

Contents	Page
California Recognizes Out-of-State Same-Sex Marriages	2
Military Spouses Residency Relief Act	2
Mandatory e-pay Penalty Update: Not Assessed in 2010	4
Luxury Auto Pilot Program	4
EITC Awareness Day Is January 29, 2010	5
Consultants Wanted: California Seeks Experts Knowledgeable in Abusive Tax Shelter Transactions	6
Get Ready for the Filing Season with e-Services	7
Head of Household Guidelines	8
California's Enterprise Zones Wage Credit	9
Small Business	
Misleading Letter Schemes Target Corporations and LLCs	10
Ask the Advocate	
Taxpayers' Bill of Rights Hearing	12
Inside FTB	
Interested Parties Meeting Scheduled for Single Sales Factor	13
Criminal Corner	
Sunland Interior Designer Sentenced for State Income Tax Fraud and Insurance Fraud	13

California Recognizes Out-of-State Same-Sex Marriages

On October 11, 2009, the Governor signed Senate Bill 54, which provides that a marriage between two persons who have entered into a same-sex marriage outside the State of California prior to November 5, 2008, that was valid by the laws of the jurisdiction in which the marriage was contracted, is valid in California. The bill also provides that a marriage between two persons who have entered into a same-sex marriage outside of California on or after November 5, 2008, that was valid by the laws of the jurisdiction in which the marriage was contracted have the same rights and responsibilities as spouses with the sole exception of the designation of “marriage.”

Consequently, beginning in taxable year 2010, persons who have entered into a same-sex marriage outside of California that is valid according to the laws of the jurisdiction in which the marriage was contracted must file their California income tax return using either the joint or separate filing status.

If your client entered into a same-sex marriage outside of California, they may need to modify their withholding or estimated tax payments for taxable year 2010 in anticipation of this change.

For more tax information for same-sex married couples, go to ftb.ca.gov and search for [Pub 776](#).

Military Spouses Residency Relief Act

The Military Spouses Residency Relief Act (MSRRA) was signed into law on November 11, 2009 by the President. For taxable years beginning on or after January 1, 2009, a servicemember’s spouse is considered a nonresident for tax purposes if the servicemember and spouse have the same legal residence or domicile outside of California and the spouse is in California solely to be with the servicemember who is serving in compliance with military orders. In addition, under the MSRRA, a qualified spouse’s income for services performed in California is not considered to be from sources within this state if the spouse is not a California legal resident or domiciliary because the spouse is in California solely to be with the servicemember serving in compliance with military orders and both have the same out-of-state legal residence or domicile.

What is a Resident?

If the servicemember and spouse have the same state of legal residence or domicile, the MSRRA provides:

- A spouse shall not be deemed to have lost a residence or domicile in any state solely by reason of being absent to be with the servicemember serving in compliance with military orders.
- A spouse shall not be deemed to have acquired a residence or domicile in any other state solely by reason of being there to be with the servicemember serving in compliance with military orders.

Legal Residence or Domicile is defined as the one place:

- Where you maintain a true, fixed, and permanent home.
- To which you intend to return whenever you are absent.

Note: California may require spouses of servicemembers to provide proof that they meet the criteria for California personal income tax exemption as set forth in the MSRRA.

Income Subject to California Tax

In general, California taxes all of the income you receive while you are a resident of California and all of the income you receive from California sources while you are a nonresident.

However, a spouse of a servicemember is not taxed by California on income received from services performed in California if the spouse is not a California domiciliary and meets the MSRRA requirements above. All other income of nonresident spouses from California sources is subject to California tax.

California Source Income –

For the Servicemember's Spouse Who Meets the MSRRA Requirements

California source income subject to California income tax includes:

- Income from real or tangible personal property located in California.
- Income from a trade or business located in California other than income for services performed by the servicemember's spouse.

Tax Computation for Part-Year Residents or Nonresidents

To determine the amounts of "California taxable income" and "total taxable income" described in FTB 1032, section G, Tax Computation for Part-Year Residents or Nonresidents, the income for services performed in California by a servicemember's spouse meeting the MSRRA requirements is not included in California taxable income, Schedule CA (540NR), Column E. However, this income is included in total taxable income, Schedule CA (540NR), Column D, to arrive at the applicable California tax rate.

For more information, go to ftb.ca.gov and search for [FTB 1032](#), Tax Information for Military Personnel.

Mandatory e-pay Penalty Update: Not Assessed in 2010

When you are required to make electronic payments but pay by other means, we can assess a penalty equal to one percent of the amount paid, unless your failure to pay electronically was for reasonable cause and not willful neglect.

Effective January 1, 2010: 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. We will continue to focus our efforts on education and outreach so that taxpayers and their representatives can implement processes and procedures to comply with the law. We will continue to monitor compliance levels to determine the appropriate time to begin implementation of the penalty provision.

For more information about the e-pay law and making your tax payment, go to ftb.ca.gov and search for [Mandatory e-pay](#).

Luxury Auto Pilot Program

Each year, we receive and process millions of income information records. Our nonfiler program uses federal tax return information, information from other California state agencies, third-party data, and income estimates from self-employed activities to determine if a taxpayer has a filing requirement.

We are conducting a pilot program using luxury vehicle registration information from the Department of Motor Vehicles (DMV). We are evaluating the use of the DMV data to:

- Determine the taxpayer's ability to pay outstanding tax debts where the taxpayer was previously determined to have a limited ability to pay, or the cases were determined uncollectible or cost-prohibitive.
- Obtain better addresses.
- Evaluate asset information.
- Analyze existing collection strategies.
- Identify nonfilers.

The pilot is primarily focused on vehicles valued at \$40,000 or more at the time of purchase. We are using DMV vehicle registration data for the years 2004 through 2008.

EITC Awareness Day Is January 29, 2010

The IRS in partnership with local organizations in your area will kick off the Earned Income Tax Credit (EITC) Awareness Day event on January 29 to promote the federal tax credit.

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 IRS has a Partner Toolkit at www.eitc.irs.gov that provides EITC resources such as state-by-state statistics, ready-to-use presentations, fact sheets that can be used in outreach efforts, a sample “tweet,” letter to the editor, newsletter article, web article, “widget” (coming soon), and an “on-hold” message.

Remember:

- New EITC provisions mean more money for larger families.
- EITC can be a financial boost for working people hit by hard economic times.
- One in four eligible taxpayers could miss out because they don't check it out.

The EITC program enjoys relatively high participation rates; between 75 and 80 percent of eligible taxpayers claim the credit. Nonetheless, the IRS works hard to identify and reach the remaining EITC eligible taxpayers. The IRS is committed to maximizing participation while minimizing error.

The [EITC Assistant](#) (available mid-January) can help people determine if they qualify.

Please consider joining with local organizations interested in promoting the credit. If your office is interested in participating in a local news conference or issuing a press release, the IRS can help you connect with like-minded organizations in your area.

Consultants Wanted: California Seeks Experts Knowledgeable in Abusive Tax Shelter Transactions

Abusive Tax Avoidance Transactions (ATAT) cost California billions of dollars each year. In 2004, we collected a record \$1.4 billion from taxpayers participating in tax shelters during our Voluntary Compliance Initiative. Currently, we have an inventory of audit cases worth billions that need expertise beyond what we have in-house. As a result, we have decided to seek staff training assistance and help with our investigations from the private sector through the use of contract consulting.

California has worked successfully in the past with outside consultants on some of our most complex ATAT investigations. It is a great way to expand or maintain your practice and assist a governmental agency unwind some interesting, exciting, and exotic tax shelter cases. Currently, we are looking for specialists in the fields of financial instruments, structures, and arrangements that such abusive transactions employ. Additionally, we want experts or specialists who have substantial knowledge and can instruct staff on subject areas relating to ATAT such as:

- Financial Product Experts.
- Economist and Risk Theorists.
- Valuation Appraisers.
- Tax Law Specialists.
- Industry Specialists.
- Regulatory Specialists.

Outside consultants will assist staff on a case-by-case basis, as needed basis, and as the consultant is available. Specific contracts for each job are made from a pool of available experts that have specific expertise in the particular area needed. Assistance may be needed in investigations at any of our California, New York, Chicago, and Houston offices. Our ATAT investigations may include individuals, pass-through entities, corporations, and special purpose entities.

If you are interested in contracting with California to help FTB train staff, investigate taxpayers who may have engaged in these types of transactions, or know someone else who might be interested, please contact us at 916.845.7870 weekdays between 8 a.m. and 5 p.m. PST, excluding holidays, or email: Nellie.Bohling@ftb.ca.gov.

Get Ready for the Filing Season with e-Services

During these difficult times, it is increasingly important to work both smart and efficiently. Don't forget to take advantage of all our online services. We know it sounds cliché, but our online services really do save you and your clients time, money, and stress.

MyFTB Account – How many times have you received incorrect data regarding your client's estimated tax payments? Did you know you can find this information online before you complete their tax return? MyFTB account gives you a snapshot of the information we have, including:

- Estimated tax payments.
- Payments and balance due.
- Wage and withholding information.
- FTB-issued 1009-G and 1099-INT records.

Web Pay – If your clients need to make a payment, encourage them to pay electronically using Web Pay. This service simply debits their account on the day of their choice, up to one year in advance. We've developed form [FTB 1382A](#) to assist you with providing step-by-step instruction for your clients. With Web Pay, they can:

- Make an **estimated tax payment** (Form 540-ES).
- Pay the balance due on their **current-year tax return**.
- Make an **extension payment** (form FTB 3519).
- Pay any amount owed for **prior years**.
- Pay any personal income **tax bill** from us.
- Pay any **notice of proposed assessment**.
- Make a **tax deposit payment**.

Refunds – Taxpayers are always anxious to know what is going on with their refund. Encourage them to check the status of their refund online. Once their return has been processed, we will let them know the day their refund was authorized and give the estimated timeframe to receive their refund. Keep in mind, they generally will receive their refund much quicker if they e-filed and selected direct deposit.

Don't forget to go to ftb.ca.gov for these and other great [online services](#).

Looking for a form, schedule, or publication?

Have you ever had difficulty looking for one of our forms, schedules, or publications? We've developed a new [online locator](#) which allows you to search by the criteria of your choice. You can search by tax year, taxpayer type, form type, or simply by the form number or keyword. Go to ftb.ca.gov and select the Forms tab.

Helpful filing hints

- In order to save time and processing delays, please verify your client's address and social security number prior to submitting their tax return.
- If you e-file and transmit a California return with an incorrect social security number and we accept the return, do not correct the SSN and retransmit it. Call our Tax Practitioner Hotline at 916.845.7057 to make the correction.

Advise your clients to sign up to get a quarterly [email reminder](#) for estimated tax payments.

Head of Household Guidelines

Our filing season is just around the corner. Some of your clients may inquire about claiming head of household filing status. This filing status provides a lower tax liability and a higher standard deduction than the single filing status. Although many of your clients may think of themselves as the head of their household, they may not qualify for this filing status under state and federal tax laws.

To qualify for this filing status the taxpayer must meet all of the following requirements:

- The taxpayer was unmarried and not a registered domestic partner (RDP), or met the requirements to be considered unmarried or considered not in a registered domestic partnership as of the last day of the tax year.
- The taxpayer paid more than one-half the costs of keeping up his or her home for the year.
- The taxpayer's home was the main home for the taxpayer and a qualifying person who lived with the taxpayer for more than one-half the year. Please see the legal definitions for Parent/Stepparent (Father or Mother) and Temporary Absence in FTB Pub. 1540 for exceptions to this rule.
- The qualifying person was related to the taxpayer and met the requirements to be a qualifying child or qualifying relative.
- The taxpayer was entitled to a Dependent Exemption Credit for his or her qualifying person. However, the taxpayer does not have to be entitled to a Dependent Exemption Credit for his or her qualifying child if the taxpayer was unmarried and not a RDP, and the taxpayer's qualifying child was also unmarried and not a RDP.
- The taxpayer was not a nonresident alien at any time during the year.

There are several resources available to assist you in determining if your client qualifies for head of household:

- The 2009 personal income tax instruction booklets for Forms 540/540A and 5402EZ contain the general rules for using the head of household filing status.
- For detailed information, refer to FTB Publication 1540, California Head of Household Filing Status.
- FTB Publication 1540SPAN is our Spanish version of the 1540.
- You can also access the same comprehensive information online on our [HOH Webpage](#).
- A HOH [self-test](#).
- Under the [Practitioner's Corner Webpage](#), you can find more information about the topics covered in our HOH seminar. See FTB 1585, [Head of Household Workshop Supplement](#) and our PowerPoint presentation in the June 2008 issue of [Tax News](#).

By reviewing these sources and using the self-test to determine eligibility, most taxpayers can avoid a denial of their head of household filing status, and an assessment of additional tax plus interest.

For your clients who file electronically, we highly recommend having them file Form 4803e with their electronic return. By filing Form 4803e, (an electronic version of the HOH Audit Letter) with their electronic return, most electronic filers can avoid later receiving a paper copy of the HOH Audit Letter in the mail asking them to provide information about their qualifications for head of household filing status. They may, however, still receive a follow-up audit letter if they provide incomplete or conflicting information on the Form 4803e.

California's Enterprise Zones Wage Credit

In our June 2009 issue of Tax News we asked the question, "[Are you familiar with California's Enterprise Zones?](#)"

We now ask, "Are you aware some taxpayers who work in an Enterprise Zone may be entitled to a credit for the wages they earned?"

The Enterprise Zone tax incentive programs were created to help local businesses, and encourage outside businesses to locate in economically depressed areas. Also, the programs have a provision that allows low income individuals working within an Enterprise Zone to claim a credit that may help eliminate their California tax liability.

The Enterprise Zone Employee Credit is five percent of the wages attributable to employment within an enterprise zone up to \$10,500. The maximum credit per zone is \$525. The Enterprise Zone Employee Credit is reduced by nine cents (\$0.09) for every

dollar the taxpayer receives in excess of \$10,500 and any unused credit is lost (no carryover is allowed).

The Enterprise Zone Employee Credit is claimed on form FTB 3553 and the taxpayer must file a Form 540 or the Long Form 540NR to claim this credit. The Enterprise Zone Employee Credit can only be used to offset the tax attributable to employment within the enterprise zone. If a taxpayer earned wages in more than one zone, a separate form FTB 3553 is needed for each zone.

The following business-related tax incentives are also potentially available to a taxpayer doing business in an Enterprise Zone, so you may want to see if your clients are doing business within one of the state's many Enterprise Zones.

- Hiring credit.
- Sales or use tax credit.
- Business expense deduction.
- Net interest deduction for lenders.

Enterprise Zone tax incentives apply only to business activities and investments that take place in an Enterprise Zone that has received final designation.

While these Enterprise Zone incentives have been around for quite some time, there have been recent changes to the zones.

For a listing of all Enterprise Zones, expired, active and conditional, or to check if any of your clients work or have a business located within an Enterprise Zone, go to the California Department of Housing and Community Development (HCD) website at www.hcd.ca.gov/fa/cdbg/ez/.

For more information on the Enterprise Zone incentives and the Enterprise Zone Employee Credit, please call our Enterprise Zone Hotline at 916.845.3464.

Small Business

Misleading Letter Schemes Target Corporations and LLCs

Your business clients may receive a misleading letter to file board minutes and/or a statement of information for a fee. Because the letters look and sound official, your clients may be quick to send payment. But wait! Read the fine print, "...products or services being offered are not approved or endorsed by any government agency."

In our June 2008 issue, [Upsurge in Email Scams](#), we warned taxpayers of an “annual minutes” filing scheme where corporations are requested to file a form and pay a fee to a nonexistent agency.

Corporations receive letters from a variety of different businesses that sound like a government agency, including the “Compliance Annual Minutes Board” or “Board of Business Compliance Annual Minutes Division.” The letters cite various Corporation Code Sections, (e.g., 1500, 600, and 9510), request the completion and submission of the form along with a fee amount, and imply that failure to submit the form can put the corporation in a negative status. The fee amount requested ranges from \$125 to \$300. Corporations are not required to file their minutes with any agency.

More recently, limited liability companies (LLCs) are the target of a new letter scheme. LLCs receive a letter from the “Annual Filing Division” or the “Annual Review Board” again citing the Corporation Code, but now requesting the filing of a Statement of Information instead of the annual minutes. The letter looks official and includes the LLC’s name, address, an LLC number which may or may not be correct, and a due date for the fee. The first line reads, “Avoid Penalties, Fines, and Suspension” then it goes into the requirement language for the LLC to file a Statement of Information with the Secretary of State. The fee is \$195 or more. California law does require the filing of a Statement of Information to update records of the Secretary of State on an annual or biannual basis. However, the statement can be filed directly with the Secretary of State for a fee of \$20.

Within these letters there is a sentence indicating that the products or services being offered are not approved or endorsed by any government agency. These letters are not from the State of California.

Corporations and LLCs are not required to file “annual minutes” or a “Statement of Information” with the nonexistent Annual Minutes Board, Board of Business Compliance Annual Minutes Division, Annual Filing Division, Annual Review Board, or other third party. If your clients receive such a letter, they are under no obligation to respond.

We have several policies in place to protect the safety and security of taxpayer information. We never collect confidential taxpayer information through email or phone solicitation. Taxpayers should never provide personal information over the telephone or via email to persons who cannot verify they are our employees.

Ask the Advocate



Taxpayers' Bill of Rights Hearing

The Annual Taxpayers' Bill of Rights Hearing was held December 3, at FTB headquarters in the Gerald H. Goldberg Auditorium. We received four proposals in advance and representatives from two organizations made presentations. We are in the process of preparing responses to the proposals we received.

Vicki Mulak from CSEA presented the following concerns to the Board: taxpayers are being hit with so many issues from job losses, foreclosures, end of mortgage relief in 2008, two-thirds loss of dependency exemption, and the lack of conformity which drives the need for a "Stand-Alone" tax return. Ms. Mulak also complimented us for legislative proposals to make corrections in operations to the Innocent Spouse Program and the Voluntary Disclosure Program.

Gina Rodriguez from Spidell presented the following proposals to the Board:

- We should sponsor legislation to allow the three standard relief provisions for disaster loss carryover, loss throwback election, and an extension of time to make the loss throwback election.
- We should address the inequities with respect to interest assessment involving NOL carrybacks, with respect to both federal carrybacks, and carrybacks allowed by other states, as well as California carrybacks that will be allowed beginning with the 2011 taxable year.
- We, along with BOE, should sponsor legislation to provide optional look-up tables, where California individual taxpayers/purchasers can determine their use tax liability based on their income.

Ms. Rodriguez acknowledged Steve Sims, Susan Maples, and Patrick Kusiak for their dedication to the fair administration of California tax laws.

Steve Sims, EA
Taxpayers' Rights Advocate

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

Inside FTB

Interested Parties Meeting Scheduled for Single Sales Factor

We are holding an Interested Parties Meeting Thursday, January 28, 2010, at 10 a.m. to elicit public input on the single sales factor. We will discuss the content of a proposed regulation that will give instructions on how to make the single sales factor election provided for under Revenue & Taxation Code Section 25128.5 and to address numerous factual variations that may be encountered in making and accounting for the election. For more information about this meeting and others, go to ftb.ca.gov and search [interested parties](#).

In last month's issue of Tax News, [Corporation Tax Law Changes in California](#), lists the changes in tax law, including the single sales factor, and an [email](#) for you to send in questions, comments, and suggestions.

Criminal Corner

Sunland Interior Designer Sentenced for State Income Tax Fraud and Insurance Fraud

On November 19, 2009, a Sunland interior designer was sentenced after pleading guilty to one felony count of state income tax fraud and one felony count of insurance fraud.

According to court documents, Ronald E. Hunt, 56, continued working as an interior designer from 2003 to 2006, including an appearance on an HGTV home improvement show during the time he claimed to be disabled. An employee with the private insurance company paying Hunt's disability saw the show and alerted the California Department of Insurance (CDI). An investigation confirmed Hunt intentionally and knowingly concealed his secondary employment from his disability insurance company by falsifying written statements and deceiving a company field representative. During the time Hunt claimed to be disabled, he collected more than \$400,500 in income as an interior designer while also collecting \$147,600 in disability benefits. Hunt also failed to report this income on his state income tax returns for these same years.

Tax News
January 2010

Hunt was ordered to pay \$151,700 restitution to the private insurance company and \$31,000 to us, representing the unpaid tax, penalties, interest, and the cost of the investigation. He was sentenced to 200 hours of community service and 60 months of probation.

Judge David M. Horwitz handed down the sentence on Tuesday, November 17, in Department 50 of the Clara Shortridge Foltz Criminal Justice Center. Los Angeles County Deputy District Attorney David Berton prosecuted the case. This was a joint investigation between the CDI and us.