Tax News

August 2010

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Offer in Compromise

The Offer in Compromise (OIC) Program offers taxpayers who do not have, and will not have in the foreseeable future, the money, assets, or means to pay their tax liability in full. It allows a taxpayer to offer a lesser amount for complete satisfaction of a nondisputed final tax liability. Our OIC program is authorized by Revenue and Tax Code (R&TC) Section 19443.

We require taxpayers to prove that the amount offered is the most we could expect to receive based on their present assets and income. In addition, we determine whether taxpayers have reasonable prospects of acquiring additional income or assets that would allow them to satisfy a greater amount of the liability than the offered amount within a reasonable period (depending on other factors, five years is usually considered a reasonable period). Furthermore, we must determine that acceptance of the offer is in the best interest of the state.

You may use the following publications to assist your clients in applying for an OIC.

- 4905 PIT Booklet, Offer in Compromise for Individuals.
- 4905 BCT Booklet, Offer in Compromise for Business Entities.
- DE 999CA, Multi-Agency Form for Offer in Compromise.

You may call the OIC staff directly at 916.845.4787.

To print the publications, go to **ftb.ca.gov** and search for **OIC**.

Statutes of Limitations on Assessments and Refunds/Credits Following Federal Action

This is the third in a series of four articles on Statutes of Limitations (SOLs) relating to California tax law. This month's article addresses common SOLs for assessments and claims for refund or credit following a federal action. The last article will cover miscellaneous SOLs for assessment and refund/credit.

1. **What is the SOL for us to issue an assessment following federal action?**
Timing is everything! The date we are notified of an Internal Revenue Service (IRS) adjustment determines when we may issue an assessment resulting from the federal adjustment.

- If the taxpayer or the IRS reports a federal adjustment to us, or if a taxpayer files an amended California return reflecting the federal adjustment, **within six**

months after the final federal determination date, we may issue a proposed assessment within the later of (1) **two years** after the date we received notice of the federal adjustment, or (2) the expiration of any other open SOL under California law. (Revenue and Taxation Code (R&TC) Section 19059)

- If notice of the federal adjustment is reported to us **more than six months** after the final federal determination date, we may issue a proposed assessment **within the later** of (1) **four years** after the date we receive notice of the federal changes or corrections, or (2) any **open SOL** under California law.

- If neither IRS nor the taxpayer reports a federal change or correction, we may issue a proposed assessment at any time. (R&TC Section 19060(a))

2. What is the SOL to file a claim for refund following federal action?
Pursuant to R&TC Section 19311, a taxpayer may file a claim for refund resulting from a federal adjustment within the later of the general four-year SOL (R&TC Section 19306) or two years from the final federal determination date.

3. Are there limitations on the scope of claim for refund following federal action?
Yes. There are three important limitations. First, a claim for refund under R&TC Section 19311 is limited to overpayments resulting from the federal adjustment. Generally, this means that the same issue or item adjusted by the IRS can be the basis of a California claim. Second, a claim for refund filed under R&TC Section 19311 must be based on a federal adjustment to an original or amended federal return, **and** the federal adjustment must affect the tax shown on an original or an amended California return previously filed with us. The original state or federal return of a non-filer does not result from a federal determination. Third, a federal adjustment may result in a claim for refund for a tax year different from the tax year in which the federal adjustment occurred. This commonly occurs where there is a federal carryforward or carryback that is not applicable under California law or where there is a California-only credit or credit carryforward in the year of the federal adjustment.

Erroneous Underpayment Penalties Issued

For taxable years beginning January 1, 2009, California requires individual taxpayers with California AGI equal to or greater than $1,000,000 ($500,000 for married/RDP filing separately) to pay 90 percent of the current year tax or be subject to the underpayment of estimated tax penalty. FTB 5805, Underpayment of Estimated Tax by Individuals and Fiduciaries, provides the following instructions:

If you meet any of the following conditions, you do not owe a penalty for underpayment of estimated tax. Do not complete or file this form if:

- The amount of your tax liability (not including tax on lump-sum distributions) less credits (including the withholding credit) but not including estimated tax payments for either 2008 or 2009 was less than $500 (or less than $250 if married/RDP filing a separate return).
- Your 2008 return was for a full 12 months (or would have been if you were required to file) and you did not have any tax liability on that return.
- The amount of your withholding plus your estimated tax payments, if paid in the required installments, is at least 90 percent of the tax shown on your 2009 return or 100 percent of the tax shown on your 2008 return (110 percent if AGI was more than $150,000 or $75,000 if married/RDP filing a separate return) and you are not using the annualized income installment method. Taxpayers with AGI equal to or greater than $1,000,000 (or $500,000 if married/RDP filing a separate return), must use the tax shown on their 2009 tax return.

Unfortunately, our systems did not allow the $500/$250 tax liability prior year exception for a 2009 tax year return reporting an AGI equal to or greater than $1,000,000 ($500,000 for married/RDP filing separately). As a result, notices with incorrect penalties were sent out. We corrected this processing error so that returns processed after June 29, 2010, will be allowed the prior year exception as stated above. We have identified the affected 2009 tax returns and corrected accounts on July 20, 2010. FTB 719PC, Underpayment of Estimate Tax Penalty, will be sent to taxpayers regarding the adjustment beginning July 26, 2010. If applicable, refunds will be mailed within two weeks.

For questions on the underpayment of estimated tax penalty, contact our practitioner hotline staff at 916.845.7057 or have your clients contact the taxpayer services center section at 1.800.852.5711. We apologize for any inconvenience this may have caused you and your clients.

Register for the IRS Nationwide Tax Forums

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, 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. To register and get more information, go to the IRS Nationwide Tax Forum at irstaxforum.com.

No Change to Interest Rates

The adjusted interest rate has been determined for the period January 1, 2011, through June 30, 2011.[1] The interest rate will remain at four (4) 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 (0) percent.

To find adjusted interest rates, both current and past, go to ftb.ca.gov and search for **interest rates**.

2009 Head of Household (HOH) Audit Letters

The first mailing of HOH Audit Letters for tax year 2009 began at the end of July. We expect to mail approximately 135,000 HOH Audit Letters for the 2009 tax year.

HOH audit staff review the completed questionnaires from the audit letters to determine if taxpayers qualify for the HOH filing status. If the audit letter questionnaire is incomplete, or provides conflicting information, we contact the taxpayer to resolve the issue. Once we confirm the HOH filing status, we mail an acceptance letter to qualified taxpayers. Acceptance letters apply only to the specific tax year examined and will not qualify the taxpayer for any other tax year.

Taxpayers who fail to respond to the letter, or whose responses indicate they do not qualify for HOH, can expect a Notice of Proposed Assessment that disallows their HOH filing status. If you have clients who receive an audit letter, advise them to respond by the letter's due date to avoid a failure to furnish information penalty.

Taxpayers who receive a 2009 HOH Audit Letter can complete the questionnaire any of the following ways:

- Go to ftb.ca.gov and search for **hoh web** to find the HOH Audit Letter Web Response page. Taxpayers will need their social security number and the FTB ID listed at the top of the letter. This is the fastest way to process the audit letter.
- Fax the completed questionnaire in the letter, and any supporting information to 866.223.8195.
- Mail the letter's questionnaire using the enclosed pre-addressed envelope.

[1] Pursuant to Section 19521 (formerly 19269) of the Revenue and Taxation Code

Small Business

New Jobs Credit Still Available

There is still time for qualified businesses to claim the New Jobs Credit. California allocated $400 million for this tax credit. As of July 17, 2010, the cumulative total amount of New Jobs Credit generated on personal income tax and business entity tax returns filed and processed is $30,250,693. Business entities include C corporations, S corporations, limited liability companies, and partnerships.

This credit is allocated on a first come, first served basis up to $3,000 for each additional full-time qualified employee. To claim the credit on a 2009 personal income tax or business entity tax return, use Form 3527, New Jobs Credit. The cut-off date is the last day of the calendar quarter in which we estimate that qualifying claims will total $400 million. Qualifying claims must be made on original, timely filed returns.

By Tuesday of each week, we update our webpage to show the prior week ending cumulative totals.

An employer will qualify for the credit if:

- Each qualified full-time hourly employee is paid wages for not less than an average of 35 hours per week.
- Each qualified full-time employee that is a salaried employee was paid compensation during the year for full-time employment within the meaning of Section 515 of the Labor Code.
- On the last day of the preceding taxable year, they employed a total of 20 or fewer employees.
- There is a net increase in qualified full-time employees compared to the number of qualified full-time employees employed in the preceding taxable year. For taxpayers who first commence doing business in California during the taxable year, the number of full-time employees employed in the preceding year would be generally zero, unless certain special rules apply.

An employer may not claim the credit for those employees who are any of the following:

- Certified as a qualified employee in an enterprise zone or targeted tax area.
- Certified as a qualified disadvantaged individual in a manufacturing enhancement area.
- Certified as a qualified disadvantaged individual or qualified displaced employee in a local agency military base recovery area.
- An employee whose wages are included in calculating any other credit allowed.

For more information visit the New Jobs Credit Frequently Asked Questions webpage and see the instructions included with Form 3527. You can also call us at:

- 800.852.5711 from within the United States
- 916.845.6500 from outside the United States (not toll-free)

Ask the Advocate

Did We Deny Your Client's Child Care Credit?

Make sure your client provides a street address on Form 3506, Child and Dependent Care Expenses Credit, in order to receive the child care credit. Your client may qualify to claim the 2009 credit for the child and dependent care expenses, if your client paid someone in California to care for a qualifying person or child while your client worked or looked for employment. Your client must have earned income to qualify for the credit. Use Form 3506 to calculate the amount of your client's credit.

Your client must enter a complete physical address where the care was provided. This must be a California address since only care provided in California qualifies. A post office box is not acceptable. If your client does not provide correct or complete information, the credit may be disallowed. If a PO Box address is used on Form 3506, we deny the credit, and send out a letter asking your client to resubmit Form 3506 with a complete address including street number, city, state, and Zip code.

For additional information, go to ftb.ca.gov and search for Form 3506 to view the fillable version and the instructions.

Steve Sims, EA
Taxpayers' Rights Advocate

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

Inside FTB

Protecting Your Privacy

We take the privacy of your personal information very seriously.

Today's technology provides a number of benefits that improve the quality of our lives, including easier access to a greater amount of personal information. We work to maintain the balance between your right to privacy and our responsibility to achieve our mission.

We recognize that you have concerns about your right to privacy as it relates to personal information we collect and use to do our job. To address your concerns, we adopted the Information Privacy Principles for Individuals. We based them on the California Information Practices Act. They demonstrate our commitment to protect your personal tax information and to use that information responsibly.

To view the information we collect and the reasons we collected it, go to our Revised Privacy Policy.

Criminal Corner

Camarillo Businessman Sentenced for State Income Tax Evasion

A Camarillo businessman was sentenced to 180 days in jail and paid $313,764 in restitution after previously pleading guilty to four felony counts of state income tax evasion.

Charles Samuel Smith, 60, pleaded guilty in February 2010. Smith is president of C&J T-28 Parts Sales, Inc., which sells aircraft parts. According to court documents, Smith failed to report more than $1.8 million in personal income during the years 2000 – 2008 and the corporation failed to report more than $10.1 million in income during these same years. Smith also failed to file his 2002 – 2005 state income tax returns.

The restitution represents the unpaid personal and corporate tax, penalties, interest, and the cost of the investigation.

The failure to report income 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.

Ventura County Superior Court Judge Bruce A. Young handed down the sentence in Department 13 of the Ventura County Superior Court. Senior Attorney Kevin Drescher with the Ventura County District Attorney's Office prosecuted the case.

Smith is ordered to turn himself in August 31, 2010, to serve his sentence.

Big Business

Suspension and Revivor 101 – Part 1

In a four part series of articles, we will cover why a corporation or limited liability company (LLC) is suspended, how to revive your corporation or LLC, penalties associated with suspension, contract voidability, and how to apply for relief of contract voidability. In addition to these articles you can also find information on suspension and revivor on our website.

Suspension applies to domestic corporations and LLCs. Forfeiture applies to foreign corporations and LLCs. Both the Secretary of State and FTB have the authority to suspend or forfeit a corporation or an LLC. Although, foreign corporations and LLCs that have not registered with the Secretary of State cannot be forfeited, their contracts may become voidable if they are not in compliance with filing and payment obligations. We will discuss contract voidability in more detail in Part 4 of this series of articles.

We suspend or forfeit a corporation's or LLC's rights, powers, or privileges for:

- Failure to file a return.
- Nonpayment of taxes, penalties, interest, and fees (collection, filing enforcement, lien, or sheriff).

Before we can suspend or forfeit a corporation or an LLC, we are required to notify them that they are in danger of being suspended, forfeited, or having their contracts become voidable. We first send FTB 4974BC M (corporation) or FTB 4974LLC M (LLC), Final Notice Before Suspension/Forfeiture. If the entity does not comply within 60 days after we send the first notice, we send FTB 2520BC M (corporation) or FTB 4974LLC M (LLC), Notice of Suspension or Forfeiture. Finally, if the entity still does not comply after this final notice, we will suspend or forfeit. Generally, the suspension or forfeiture occurs on the first working day of the month.

Sometimes, we suspend or forfeit a corporation or LLC in error. Generally, this happens when a taxpayer sends the required returns or payment close to the suspension or forfeiture date, and we process the return or payment after that date. If this should happen to your client, contact us and we will restore the entity's status.

If the corporation or LLC continues to do business or receives income after it is suspended or forfeited, it is still required to file tax returns (R&TC 23303). In addition, we can assess a penalty on corporations that continue to do business while they are suspended or forfeited. We will discuss this penalty in Part 3 of this series.

In Part 2 of this series, we will discuss the effects of suspension or forfeiture and the how to revive your corporation or LLC.