Tax News
for tax professionals

Tax News

December 2008

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Legislative wrap-up 2008

Here is our annual summary of tax-related legislation enacted this session.

Assembly Bills:

AB 583 (Hancock, Stats. 2008, Ch. 735): Establishes the Fair Elections Fund and places the Voters Fair Elections Fund as a voluntary contribution designation on the personal income tax return beginning with the 2008 return.

AB 1279 (Assembly Budget Committee, Stats. 2008, Ch. 759): Requires the transfer of Franchise Tax Board's (FTB's) duties and authority for the California Child Support Automated System to the Department of Child Support Services effective January 1, 2009.

AB 1389 (Committee on Budget, Stats. 2008, Ch. 751): Does the following:

- Modifies group return filing requirements to allow less than two nonresident individuals, as specified; allows nonresident individuals, as specified, with more than $1 million of California taxable income to be included in the group return and subject to an additional one percent tax on their entire California taxable income.
- Requires personal income taxpayers with estimated tax or extension payments that exceed $20,000 or with tax liabilities of more than $80,000 to remit their payments electronically.
- Adds bail as a type of debt that could be referred by the Courts to FTB for collection.
- Authorizes Department of Industrial Relations to refer assessments and penalties under the California Occupational Safety and Health Administration Targeted Inspection Program to FTB for collection.

AB 1452 (Committee on Budget, Stats. 2008, Ch. 763): Does the following:

- Suspends net operating loss (NOL) deductions for two years, makes the NOL carryover period 20 years, and allows taxpayers a two-year carryback for NOLs from 2011 and later.
- Authorizes FTB to conduct a tax amnesty for the 2003 through 2006 taxable years for corporation and personal income taxpayers. (Repealed by SBX1 28.)
- Requires a limited liability company (LLC) to estimate and pay its LLC fee by a specific date. (Clarified by SBX1 28.)
- Limits the amount of tax credits that may reduce tax for two years, and allows tax credits to be assigned among members of a combined reporting group under the Corporation Tax Law. (Clarified by SBX1 28.)

AB 1812 (Arambula, Stats. 2008, Ch. 160): Extends the repeal date for the California Firefighters' Memorial Fund and the California Peace Officer Memorial Foundation Fund from January 1, 2011, to January 1, 2016.

AB 1935 (Fuller, Stats. 2008, Ch. 324): Establishes the California Ovarian Cancer Research Fund as a voluntary contribution designation on the personal income tax return. This act specifies that the designation may be added to the income tax return when another voluntary contribution designation is removed.

AB 2202 (Caballero, Stats. 2008, Ch. 261): Requires every state agency, upon request from the California Public Employees' Retirement System, to provide information on its employees who are not enrolled as members of CalPERS to carry out administration of the system.

AB 2249 (Niello, Stats. 2008, Ch. 234): Allows a taxpayer to recover an income tax refund that they misdirected to the wrong bank account. Also allows FTB, where necessary, to use its assessment and collection powers to get a misdirected refund back from a third-party who is the unintended recipient of a misdirected refund.

AB 2291 (Mendoza, Stats. 2008, Ch. 328): Establishes the Municipal Shelter Spay-Neuter Fund as a voluntary contribution designation on the personal income tax return. This act specifies that the designation may be added to the income tax return when another voluntary contribution designation is removed.

AB 2518 (Torrico, Stats. 2008, Ch. 330): Establishes the California Cancer Center Research Fund as a voluntary contribution designation on the personal income tax return beginning with the 2008 personal income tax return.

AB 2928 (Spitzer, Stats. 2008, Ch. 752): Authorizes the California Department of Corrections and Rehabilitation to refer restitution orders to FTB for collection and allows the person who is owed the restitution to decline the collection assistance.

AB 3016 (Cook, Stats. 2008, Ch. 645): Revised references within the statute from the California National Guard to the Armed Forces of the United States, and extends the repeal date for the California Military Family Relief Fund from January 1, 2010, to January 1, 2015.

AB 3078 (Assembly Revenue & Taxation Committee, Stats. 2008, Ch. 305): Does the following:

- Allows entities to file a tax return on behalf of certain nonresidents.
- Closes loopholes in current tax withholding on the payments that nonresident individuals and non-California businesses receive from the sale of California real property.
- Extends the statute of limitations for claiming the credit for taxes paid to another state.
- Gives discretionary authority to the Taxpayers' Rights Advocate to grant relief from penalties, fees, or interest imposed on a taxpayer because of erroneous actions of the department.
- Increases the Personal Income Tax estimated tax penalty threshold.
- Clarifies the rules for the elimination from income of certain dividends received.

Senate Bills:

SBX1 28 (Senate Budget Committee, Stats. 2008, First Ex. Sess. 2007-2008, Ch. 1): Does the following:

- Accelerates the amount of estimate tax payments required to be made for taxable years beginning on or after January 1, 2009, and eliminates the option for certain taxpayers to use last year's income tax in calculating estimate payment requirements for current year.
- Repeals Tax Amnesty provisions and penalty, as enacted in AB 1452.

- Enacts a new corporation tax penalty for understatements of tax in excess of $1 million for taxable years beginning on or after January 1, 2003.
- Clarifies the operative date for the requirement to estimate and pay the limited liability company fee of taxable years beginning on or after January 1, 2009.
- Clarifies legislative intent on business tax credit assignment language in AB 1452 for purposes of proper implementation of that section.

SB 31 (Simitian, Stats. 2008, Ch. 746): Makes it a crime to read or attempt to read personal identification documents using radio frequency identification without the owner's knowledge and consent. The crime will be punishable by imprisonment in a county jail for up to one year, a fine of not more than $1,500, or both.

SB 585 (Lowenthal, Stats. 2008, Ch. 382): Specifies that the state Low-Income Housing Credit may be allocated to partners without regard to "substantial economic effect" rules and when losses of partners may be recognized upon disposition of the partnership interest.

SB 797 (Ridley-Thomas, Stats. 2008, Ch. 33): Requires income tax returns prepared by an employee of an exempt tax preparer to be signed by either of the following:

- An exempt tax preparer (Certified Public Accountant, Attorney, or Enrolled Agent).
- A tax preparer that is registered with the California Tax Education Counsel.

SB 1055 (Machado, Stats. 2008, Ch. 282): Allows taxpayers to exclude up to $250,000 of cancellation-of-debt income that results from a discharge of a loan that was used to acquire, construct, or substantially improve the principal residence of the taxpayer. The maximum amount of a loan eligible to be excluded is $800,000, and the exclusion is phased-out for discharged loans that exceed $800,000.

SB 1064 (Hollingsworth, Stats. 2008, Ch. 386): Allows special tax treatment, called disaster loss treatment, for losses sustained as a result of the wildfires and rainstorms that occurred in Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties during calendar year 2007; damage that occurred in the Riverside county during October, 2007, as a result of strong winds; and the wildfires that occurred in May, June, and July, 2008, in Butte, Kern, Humboldt, Mariposa, Mendocino, Monterey, Plumas, Santa Barbara, Santa Clara, Santa Cruz, Shasta, and Trinity Counties to the current list of specified disasters under the personal income tax law and the corporation tax law. In addition, this act adds the July, 2007, Inyo wildfire and July, 2008, rainstorms that occurred in Inyo County to the list of specified disasters.

Specifically, under this act, a taxpayer may elect to claim the loss either in the year the loss occurred or in the year preceding the loss. If a taxpayer elects to take the loss in the preceding year, allows the taxpayer to file an amended return immediately for the prior year.

SB 1101 (Cedillo, Stats. 2008, Ch. 203): Changes the name of the voluntary contribution fund to be shown on the Personal Income Tax return from "Emergency Food Assistance Program Fund" to the "Emergency Food for Families Fund" and extends the repeal date of the Fund from January 1, 2009, to January 1, 2014.

SB 1146 (Cedillo, Stats. 2008, Ch. 345): Requires a city that administers a business tax to provide specific data to FTB and provide annual funding in the Budget Act to reimburse cities for actual costs not to exceed $1 per usable record, adjusted annually for the implicit price deflator, and adds a repeal provision in the event of a determination by the Commission on State Mandates that the reimbursement does not cover a city's costs to provide data to FTB.

SB 1247 (Lowenthal, Stats. 2008, Ch. 521): Consolidates the farmworker housing tax credit (FWHC) program into the state low-income housing tax credit (LIHC) and does the following:

- Repeals the farmworker housing assistance program from the Health and Safety Code.
- Adds new language to the Health and Safety Code requiring the FWHC to be allocated in the same manner as the state low-income housing tax credit.
- Specifies $500,000 annual cap plus any unallocated credit under prior law is for farmworker housing exclusively.
- Provides that if a disaster occurs, nonfarmworker households can temporarily occupy vacant farmworker units.
- Specifies farmworker housing credits that are unallocated or returned be added to the annual credit allocation cap until exhausted.
- Adds a provision that allows FWHCs to be awarded independently of federal LIHCs.

SB 1285 (Corbett, Stats. 2008, Ch. 711): Requires FTB to establish appraisal standards and requirements for the purpose of substantiating the amount of charitable contributions claimed by a seller for conservation land acquired using state funds.

SB 1498 (Senate Judiciary Committee, Stats. 2008, Ch. 179): Makes technical, non-substantive changes to various code sections, including the Revenue & Taxation Code.

SB 1502 (Steinberg, Stats. 2008, Ch. 354): Establishes the Amyotrophic Lateral Sclerosis Research Fund as a voluntary contribution designation on the personal income tax return beginning with the 2008 return.

SB 1696 (Yee, Stats 2008, Ch. 62): Provides, as declaratory of existing law, that a state agency may not allow another party to control the disclosure of information otherwise subject to the Public Records Act.

Tax Relief for Southern California Fire Victims

FTB gives special tax, payment, and filing relief to people and businesses affected by the wildfires in Southern California (FTB announcements - November 19 and November 20, 2008).

Taxpayers affected by the wildfires occurring in the Presidentially declared disaster areas are able to claim disaster losses in the current or prior tax year. Claiming the loss on a 2007 tax return filed earlier this year will allow FTB to quickly issue a refund to the affected taxpayer.

California will match the postponement period announced by the IRS. FTB gives this automatic postponement, to February 11, 2009, without added penalties or interest to affected taxpayers who have tax returns, payments, or other time-sensitive acts otherwise due between November 13, 2008 and February 11, 2009.

The following counties were Presidentially declared disaster areas: Los Angeles, Orange, Riverside, and Santa Barbara. Specifically included were the Tea Fire in Santa Barbara County, the Sayre fire in Los Angeles County, and Triangle Complex (formerly named Freeway Complex) fire in the Orange and Riverside Counties.

Taxpayers claiming the disaster loss should write "Southern California Wildfires 2008" in red ink at the top of their tax return to alert FTB to expedite the refund. If taxpayers are e-filing, they should follow the software instructions to enter the disaster information. Taxpayers can get FTB's amended 2007 tax return or original 2007 tax return at FTB's website, ftb.ca.gov.

FTB can also help disaster victims replace state returns lost or damaged by the fires free of charge. Complete Form FTB 3516, Request for Copy of Tax Return, at ftb.ca.gov and print "Southern California Wildfires 2008" in red ink at the top of the request.

To learn more about disaster losses, refer to publications FTB 1034 *Disaster Loss* at ftb.ca.gov or the IRS 547, *Casualties, Disasters, and Thefts* at irs.gov.

Taxpayers who have questions about their accounts can call FTB toll-free at 800.852.5711, Monday through Friday, from 7 a.m. to 6 p.m.

The Board of Equalization has also granted relief to affected taxpayers. Please refer to their news releases at boe.ca.gov.

FTB Notice 2008-4: BOB and ESOP Resolution

Results for FTB Notice 2008-4: Bogus Option Basis (BOB) and Employee Stock Option Plan (ESOP) Transactions

The terms of FTB Notice 2008-4 allowed certain taxpayers to resolve BOB and/or ESOP transactions that may be subject to the noneconomic substance transaction (NEST) penalty under Revenue and Tax Code Section 19774. The BOB and ESOP resolution began on June 23, 2008, and ended on September 12, 2008.

FTB received 47 closing agreements, resulting in $42.7 million in projected cash revenue. A transactional breakdown reveals that the BOB transaction accounts for 95 percent of projected cash revenue, with the remaining five percent relating to the ESOP transaction.

2009 Southern California IRS/CSEA Practitioner Seminars

The 2009 Practitioner Seminars will be held in six locations around Southern California from January 5 through January 10. Topics will include sessions on compliance activities for FTB, EDD, and BOE, IRS examination priorities, how to handle problems with retirement plans, hot topics for practitioners, preparer penalties, and others. The seminar qualifies for continuing education credits at a very reasonable price. Come hear the latest directly from representatives of IRS, SSA, BOE, FTB, and EDD.

Early bird discount rate has been extended to December 9. For details on locations, cost, and how to register, please go to:

http://www.csea.org/EducationandEvents/2009PractitionersSeminars/tabid/94/Default.aspx

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Home Mortgage Interest Deduction

Audits of tax returns with large home mortgage interest deductions indicate that many taxpayers and tax practitioners are not complying with the rules regarding debt limitations on the deductibility of home mortgage interest.

Home mortgage interest deduction is governed under IRC Section163 (CR&TC Section 17201). To fully deduct the home mortgage interest, the interest must be paid on acquisition or equity debt. The aggregate amount treated as acquisition debt for any period shall not exceed $1 million or $500,000 in the case of a married individual filing a separate return. The maximum aggregate amount of home equity debt for any period is $100,000, or $50,000 in the case of a married individual filing a separate return. Therefore, the aggregate amount of the principal balance of all the mortgage loans used in computing the deductible home mortgage interest may not exceed $1,100,000, or $550,000 in the case of a married individual filing a separate return. The acquisition debt or the home equity debt must be secured by the principal residence of the taxpayer, or one other residence of the taxpayer used as a residence and selected by the taxpayer for the taxable year.

New debt that taxpayers incur to refinance their acquisition indebtedness also qualifies, but only up to the amount of the refinanced debt. The following example illustrates this issue:

Example:

Taxpayer acquires a qualified residence for $500,000 with a $100,000 down payment and a $400,000 mortgage. The $400,000 debt is acquisition indebtedness. After the taxpayer has paid the mortgage down to $300,000 and the home is worth $800,000, the taxpayer refinances with a new $500,000 mortgage. Only $300,000 of this new debt is acquisition indebtedness. However, an additional $100,000 may qualify as home equity indebtedness for a total of $400,000. How much debt can the taxpayer use to compute the deductible home mortgage interest? Only $400,000, not $500,000.

If the remaining mortgage proceeds of $100,000 were not used for business or investment, then all the interest attributable to the $100,000 is personal interest. Personal interest is not deductible.

The Internal Revenue Service Publication 936 provides guidance and a worksheet, which may be used to figure the qualified loan limit and deductible home mortgage interest.

Taxpayers have to figure the average balance of each mortgage to determine their qualified loan limit. They can use the highest mortgage balance during the year, but they may benefit most by using average balances. Two methods discussed below are:

(1) The average of first and last balance.
(2) Average balance computed on a daily basis.

(1) Average of first and last balance method can be used if the following apply:

- Taxpayer did not borrow any new amounts on the mortgage during the year.
- Taxpayer did not prepay more than one month's principal during the year.
- Taxpayer had to make level payments at fixed equal intervals on at least a semi-annual basis.

To determine the average balance of the debt, add the principal balance as of the first day of the taxable year that the debt is secured by the qualified residence and the principal balance as of the last day of the taxable year that the debt is secured by the qualified residence and divide the sum by two. The following example illustrates the computation under the average of first and last balance method.

Modified Example: (Regulation Section 1.163-10T(h)(5)(ii))

C borrows $100,000 in 2000, securing the debt with a second mortgage on a principal residence. The terms of the loan require C to make equal monthly payments of principal and interest so as to amortize the entire loan balance over 20 years. The balance of the debt is $96,520 on 01/01/2001, and is $94,500 on 12/31/2001. The average balance of the debt during 2001 may be computed as follows:

Average Balance: $$\frac{\$96{,}520 + \$94{,}500}{2} = \$95{,}510$$

(2) To determine average balance computed on a daily basis –

Add the outstanding balance of a debt on each day during the taxable year that the debt is secured by a qualified residence, and divide the sum by the number of days during the taxable year that the residence is a qualified residence.

The following example illustrates the average balance computed on a daily basis.

Modified Example: (Regulation Section 1.163-10T(h)(3)(ii))

Taxpayer A incurs debt of $100,000 on 09/01/2003, securing the debt with A's principal residence. The residence is A's principal residence during the entire taxable year. Taxpayer A pays current interest on the debt monthly but makes no principal payments. The debt is, therefore, outstanding for 122 days with a balance each day of $100,000. The residence is a qualified residence for 365 days. The average balance of the debt for 2003 is computed as follows:

Average Balance: $$\frac{122 \times \$100{,}000}{365} = \$33{,}425$$

If the debt is secured by a qualified residence for less than the entire period during the taxable year that the residence is a qualified residence, the average balance may be determined by multiplying the average balance determined under the "average of first and last balance method" by a fraction, the numerator of which is the number of days during the taxable year that the debt is secured by the qualified residence and the denominator of which is the number of days during the taxable year that the residence is a qualified residence. The following example illustrates this scenario:

Example:

Loan #1: In 2005, Taxpayer B incurred acquisition debt of $1,500,000 securing the loan with his principal residence. The beginning balance of the loan on 01/01/2007, was $1,441,260 and the ending balance on 12/31/2007, was $1,419,218. During 2007, Taxpayer B paid mortgage interest of $85,876 on this loan. The terms of the loan require B to make equal monthly payments of principal and interest so as to amortize the entire loan balance over 30 years.

Loan #2: Taxpayer B incurred a debt of $100,000 on 03/01/2007, securing the debt with B's principal residence. On 12/31/2007, the principal balance of the loan is $97,786. The residence is a qualified residence for 365 days in tax year 2007. During tax year 2007, the loan was held for a total of 306 days from 03/01/2007, through 12/31/2007. During 2007, Taxpayer B paid total interest of $4,951 on this loan. The terms of the loan require B to make equal monthly payments of principal and interest so as to amortize the entire loan balance over 20 years.

For 2007, the deductible home mortgage interest is computed as follows:

Average Balance of Loan #1: $\frac{\$1{,}441{,}260 + \$1{,}419{,}218}{2} = \$1{,}430{,}239$

Average Balance of Loan #2: $\frac{\$100{,}000 + \$97{,}786}{2} \times \frac{306}{365} = \$82{,}908$

Aggregate Average Balance: $1,430,239 + $82,908 = $1,513,147

Total Interest Paid on Loans #1 & #2: $85,876 + $4,951 = $90,827

Deductible Home Mortgage Interest: $\frac{\$1{,}100{,}000}{\$1{,}513{,}147} \times \$90{,}827 = \$66{,}028$

Do you need to amend your 2007 tax return? Possibly yes, California's mortgage forgiveness debt relief law applies to 2007.

The California mortgage forgiveness debt relief law (Senate Bill 1055), was enacted after many taxpayers had already filed their 2007 tax return, but covers qualified debt forgiven in 2007 and 2008.

The California mortgage forgiveness debt relief law is similar to federal law, but with important differences.

The California law covers qualified debt forgiven in 2007 and 2008, and it:

- Limits the amount of qualified principal residence indebtedness to $800,000 for taxpayers who file as married/registered domestic partners (RDP) filing jointly, single, head of household, or widow/widower, and to $400,000 for taxpayers who file as married/RDP filing separately.
- Limits debt relief to $250,000 for taxpayers who file as married/RDP filing jointly, single, head of household, or widow/widower, and to $125,000 for taxpayers who file as married/RDP filing separately.

The federal law covers qualified debt forgiven from 2007 through 2012,[1] and it:

- Limits the amount of qualified principal residence indebtedness to $2 million for taxpayers who file as married filing jointly, single, head of household, or widow/widower, and to $1 million for taxpayers who file as married filing separately.
- Does not limit the debt relief amount: it only limits the indebtedness amount used to calculate the debt relief amount.

If you filed your 2007 tax return before October 2008, or you were unaware of this new law, you may have overpaid your 2007 taxes. If you overpaid your taxes, there is a time statute of limitations[2] to request a refund from us. Generally, you can file a refund claim until the later of four years from the due date of the return or one year from the date of overpayment.

If you want to file a claim for refund in order to claim debt relief, you can file a Form 540X, *Amended Individual Income Tax Return*.

If the amount of debt relief for federal purposes is more than the California limit, include the amount in excess of the California limit on Schedule CA (540/540NR) line 21f, Column (C).

If the amount of debt relief for federal purposes is the same as the California limit, no adjustment is necessary on Schedule CA (540/540NR). On Form 540X, simply enter on line 2e, Column (B), the amount originally entered on Schedule CA (540/540NR) line 21f, Column (C).

For more information, go to our website and search for mortgage forgiveness.

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[1] The federal law previously covered debt forgiven from 2007 through 2009. On October 3, 2008, the Emergency Economic Stabilization Act of 2008 (P.L. 110-343) extended the federal period through 2012.

[2] See California Revenue and Taxation Code Sections 19306, 19308, 19311, 19312, and 19313.

CalCPA Liaison Meeting

This year's annual liaison meeting with the California Society of CPAs (CalCPA) was held on October 29, 2008, in Sacramento. The CalCPA members were pleased with the level of FTB participation and the responses to their questions.

After some introductions, FTB's Executive Officer, Selvi Stanislaus addressed budget concerns and succession planning. A lively discussion followed as Legislative Services Assistant Bureau Director Patrice Gau-Johnson, provided an overview of the legislation enacted in 2008, including several budget trailer bills.

Filing Division Chief Anne Miller, walked the group through the 2008 filing season, and gave an overview of what is ahead for 2009. Audit Division Chief Debbie Langsea, highlighted the Audit Program past, present, and future, which included a breakdown of the programs by volume and by revenue.

Legislative Services Bureau Director Brian Putler, and Taxpayers' Rights Advocate Steve Sims, led a discussion about conformity. They expressed that FTB is strongly in favor of conformity and anxious to work with CalCPA as a partner to see the enactment of a conformity bill.

The day ended with a question and answer session where FTB provided responses to questions submitted in advance by CalCPA members.

Get your FREE 2009 IRS Tax Calendar for Small Businesses and the Self-Employed

The 2009 IRS *Tax Calendar for Small Businesses and the Self-Employed* (Pub 1518 and Pub1518SP, Catalog #37263R), available in English and Spanish, is a ready resource to help small business owners meet their tax obligations. The 12-month wall calendar is chock-full of useful information on general business taxes, electronic filing and paying options, retirement plans, business publications and forms, common tax filing dates, and much more.

Each page highlights different tax issues and tips that may be relevant to small-business owners, with room on each month to add notes, state tax dates, or business appointments.

For an online version of the tax calendar, visit IRS.gov (keyword: tax calendar). Copies of the tax calendar can also be ordered online, or by calling the National Distribution Center at 800.829.3676.

To learn about other IRS products and services, subscribe to e-News for Small Businesses. To view a representative sample and to start your **free** subscription to e-News, just go to IRS.gov (keyword: subscription), type in your email address, and submit.

Inside FTB

MyFTB Account service to take brief holiday

To help us prepare for the new tax year, MyFTB Account will be temporarily unavailable on these dates:

- From 5 p.m. Wednesday, December 24, through 7 a.m. Friday, December 26.
- From 5 p.m. Sunday, December 28, through 7 a.m. Friday, January 2.

MyFTB Account service allows you to view:

- Estimated tax payments.
- Recent payments applied to a balance due.
- Total current balance due.
- A summary of each balance due tax year on an account.
- California wage and withholding information.
- FTB-issued Forms 1099-G and 1099-INT.

New Payment Voucher for 540 Returns | Form 540-V

We have developed a new payment voucher form to be used with an originally filed computer-generated 540 return. The new Form 540-V is used only when you make payment by check or money order with your return. Or, you can schedule your payment for automatic withdrawal from your bank account with WebPay, FTB's free online payment feature, or pay by credit card. See the payment instructions in the tax booklet, or go to our website at ftb.ca.gov and search for **payment options**. If paying online, do not use Form 540-V.

The information on Form 540-V should match the information printed on your 2008 computer-generated Form 540 return. If you make a change prior to filing your tax return, reprint both the computer-generated Form 540 and Form 540-V. Make your check or money order payable to the "Franchise Tax Board." Write your SSN or ITIN and "2008 Form 540-V" on the check or money order payable in U.S. dollars and drawn against a U.S. financial institution.

Form 540-V will only be available through tax preparation software products. FTB will not provide a printed or online version of the form. Use the payment voucher only if an amount is due. Enclose, but do not staple, your payment and Form 540-V with your computer-generated Form 540 return and mail to:

FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0009

Taxpayers' Bill of Rights hearing - This annual hearing will be conducted during a meeting of the Board on December 4, 2008, at 1:30 p.m.

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 behaviors 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 on the FTB website at ftb.ca.gov, or by calling FTB at 800.540.3453.

Insurance Agent Sentenced to 10 Years for Defrauding Business Owners Out of More Than $2.5 Million in Insurance Premiums and Failing to File $230,000 in Taxes

Santa Ana – An insurance agent was sentenced today to 10 years in state prison for defrauding 18 business owners by stealing more than $2.5 million they had paid him to take out insurance policies for their businesses. Anthony David Medina, 37, pleaded guilty in court to 152 felony counts including 85 counts of forgery, 33 counts of transacting as an insurance company without a certificate of authority, 19 counts of grand theft, five counts of filing false tax returns, four counts of willfully failing to file a tax return, four counts of identity theft, two counts of insurance fraud, and sentencing enhancement allegations for excessive taking over $50,000, $150,000, and $500,000. Medina will have a restitution hearing November 12, 2008, at 9 a.m. in Department C-50, Central Justice Center, Santa Ana.

Medina's wife, Vanessa Chaverri, 37, pleaded guilty on June 10, 2008, to one felony count of filing a false return. She was sentenced to 90 days in jail, three years probation, and ordered to pay $486,172 in restitution.

Between June 2003 and November 2007, Medina operated Prompt Insurance Agency in Newport Beach. The defendant collected more than $2.5 million from 18 business owners, including restaurants, plumbing, and painting businesses, and other service-oriented businesses. Medina took money from the businesses under the pretense of securing workers compensation and general liability insurance policies for them.

Medina failed to take out insurance policies for many of the businesses and charged the victims more than the stated premiums. In some instances, he forged documents to finance insurance policy premiums instead of paying the full amount up front to the insurance company, despite the fact that the victims had paid him the total cost of the policy premium.

Medina issued false certificates of insurance to some of his victims. The defendant created false policy numbers or gave companies policy numbers that actually belonged to other businesses.

As a result of Medina's failure to take out insurance policies for some of the businesses, several business owners and employees suffered losses that should have been covered by insurance. In some cases, employees who had been injured at work did not receive the workers compensation benefits they were due because their employer did not have the workers compensation insurance they had paid Medina to secure. Many of the business owners had to pay for employee workers compensation care that should have been covered by insurance.

Between 2003 and 2006, Medina failed to file any tax returns for Prompt Insurance Agency. Chaverri and Medina failed to report the income from the stolen monies on their personal tax returns. They failed to pay more than $230,000 in taxes, and passed that loss of revenue on to California taxpayers. The defendant was using the stolen money for personal use on his extravagant lifestyle, including cars, homes, and a boat.

The California Department of Insurance (CDI) began investigating this case when an insurance company filed a report after finding a discrepancy in a financed policy taken out through Prompt Insurance Agency.

"The victimized business owners were trying to make an honest living and take out insurance to protect themselves, their employees, and their customers," said Orange County District Attorney Tony Rackauckas. "Insurance agents hold a fiduciary duty of trust to their customers that they will be there to cover the loss when things go bad. This case shows how much damage a single dishonest agent can cause, not only to hardworking business owners, but to taxpayers who are forced to absorb the cost of fraud."

“It is unconscionable to expose employers and potentially injured workers to severe liability,” said Insurance Commissioner Steve Poizner. “Insurance fraud cannot be tolerated and we will continue working with our local law enforcement partners to bring these alleged perpetrators to justice.”

This case was jointly investigated by the California Franchise Tax Board, CDI, and the Orange County District Attorney’s Office. Deputy District Attorney Andrea Burke of the Insurance Fraud Unit prosecuted this case.