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2012 State Income Tax Rate Schedules Adjusted

We released the 2012 state tax brackets. Brackets are “indexed” each year by adjusting them to reflect changes in the California Consumer Price Index (CPI).

Filing requirement thresholds, the standard deduction, and certain credits were adjusted along with income tax brackets based on the inflation rate of 1.9 percent, as measured by the California CPI for all urban consumers from June 2011 to June 2012. Last year, California’s inflation rate measured 2.7 percent.

Below are some of the changes to various items:

	2012 Amounts	2011 Amounts
Standard deduction for single or married filing separate taxpayers.	\$3,841	\$3,769
Standard deduction for joint, surviving spouse, or head of household taxpayers.	\$7,682	\$7,538
Personal exemption credit amount for single, separate, and head of household taxpayers.	\$104	\$102
Personal exemption credit amount for joint filers or surviving spouses.	\$208	\$204
Dependent exemption credit.	\$321	\$315
Renter’s Credit available for single filers with these adjusted gross incomes.	\$36,337 or less	\$35,659 or less
Renter’s Credit available for joint filers with these adjusted gross incomes.	\$72,674 or less	\$71,318 or less

In addition, we provide minimum filing requirement thresholds to ensure that most people who will not have a tax liability are not required to file a state tax return. We adjust these tables each year to include the added senior exemption and the dependent exemption credits.

Other tax credits affected by indexing include the Joint Custody Head of Household Credit, Dependent Parent Credit, and Qualified Senior Head of Household Credit.

More information about the 2012 tax rates and exemptions and other tax amounts will be posted on our website at ftb.ca.gov sometime this month.

Short Form Cancellations for LLCs

California Code provisions allow limited liability companies (LLCs) to cancel and not be required to pay the first year annual tax if they meet certain conditions (Corporations Code Section 17350.5 and California Revenue and Taxation Code (R&TC) Section 17941(e)).

A domestic limited liability company (LLC) may use the Secretary of State's form [SOS Form LLC-4/8](#), Limited Liability Company Short Form Certificate of Cancellation, to cancel (ceasing the LLC's rights, powers, and privileges) if it is filed within twelve months from the date the Articles of Organization were filed with the SOS, **and** it meets the following requirements:

- Owe no debts or liabilities, except for its final state income tax.
- Filed or will file a timely **final** tax return.
- Conducted no business since filing its articles of organization.
- Distributed all remaining assets to the entitled persons after providing for payment of all debts and liabilities.
- Voted to dissolve the LLC from a majority of the managers, members, or persons that signed the articles of organization.
- Returned all payments received for interests to the investors.

The short form cancellation is operative for LLC's that filed articles of organization with the SOS on or after January 1, 2004.

Effective for taxable years beginning on or after January 1, 2005, the LLC annual tax is not required for the first taxable year if an LLC filed the short form cancellation with SOS and is classified as a partnership or disregarded entity.

If an LLC files [SOS Form LLC-4/7](#), Limited Liability Company Certificate of Cancellation, or is involved in a merger or conversion, it does not qualify for LLC short form cancellation even if it meets all of the requirements.

Currently, the minimum tax is not required for the first taxable year only if the LLC is classified as a corporation.

We can only refund the annual tax or fee that was paid on or after the date the LLC filed the [SOS Form LLC-4/8](#), Limited Liability Company Short Form Certificate of Cancellation, with the SOS.

Example 1: Annual Tax Unpaid

Needs Capital, LLC, filed articles of organization on August 1, 2011, with the SOS. The LLC later determined that it was unable to obtain sufficient funding to begin business operations. The LLC filed a short form cancellation (SOS Form LLC-4/8) with the SOS on December 14, 2011. It used a calendar tax year and did not pay any tax or fee.

The LLC would file a final 2011 Form 568 without self-assessing the annual tax.

Example 2: Payment Received Prior to the Cancellation Date

Use the same facts as in Example 1, except that the LLC made an annual tax payment on November 15, 2011.

The LLC would file a final 2011 Form 568 and self-assess the annual tax. We cannot refund annual tax payments received before the date the LLC filed the short form cancellation with the SOS.

Example 3: Payment Received On or After the Cancellation Date

Use the same facts as in Example 1, except that the LLC made an annual tax payment on January 15, 2012.

The LLC files a final 2011 Form 568 without self-assessing the annual tax. We will refund the annual tax payment since it was paid on or after the date the LLC filed the short form cancellation with the SOS.

No Close of Escrow Date May Trigger a Penalty

Generally, California law requires withholding on sales or transfers of California real property when the total sale price exceeds \$100,000 unless an exemption applies.

Withholding agents use [Form 593](#), Real Estate Withholding Tax Statement, to report real estate withholding on closed sales, installment payments made, or exchanges completed or failed on or after January 1, 2008. Agents use a separate Form 593 to report the amount withheld from each seller.

Real estate withholding is due to us by the 20th day of the month following the month escrow closes. When no date is entered on Line 2 of the Form 593, we will use a default date of January 1, of the tax year in which the Form 593 is received.

For example, if you submit a 2012 Form 593 with no date entered on Line 2; we will deem the date escrow closes to be January 1, 2012.

Omitting the date escrow closes may result in an information return penalty.

The penalty is calculated per payee:

- \$15 if filed 1 to 30 days after the due date
- \$30 if filed 31 days to six months after the due date
- \$50 if filed more than 6 months after the due date

This penalty may also be assessed for failure to file a complete, correct, and timely Form 593. Furthermore, if the noncompliance is due to an intentional disregard of the requirements, the penalty amount increases to the greater of \$100 or 10 percent of the required withholding.

If you have submitted an incomplete Form 593, you may contact us at 888.792.4900 to provide the correct closing date information.

For information relating to the requirements for proper notification of buyers, see [FTB Publication 1016](#), Real Estate Withholding Guidelines.

Ask the Advocate



It Isn't Me!

“Hello. This is the State of California Franchise Tax Board calling about an urgent matter regarding your account . . .”

This is not a message anyone wants to hear, especially when the automated call is placed to a wrong telephone number.

If the automated call is placed to the wrong number, your client can call our Outbound Contact Response Line at 1.888.895.8125. By pressing 3 when asked, “If you believe you have been contacted by FTB in error. . .” your client will be connected with an FTB collector when the call is made during normal business hours. The FTB collector will make changes so no more automated calls will be made to your client about this

matter.

However, if your client actually does have an urgent matter, such as an outstanding balance due, they should call the same toll-free number, 1.888.895.8125, and utilize self-help services to resolve their accounts.

While some of these automated calls will provide a prerecorded message, others will connect your clients directly to an FTB collector. The collector will work with them to resolve their case through several payment options.

If the automated call isn't answered, when possible, a message is left about various self-service options available to help them resolve this matter either online at ftb.ca.gov or by calling 1.888.895.8125.

As Taxpayer Advocate, I encourage you to recommend to all of your clients who received an automated call from us to call us using our toll-free Outbound Contact Response Line 1.888.895.8125. Your clients may not know they have an urgent matter, and a call to us may help them avoid further collection action.

Although the automated dialing system is new, delinquent taxpayers have been receiving similar direct calls from FTB collectors for years. So, the well established taxpayer identification questioning process is always used when any direct call is made.

Steve Sims, EA
Taxpayers' Rights Advocate

Follow me on Twitter at twitter.com/FTBAdvocate.

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!

EDR in the News

Outbound Contact for Businesses Begins This Month

In late [June](#), we began using an automated calling system to contact personal income tax taxpayers to resolve their collection issues. This month we will also begin using the automated calling system to call businesses. We will call taxpayers and immediately connect them with a live customer service agent or leave a message for them to call us back. We expect this new contact method will assist us to help more taxpayers resolve their issues and avoid entering our involuntary collection process.

Criminal Corner

Monterey Couple Pleads in Unlicensed Contractor Case

According to The Californian.com, a Monterey couple pleaded to criminal charges connected to a home improvement business they ran illegally.

On August 3, 2012, the Monterey County District Attorney's Office said, Daniel Kenneth Furness, 60, pleaded to six felony and three misdemeanor charges while his wife, Coleen Ann Gsell, 57, pleaded to nine misdemeanor charges.

They said the couple operated their businesses, **Window Design** and **Fresh Paint**, from 2002 to 2011 without any contractor licenses. The District Attorney's Office said the documents the two signed and filed with public offices were false as it was alleged that Furness didn't possess a criminal record and hadn't received citations from the Contractors State License Board. Additionally, they said the home and main office address, as well as a phone number of the couple, were entered as contact information for other people, with their names signed by Furness or Gsell. The District Attorney's Office said liens and lawsuits were recorded and filed falsely stating that labor or material were furnished, and amounts were due and unpaid from homeowners. They said documents also alleged that the corporation operated by the couple was a licensed contractor.

Other violations include using contractor license numbers of others and charging homeowners excessive down payments, the District Attorney's Office said. They said the couple also filed quarterly reports that allowed them to evade disability, unemployment insurances, and taxes. The District Attorney's Office said the couple also conspired to help two workers file false personal income tax returns.

The two are scheduled for sentencing and a potential restitution hearing on September 26, 2012. Furness faces seven years and six months in prison for the first case, and three years and eight months in the other. His wife faces seven years in prison for the first case, and two years in the second.

Big Business

Contract Voidability

In our July 2012, [Ask the Advocate article](#), we addressed the penalty (\$2,000 per tax year) that we can assess a suspended or forfeited corporations doing business in California, and in our [Big Business article](#) we addressed how a suspended or forfeited business entity can accumulate a substantial amount of tax, penalties, fees, and interest.

But did you know a suspended or forfeited business entity is at risk of having their contracts voided?

Suspended/Forfeited Business Entities Contract Voidability

Under California law (R&TC Section 23304.1) every contract made in this state by a taxpayer during the time that the taxpayer's corporation powers, rights, and privileges are suspended or forfeited can be voided by any party to the contract other than the taxpayer, including but not limited to any sale, transfer, or exchange of real property in California.

But did you know a business entity does not need to be suspended or forfeited to be at risk of having their contracts voided?

Foreign Business Entities Contract Voidability

Foreign¹ corporations (including limited liability companies (LLCs) classified/taxed as corporations) that have not qualified to do business in California with [California's Secretary of State](#) (SOS) and failed to file a return with us are also at risk of having their contracts voided.

Foreign Business Entities Public Record — Failure to Comply

Any contracts made by a foreign corporation, or taxpayer treated as a corporation, that is not qualified to do business in California that fails to file a return or to pay any tax owed within 60 days of our demand, may be voided at the instance of any party to the contract, except the taxpayer. When such taxpayers fail to comply with our demand, the taxpayer's contract voidability status becomes a public record which may be obtained upon request to us, as specified in R&TC Section 23304.1(d).

Purchasing Relief is an Option

The law does allow us (FTB) to give a taxpayer who makes an application² and pays the daily penalty relief from the voidability provisions of R&TC Section 23304.1, in most cases.

The facts and circumstances of each taxpayer need to be considered to determine:

- If relief can be granted.
- The period to be covered by the relief.
- The amount of daily penalty that must be paid.

Generally, relief can be granted to corporation taxpayers, including limited liability companies (LLC) that are taxed as corporations and taxpayers that have an approved voluntary disclosure agreement. LLCs, foreign or domestic, that are registered with the SOS can request relief. Relief can only be granted if the contract has not already been rescinded by a final court order.

In addition to filing all required returns and paying all taxes due, a taxpayer wishing to obtain contract voidability relief must file an application with us and pay a penalty of \$100 per day (maximum penalty not to exceed the tax owed for each tax year). The taxpayer's application for relief needs to specify the period for which relief is being requested.

The period for relief must begin on the first day of a tax period in which contract voidability relief is sought and ends on the date that relief is granted. However, if the taxpayer requests relief after a certificate of revivor has been issued, the period for relief

¹ "Foreign" refers to any business entity's whose legal existence is formed or organized in any jurisdiction (state or country) other than California.

² The voidability provisions of R&TC Section 23304.1 do apply to foreign LLC classified/taxed under California's Personal Income Tax laws when registered with the SOS.

will begin on the date the taxpayer's powers, rights, and privileges were suspended or forfeited.

We will not issue a certificate of relief if we determine Section 23304.1 contract voidability provisions do not apply.

Public Record

Once we have granted relief from voidability, we will issue a certificate certifying the relief period.³ The fact that a certificate of relief from voidability was issued and information contained on our certificate of relief is subject to public disclosure upon request to us. The taxpayer can have the certificate recorded in the office of the county recorder of any California county.

³ FTB 2519, Certificate of Relief from Contract Voidability.