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Tax Credit for New Home Purchase

This tax credit is available for qualified buyers who purchase a new home (qualified principal residence) on or after March 1, 2009 and before March 1, 2010 that has never been occupied. The buyer must reside in the new home for a minimum of two years immediately following the purchase date. See our [website](#) for more information.

Delayed Tax Refunds Continue

Even though the budget is enacted, the state must now determine if there is sufficient cash to pay outstanding debts, including tax refunds. Until then, refunds will continue to be delayed. The State Controller announced that once the budget plan provides the needed cash, his office will work around the clock to issue payments. We have compiled several frequently asked questions about this delay to assist you and your clients:

When will the refund delay be lifted?

It is anticipated that as soon as the cash problems are solved, the refund delay will be lifted. Check this website for updated information on the status of the delay.

Should I wait to file my client's return?

No. If you have all of the documents and information needed to prepare your client's return, you may file it any time through April 15 (October 15, if filed on extension). The refund delay does not affect the return due date or our ability to process returns.

Now that the budget is passed, when will my client's refund be issued?

Even though the budget is enacted, the state must now determine if there is sufficient cash to pay outstanding debts, including tax refunds. Until then, refunds will continue to be delayed.

Are all refunds delayed or just 2008 tax year refunds?

All refunds are delayed, regardless of the tax year they apply to. For example, an approved refund claim for tax year 2006 will be delayed until the state's cash problems are solved.

Is it possible that my clients will be issued IOUs?

If the state's cash flow problems do not improve, the Controller may need to issue IOUs. If the Controller has to issue IOUs, you will receive a paper IOU warrant, even if you requested a direct deposit of your client's refund.

For information on the status of a specific client's refund go to our website and check [Refund Status](#).

Interest on Delayed Payments

Although payments are being held, most taxpayers will not be entitled to interest unless the delay goes for several months. For individuals and fiduciaries, interest on current year refunds is only paid if the refund is not issued within 45 days after April 15, or the date that the return is filed, whichever is later. In most cases, interest will be paid if refunds are issued after May 30, 2009.

For bank and corporate taxpayers, the refunds must be paid within the later of 90 days after the return is filed, or 90 days after the last day prescribed for filing the return, without regard to extensions. In most cases, refunds must be issued after June 15, 2009 for interest to apply.

Estimated Payments Update

We recently sent this information as a *Tax News Flash* for our subscribers:

As the result of legislation enacted last year, there is a new California estimate payment requirement beginning on or after January 1, 2009. This new law changed the percentage amount for estimated tax installment payments from four equal installments of 25 percent of the required annual amount to installments of 30 percent of the required annual amount for each of the first two installments and 20 percent of the required annual amount for the last two installments. The new law did not change withholding requirements, therefore, wage earners do not need to change their withholding to address the change to the percentage amount for estimated tax installment payments, so long as the total amount of tax owed with the return for 2009 or 2008, after being reduced by credits and taxes withheld for the applicable year, is less than \$500 (\$250 in the case of a married individual filing separately). This \$500 threshold was increased this year. In previous years the threshold was \$200.

Unlike an estimated tax installment payment, which must be paid in an amount required by the law to avoid an underpayment penalty for a particular installment, taxes on wages do not need to meet the percentages for estimated tax installment payments to avoid the penalty for underpayment of estimated taxes. Taxes withheld on wages can vary substantially over the year and withholding can be increased at anytime during the year to meet the less-than-\$500-owed threshold and avoid the penalty. If, however, taxes withheld for a taxable year and credits for a taxable year do not reduce taxes owed to less than \$500 for the current year or the prior year,

then a taxpayer may need to make estimate payments, paid in the required installments, to avoid the penalty for underpayment of estimated tax.

We received several questions and comments about this newsflash, here are a few of the questions and their answers to help clarify this legislation further:

Q. How is withholding from pensions treated? Is it the same as wage withholding or will withholding have to be adjusted throughout the year to meet the estimated payment acceleration requirements?

A. Pension withholding is treated the same as wage withholding for purposes of the estimated tax penalty exception computations.

Q. Withholding is, by default, considered paid evenly all year regardless of when it was actually withheld. Will the new penalty computation assume that the withholding occurred the same as estimated payments: 30/30/20/20?

A. No, we will not consider withholding paid at 30/30/20/20. So a taxpayer who has withholding AND pays estimated tax should "make up" the 30% in the first two payments, taking into account only 25% of the expected withholding for each of those payments. In addition, since we continue to assume that withholding was paid 25/25/25/25 a penalty may be assessed if a taxpayer pays taxes through withholding but does not meet one of the exceptions.

Q. Can I apply my client's refund as an estimated payment toward my 2009 taxes?

A. Yes, if on your client's 2008 return you request that their refund be applied toward your 2009 taxes, we will apply the amount you designate when we process their return.

Q. In the event of a one-time distribution, for instance from an IRA, can we assume that if an amount adequate to cover the tax on that income is withheld at the time of the distribution, it would be considered timely?

A. Yes. Depending on when the distribution occurs during the year, the taxpayer might need to use the annualization exception to ensure that the any penalty computation takes into account the uneven receipt of income during the year.

Mailing Information Sent to Taxpayers

1099-G AND 1099-INT Forms for Calendar Year 2008

Between January 10, 2009, and January 21, 2009, we mailed the following volume of forms:

- Form 1099-G 5,102,980
- Form 1099-INT 129,375

We consider overpayments or interest income reported on Form 1099-G or Form 1099-INT “refunded” in the following situations:

- Paid directly to the taxpayer or directly deposited into a financial institution.
- Offset for other liabilities, such as taxes, penalties, or interest.
- Credited as an estimated tax payment.
- Intercepted (offset) by a state, city, county agency, or the IRS.
- Elected as a use tax payment.
- Paid to voluntary contributions as designated by the taxpayer.

We do not include the Child and Dependent Care Expense Credit claimed on the taxpayer’s return as a refunded amount.

Federal law requires us to mail one of the following to any taxpayer who received a refund or interest of \$10 or more during 2008:

- [Form 1099-G](#), *Report of State Income Tax Refund, Credit, or Offset*.
- [Form 1099-INT](#), *Statement of Interest Income*.

We issued Form 1099-Gs for specific tax years.

Example: A taxpayer that received a refund in 2008 for overpayments on tax years 2007 and 2008, will receive two 1099-Gs, one for 2007 and one for 2008.

We issue Form 1099-INTs for all interest we paid during 2008 of \$10 or more.

Marketing Letters

We plan to send approximately 750,000 marketing letters to taxpayers, providing information about [ReadyReturn](#), [CalFile](#), and [Spanish CalFile](#). The letter provides taxpayers with their Customer Service Number (CSN), and explains about Payment Options, MyFTB Account, and the Refund Status application. Your clients may have questions about these different payment and filing options after reading the letters.

Need W-2 Information?

Many companies are going out of business, and your clients may have difficulty getting their W-2 information. You can use [MyFTB Account](#) to look up California wage and withhold information, view estimated tax payments, recent payments applied to a balance due, and the total balance due on accounts. You will need the following to use MyFTB Account:

- Your client's social security number.
- Your client's 2009 CSN.
- A compatible browser and operation system. We recommend that you log out and close your browser when you are done to ensure the highest level of security for your client.

Information from FTB-issued 1099-G and 1099-INT records are also available.

Small Business Fair Schedule

Our state and federal tax agencies collaborated to offer free small business seminars to assist with tax aspects of your business. Talk to experts from the Board of Equalization (BOE), IRS, FTB, and Employment Development Department (EDD).

The following three fairs are scheduled and open for registration:

Small Business Seminars			
Date	Location	Time/Schedule	Phone Number/ Reservation
March 5, 2009	East San Gabriel Valley Japanese Community Center 1203 West Puente Ave. West Covina, CA 91790	9 a.m.-2:30 p.m. (8:30 check-in)	Call 1.888.847.9652 Register Now
March 10, 2009	Holiday Inn, Costa Mesa 3131 S. Bristol Street Costa Mesa, CA 92626	9 a.m.-2:30 p.m. (8:30 check-in)	Call 1.888.847.9652 Register Now
April 7, 2009	Handlery Hotel and Resort 950 Hotel Circle North San Diego CA 92108	9 a.m.-2:30 p.m. (8:30 check-in)	Call 1.888.847.9652 Register Now

The following small business fairs are tentatively scheduled with BOE:

- 5/06/09 - Small Business Fair in Ventura.
- 5/12/09 - Small Business Fair in Huntington Beach.
- 5/14/09 - Small Business Fair in Sunnyvale.
- 5/21/09 - Small Business Fair in Lake Tahoe.

For more specific informational seminars and classes that pertain to your business, check out the following offered on BOE's website:

Nonprofit Seminars – BOE offers free seminars to discuss tax laws, exemptions, and reporting requirements as they apply to nonprofit or exempt organizations.

[Sales and use tax classes](#) available:

- Basic Sales and Use Tax.
- Sale and Use Tax Return Preparation.
- Online Tutorial in Basic Sales Tax.

Cigarette/Tobacco Product Classes – Free classes for sellers of cigarette and tobacco products. Discussion covers license requirements, preparing you for the Board's inspection, avoiding penalties, and answering questions about California's cigarette and tobacco tax laws.

[e-file/e-services Workshop \(for Tax Professionals\)](#) – FTB, IRS, EDD, and BOE are holding their free annual e-file workshops and exhibits to bring you the latest information and assistance.

Restaurant Seminars – A free seminar for restaurant owners to assist with many aspects of your business. Talk to experts from BOE, IRS, FTB, EDD, and others.

[Women Entrepreneur Seminars](#) – BOE offers free business/tax seminars for emerging entrepreneurs as well as women who are already operating their own small businesses: First-time Women Entrepreneur Seminars, Women Financial Seminars, and Advanced Women Entrepreneur Seminars. These events are designed for women of all ages, backgrounds, and financial means to equip themselves with the tools to help them succeed in business.

[Practitioner Seminars](#) - The 2009 Practitioners Seminars give tax practitioners an opportunity to hear directly from representatives from IRS, BOE, FTB, and EDD regarding compliance policies and procedures that affect you and your clients.

Top 250 Delinquent Taxpayers

We mailed *Notice of Public Disclosure of Tax Delinquency* letters on February 18, 2009. We sent the letters to the top delinquent personal and business entity taxpayers with a tax delinquency over \$100,000. We plan to publish this information on our public website beginning April 9, 2009.

California Revenue and Taxation Code §19195 directs FTB to publicly disclose the names, addresses, and secured amounts owed of the 250 top delinquent personal income tax and business entity taxpayers who owe over \$100,000 in delinquent taxes. We update this list annually.

If a client contacts you because they received a Notice of Public Disclosure of Tax Delinquency letter, you can contact us for more information:

- Personal income tax - **866.418.3702**
 - Business entity - **866.914.5594**
 - ftb.ca.gov and search for **delinquent taxpayers**
-



Coming Soon...Ask the Advocate

Since my new appointment as your Taxpayers' Rights Advocate, I maintain constant interaction with the tax practitioner community and with taxpayers. I have been involved in working with the tax practitioner community for over 15 years. In the last three years, I have personally made an average of 80 presentations per year to a variety of tax practitioner, community, and government groups throughout California. Meeting with these groups allows me to hear first hand what issues, concerns, and challenges taxpayers are facing and the impact that tax legislation has on them. **Send us your questions and concerns**; I plan to address them in this column on a monthly basis. Stay Tuned.

Steve Sims, EA
Taxpayer Rights' Advocate

Inside FTB

CalFile Cross-Over

ReadyReturn eases the tax filing burden for taxpayers who file the simplest tax returns. We use available information to prepare a California state tax return.

Taxpayers who are not eligible for ReadyReturn, or who are eligible but their return is not ready yet, can easily transition to CalFile without having to log in again.

For taxpayers who go directly to CalFile, we will check to see if they have a ReadyReturn available. If they do, we will notify them and taxpayers can continue with CalFile, or transition to ReadyReturn.

Note: Taxpayers who can be claimed as a dependent may also qualify for CalFile or ReadyReturn.

540 2EZ Instructions Available in Spanish

We offer several translated products to help with your tax preparation. The 540 2EZ instructions are now available in Spanish. The Form 540 2EZ is offered only in English, but the translated instructions can assist you when working with Spanish-speaking clients. We translated our CalFile program, [Spanish CalFile](#), to provide free electronic filing assistance. We have a [languages tab](#) on our homepage linking to translated frequently asked questions and other content in Spanish, Chinese, Korean, Russian, and Vietnamese.

Instructions for Form FTB 3582

We recently updated the instructions for [Form FTB 3582](#), *Payment Voucher for Individual e-filed Returns*, to remind taxpayers not to include a copy of their return when submitting the form along with their payment. Please remind your clients to keep a copy of their e-filed return for their records.

No More Peel and Stick Labels

On January 2, 2009, we began mailing 540, 540NR, and 540 2EZ 2008 tax booklets with a new format. We eliminated the use of the peel and stick address labels on our tax booklets. Taxpayer names and addresses are now printed directly on the tax booklets; taxpayers will now fill in their name and address if they use the forms inside the booklets to file Personal Income Tax Returns.

Per Civil Code §1798.85(a)(5) (added by SB25, Stats 2003, Ch. 907), no social security numbers will be used on any outgoing mail to individuals (exceptions: FTB 1099 and FTB 4600 INC letters, or others specifically approved).

This new process continues to protect the confidentiality of social security numbers and has resulted in a sizeable savings for the department.

Criminal Corner

Former San Diego Woman Pleads Guilty to Grand Theft, State Income Tax Evasion

A former resident of San Diego pleaded guilty to one felony count of grand theft with an enhancement for taking more than \$150,000 and one felony count of state income tax evasion, the Franchise Tax Board (FTB) said.

Diane Winters, 43, now resides in Arkansas. During the years 2002 – 2005, Winters was employed as a payroll manager for a real estate management firm. According to court records, Winters embezzled more than \$233,000 from her employer during these same years. In addition, she failed to report the embezzled funds on her state income tax returns for 2002 and 2003 and failed to file her 2004 and 2005 tax returns to report either her wages or the embezzled funds. All income is taxable including income from illegal sources.

Winters sentencing and restitution hearing is scheduled for April 6. Winters owes the State more than \$45,000 in unpaid tax, penalties, interest, and the cost of the investigation.

The failure to file tax returns is part of the \$6.5 billion tax gap California faces each year. The tax gap is defined as the difference between the tax that is owed and the tax that is paid.

San Diego Superior Court Judge Michael T. Smyth presided over the case yesterday in Department 30 of the San Diego County Superior Court Central Courthouse. Deputy District Attorney Christine Ryan of the San Diego County District Attorney's Office prosecuted the case. This was a joint investigation between the San Diego County District Attorney's office and FTB.

Sacramento Bookkeeper Pleads to Grand Theft, State Income Tax Fraud

A Sacramento woman pleaded no contest to grand theft with an enhancement for taking more than \$150,000 and filing a false state income tax return, the Franchise Tax Board (FTB) said.

Donna Joe Goodenough, 46, was employed as a bookkeeper for a Sacramento based company that provides 24-hour assistance to people with developmental disabilities. According to court documents, Goodenough abused her position of trust by embezzling more than \$224,000 from the company by writing fraudulent checks and charging personal expenses on the company credit card. The thefts occurred from January 2007 through May 2008. In addition, Goodenough failed to report the more than \$177,000 she embezzled in 2007 on her state income tax return. All income is taxable including income from illegal sources.

Goodenough's sentencing is scheduled for April 20, 2009, at 1:30 p.m. Goodenough faces three years and four months in state prison as well as paying restitution to her former employer and FTB. The amount of restitution will be announced as part of her sentencing.

Sacramento County Superior Court Judge Judy Hersher presided over today's proceeding in Department 63. Deputy District Attorney Robert Clancey of the Sacramento County District Attorney's Office prosecuted the case.

Big Business

Disclosing Deferred Intercompany Stock Account (DISA) Balances

FTB issued Form 3726, *Deferred Intercompany Stock Account (DISA) and Capital Gain Information* to assist taxpayers in complying with their annual disclosure requirement. In conjunction with Form 3726, we revised Form 100, *California Corporation Franchise or Income Tax Return*, and Form 100W, *California Corporation Franchise or Income Tax Return - Water's-Edge Filers*, to include a question asking whether taxpayers have a DISA balance and, if so, the amount of that balance. An appropriately completed Form 3726 must be included with a taxpayer's 2008 original return and every year thereafter, if a member of the combined group has a DISA balance.

For years 2001 through 2007, taxpayers who have not yet fulfilled their disclosure obligation on the original return can fulfill their disclosure obligation by submitting a Form 3726 disclosing their DISA balances for each of those prior years. An amended return does not need to be filed. However, taxpayers should file an amended return if they discover that a prior triggering event has occurred that would have required taking into income the relevant DISA amount. If taxpayers satisfy their disclosure obligations, the previously undisclosed balances will not be included in income due to the prior nondisclosures.

The Form 3726 disclosing a taxpayer's DISA account for prior years, except those years open to assessment under the applicable statute of limitations, should be submitted by **May 31, 2009**. Form 3726 disclosures must be made on a specific entity basis. This means the company that received the distribution and the company that made the

distribution must be identified. Accordingly, the name and California corporation number, or federal employer identification number (FEIN), for each specific distributor and distributee must be provided.

Additionally, the name and California corporation number of the key corporation must also be provided.

Please mail Form 3726 and any supplemental schedules to:

PO Box 942867-2222
Sacramento CA 94267-2222

If there are any questions regarding satisfying the disclosure requirement, contact Michael Halahan at **714.567.7109**.

Certain penalties may be imposed as consequences for failure to disclose. If the prior DISA balances for years 2001 through 2007 are not reported as income due to the occurrence of a triggering event described in California Code of Regulations (CCR) Section 25106.5-1, Subsection (f)(1)(B), or disclosed as required, then pursuant to CCR Section 25106.5-1, Subsection (j)(7), the undisclosed balances may be accelerated by the FTB and required to be taken into income. This could result in additional tax liability and the imposition of various penalties, including the accuracy-related penalty under California Revenue and Taxation Code (CRTC) section 19164 and the large corporate underpayment penalty under CRTC section 19138.

See California Revenue & Taxation Code Section 25106 for more information. This regulation is applicable for tax years beginning on or after January 1, 2001.