taxnews

April 2013

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Tax Tips 2013

Online Account Access

Taxpayers can go to **ftb.ca.gov** to register and access their MyFTB Account to change their address, get information, such as estimated tax payments, balances due, state W-2 information, or FTB-issued 1099 forms. We suggest taxpayers use their online account information to avoid claiming the wrong amount of estimated tax payment amounts, which is the top error taxpayers make on their tax returns.

What tax credits are available for taxpayers to reduce their tax bill?

Personal Exemption Credit

This year's credit totals $104 for individuals and $208 for married couples and registered domestic partners. Blind individuals and senior individuals (65 years or older) receive $208 (double the individual amount).

Dependent Exemption Credit

Families can reduce their tax bill by $321 for each dependent.

Renter's Credit

Single renters can claim a $60 credit if their adjusted gross income is $36,337 or less. Married couples, registered domestic partners, or head of household filers can claim $120 if their adjusted gross income is $72,674 or less.

Federal Earned Income Tax Credit (EITC)

EITC is a federal incentive for low-income individuals and families. Taxpayers who earn less than $50,270 may qualify for a refundable credit that can total up to $5,891.

"Refundable" means that taxpayers do not need a tax liability to get a refund check from the government. For those who might qualify, go to **irs.gov** and search for **EITC assistant**. California has no comparable state credit.

What are the common errors taxpayers should avoid?

The top three common tax errors:

1. Claiming incorrect estimated tax payments.
2. Deducting the wrong amount for the standard or itemized deductions.
3. Selecting the wrong amount of tax from the tax table on paper tax returns.

To avoid these errors, we suggest taxpayers:

- Go to ftb.ca.gov and access their MyFTB Account to verify the amounts we have on record for their estimated tax payments, wage and withholding information, and current balance due.
- Accurately add and transfer their total deductions to the correct line of the tax return.
- Double-check that they transferred the correct amount of tax from the tax table.

What should taxpayers do if they cannot file by April 15?

No problem. All taxpayers get an automatic six-month filing extension to October 15. The extension is only for filing tax returns and not for payment of any taxes that may be due. Be sure to pay the total tax due by April 15 to avoid penalties and interest.

What if taxpayers owe and cannot pay?

First, taxpayers should always file on time and pay as much as they can with their tax return. This saves them money in penalties and interest. We realize that unforeseen events occur that prevent taxpayers from paying their taxes on time.

We generally approve monthly payment plan requests if the balance owed is $25,000 or less and can be paid within 60 months. We generally do not file liens on these taxpayer's accounts.

Taxpayers can set up payment plans online at ftb.ca.gov and search for **payment options**.

New this season: Payment plans can be set up using our automated phone line at 800.689.4776. Payment plan information is available in both English and Spanish.

Taxpayers may pay taxes by credit card: Visa, Master Card, Discover/NOVUS, and American Express.

Website: Official Payments Corporation: officialpayments.com.

Telephone: 888.2PAY.TAX or 888.272.9829.

Service providers charge a convenience fee for this service based on the amount charged.

What should taxpayers do if they made an error on their tax return, forgot to claim a deduction, or received a late W-2?

Taxpayers can correct their California tax return by filing Form 540X, Amended Individual Income Tax Return. Amended tax returns take longer to process than original tax returns.

For simple math errors or missing documents, taxpayers generally do not need to file amended tax returns, as we typically correct math errors when we process tax returns. We will contact taxpayers about missing documents.

What should taxpayers do if they changed their address during the year?

Each year, the U.S. Post Office returns millions of dollars in refund checks to us as undeliverable. This is generally because taxpayers moved after they filed their taxes. The post office does not forward refund checks.

Notify us immediately of a change of address:

Web: Go to ftb.ca.gov to access their MyFTB Account and change their address online.

Telephone: 800.852.5711

Mail a completed FTB 3533, Change of Address, to:

FRANCHISE TAX BOARD
PO BOX 942840
SACRAMENTO CA 94240-0002

Your Client's Concerns After Filing Their Tax Returns

As the end of filing season approaches, taxpayers contact us with questions or concerns they have after filing their tax return. The following information can help you:

When can my client expect their refund?
e-file – Refunds from e-file returns are usually issued within seven to ten business days from the date the return is accepted. Your client can also request to have the refund directly deposited into a bank account usually within five to seven business days.

Paper returns - Direct deposit of refunds for paper returns are deposited in six to eight weeks.

How can my client check their refund status?
Your client can check the status of their current year refunds online or call 800.852.5711 available in English and Spanish.

My client sent the check without the payment voucher.
We will cross reference and accept the check, but if this is the first time the taxpayer is filing the tax return, we might need to contact the taxpayer.

My client cannot pay what is owed on the tax return.
If your client is unable to pay the tax owed in full, the taxpayer can make a request for monthly payments. However, interest accrues and an underpayment penalty may be charged on the tax not paid by April 15, 2013, even if the request for monthly payments is approved. To make monthly payments, complete form FTB 3567, Installment Agreement Request, online or mail it to the address on the form.

My client is due a refund for this year, but has a balance due from a prior year or a nontax debt being collected by us. Will my client get the refund?
No. All refunds are subject to intercept. Refunds from joint returns may be applied to the debts of either the taxpayer or spouse.

What Constitutes a Valid "Filing?"

A frequent question we received is "What constitutes a valid 'filing' if the business entity is filing solely for purposes of reporting the minimum/annual tax?" In most cases this is a business entity that is relying on a federal provision, Public Law (PL) 86-272, that preempts states including California from taxing entities. For more information on PL 86-272 "protected activities," see FTB Publication 1050, Application and Interpretation of Public Law 86-272. Other times this question is coming from a nonregistered foreign corporation, limited liability company (LLC), or limited partnership that owns an interest in another pass-through entity doing business in California.

Often the question is "How can a taxpayer designate the return filing as only 'minimum tax' due and 'PL 86-272 protected' without it being considered an incomplete return for processing and/or filing enforcement purposes?" or "If a taxpayer meets the requirements of doing business under California Revenue and Taxation Code (R&TC) Section 23101, but is protected by PL 86-272, what is the minimum amount of information required to be reported on the tax return for purposes of reporting and remitting $800 minimum tax due?"

A business entity is required to file the appropriate form (California Form 100, 568, or 565) if it is doing business within California, and pay the appropriate tax and fee. Within each form booklet we provide instructions. Each business entity is required to fill out the necessary form including all pertinent schedules and tax forms as instructed.

Partnerships, LLCs, and S corporations are also required to fill out a California Schedule K-1 for each partner/members/shareholder. For purposes of reporting the information from Column (e) of the California Schedule K-1, the entity must complete Schedule R, to determine the entity's income from California sources.

If the activities of the business entity are protected under PL 86-272, taxpayers should provide that information on Schedule R. It is best to attach a statement explaining why the apportioning percentage and the business income are zero.

Remember your clients can save time and resources by going paperless, We offer e-filing for corporations, partnerships, and LLCs filing Forms 100, 100S, 100W, 100X, 565, or 568, plus certain accompanying forms and schedules. In July 2012, we began accepting Form 199, California Exempt Organization Annual Information Return, for taxable year beginning on or after January 1, 2011.

For more information about our business e-file program, refer to FTB Publication 1346B, *Business e-file Guide for Software Developers and Transmitters*, or go to ftb.ca.gov and search for **business e-file.**

Through the Paperless Schedule K-1 (565 or 568) Program, partnerships LLCs not classified as corporations, or their representatives, can file hundreds of Schedule K-1s

(565 or 568) by CD or diskette instead of sending paper schedules with our Form FTB 3604, Transmittal of Paperless Schedule K-1 (565 or 568) on CD or diskette.

For more information this program refer to our Paperless Schedules K-1 (565 or 568) Frequently Asked Questions, go to ftb.ca.gov search for **K-1 program**.

Tax Returns for Military Personnel

If your practice includes preparing tax returns for military personnel, here are a few reminders about some special benefits that may be available to them.

Minimum Franchise or Limited Liability Company (LLC) Annual Tax Exemption

A corporation or LLC that is a small business solely owned by a deployed member of the U.S. Armed Forces shall not be subject to the minimum franchise or annual tax respectively if the owner is deployed during the taxable year and the corporation or LLC operates at a loss or ceases operation.

Corporations or LLCs exempt from the minimum franchise or annual tax should write **"Deployed Military"** in red ink in the top margin of the corporation's or LLC's tax return.

Filing Due Dates and Time Extensions

Military members and Merchant Marines who are outside the United States or who are in a combat zone, contingency operation, qualified hazardous duty area, or qualified hospitalization qualify for automatic extensions for:

- Filing returns (except income withheld at source).
- Paying taxes (except income withheld at source).
- Filing protests.
- Claiming refunds or credits.
- Filing appeals.

Reservists Travel Expenses

National Guardsmen and Armed Forces reservists who travel 100 miles away from home and stay overnight to attend National Guard and reserve meetings are allowed to take an above-the-line deduction for unreimbursed travel expenses such as transportation, meals, and lodging.

Nonrefundable Child and Dependent Care Expenses Credit (CDC)

Military personnel domiciled outside of California may use the adjusted gross income (AGI) less military pay (or, modified AGI) to compute the CDC. If you do so, write “MPA” to the left of the credit amount on form FTB 3506, Child and Dependent Care Expenses Credit, line 12 or include it according to your software’s instructions. Please note, however, that if using the modified AGI to determine the applicable decimal amounts used to compute the CDC credit, our filing system will automatically generate a “Return Information Notice (RIN)” when either an electronic or paper filed return is processed. Due to the way our system is set up, the system will attempt to “correct” the percentages on FTB 3506 to reflect the federal AGI amount reported on the income tax return, not the modified federal AGI amount. As directed in the RIN, you will need to contact us directly to resolve this issue at **916.845.7057**.

For more information about these and other military personnel tax issues, get FTB Publication 1032, Tax Information for Military Personnel online at ftb.ca.gov.

If your practice does not include preparing tax returns for military personnel, please let military members and their spouses know that they may be eligible to receive free tax return preparation assistance. The IRS, U.S. Armed Forces, and us participate in the Volunteer Income Tax Assistance (VITA) program which provides free tax advice, tax preparation, tax or information return filing, and other tax assistance to military members and their families.

Volunteers at military-based VITA sites are trained to address military-specific tax issues, such as combat zone tax benefits and the new federal Earned Income Tax Credit guidelines.

Military VITA locations are available at the Legal Assistance Office at a military installation, or through the Armed Forces Legal Assistance Legal Services Locator.

FTB en Español – Social Media

We increased our outreach efforts to Spanish speaking taxpayers using Twitter and Facebook. We now translate and post tax tips and general information such as:

- Mortgage Relief Credit
- Increase in standard deductions for 2012
- How to select a tax preparer
- How to check your refund status
- How to obtain new forms
- How to request an installment agreement
- And much more!

Whether you are a tax practitioner assisting a Spanish speaking client or a Spanish speaking taxpayer, connect with us on Facebook, Twitter, and Youtube and get the latest information instantly.

For more information, go to ftb.ca.gov and search **espanol.**

Why Knowing Your California Nonresident Clients' Worldwide Income is Important

A common question we get from nonresidents is "Why, do I have to report my worldwide income if California can only tax California sourced income?" For tax year's beginning on or after January 1, 2002, the first step in calculating a nonresident or part year resident's California tax is to calculate the taxpayer's effective tax rate as if the taxpayer were a California resident. If the taxpayer fails to report this income a statutory adjustment will be made to the 540NR return.

These adjustments are usually made based upon information received from the IRS regarding the adjusted gross income reported on the 1040.

Why does California calculate the tax this way? Both the IRS and California assess tax based on tax brackets, which are the divisions at which tax rates change in a progressive tax system. Progressive tax systems attempt to reduce the "tax incidence" of people with a lower "ability-to-pay," as they shift the incidence increasingly to those with a higher ability-to-pay. California law requires us to compute California tax at the effective tax rate that would be the equal to the effective tax rate of a resident with the same level of income.

The effective tax rate, based on worldwide income, is then applied only to the California taxable income of the nonresident to determine the tax amount owed to California. For more information on taxation of nonresidents and individuals who change residency, see FTB Publication 1100, Taxation of Nonresidents and Individuals Who Change Residency.

Failure to include worldwide income results in a statutory adjustment to a 540NR return. These adjustments are usually made after we receive information from the IRS on the adjusted gross income reported on the 1040.

Group Nonresident Return

On an individual return, a nonresident must report all income from all sources in addition to the California source income. On the group nonresident return, only the California source pass-through income or director's compensation is reported.

A full year nonresident who meets other requirements, can be included in the group nonresident return.

In filing a group nonresident return, a business entity, acts as the authorized agent, and may also choose to file a group nonresident return for certain nonresidents. To participate, nonresidents must receive distributive shares of income from business entities that derive income from California sources or from those who are doing business in California. The business entity pays the tax on behalf of the nonresident individuals who elect to file a group return. A group nonresident return is considered a group of individual returns that meets the California individual income tax return filing requirement. Thus, a qualified nonresident individual who elects to be included in the group nonresident return is not required to file a separate income tax return for the tax year.

The upside to the group return is that worldwide income does not need to be reported individually; however, the income reported on the group nonresident return is taxed at the highest marginal rate of 12.3 percent. See FTB Publication 1067 for more information on guidelines for filing a group 540NR.

Ask the Advocate

New Form for Requesting Relief from the Advocate

As promised, form FTB 3705, Request for Taxpayer Advocate Equity Relief, is now available online.

Use this form to request relief from interest, penalties, and fees that are attributable to any of the following:

- Erroneous action or erroneous inaction by FTB in processing documents filed or payments made.
- Unreasonable delay caused by FTB.
- Erroneous written advice that does not qualify for relief under R&TC Section 21012.

The Taxpayers' Rights Advocate may only grant relief under R&TC Section 21004 if your client did not contribute to the error or delay in any significant way and relief is not otherwise available under the law, including under any regulation or FTB announcement.

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

Electronic Bank Levy

Currently, we issue all bank levies by paper notices. Beginning May 2013, we will implement the Electronic Bank Levy Program (eLevy). We do not anticipate any impacts to taxpayers due to this new program.

eLevy helps us reduce paper usage, decrease postage expenses, and increase overall operational efficiency.

Financial institutions that participate in eLevy will benefit from automation of some manual processes and reduction in paper usage. eLevy will not have an impact on the volume of levies we issue. Financial institution participation in eLevy is voluntary.

Inside FTB

Regulation Hearing Scheduled for Child and Dependent Care Credit

We scheduled a public hearing for 10 a.m., April 18, 2013, at the Franchise Tax Board, 9646 Butterfield Way, Sacramento, California, to consider adding Section 17052.6 under Title 18 of the California Code of Regulations, pertaining to the Child and Dependent Care Expenses Credit.

We invite interested persons to present comments, written or oral, concerning the proposed regulatory action. It is requested, but not required, that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

We post additional information about upcoming public meetings on our website. You can also sign up for email notices on upcoming events.

Criminal Corner

Woman Admits $5.7M Embezzlement

According to the San Diego Union Tribune, a former company controller is looking at prison after pleading guilty to embezzling $5.7 million from her San Marcos employer.

Riverside County resident Elizabeth Ann Masters, 45, is charged with several felonies, including embezzlement by an employee, grand theft, theft by false pretenses, forgery, and willfully filing a false tax return, according to the San Diego County Sheriff's Department's online jail records.

Masters took a plea deal that saw her agree to a nine-year prison sentence, Deputy District Attorney, Anna Winn, said. Jailed since July, Masters is to be sentenced April 15 in Vista Superior Court.

Masters pleaded guilty to four felonies, including grand theft from an employer and forgery, Winn said.

The size of Masters' embezzlement makes the case the second largest such case in recent North County history, Winn said.

The largest embezzlement uncovered in recent years was by Annette Yeomans, a former finance executive. She pleaded guilty in 2009 to stealing nearly $10 million from her San Marcos employer.

Winn said Masters siphoned $5.7 million from Performance Apparel Group, LLC, over eight years, primarily by arranging to receive extra paychecks each month.

The company uncovered accounting irregularities and fired Masters in late 2011, Winn said. Masters soon moved to Albuquerque, New Mexico, where she got a job in accounting.

The prosecutor said that when Masters was fired, she owned 100 head of horses at her Aguanga ranch in Southwest Riverside County.

Winn said that Masters duped horse-lovers by posting online messages to say that she lost her job because her company had gone out of business, she was battling cancer, and that she needed money to care for the large herd.

Investigators were unable to turn up any evidence that she had cancer, Winn said.

Big Business

Proposition 39's Single Sales Factor is Not Just for Corporate Taxpayers

"An apportioning trade or business," which includes a nonresident's business, trade, or profession that carries on within and out of California[i] is now required to apportion business income using the single sales factor.

Proposition 39, which added R&TC Section 25128.7 for taxable years beginning on or after January 1, 2013, requires

> "all business income of an apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, shall be apportioned to this state by multiplying the business income by the sales factor."

California Regulation Sections 17951 through 17954 requires such businesses to source such business income in accordance with the provisions of the corporate apportionment rules (Sections 25120 to 25139). This regulation also requires a partner's distributive share of partnership income derived from sources within California (with some modifications) also be determined using corporate apportionment rules.

This means "an apportioning trade or business" regardless of the form of ownership, (e.g. sole proprietorship, partnership, limited liability company, or corporation), that carries on within and out of California under Regulation Sections 17951 through 17954, or the provisions of Section 25128.7[ii] is required to apportion the nonresident's business income using the single sales factor.

The same would be true for a partner's distributive share. Whether the trade or business is the partnership's business (if not unitary with the trade or business of its partner), or the partnership interest when combined with the partner's trade or business (if the partnership's activities are unitary with the activities of its partner, notwithstanding ownership requirements), the business income of the trade or business would be apportioned using the single sales factor under the provisions of Section 25128.7 unless the trade or business meets one of the exceptions of Section 25128(b).

Our January 2013 issue of Tax News article, Single Sales Factor Election to Taxpayers Meeting Special Apportionment, provides additional guidance for taxpayers required to follow special industry apportionment and allocation regulations under Regulation Section 25137.

Withholding Agents

The new requirement to apportion business income using the single sales factor rules may affect California source income withholding. Withholding agents (for example partnerships or LLCs with nonresident partners or members) who may need to make their first payment (for 2013) by April 15 should consider this change when considering their withholding requirements.

For more information, go to ftb.ca.gov and search for **California source income**.

[i] Unless the trade or business is within one of the exceptions of California Revenue and Taxation Code Section (R&TC) 25128(b)).
[ii] Unless the trade or business is within one of the exceptions of California Revenue and Taxation Code Section (R&TC) 25128(b)).