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Does Your Client Qualify for the New Film Credit?

Recent legislation (enacted on February 20, 2009) allows an income tax credit to a qualified taxpayer for 20 percent of qualified expenditures attributable to the production of a qualified motion picture and 25 percent of qualified expenditures attributable to the production of a qualified television series. A qualified motion picture is an independent film allocated and certified by the California Film Commission. A qualified television series is a series where the production is relocated to California.¹

Although the credit may not be claimed until taxable years beginning in 2011, taxpayers may become eligible for the tax credit if they apply to the California Film Commission beginning July 1, 2009.

The amount of the credit allowed is limited to the amount specified in the credit certificate issued by the California Film Commission. The total amount of credits the California Film Commission is authorized to issue is limited to \$100 Million in credits for fiscal year 2009/2010 through fiscal year 2013/2014.

The credit does have a six-year carryover provision. Any credit that is allowed and is attributable to an independent film, as defined, can be sold to an unrelated party, but not be sold to more than one taxpayer or resold. In lieu of claiming the credit, a taxpayer may also make an irrevocable election to apply the credit amount against "qualified sales and use taxes."

The tax credit disallows certain types of productions, such as commercial advertising, music videos, news programs, game shows, and sporting events. Other types of productions also do not qualify for the tax credit.

The California Film Commission is currently developing program guidelines and application procedures. Applications are expected to be available on June 1, 2009. **Applications will be accepted on a first come, first served basis beginning on July 1, 2009.**

For more information, visit the California Film Commission website at film.ca.gov.

¹ California Revenue & Taxation Code section 17053.85 (PIT) & 23685 (Corp.)

California Public Records Act Increases Transparency

The California Public Records Act (PRA) protects individuals' rights to privacy. The PRA acknowledges that access to information concerning the conduct of the people's business is a fundamental and necessary right to every person in this State.²

Generally, you need to request public records through our Disclosure Office. This process can become time consuming and tedious. We plan to simplify this process and increase transparency by posting some pre-approved documents directly to our website. These documents currently include Feasibility Study Reports (FSRs). In the future, we may also post documents such as statistical data and special project-related reports, etc., that previously were requested through the PRA. We will be using the Portable Document Format (PDF). If you need a document to be more accessible, please mail a request to:

Franchise Tax Board
Disclosure Office, MS A181
PO Box 1468
Sacramento CA 95812-1468

For more information, go to ftb.ca.gov and search for [Public Records](#).

FTB Offers Tax Guidance for Ponzi Scheme Victims

On March 27, 2009, we announced we now offer guidance on theft-loss deductions for California taxpayers who had losses from investment schemes.

“Tax remedies are available for victims of Ponzi schemes,” said State Controller and FTB Chair John Chiang.

State and Federal law allow taxpayers to deduct some uncompensated losses on their tax returns. A recent IRS ruling, [Revenue Ruling 2009-9](#), clarifies the treatment of losses from investment schemes, including the nature of such losses (theft losses), the amount of such losses to be allowed, and the year of deductibility. The IRS also plans to follow a new procedure, [Revenue Procedure 2009-20](#), which provides an optional “safe-harbor” for determining the year in which the losses occurred and a simplified method of computing the amount of the loss. A “safe-harbor” allows taxpayers to avoid later IRS challenges.

California will follow this guidance, and we will accept the form provided in Appendix A of [Revenue Procedure 2009-20](#) for those taxpayers who choose to participate in the safe harbor provision for California purposes. However, a taxpayer that takes advantage of the safe harbor for federal purposes is not required to do so for California purposes.

State law differs from the Federal law in two key areas. In these areas, State law controls:

² Government Code Section 6250 et seq.

- Statute of limitations for filing a claim for refund.
- Deductibility of net operating loss (NOL) carryforwards or carrybacks. (NOL carryforwards are suspended for most taxpayers for 2008 and 2009. Carrybacks are allowable but only for NOLs attributable to 2011 or later.)

We will soon offer more detail on the differences in a FTB Taxpayer Notice. Interested taxpayers should check our website at ftb.ca.gov for updates.

A Quick Reference for Small Business Owners



Our publication, [FTB 984](#), *Common Business Expenses for the Business Owner and Highlights of the Federal/State Differences*, can help you inform your clients about business expenses.

Whether your client is starting a new business or has been in business for several years, we want your clients to know all the expenses they are entitled to claim.

Also, this publication provides a list of expenses, federal/state treatment of those expenses, and federal/state publications your clients can obtain for

additional guidance.

We also feature FAQs that will answer some of your client's questions.

We developed the publication about three years ago, because we identified a need due to inquiries we receive, and outreach surveys at our small business forums.

To get the publication, go to ftb.ca.gov and search for [FTB 984](#).

Mandatory e-pay

Reminder – Some of your clients may have met the new mandatory e-pay requirement when they made their first quarter estimate payment for the 2009 taxable year. However, We realize that some taxpayers and practitioners may need additional time to implement practices and procedures to comply with the requirement. Therefore, during the 2009 calendar year, taxpayers subject to the mandate who remit their payment by check instead of electronically will not be assessed an “e-pay penalty” (one percent of the amount paid).

Senate Bill 1389 (signed by the governor on September 30, 2008) added Section 19011.5 to the Revenue and Taxation Code, requiring some taxpayers to make their tax payments using an electronic method.

Beginning January 1, 2009, personal income taxpayers whose tax liability is greater than \$80,000, or who make a single estimated tax or extension payment that exceeds \$20,000 for taxable years beginning on or after January 1, 2009, meet the condition for mandatory electronic payments. Once either of these conditions is met, all subsequent payments regardless of type, amount, or tax year must be remitted electronically. Electronic payment methods include Electronic Funds Withdrawal (EFW), Web Pay, or by credit card. We will also offer a Pay-by-Phone option in July 2009.

There is a provision for a one percent penalty of the amount paid unless the failure to pay electronically was for reasonable cause and not willful neglect. However, as stated above, we realize that some taxpayer and representatives will need added time to comply with the mandatory e-pay requirement. Taxpayers subject to the requirement who do not remit their payments electronically will not be assessed the e-pay penalty during the 2009 calendar year. We will start assessing the e-pay penalty on January 1, 2010.

Taxpayers may elect to discontinue making payments electronically if they have not made an estimated tax or extension payment in excess of \$20,000 during the current or previous taxable year, or their total tax liability for the current or previous taxable year did not exceed \$80,000. Taxpayers may also request a waiver from the mandatory e-pay requirement if the amounts paid were not representative of their total tax liability. To request a waiver, use [FTB Form 4107](#), *Mandatory e-pay Election to Discontinue or Waiver Request*, available on our website.

Check our website for more information. Go to ftb.ca.gov and search for **mandatory e-pay**.

Federal/State Conformity

On March 24, 2009, we released our annual federal conformity report, [Summary of Federal Income Tax Changes 2008](#), which explains new federal laws along with their effective dates. Corresponding California law, if any, is also included in the analysis. Finally, the impact on California revenue is provided if California were to conform to the federal changes.

On April 3, 2009, we held an interested parties meeting to discuss California conformity to the 2008 federal income tax changes and whether or not our staff recommends conforming in a conformity bill. The discussion at this meeting excluded revenue considerations only taking policy issues into account for recommendations. The federal legislation discussed included the following:

- Economic Stimulus Act of 2008 (PL 110-185).
- Heartland, Habitat, Harvest, and Horticulture Act of 2008 (PL 110-246).
- Heroes Earnings Assistance and Relief Act of 2008 (PL 110-245).
- Housing and Economic Recovery Act of 2008 (PL 110-289).
- Hubbard Act of 2008. (PL 110-317).
- Emergency Economic Stabilization Act of 2008 (PL 110-343).
- Worker, Retiree, and Employer Recovery Act of 2008 (PL 110-458).

For a list of future meetings, visit our [Interested Parties Meetings](#) webpage.

FTB Offers Alternative to American Indian Tribes Submitting Per Capita Income Withholding

Currently, when American Indian Tribes withhold on the per capita income for their California resident tribal members, it is sent to the Employment Development Department (EDD). Unfortunately, sometimes the tribal members file their California tax return with us and their credit is disallowed due to difficulties transferring this unique type of withholding between EDD and us. This affects the tribal members because it results in erroneous notices of tax due, delayed refunds, and unnecessary contacts.

As an alternative to submitting the withholding to EDD, tribes may now send the withholding directly to us with 2009 [Form 592](#), *Quarterly Resident and Nonresident Withholding Statement*. Form 592 includes a Schedule of Payees section to identify the payment recipients (payee) and the income and withholding amounts. This schedule allows us to allocate the withholding payments to the taxpayer (payee) upon receipt of the completed Form 592.

The tribe will also need to provide a 2009 [Form 592-B](#), *Resident and Nonresident Withholding Tax Statement* to the tribal member. The member will include the 592-B in their 2009 Form 540,

California Resident Income Tax Return to claim their withholding credit. This will ensure the tribal member receives the appropriate amount of credit at the time of filing.

If a tribe chooses to implement this process, 2009 Form 592 will replace EDD Form DE 6 and the current process of remitting to EDD. Currently, several Indian tribes successfully use Form 592 to submit other types of withholding to us.

In April, we began reaching out to American Indian Tribes located within California to explain this alternative process and the benefits.

For more information on non-wage withholding visit ftb.ca.gov and search for **withholding**.

Small Business

New Due Date for Paying Estimated Fee for Limited Liability Companies

Have you heard there is a new due date to estimate and pay your LLC fee?

For taxable years beginning on or after January 1, 2009, the annual LLC fee must be estimated and paid by the 15th day of the 6th month of the current taxable year. For calendar-year LLCs, June 15, 2009 is the first due date for the new estimated fee for LLCs.

LLCs are subject to an annual fee based on their total California annual income.³ Total California annual income, for purposes of the LLC fee, means gross income⁴ plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer derived from or attributable to this state. If an LLC has a total California annual income of \$250,000 or greater, the LLC must report a fee. The annual fee is due by the original due date of the return, which is the 15th day of the 4th month following the close of its taxable year. A new penalty of 10 percent of the underpayment of the estimated fee will apply if the estimated LLC fee is underpaid.

An LLC makes an estimated LLC fee payment if they expect to owe a fee for the 2009 tax year.

LLCs will use new form [FTB 3536](#), *Estimated Fee for LLCs*, to remit the estimated fee. LLCs will also use form FTB 3536 (or FTB 3588 for an e-filed return) to pay by the due date of the LLC's return, any amount of the LLC fee due which was not paid as an estimated fee payment.

The new FTB 3536 has been revised to provide guidance on how to compute the estimated fee. The guidance provides that as the fee owed for 2009 may not be known by the 15th day of the 6th month of the current taxable year, LLCs may estimate the 2009

³ R&TC Section 17942

⁴ R&TC Section 24271

fee by completing the prior year LLC Income Worksheet, included in the 2008 Form 568 Booklet. LLCs use amounts of income expected for the 2009 taxable year to estimate the 2009 fee amount.

Mail the form along with the check or money order payable to us by the 15th day of the 6th month of the current taxable year (fiscal year) or June 15, 2009 (calendar year), to avoid late payment penalties and interest.

Continue to use form [FTB 3522](#), *LLC Tax Voucher*, to pay the annual tax of \$800 for taxable year 2009.

All forms are available on the Internet. Go to ftb.ca.gov and search for forms.

Ask the Advocate



Our Advocate on Twitter

You can now follow our Taxpayers' Rights Advocate on a Twitter Account. If you are interested to see what meetings he is attending and which hot topics we're dealing with within our agency, signup on Twitter and select [FTBAdvocate](#) to follow.

Steve Sims, EA
Taxpayers' Rights Advocate

Inside FTB

FTB Tax Statistics Now Available on the Web

Have you ever wondered how many California e-filed returns are professionally prepared? Or how that compares to the total number of returns filed? This information, and more, is now available on our website. Check it out at [Tax Statistics](#).

FTB Purges Records

In accordance with our [Information Privacy Principles for Individuals](#) and our continued commitment to protect your personal tax information and to use that information

responsibly, we will begin purging all estimate, extension, and miscellaneous payment records which are beyond the [Statute of Limitations](#), from our accounting system. Generally, this applies to payments received before 2001.

Our retention policy ensures the responsible use of taxpayer data within our system and supports the removal of personal information for which we no longer have a business need.

Criminal Corner

Inland Empire Tax Preparer Sentenced for Filing False State Income Tax Returns

An Upland tax preparer was ordered to pay restitution of more than \$310,000, sentenced to time served, and placed on three years formal probation for filing false state income tax returns, we announced on April 2, 2009.

Jose A. Garcia, 29, owned and operated Mi Oficina Income Tax, a tax preparation business with several locations throughout the Inland Empire. Garcia pleaded guilty in February to four felony counts for preparing false personal state tax returns for tax years 2001 through 2004 and underreporting his income by more than \$968,000. Garcia fully paid the \$310,369 representing the unpaid tax, penalties, interest, and the cost of the investigation.

San Bernardino County Superior Court Judge Michael Dest presided over the case in Department 23 of the San Bernardino Superior Court. San Bernardino County Deputy District Attorney Melinda Spencer prosecuted the case.

Danville Couple Pleads in Underground Economy Case

A Danville contractor pleaded no contest yesterday to a felony charge of diversion of construction funds and he and his wife pleaded no contest to three felony counts of state income tax evasion, we announced on April 10, 2009.

According to court documents, Rick Alvin Powers, 55, and Cathy Powers, 55, failed to report more than \$582,000 in income during the years 2001 – 2003. They owe us more than \$42,000 in unpaid state income tax. The diversion of construction charge stems from eight formal consumer complaints to the Consumer State Licensing Board (CSLB) that the couple would take huge down payments, as much as 62 percent, for high-end cabinets, then do little or no work at all. They would then lead the consumers to believe the cabinets were about to be finished, but additional money would be needed.

The Powers face up to four years four months in state prison as well as payment of full restitution to their victims including us. Their sentencing and restitution hearing is scheduled for later this year.

"CSLB's lengthy investigation is moving through the legal process with positive signs," said CSLB Registrar Steve Sands. "We are hopeful that a determination on consumer restitution will be announced later this year." 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. In addition, businesses operating in the underground economy have an unfair competitive edge over their legitimate competitors. By avoiding their fair share of income tax, withholding tax, workers' compensation insurance, and not being properly licensed, they are able to underbid jobs hurting honest California businesses.

Contra Costa Superior Court Judge Mary Ann O'Malley accepted the plea in Department 1 of the Martinez Superior Court. Contra Costa Deputy District Attorney Steve Bolen prosecuted the case. This was a joint investigation between the Contra Costa District Attorney's Office, CSLB, and us.

Big Business

Large Corporate Understatement Penalty Payments and Amended Returns for the 2003-2007 Taxable Years

We are continuing to set forth guidance on procedural issues related to the payment of tax and filing of amended returns under California Revenue and Taxation Code (R&TC) Section 19138, subdivision (b).

SBX1 28⁵ recently added R&TC Section 19138 effective December 19, 2008, and operative for taxable years beginning on or after January 1, 2003, for which the statute of limitations on assessment had not expired as of December 19, 2008.

The penalty applies to taxpayers subject to tax under Part 11 of the R&TC, primarily corporations, where the taxpayer has an understatement of tax in excess of \$1 million. The penalty is 20 percent of the entire amount of the understatement, which is measured by the difference between the correct tax liability and the tax reported on the original return or an amended return filed on or before the extended due date.

The penalty will not be imposed to the extent the understatement of tax is attributable to a change in law that is enacted, promulgated, issued, or becomes final after the earlier of the date the taxpayer files the return or the extended due date of the return for the taxable year for which the change is operative. In addition, the penalty will not be imposed to the extent that the understatement of tax is attributable to the taxpayer's reasonable reliance on a legal ruling by our Chief Counsel. The penalty is payable upon notice and demand, and claims for refund of amounts paid in satisfaction of the penalty may be allowed only if the penalty was computed incorrectly.

For the 2003-2007 taxable years, a taxpayer can file an amended return and pay the tax shown on the amended return by **May 31, 2009**, in order to treat the tax shown on this

⁵ Stats. 2008, 1st Ex. Sess. 2007-2008, Ch. 1

amended return as tax shown on the original return for purposes of this penalty. This action will increase the taxpayer's self-assessed tax base against which the understatement of tax is measured to reduce the likelihood of receiving this penalty for those years.

We now have a webpage on ftb.ca.gov for the [large corporate understatement penalty](#) that brings together all Section 19138 information and resources. We provide additional information and procedural guidance relating to the penalty, including payment of tax, and filing of amended returns for the 2003-2007 tax years. Plus, the additional FAQs mentioned in last month's issue are now available on this webpage.