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## **Cost Recovery Fees Changes**

The cost recovery fee is comprised of two separate fees: the filing enforcement fee and the collection fee. We assess the cost recovery fee to recover program costs when individuals and business entities fail to file tax returns upon demand or pay their delinquent taxes. The cost recovery fee amounts are reviewed yearly imposed under the authority of Revenue and Taxation Code (R&TC) Section 19254.

### **New cost recovery fee amounts beginning July 1, 2012, for the 2012/2013 fiscal year**

Entity Type	Filing Enforcement Fee	Collection Fee
<ul style="list-style-type: none"><li>• Individual</li><li>• General partnership</li><li>• Limited partnership</li><li>• Limited liability partnership</li><li>• Limited liability company treated as a partnership</li></ul>	\$82	\$159
<ul style="list-style-type: none"><li>• Corporation</li><li>• Limited liability company treated as a corporation</li></ul>	\$89	\$269

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## **New Legislation**

Senate Bill (SB) 1015 became law on June 27, 2012. This bill contained three significant provisions. First, this law acknowledges the doctrine of election, as addressed in a 1938 Supreme Court case, *Pacific National Co. v. Welch*, 304 U.S. 191, 58 S. Ct. 857, 82 L. Ed. 1282 (1938), applies to elections that affect the computation of California income and franchise tax, unless otherwise provided, and repeals the provisions of the Multistate Tax Compact. Next, this law allows us to use Earnings Withholding Orders for Taxes (EWOTs) for the entire 20-year collection statute of limitations (SOL) without having to record a Notice of State Tax Lien. Finally, this law requires the Employment Development Department (EDD) and the Board of Equalization (BOE) to participate in the Financial Institutions Record Match (FIRM) program.

### **What changed?**

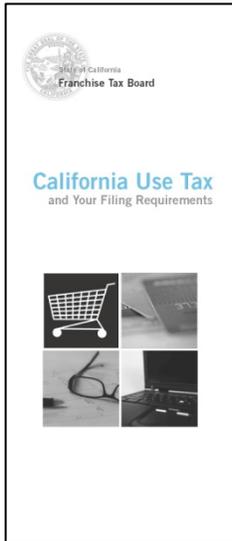
This bill declares that the judicial doctrine of election applies to elections that affect the computation of California income and franchise tax, unless otherwise provided. The repeal of the Multistate Tax Compact ends California's participation as a voting member of the executive committee of the Multistate Tax Commission.

Under California law, a 20-year collection SOL for state income tax debts allows us to use an EWOT to collect delinquent tax debts within the 20-year SOL. An EWOT is a continuing wage garnishment based on a percentage of a debtor's earnings, not to exceed 25 percent of a debtor's disposable income. By law, before an EWOT can be issued there must be an enforceable "state tax lien" in effect, whether recorded or unrecorded. Prior to SB 1015, we are authorized to issue an EWOT via an unrecorded statutory tax lien. The statutory tax lien arises upon operation of law on the date an assessment is issued and exists for 10 years, unless the liability is satisfied or a Notice of State Tax Lien is recorded. If the debt remains uncollected during the first 10 years, a recorded Notice of State Tax Lien extends our ability to issue an EWOT for an additional 10 years.

SB 1015 changed the law so that we can issue an EWOT at any time during the 20-year collection SOL without recording a Notice of State Tax Lien.

SB 1015 also authorizes the expansion of the existing FIRM (Stats. 2011, Ch. 14) program to the tax programs administered by EDD and BOE. Under FIRM, financial institutions doing business in this state are required to participate in a quarterly data exchange process to match our list of delinquent tax and non-tax debtors with the financial Institution's account holders.

SB 1015 requires the BOE and EDD to submit their respective delinquent tax debtor information us and requires us to include the BOE's and the EDD's delinquent tax debtor information in its data file used to match delinquent tax debtor records to financial institution accountholder records.



## **Use Tax Publication Revised**

Need a quick overview of California Use Tax filing requirements? We recently revised our Publication 988, California Use Tax and Your Filing Requirements. The publication gives you information to help determine when you or your client may have a Use Tax filing requirement, including an estimated use tax table.

To view or print California Use Tax and your Filing Requirements, go to [ftb.ca.gov](http://ftb.ca.gov) and search for [FTB 988](#).

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## **Power of Attorney Form Update**

The Power of Attorney (POA), Form 3520, is one of the first pieces of information that may be requested from you when you call our practitioner hotline. Questions about when one is needed and what it can be used for are frequently asked by practitioners trying to do their best to represent their clients. Although there are many reasons the practitioner needs a POA form signed by the client, the most common are to do the following:

- Receive confidential tax information.
- Receive information for the nontax programs we administer.
- Represent a taxpayer/debtor or business entity before us.
- Sign the client's tax return (which is allowed only in very limited circumstances)
- Receive, but not endorse or cash checks we send to the client

While these reasons seem fairly straight forward, there are limited instances when we may be able work with a caller without requiring a POA form. A POA form is not required when you are simply furnishing requested information to us. We may be able to discuss a tax issue in a limited manner with a caller who has notices or documents that we sent to the taxpayer. In addition, the caller must also have the taxpayer's social security number, address or other information and answer our security and disclosure questions. Discussing any matters is at the discretion of the line agent, meaning they can still ask the caller for the POA form. In addition, without a valid POA form, any

written information or confirmation of corrections on an account can only be mailed directly to the taxpayer/debtor. No written information can be provided to a representative without a Power of Attorney form or FTB 3518, One-Time Release of Confidential Tax Information.

A valid POA form allows us to discuss confidential tax matters with a representative. The POA form also is designed to allow the client to limit the scope of tasks and tax years that a representative may discuss with us on their behalf. It is important to discuss with your clients exactly which years and tax matters they want you to handle on their behalves before signing the POA form and sending it in. In addition, while the current POA form has a box to check if the representative wants to receive copies of notices, unfortunately, not all of our many systems are capable of automatically sending a copy of the notice to you.

We've heard many comments from practitioners about the POA form and how it could be changed for the better. At a time when we are currently undertaking a massive system upgrade, Enterprise Data to Revenue, we decided to do a substantial overhaul to the POA form as well. This new POA form will include greatly enhanced instructions and the ability for the taxpayer to designate the practitioner to handle all open tax years. We hope to have it ready to roll out by the end of the year.

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## **Should I File my Business Entity Return Even Though I Do Not Have the Money to Pay?**

If you owe, but cannot pay your taxes by the due date, you still must file your return on time and pay as much as you can. Although there are penalties for late payment of tax, the penalty for late filing of the return is usually higher.<sup>1</sup>

This statement is especially true for pass-through business entities, such as partnerships, LLCs<sup>2</sup>, and S corporations.

Similar to the federal law (IRC sections 6698 and 6699), California law (R&TC Section 19172 and 19172.5) imposes a partnership late filing penalty for the late filing of pass-through business entities returns (Forms 565, 568 and 100S) or if you file the returns without required information. These penalties are imposed even if all taxes have been paid or (as is the case with a general partnership) no taxes are imposed.

### **California Penalty**

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<sup>1</sup> All late filed returns may be subject to a late filing (R&TC Section 19131), which is based on amount of unpaid tax due. This may be assessed with other penalties, such as the partnership or S-corporation late filing penalty.

<sup>2</sup> Limited Liability Companies – This article addresses LLCs that are treated for tax purposes as a partnership. Single Member Limited Liability Company and LLCs which have elected to be treated as corporations are not addressed in this article.

**Penalty Imposed for Failure to File Partnership, LLC, or S Corporation Returns**

For returns required to be filed on or after January 1, 2011, the partnership late filing penalty/S-corporation late filing penalty will be increased to \$18 for each month or part of a month (for a maximum of 12 months) multiplied by the total number of partners, members, or shareholders in the entity during any part of the taxable year for which the return is filed after its due date. This penalty is in addition to the existing late filing penalty.

Although federal and California law both impose late filing penalties on pass-through business entities returns, as we outline in the following chart, there can be a significant difference when these penalties start to accrue and how much will be imposed.

<b>Partnership</b>	<b>Federal</b>	<b>California</b>
Form	1065	565
Due Date (Calendar Year Filer)	April 15 <sup>th</sup> (15 <sup>th</sup> day of 4 <sup>th</sup> month)	April 15 <sup>th</sup> (15 <sup>th</sup> day of 4 <sup>th</sup> month)
Application to Extend	Application Required	Automatic (if the return is filed within 6 months of original due date)
Extension Due Date	Sept 15 <sup>th</sup> (5-month extension)	Oct 15 <sup>th</sup> (6-month extension)
Penalty Per Partner	\$195 per month (or fraction thereof)	\$18 per month (or fraction thereof)
<b>Limited Liability Company</b>		
Form	1065	568
Due Date (Calendar)	April 15 <sup>th</sup> (15 <sup>th</sup> day of 4 <sup>th</sup> month)	April 15 <sup>th</sup> (15 <sup>th</sup> day of 4 <sup>th</sup> month)
Application to Extend	Application Required	Automatic (if the return is filed within 6 months of original due date)
Extension Due Date	Sept 15 <sup>th</sup> (5-month extension)	Oct 15 <sup>th</sup> (6-month extension)
Penalty per partner	\$195 per month (or fraction thereof)	\$18 per month (or fraction thereof)
<b>S Corporation</b>		
Form	1120S	100S
Due Date (Calendar)	March 15 <sup>th</sup> (15 <sup>th</sup> day of 3 <sup>rd</sup> month)	March 15 <sup>th</sup> (15 <sup>th</sup> day of 3 <sup>rd</sup> month)
Application to Extend	Application Required	Automatic (if the filed within 7

		months of the original due date)
Extension Due Date	Sept 15 <sup>th</sup> (6-month extension)	Oct 15 <sup>th</sup> (7-month extension)
Penalty Per Partner	\$195 per month (or fraction thereof)	\$18 per month (or fraction thereof)

After the return is processed, we will send a bill, including penalties and interest.

If the business entity is unable to pay the balance in full by the due date on your notice, the business entity can enter into an installment agreement if it cannot pay the total balance in 90 days due to a financial hardship. Under this program, it would agree to pay a specified amount on a specified day each month.

Requirements for an Installment Agreement:

- You must file any delinquent tax returns.
- You may need to complete and mail to us a financial condition form. If necessary, we may require other financial documentation to process your installment agreement request.
- You must pay a \$50 fee to set up an installment agreement. We will add the fee to your business entity's balance due.

Our staff will determine if an account qualifies for an installment agreement and the time period allowed.

For more information about these notices is available, go to [ftb.ca.gov](http://ftb.ca.gov) and search for [installment agreements - business](#).

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## **Kiddie Tax – When the Child Files the Return**

Like federal law, California requires certain children with investment income above \$1,900 to be taxed at the parent's tax rate if the parent's tax rate is higher. This law is commonly known as Kiddie Tax. The child's investment income may be reported by using one of the following forms:

- [FTB 3803](#), Parents' Election to Report Child's Interest and Dividends. The parents use this form to elect to include the child's interest and dividend income on their tax return. If the parents make this election, the child does not need to file a tax return. The requirements for parents to elect to use FTB 3803 are different than the FTB 3800, review the instructions for both forms.

- [FTB 3800](#), Tax Computation for Certain Children with Investment Income. When a child files a tax return, use this form to compute the tax on the child's investment income at the parent's tax rate.

Note: Your client is not required to report the same as federal. For example, if your client reported federal Kiddie Tax on the parent's return, your client can choose to report it on the child's return for California and vice versa. Schedule CA adjustments would be needed.

Kiddie Tax is owed if all the following apply:

- The child is 18 and under or a student under age 24 at the end of the year.
- The child has investment income taxable by California of more than \$1,900
- At least one of the child's parents was alive at the end of the year.
- The child does not have earned income that exceeds over half of their support.

If the child has an individual filing requirement, the Form 3800 can be attached to the child's tax return to report the Kiddie Tax. In this case, you should also verify whether or not the child can be claimed as a dependent by another person. A child who can be claimed as a dependent by another person cannot take a personal exemption on their own tax return. This is true even if the other person who can claim the exemption does not actually claim it.

If the child has earned income that exceeds over half of their support, the Kiddie Tax is not applicable. It is possible however, that your software may still suggest that a Form 3800 be attached to the child's return. Filing a Form 3800 on a tax return where the child claims a personal exemption may lead us to believe the child can be claimed as a dependent by another person. A notice would then be issued by us denying the child's personal exemption.

In general, for taxable years beginning on or after January 1, 2010, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2009. For federal Kiddie Tax rules, see IRC Section 1(g).

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## **Tax News Flashes Update**

We now have an archive webpage dedicated to the [Tax News Flashes](#). In the past, we would rerun the flashes that occurred in the following month's issue of Tax News. To read the flashes, go to [ftb.ca.gov](http://ftb.ca.gov) and search for [Tax News Flashes](#).

## **CSEA-IRS Federal Representation Workshop 2012**

CSEA and the IRS once again partner to bring you a workshop that focuses specifically on how to best represent your clients through a better understanding of IRS compliance processes and procedures as they relate to examinations, collections, appeals, and offers in compromise. In addition, the IRS will share new developments at the Service, and CSEA will share the practitioner perspective.

### **You can expect to learn:**

- Examination Process and Procedures.
- Collection Process and Procedures.
- Appeals Process and Procedures.
- Collection Appeals Program and Collection Due Process.
- Offers in Compromise.
- What's New at the IRS.

### **Locations, dates, and time:**

Registration: 8 AM – 8 AM ; Seminar: 8:30 AM – 4:30 PM

<b>Date</b>	<b>City</b>	<b>Address</b>
August 14	Los Angeles	Loyola Law School, Merrifield Hall, 919 Albany Street
August 21	Oakland	Ronald V. Dellums Federal Building, 1301 Clay Street, North Tower Auditorium
August 22	Sacramento	Franchise Tax Board, Town Center, Gerald Goldberg Auditorium, 9646 Butterfield Way
September 6	Laguna Niguel	IRS Office, Oceanside/Riverside Room, 2nd floor, 24000 Avila Road

### **Cost:**

\$129/Members; \$149/non-Members

### **CPE offered:**

IRS/CTEC - 8 hours federal tax law topics

California Board of Accountancy and CSEA/NAEA - 8 hours

State Bar of California MCLE - 7 hours

### **To register:**

800.777.2732

[www.csea.org](http://www.csea.org)

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## **Ask the Advocate**

## **Ask the Advocate**

### **The “How-To” on Two Withholding Issues: Pass-Through Withholding and Withholding on Group Returns**

#### **Pass-Through Withholding**

Under California law, there are various reasons why pass-through entities such as S corporations, partnerships, and limited liability companies (LLCs) classified as partnerships, may have taxes withheld from payments made to them.



If a pass-through entity had money withheld and remitted to us by another entity, it can:

1. Allocate the entire withholding credit to all its shareholders, partners, or members.
2. Claim a portion (not to exceed the total tax and fee due) of the withholding credit on the line of its tax return.
3. Use a combination of both of the above.

As a result, pass-through entities may themselves be required to file Form 592, Resident and Nonresident Withholding Statement, with us to report pass-through withholding credits.

#### **The Group Nonresident Return**

Certain nonresident individual owners of S corporations, partnerships, or LLCs may elect to file a group nonresident return using [Long Form 540NR](#), California Nonresident or Part-Year Resident Income Tax Return, in which case the business entity would file a group nonresident return for their qualified nonresident pass-through entity owners.

Much like estimate payments, in order for withholding to be credited to a nonresident group return, the proper [Form 592](#) showing the allocation of these withholding credits, needs to be filed. If Form 592 is not filed, withholding may not be properly credited to the group nonresident return.

For more information on how to pass through withholding credits, get [Pub. 1017](#), Resident and Nonresident Withholding Guidelines and instructions for [Form 592](#), and [Form 592-F](#), Foreign Partner or Member Annual Return.

If the withholding credit was not allocated to the nonresident group return, you will need to use Schedule 1067A, Nonresident Group Return Schedule, to allow us to move withholding credits to the group. It will take us six to eight weeks to move the withholding credits and make them available to be claimed on the group return.

[FTB Pub. 1067](#), Guidelines for Filing a Group Form 540NR, contains information regarding the Group Nonresident Returns. You can get FTB Pub. 1067, along with other California tax forms and publications at [ftb.ca.gov](http://ftb.ca.gov). You may also call 916.845.3465 for more information.

The withholding agent must file Form 592 with us by the specific due dates. The withholding agent must also provide its pass-through entity owners with Form 592-B January 31 of each year, or as otherwise indicated on forms and instructions. See instructions on Form 592 for information on due dates, penalties, and interest information. See the instructions on Form 592-B for information on when to complete the form and when penalties will be assessed.

Our Withholding Services and Compliance Section offers free webinars that cover a variety of withholding topics to help our customers understand California withholding requirements. To view our pre-recorded webinars, go to [ftb.ca.gov](http://ftb.ca.gov), and search for **withholding webinars**.

**Steve Sims, EA**  
**Taxpayers' Rights Advocate**

Follow me on Twitter at [twitter.com/FTBAdvocate](https://twitter.com/FTBAdvocate).

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## **Event Calendar**

As part of our education and outreach to our tax professional community, we participate in many different presentations and fairs. We now provide a [combined-calendar](#) to show the events we are attending as well as other events happening with us such as interested party and board meetings.



## **Enterprise. Data. Revenue!**

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### **EDR in the News**

#### **EDR Release 1.0**

We are laying the foundation for more efficient return and payment processing by deploying the first release of the Enterprise Data to Revenue Project (EDR), Release 1.0.

We will kick-off EDR Release 1.0 on September 30, 2012, which includes reengineering of return processing. This will allow us to reduce sorts and wait times to get paper returns to the scanners faster. We will begin scanning all pages of the 2011 Form 540 including attachments, payments, and W-2s. Previously, we only scanned the first three pages of the return.

With EDR Release 1.0, we will also implement electronic imaging and deposit for paper checks. This means we will deposit checks by transmitting electronic images to our bank accounts, rather than taking the paper checks to the bank. This process is also called Image Cash Letter or Check 21.

Implementation of Release 1.0 represents a significant milestone for the EDR Project. The expanded data capture from returns and attachments is a key component to realizing the project's \$4.7 billion revenue target. Capturing full images of the returns and payments allows us to eliminate paper, speed up processing, and improve customer service.

Release 1.0 is a pilot and is limited to the 2011 540 returns. A pilot is a low risk way to try out our new systems and processes. Implementing this pilot during October's final filing days allows us to refine our procedures for Release 1.0.1 which will be implemented on December 31, 2012. We expect to receive approximately 200,000 tax year 2011 540 returns during this period.

## **Inside FTB**

### **Interest Rates Remains the Same**

The adjusted interest rate has been determined for the period January 1, 2013, through June 30, 2013.<sup>1</sup> Currently, interest rates are three percent, and will remain three percent at the first of the year. This rate is compounded daily and accrues with respect to various state taxes including: personal income, corporate income, and franchise. The rate for corporation tax overpayments for the period will remain zero percent.

To find [adjusted interest rates](#), both current and past, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **interest rates**.

<sup>1</sup> Pursuant to R&TC Section 19521.

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## **Big Business**

### **A Guide to Formally Terminate a Business Entity's Legal Existence**

In general, a business legal existence in California occurs with the filing of specific formation documents with [California's Secretary of State](#) (SOS). This could be documents filed to form a California business entity (domestic) or to acknowledge the business entity's legal existence that previously forms (foreign) either in another state or country. Once the appropriate documents have been filed, the business entity is afforded specific rights, including the right to transact business in California, along with specific responsibilities, including the requirement to file and pay taxes.

In [last month's article](#) on Big Business, we discussed how a business entity (including one that is suspended/forfeited) continues to accrue tax, along with penalties and interest until the business entity formally terminates their legal existence.

Filing a final return itself will not terminate a business entity. The following information should help you to assist your clients to terminate the business entity's legal existence in [California](#).

#### **To cancel an LLC (foreign and domestic)**

To cancel the Application for Registration of a foreign (out of state or country) LLC, the foreign LLC must file SOS's [Form LLC-4/7](#), Certificate of Cancellation.

To cancel the Articles of Organization of a domestic LLC, the domestic LLC must file a [Form LLC-3](#), Certificate of Dissolution **and** [Form LLC-4/8](#), Short Form Certificate of Cancellation. However, if all the members vote to dissolve, only Form LLC-4/7 is required.

Domestic LLCs organized in California on or after January 1, 2004, have the option to file a Form LLC-4/8, Short Form Certificate of Cancellation if specific requirements are met.

### **To dissolve a California formed (domestic) corporation**

To dissolve, the corporation must file a [Form ELEC STK](#), Certificate of Election to Wind Up and Dissolve **and** a [Form DISS STK](#), Certificate of Dissolution. However, if the election to dissolve is made by the vote of all the outstanding shares, only the Certificate of Dissolution is required.

Domestic stock corporations have the option to file a [Form DSF STK](#), Short Form Certificate of Dissolution if specific requirements are met.

Upon SOS accepting the filing of the Certificate of Dissolution or Short Form Certificate of Dissolution, the corporation will be completely dissolved and its corporate existence will cease.

### **To surrender an out of state formed (foreign) corporation**

A qualified foreign corporation, which previously qualified to do business in California with the SOS, must surrender its right to transact intrastate business in the State of California. The foreign corporation does this by filing a Certificate of Surrender of Right to Transact Intrastate Business that meets the requirements of California.

Upon SOS accepting the filing of the Certificate of Surrender, the foreign corporation will be completely surrendered and the corporate rights, powers, and privileges of the corporation will cease in California.

### **Mergers**

A corporate merger is a combining of corporations in which one of two or more corporations survives. There are several types of mergers with a variety of filing requirements, based not only on the number of corporations merging and the type of merger, but also the domicile of the corporations merging and whether or not any foreign (out-of-state) corporations are qualified to transact business in California. Regardless of the type of merger, be sure the corporations involved file the proper documents with SOS so the corporate existence of the corporation(s) that was merged ceases in California.

***Tax News***  
**August 2012**

As with all forms required to dissolve, surrender, cancel, or merge a business entity, the SOS cannot file (process) documents filed on behalf of suspended/forfeited corporations/LLCs. (California Revenue and Taxation Code Sections 23301, 23301.5 and 23775.) If you are unsure the status of the corporation or LLC, you can check its status online using SOS's Business Search tool at [kepler.sos.ca.gov](http://kepler.sos.ca.gov).

Get [FTB Publication 1038](#), Guide to Dissolve, Surrender, or Cancel a California Business Entity, for more information.