States, or (916) 845-6500 from outside the United States.
 - When you call, please have available your client's name, taxpayer identification/corporation number, address, the assessed penalty amount, and the tax year. We will review the penalty computation, and make any necessary adjustments.

Nonfiling notices in the mail to businesses

On May 15, FTB sent notices to business entities that have not filed a required California income tax return. In the coming weeks, we will mail notices to other businesses identified as having a filing requirement that have not filed the required returns.

Notices are sent to nonfilers that are doing business in California, or deriving income from California sources. They are based on income information received from the Internal Revenue Service, Board of Equalization, and Employment Development Department.

The quickest way to respond to our notice is through our secure [public Website](#) to file returns, resolve problems, get information, or download forms. You can also call our Interactive Voice Response phone system at (866) 204-7902.

Tips for filing nonresident group return (Form 540NR)

A business entity, acting as the authorized agent, may choose to file a group nonresident return for certain nonresidents. To participate, nonresidents must receive distributive shares of income from business entities that derive income from California sources, or that are doing business in California. The business entity pays the tax on behalf of the nonresident individuals who elect to file a group return.

A group nonresident return is considered a group of individual returns that meets the California individual income tax return filing requirement. Thus, a qualified nonresident individual who elects to be included in the group nonresident return is not required to file a separate income tax return for the tax year.

If your clients filed as part of a group nonresident return, you may have observed that the complex rules and requirements often result in special handling. To expedite processing of nonresident group returns:

- 1. Don't include taxpayers whose California taxable income exceeds \$1 million.**

For taxable years beginning on or after January 1, 2005, these cannot be included in the group nonresident return, as they are subject to the Mental Health Services Tax and must file separate from the group.

A married couple should not be part of a group return if they filed a federal tax return, and either spouse has California income over the \$1 million threshold. The couple is required to file a joint California nonresident return.

- 2. Use the right form, for the right tax year.**

Do not use a 2004 form with the "04" crossed out and replaced with "05." You can get current and prior year forms from our Website (www.ftb.ca.gov).

- 3. Use a calendar year for the group nonresident return, even if the business has a fiscal year end.**

You should also make any estimated tax payments on a calendar year basis.

- 4. Use Form 540-ES to make estimated tax payments for the group nonresident return.**

Estimate payments made for a nonresident group return must be made on FTB Form 540-ES. Estimated tax payments made on Form 100-ES, Corporation Estimated Tax, will not be properly credited to the group nonresident return, but will be credited to the corporate account. Please see the example in FTB Pub. 1067 for detailed instructions on how to complete the estimate voucher.

- 5. Use long Form 540NR and attach the Schedule 1067A and a signed Form 3864 for the correct tax year.**

The California Nonresident or Part-Year Resident Income Tax Return (long Form

540NR) is required for filing a nonresident group return. The following forms must be attached to the return:

- Schedule 1067A *Nonresident Group Return Schedule*
- Form 3864 *Group Nonresident Return Election*

An authorized general partner, member-manager, corporate officer, or an attorney-in-fact **must sign** Form 3864. A new election form must be signed and attached each year to each group nonresident return filed.

6. Include only individuals in the group nonresident return.

Partnerships, LLCs, C corporations, S corporations, Estates, or Trusts cannot be included in the group nonresident return. The exception to this is grantor trusts, described under IRC Section 675-677, and not recognized as a separate taxable entity for income tax purposes.

Example: The ABC partnership consists of a general partner and 20 limited partners. The general partner is a C corporation. The limited partners consist of 15 nonresident individuals, an S corporation, a nonresident estate, an LLC, an LLP, and a trust, which is not a grantor trust. One nonresident individual has California taxable income in excess of \$1,000,000. The other 14 nonresident individuals have California taxable income of less than \$1,000,000 each.

Only the 14 nonresident individuals with California taxable income of less than \$1 million can be included in the group return. None of the other partners can be included.

In addition, the individuals must be full-year nonresidents of California, and the only California source income must be from the business entity. If, for example, a nonresident has California source income from a business entity, and from a separate California rental property, this person cannot elect to be included in the group nonresident return.

7. Election to be included in the group nonresident return is irrevocable.

Inform your clients that once a group return is filed, it cannot be amended to either include or exclude a nonresident individual.

8. Income taxed at the highest marginal rate.

The income reported on the group nonresident return is taxed at the highest marginal rate of 9.3 percent.

9. Moving estimated payments.

Use Schedule 1067B to authorize us to move estimated tax payments from either the group to the individual's account, or the individual's account to the group. It will take us six to eight weeks to move the estimated tax payments, and make them available to be claimed on the return.

FTB Pub. 1067 contains information regarding the Group Nonresident Returns. You can get FTB Pub. 1067 along with other California tax forms and publications at www.ftb.ca.gov. You may also call (916) 845-3465 for more information.

Protecting information privacy

We take the privacy of your clients' personal information very seriously. To show our commitment to protecting personal tax information, and using that information responsibly, we adopted the [Information Privacy Principles for Individuals](#) and published it on our Website.

We recently revised our Privacy policy to make easier to read and understand. The revised policy will be published on our Website on July 1, 2006. As an important stakeholder, we are giving you an advance view of the [policy](#) before we publish it on July 1.

Visit our [Privacy policy Web page](#) to view our current policy, or to get more information about privacy issues.

You can find more information about California law that governs the privacy of personal information at www.leginfo.ca.gov/calaw.html (search for Civil Code Section 1798).

We've extended our Collection contact centers hours

The Collection contact centers are now open from 7:30 a.m. to 6:00 p.m. Monday through Friday, to take your calls on personal income tax, business entities Income tax, and lien resolution questions.

Personal income tax collections	(800) 689-4776
Business entities income tax collections	(888) 635-0494
Lien resolution	(916) 845-4350

If your client's case is assigned to a specific collections representative, please contact the assigned representative.

For general tax information, our toll free information service is available from 7:00 a.m. to 6:00 p.m., Monday through Friday. Call (800) 852-5711 within the United States, or (916) 845-6500 from outside the United States (not toll free).

Criminal Corner

We are committed to closing California's \$6.5 billion tax gap, defined as the difference between tax that is owed and tax that is paid. Our special agents work cooperatively with law enforcement agencies throughout California to uncover illegal behaviors that contribute to the tax gap. These include underreporting income, overstating deductions, failing to file returns, failing to pay taxes due, and making illegal cash payments to employees.

Tax fraud is not a victimless crime. You can report suspected tax fraud by calling FTB at (800) 540-3453.

Some of the cases prosecuted in the last couple of months are described below.

San Marino physician faces deportation after sentencing on state tax charges

On April 17, 2006, a San Marino physician was sentenced to three years in state prison, ordered to surrender his medical license, and faces deportation.

Saud S. Rayyis, M.D., 69, pleaded guilty to one felony count of tax fraud in February 2006. According to court documents, Rayyis was involved with a local health care clinic in a staged accident activity scheme. He failed to file his 1998 through 2002 state income tax returns, and claim the more than \$4 million in income he earned for his role in this scheme. All income is taxable, including income from illegal sources.

FTB's nonfiler program contacted Rayyis, to request that he file his delinquent tax returns. Each year FTB receives more than 160 million income records from third parties. FTB matches these income records against its database of tax returns filed. Those who ignore the letter get a tax assessment with added penalties and fees. Those who continue to ignore the billing notices and FTB's collection efforts may face criminal prosecution.

Rayyis will also have to pay fines, restitution, and penalties of up to \$800,000. That amount was frozen in several bank accounts belonging to the physician during the investigation by FTB and the District Attorney's Bureau of Investigation. Rayyis' Mercedes-Benz was seized and a court order freezing an action on his San Marino home was obtained.

Fontana woman arrested on state tax charges

FTB special agents arrested a Fontana woman at her home on May 2, 2006, and charged her with felony counts including tax evasion, filing a false tax return, and fraudulently obtaining refunds.

Judi Ann Templeton, 61, overstated medical and dental deductions on tax returns for her family for 1999 through 2001. She also wrote a series of non-sufficient-fund checks for the purpose of obtaining refunds. During the investigation, FTB discovered that

Templeton's husband and sons were unaware of the alleged false returns or forged checks she was using to obtain the false refunds.

The loss to the state from the scheme is more than \$26,000 plus penalties, interest, and the cost of investigation

Templeton faces felony charges of filing false state income tax returns for herself, husband, and two sons. She is charged with 10 counts of fraudulently obtaining refunds, nine counts of filing false tax returns, and one count of tax evasion. Each felony count carries a maximum sentence of three years in state prison.

San Bernardino woman pleads to felony tax charges

A San Bernardino woman faces sentencing on felony charges for filing a false state tax return, and grand theft.

LaWanda Denise Pllum, 49, fabricated a Wage and Tax Statement (Form W-2) from a school district where she had never worked that resulted in a refund of \$3,060. The personnel technician for the school district stated that Pllum had not worked for them in 2001, nor was a W-2 issued to her.

Pllum was ordered to pay restitution to FTB of \$10,000. She faces 90 days of county jail and three to five years of formal felony probation per the plea agreement. Each felony count can carry a maximum sentence of three years in state prison.

Saratoga woman pleads guilty to grand theft and state income tax evasion

A Saratoga woman pleaded guilty to two felony counts of grand theft and three felony counts of state income tax evasion on May 2, 2006.

Jessica Taylor Aerts, 22, was employed at her father-in-law's vending machine business. According to court documents, Aerts embezzled more than \$425,000 from the business during 2002-2004. Abusing her position of trust, Aerts embezzled cash from the firm's transactions and deposited them into her personal bank account, or spent the money on personal purchases. The scheme was discovered when the business owner confronted her about the theft. Videotape also captured Aerts in the act of embezzlement. She failed to file a state income tax return for any of these years.

Aerts faces a maximum sentence of four years in state prison. The amount of restitution to her victim and FTB will be determined at her sentencing in September.

Valencia couple arrested for tax evasion

On May 11, 2006, a Valencia couple was arrested on felony charges of filing false state income tax returns.

Socorro Lugo Garcia, 48, and Luis Garcia, 48, owned and operated Fantasia Travel in Van Nuys and Panorama City. According to investigators, the couple allegedly failed to

report more than \$919,000 in income for tax years 1999 through 2002 on their state income tax returns.

The Garcias are charged with four counts of filing false returns. Each felony count of tax evasion carries a maximum state prison term of three years. The couple owes FTB more than \$62,000 in unpaid tax.

The Garcias were booked into the Santa Clarita Valley Sheriff Station on \$80,000 bail each.