



Tax News

August 2016

Contents

2015 filing season update2

California Competes Tax Credit.....2

Small Business Finance Center3

Interest rates increase.....4

New identity (ID) theft hotline4

Did your client receive a letter prompting them to claim the CA EITC?5

Ask the Advocate6

 MyFTB resources.....6

Chief Counsel7

 Calculation of the LLC fee for dealers in real property7

Inside FTB.....9

 Interested parties meeting (IPM) withholding regulations summary9

All About Business9

 Crowdfunding - IRS guidance.....9

Event Calendar.....10

2015 filing season update

We compiled our statistics for the volume of 2015 personal income tax and business entity returns, deposits, and many other programs. Here are a few highlights for this year:

- Personal income tax returns filed increased three percent overall this year with 87 percent being e-filed.
- Fiduciary returns increased 12 percent from last year. This is the third year fiduciary returns have the e-file option.
- We issued nearly 80,000 refunds to business entities amounting to nearly \$1.1 billion.
- Our overall deposits were \$26.9 billion, including \$18.1 billion in electronic payments.
- We registered approximately 250,000 new MyFTB registrants with MyFTB accounts accessed 875,000 times.
- The Tax Practitioner Hotline answered over 80,000 calls, representing 77 percent of the calls made.
- The Filing Compliance Bureau focused education efforts on the escrow community in an effort to improve the real estate withholding process and accuracy of information received.

For a more detailed report of our 2016 filing season, go to our [Filing Season Update](#).

California Competes Tax Credit

The California Competes Tax Credit is an income or franchise tax credit available to businesses that relocate to California or stay and expand in California. Tax credit agreements are negotiated by the Governor's Office of Business and Economic Development (GO-Biz) and approved by a statutorily created California Competes Tax Credit Committee. The committee consists of:

- Director of GO-Biz (Chair).
- State Treasurer.
- Director of the Department of Finance.
- One appointee each by the Speaker of the Assembly and Senate Committee on Rules.

For Fiscal Year 2016/2017, \$243.3 million of the California Competes Tax Credits will be available for allocation during three application periods. GO-Biz is hosting over 30 informational workshops on applying for the credit. Click [here](#) for a list of the workshops.

For the first application period, \$75 million will be available for allocation. Applications for the credit will be accepted at calcompetes.ca.gov from **July 25, 2016, until August 22, 2016**. Go to www.business.ca.gov/CalCompetes.aspx for more information on the California Competes Tax Credit.

Small Business Finance Center

iBank's Small Business Finance Center (SBFC) helps businesses create and retain jobs, and encourages investment in low to moderate-income communities through its Small Business Loan Guarantee Program (SBLGP). The SBFC partners with Financial Development Corporation (FDCs) throughout the state to provide loan guarantees to lenders to small businesses that experience difficulty accessing capital. Businesses can use the funds for business acquisition and expansion, start-up costs, working capital, gap financing, lines of credit, construction and renovation, export financing, farming, inventory, equipment and other needs. Small businesses located in California with 1-750 employees are eligible to apply.

The SBLGP is backed by the State Small Business Credit Initiative (SSBCI) fund allocated to California by the U.S. Treasury and by the state Trust Fund specifically to support the guarantees issued.

How it works

Financial institutions, credit unions, and Community Development Financial Institutions (CDFIs) make small business loans directly to the small business with iBank's loan guarantee to minimize their capital risk. FDCs work with participating lenders to issue the guarantee for up to 80 percent of the loan on behalf of iBank.

- Lender underwrites the loan and requests a loan guarantee from an FDC.
- FDC reviews the lender loan package and does its own underwriting.
- FDC issues the guarantee agreement to the lender.
- Lender executes loan documents and disburses funds to the business.
- Lender manages the credit and keeps FDC informed of loan status.
- Lender and FDC work together on any loan issues or modifications.
- In the event of a default, the lender files a claim with the FDC for payment.

Guarantee terms

- Loans up to \$20 million.

- Maximum guarantee up to \$2.5 million.
- Guaranteed up to 7 years; actual loan term can be longer.
- Market loan interest rates are negotiated between the lender and the borrower.
- Qualifications based on lender criteria.

Since its inception in February 2011 through January 2016, there have been 1,041 loans for over \$418 million with \$296 million in loan guarantees under the State Small Business Credit Initiative. As a result, over 30 thousand jobs have been created or retained.

To apply, contact a Financial Development Corporation. For a list of FDCs, please visit: ibank.ca.gov/smallbusiness.htm. Contact IBank's SBFC at SBFC@ibank.ca.gov or by mail at P.O. Box 2830, Sacramento, CA 95812-2830.

Interest rates increase

The adjusted interest rate has been determined for the period January 1, 2017, through June 30, 2017.¹ The interest rate increases from three to four percent. This is the rate compounded daily that accrues with respect to various state taxes including: personal, corporate, and franchise. The rate for corporation tax overpayments for the period remains at zero percent.

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

New identity (ID) theft hotline

Effective July 1, 2016, we have a new Hotline for ID Theft. The previous number will roll over to the new one for the time being.

The ID theft fax number remains the same for submission of ID theft correspondence and forms, such as the ID Theft Affidavit, FTB 3552. For your reference the numbers are:

Telephone Hotline: 916.845.7088

FAX: 916.843.0561

¹ Pursuant to Section 19521 of the Revenue and Taxation Code

For more information about ID Theft, see our website at ftb.ca.gov.

Did your client receive a letter prompting them to claim the CA EITC?

We are notifying 55,000 taxpayers they may qualify for California's new Earned Income Tax Credit (EITC).

Ensuring taxpayers receive the right amount

Nearly 365,000 Californians received more than \$189 million of California EITC's when they filed their 2015 tax return. In the normal course of processing returns, we discovered 55,000 potentially-eligible state taxpayers who failed to claim the credit.

Our notice informs these taxpayers that even though they did not claim EITC, it is not too late to claim it now and increase their tax refund. We are directing them to caleitc4me.org for more information.

How does this affect your clients?

About 40 percent of claims were filed by tax professionals. You may receive contacts from your EITC clients as a result of our mailings, which include a 2015 Amended Tax Return EITC Worksheet with instructions.

If you have any questions, please contact the Tax Practitioner Hotline at 916.845.7057.

Thank you for your efforts to make the inaugural year for California's EITC a success.

Ask the Advocate



Susan Maples, CPA
Taxpayers' Rights Advocate
Follow me on Twitter at
twitter.com/FTBAdvocate

MyFTB resources

I would like to offer some information I hope you find helpful.

Now that filing season is over and notices have gone out, many MyFTB users have shifted gears from looking up account information such as estimate payments to representing clients who have received notices. As a power of attorney (POA), you may be using your MyFTB account to review notices and communicate with us, either through secure chat or the send a message functions. The Advocate's Office has received a number of calls from practitioners having difficulty getting emails when their clients get notices, getting POAs processed, and finding their clients' notices in MyFTB. So this month, I would like to offer some information I hope you find helpful.

If you have registered for a MyFTB tax preparer account with a number other than a PTIN, please let our customer service agents assisting you know that information. It is an important cue for the agent to ensure all your POA clients have been associated to your Client List in MyFTB. This will allow you to be able to view your client's notices and correspondence based on the privileges of the POA. Making sure this association occurs is a common resolution to the issue of receiving an email notification that one of your clients got a notice, but the notice is not displaying on your Client Notices List in MyFTB.

Another common issue is not receiving an email that your client got a notice. While an email address is required to register for a MyFTB account, only the email provided on each individual POA form is used to generate the email that a client got a notice. If you find you didn't get an email, please verify that your active POA included an email and that it is the correct email address for you. To add or edit your email address on an active power of attorney, we've created a handy "How To" including visual aids to help. Please take a look at all our Tax Preparers How To's on our website by clicking on Learn More underneath the MyFTB logo and searching at the bottom of the right hand column.

Finally, FTB is dedicated to providing easy to use services to tax professionals that allows them to serve their clients expeditiously. I appreciate all those comments, questions, and concerns that you've shared with my office over the past seven months since the launch of MyFTB. Protecting taxpayer information is of the utmost concern to FTB. To balance the need to protect taxpayer's information while providing an easy to use service for tax professionals, FTB

has implemented a new process to verify that individuals who register to use the MyFTB service as a tax professional have the need and right to access taxpayer information. FTB will use a variety of mechanisms to validate the tax professional's credentials or confirm the individual is working for a tax professional office before allowing access to MyFTB. If FTB is unable to verify the individual through these mechanisms, FTB will reach out to the individual registered either by phone or via the email provided at registration to get additional information to help in the verification process. In the event FTB cannot verify your credentials or your need for the MyFTB tax professional account, FTB will generate a letter to advise you of the deactivation of the MyFTB account and steps you must take in order to use the service.

Chief Counsel

Calculation of the LLC fee for dealers in real property



Jozel Brunett
Chief Counsel

The FTB's legal division recently answered a question often raised by tax practitioners.

- New guidance on how to calculate the fee based on gross receipts.
- Instructions to Form 568 will be revised.
- Relief from underpayment penalties is available.

The FTB's legal division recently answered a question often raised by tax practitioners: For purposes of calculating the limited liability company (LLC) fee, does the cost of goods sold include the adjusted basis of real property held for sale to customers in the ordinary course of business?

We addressed that question and related issues in a July 14 Legal Ruling (2016-01), which clarifies the application of the LLC fee for many real estate companies. First, a little background:

Revenue and Taxation Code (R&TC) Section 17942 imposes a fee on LLCs based on "total income from all sources derived from or attributable to this state." Total income for purposes of calculating the LLC fee is defined in R&TC Section 17942 as "gross income...plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer." In other words, the costs of goods sold is added back to trade or business gross income and the LLC fee is then calculated based on gross receipts. For other items of income, the LLC fee is calculated based on gross income.

Many LLCs sell investment real property for which the LLC fee is calculated based on gross income. This generally includes (among other investments) real property held for rental purposes. However, a dealer in real property sells both real property held for sale to customers in the ordinary course of business, as well as investment real property. The legal ruling clarifies "the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer:"

1. Includes the adjusted basis of real property held for sale to customers in the ordinary course of business and
2. Does not include the adjusted basis of real property held for investment purposes.

This ultimately means a dealer in real property calculates the LLC fee based on gross receipts amounts for sales of real property held for sale to customers in the ordinary course of business, but calculates the LLC fee based on gross income (i.e. gain amounts) for sales of real property held for investment. This result is consistent with the calculation of the LLC fee for other industries.

The legal analysis on this issue was undertaken because of long-standing practitioner concerns regarding the instructions to FTB Form 568. Those instructions told taxpayers the cost of goods sold did not include the adjusted basis of real property held for sale to customers in the ordinary course of business. We will update our 2016 and subsequent forms to include the legal ruling's conclusions. In the meantime, we have no plan to commit audit resources to identify prior year tax returns that did not conform to this legal ruling's conclusions.

Finally, we recognize that LLCs' reliance on FTB's existing instructions regarding the calculation of the LLC fee may subject some LLCs to a potential underpayment penalty per R&TC Section 17942(d). While R&TC Section 17942(d) does not contain an abatement provision, impacted LLCs should contact the FTB's Taxpayer Advocate, whose office has the authority to consider and abate this penalty under R&TC Section 21004.

Inside FTB

Interested parties meeting (IPM) withholding regulations summary

We held a second IPM regarding the withholding regulations on July 11, 2016 which follows the first IPM held on October 12, 2015 on this topic. In the second IPM, staff introduced and solicited public input on proposed amendments to California Code of Regulations (CCR), title 18, Sections 18662-0 through 18662-6, and Section 18662-8 (Withholding Regulations)), including draft language of the proposed amendments to the regulations.

The two main topics discussed included:

1. Changes to nonresident and real estate withholding rules and procedures.
2. Changes to the current rules applicable to domestic pass-through entities (PTE) from a quarterly filing withholding scheme to an annual one. A new annual reconciliation and PTE voucher forms will also be created to assist this change. In addition, the proposed amendments to the Withholding Regulations will clarify that the due date of January 31 will be established as the deadline by which the annual PTE annual reconciliation form must be filed.

For more detailed information about the Withholding Regulations and the discussions at the IPM, go to Interested Party Meetings – Current Year and look for “Withholding Regulations.”

All About Business

Crowdfunding - IRS guidance

On June 25, 2016, the IRS recently released information that explains their thinking on the tax treatment of crowdfunding.

Back in June of 2015 the Advocate, Susan Maples, shared with you some information on Crowdfunding in the article Crowdfunding – What is it and How is it Reported? On June 25, 2016, the IRS recently released [Information Letter 2016-0036](#) that explains their thinking on the tax treatment of crowdfunding. The IRS’s letter concurs with our prior statement “Without an analysis of the facts and circumstances, you can tell your client in most cases that amounts raised are included in your taxable income unless it is specifically exempted by law.” The Information Letter states:

“In general, money received without an offsetting liability (such as a repayment obligation), that is neither a capital contribution to an entity in exchange for a capital interest in the entity nor a gift, is includible in income. The facts and circumstances of a particular situation must be considered to determine whether the money received in that situation is income.

What that means is that crowdfunding revenues generally are includible in income if they are not:

1. Loans that must be repaid.
2. Capital contributed to an entity in exchange for an equity interest in the entity.
3. Gifts made out of detached generosity and without any “quid pro quo.”

However, a voluntary transfer without a “quid pro quo” is not necessarily a gift for federal income tax purposes. In addition, crowdfunding revenues must generally be included in income to the extent they are received for services rendered or are gains from the sale of property.

However, the final determination is dependent on your client’s specific facts and circumstances.

If you are in doubt about whether or not some of your income is taxable, you’ll find more information in [IRS Publication 525](#), Taxable and Nontaxable Income.

Where California law is the same as federal law, taxpayers or practitioners requesting clarification to federal law, federal rulings, or other federal guidance, are advised to contact the Internal Revenue Service.

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 calendar that shows the events we attend, as well as other events happening with us, such as interested party and board meetings.