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For Privacy Notice, get form FTB 1131. California Resident Income Tax Return 2010 540 C1 Side 1
Federal year: 2010. State year: 2010.
Your first name: [] Last name: [] Your SSN or TIN: []
If joint return, spouse's/RDP's first name: [] Last name: [] Spouse's/RDP's SSN or TIN: []
Address (number and street, PO Box, or P.O. Box): [] Apt. no./Ste. no.: [] P.O. Code: []
City (if you have a foreign address, see page 7): [] State: [] ZIP Code: []
• Your DOB (mm/dd/yyyy): [] • Spouse's/RDP's DOB (mm/dd/yyyy): []
1 Single 4 Head of household (with qualifying person) (see page 3)
2 Married/RDP filing jointly (see page 3) 5 Qualifying widow(er) with dependent child. Enter your spouse's/RDP's
3 Married/RDP filing separately. Enter spouse's/RDP's SSN or TIN above and full name here.
If your California filing status is different from your federal filing status, fill in the circle here. •
6 If someone can claim you (or your spouse/RDP) as a dependent, fill in the circle here (see page 7) • •
7 **Personal:** If you filed on 1, 2, or 4 above, enter 1 in the box. If you filed on 2 or 3, enter 2 in the box. If you filed in the circle on line 6, see page 7. 7 X \$99 = \$
8 **Blind:** If you (or your spouse/RDP) are visually impaired, enter 1. If both are visually impaired, enter 2. 8 X \$99 = \$
9 **Senior:** If you (or your spouse/RDP) are 65 or older, enter 1. If both are 65 or older, enter 2. 9 X \$99 = \$
10 **Dependents:** Enter name and relationship. Do not include yourself or your spouse/RDP. Total dependent exemptions • 10 X \$99 = \$
11 **Exemption amount:** Add line 7 through line 10. Transfer this amount to line 32. 11 \$
12 State wages from your Form(s) W-2, box 16. • 12 \$0.00
13 Enter federal adjusted gross income from Form 1040, line 37; 1040A, line 21; or 1040EZ, line 4. • 13 \$0.00
14 California adjustments – subtractives. Enter the amount from Schedule CA (540), line 57, column B. • 14 \$0.00
15 Subtract line 14 from line 13. If less than zero, enter the result in parentheses (see page 9). • 15 \$0.00
16 California adjustments – additions. Enter the amount from Schedule CA (540), line 37, column C. • 16 \$0.00
17 California adjusted gross income. Combine line 15 and line 16. • 17 \$0.00
18 Enter the **larger of** your California **standard deduction** shown below for your filing status:
• Single or Married/RDP filing separately: \$3,670
• Married/RDP filing jointly, Head of household, or Qualifying widow(er): \$7,340
If the circle on line 6 is filled in, STOP (see page 9). • 18 \$0.00
19 Subtract line 18 from line 17. This is your **taxable income**. If less than zero, enter -0-. • 19 \$0.00
31 Tax. Fill in the circle if from: Tax Table Tax Rate Schedule FTB 3800 FTB 3803 • 31 \$0.00
32 Exemption credits. Enter the amount from line 11. If your federal AGI is more than \$162,186, see page 10. • 32 \$0.00
33 Subtract line 32 from line 31. If less than zero, enter 0. • 33 \$0.00
34 Tax (see page 11). Fill in the circle if from: Schedule G-1 FTB 5870A • 34 \$0.00
35 Add line 33 and line 34. • 35 \$0.00
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New Field on Your Tax Return

New this year on the personal income tax return, we added a date of birth field for the taxpayer and the taxpayer's spouse/RDP.

By taxpayers providing this information, we will be able to process returns quickly and accurately. The date of birth will augment validation of the taxpayer's information by improving matches to the taxpayer's social security number and IRS information. It will also help determine 'who's who' when name extensions are used, for example, JR/SR. In some cases, the date of birth will substantiate that the taxpayer qualifies for certain credits. The date of birth will also help us identify taxpayers who are using erroneous social security numbers and help them file correctly.

Assessing the Mandatory E-pay Penalty

Starting January 1, 2011, we began enforcing the mandatory e-pay penalty. The penalty is equal to 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 Section 19011.5).

The penalty applies to personal income 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. Once either of these conditions is met, all future payments regardless of type, amount, or tax year must be remitted electronically.

Example: On April 15, 2011, Jane Doe sends us a check for \$30,000 as an extension payment for her 2010 tax year. After we process Jane's payment, we will send her FTB 4106 MEO, *Mandatory e-pay Program Participation Notice* informing her that she now must remit all future payments to us electronically. For instance, if Jane must make a June 15, 2011 estimated tax payment for her 2011 tax year, she must make that payment electronically or she may be subject to the mandatory e-pay penalty.

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 will notify the taxpayer in writing if the request is approved or denied. If the individual is granted a waiver and later meets e-pay requirements, the individual must resume making payments electronically. For more information on the mandatory e-pay requirement, visit our website and search mandatory e-pay.

Electronic payment methods include Electronic Funds Withdrawal (EFW), Web Pay, or credit card. For more information on Web Pay and credit card payment go to ftb.ca.gov and select payment options. For Electronic Funds Withdrawal (EFW), include your client's banking information as instructed on his or her e-file return.

For payments made by check on or before December 31, 2010, we recognized that there could have been a delay in receiving payments postmarked on or before December 31, 2010, due to high year-end postal volumes. As a result, we are reviewing the accounts that were assessed the penalty to determine if the mail date of the payment occurred on or before December 31. If this was the case we will withdraw the penalty and send the taxpayer a letter.

If your clients received the mandatory e-pay penalty and you believe that:

- They sent us a check on or before December 31, 2010, and their penalty hasn't been canceled, or
- They have reasonable cause to have the penalty withdrawn,

Contact us at 916.845.7057 or your client can call 800.852.5711. Please be prepared to provide the appropriate information to our call center agents so we can determine if we should withdraw the penalty.

Important: Even if your client's mandatory e-pay penalty is withdrawn, they are still required to make future payments electronically unless they are granted a waiver.

Attach California Schedule K-1s to avoid Erroneous Contacts to Your Partners, Members, and Shareholders

We are concerned about what we call "erroneous contacts"; sending notification or correction letters when we do not have to. We send letters to individuals that we believe have a filing requirement and have not yet filed their tax return. For example, we send a notice to individuals who receive pass-through income, which is reported on Federal

and California K-1s. Some of these partner, member, and shareholder contacts can be avoided. We need your help to avoid this situation.

The issue is that business entities/partnerships doing business within and outside of California have filed returns without attaching **California Schedule K-1s**; instead they include the necessary information in schedule(s) attached to the Federal K-1. The importance of the California Schedule K-1 form is that it reflects the accurate California sourced income **in a format that our systems recognize**. If our systems do not recognize the attached schedule reporting the partner's, member's, or shareholder's income, or lack thereof, we send a letter communicating a filing requirement, when we should not. Use the California Schedule K-1 to avoid this.

Business entities/partnerships filing 565, 568, or 100S returns are required to attach one copy of each (CA) Schedule K-1 to the return (565, 568, or 100S) filed with FTB. The (565, 568, and 100S) tax booklets provide instructions on filing via computer software, magnetic media, CD, or diskette. Visit our website at ftb.ca.gov, click on the "Forms and Publications" tab for more filing information.

Top 10 Errors

Just in time for the filing season crunch, we offer the *Top 10 [Personal Income Tax](#) and [Business Entity](#) errors that delay return processing in 2010*. The list also provides solutions to ensure your clients' forms are computed correctly.

Head of Household Guidelines

Some of your clients may inquire about claiming the 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 1540, *California Head of Household Filing Status* 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 an RDP, and the taxpayer's qualifying child was also unmarried and not an 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 2010 personal income tax instruction booklets for Forms 540/540A and 540 2EZ contain the general rules for using the head of household filing status.
- For detailed information, refer to FTB1540, *California Head of Household Filing Status*.
- FTB 1540SPAN is the Spanish version of the 1540.
- You can also access the same comprehensive information online on our [HOH Webpage](#).
- The HOH [self-test](#).
- Under the [Practitioners 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.

Available Now: Free California Source Income Withholding Webinar in March 2011

We will host a free California source income withholding webinar in March 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 [588](#), [589](#), [590](#)).
 - At the time of payment.
 - After payment (Forms [592](#), [592-V](#), [592-B](#)).
- Preparations for process changes that will occur when we implement our new, automated withholding system.
- Withholding resources and contact information you can use any time.

Date/Time: Tuesday, March 15, 2011, 10 a.m. PDT.

Duration: Approximately 30 minutes.

[Register here.](#)

Registration takes only a few minutes. Space is limited.

Web Pay for Businesses – The Fast and Convenient Way to Make Payments

Web Pay for businesses is a fast and convenient way for your business clients (corporations, partnerships, and LLCs) to make payments to us. After a one-time registration process, businesses can make online payments, 24 hours a day, 7 days a week. A business can pay today or schedule a payment up to one year in advance. If your clients use Web Pay, they do not have to send us a paper payment voucher. In

addition, if your clients are required to make EFT payments, they can use Web Pay and not be subject to the EFT penalty. Your clients can use Web Pay to make payments for:

- Estimated taxes and LLC fee.
- Extension.
- LLC annual tax.
- Current and prior year balances for original and amended returns.
- Notice of proposed assessment (NPA).
- Tax deposit payment for a pending audit.

If your client is filing a Form 540NR Group (Composite) Return or is a sole proprietor, they can use our Web Pay for Individuals to make their payments.

For more information, see our Web Pay for [Businesses FAQs](#).

Corporation Estimated Tax Payments - Avoid the Wait on Hold - MyFTB Account for Business

Tired of waiting on hold to get your client's estimated tax payment information? Now you can avoid the wait by accessing [MYFTB Account for Businesses](#) Monday through Friday from 6 a.m. to 10 p.m.

To view your client's account, you need to have your client's permission and must be able to provide information from their return. Your clients can use [FTB 743](#), Online Account View Access Authorization, to give you permission to view their account. If you have already registered with Access Your Account, you simply need to enter your user name and password. New users will self-register and select their own user name and password.

For more information, see our MyFTB Account for [Businesses FAQs](#).

Your 24-hour FTB

It's now tax season and working 9 to 5 is just a memory. It seems that you get those pesky questions after our phone lines close or in some cases even before they are open. Well, you might be surprised at all the information you can get from our website 24-hours a day. In this article, we will be highlighting information that you can access for individual taxpayers. For instructions on how to register to view your clients MyFTB Account, see our homepage.

Estimated Tax and Other Payment Information

You can use MyFTB Account to:

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- View up to 25 estimated tax payments, estimate transfers, and extension payments made as a prepayment of the taxes you expect to owe.
- View up to 60 of the most recent payments applied to your balance due.

Your clients can subscribe to our estimated tax payment [email reminder service](#).

Account Summary

You can use MyFTB Account to view a summary of:

- Each tax year with a balance due.
- Up to 10 tax years with a balance and the total amount due.

Wage, Withholding, and FTB 1099-G and 1099-INT Information

You can use MyFTB Account to view up to:

- Four years of California wage and withholding information.
- Three years of FTB-issued 1099-G and 1099-INT information.

Installment Agreements

If your clients are unable to pay taxes and meet certain conditions, they can request an installment agreement. They can make their request by clicking on the Payment Options link located on the left-hand side of our homepage.

Head of Household (HOH)

If your client has received an HOH Audit Letter, they can respond to our questionnaire online by clicking on the HOH Audit Letter link located on the left-hand side of our homepage under Online Services.

Where's My Refund!

Does your client need to know when they are getting their California tax refund right NOW? They can check their refund status by clicking on the "Check your refund status" link located in the center of our homepage. They can also check their refund status from their smart phone.

New Tax Law and Hot Topics

Want to find out what the latest hot tax topic is? Of course you do! Just click on either the Individual or Business tab and the first item on the page is “What's new or under discussion”.

Address or Phone Number Changes

Your clients can use MyFTB Account to change their address or phone numbers. This insures that we send their refund or other tax related correspondence to their current address. They can also change their address online with the U. S. Post Office by visiting their website:

www.usps.gov

Got Forms?

Available for both individuals and business entities, you can download your 2010 tax forms from our website by clicking on the Forms and Publications tab at the top of the homepage. In addition to current year tax forms, you can download prior year tax forms and instructions from 1994 through 2009.

Need Publications?

Available for both individuals and business entities, you can also view or download our publications from our website clicking on the Forms and Publications tab at the top of the homepage. Here is a list of our most downloaded publications for individuals:

- FTB 761 PIT, Top 10 Personal Income Tax Errors.
- Pub. 1001, Supplemental Guidelines to California Adjustments.
- Pub. 1005, Pension and Annuity Guidelines.
- Pub. 1031, Guidelines for Determining Resident Status.
- Pub. 1032, Tax Information for Military Personnel.

Email Us

Where can you go if you have questions that cannot be answered via our website? You can email your general tax (individual and business entity) questions to us. We generally respond to your email within two working days. We recommend that you include your phone in the email so we can **call you** and discuss your question. To send us an email, click on the Contact Us tab at the top of our website. Then click on either Email at the top of the next page or click on the Send Email button at the bottom of the next page.

This is **not** a secure email site, so do not send any account-related or confidential questions to this email address.

Live Internet Chat

Starting in early March, we will launch a new pilot program, internet live chat. You will be able to communicate with a representative via the internet to get information about law, general filing assistance, navigation, and self service options on our website. Look for our announcement on our website.

You Have to Call. End Waiting on Hold Use Virtual Hold

For those occasions when it is necessary to talk to a phone agent about confidential account information, many of our *toll-free* call centers provide virtual hold technology, allowing callers the choice of receiving a call back from a call agent rather than waiting on hold. Since implementing virtual hold six months ago 63 percent of callers took advantage of the virtual hold option.

Small Business

Make Sure LLCs Classified as a Partnership Use the Correct California Forms

We are seeing some limited liability companies (LLCs) classified as partnerships filing the incorrect forms. This causes confusion, processing delays, and potential penalties that can be avoided.

LLCs organized in California, registered with SOS, or doing business in the state, are required to file Form 568, Limited Liability Company Return of Income, but often file Form 565, Partnership Return of Income, **in error**. When such LLCs file a Form 565, we process the return as a partnership and create a new account. In addition, if payments are made, we apply the payments to that new account number. Since we did not receive a Form 568 for the LLC account, we also issue a delinquent notice and assess penalties for not filing. In some instances, though the incorrect tax return was filed, the correct LLC Tax Voucher ([Form 3522](#)) was submitted with the payment. The payment is then applied to the LLC account, but the return is on the new account number.

To add to the confusion, when the LLC realizes that the incorrect form was filed, the LLC files an amended LLC return, to correct the error. Occasionally, staff is able to determine the amended LLC return was filed to correct the filing of a wrong form. If this occurs, our procedure is to make the necessary adjustments to the LLC account and close the partnership account. Unfortunately, due to timing of the filing and processing

of the amended LLC return and the partnership return filed in error, the accounts are not matched up and two different accounts exist until corrected.

One of the possible reasons this occurs is that foreign (non-California) LLCs may not be familiar with California filing requirements. Another possible reason for the confusion is that, for federal purposes an LLC classified as a partnership must file the partnership return, Form 1065, U.S. Return of Partnership Income. If the company is a partnership then the 565 is the correct form to file, but Form 568 is the correct form to file when the company is organized in California, registered with SOS, or doing business in the state, as an LLC.

LLCs may file a Form 565 if they meet the requirements for Finanz status.¹ **Generally**, only foreign LLCs that are limited partners of partnerships doing business in the state qualify. Additionally, changes to the definition of “doing business” in CR&TC § 23101 (effective for tax years beginning January 1, 2011) may result in entities previously eligible for Finanz treatment being disqualified.

Filing the correct form will save you and your clients’ time, energy, and cost. If you find that you or your LLC client filed an incorrect tax return, contact the Tax Practitioner Hotline at 916.845.7057. For more information about LLCs, please see [Publication 3556 LLC MEO](#), Tax Information for Limited Liability Companies and the 568 Tax Booklet, Limited Liability Companies located on our website.

¹ Appeal of Amman & Schmid Finanz AG, et-al, 96-SBE-008.

Ask the Advocate



Should California Have a Stand-Alone Return?

On December 2, 2010, we held the Taxpayers' Bill of Rights Hearing and we received a lot of good feedback as well as comments and suggestions on how we could improve our services. This month, I would like to share one of the suggestions received and our response to it. This suggestion is one of many we have heard given the recent election results and the current situation regarding the lack of conformity between California and Federal tax law.

Suggestion: In light of Proposition 26's two-thirds vote requirement for conformity bills, we request that the FTB once again review the idea of going back to a stand-

alone return similar to the federal return.

Response: This proposal discusses the history of California adoption of a tax return that currently uses federal AGI as a starting point to complete the California tax return. Our 2009 Bill of Rights' Hearing response to a similar proposal includes additional discussion on the history and benefits of the current format of the California tax return.

To revisit the benefit of the current tax return format, we have looked to the types of state adjustments that are commonly reported by taxpayers who filed a 540/540A/540NR tax return. Our research finds that about one-half of these taxpayers do not show a California adjustment to federal AGI. Furthermore, of those that have a California adjustment to federal AGI, a total of 58 percent are related to the following three common items of income that are not taxable for California purposes: state tax refunds (33 percent), social security benefits (15 percent), and unemployment compensation (10 percent). Any other type of adjustment accounts for five percent or less of all state adjustments to federal AGI. Looking further at state adjustments to federal itemized deductions, 52 percent of the taxpayers report the deduction for state taxes as the only state and federal difference. An additional 38 percent of taxpayers report no state and federal difference to itemized deductions.

We believe the taxpayer's burden to file is simplified by using the current format to allow the taxpayer to begin with a completed federal return, and then only report adjustments for differences in federal and California law on the Schedule CA of the California return. This is supported by our research findings that the majority of taxpayers have either no adjustment or one of the three most common adjustments. Using a stand-alone return

format would require taxpayers to report every line of income and expense on both their federal and state return, including the majority of tax return lines where the reported amounts are identical. Under both the current return and the stand-alone return, the taxpayer must account for differences between federal and California tax law.

The majority of taxpayers use software which computes state and federal income and deductions. A side by side comparison is currently available to all taxpayers by reviewing the Schedule CA, which replicates the current Federal 1040, with corresponding state adjustment columns for each federal line number. Tax professionals may suggest to software companies their desire for an additional software product that includes an analysis of state and federal differences.

The proposal also points out that much effort would be required to revert to a stand-alone return. We agree significant resources and costs would be necessary to redesign the tax return, return processing, and system programming to revert to a stand-alone tax return. Devoting resources to such an effort at this time would impact our ability to implement the current Enterprise Data to Revenue (EDR) project. EDR deliverables include reduction to the \$6.5B tax gap, improved processes, and providing more taxpayer data to our customers.

Finally, this proposal highlights the potential impact of Proposition 26 in relation to federal conformity. We agree that a lack of updated federal conformity affects taxpayer's burden to file, and we continue to support and encourage federal conformity in order to simplify taxpayer's burden to file. While the number of state and federal differences will continue to increase without updated federal conformity, our findings show that the majority of taxpayers are able to complete their California tax return with few, if any, state adjustments.

For the reasons stated above, we do not believe reverting to a stand-alone return will result in an overall reduction in taxpayer's burden to file. We also continue to earnestly support updated federal conformity. We will continue to monitor the reporting of state adjustments, federal non-conformity, and the related impact on the taxpayer's burden to file.

Steve Sims, EA
Taxpayers' Rights Advocate

Follow me on Twitter at twitter.com/FTBAAdvocate.

Event 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			
Speaking Engagements and Small Business Fairs			
March 2011			
Date	Event Association	Subject Matter	Location
Mar 2	UC Davis	Non Resident Foreign Scholars	Davis
Mar 8	National Association of Women Business Owners-CA	CA Tax Update	Sacramento
Mar 8	City of Stockton - Economic Development	Small Business Fair	Stockton
Mar 8	UC Riverside	Non Resident	Riverside
Mar 10	EDC of Shasta County	Enterprise Zone Presentation	Redding
Mar 16	UC Berkeley, UC Santa Cruz	Non Resident Foreign Scholars	Santa Cruz
Mar 17	Monterey Institute of International Studies	Non Resident Foreign Scholars	Monterey
Mar 22	UC San Francisco	Non Resident Foreign Scholars	San Francisco
April 2011			
Date	Event Association	Subject Matter	Location
April 5	UC Berkeley	Non Resident Foreign Scholars	Berkeley
May 2011			
Date	Event Association	Subject Matter	Location
May 10	CA Society of Enrolled Agents	Collection Overview	San Diego
May 12	CA National Association of Tax Professional	CA Tax Update	Palm Springs
May 24	CA Society of Accounting and Tax Professionals	Non Resident	Oakland

Inside FTB

State Contacting Income Earners Who Did Not File Tax Returns

While most people are working on their 2010 state tax returns, we contacted more than 900,000 people who did not file a 2009 state income tax return.

We find nonfilers by using more than 400 million income records we receive each year from third parties such as the IRS, banks, employers, state departments, and other sources. In addition, we use occupational licenses and mortgage interest payment information to detect others who may also have a requirement to file a state tax return. We then contact those who earned California income, but did not file a return for the 2009 filing year.

Last year, we collected more than \$600 million through these efforts.

Since the 1950s, we have contacted people who may have a filing requirement, but have not filed a tax return. Individuals contacted have 30 days to file their state tax return or show why one is not due. When a required return is not filed, we issue a tax assessment using income records to estimate the amount of state tax due. The assessment includes interest, fees, and penalties of up to 50 percent.

We provide more information for those receiving [notices](#) under the Tax Debt Section, select: *Respond to request or demand for tax return*. Taxpayers can request more time to respond, retrieve information that can assist them in filing a tax return, request tax forms, learn about payment options, sign up to receive an email reminder to file, and access other services. Individuals can also call us at 866.204.7902 to get information.

Criminal Corner

Chino Hills Tax Preparers Sentenced for State Income Tax Fraud

A Chino Hills couple was sentenced on one count of income tax fraud, after pleading guilty in November 2010.

Al Vivo, 56, and Rachel Vivo, 48 were sentenced to serve 180 days in jail; pay us more than \$262,800 restitution representing the unpaid tax, penalties, and interest; and serve five years formal probation. Their sentences will run concurrent with the sentences they are currently serving in Riverside County where they were found guilty of similar charges last year.

The couple owned and operated a home-based tax preparation business, Vivo-Cota & Associates aka Vivo & Associates. They were found to have understated their business income by more than \$1.1 million. The Vivos also falsely claimed the Child and Dependent Care credit for expenses that were never paid and for a child whose age made the child ineligible for the credit. In the Riverside County case, the Vivos filed a false personal tax return and aided in the preparation of three false income tax returns for their own workers.

San Bernardino County Superior Court Judge Alexander Martinez handed down the sentence in Division C3 of the Chino Court. San Bernardino County Deputy District Attorney Daniel Silverman prosecuted the case.

With tax season now underway, we remind taxpayers to check your preparer's credentials to ensure the preparer meets your specific needs. Your California options are: registered preparer, enrolled agent, certified public accountant, or attorney. Review your preparer's history with the various licensing authorities below:

- [California Tax Education Council](#) (CTEC) for CTEC Registered Tax Preparers (CRTPs).
- [IRS](#) for Enrolled Agents (EAs).
- [California Board of Accountancy](#) for CPAs.
- [California State Bar](#) for Attorneys.

Big Business

Doing Business in California

California defines "doing business" as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. For taxable years beginning on or after January 1, 2011, the definition of doing business under R&TC 23101 is expanded. For those years, a taxpayer will be considered to be doing business in California if **any** of the following conditions is satisfied:

- The taxpayer is actively engaging in any transaction in California for the purpose of financial or pecuniary gain or profit.
- The taxpayer is organized or commercially domiciled in California.
- Sales, as defined in subdivision (f) of R&TC 25120, of the taxpayer in California, including sales by the taxpayer's agents and independent contractors, exceed the lesser of \$500,000 or 25 percent of the taxpayer's total sales.
- Real and tangible personal property of the taxpayer in California exceed the lesser of \$50,000 or 25 percent of the taxpayer's total real and tangible personal property.

- The amount paid in California by the taxpayer for compensation, as defined in subdivision (c) of R&TC 25120, exceeds the lesser of \$50,000 or 25 percent of the total compensation paid by the taxpayer.

Furthermore, in determining the amount of the taxpayer's sales, property, and payroll for doing business purposes, the taxpayer's pro rata share of sales, property and payroll from partnerships, LLCs treated as partnerships, and S corporations are included.

Example 1: Corporation A, an out-of-state seller of tangible goods, has no property or payroll in California. During tax year 2011, Corporation A has \$1,000,000 of sales in California. Corporation A will have a filing requirement for tax year 2011 and will be subject to the \$800 minimum tax, assuming its activities in the state do not exceed Public Law 86-272.

Example 2: Corporation B has a 30 percent limited partnership interest in Limited Partnership X which is doing business in this state. For tax year 2011, Partnership X has \$50,000, \$80,000, and \$2,000,000 in property, payroll, and sales in California, respectively. For the purpose of determining whether Corporation B is doing business in this state, it will compute its pro rata shares of Partnership X's California property, payroll, and sales as follows:

Pro rata partnership property = \$15,000 ($\$50,000 \times 30\%$)
Pro rata partnership payroll = \$24,000 ($\$80,000 \times 30\%$)
Pro rata partnership sales = \$600,000 ($\$2,000,000 \times 30\%$)

Corporation B is doing business in this state because it has over \$500,000 in California sales through its pro rata share from Partnership X.

Example 3: Corporation C, an out-of-state corporation, has \$100,000 in total property, \$200,000 in total payroll, \$1,000,000 in total sales, of which \$400,000 was sales to California customers. Corporation C has no property or payroll in California. Although Corporation C's California sales are less than the \$500,000 threshold, Corporation C's California sales are 40 percent of its total sales which exceeds 25 percent of the corporation's total sales ($\$400,000 \div 1,000,000 = 40$ percent.) Therefore, for tax year 2011, Corporation C is considered doing business in this state, and will be subject to either the franchise tax (assuming Corporation C is not protected by Public Law 86-272) or to the \$800 minimum tax, whichever is greater.

For more information on the application of the new doing business definition in California, go to ftb.ca.gov, and search for **2011 corp law changes**.