

Table of Contents

Same Filing Status for all Legal Same-Sex Marriages	2
Fiduciary e-filing coming in January 2014	2
Got Questions about the New Employment Credit and the California Competes Tax Credit?.....	3
Real Estate Withholding Reminders.....	3
Take the Guesswork Out of Nonresident Withholding.....	5
Self-Test Now Available	5
Register Now: California’s Nonwage Withholding Webinar	5
FTB en Español – NEW! FTB 4060 California’s Other Withholding	6
FTB Board Meeting Held September 4	6
Ask the Advocate	
2013 CSEA Meeting	7
Chief Counsel Corner	
Court-Ordered Relief from Joint and Several Liability.....	10
Event Calendar	11
EDR in the News	
EDR Update Presented to Advisory Board	12
Inside FTB	
New Tax News Live Video – Lien Information	13
Big Business	
Business Income Where are we Today, Part 2.....	13

Same Filing Status for all Legal Same-Sex Marriages

In [Revenue Ruling 2013-17](#), the United States Department of the Treasury and Internal Revenue Service (IRS) ruled that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. The ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage.

This ruling aligns the federal and California filing status for same-sex married couples, and eliminates the need for same-sex couples to create a pro-forma federal income tax return prior to preparing their California joint income tax return.

However, the ruling does not apply to California registered domestic partnerships. These couples must still claim married filing jointly or married filing separately filing status for California income tax purposes, but may not do so for federal income tax purposes. Consequently, the need to create a pro-forma federal income tax return prior to preparing their California income tax return remains.

For federal tax purposes, individuals who were in same-sex marriages may, but are not required to, file original or amended returns choosing to be treated as married for federal tax purposes for one or more prior tax years still open under the statute of limitations.

Fiduciary e-filing coming in January 2014

Fiduciaries who file the Form 541, California Fiduciary Income Tax Return, will be able to e-file their returns beginning January 2, 2014.

The California e-file Program offers year round e-filing for individuals filing FTB forms 540, 540NR, 540NRS, 5402EZ and businesses filing FTB forms 100, 100S, 100W, combined reporting, 565, 568 and the 199 along with most accompanying forms and schedules.

Adding fiduciaries to our California e-file program will make it possible to e-file the following forms listed below, as well as most other accompanying forms and schedules:

- Form 541 - California Fiduciary Income Tax Return
- Schedule D (541) – Capital Gain or Loss
- Schedule J (541) - Trust Allocation of an Accumulation Distribution
- Schedule K-1 (541) - Beneficiary's Share of Income, Deductions, Credits
- Schedule P (541) - Alternative Minimum Tax and Credit Limitations – Fiduciaries

The IRS already mandates e-filing for many of these returns, so this will increase convenience for those already e-filing the federal return.

Fiduciaries are not included in the individual e-file mandate at this time. We will reevaluate the fiduciary e-file program at the end of 2014 for potential inclusion in the mandate beginning in January 2016.

Contact your software providers to see if they are supporting Fiduciary e-filing. Stay tuned to our website and to *Tax News* for more information about our e-file Program.

Got Questions about the New Employment Credit and the California Competes Tax Credit?

- Want to know who is a qualified taxpayer for purposes of the New Employment Credit?
- Want to know more about the new California Competes Credit?

Answers to these and other questions about the [Governor's 2013 Economic Development Initiative](#) are now available.

Your question not answered? Then call one of our subject matter experts at 916.845.3464 during normal business hours. Or, send us an email at GEDI@ftb.ca.gov. Our California Economic Development Business Incentives webpage will also soon provide links to Designated Geographic Area maps, and more information about the Tentative Credit Reservation system.

Real Estate Withholding Reminders

The withholding law applies to the sale or transfer of California real estate by both residents and nonresidents which close on and after January 1, 2003. We spent the past ten years educating withholding agents of their withholding obligations and penalties that may apply. We continue to conduct withholding audits to enforce these requirements and we may assess penalties on withholding agents who fail to withhold or file forms late.

If real estate withholding is required, withholding agents should use [Form 593](#), Real Estate Withholding Tax Statement, to report the withholding and [Form 593-V](#), Payment Voucher for Real Estate Withholding, to send the withholding to us. To ensure we process your forms and payments correctly and timely, here are a few reminders:

Accurately complete all applicable fields. Be sure that the amount withheld is entered on the form. Include a telephone number so we can reach you directly if we discover an error or omission.

Enter the correct identification number(s) on all withholding forms. If the seller has not received a taxpayer identification number, remind them to contact us when they receive it so their credit can be applied properly. This must be done before the seller files their income tax return or the withholding credit will not be available on their account.

- Make sure the year on the form matches the year of the transaction being reported.
- Use a separate Form 593, Real Estate Withholding Tax Statement, for each of the sellers (other than joint filers) to allocate the proportional share of withholding.

Make sure the information you enter for the seller or transferor on Form 593, Real Estate Withholding Tax Statement, matches the information on the Title. For trusts, refer to [FTB 7429](#), Do I Need to Withhold on This Trust, for assistance to determine withholding and guidelines on the types of trusts.

The withholding agent's information on Form 593-V, Payment Voucher for Real Estate Withholding, and Form 593, Real Estate Withholding Tax Statement, should be identical.

If you are sending one payment for multiple 593 forms, be sure the amount of payment matches the combined total withholding.

If a seller qualifies for an exemption from withholding for any reason, you must receive a completed and signed [Form 593-C](#), Real Estate Withholding Certificate that includes the seller's taxpayer identification number, **prior** to the close of escrow. Otherwise, the withholding agent is required to withhold.

Withholding agents should retain a copy of 593-C for five years. If you choose to provide a copy of Form 593-C to the buyer, delete the seller's tax identification number on the buyer's copy. Sellers should retain Form 593-E for five years.

For more information on real estate withholding, please reference FTB Publication [1016](#), Real Estate Withholding Guidelines, or contact us at 888.792.4900 or 916.845.4900.

Take the Guesswork Out of Nonresident Withholding Self-Test Now Available

Finally, a test you want to take! In an ongoing effort to make meeting your nonresident withholding requirements less challenging, we created several self-help tools which include a [small business withholding tool](#), a printable [brochure](#), and a [YouTube video](#) on the basics of withholding.

Most recently, we created an online self-test that can help you determine if you have a withholding requirement. Simply answer three questions about the upcoming payment and we'll let you know if you must withhold seven percent. So stop guessing and take the [test](#) today!

Register Now: California's Nonwage Withholding Webinar

We designed this webinar for individuals and businesses who must withhold on California source income payments to resident and nonresident independent contractors. This webinar will cover:

- The basics of nonresident withholding.
- Backup withholding.
- How to compute nonresident withholding.
- How to complete Form 592, 592-V, and 592-B.
- The consequences for failure to withhold.
- Withholding Voluntary Compliance Program (WVCP).
- Available online resources and contact information.

Date/Time: Wednesday, October 16, 2013, at 10 a.m. PDT.

Duration: 1.0 hour.

[Register here](#)

Registration takes only a few minutes. Space is limited.

FTB en Español – NEW! FTB 4060 California’s Other Withholding

Our newest translation, [FTB 4060](#), California’s Other Withholding (Otros Tipos de Retención en California), offers Spanish speaking taxpayers and representatives a basic overview of nonresident withholding requirements. The publication offers easy to follow steps, explains when you should withhold, how to withhold and even provides helpful withholding examples and contact information for the Withholding Services and Compliance Section.

For more information, go to ftb.ca.gov and search **tipos de retencion**.

FTB Board Meeting Held September 4

On September 4, 2014, we held our quarterly meeting in the Sacramento office’s Gerald Goldberg auditorium. Our head of Fraud and Discovery, reported incidents of identity theft were up 300 percent since 2009.

We define identity theft as the use of someone else’s personal information, without permission, to commit fraud or other crimes. We see two main types that relate to taxes, the first is refund fraud and the second relates to employment. Our new efforts to combat identity theft include a partnership with the IRS, new detection capabilities through our Enterprise Data to Revenue (EDR) modernization project, and the formation of an enterprise study team.

Also discussed at the Board Meeting were a group budget change proposals relating the EDR project, retaining limited term collections staff, hiring additional staff lost due to prior vacancy sweeps, funds to make changes due to the passage of Assembly Bill (AB) 93/Senate Bill 90 and the Like-Kind Exchange legislation in AB 92, and more.

Finally, a presentation was given by Business and Human Resources to recognize the 2012-2013 to superior accomplishment award winners.

Our next regularly scheduled Board Meeting will be held on December 4, 2013, and will include the annual Taxpayer Bill of Rights Hearing.

Ask the Advocate



2013 CSEA Meeting

On September 20, 2012, we held our annual liaison meeting with the California Society of Enrolled Agents (CSEA). This year, like every year, they had some really great questions for FTB staff. I've decided to share a few of questions I thought our Tax News readers would find most interesting in my Ask the Advocate column this month.

Question #1

Limited Liability Companies (LLCs) Cancellation/Corporation Dissolution Simplification:

The whole situation with entity suspensions and associated penalties as well as the revivor process has become unworkable and untenable. The problem is so rampant, it is perceived as a California "gotcha." Taxpayers form entities that never get off the ground (sometimes by attending seminars), then the letters start coming and they barely remember forming the entities, and definitely do not have the funds to address the revivor process requirements in order to properly close. There isn't even a caution of any kind when they form the entities with the SOS as to the seriousness of their actions, and the ramifications of not closing the entity should their plans change. This is just one of the many reasons California is not viewed as a "pro-business" state. Would the Franchise Tax Board (FTB) consider a legislative proposal (LP) to simplify the process by coordinating with Secretary of State (SOS) for an automatic closure for resolution of inactive, "never-started" corporations and LLCs that are only formed with the Secretary of State but never become operational?

Response #1

Our staff is aware of this issue, and is prepared to work with interested parties to come up with a workable legislative solution. A similar proposal has been considered by the State Bar Tax section, with discussions about whether a one-time amnesty program or an ongoing process would be advisable to let inactive or suspended business entities dissolve either without going through the revivor process or abating some or all the minimum tax for periods of inactivity. The idea of automatic dissolution after a period of suspension was also considered. It should be pointed out that the annual minimum tax is imposed in part to address the administrative costs of the state of maintaining records concerning a business entity, and any legislative proposal may need to address these administrative costs as well as the perceived revenue loss involved in abating the minimum tax in order for the proposal to be successful.

A large percentage of corporations and LLC's that are suspended never take the steps needed to revive and dissolve, creating administrative problems for both us and SOS, including the expense of sending notices and letters as well as the necessity of recordkeeping and reporting on these inactive or defunct entities. We continue to educate taxpayers about the annual minimum tax requirement, including information on our forms and website, as well as the inclusion of a caution on SOS formation documents (LP-1, LLC-1, ARTS-GS, etc.) about the ongoing liability for the annual minimum tax.

Question #2:

Wage/Pension Withholding:

There have been a number of cases of Form 540 refunds being held with no notification by FTB until personal contact is made by either the client or the practitioner. When FTB is contacted regarding the missing refund, after allowing for more than an appropriate refund processing period, FTB says there is further documentation or substantiation needed for withholding on Forms W-2 or 1099-R in order to process the refund. In each case FTB did not reach out in any way to notify the taxpayer that their refund was held, pending further substantiation. FTB also said they were seriously behind. Additionally, we had previously understood that EDD verified wage withholding for FTB. Please provide understanding for the increased amount of taxpayer withholding substantiation requests that are only communicated once contact is made regarding a refund that has not processed.

Response #2:

We strive to balance the issuance of timely refunds while protecting the interest of taxpayers and California. In order to do this, we employ a variety of checks to ensure filing compliance and to validate information furnished by the taxpayer, including withholding claimed. We pride ourselves on being able to maintain this balance; however, we cannot avoid affecting some taxpayers in the validation process. We use all available tools to minimize this impact, including using the records provided to us daily by the Employment Development Department (EDD).

Overall, we processed 10.2 million refund due returns for the 2012 tax year. On average, we processed these returns within seven days. For the 2012 tax year, we implemented enhanced withholding validation measures in order to protect taxpayers from identity theft and refund fraud related issues. This requires some manual processes.

The manual processes undertaken can include contact to the taxpayer, their employer, or both. We receive wage and withholding data from EDD on a daily basis. Unfortunately, this information does not always match what the taxpayer provides us on their return. There are a variety of reasons for these discrepancies, including clerical

errors or non-reporting by the employer. When the information received from EDD does not match the taxpayer's information, additional processing is required¹.

Currently, we do not notify taxpayers in all cases during this additional processing time. However, we are always looking for ways to improve our processing timeframes and customer service. We recently updated our website's refund status application with language to provide taxpayers and their representatives with a more accurate refund timeframe in the event a return needs further validation. Additionally, we currently evaluate options for potentially notifying taxpayers when their return will be significantly delayed.

Question #3:

Power of Attorney and Correspondence Copies:

Can we expect any further modifications, through the Enterprise Data to Revenue (EDR) project upgrades, to the FTB power of attorney program, so that the representative can receive copies of FTB correspondence (similar to IRS)?

Response #3:

When this phase of EDR becomes operational, we will notify POAs by email when their client is sent a notice that coincides with the privilege and tax year(s) on their Declaration. The email will direct the authorized representative to access their client's MyFTB Account to view the notice. Providing notification by email is a more efficient and less costly alternative to paper.

As we move closer towards implementing this phase of EDR, we will be providing education and outreach to the tax practitioner community.

Question #4:

Single Sales Factor (SSF)/Market-Based Sourcing:

Since SSF accompanied with new market-based sourcing rules are mandatory in 2013 and will impact all businesses filing in California (small sole-proprietors to large multi-state corporations), what outreach or instructional guidance will be made available by FTB?

Response #4:

We are updating the appropriate tax forms and instructions to include information on the new requirements. We plan to write a series of Tax News articles; the first one was

¹ Our procedures do not include asking the taxpayer to verify the employer paid the withholding to EDD. Our staff may ask the taxpayer/representative for copies of the W-2, yearend paystubs, and/or proof of identity. In the event EDD has no record of the employer/employee relationship and/or withholding, we may contact the employer to validate employment and the amount of withholding deducted from the taxpayer's pay.

published in the September issue. We are developing Frequently Asked Questions for our website and plan to publish before the end of this year.

Steve Sims, EA
Taxpayers' Rights Advocate

Follow me on Twitter at twitter.com/FTBAdvocate.

Chief Counsel Corner

Court-Ordered Relief from Joint and Several Liability



California taxpayers filing a joint return are jointly and severally liable to pay any income tax reported on the return and for any deficiency determined later. When taxpayers file a joint return, the law allows us to collect any tax due from either person who signed the joint return, without regard to which person earned the income, or failed to report the income that resulted in the tax liability.

During a divorce proceeding, taxpayers may enter into a written agreement providing for one of the parties to be responsible for payment of the joint tax liabilities. Often, the parties mistakenly believe that we must follow their agreement and revise their joint tax liabilities. This is not the case if the agreement is not in compliance with the specific statutory requirements set out in Section 19006(b) for court-ordered relief.

Section 19006(b) provides that a joint liability may be revised by the court during a divorce proceeding provided the court order:

- 1) Does not relieve a spouse of a tax liability on income earned by or subject to the exclusive management and control of that spouse.
- 2) Separately states the income tax liabilities for the tax years for which the revision is being granted.
- 3) Does not revise a tax liability that has been paid prior to the effective date of the order.

If a judge grants court-ordered relief from a joint California tax liability to one of the parties during a divorce proceeding or in a subsequent hearing, and the court's order meets all the requirements of Section 19006(b), we will follow the court's order and revise the joint tax liabilities. Section 19006(b) also applies to court orders issued during proceedings to dissolve or terminate a registered domestic partnership.

If the gross income reported on the joint return exceeds \$150,000 or the tax liability for which relief is sought exceeds \$7,500, a tax revision clearance certificate (TRCC) must be obtained from us and filed with the court. A TRCC informs the court of the total amount of tax, penalties, and interest that are due on the joint account as of the date we issue the TRCC. It also provides the amount of the tax, penalties, and interest that are attributable to the taxpayer who is requesting relief of the joint tax year liability.

When we issue a TRCC to a taxpayer, we advise the taxpayer that the court's order or divorce decree must include the California tax liability, the years for which relief is sought, and the amount or percentage of the total tax liability each taxpayer is responsible for paying based on the information provided on the TRCC. In order to provide current information to the court, we request that the taxpayer file the TRCC with the court within 90 days of the date it was issued or it will expire. If the court determines that there will be a delay in issuing its order, we will issue a revised TRCC to the taxpayer.

Upon being provided with a copy of the court order that includes the TRCC, we will follow the court's order and revise the tax liability as long as the statutory requirements of section 19006(b) are satisfied.

To request that we issue a TRCC to be provided to a divorce court, taxpayers may call our Innocent Spouse Unit at 916.845.7072. Taxpayers may also write to us to request a TRCC at:

STATE OF CALIFORNIA
INNOCENT SPOUSE UNIT MS A452
FRANCHISE TAX BOARD
PO BOX 2966
RANCHO CORDOVA, CA 95741-2966

Jozel Brunett
Chief Counsel

Event Calendar

As part of 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

EDR Update Presented to Advisory Board

On Monday, September 16, our CIO Cathy Cleek and Filing Division Chief Anne Miller provided an EDR update to the Advisory Board. The Advisory Board meets at least once a year and is made up of representatives from industry, state and federal government, and us. The Board meets to provide insight and contributions from a non-FTB point of view to our executive officer on the various projects and programs we administer.

Anne explained that in the fall of 2014, users will see enhancements to MyFTB Account (the Taxpayer Folder). We will deploy more self-service applications that let taxpayers interact with their data and access their information and activity 24x7. They will be able to view their tax return, payment history, and all communication to and from us. They can also update contact information, receive and reply to a filing, audit, or collection notice, and submit a Power of Attorney – all online.

Anne also provided an update for tax professionals. In the fall of 2014, tax professionals will have convenient access to client tax information including FTB actions, communications, and taxpayer activities in a “view my clients” section. You will also be able to view California wage and withholding, FTB-issued 1099s, and estimated tax payments needed to prepare tax returns. This will help you to better serve your clients when engaged to handle a tax matter.

Cathy provided an update on our data clean-up and locate-service efforts, both of which are improving the way we do business. She also discussed some of the additional enhancements we will add to MyFTB Account in 2015 and 2016. With EDR, we have more and better quality data on taxpayers and we are using this data to help taxpayers and tax professionals file and pay accurately. It’s paperless, convenient, and saves money.

Inside FTB

New Tax News Live Video – Lien Information

We partnered with California Society of Enrolled Agents Education Foundation to produce our latest new video. Our newest video, [Lien Information](#), gives tax professionals a tool to further explain how to prevent a state tax lien, how having a lien recorded against you may impact you, and if recorded, how to get a lien released to their clients.

For other products, go to our [products page](#) at ftb.ca.gov.

Big Business

Business Income Where are we Today, Part 2

In our [September 2013 edition of Tax News](#), we summarized several law changes that affect your business clients that do business both in California and elsewhere, an apportioning trade or business. In this article, we will focus on the changes and the effects on nonresidents who have income from an apportioning business, trade, or profession.

California taxes nonresidents who have income sourced to this state. Because of the recent law changes, you may have a nonresident client with an apportioning trade or business that in the past may have had little or no income that was sourced to California; you may find these clients will now have California sourced income. This is especially true if the client's business income is derived from the sale of intangibles² or services.

If the client's business, trade, or profession (including a sole proprietorship) is one line of business (unitary) conducted partly within California and elsewhere, Regulation Section 17951-4 requires the business income sourced within California to be determined using California apportionment rules (R&TC Sections 25120 to 25139). In addition "an apportioning trade or business,"³ is now required to apportion business income using the single sales factor.

² For purposes of this discussion the "intangible properties" are those that are considered to generate business under the Transactional or Functional tests.

³ Unless the trade or business is within one of the exceptions of R&TC Section 25128(b)). A multistate taxpayer who is required to follow special industry apportionment and allocation regulations under Regulation Section 25137 must follow the sales factor provisions, with the exception of any rule excluded by the provisions of Regulation Section 25136(g)(3), and is not required to use the property and payroll factor rules.

Public Law (PL) 86-272 will still protect out-of-state business owners from taxation if their only in-state activities consist of all of the following:

- Solicitation of orders for sales of tangible personal property (goods)
- Orders that are sent outside the state for approval
- Orders that are filled from a stock of goods maintained outside the state.

However, the protections of PL 86-272 will not apply if the out-of-state business entity uses its own vehicles to ship the goods to the in-state purchaser.

Protection under PL 86-272 **does not** apply to businesses that derive in-state income from the solicitation or sale of:

- Intangibles.
- Services.
- Any combination of goods and services.

For taxable years beginning on or after January 1, 2013,⁴ all apportioning trades or businesses must assign sales of other than tangible personal property under the new market-based rules.⁵

What have changed are the way services and intangibles are assigned for sales factor purposes. You no longer will look to where the service is performed, but rather, you now need to source the receipts the taxpayers received from services to the location of where the customer receives the benefit of the service. This will generally be the location of the taxpayer's market for the sales.

This also means intangibles will no longer be assigned to California where the greater cost of performance occurred; instead you need to assign receipts from sales of intangibles to California to the extent the property was used in California.

R&TC Section 25136 (which is the provision for determining if sales of other than tangible property are sourced to California) now states (formerly R&TC Section 25136(b)):

- (1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the services in this state.
- (2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.
- (3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

⁴ This change was the result of the Proposition 39.

⁵ R&TC Section 25136.1 (new law) provides special sales factor rules for certain cable system operations, but even those taxpayers must use the new market rules.

- (4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

Regulation Section 25136-2 was adopted for taxable years beginning on or after January 1, 2011, to provide guidance on how to assign sales using the new market-based rules (described under former R&TC 25136, subdivision (b)).

Taxpayers who are required to follow special industry apportionment and allocation regulations (special industry taxpayers) under Regulation Section 25137 will follow the 25137 sales factor provisions incorporating the new 25136 rules, and incorporating the exclusions in Regulation Section 25136-2(g)(3). Special industry taxpayers will not use the property and payroll factor rules, unless the trade or business is within one of the exceptions of R&TC Section 25128(b) (taxpayers that derive more than 50 percent of their gross business receipts from a qualified business activities – agricultural, extractive, savings and loan, and banking or financial business).

You should also be aware that law changes that affect income sourced within California can also effect the taxation of estates and trusts (see Regulation Section 17742).