STATE OF CALIFORNIA
Franchise Tax Board

taxnews

Tax News

October 2020

Contents

Disaster Relief 2020

With the recent wildfires throughout California, we wanted to again share with you how to claim a disaster loss for your clients. You may deduct any loss caused by a disaster located in a California area designated by the President or the Governor to be in a state of emergency beginning on or after January 1, 2014 and before January 1, 2024. California law generally follows federal law regarding the treatment of losses incurred as a result of a casualty or a disaster.

Your clients may qualify for a casualty loss if they were not compensated for the damage to or loss of their property due to a sudden unexpected, or unusual earthquake, fire, flood, or similar event.

Your clients may also claim a disaster loss in the taxable year the disaster occurred or in the taxable year immediately before the disaster occurred. If they meet the qualifications to claim a disaster loss, the same disaster rules and extended deadlines apply.

If they e-file, they will need to use the appropriate disaster code from the list of disasters for California.

If they file a paper return, they will need to print the following information in blue or black ink across the top of their return:

- "Disaster"
- Name of disaster from the list of disasters
- The year the loss occurred: Year of the proclamation of state of emergency by the President or the Governor

  Example: Disaster – Camp Fire – 2018

Your clients need to include or attach:

- A written statement with their loss documentation that provides:
  - The date of the disaster
  - The location of the disaster (city, county, and state)
  - Their election to deduct the loss in the taxable year before the year the disaster occurred (if they choose this option)
- Copies of the following federal forms:
  - A completed federal Casualties and Thefts (use California amounts) (IRS Form 4684)
  - A copy of their federal income tax return

    - Any supporting federal schedules that verify your deduction
- You may also need the following California forms:
    - Sales of Business Property (Schedule D-1 | Instructions)
    - Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations Individuals, Estates, and Trusts (FTB 3805V | Instructions)
    - Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations Corporations (FTB 3805Q | Instructions)

Disaster Loss – How to Claim a State Tax Deduction (FTB Publication 1034) assists taxpayers in need of financial recovery and provides more detailed instructions on how to claim the loss on the California tax return.

To request a copy of a lost or damaged California tax return, you or your clients must complete Request for Copy of Tax Return (Form 3516). Print the name of the disaster at the top of the form and we will send copies of the most recently filed tax return. We will replace lost or damaged California tax returns at no charge to disaster victims. You or your clients may be able to obtain a copy of their California tax return(s) through MyFTB.

California also follows federal extended deadlines for filing tax returns, paying income taxes, and making contributions to a traditional Individual Retirement Account (IRA) or Roth IRA. Deadlines are extended up to 1 year. Visit IRS's Tax Relief in Disaster Situations webpage for more information. Interest and penalties are canceled on the underpaid income tax for the length of any extended deadline period

Visit our Disaster loss deduction webpage for more information.

New credit to help small businesses

The California Legislature passed and the Governor signed a law creating a new small business hiring credit (SBHC) (SB 1447) for small businesses impacted by economic disturbances in 2020. You may have heard the Governor refer to this as the "Main Street Hiring Credit."

Taxpayers can use the credit against franchise or income taxes, or can make an irrevocable election to apply the credit against sales and use taxes. The credit is equal to $1,000 for each increase in qualified employees, as measured in monthly full-time employee equivalents. The total amount of credit for each employer cannot exceed $100,000.

To claim the credit, taxpayers must first get a tentative credit reservation from the California Department of Tax and Fee Administration (CDTFA). When applying for the reservation, taxpayers must specify whether they make an irrevocable election to apply the credit to sales and use taxes instead of against income taxes.

To qualify for the credit, taxpayers (employers) must:

- Have 100 or fewer employees on December 31, 2019 (this includes all employees, including part-time employees)
- Have experienced a 50% decrease in gross receipts from April–June, 2020, compared to the gross receipts in April–June 2019.
- Apply for a tentative credit reservation from CDTFA during December 1, 2020 through January 15, 2021.
- Not be required or authorized to be included in a combined report.

Go to our SBHC webpage (coming soon) for additional information regarding these and other requirements for the credit.

Visit CDTFA's website and search for small business hiring credit for information regarding:

- The tentative credit reservation
- Claiming the credit against your sales and use taxes

Notice reminders and updates

We mentioned in previous articles that Notices of Tax Return Change - Revised Balance (FTB 5818-B) would start going out in August. These notices correct return errors and we mail them after we process all incoming returns and payments. As expected, these notices were delayed this year due to the postponed COVID-19 related filing due dates.

In addition to the COVID-19 delay, we encountered unexpected delays with mailing some notices, including Notices of Proposed Assessment. During the periods July 23, 2020 through July 31, 2020, and August 19, 2020 through August 28, 2020, certain notices experienced a 3-to-7-day mailing delay. Specific timeframes to respond or make a payment will be extended accordingly for these notices.

Here are some important timeframes to keep in mind:

- To protest a Notice of Proposed Assessment: 60 days from the postmark date on the envelope.
- To appeal a Notice of Action from a Notice of Proposed Assessment: 30 days from the postmark date on the envelope.
- To appeal a Notice of Action denying a claim for refund: 90 days from the postmark date on the envelope.

Visit the Delayed Notice Public Service Bulletin on our website for more information.

Given the time-sensitive nature of our notices it is always a good idea to remind your clients to respond as soon as possible when FTB contacts them. Acting promptly may provide your clients with more options and ensure they are able to exercise all of their protest and appeal rights. Additionally, timely action helps avoid unnecessary collection activity, such as a lien or levy. If a balance is due, a payment arrangement can usually be made, which may reduce interest and penalties.

As always, if you have questions about a notice, you should call the number on the notice or the Tax Practitioner Hotline at (916) 845-7057.

FTB bankruptcy program

Our bankruptcy program:

- Honors the protective stay
- Discharges the proper tax debts under the bankruptcy law
- Resolves the debt repayment process

We monitor bankruptcy filings to properly facilitate cases through bankruptcy by working with bankruptcy attorneys and trustees in order to ensure taxpayers are accounted for equitably.

In recent years, the bankruptcy program has seen a gradual decline in both personal and business bankruptcy filings. However, as a result of the COVID-19 pandemic we recognize many businesses and individual taxpayers have been, or will be, negatively impacted by the slower economy, in some cases:

- Losing significant business income
- Closing their business altogether
- Losing their employment

Although we are not currently seeing an increase in personal bankruptcies, and only a slight increase in business bankruptcy filings, we anticipate rising bankruptcy filings over the next year and beyond.

If your clients are considering filing for bankruptcy, the following information can assist them:

File all missing tax returns – If you need more information on your client's tax account information, contact the bankruptcy program at (916) 845-4750. Collection actions will not stop until we are notified that your client filed for bankruptcy with the federal bankruptcy courts.

Continue to pay outstanding tax debt – If you know that some of your client's tax debt may be due after bankruptcy, you can advise them they should still make voluntary payments. Benefits to making voluntary payments include:

- Reduce ongoing interest
- Reduce tax debt owed after bankruptcy
- Prevent collection actions after bankruptcy

After filing for bankruptcy – Contact our bankruptcy program with your client's bankruptcy case number, or a copy of the petition filed with the federal courts. At that time, we will stop collection action on your client's tax debt, which may include the issuance of liens, wage garnishments, or seizures.

Bankruptcy Program's contact information:

Phone: (916) 845-4750

Fax: (916) 845-9799

Mail:

Personal Bankruptcy

Franchise Tax Board
Personal Bankruptcy MS A340
PO Box 2952
Sacramento CA 95812-2952

Business Bankruptcy

Franchise Tax Board
Business Entity Bankruptcy MS A345
PO Box 2952
Sacramento CA 95812-2952

Note: Although your client has filed for bankruptcy, they still have a requirement to file their current year tax return(s). If you or your client have questions regarding their tax debt, including bankruptcy disputes, claims issues, or other related reasons, please contact us. It may be possible to resolve the issues without court intervention.

Visit our website for information.

Doing business in California threshold amounts updated for 2020

Annually, we update the amounts used to determine whether a taxpayer is doing business in California based on the California Consumer Price Index (CCPI) as prescribed in the Revenue and Taxation Code. The inflation rate, as measured by the CCPI for all urban consumers from June 2019 to June 2020, was 1.4%. By comparison, the inflation rate from June 2018 to June 2019, was 3.1%.

We look to taxpayers' sales, property and payroll.[1] "Doing business" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

For taxable years beginning on or after January 1, 2011, a taxpayer is doing business in this state for a taxable year if any of the following conditions has been satisfied:

- The taxpayer is organized or commercially domiciled in this state.

[1] R&TC Section 25120(c)(e)(f)

- The taxpayer’s sales in California exceed the lesser of $500,000 or 25% of the taxpayer's total sales.
- The real property and tangible personal property of the taxpayer in this state exceed the lesser of $50,000 or 25% of the taxpayer's total real property and tangible personal property combined.
- The amount the taxpayer paid in California for compensation exceeds the lesser of $50,000 or 25% of the total compensation paid by the taxpayer.

The indexed threshold values for the 2020 tax year are as follows:

	Indexed Threshold Value
Sales	$610,395
Property	$61,040
Payroll	$61,040

Individual Shared Responsibility Penalty – How it is Calculated

The State of California is working hard to reduce the number of uninsured individuals and families. While the vast majority of Californians already have qualifying health insurance coverage, for those who currently do not but want to obtain it, Covered California provides information about affordable and quality health insurance, Medi-Cal eligibility and available financial assistance.

Beginning January 1, 2020, all California residents must either have qualifying health insurance coverage, obtain an exemption from the requirement to have coverage, or pay a penalty when they file their state tax return. The Individual Shared Responsibility Penalty is imposed on any applicable individual for any month in which they fail to enroll and maintain minimum essential healthcare coverage.

FTB’s website has an Individual Shared Responsibility Penalty Estimator where you can determine the potential penalty based on one’s individual circumstances. But, did you know how the amount of the penalty is determined? The penalty will be calculated based on an applicable dollar amount as follows:

For the 2019 taxable year, the applicable dollar amount for adults was $695. If an applicable individual isn’t 18 years old as of the beginning of the month, that person’s penalty that month shall be equal to one-half of the applicable dollar amount ($347.50 for 2019). For each subsequent year, the applicable dollar amount will be multiplied by the cost-of-living adjustment described below.

The 2020 applicable dollar amount for adults is $750, calculated as follows:

a. Applicable dollar amount in 2019 = $695

b. California CPI in June 2016 = 255.576
c. California CPI in June 2019 = 280.956
d. Cost-of-living adjustment = 280.956 ÷ 255.576 = 1.0993
e. Applicable dollar amount in 2020 = 1.0993 × $695 = $764.02
f. Applicable dollar amount in 2020 rounded down to multiple of $50 = $750

It's important to note that the penalty imposed on an uninsured individual for a month could be different from the applicable dollar amount. The penalty amount would take into account such factors as the size of the family, the excess of household income over the filing threshold, state average premium for qualified health plans that have a bronze level of coverage for the applicable household size involved, and the age of the individual.

Finally, the penalty will not be imposed if the applicable individual did not have coverage for a continuous period of three months or less. If there is more than one such continuous period in a calendar year, the exception provided will only apply to months in the first of those periods.

Quick Reference Guide for California Real Estate Withholding

As of January 1, 2020, the real estate community is required to report withholding from any real estate transaction using the consolidated Real Estate Withholding Statement (Form 593).

Through our outreach efforts, we identified a need to provide additional assistance regarding who completes which parts of Form 593. If you are a seller, buyer, real estate escrow person (REEP), or qualified intermediary (QI), we created a quick reference guide, California Real Estate Withholding (FTB 4064) to help you complete Form 593, and Payment Voucher for Real Estate Withholding (Form 593-V).

This guide clarifies the process and explains the responsibilities of the remitter, seller, and buyer for each type of real estate transaction:

- Traditional sales with full exemption from withholding
- Traditional sales with partial exemption from withholding
- Traditional sales with no exemption from withholding
- Installment sales
- Like-kind exchanges (failed or with boot)

The Quick Reference Guide California Real Estate Withholding (FTB 4064) is available on our website by request only.

For more information, refer to the Form 593 instructions.

We also recently updated Real Estate Withholding Guidelines (FTB Publication 1016). You may also go to our website to request this publication.

Franchise Tax Board Legislative Stakeholder meeting dates

The time for FTB's Conformity and Legislative Proposal (LP) meetings is fast approaching. This year, the meetings will be held in November virtually through WebEx.

LP Stakeholder Meeting

Every year we submit ideas to ease tax administration to our 3-member Board for approval. Before doing that, we like to receive feedback on our ideas during an LP stakeholder meeting.

During the LP meeting, stakeholders will hear about the Department's LPs and will be given the opportunity to provide input or comments.

Date: November 10, 2020

Time: 9:00 AM to 11:00 AM

Conformity Stakeholder Meeting

During the Conformity meeting, the panel will gather input and feedback on conformity topics as well as highlight the redesigned Summary of Federal Income Tax Changes report. We have streamlined the report format to allow users to quickly get the information they need.

Date: November 18, 2020

Time: 9:00 AM to 12:00 PM

Get more information

Instructions for logging into the meetings will be available on FTB Meetings in early November.

In the meantime, if you have questions or would like additional information, send your inquiries to: FTBLegislativeServices@ftb.ca.gov.

Ask the Advocate

California counts on all of us

Susan Maples, CPA
Taxpayers' Rights Advocate

When you visit FTB's homepage, one of the first things you see is the statement "California counts on all of us." This brings to mind letters FTB sent out a few years ago to non-filers as part of our ongoing efforts to improve compliance. The letters were more of a soft approach, encouraging individuals with a filing obligation to file their past due returns by reminding them that the taxes we pay fund important public services for all Californians.

The need for public services is more evident now considering the devastating impact of the unprecedented wildfires throughout California this year. You only have to read your morning newspaper or watch the evening news to understand the immense tragedy unfolding across our great state. According to CAL FIRE, in early September there were approximately 14,000 firefighters on the lines of 29 major wildfires burning across California. I can only imagine the resources needed to fight these fires and then repair the damage from them.

When it comes to paying our taxes, we are obligated to pay only what we owe and nothing more – this is every taxpayer's right. While some pay more than others, every taxpayer who meets their obligation to file a return and pay their tax due is helping to provide the resources needed by our state, especially during difficult times like those we are experiencing now.

Many of us have family members or friends who are first responders. We are all deeply grateful for the men and women battling these fires and risking their lives to keep the rest of us safe. Along with you, I hope they will safely return home soon.

In closing, as we approach the October 15th extended filing deadline, I hope that the 2020 filing season has gone well for you despite the many challenges we have faced this past year. Looking forward to next month, we will take a look at any recently passed legislation likely to impact us in the 2021 filing season. Until then, please stay safe and may your "last minute" clients be only a few.

Chief Counsel Corner

Update to COVID-19 FAQs – Teleworking Employees/Nexus

Jozel Brunett
Chief Counsel

On March 19, 2020, California Governor Gavin Newson issued Executive Order N-33-20 in response to the COVID-19 pandemic. As provided by Executive Order N-33-20, residents are required to stay at home in order to prevent the spread of the virus. As a result, many individuals living in California who ordinarily did not telework from California began to do so. In some instances, the individuals living in California who were now teleworking from their homes might be employed by corporations that previously had no connections with California. To address whether these corporations might be considered to be doing business in California and to address concerns pertaining to a corporation's protections pursuant to Public Law 86-272, codified at 15 U.S.C. section 581 et seq., the Franchise Tax Board has published a series of frequently asked questions ("FAQs"). The FAQs will provide guidance as to the possible California franchise tax implications to corporations that previously had no connections with California but now have an employee indefinitely teleworking from California due to the Governor's Executive Order. The FAQs have been posted to the Franchise Tax Board's COVID-19 webpage its public website. The responses to the FAQs are applicable until the Governor's Executive Order is no longer in effect.

C corporations and California's automatic extension, FTB Notice 2019-07

With all the things happening this year and with October 15 just a few days away, we thought it would be a good idea to remind you that California now gives calendar year C corporations an additional month, until November 16[2] to file a return.

FTB Notice 2019-07

On December 2, 2019, we issued FTB Notice 2019-07 granting all Part 11 taxpayers in good standing filing the Forms 100 and 100W an automatic 7-month extension, for taxable years beginning on or after January 1, 2019. The extended due date for C Corporations is the 15th day of the 11th month after the close of the taxable year. For Calendar year taxpayers, this date is November 16, 2020.

As stated in the Notice, the automatic 7-month extension does not apply to S Corporations, the extended filing due date for S Corporations will remain the 15th day of the 9th month after the close of the taxable year.

The extension of time to file in Notice 2019-07 is not an extension of time to pay the tax. A C Corporation's total tax owed is due with its original tax return on the 15th day of the 4th month after the close of the taxable year.

Penalty for Late Filing

If a return is filed late the extension is denied and the taxpayer is subject to a late-filing penalty. The late-filing penalty is computed at a rate of 5% of the tax due for every month from the taxpayers due date (without) extension that the return is late, up to a maximum of 25%.[3]

Visit our Penalty Reference Chart (FTB 1024) for more information on penalties.

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.[4] This means that legally, the balance on a taxpayer's account for each day must be computed, and interest on that amount is added to the balance for that day. Interest begins to be charged from the original due date for underpayments because the liability for tax

[2] Because November 15, 2020, is a Sunday, the due date will be the following Monday, November 16, 2020.

[3] California Revenue and Taxation Code (R&TC), Section 19131, subd. (a)

[4] R&TC Section 19521(b)(1).

arises on the original due date[5] and ends on the effective date of payment. Interest is mandatory, and the FTB is not allowed to abate interest except where authorized by law.

Visit our [Interest and estimate penalty rates] webpage for more information.

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

Note: If your clients cannot pay in full and need to make monthly payments, they can request an Installment Agreement.

Event Calendar

As part of our education and outreach to the tax professional community, we participate in many different presentations and fairs. We provide a calendar that shows the events we attend (virtually), as well as other events happening at FTB, such as interested party and board meetings.

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[5] R&TC Section 19101(b)(1).