Tax News

April 2010

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FTB Conforms to IRC Section 409A

On January 19, 2010, the Internal Revenue Service (IRS) released Notice 2010-6. It allows taxpayers to correct certain operational failures of nonqualified deferred compensation plans in order to comply with IRC Section 409A. Because the California Revenue and Taxation Code (R&TC) Sections 17501 and 24601 conformed to IRC Section 409A, we follow IRS Notice 2010-6.

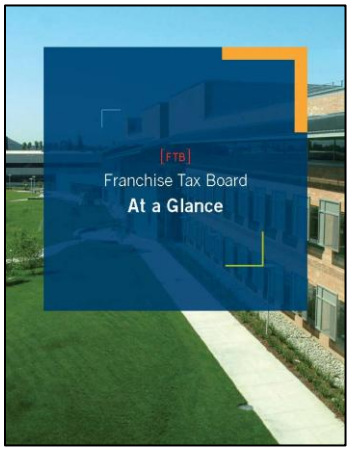
Service recipients or service providers, e.g., employees or employers, that rely on IRS Notice 2010-6 for federal income tax relief must follow the Notice's information and reporting requirements. To follow the information and reporting requirements, service recipients and providers must attach statements to their respective federal income tax returns.

For California income tax purposes, however, service recipients or providers that rely upon the Notice for relief are **not** required to attach additional statements to their California income tax returns. We require service recipients and providers to retain a copy of the information in their records, and may request these documents at a later date.

Although we follow IRS Notice 2010-6, this does not relieve the service recipients of employment taxes or penalties, if applicable.

For further information, please contact Maria Brosterhous at **916.845.7651** or Deirdre O'Connor at **916.845.7335**.

FTB at a Glance Revised and Online



Need a quick overview of our programs, resources, and processing statistics? We revised our publication 1041, FTB at a Glance, in February 2010. The publication gives you everything from a brief history to a quick reference of the public services we offer.

To view or print FTB at a Glance, go to ftb.ca.gov and search for **1041**.

Tax Delinquency Letters Mailed

We mailed the Notice of Public Disclosure of Tax Delinquency letters on February 19, 2010. We sent letters to the top delinquent personal and business entity taxpayers with a tax delinquency over $100,000. We intend to publish this information on our public website beginning April 9, 2010.

R&TC Section19195 authorizes us to publicly disclose the names, addresses, and secured amounts owed of the top 250 delinquent personal and business entity taxpayers who owe over $100,000. This list is updated annually.

If a client receives a Notice of Public Disclosure of Tax Delinquency letter and contacts you, you can call:

- 866.418.3702 (personal)
- 866.914.5594 (business entity)

Since, April 2009, 11 of the top 250 taxpayers paid tax delinquencies of over $1.7 million.

For more information about the top 250 delinquent taxpayers, go to ftb.ca.gov, and search for **top 250**.

Fraudulent W-2s

Every year, tax professionals are faced with what to do when presented with documents they think may not be legitimate, of particular concern, fraudulent W-2s. We encourage you to use ‘MyFTB Account’ to verify W-2 information such as California wage and withholding information. If you cannot find your client’s information on 'MyFTB Account,' then ask the client for a copy of their last paycheck stub or call the employer to verify the wage and withholding amounts.

However, if you still have concern, you may fax copies of suspicious W-2s to **916.845.6034**. Include your contact information with your fax. Our goal is to confirm the validity of the W-2 within 24-48 hours. Referring a questionable W-2 to us, regardless of whether the return is transmitted, enables us to prevent the fraudulent refund from being issued.

The perpetrators of false W-2 filings do it in many ways, including: altering an existing W-2; making up W-2s by making up social security numbers; using another person's social security number, or outright identity theft. Typical red flags used by suspicious filers:

Tax Fraud Examples

- Deliberately preparing and submitting false W-2s.
- Deliberately claiming false refundable credits.
- Purposely claiming false business (Schedule C) income.
- Intentionally omitting income information to reduce/avoid tax or obtain refundable credits such as Earned Income Tax Credit.
- Using someone else's identity (forgery or identity theft).

Client Interview "Fraud Flags"

- New (unknown to you) client that appears nervous.
- Client appears to be following a script.
- Client accompanied by a friend that appears to be coaching your client.
- Excessive distance from taxpayer to preparer's address.
- Unknown (unable to verify) employer address, phone number.
- Identification seems to be altered.
- Client unfamiliar with type of work performed.
- Length of employment is under 12 months.

W-2 Fraud Indicators

- Unreasonable withholding compared to wages.
- Excessive wages (executive vs. line worker) for type of work.
- W-2 is not similar to the type of W-2 issued by that particular employer. Example: Hand typed or written for a larger corporation that uses a specific type of computer generated W-2.
- Missing identification number (SEIN/FEIN). All W-2s should have identification numbers.
- Dollar amounts (decimals) out of alignment, as well as the entity information.
- Information misspelled.
- Appearance of altered W-2 – whited out or added figures.
  Example: W-2 for withholding has an amount, but the "print type" does not match for all the numbers. The changes are an addition of a digit to increase withholding amount or a whited out digit to decrease wage amounts.

California Winter Storm Victims Get State Tax Relief

The President declared the following counties a major disaster on Monday, March 1, 2010:

- Calaveras
- Los Angeles
- San Bernardino
- Imperial
- Riverside
- Siskiyou

The federal declaration was a result of a series of winter storms that brought high winds, heavy rainfall, and severe mud and debris flows during the period of January 17 to February 6, 2010.

The disaster declaration allows affected taxpayers to claim disaster losses in the current or prior tax year. Claiming the loss on a 2009 tax return will allow us to issue refunds quickly. Taxpayers who have already filed a 2009 tax return can file an amended return to claim their losses.

Taxpayers claiming the disaster loss should write "California Winter Storms 2010" in red ink at the top of their tax return to alert us to expedite the refund. If taxpayers are e-filing, they should follow the software instructions to enter the disaster information. Taxpayers can get our forms for the 2009 tax return or amended 2009 tax return at ftb.ca.gov.

Taxpayers needing copies of lost or damaged state returns should complete Form FTB 3516, "Request for Copy of Tax Return," available online. Disaster victims can receive copies of tax returns for free by printing, "California Winter Storms 2010" 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.

California Combined Reports Missing Information

It has come to our attention that numerous combined reports are being filed with missing or incomplete information. Specifically, the combined reports are missing the income breakdown spreadsheets or the spreadsheets are incomplete. These detailed spreadsheets assist in verifying net operating losses (NOL) and various tax credits. Missing or incomplete spreadsheets could result in processing delays and erroneous assessments.

California combined reports are required to present the group's data by each corporation, as well as totals for the combined group.

A California combined report should contain all of the following:

- A list of subsidiaries/affiliates, their California corporation numbers, and federal employer identification numbers (FEINs).
- A combined profit and loss statement in column format disclosing each corporation's statement of profit and loss.
- A schedule in column format disclosing the various adjustments for each corporation necessary to convert the combined profit and loss statement to the combined income subject to apportionment. This schedule includes any adjustments necessary to revise federal or foreign income reported for California purposes, as well as adjustments for income from a separate trade or business or for nonbusiness income or loss.
- A combined apportionment formula in column format disclosing for each corporation the total amount of property, payroll, and sales, and the amount of California property, payroll, and sales.
- A schedule in column format disclosing for each corporation any items of nonbusiness income or expense allocated to California.
- Schedules disclosing the computation of the charitable contributions adjustment.
- A schedule in column format of the alternative minimum tax calculation for each corporation.
- Schedules in column format disclosing for each corporation all data required by Form 100 or Form 100W. These schedules include:

    1. Balance sheets.
    2. Gains and losses from sale or exchange of assets.
    3. Taxes on or measured by income.
    4. Dividends and interest received.
    5. Income or loss from rentals, royalties, partnerships, and miscellaneous sources.
    6. Net operating losses.

- Schedules in column format showing the computation of income apportionable and allocable to this state for each member of the group, and the computation of each member's tax credits and tax liability.

A comprehensive example illustrating the use of the above schedules can be found in **FTB Pub. 1061**.

Haiti Donations Are Immediately Tax-Deductible

We announced that a new state law allows taxpayers to immediately deduct their donations made to provide relief for the January 12 Haitian earthquake victims.

Charitable deductions are normally taken on a tax return for the taxable year the donation is made. Those returns are filed in the following calendar year. The new law gives donating taxpayers the option to claim these specific charitable contribution deductions made before March 1, 2010, immediately on their 2009 returns instead of waiting to claim it on their 2010 returns.

To claim the charitable deduction on the 2009 tax return, both individuals and businesses must have made the Haitian-relief contributions to qualified charities after January 11, 2010, and before March 1, 2010. Only cash contributions such as those made by text message, check, credit card, or debit card qualify. The contributions must be made specifically for the relief of victims in areas affected by the January 12, 2010, earthquake in Haiti.

The new legislation, Assembly Bill 347 (Stats 2010, Ch. 8), conforms to similar federal law (Haitian Relief Bill H.R. 4462; P.L. 111-126).

To find more information about this year's state tax rules, go to ftb.ca.gov.

Unclaimed Earned Income Tax Credit

Do your clients know someone who qualifies for the Earned Income Tax Credit (EITC)?

Each year an estimated $1 billion in EITC goes unclaimed by California taxpayers. The EITC is a refundable federal income tax credit for low-income working individuals and families. When the credit exceeds the amount of taxes owed, it results in a tax refund to those who qualify for and claim the credit. EITC can bring money into communities. The EITC Assistant is now available at irs.gov and can help people determine if they qualify. Help your community by spreading the word about EITC.

Paying Electronically Saves Time

We all know that going paperless saves time, hassle, and trees. Paying electronically means your client doesn’t have to spend time writing and mailing a

check. It also ensures that their payment is quickly applied to their account. We encourage them to use one of the many options we offer for electronic payments. But which is right for them? We provided you a brief summary of the options below.

We also created an e-pay toolkit that contains posters, pamphlets, and a Payment Reminder letter that you can provide your client with their balance due and step-by-step instructions on using Web Pay. Using the toolkit is another way to show your clients your commitment to making their lives easier. Go to ftb.ca.gov and search for **e-pay toolkit**.

Electronic Funds Withdrawal (EFW):

Use this option to pay electronically when e-filing. Your client can pay when they e-file their balance due return, and not worry about having to remember to mail a check later. They can choose the amount they want to pay, as well as the date they want the funds to be transferred from either their checking or savings account. Your clients can even schedule electronic withdrawal for their next year's estimated tax payments when they e-file. Check your software provider's instructions for the availability of this option.

Web Pay:

Your clients can request a debit to their account online, at any time, to pay **any** FTB liability, including:

- A balance due on their current-year tax return
- Extension payments (Form FTB 3519)
- Estimated tax payments (Form 540-ES)
- Prior-year amounts
- Billing Notice
- Notice of Proposed Assessment
- Tax Deposit

Similar to EFW, your clients choose the amount to pay and the date the funds should be transferred from their checking or savings accounts. They can schedule their estimated payments up to a year in advance or subscribe to our estimated tax payment email reminder service and never miss a due date.

To use Web Pay, all that your clients will need to enter are their social security number and last name.

Credit Card:

Your clients can use their credit cards to pay **any** bill when they make a payment through Official Payments Corporation. Official Payments Corporation charges a convenience fee of 2.5 percent (minimum $1).

Installment Payments:

If your clients are unable to pay their balances in full, encourage them to apply for an installment agreement online. Generally, your clients qualify if they:

- Owe a balance of $25,000 or less.
- Agree to pay their balance in 60 months or less.
- Have filed all personal income tax returns.

Approval will be based on ability to pay and compliance history. There is a $20 fee for establishing installment agreements. We will add the fee amount to your client's balance.

Mandatory e-Pay

As a reminder, the law requires individuals to remit all future payments electronically once they:

- Make an estimated tax or extension payment (by check or electronic method) over $20,000 for a taxable year beginning on or after January 1, 2009; OR
- File an original return with a tax liability over $80,000 for a taxable year beginning on or after January 1, 2009.

Once your client meets the mandatory e-pay threshold, they are required to make all subsequent payments electronically, regardless of the amount, type, or taxable year. Fiduciaries, estates, and trusts are not required to make payments electronically, regardless of the amount owed. Since passage of the Mandatory e-Pay law for Individuals, compliance by taxpayers and their representatives has steadily increased. Therefore, in 2010, we will again not assess the Mandatory e-Pay penalty.

IRS Nationwide Tax Forums Registration Available!

Join tax professionals from across the country for three days of the latest tax law information, hands-on workshops, networking opportunities, and exhibits of the latest tax products and financial services to improve your business.

In 2010, the Nationwide Tax Forums sites include Atlanta, GA, Chicago, IL, Orlando, FL, New York, NY and Las Vegas, NV, and finally San Diego, CA.

Take advantage of this great opportunity to receive CPE credits, learn from subject matter experts and, network with your peers. You can also take advantage of IRS electronic services and, obtain assistance on your most

difficult tax case. More forum dates and information is available on our website. To register, go to the IRS Nationwide Tax Forum at www.irstaxforum.com.

Information for Charities and Nonprofits, Exempt Organizations

We recently updated our Charities and Nonprofits (Exempt Organizations) webpage. The updates include exempt organization information on the tax exemption process, filing requirements, forms and publications, presentations, and a listing of organizations that have obtained California exempt status.

The listing of exempt organizations contains the following information:

- Entity identification number.
- Entity name.
- City.
- Exempt section under R&TC Section 23701.
- Account period ending date.
- Franchise Tax Board status.
- Secretary of State status.

The list will update on a monthly basis.

To access the webpage, go to ftb.ca.gov and search for **exempt organizations**.

Recent Law Changes

Beginning January 1, 2010, we clarified the usage of streamlined form FTB 3500A, Submission of Exemption Request, as explained below.[1]

When an organization submits form FTB 3500A along with its IRS Determination Letter under IRC Section 501(c)(3), we send the organization an acknowledgment letter specifying the effective date of the organization's exemption. The effective date for state purposes is generally the effective date of the organization's federal income tax exemption.

Once we issue the acknowledgment letter, the documents submitted to us for exemption, the acknowledgment letter, and any other documents issued by us are required to be open to the public for inspection under R&TC Section 19565.

If we suspend or revoke the exemption of an organization, the organization must file form FTB 3500, Exemption Application, for reinstatement of its exempt status.

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[1] AB404

Statute of Limitations on Collection Actions

For many years, no statute of limitations existed on the collection of an income or franchise tax delinquency. Beginning in 2006[2], a statute of limitations (SOL) on our collection actions went into effect.

R&TC Section 19255 was created to require us to permanently abate unpaid debts after 20 years, and established specific circumstances under which debts will remain due and payable beyond the 20-year period.

When does the 20-year SOL start? The time period begins to run on the assessment date, commonly called the statutory lien date (SLD). Collection stays suspend or extend the 20-year SOL. For example, a bankruptcy, an approved installment agreement, or during any other period during which collection of a tax is suspended, postponed, or extended by operation of law will serve to extend the SOL period.

What is the SLD? R&TC Section 19221 provides that if a tax liability is not paid at the time that it becomes "due and payable;" a perfected and enforceable state tax lien is created for the amount of the tax liability. This point in time is called the assessment date or the SLD. If more than one liability is "due and payable" for a particular taxable year, the later date is used. For example, a taxpayer files a return with a balance due on April 15, 1999, and we later audit the year and issue a Notice of Proposed Assessment that becomes due and payable on April 15, 2001, the SLD is April 15, 2001.

What are collection stays? Collection stays are the times when we cannot take involuntary collection action due to one or more of the following reasons:

- The taxpayer/debtor is in bankruptcy plus six months.
- The taxpayer/debtor is in an approved installment payment agreement.
- The taxpayer/debtor is in serving in the military and in a combat zone.
- The taxpayer/debtor is in child support collection plus 60 days.
- We postpone collection because of a presidentially declared disaster or terroristic or military action.

For more information for your clients in collection status, go to ftb.ca.gov and search for Collections Procedures Manual (**CPM**).

[2] Applicable on and after July 1, 2006, to any liability due and payable before, on, or after July 1, 2006

Small Business

Dissolving an Entity

Does your client plan to dissolve, surrender, or cancel business operations in California? If so, your clients may be able to avoid the minimum franchise tax or annual tax.

To terminate their legal existence, business entities registered with the California Secretary of State (SOS) can dissolve, surrender, or cancel their businesses in California as follows:

- **Domestic corporations** (those originally incorporated in California) may legally **dissolve**.
- **Foreign corporations** (those originally incorporated outside California) may legally **surrender**.
- **Limited liability companies** and **partnerships** (both domestic and foreign) may legally **cancel**.

Entities may be able to avoid the minimum franchise tax or annual tax for current and subsequent years if all of the following requirements are met:

- The entity filed its final franchise or annual tax return timely, including extension, for the preceding taxable year.
- Conducted no business after the last day of the preceding year.
- Filed the appropriate documents with SOS within 12 months of the filing date of their final tax return.

Steps to dissolve, surrender, or cancel a business entity:

- File any delinquent tax returns.
- File the final/current year tax return. On this tax return's first page, write **FINAL** at the top of the page and check the box labeled **"Final Return."**

  Exception for a nonprofit tax-exempt church or tax-exempt corporation - It does not have to file a final return if its three-year gross receipts average is under $25,000. But it must file a final return if it exceeds this average, if it's a private foundation, or if it has non-member or unrelated business income.

- Pay all tax balances, including any penalties, fees, and interest.
- File the appropriate dissolution, surrender, or cancellation forms with the SOS within 12 months of filing your business' final tax return. To get the correct forms, go to sos.ca.gov, or call the SOS at 916.657.5448.

  - **Suspended or forfeited business** - You must revive your business before you file dissolution, surrender, or cancellation forms with the SOS.
  - **Public benefit and religious corporations, and mutual benefit corporations holding charitable assets** - You must obtain a dissolution waiver from the Office of the Attorney General **before** filing dissolution forms with the SOS. For more information, go to ag.ca.gov/charities, or call the Office of the Attorney General at 916.445.2021.

If you need our assistance, call us:

Business entities	916.845.7057
Tax-exempt corporations	916.845.4171

Ask the Advocate

Provisional Assessments

We have received questions regarding our practice of issuing provisional assessments. The following is a brief explanation of the process and the authority to make such adjustments.

A provisional assessment is an assessment based on information developed as of the date of the issuance of the assessment, issued before the full completion of the

audit to protect the statute of limitations, with the understanding that further development of the facts and issues may occur at a protest.

Basis of Assessment

Under R&TC Section 19033, we have the authority to examine original/amended returns filed by taxpayers, and issue a deficiency notice, if it is determined that the tax reported is less than the tax disclosed by the examination. The determination of the deficiency cannot be "arbitrary or without foundation."

When issuing assessments, we have the initial burden to show that a proposed assessment is reasonable and rational; if we satisfy this burden, the proposed assessment is presumed to be correct, and the burden of proof falls upon the taxpayer.[3]

Taxpayers are required to provide and maintain accounting records in order to file an accurate tax return.[4] In the absence of reliable books or records, the taxing agency is given great latitude to determine a taxpayer's taxable income by whatever method will, in its opinion, clearly reflect income.[5] The choice as to the method of reconstructing income lies with the taxing agency; the only restriction being that the method is reasonable under the circumstances.[6]

In *New Colonial Ice Co. v. Helvering (1934) 292 U.S. 435, 440 [78L. Ed. 1348],* the courts held that deductions are a matter of legislative grace and the taxpayer seeking the deduction must be able to point to an applicable statute and show that the taxpayer comes within its terms.[7] Additionally, the burden of proof for an item of deduction or credit is on the taxpayer.[8]

Validity of Notice of Deficiency

Under R&TC Section 19034, the notice of proposed assessment "shall set forth the reasons for the proposed deficiency assessment and the computation thereof."

The validity of a notice of deficiency is determined by whether it informs the taxpayer of the basis of the assessment such that the taxpayer can intelligently protest the matter.[9]

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[3] *Todd v. McColgan* (1949) 89 Cal.App.2d 509, 201 P.2d 414; *Appeal of Myron E. and Alice Z. Gire*, 69-SBE-029, Sep. 10, 1969; *Appeal of Ismael R. Manriquez*, 79-SBE-077, Apr. 10, 1979; *Appeal of Harold and Lois Livingston*, 71-SBE-038, Dec. 13, 1971.
[4] *Appeals of Siroos Ghazali, 85-SBE024, April 9, 1985; Appeal of Michael S. Luft, 88-SBE-008, Apr. 8, 1988*
[5] *Appeal of Siroos Ghazali, supra; Joseph F. Giddio, 54 T.C. 1530 (1970)*
[6] *Appeal of Siroos Ghazali, supra; Herbert Schellenbarg, 31 T.C. 1269 (1959)*
[7] See also, *Appeal of James M. Denny,* 62-*SBE-023, May 17, 1962*
[8] *Segel v.Comm'r*, 89 T.C. 816, 842 (1987), citing to *Interstate Transit Lines v. Commissioner*, 319 U.S. 590, 593 (1943); *Appeal of Robert R. Telles*, 86-SBE-061, Mar. 4, 1986
[9] *Edison California Stores*, 50-SBE-007, May 18, 1950

In *Scar v. Commissioner* (1987) 814 F 2d. 1363, the Court discussed what is considered a valid notice of deficiency, sufficient to put a taxpayer on notice of the adjustments being made. *Scar* explains that a notice of deficiency "must at a minimum indicate that the IRS [the taxing agency] has determined the amount of the deficiency."

Provisional assessments must meet the legal qualifications discussed above (reasonable and rational basis and adequacy of notice), to qualify as a valid assessment. If a taxpayer has concerns about the legal sufficiency of a specific notice of proposed assessment, those issues should be raised at protest.

Steve Sims, EA
Taxpayers' Rights Advocate

Follow our FTB Advocate on Twitter at twitter.com/FTBAdvocate.

Inside FTB

Interest Rate for July 2010 to December 2010

Pursuant to R&TC Section 19521 (formerly 19269), the adjusted interest rate has been determined for the period July 1, 2010, through December 31, 2010. The adjusted interest rate is four percent. This is the rate compounded daily that accrues with respect to various state taxes including: personal income, corporate income, and franchise. The rate for corporation tax overpayments for the period is zero percent. If you are interested in viewing the previous interest and estimate penalty rates, go to ftb.ca.gov and search for **interest rates**.

Criminal Corner

Clinic Owners Accused of Bilking Millions from Public Health Programs, Failing to Pay Taxes

The owners of a West Hollywood clinic are due to be arraigned for allegedly billing state and federal health programs up to $50 million in services not rendered or, in some cases, services purportedly rendered to dead patients, the Los Angeles District Attorney's Office announced.

Deputy District Attorney Amy Suehiro of the Fraud Interdiction Program said Alla Chernov, 48, and Boris Sokol, 50, of Pacific Palisades are charged with one count

each of conspiracy to commit a crime with the allegation that in the commission of the offense the defendants took more than $3.2 million.

Chernov and Sokol, who were arrested by our agents and the Department of Justice, are expected to be arraigned in Department 30 of the Foltz Criminal Justice Center. Bail was recommended at $15 million each.

The defendants additionally were charged with one count each of grand theft of personal property for unlawfully taking money from Medi-Cal and Medicare. Chernov and Sokol, who are married, were collectively charged with seven counts of allegedly filing false resident and corporation income tax returns.

Chernov and Sokol were allegedly involved in a scheme over a five-year period, beginning in 2001, whereby they billed Medi-Cal and Medicare for medical treatment and diagnostic services that were not rendered.

An eight-year, multi-agency investigation further revealed that the defendants billed for patients who were seen at other medical facilities and, in some cases, for people who had died long before they purportedly received care at the defendants' clinic.

Prosecutors allege that Chernov and Sokol orchestrated a complex conspiracy that involved medical doctors and bribes given to Medicare workers to obtain multiple provider numbers for doctors who saw no patients but merely initialed files.

The investigation revealed that some of the doctors were out of the country or were doing out-of-state internships when they allegedly supervised physician's assistants.

A search warrant executed in 2004 additionally revealed that the clinic had predated medical records two weeks into the future complete with patients' vital signs and pulse rates. Medicare was billed for services allegedly rendered while the clinic was closed down after the search warrant.

The defendants also are accused of filing false tax returns between 2003 and 2005 for their personal and corporate income in excess of $14.9 million.

The investigation was conducted by the Los Angeles County District Attorney's Office, the California Department of Justice, the Federal Bureau of Investigation and us.

If convicted as charged, Chernov and Sokol each face seven years in prison.

Systemic Issue Update

Prevent Misread Taxpayer Identification Numbers

In March 2009, we implemented our Systemic Issue Management System. This system allows us to collect taxpayer issues and track the research and resolution. Over the past year, we received many comments and suggestions. In our effort to share the progress and changes we have made from your comments and suggestions, we created this new column, **Systemic Issue Update**.

Systemic Issue Submission: Payers report information using a nine-digit taxpayer identification number for business returns. Apparently, your system is picking this up as a social security number and generating a notice to file a tax return. The telephone number on the notice can't help with the problem and transfers us to another section. This is a huge expense of time. Can't the system recognize a taxpayer ID and/or a social security number?

Response: Sometimes. We receive and process more than 500 million income records each year. These records belong to individuals, estates, trusts, corporations, etc. To help ensure that taxpayers are properly identified, our reporting requirements instruct payers to provide information about the type of taxpayer (individual, corporation, etc.) who received the record and the type of taxpayer identification number being reported. When a payer correctly provides that type of information, the nonfiler system has no trouble determining what type of identifier has been provided. However, that information is not always available to the payer or the payer provides incorrect information. Taxpayers should review the information provided to employers, customers, and financial institutions to ensure that information is accurate.

Big Business

S Corporations – New Withholding Rule for the 2009 Form 100S

Beginning tax year 2009, S corporations may claim withhold at source on their S corporation return, but not in excess of their tax liability. Since S corporations are taxed at the entity level, they can choose to:

- Allocate the withholding credit to their S corporation shareholders.
- Claim the withholding on the S corporation tax return (not to exceed the amount of tax).
- Use a combination of both the above.

S corporations may not receive a refund of withholding on Form 100S.

Next Step-Allocating Withhold at Source

Any remaining withhold at source credit in excess of the tax liability must be allocated to the S corporation shareholders using Form 592.

Need more information about withholding?

Web: Go to ftb.ca.gov and search for **nonresident withholding**
Phone: Within the U.S., call: **888**.792.4900
Outside the U.S., call: 916.845.4900
Fax: 916.845.9512
Email: wscs.gen@ftb.ca.gov
(This is not a secure email address. Please do not send confidential information.)