



Tax News

December 2011

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Taxpayers' Bill of Rights Hearing

The next Taxpayers' Bill of Rights Hearing is scheduled to occur during the next meeting of the Franchise Tax Board on December 1, 2011, beginning at 1:30 p.m.

California Revenue and Taxation Code Section 21006(a)(2) requires us to hold an annual hearing where industry representatives and individual taxpayers may present to the Board their proposals on changes to California's tax laws. This annual hearing is conducted during a meeting of the Board.

You can get more information for prior year's hearings from the [agendas, minutes, or audio](#).

Amended Returns and Collection Action

What should tax practitioners do when filing an amended return that will reduce or eliminate their client's outstanding tax liability that is in collections with us?

Because an amended return can take awhile to be processed, a practitioner with a client in collection status should contact us if the amended return changes the balance owed. This will allow the collection action to be modified or delayed pending the processing of the amended return. The practitioner should provide a copy of the amended return to the collector who will need to make the following determinations:

- If the amended return is based on an audit, our collection staff will work with audit staff to determine the accuracy of the return.
- If the amended return is determined to be complete and accurate and will result in a reduction of the taxpayer's liability, we will modify existing actions to ensure only the correct amount of tax is collected. Or, staff will work with the taxpayer's representative to establish a payment plan for the amount due.
- If the amended return eliminates the taxpayer's liability, we will delay collection action and place a hold on the account to allow time for the amended return to be processed.
- If the amended return is incomplete, inaccurate, or there is no change to the tax due, collection action can continue as normal.

Did You Submit Form 589, Nonresident Reduced Withholding Request?

If you submitted reduced withholding requests, please note recent processing changes. We can no longer process nonresident reduced withholding requests with service dates that are not in the current calendar year. If you need to submit a request for the next calendar year, please refer to our website toward the end of December for the updated [Form 589](#), Nonresident Reduced Withholding Request.

Available Now: Online Form 589 Request Reduced Withholding Webinar

Free Online Form 589 to Request Reduced Withholding [webinar](#). Learn how to electronically complete and submit [Form 589](#), Nonresident Reduced Withholding Request.

Upcoming Live: Free California Source Income Withholding Webinar

We will host a free California source income withholding webinar in December 2011.

The topic is:

Nonresident Independent Contractor Withholding

We designed this webinar for those who must withhold on California source income payments to resident and nonresident independent contractors. We will look at:

- The basics of nonresident withholding.
- Backup withholding.
- A three-phased summary of withholding and what to do:

- Before payment (Forms [587](#), [588](#), [589](#), [590](#)).
- At the time of payment.
- After payment (Forms [592](#), [592-V](#), [592-B](#)).
- Updates on our new electronic Form 589
- The consequences of noncompliance.
- Withholding resources and contact information you can use any time.

Date/Time: Tuesday, December 20, 10 a.m. PST.

Duration: Approximately 35 minutes.

[Register here](#)

Registration takes only a few minutes. Space is limited.

Estimated Tax Payment – Mandatory e-Pay Requirement Reminder

As the 2011 tax year comes to close, we know that many of your personal income tax clients make their final 2011 estimated tax payment in December in order to deduct the payment on their 2011 federal return. We thought this would be a great time to remind you that some of your clients may be required to make their estimated tax payments electronically.

Individual taxpayers whose tax liability is greater than \$80,000, or who make an estimated tax or extension payment that exceeds \$20,000 for taxable years beginning on or after January 1, 2009, are required to make all future payments regardless of type, amount, or tax year electronically. Taxpayers who fail to pay electronically will be subject to the mandatory e-pay penalty of one percent of the amount paid unless the failure to pay electronically was for reasonable cause and not willful neglect (California Taxation and Revenue Code 19011.5). Taxpayers can request a waiver from mandatory e-pay if they meet certain requirements by filing [FTB 4107](#), Mandatory e-pay Election to Discontinue or Waiver Request. We notify the taxpayer in writing if the request is approved or denied. If the individual granted the waiver later meets e-pay requirements, they must resume making payments electronically.

For more information on mandatory e-pay requirement, go to our website and search mandatory e-pay.

Understanding the Real Estate Tax Deduction

Did you know that not all real estate taxes are deductible? To be able to determine what is deductible and non-deductible, you will need a copy of the taxpayers' property tax bills.

Real estate tax is an allowable itemized deduction for both federal and state income tax. California conforms to federal law regarding real estate tax deductions. You should use the same deduction amount on both the federal and state tax returns.

Deductible:

Generally, only the amount based on the assessed value of the taxpayers' property is deductible. These amounts are commonly referred to as ad valorem or general tax levy on property tax bills. For most counties, the deductible amount is identified on property tax bills as the assessed value multiplied by an associated tax rate percentage.

Nondeductible:

Most property tax bills also include non-ad valorem special assessments, special taxes, mello-roos, direct levies, fees, and charges that are nondeductible. For most counties, these amounts are identified on the tax bills as amounts that do not include a tax rate percentage.

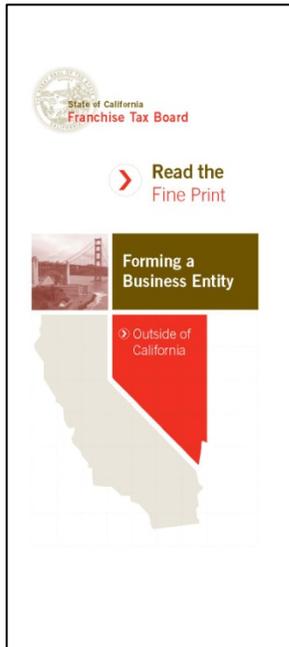
Note: A few county property tax bills do not show tax rate percentages for items that may be deductible. However, sample property tax bills located on our webpage highlight the deductible and nondeductible amounts.

We have developed a [webpage](#) that provides additional real estate tax information. This information includes:

- How to review property tax bills to identify deductible and nondeductible amounts.
- Items deductible and nondeductible.
- Links to county websites for taxpayers to access their specific property tax bills, if available.
- Links to samples of all county property tax bills that identify deductible and nondeductible amounts.
- Links to all county tax collector contact information to request duplicate tax bills, if needed.

Beginning with the 2012 tax return, we may also include reporting requirements related to real estate tax deductions. You may be required to report the property parcel

numbers and the deductible and nondeductible amounts from taxpayers' property tax bills. You will need copies of your clients' property tax bills to report this information.



Forming a Business Publication Revised

Need a quick overview about forming a business entity? We revised [Publication 689](#), Forming a Business Entity, in September 2011. The publication addresses advertisements that promise big tax savings to businesses that form outside of California.

To view or print Forming a Business Entity, go to ftb.ca.gov and search for **689**.

New Laws Enacted

Governor Brown used every last minute until the October 9 deadline to consider the bills presented to him. Of the 870 bills passed by the Legislature this year, the Governor signed 745 and vetoed 125, an 86 percent pass rate. In comparison, twenty four of the thirty bills that would impact us were signed into law, an 80 percent pass rate.

Bills affecting us that were enacted during 2011 include:

- A major tax administration bill that was enacted to protect the state budget and strengthen fiscal stability in California.
- An FTB-sponsored bill that denies a deduction for specified fraudulent activity.
- A 2011/2012 fiscal year budget trailer bill.
- Changes to the top 250 debtors list.
- Several issue-specific federal conformity bills.

The following table summarizes the chaptered legislation administered by us:

Bill Number	Description	Chaptered Number
AB 36	Conformity - Medical Care Expense Exclusion/Deduction for Children Under 27	11-17
AB 50	Disaster Loss - Exclusion/Compensation Received for San Bruno Gas Explosion	11-18
AB 152	Credit - Donations of Fresh Fruits/Vegetables to Food Bank	11-503
AB 242	Conformity - Federal Health-Care Reform	11-727
AB 315	Nonadmitted Insurance/Surplus Line Brokers	11-83
AB 361	Benefit Corporations	11-728
AB 560	Extended Inclusion of Architecture Service to January 1, 2019 for Limited Liability Partnerships and Foreign Limited Liability Partnerships	11-291
AB 564	Voluntary Contribution - Municipal Shelter Spay-Neuter Fund Re-established	11-549
AB 624	Credit - Community Development Financial Institutions Investments Credit Extended to December 31, 2017	11-436
AB 764	Voluntary Contribution - Child Victims of Human Trafficking Fund	11-465
AB 971	Voluntary Contribution - California Sea Otter Fund Re-	11-209

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	established	
AB 1023	Code Maintenance to Various California Codes	11-296
AB 1069	Credit - California Motion Picture Credit Extended to July 1, 2015	11-731
AB 1369	Broadens Disallowance of Deductions for Expenses and Cost of Goods Sold Attributable to Illegal Activities Broadened	11-454
AB 1423	Conformity - Regulated Investment Company (RIC) Modernization Act of 2010	11-490
AB 1424	Revise Top 250 Tax Debtor List to Top 500/Update Twice Each Year/License Suspension for Debtors on List/Prohibit State Contracts with Debtors on List/Reciprocal Refund Offsets with Other States/Collection Agreements with Other States or IRS	11-455
AB 1428	Disaster Loss - Deductions/Excess Loss Carryover/March 2011 Mendocino County Tsunami	11-283
SB 24	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	11-197
SB 86	FTB Revise Tax Form Instructions to Include Use Tax Lookup Table/Eliminate Refundable Portion of Child and Dependent Care Expense Credit/Financial Institution Record Match/Voluntary Compliance Initiative	11-14
SB 164	Voluntary Contributions - State Children's Trust Fund and Rare and Endangered Species Preservation Program Extended to December 31, 2017	11-699
SB 559	Business Expense Deduction/Prohibit Deduction for Discriminatory Clubs/Except for Genetic Information	11-261
SB 583	Voluntary Contributions - ALS/Lou Gehrig's Disease Research Fund Re-established	11-711
SB 617	State Agency Regulations/Standardized Impact Analysis/Financial and Administrative Accountability	11-496
SB 647	FTB to Collect Juvenile Court Appointed Counsel Costs	11-308

Below is a table summarizing vetoed legislation that would have been administered us:

Bill Number	Description
AB 172	State Agencies Post Specified Audits and Contracts to the Reporting Transparency In Government Internet Website

AB 1044	Registered Warrants No Redemption Date/Tax Liabilities
SB 14	State Budget/Performance-Based Budget
SB 223	Require FTB to Report to the DMV Estimated Revenue Loss from Local Vehicle Assessment in San Francisco
SB 364	Business Tax Incentive Reporting Information and Penalty
SB 508	Require Tax Credit to Have 10 Year Sunset

Tax News Flashes

We flashed the following article on November 1:

Schedule CA Changes Delayed

Each year we make changes to our forms for the upcoming filing season. One of this year's proposed changes involved adding additional lines and information to the Schedule CA to allow for enhanced real estate tax deduction reporting requirements. We received many comments and suggestions from stakeholders and practitioners as we moved forward with this change. As a result of your feedback, we have decided to delay implementation and will not be requesting information about the deductible portion of real property tax this year. Instead, we will move forward with education and outreach and include information about this issue in the 2011 tax return instructions and what to expect for 2012. We will also direct taxpayers to our website for more information about deductible and nondeductible real estate taxes and the importance of reviewing the real estate tax bill. We expect to implement the new reporting requirements for the 2012 tax year.

Ask the Advocate



Cal CPA Meeting Summary

On October 26, we attended the California Society of Certified Public Accountants (CalCPA) Annual Liaison meeting. Our staff gave updates on our filing season, audit matters, and collection policy information. We also participated in a question and answer session on emerging issues. The following are some of the questions and answers discussed at the meeting:

1. Mandatory E-Pay

Several California Practitioners have expressed a desire we make better information available to practitioners when a taxpayer is subject to mandatory e-pay. Clients, especially new ones, are sometimes unaware that they are subject to it and incur penalties

when they don't use it. It has been suggested that information could be noted in their MyFTB Account page.

Answer:

- This suggestion is already being worked on, and is planned for implementation, within MyFTB Account, beginning January 2012.

2. Payments Made to Accounts with No Balance Due

Question:

A practitioner recently experienced a problem in attempting to have a refund check applied to a taxpayer's account for 2010 which showed no tax due, but which would show additional tax due once an amended return for that year was processed. The practitioner had the taxpayer return the 2010 refund check with a letter explaining that an amended 2010 return was filed and the refund check was to be applied to the tax that would be due with the amended return. The amount of the refund was again refunded to the taxpayer with another check. A call to the Practitioner's Hotline resulted in the following situation: It was suggested by the Hotline personnel that they couldn't post a payment to an account that didn't show a balance owing; therefore, we should wait until the amended return has been processed and the additional tax is added to the

account. At that time, the refund check can be returned to us with request that it be applied to the balance due.

It seems that you are rather rigid and selective when it will and won't accept payments made by taxpayers to be applied to a particular year. Is there any restriction on your ability to apply payments to tax years at the request of the taxpayer, either as a payment or deposit? If there aren't restrictions, why won't you accept these types of payments? If you are restricted in accepting these types of payments, might it be subject to proposed legislation to allow such authority?

Answer:

Unfortunately, since the refund was submitted prior to the amended return being processed, due to system limitations, another refund was issued to the taxpayer. Staff have already spoken to the representative and advised that in future situations like this, to send the refund check (or payment) and the amended return together so they could be linked. This will result in the payment being accurately credited to the appropriate account and tax year.

In regards to future efforts to apply payments as a "tax deposit" to any particular tax year, you should follow the procedures outlined in the September 2006 Tax News Article, [New Tax Deposit Forms](#).

3. MY FTB ACCOUNT

We as practitioners appreciate the information that you make available on MyFTB Account. That said, we would like to make some suggestions that would help us use this more efficiently and effectively.

If we want to access multiple years for one particular client, we have to go back to the Client Selection page and re-enter all of the data. It would be a lot more efficient if we could move from year to year using minimal amount of key strokes.

Answer:

- Once a client has been selected, it is not necessary re-enter all the information/"secrets" to see different tax years. Once in a client's account, you can select different options or tax years by using the navigation buttons at the bottom of the page (e.g., the "Back" button or the "MyFTB Account Options" link). If you click the "Exit MyFTB Account" link or "Select another client" link, then you will need to enter all the information/secrets again to view that client's information.

Account Summary – it doesn't appear that any information is available under this option if there isn't a balance due. This type of history can be valuable when looking to see what transactions we have on file in the current or previous years.

Answer:

- Currently, tax year information is not available in MyFTB Account if there is no balance due on a tax year. We understand this information may be important and valuable. We are currently evaluating when we will be able to make this information available.

One of the required pieces of information for logging on to a taxpayer's account is an item shown on the prior year's California return. In the case of a business entity in its first year, this information is not available. Is it possible to access this taxpayer account in the first year?

Answer:

- At this time, there is no option to access a taxpayer's account that hasn't filed a return. The issue is that without a return being filed, there isn't really information in our system that we would be able to use for authentication/verification online.

Do you have an estimated date when we will be able to get information related to trust and estates on MyFTB Account?

Answer:

- Currently, we estimate trusts and estates will be able to access MyFTB Account mid to late 2012.

Steve Sims, EA
Taxpayers' Rights Advocate

Follow me on Twitter at twitter.com/FTBAdvocate.

Event Calendar

Education and Outreach			
Speaking Engagements and Small Business Fairs			
December 2011			
Date	Event Association	Subject Matter	Location
6	Fresno Small Business Tax Forum	Forms of Ownership	Fresno
8	SBA Small Business Forum	Forms of Ownership	Sacramento
8	San Diego Enterprise Zone	Enterprise Zone Credit	San Diego
15	CA Society of Tax Consultants	CA Tax Update	Modesto
January 2012			
Date	Event Association	Subject Matter	Location
3	CA Society of CPAs	CA Tax Update	Woodland Hills
3	San Fernando Valley Discussion Group	CA Tax Update	Van Nuys
5	IRS Seminar	CA Tax Update	Escondido
6	IRS Seminar	CA Tax Update	San Bernardino
7	IRS Seminar	CA Tax Update	Santa Barbara
10	IRS Seminar	CA Tax Update	Torrance
12	IRS Seminar	CA Tax Update	Irvine
13	IRS Seminar	CA Tax Update	Burbank
14	Philippine Institute of CPAs Seminar	CA Tax Update	San Francisco
24	CA Society of Enrolled Agents	CA Tax Update	Fairfield
24	CA Society of Accountants and Tax Preparers	CA Tax Update	Oakland
25	Society of CA Accountants	CA Tax Update	Arcadia
25	Society of CA Accountants	CA Tax Update	San Rafael
February 2012			
Date	Event Association	Subject Matter	Location
15	Cal CPA	CA Tax Update	Los Angeles



Enterprise. Data. Revenue!

Additional Sources for Levy – Phase I

On September 13, the EDR Project reached another milestone with the implementation of the first project deliverable: Leveraging Additional Sources for Levy.

This addresses our business problem regarding the availability of data. We will automate access to many data sources that are currently manual processes. This initiative will result in an additional 80,000 levies issued in Fiscal Year 2011/2012.

The deployment of this initiative includes a two-phased approach.

EDR Update:

Additional Sources for Levy – Phase II

In December 2011, the EDR Project will release Phase II. This phase will expand on the functionality implemented in Phase I by including more asset data resulting in additional levies issued resulting in increased revenue for the State of California.

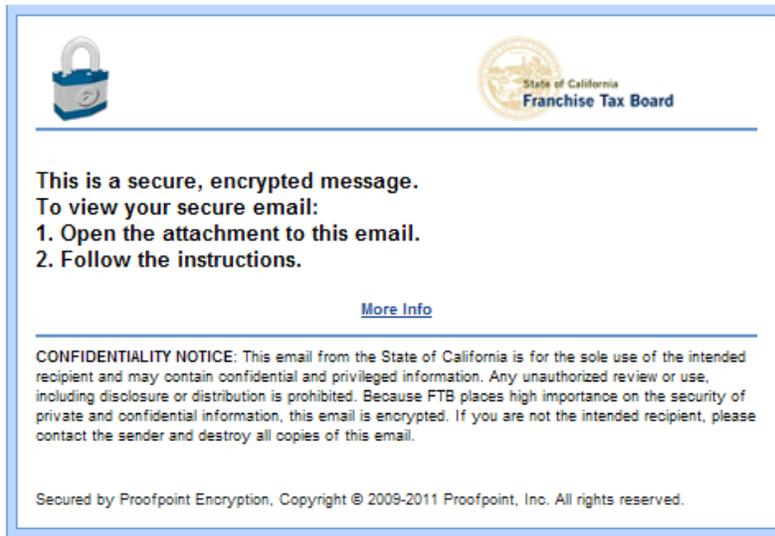
Inside FTB

Secure Email Upgrade

Since 2010, we send confidential information to you using Secure Email. Secure Email is a fast, cost effective, and secure way to communicate confidential information to you, without installing software on your computer. Secure Email encrypts the data sent to you. Regular email fails to meet our security standards to email confidential data.

We upgraded Secure Email on Sunday, November 27, because our current version will no longer receive support from the vendor.

This is the new look for Secure Email:



The Secure Email upgrade:

- Provides an improved, easier-to-use web-based interface.
- Simplifies the registration process.
- Requires you to re-register.
- Eliminates your ability to view pre-upgrade Secure Email.

If you need to view pre-upgrade Secure Email, please contact the sender and ask them to resend the information in a new Secure Email.

We place high importance on the security of private and confidential information. To ensure email sent from us is protected, Secure Email may be initiated by our staff or automatically by us depending on the content of the email. Secure Email cannot be initiated from an individual outside our department.

As a reminder, the IRS prohibits us from emailing Federal Tax Information outside our department in **any** email, encrypted or not.

If you have any questions, please contact our technical support at SecureEmailSupport@ftb.ca.gov.

Big Business

Voluntary Compliance Initiative (VCI2) Results

VCI2 results exceeded expectations.

According to preliminary numbers, VCI 2 raised \$350 million with \$293 million received in cash and an added \$57 million expected by June 15, 2012, from installment payments. This initiative was estimated to raise \$270 million from taxpayers who had unreported offshore income or who participated in abusive tax avoidance transactions.

Similar to an amnesty program, VCI 2 allowed taxpayers who underreported their California income tax liabilities, through the use of [abusive tax avoidance transactions](#) or [offshore financial arrangements](#), to amend their returns for 2010 and prior tax years and obtain a waiver of most penalties. More than 1,000 taxpayers participated. Individual taxpayers comprised more than 90 percent of participation. Business taxpayers paid more than \$100 million in added tax and interest. Payments from individuals and estate and trusts make up the difference.

Taxpayers who were eligible for VCI 2 because of their involvement with abusive tax avoidance transactions but did not elect to participate are subject to audit for 12 years with large penalties such as the 40 percent Noneconomic Substance Transaction penalty and a 50 or 100 percent Interest Based penalty.

VCI 2 ended on October 31, 2011. Final payments are due by June 15, 2012.