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State Tax Relief Provided for Disaster Victims

Recent Legislation (AB 1662, AB 1690, and ABX6 11) designates several wildfires, storms, an earthquake, and explosion as state disasters, thus providing the disaster victims with specific tax relief.

Special tax rules apply to disaster losses. Disaster victims can claim a disaster loss in either the year the disaster occurred or in the prior year. Typically, taxpayers must deduct losses only in the year of the disaster. The advantage of claiming a disaster loss in the prior year is that the loss will generally reduce the prior year tax liability and creates a refund that we can quickly issue.

The following events are designated as state disasters and provide the following tax benefits:

Disaster	Counties covered by disaster designation	Prior year election deadline	100 percent loss carryover provision
September 2010 San Bruno Explosion	San Mateo	2009 by October 17, 2011	15 years
July 2010 Kern Wildfires	Kern	2009 by October 17, 2011	15 years
April 2010 Baja California Earthquake	Imperial*	2009 by October 17, 2011	15 years
January 2010 Humboldt Earthquake	Humboldt	2009 by October 17, 2011	15 years
January 2010 California Winter Storms	Calaveras * Imperial * Los Angeles * Orange Riverside* San Bernardino* San Francisco Siskiyou*	2009 by October 17, 2011	15 years
August 2009 California Wildfires	Los Angeles Monterey Placer	Expired	15 years

When the losses exceed disaster victims' income for the year, they can carry the loss over for up to 15 years to reduce their tax liability until the disaster losses are used up. For example, a couple who were disaster victims of the July 2010 wildfires have uninsured losses of \$300,000 and taxable income for 2009 of \$50,000. They have the option to report the disaster on their 2009 tax return, get a refund of their state income taxes paid, and carryover the \$250,000 balance to future years. They have until October 17, 2011, to make this election.

Disaster victims that already filed their tax return for the prior year can claim a disaster loss against that year's income by filing [Form 540X, Amended Individual Income Tax Return](#).

A casualty loss occurs when your property is lost or damaged due to an earthquake, fire, flood, or similar event that is sudden, unexpected, or unusual. Disaster victims usually qualify for a casualty loss deduction for tax purposes when insurance or other reimbursements do not repay you for damage to your property. For California purposes, your casualty loss becomes a disaster loss when both of the following occur:

- Disaster victims sustain the loss in an area the President of the United States or the Governor of California designates as a disaster area. If only the Governor declares a disaster, subsequent state legislation is required to activate the disaster provision for California tax purposes.
- Disaster victims sustain the loss because of the declared disaster.

For more details, refer [FTB Publication 1034, Disaster Loss How to Claim a State Tax Deduction](#) at ftb.ca.gov.

*Also qualifies for Federal disaster relief

Assessing the Mandatory e-pay Penalty Begins 2011

Starting January 1, 2011, the mandatory e-pay penalty will be assessed when a person required to make payments electronically pays using any other method.

The penalty is equal to one percent (1%) of the amount paid, unless failure to pay was for reasonable cause and not willful neglect. (Revenue and Taxation Code section 19011.5)

Electronic payments are required once a person:

- Makes an estimate tax or extension payment (by check or electronic method) over \$20,000.
- Files an original tax return with a tax liability over \$80,000.

Electronic payments may be made using any of the following methods:

- Pay online with [Web Pay](#) at ftb.ca.gov.
- Request an Electronic Funds Withdrawal (EFW) when e-filing a tax return.

- Pay by credit card online at www.officialpayments.com or by calling toll free 1.800.272.9829.
- Use the [pay-by-phone option](#) by completing and submitting form [FTB 4073](#), Mandatory e-pay Pay-by-Phone Authorization Agreement for Individuals, available at ftb.ca.gov.

Fiduciaries, estates, and trusts are not required to make payments electronically, regardless of the amount owed.

Penalty Reference Chart Updated

We updated the [penalty reference chart](#) (FTB 1024). We list the penalty codes numerically by Revenue and Taxation Code sections. These penalties reflect the law as enacted on April 12, 2010, for taxable years beginning on or after January 1, 2010.

To view or print the chart, go to ftb.ca.gov and search for **1024**.

What is a Partial Lien Release?

A partial lien release releases a specific piece of property from a recorded state tax lien. However, it does not release the lien in its entirety. The lien remains in effect against the taxpayer and continues to encumber other property the taxpayer owns or acquires in the future.

Sometimes, during short sales transactions, your client may not have enough funds in their escrow account to pay off our recorded state tax lien in full. If this happens, you may request a Partial Lien Release from us.

To request a partial lien release for your client, call the Lien Resolution Unit at 916.845.4350. If it is determined that a partial release of lien or subordination of a lien is warranted, we will ask for the following documentation to be submitted via overnight mail to the address below:

- Letter of explanation.
- Estimated closing statement.
- Current preliminary title report that includes the legal description of the property.
- Current appraisal.
- Copies of all other lien encumbrances.

- Documentation to substantiate all lien payoffs through this escrow.
- Copy of the new deed of trust (for subordination requests only).

LIEN RESOLUTION UNIT MS A410
FRANCHISE TAX BOARD
SACRAMENTO, CA 95827

For more information about liens, go to ftb.ca.gov and search **liens**.

Taxpayers Beware: eMail Phishing Scam

Warn your clients about a potential phishing scheme via email and caution them not to respond to the email.

We received calls from concerned taxpayers who have received what looks like an official email from a tax agency. The email warns the taxpayer that their federal Electronic Funds Transfer (EFT) tax payment did not go through and directs the taxpayer to another website. While we recently introduced [secured email](#) as an efficient and easy method for us to communicate confidential information with taxpayers, its use is currently limited to specialized business purposes. Secure email cannot be initiated from an individual outside our agency.

We do not send email notices regarding EFT payment rejections. If we have a question about a taxpayer's EFT payment, normal procedures are to call the taxpayer or send a bill through the mail.

The IRS is aware of this scam and provides guidance about this and other [scams](#) at its [website](#). The Board of Equalization also reports hearing from its taxpayers about the same scam and has issued a [similar warning](#).

If your client receives suspicious emails, advise them not to click on the link or respond to the sender. Anyone who has a question about an FTB EFT payment should check their bank account to verify whether an EFT payment has been made, or you can call us at 916.845.7057, 8 a.m. to 5 p.m. weekdays.

Free Backup Withholding Seminars

Do you know the current backup withholding requirements? If you do not, join us for a free webinar and get the information you need.

The webinars are developed for individuals, businesses, and government entities. Participants attending one of these webinars will receive an overview of the following topics:

- Requirements.
- Reporting and remitting.
- Forms and publications.
- Frequently asked questions (FAQs).

Duration: Approximately 45 minutes.

Dates/Time:

- [Tuesday, November 16, 2010 at 10 a.m. \(PST\)](#)
- [Tuesday, December 14, 2010 at 10 a.m. \(PST\)](#)

Registration takes only a few minutes. To register, select a date and time option from above. Space is limited.

Chaptered or Vetoed? - That is the Question

After the longest budget delay in state history, the Legislature and the Governor reach an agreement in early October. The following is a list of bills related to us, with a brief description, that were chaptered and a list of the bills that were vetoed as part the budget negotiations.

BILL NUMBER	DESCRIPTION	CHAPTERED NUMBER
AB 183	Principle Residence Credit	10-12
AB 347	Haiti Earthquake	10-8
AB 680	Tax Levy Administration	10-4
AB 1585	State Agencies Submit Required Reports as Printed Copies to Legislative Counsel and Secretary Of Senate	10-7

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	and as Electronic Copies to Assembly Chief Clerk/Bills Requiring Reports Shall Include Repeal Date	
AB 2091	Public Records/Exempt Public Agency Information Security Records From Disclosure if Facts of Case of Disclosure Would Reveal Vulnerabilities or Increase Potential for Attack	10-205
AB 2177	Allow Electronic Communication to Taxpayers to Inform Of Tax Change or Obligation	10-136
SB 401	Conformity Act of 2010	10-14
AB 658	CA Police Activities League	10-346
AB 1088	CA Veterans Home Fund	10-355
AB 1530	FTB Order of Restitution for Collections	10-359
AB 1662	Disaster Loss Deduction/Excess Loss Carryover/August 2009 Los Angeles, Monterey, Placer, and July 2010 Kern County Wildfires and January 2010 Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou County Winter Storms	10-447
AB 1690	Disaster Loss/Humboldt	10-449
AB 1983	Safely Surrendered Baby Fund	10-587
AB 2136	Disaster Loss Deduction/Excess Loss Carryover/April 2010 Imperial County Earthquake	10-461
AB 2408	State Government Information Technology/Statutory Codification Changes Made Necessary By Governor's Reorganization Plan No. 1 Of 2009	10-404
AB 2671	Minimum Franchise Tax and Annual Tax/Exempt Corporations and Limited Liability Company Small Businesses Owned Solely by Deployed Member Of U.S. Armed Forces that Operate at A Loss or Ceases Operation	10-394
SB 392	Limited Liability Companies/Contractors	10-698
SB 657	FTB Provide AG with Company Name and California Identification Numbers For Retailers and Manufacturers with Gross Receipts Over \$100 Million	10-556
SB 1008	Limited Partnerships and Foreign Limited Partnerships/Engineers and Land Surveyors	10-634
SB 1065	Innocent Spouse Law Conformity	10-318
SB 1076	Arts Council Fund	10-319
SB 1492	Voluntary Disclosure Agreements	10-498

BILL NUMBER	VETOED
SBX8-29	FTB, BOE, and employees in Position Funded 95% by Other Sources than General Fund Exempt from Furloughs
SBX8-32	Conformity Act of 2010
AB 1506	Registered Warrants Use to Pay Tax

AB 1899	State Agencies Post Specified Audits and Contracts to the Reporting Transparency in Government Internet Web Site
AB 1987	State Employees/Retirees Who Have Not Reinstated May Not Perform Services for State Until Separated from Service for at Least 180 Days
AB 2008	FTB and BOE Employees Exempt from Furloughs
AB 2017	California Youth Leadership Fund
AB 2458	Underpayment Penalty for Small Businesses Shall be Due and Payable 60 Days from Notification
AB 2666	FTB Compile Information on Any Tax Expenditure Claimed and Reported by Publicly Traded Company and Submit to State Chief Information Officer for Publication on the Reporting Transparency in Government Internet Website
SB 1166	State Agencies Notify California Residents of Any Breach of Security of System or Data/Additional Notification Requirements/if Notification to More than 500 Residents Must Also Submit Electronically to Attorney General
SB 1272	Tax Expenditures/Add 7 Year Sunset
SB 1425	Public Retirement Retiree Final Compensation/Establish Regulation that Retired Persons May Not Perform Services for Any State or Local Retirement System Employer Until Separated from Service for at Least 180 Days

Systemic Issue Update

Doing Business as an Insurance Company?

We received this issue through our Systemic Issue Management System. In our effort to share the progress and changes we have made from your comments and suggestions, we periodically will provide your submission and the resolution.

Systemic Issue Submission:

What procedures are in place when we get information that the corporation is doing business as an insurance company?

Research and Resolution:

Corporations that are doing business in California and are registered with the Department of Insurance and have received a Certificate of Authority should **not** be required to file a tax return with us. We do not receive information from the Department of Insurance or any other source showing the Certificate of Authority and therefore our systems see these entities as regular corporations with a filing requirement.

We contacted the Department of Insurance to obtain the information annually, before we

start our nonfiler process for a given tax year. They committed to provide us an annual listing of companies who have been issued a Certificate of Authority so we can proactively code these entities to eliminate the nonfiler notices for them.

Ask the Advocate



CSEA Meeting

On September 24, 2010, we held our annual liaison meeting with the California Society of Enrolled Agents (CSEA). This year, like every year, they had some really great questions for FTB staff. I decided to share a few questions I thought our Tax News readers would find most interesting in this month.

QUESTION 1:

Some of the FTBs formal responses to items submitted for the December 2009 Taxpayer Bill of Rights hearings (TBR) were included in the March 2010 Tax News. In particular, the Tax News stated that FTB would consider a legislative proposal (LP) for California to automatically provide statutory disaster tax relief, whenever the governor declares a disaster in the state, rather than to require legislation each time in response to the Governor's disaster declaration. What is the status of this LP?

RESPONSE 1:

On May 3, 2010, AB 1782 (Harkey) was introduced that would have, among other things, provided automatic disaster loss treatment—similar to the TBR proposal. That bill failed passage in the Assembly Revenue and Taxation Committee (the policy committee of the first house). FTB staff made the decision to let the issue —colloff” for a year but will ask one of the revenue and taxation chairs to author the TBR proposal in 2011.

QUESTION 2:

Beginning January 1, 2011, California conforms to 2006 federal law that requires small tax-exempt organizations with gross receipts of \$25,000 or less, other than churches and church-related organizations, to e-file an annual informational notice, similar to IRS Form 990-N, known as the e-postcard [SB 401(CH 10-14)]. The due date for calendar year organizations is May 15th each year. The IRS is reporting noncompliance with the

e-postcard filing requirement, which can cause an organization to lose its exempt status. What are FTB plans for rollout of the state version of *e-postcard*?

RESPONSE 2:

FTB understands the importance of outreach. Therefore, we are taking various measures to get the word out on the new filing requirements for the smaller tax-exempt organizations as follows.

We are creating a Web application for the small tax-exempt organizations to file with FTB. The application will be ready for use by January 3, 2011. Our Charities and Nonprofit (Exempt Organizations) webpage provides information regarding the filing requirements for the small tax-exempt organizations. Within the next few months the full instructions for filing the California e-Postcard will be on the FTB website.

This fall, we will mail letters to California tax-exempt organizations to inform them of the new filing requirement.

In July, we published a Tax News article, [New Reporting Requirements for Small Tax-Exempt Organizations Begins 2011](#), to explain the impacts of SB401 on the smaller tax-exempt organizations. The Tax News article was also picked up and published by Research Institute of America (RIA) and California CPA Educational Foundation.

We send updates through social media (Facebook and Twitter) on the new filing requirements for these tax-exempt organizations.

Our exempt organizations staff conducts presentations throughout California to share exempt organization information, which includes the new filing requirements of the smaller tax-exempt organizations. Most of these presentations are sponsored by the Board of Equalization.

Our exempt organizations phone center continuously reminds tax-exempt organizations of the new filing requirements.

QUESTION 3:

Beginning January 1, 2011, California now has a bright-line test for establishing when a taxpayer is considered to be “~~big~~ **big** business” in California. Additionally, California also adopts the option for businesses apportioning income to elect to apportion income using the single sales factor rather than the three-factor, double-weighted sales apportionment method. Since these are significant changes, does FTB have plans for any taxpayer outreach other than updating the instructions for **Schedule R, Apportionment and Allocation of Income**?

RESPONSE 3:

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Yes. In December 2009, we published an article in Tax News announcing the corporate law changes applicable for tax years beginning January 1, 2011, and providing the public with an email address (2011corplawchanges@ftb.ca.gov) to send in their inquiries. In March of 2010, we covered these 2011 corporation tax law changes on our public website (see website link or instructions below). We plan to use the website to keep the public informed of the latest developments, FAQs, interested parties meetings, etc. Concerning the single sales factor election, we held two interested parties meetings for comments on the proposed regulation in January and June of this year. We have also added information in the "What's New/Tax Law Changes" portion of our 2009 and 2010 tax forms' instructions. Currently, we are working on an FAQ for the new definition of doing business in California. We will be working closely with our Education and Outreach and Public Affairs Office to keep the public informed. Finally, in the very near future, there are plans for more public announcements via Tax News and our website.

Go to ftb.ca.gov and search [2011 corp law changes](#).

Steve Sims, EA
Taxpayers' Rights Advocate

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

Our Calendar

As part of education and outreach to our tax professional community, we participate in many different presentations and fairs. We provided this calendar to show the events we are attending.

Education and Outreach November Events

Date	Event/Association	Subject Matter	Location
Nov 3	East Bay Association of Enrolled Agents	California Tax update	Dublin
Nov 4	FNCC	1040 Update Seminar	Redding
Nov 8	SBSE	Small Business Update	San Francisco
Nov 10	Coachella Valley Enterprise Zone	Enterprise Zone	Indio
Nov 11	CSEA	Golden Gate Chapter presentation	San Francisco
Nov 17	San Diego Tax & Acctg Institute	California Tax Update	San Diego

December Events

Date	Event/Association	Subject Matter	Location
Dec 2	CSTC	California Tax Update	Anahiem
Dec 2	Sac SB Office	Small Business Update	Citrus Heights
Dec 6	Regional Enterprise Zone	Enterprise Zone	Imperial Valley
Dec 7	Regional Enterprise Zone	Enterprise Zone	National City
Dec 14	California Society of CPAs	California Tax Update	TBD

January Events

Date	Event/Association	Subject Matter	Location
Jan 4	CPA	California Tax Update	Woodland Hills
Jan 4	San Fernando Valley Discussion Group	California Tax Update	Van Nuys
Jan 8	CSTC Inland Empire Chapter	California Tax Update	Claremont
Jan 10	IRS	California Tax Update	Torrance
Jan 10	California Society of CPAs	California Tax Update	Pasadena
Jan 11	IRS	California Tax Update	Irvine
Jan 12	IRS	California Tax Update	San Diego
Jan 13	IRS	California Tax Update	San Bernardino
Jan 14	IRS	California Tax Update	Burbank
Jan 15	IRS	California Tax Update	Goleta
Jan 26	Society of CA Accountants	California Tax Update	Arcadia

Inside FTB

Interested Parties Meeting

We are holding an interested parties meeting to discuss the need for possible regulatory guidance relating to the LLC fee imposed under Revenue and Taxation Code section 17942 to:

- Address the application of the new assignment mechanism contained in 17942(b)(1)(B).
- Address rules for passive investments and occasional sales.
- Provide examples to demonstrate the calculation required by the new section.
- Discuss whether any proposed regulation should address the use of Schedule R as an instrument for determining the total income for fee purposes.

When: November 19, 2010, 10 a.m.
Where: Franchise Tax Board
Golden State Room A
9646 Butterfield Way
Sacramento, CA 95827
(North lobby entrance)

To attend this meeting, please RSVP by November 16, 2010, by contacting Colleen Berwick at (916) 845-3306 or email: Colleen.Berwick@ftb.ca.gov. Space is limited.

To participate in this meeting by telephone, use this number to dial in: (877) 923-3149. The participant pass code is 2233420.

Criminal Corner

Diamond Springs Couple Sentenced on State Income Tax Evasion

Dora Lee Velasquez was sentenced on one felony count of state income tax evasion and given 90 days suspended jail time, ordered to complete 300 hours of community service, and placed on 5 years formal probation. Also, she was ordered to file the 2005 through 2009 state income tax returns.

In addition, Velasquez was ordered to pay restitution of \$28,578 to us representing the investigation cost. The unpaid tax, penalties, and interest restitution will be determined at a later date.

Emilio Rubalcaba, Jr. was sentenced on one misdemeanor count of state income tax evasion and given 60 days suspended jail time, three years court probation, and also ordered to file the 2005 through 2009 state income tax returns.

According to court documents, Velasquez and Rubalcaba failed to file their 2001 – 2004 state income tax returns and failed to report more than \$547,000 in taxable income they earned from two painting companies the couple owned. Velasquez was sole owner of Eagle Painting Company, which she closed in 2003. Rubalcaba then opened his painting business, American Eagle Painting.

We discovered the case through our internal collections process.

El Dorado County Superior Court Judge Douglas C. Phimister handed down the sentence in Department 7 of the El Dorado County Superior Court. Deputy District Attorney Vicki Ashworth of the El Dorado County District Attorney's Office prosecuted the case.

Big Business

Suspension and Revivor 101 - Part 4

Suspension or forfeiture, and contracts made by the entity in California will be voidable at that time.

Relief Period

Relief period is the period of time that taxpayers can request to have their contracts relieved of contract voidability.

Relief Period - During Revivor

During the revivor process, you can choose when the relief period begins. The relief period ends on the date of revivor. The relief period can start on either the:

- Beginning of the tax year of suspension/forfeiture, or
- Beginning of a tax year after the tax year of the suspension of forfeiture.

Example: Harp, Inc., a calendar year filer, was suspended in 2006 and revived on June 19, 2010. The corporation can choose to start the relief period from the beginning of any the 2006 through 2010 tax years. If the corporation chooses the 2008 tax year to start the relief period, the relief period would be January 1, 2008 to June 19, 2010.

Relief Period – After Revivor

After the revivor process, the relief period starts with the tax year the corporation or LLC was suspended. The relief period ends on the date of revivor.

Example: Cello, Inc., a calendar year filer, was suspended in 2007. The LLC revived on April 1, 2009. The corporation did not request relief of contract voidability. On March 1, 2010, the corporation requests relief of contract voidability. The corporation's relief period is January 1, 2007 to March 1, 2010.

Figuring the Contract Voidability Penalty

The contract voidability penalty is \$100 a day for the relief period. The penalty cannot exceed the tax due for the relief period. When a tax return is not due, the minimum franchise tax is considered the tax due for the period.

Example: Flute, Inc., a calendar year filer, was suspended in 2006. The corporation revived on April 1, 2010. The corporation requests a relief period from January 1, 2008

to April 1, 2010. The corporation's contract voidability penalty for each year of the relief period is:

TAX YEAR	RETURN TAX	CONTRACT VOIDABILITY PENALTY
2010	\$800	\$800
2009	\$20,000	\$20,000
2008	\$10,000	\$10,000
Total Penalty		\$30,800

Nonqualified Corporations OR LLCs with an FTB Assigned Number

When a foreign corporation or LLC with an FTB assigned number fails to pay taxes, penalties, and interest, or fails to file a the return, we send them a File Notice Before Contract Voidability. If they do not comply within 60 days from the mail date, we send them Notice of Contracts Subject to Voidability, and contracts made by the entity in California will be voidable at that time.

Relief Period – During and After Bringing the Entity into Compliance

You can choose the beginning tax year of the relief period. The relief period ends on the date the taxpayer brings themselves into compliance. The relief period can start on either the:

- Beginning of the tax year the contracts become voidable, or
- Beginning of a tax year after the contracts became voidable.

Figuring the Contract Voidability Penalty

Example: On January 25, 2000, Drum, Inc. (a nonqualified corporation) receives Notice of Contracts Subject to Voidability and their contracts become voidable. Drum, Inc. is a calendar year filer. On December 14, 2009, the corporation files all its missing tax returns and pays all the outstanding amounts they owe. At that time the corporation did not request relief of contract voidability. On March 1, 2010, the corporation contacts us and asks for relief from contract voidability starting with the 2008 tax year.

The corporation's relief period is January 1, 2008 to December 14, 2009 (date of compliance).

The corporation's contract voidability penalty for each year of the relief period is:

TAX YEAR	RETURN TAX	CONTRACT VOIDABILITY PENALTY
2009	\$5,000	\$5,000
2008	\$10,000	\$10,000
2000 to 2007	Did not request relief from contract voidability for these tax years.	
Total Penalty		\$15,000

Foreign Corporations or LLCs not Qualified and not Filing Returns

When a foreign corporation or LLC is not qualified to do business in California does not have an FTB assigned account number, and fails to file tax returns, any contract entered into within the state can be declared voidable during the applicable period.

Applicable Period

The applicable period begins on the later of:

- January 1, 1991.
- The first day of the tax year for which the corporation or LLC has failed to file a tax return or pay taxes.

The applicable period ends on the earlier of the date the corporation or LLC:

- Qualifies to do business with the Secretary of State
- Obtains an account number from us

Relief Period

The relief period is the same as the applicable period.

Voluntary Disclosure Program

Corporations and LLCs that have fully complied with their voluntary disclosure agreements, will be considered to have applied for and been granted relief from contract voidability. Go to our website for additional information on the Voluntary Disclosure Program.

Interest

Interest on the contract voidability is charged from the original notice date of the penalty assessment to the date paid.

Penalty Waiver or Abatement

The contract voidability penalty cannot be waived for reasonable cause.