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## **Top 500 Delinquent Taxpayers Face Suspension of Driver's and Occupational Licenses**

Starting October 2012, we will work with Department of Motor Vehicles (DMV) to suspend driver's licenses for individuals who appear on the [Top 500 Delinquent Taxpayer](#) list. Additionally, top 500 delinquent taxpayers face suspension of occupational and professional licenses. (Business and Professions Code Section 494.5)

A taxpayer can avoid this list if they:

- Pay their tax liability in full.
- Enter into and comply with an installment agreement (California Revenue and Taxation Code Section 19008).
- Provide information to resolve their tax liability in some other manner (i.e. proof of bankruptcy, proof that the liability isn't owed, substantiation of a permanent financial hardship).

Additionally, the law prohibits state agencies from entering into contracts for the acquisition of goods and services with taxpayers who appear on the Top 500 list. (California Public Contract Code Section 10295.4)

We publish the list twice a year.

Contact us at the phone numbers or the address below to discuss and resolve your tax delinquency:

Personal Income Tax: 888.426.8555

Business Income Tax: 888.426.8751

FRANCHISE TAX BOARD  
PO BOX 3065  
RANCHO CORDOVA CA 95741-3065

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## **Nontax Debt Collection Changes**

Most of what we do involves administering two of California's major tax programs: Personal Income Tax and Corporation Tax. Our collections program, however, also has the responsibility for administering other nontax programs and delinquent debt collection functions, including delinquent vehicle registration debt collections on behalf of the Department of Motor Vehicles and court-ordered debt for California courts. Until recently, these nontax debt programs included collections on behalf of the Department

of Industrial Relations (DIR). Revenue and Taxation Code (R&TC) Section 19290 and Section 19290.1, required that the DIR transfer responsibility for collecting specified delinquent fees, wages, penalties, costs, and interest to us.

Effective June 27, 2012, we no longer collect Industrial Health and Safety assessments for the DIR. Senate Bill 1006 repealed R&TC Section 19290 and Section 19290.1 removing our statutory authority to collect on behalf of DIR. For these debts, all inquiries should go to DIR at 916.263.2999.

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## **Sign Up Today: Sole Proprietorship vs. LLC – Determine Which Tax Structure is Right for Your Business**

This webinar is for individuals who are starting a business and want to learn the basics of sole proprietorships and LLCs.

We designed this webinar to help aspiring business owners understand the tax implications of each business structure so they can determine which one is most suitable. In this webinar we'll look at:

- The differences between LLCs and sole proprietorships
- Tax liabilities for each business structure
- Key tax filing requirements
- Additional resources to help set up a business

Date/Time: Wednesday, October 10, 2012, 10 a.m. PDT

Duration: This webinar is approximately 45 minutes

Hosted by: Office of State Controller John Chiang

[Register here](#)

Registration takes only a few minutes. Space is limited.

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## **When is a 1099-MISC Not Enough?**

It is well known that Form 1099-MISC, Miscellaneous Income, is used to report to both the Internal Revenue Service (IRS) and FTB payments of miscellaneous income.

A common type of miscellaneous income is a payment made to an independent contractor for services performed for a trade or business. When all payments made to

the independent contractor throughout the year are at least \$600, a 1099-MISC is required to be filed. Payments to corporations are exempt from this requirement.

### **Is filing a 1099-MISC enough for federal tax purposes?**

Yes, unless there is a requirement to withhold tax.

Federal law only requires withholding of tax for payments made to independent contractors, in two instances. One instance is if the independent contractor is a foreign person performing personal services in the United States.

The second instance is when the independent contractor is subject to backup withholding. IRS requires backup withholding when the independent contractor fails to furnish a taxpayer identification number to the payer, provides an invalid taxpayer identification number, or fails to certify exemption from backup withholding.

### **Is filing a 1099-MISC enough for state tax purposes?**

Yes, unless there is a requirement to withhold California tax.

For California purposes, when California source income payments in excess of \$1,500 is paid to someone who is not a California resident, then a portion of this compensation must be withheld and submitted to us. Generally the amount withheld is seven percent of the California source income payments and must begin as soon as the total payments for the calendar year exceed \$1,500. Withholding on the first \$1,500 is optional. [Form 590](#), Withholding Exemption Certificate is used to certify exemption from nonresident withholding.

Furthermore, when backup withholding is required for the IRS, backup withholding must also be done for us on California source income payments. With certain limited exceptions, seven percent of the reportable income must be withheld and submitted to us. Backup withholding applies to California residents and nonresidents on California source income payments.

### **General Guidelines**

- Before paying independent contractors, require them to:
  - Complete IRS [Form W-9](#), Request for Taxpayer Identification Number and Certification.
  - Complete [Form 590](#), Withholding Exemption Certificate, if applicable (to be valid, a physical address in California and a tax ID are required).
- The payee may submit [Form 588](#), Nonresident Withholding Waiver Request, or [Form 589](#), Nonresident Reduced Withholding Request, to apply for a waiver or reduced withholding, respectively.
- Withhold at the maximum rate, seven percent, unless:
  - The independent contractor is exempt based upon a properly completed [Form 590](#) Withholding Exemption Certificate.
  - You received a waiver or reduced withholding authorization prior to the payment.

- Submit [Form 592](#), Resident and Nonresident Withholding Statement and [Form 592-V](#) Payment Voucher for Resident and Nonresident Withholding, by the required due dates.
- Submit [Form 592-B](#), Resident and Nonresident Withholding Tax Statement, to the payee by the required due date.
- Submit IRS [Forms 1099-MISC](#), Miscellaneous Income, to independent contractors, if required, whenever payments reach \$600 in the calendar year.

For more information, go to [ftb.ca.gov](http://ftb.ca.gov), and search for **small business withholding**. Use our online [Small Business Withholding Tool](#) to determine whether withholding is required for California.

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## Updating Tax Year 2013 Withholding Forms to Resolve Balancing Issues

Beginning with the 2007 tax forms, we began hard coding zeros in the cents field on all paper tax forms that previously allowed a field for the exact cents amount. This was done to encourage taxpayers to round to the nearest whole dollar and to be consistent with other forms submitted to us.

However, the hard coded zeros on withholding forms causes balancing issues with us, withholding agents, and payees. To resolve these issues, the hard coded zeros will be removed from the following tax year 2013 forms:

Form Number	Form Name
589	Nonresident Reduced Withholding Request
592	Resident and Nonresident Withholding Statement
592-A	Payment Voucher for Foreign Partner or Member Withholding
592-B	Resident and Nonresident Withholding Tax Statement
592-F	Foreign Partner or Member Annual Return
592-V	Payment Voucher for Resident and Nonresident Withholding
593	Real Estate Withholding Tax Statement
593-V	Payment Voucher for Real Estate Withholding

In addition, Form 570, Nonadmitted Insurance Tax Return, will once again allow a taxpayer to enter cents.

For more information on withholding forms, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **withholding forms and publications**.

## **California's Automatic Extensions and Like-Kind Exchange**

If certain conditions are met, taxpayers may defer gain from the sale of property, either in part or full under Internal Revenue Code (IRC) Section 1031 and conforming California laws. These transactions are commonly referred to as like-kind or 1031 exchanges.

In our January issue of Tax News, we shared some of the [Common Audit Issues and Recent Developments in the Like Kind Exchange Arena](#), including when taxpayers do not meet identification or other technical requirements of IRC Section 1031. This article offers clarification of the impact of California's automatic extension and the technical requirements of like-kind exchanges.

IRC Section 1031(a)(3)(B) requires that property received by a taxpayer will be treated as property which is nonlike-kind property if the property is received after the **earlier** of 180 days from the transfer of the relinquished property or the due date (determined with regard to extensions) of the taxpayer's federal tax return. Therefore, the federal extended due date should be used in determining whether the property is disqualified under IRC Section 1031(a)(3)(B).

California incorporates the provisions of IRC Section 1031 by reference in Revenue and Taxation Code (R&TC) Section 18031 and R&TC Section 24941, including IRC Section 1031(a)(3)(B).

Consequently, California will follow the federal treatment, regardless of whether or not the California return was filed under extension. Specifically, the federal extended due date should be used in determining whether the property is disqualified under IRC Section 1031(a)(3)(B).

## **Ask the Advocate**



### **Are You a California Withholding Agent?**

#### **Withholding Agent**

One of the most asked questions these days is, “Could I be considered a California **withholding agent**?”

The answer to this question will depend on the facts in each case. One of the biggest misconceptions is that the requirement to withhold and remit taxes on payments of income only applies to business entities. Under California law, every individual (resident or nonresident) and every business entity, partnership, limited liability company, or corporation can potentially be responsible for withholding, remitting, and reporting on California-source income payments.

Given the broad set of requirements, a withholding agent is any person or entity with the control, receipt, custody, disposal, or payment of California-source income to a payee that meets one of several general requirements to have a tax amount withheld from payments and to remit directly to us as required.

For example, unless certain exceptions apply, a withholding agent who makes California-source income payments to nonresident independent contractors must withhold and send to us seven percent of the amount that exceeds \$1,500 in a calendar year.

Penalties and interest that withholding agents may incur if they do not withhold, remit, and report the proper amounts when due can be costly. For this reason, we recommend that withholding agents analyze any California-sourced payment to determine if withholding is required under one of the withholding tax types.

#### **Real Estate Withholding**

In general, unless certain exceptions or exemptions apply, real estate withholding may be required when there is a disposition of California real property interest and the sales price of the property conveyed exceeds \$100,000. For more information on real estate withholding requirement, see our [FTB Pub 1016](#), Real Estate Withholding Guidelines.

## **Income at Source/Nonresident Withholding**

In general, withholding may be required when there is a California-source income payment to a “nonresident taxpayer” and the total amount (for the year) is over \$1,500. A nonresident taxpayer can be:

- An individual who is not considered to be a resident of California.
- A nonresident estate or trust.
- A business entity (excluding banks and banking associations) that was formed or organized in any state or country other than California, and either has not qualified to do business in California, or does not have a permanent place of business<sup>1</sup> located in California.

In addition, there are special rules for foreign partners. For more information on income withholding, see our [FTB Pub 1017](#), Resident and Nonresident Withholding Guidelines, and our [FTB Pub 1018](#), Small Business Withholding Tool.

## **Backup Withholding**

In general, backup withholding is required whenever “backup withholding” is required by the IRS, except when specifically excluded for California purposes. Usually backup withholding is required where a payee fails or refuses to provide a Taxpayer Identification Number. For more information on backup withholding, see our FTB Pub. 1017 and our FTB Pub. 1018.

The above information is intended to provide basic information to determine if you are considered a California withholding agent. There are specific rules, guidelines, and forms associated with each withholding type. Please also see our recent YouTube video [“Who is a Withholding Agent.”](#)

## **Need our forms or more information?**

- Go to [ftb.ca.gov](http://ftb.ca.gov) and search for **withholding**.
- Email us at: [wscs.gen@ftb.ca.gov](mailto:wscs.gen@ftb.ca.gov) .  
Do not send confidential information as this is not a secure email address.
- Call us at:
  - 888.792.4900
  - 916.845.4900

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<sup>1</sup> A permanent place of business means an office which is permanently staffed by the business entity’s employees.

We also offer 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 Update

On September 11, our Executive Officer Selvi Stanislaus, our division chiefs, and staff met with the FTB [Advisory Board](#).

Our Chief Information Officer, Cathy Cleek, presented an overview of the external Taxpayer Folder, which we will roll out through the [EDR Project](#) in July 2014. The Taxpayer Folder will bring you online access to your clients' accounts including numerous new functionalities for all taxpayer types.

Cathy provided sample web screens of the Taxpayer Folder. Additionally, she facilitated an exercise to identify the most needed Taxpayer Folder functionalities based on input from attendees at the meeting.

Based on feedback from the group, their top three requested functionalities for the Taxpayer Folder are:

1. Data showing total tax liability for each client.
2. Functionality to allow filing audit protests online, with real time confirmation that the protest was received.
3. Functionality to allow viewing and updating taxpayer contact information, such as social security number, FTB identification number, address, phone number, and email address.

Currently, we are collecting data to help us design the external Taxpayer Folder based on the needs of our stakeholders, including the Advisory Board, certified public accountants, enrolled agents, tax attorneys, and taxpayers.

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## **Inside FTB**

### **City Business Tax Program Update**

The recent economic challenges have not left our City Business Tax Program unaffected. During the recent program outreach, 11 cities chose not to renew their contracts. The most common reason cited was lack of resources. The program did gain 6 additional cities, leaving the overall city participation at 102—a net loss of 5 cities.

The program takes business license data from cities and tax return data to perform a match. This match results in cities finding out about businesses operating in their jurisdiction that don't possess a business license or pay local taxes and the State of California finding businesses that aren't filing required tax returns. Sounds easy enough, but the program is struggling.

We gain revenue from this program, but the big winners are the cities, many who see thousands, even millions, of dollars in revenue from participating in this voluntary program. For further information about the program, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **city business tax**.

## **Criminal Corner**

### **Sutton Sentenced to 5 Years, 4 Months for Grand Theft, Identity Theft, and Tax Evasion**

According to The Press Enterprise on August 30, 2012, the former general manager of a shareholder-owned water company in Moreno Valley was sentenced to 5 years 4 months in state prison.

Debra Sutton, 55, pled guilty in July to grand theft, identity theft, and tax evasion. Investigators say she stole \$784,000 and used it for luxury cruises and gambling at local casinos. Sutton, who was immediately taken into custody from the courtroom, did not address the court.

Search warrants served in January claimed that a water company ATM card issued to Sutton was used to pay for cruises to Alaska, the Bahamas, Mexico, the Caribbean, and other places

Additionally, the ATM card was used for purchases and withdrawals "that appear to be very questionable for business account purchases and withdrawals," court documents show.

Those included numerous purchases and/or withdrawals at:

- Soboba, Morongo, and Edgewater (Laughlin, Nevada) Casinos.
- Alaska, Continental, and United Airlines.
- Cheaptickets.com.
- Macy's.
- Disneyland.
- Carnival Cruise Lines of Florida.
- San Diego Cruise ship terminal.
- Sam's Club in Bullhead City, Arizona.

Sutton also was ordered to pay restitution: \$784,175 to the Box Springs Mutual Water Company and \$101,554 for California back taxes.

Sutton once headed the company, a private nonprofit agency that provides water to about 3,300 people in the Edgemont community on Moreno Valley's west side.

In March, dozens of Box Springs shareholders, furious over allegations of embezzlement and lax oversight, ousted the company's former board of directors.

Sutton was charged the next day. She resigned from the water company in February. Her salary was \$42,000 a year.

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## **Big Business**

### **Minimum Franchise Tax in the First Tax Year**

There is a misunderstanding that all corporations doing business in California are not subject to the minimum franchise tax in their first tax year. Newly incorporated or qualified corporations are not subject to the minimum franchise tax in their first year. They compute the tax for their corporation's first tax year by multiplying their California net income by the appropriate tax rate. Even if that amount is less than the minimum franchise tax, the corporation pays only that lesser amount. After the first year, their franchise tax is the larger of their California net income multiplied by the appropriate tax rate or the minimum franchise tax of \$800.

There are situations where corporations that incorporate, qualify, or start doing business in California are subject to the minimum franchise tax in their first tax year. For example, a corporation which has not qualified to do business in California is subject to the minimum franchise tax if it is doing business in California. Also, a limited liability company (LLC) whose first tax year in California is taxed as a partnership or a disregarded entity and in a later year checks the box to be taxed as a corporation; it will be subject to the minimum franchise tax for its first tax year as a corporation.

Under California law a business entity can convert its legal form to or from a corporation by filing the necessary paperwork with Secretary of State (SOS). An LLC that converts to a corporation with the SOS is not subject to the minimum franchise tax for its first tax year as a corporation, whether or not the LLC did business in California in a prior year.

All corporations are subject to the franchise tax if they are incorporated or organized in California, qualified or registered to do business in California, or start doing business in California, whether or not incorporated, organized, qualified or registered under California Law. A corporation is subject to the franchise tax until the corporation dissolves or withdraws with the SOS or until it stops doing business in California.