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California's Paperless Extension is for Filing not Paying

Generally, California grants all income and franchise taxpayers an automatic extension of time to file a tax return. There is no request a taxpayer needs to make in order to take advantage of this automatic extension to file a tax return. As long as taxpayers file their tax returns within the extension period, taxpayers are allowed either a six-month or seven-month extension. [1] There is no request a taxpayer needs to make in order to take advantage of this automatic extension to file a return. The extended due date for a 2012 California calendar-year taxpayer (individual, partnership, limited liability company, or corporation) is October 15, 2013.[2] If the tax return is filed late (after October 15) no valid extension exists and the taxpayer is subject to a late filing penalty.[3] (Cal. Code of Regulations section 18567(a)) The late filing penalty is computed at a rate of five percent of the tax due for every month that the tax return is late, up to a maximum of 25 percent. (Revenue and Taxation Code Section 19131(a)) In some cases individual taxpayers may be subject to a minimum late filing penalty amount.[4]

In addition to the late filing penalty based on tax, pass-through business entities (such as partnerships, limited liability companies, or S corporations) are also subject to a late filing penalty based on the total number of partners, members, or shareholders. For more information on this late penalty, see our August 2012 Tax News article.

The extension is for time to file, not for time to pay, so when the full amount of tax is not paid by the original due date of the tax return, a late payment penalty[5] at the rate of five percent plus 0.5 percent per month or a fraction of a month and interest will be imposed until the tax is fully paid even if the return is filed on time. The late payment penalty will continue to accrue from the original due date until the taxpayer pays in full or we assess the maximum 25 percent penalty.

Like the late filing penalty, taxpayers can avoid this penalty if they can show their failure to pay was due to reasonable cause. The fact that it may have been difficult to estimate the proper amount of tax due is not sufficient, to prove reasonable cause. Taxpayers must be able to prove that despite the exercise of ordinary business care and prudence, they were unable to pay the correct amount of tax. However, the penalty is not imposed

[1] Tax returns for corporations filing on a calendar year basis are due on the 15th day of the third month following the close of the tax year. To allow for uniformity of the extended due date, corporations have a seven month extension to file.

[2] In some cases additional time may be allowed. For example, taxpayers residing or traveling abroad and members of the armed forces or Merchant Marines serve beyond the boundaries of the U.S.

[3] To avoid the late filing penalty the taxpayer would need to show the failure to file was due to reasonable cause.

[4] The minimum amount for individuals is the lesser of $100 or 100 percent of the tax required to be shown on the return. The tax amount upon which the penalty is based is the amount of tax required to be shown on the return, reduced by any amount of tax paid on or before the prescribed due date for the payment of the tax and any credit against the tax which may be claimed upon the tax return.

[5] Also called the underpayment of tax penalty or the failure to pay penalty

if taxpayers pay at least 90 percent of the tax by the original due date and pay any remaining amount due with their timely-filed (by the extended due date) tax return.

For more information on penalties we may assess businesses and individuals, see our recently updated FTB 1024, Penalty Reference Chart.

Interest

Even if your client can show reasonable cause for either the late filing or late payment of tax, interest is charged. Interest is not a penalty. Since 1982, California law requires interest to be compounded daily. Interest begins to be charged from original due date for underpayments because the liability for tax arises on the original due date and ends on the effective date of payment.

To find both current and past adjusted interest rates, go to ftb.ca.gov and search for interest rates.

If your client is planning to file the return under the automatic extension period, but has not paid the full amount of tax owed, unpaid tax should be paid as soon as possible after the original due date to avoid the accrual of penalties and interest.

Your client can use Web Pay for Individuals or Businesses to make payments online. Businesses and individuals can either pay the same day or schedule payments up to one year in advance 24 hours a day, 7 days a week. Go to ftb.ca.gov and search for **web pay**.

Note: Taxpayers that cannot pay in full and needs to make monthly payments can request an Installment Agreement.

Update on California's Other Withholding Regulatory Process

After our public hearing held on April 4, 2013, we are now closer to having updated regulations for withholding of tax at source relating to California source income (R&TC Section 18662). The proposed regulations will provide clear, comprehensive guidance to taxpayers, tax practitioners, withholding agents, and the public.

We designed our new withholding regulations to provide guidance consistent with the current statutory framework, reflect our current practices and procedures, and reflect changes determined to be necessary or desirable after consulting with taxpayers, tax practitioners, and other parties at the interested parties meetings.

Withholding on the Sale or Transfer of a Business or Substantial Portion of Business Assets

Did you know if you acquire the assets of a business, you also acquire its (the payer's) withholding tax liability? Under California law (RT&C Section 18669) the successor of business assets can be held personally liable for the amount of withholding taxes, interest, and penalties if not paid by the payer. It does not matter how the assets were acquired, whether purchased, transferred, inherited, or distributed in liquidation. The obligation to pay required withholding tax transfers with the assets. The successor's liability is limited to the fair market value of the assets acquired.

As a successor, you are required to withhold in trust a sufficient part of purchase price or set aside in trust money or property to cover the amount of the taxes required to be withheld and any interest or penalties associated with the withholding tax obligation(s) that are due or unpaid by the business entity (payer).

Not sure how much? Just Ask

A successor can submit a written request to us for the amount of withholding taxes, interest, or penalties due. We have 60 days to issue a certificate or statement showing the amount due. The successor is then required to pay any required withholding taxes and any interest or penalties due or unpaid within 30 days after we issue a statement showing the amount due or on the day the business or assets are acquired, whichever occurs last. If a written request for a certificate is not made by the successor, the amount of withholding taxes, interest, or penalties due or unpaid is due the day the business or assets are acquired. If payment is not made by the due date, a 10 percent penalty, based on the payable amount, can be assessed.

If we do not issue a certificate or statement within the 60-day period after a successor submits a request, we are deemed to have issued a certificate stating no withholding taxes, interest, or penalties are due.

Whether or not we issue a certificate or statement within the 60-day period or collect amounts due from a successor, the business entity (payer) remains liable for the amount due, less any amounts we collected from any successor(s).

To request a certificate:

The successor of a California business, successor representative, escrow officer, or title officer may submit a written request for a bulk sale certificate. The written request can be faxed to **916.845.9034**. The request must include the following information:

- Name of successor
- Complete successor's mailing address
- Escrow company's name
- Complete escrow company's address, phone, and fax
- Escrow officer's name
- Escrow number
- Sales price
- Estimated closing date
- Name of business being transferred
- Physical address of business
- Liquor license number (if any)
- Payer name
- Complete payer physical address
- State tax account number

Need more information?

- Send us an email at withholding services.
- Give us a call at:
    - 888.792.4900
    - 916.845.4900

Stay tuned to our website and **Tax News** for more information about California withholding.

Using Web Pay to Make Amended Return Payments

If your clients file an amended return with a balance due and use Web Pay to make the payment, they should select the following payment option: **Notice of Proposed Assessment, Amended Return (Form 540X), or Form 3834 Payment** (Interest Computation Under the Look-Back Method for Completed Long-Term Contracts)**.** This payment will be reflected in their MyFTB Account as a Notice of Proposed Assessment.

Top 500 State Income Tax Delinquents

We updated our Top 500 Delinquent Taxpayers list. 310 individuals and 62 businesses make up the new list. Combined they owe the state more than $193 million.

In February, we sent letters to 500 taxpayers who could potentially appear on the list if they failed to resolve their tax liabilities. 128 taxpayers resolved their accounts and paid more than $3 million, to prevent their inclusion. More than $216 million has been collected from the top debtors program since its October 2007 inception.

Being on the Top 500 Delinquent Taxpayer list carries added provisions, including:

- Suspension of state-issued licenses including driver's licenses and occupational or professional licenses.
- Publishing professional license information.
- Prohibiting state agencies from entering into contracts with listed debtors.
- Returning noncompliant taxpayers to the list.
- Publishing the names and titles of corporate officers of listed corporations.

We will remove taxpayers on the Top 500 list once the tax is paid or the taxpayer agrees to make payments under an approved installment agreement or Offer in Compromise. Tax liabilities in bankruptcy proceedings are not included on the list.

Individuals on the list can contact us at 888.426.8555 to resolve their accounts. Business taxpayers can call 888.426.8751.

The Top 500 list is published twice a year in April and October. The October 2012 update listed 385 taxpayers and total balances owed in excess of $224 million. A total of 115 accounts were resolved prior to publication.

The Board of Equalization has a similar list of the state's top sales and use tax delinquencies, which they update quarterly.

Statewide Median Income Up In 2011

The statewide median income for all 2011 individual tax returns was $34,684, an increase of 2.2 percent over 2010's median income amount. For joint tax returns, the statewide median income was $68,122, an increase of 3.6 percent over 2010.

"Median income" is the point where one half of the tax returns are above and one half is below the midpoint of the range of values. Median income represents the income reported by a typical California individual or couple.

California taxpayers filed 15.8 million 2011 state income tax returns, reporting $1.1 trillion of adjusted gross income. This is an increase of 5.7 percent from tax year 2010 figures. Adjusted gross income is a tax term that means the total income increased or reduced by specific adjustments, before taking the standard itemized deduction.

Over the past 40 years, the Bay Area counties of Marin, San Mateo, Santa Clara, and Contra Costa have consistently reported the highest median incomes. Marin County still remains the highest median income for joint tax returns, reporting $120,170, an increase of 5.4 percent over 2010. Santa Clara County ranked second with $103,019, while San Mateo County ranked third with $102,793 and Contra Costa County ranked fourth with $89,924.

Los Angeles County taxpayers filed 25.4 percent of all 2011 income tax returns in California. They reported median incomes of $30,255 for all individual tax returns and $58,859 for joint tax returns, ranking 38 and 26 respectively.

Alpine County reported the largest percentage gain in median income for all counties of 8.2 percent. For joint-filed tax returns, Trinity County reported the largest increase gain with a 7.0 percent increase.

Ask the Advocate

Looking for Information about Nonresidents and Part-Year Residents? We've got that!

We continually look for ways to communicate with the taxpayer and provide guidance on a variety of issues our stakeholders are interested in. In March, we updated our website to include information on the basics of residency status, source income, community property and the other state tax credit (OSTC)

Until recently, we had limited web page information for nonresident and part-year resident taxpayers. Most of what was out there required you to look through the following publications:

- Publication 1031 – Guidelines for Determining Resident Status

- Publication 1100 – Taxation of Nonresidents and Individuals Who Change Residency
- 540NR – Nonresident or Part-Year Resident Booklet

By creating new webpages dedicated to nonresidents and part-year residents, we are able to provide all the content in one place and also provide links to the appropriate forms and publications, the Residency and Sourcing Technical Manual, and information on withholding on California source income.

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.

Introducing a new periodic column…

Chief Counsel Corner

To Docket or Not to Docket – That is the Question

A taxpayer who receives a Notice of Proposed Deficiency Assessment (NPA) may request an administrative review by the Franchise Tax Board (FTB) of that proposed assessment by filing a "protest" as provided in Revenue and Taxation Code Section 19041. Protests are assigned to a hearing officer in various units within FTB depending upon the origin of the NPA or the subject matter of the NPA. Some protests are handled by the Accounts Receivable Management Division and some by the Filing Division. Also, some are handled in the Audit Division's automated program areas.

Protests of NPAs that originate as the result of field audits are handled either in FTB's Audit Division or FTB's Legal Division. Each week, a list of all of this type of new protests filed with the FTB is distributed to staff in both the FTB Audit and Legal Divisions to determine whether to docket the protest. Protests assigned to the Legal Division are called "docketed protests." Protests assigned to the Audit Division are called "undocketed protests."

You may wonder what criteria are used to determine which cases will be handled by the Legal Division and which will be handled by the Audit Division. In general, protests handled in the Legal Division typically involve larger dollar amounts and more complex issues. They may also involve emerging issues or issues of first impression. In addition, most protests involving assessments based on the use of potentially-abusive tax avoidance transactions are handled by the Legal Division.

Even though a protest case may be assigned to the Audit Division does not mean the Legal Division will not be involved, and vice versa. FTB attorneys are available to consult with the Audit protest hearing officers as needed throughout the process, and Audit support is also utilized by the attorneys handling docketed protests. FTB Legal and Audit Divisions work collaboratively in the handling of taxpayers' protests.

Jozel Brunett
Chief Counsel

EDR Enterprise. Data. Revenue!

EDR in the News

EDR Release 2.0 Is Coming in June

June is fast approaching and we are getting ready to implement EDR Release 2.0 This release is a pilot and includes two primary components: automating our correspondence processing and expanding our Image Cash Letter program.

Overall, we receive over 2.5 million pieces of correspondence annually. For the pilot, we are focusing on correspondence related to Personal Income Tax Return Information Notices (RINs). We anticipate about 5,000 pieces of RIN correspondence during the pilot period.

Currently, we handle correspondence manually which is a labor-intensive and time-consuming process. It includes opening, sorting, and manually routing each letter to the appropriate work area. Our new EDR process allows us to scan and electronically route the scanned image of the correspondence to the appropriate work area for processing. These changes will help us to handle our correspondence more efficiently and speed up our response time for taxpayers.

Also, we expanded the Image Cash Letter (ICL) program to include all check payments we receive. Previously, we processed a limited number of checks through ICL. ICL allows us to electronically deposit payments made by paper check. This helps us reduce the time, cost, and risk involved with processing paper checks.

Release 2.0 will be implemented on June 30, 2013.

Inside FTB

Free Webinars

Interested in participating in free live upcoming webinars or viewing a re-broadcast of a previous webinar at your convenience? Just visit the News & Events section of our website, and select the "Webinars" option from the left side menu.

We offer free webinars that cover many topics. All you need to register is a valid email address and your name.

Registration will soon begin for the following webinars:

- 06/12/13 Self-Help: Using Our Website to Help You
- 06/25/13 Individuals: 10 Reasons Why We Issue RINs & How to Prevent Them

If you missed participating in a live event, you can always watch webinar videos or read the transcripts online. Presently available are the following two webinars:

- 03/19/13 FTB 3520, Power of Attorney - What's New
- 03/26/13 How to Request Waivers for the Underpayment of Estimated Tax Penalty Due to Proposition 30

To view our prerecorded webinars, you must register for each webinar separately.