

chair **John Chiang**  
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State of California  
**Franchise Tax Board**

02.01.10

Catherine Apker, CAE  
California Society of Enrolled Agents  
3200 Ramos Circle  
Sacramento, CA 95827-2513

Dear Ms Apker,

Thank you for your proposals submitted for the Taxpayers' Bill of Rights Hearing as presented by Vicki Mulak. I am responding to the proposals.

Lack of Conformity and Need for Standalone Tax Return

California used a standalone Form 540 until 1987. The standalone form required the taxpayer to complete a tax form that was similar to the federal tax form. To determine California AGI, the taxpayer entered all income items and adjustments to income. In addition, other forms were required to report various income items and adjustments. Forms required included Schedule B for interest and dividends, Schedule C-E-F for profit or loss from a business or profession, supplemental income, and farm income and expenses. California Schedules D and D-1 were also required to report capital gains and losses and supplemental gains and losses, and form FTB 3885 was used to report depreciation and amortization. If the taxpayer itemized their deductions, they completed California Schedule A. Taxpayers filing their federal form also complete similar forms and schedules to determine federal AGI. In many cases, the California forms duplicated information entered on the federal forms and schedules.

Beginning with the 1987 tax year, the standalone form became obsolete. Taxpayers now complete their California return by starting with federal AGI. Many components of federal AGI are the same for California AGI for most taxpayers, although there are differences. Those differences are reported on Schedule CA to determine California AGI. Taxpayers would need to make these adjustments even if they were using a standalone form.

The current format allows the taxpayer to first complete their federal return, and then only report adjustments for differences in federal and California law on the Schedule CA of the California return. Returning to a standalone Form 540 would still require the taxpayer to consider the differences between federal and California law. Those differences would be included on various California forms and schedules as in the past. Instead of completing various forms and schedules to make adjustments with a standalone form, all of these adjustments are made on Schedule CA.

Since many items of income and deduction are the same for California and federal purposes, the California instructions are dedicated to the differences in federal and California law in order to correctly compute the California adjustment amounts. Changing to a standalone form would require instructions for each income and adjustment line item, which would be

duplicative of the federal Form 1040. This would result in increased complexity for taxpayers and increase the taxpayer's burden to file their California return. We continue to support Federal conformity as the best solution to simplify taxpayer's filing requirements. For these reasons, we do not recommend a California tax return completed on a "standalone" basis.

#### Penalty Reference Chart and List of Available Remedies & Web Improvements

My staff is in the process of creating a penalty chart. Once the draft chart is complete it will go through departmental review, and after that review process is complete, we will make it available on our web site. Our target date is June 2010.

Notification about changes to our FTB web content:

We are researching using RSS feeds. This allows interested parties to subscribe to the feed and receive alerts about changes to the website automatically. We need to verify that there are no associated costs or security issues. If not, we plan to implement after the filing season.

Forms and Publications Tab on FTB website:

We are working on the feasibility of adding the word "Pubs" or "Publications" to the Forms tab on the homepage. To add this additional text requires us to revise our website template to display at 1024x760, rather than the current display of 800x600. Otherwise, the pages will render with a horizontal scroll bar, which is not recommended for best web design. Currently, we are working through the issues and plan to implement the tab changes after the filing season. Please note that the title of the "Forms" landing page is "Forms and Publications."

Additionally, with the recent implementation of the new forms locator function, we are striving to improve issues associated with finding or accessing forms and publications. Search results are categorized as forms, instructions, schedules, booklets, and publications. By using a specific category, for instance "publication" as a keyword, users can view all publications available. The form locator was released in December, and as with any new product, we continue to make modifications for continued improvement. Improvements we are currently addressing include number sequencing, identifying missing products, add an "all forms" button, and include additional instruction on specific searches. In addition, we will also look at creating uniform naming conventions for publications, informational brochures and other types of products listed using the forms locator function. Going forward this should help with the identification of publications, for example, by including the word publication in the title.

#### Credit and Debit Card Convenience Fees

California conforms to IRC section 212. Accordingly, we conform to the recent IRS conclusion allowing a deduction for credit card fees paid in connection with the payment federal income taxes. Taxpayers that claim these credit card fees on their federal return and report their itemized deductions for California purposes do not need to make an adjustment on Schedule CA. Please note that the recent IRS conclusion also applies to credit card fees paid in connection with the payment of state income taxes.

Retroactive Tax Increase and Withholding Table

Relief from a penalty imposed under the described scenario is already available under Revenue and Taxation Code (R&TC) section 19136(g)(1), which states: "No addition to tax shall be imposed under this section to the extent that the underpayment was created or increased by any provision of law that is chaptered and operative for the taxable year of underpayment." R&TC 19136(g)(1) is applicable because ABX3 3, the bill that increased the tax rates and decreased the dependent exemption credit, was chaptered into law on February 20, 2009, and operative for taxable years beginning on or after January 1, 2009.

To request a waiver or reduction of the underpayment of estimated tax penalty, you need to complete Part I of FTB Form 5805, Underpayment of Estimated Tax by Individuals and Fiduciaries, and attach it to the 2009 taxable year income tax return.

10% Withholding Increase Without a Tax Increase and IOUs

The 10 percent increase in withholding is not mandatory. Even Governor Schwarzenegger's press release dated July 28, 2009, refers to the 10 percent increase in withholding as optional. A taxpayer wishing to adjust his or her withholding allowances may submit the Employment Development Department's form DE4, Employee's Withholding Allowance Certificate, to their employer's payroll unit.

The Franchise Tax Board refers questions or comments regarding the oversight of unredeemed IOUs to either the State Controller or the State Treasurer. According to the State Treasurer's Web site (<http://www.treasurer.ca.gov/warrants/index.asp>), the IOUs issued in 2009 must be redeemed by October 1, 2010.

Sincerely,

Steve Sims, EA  
Taxpayers' Rights Advocate

cc: Hon. John Chiang, Chair  
Hon. Betty T. Yee, Member  
Hon. Ana J. Matosantos, Member