



State of California
Franchise Tax Board

12.30.2009

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Subject: California Backup Withholding on Proceeds from Broker and Barter Exchange Transactions (1099-B)

Thank you for your letters of December 15 and 17, 2009. You should by now be in receipt of Franchise Tax Board, Withholding Services and Compliance Section Manager Phillip Gray's letter of December 10, 2009. In that letter, the Franchise Tax Board discussed its education and outreach efforts for 2010 and agreed not to assess a penalty for failure to backup withhold on gross proceeds (1099-B) during 2010, based on industry's request for additional time allowing businesses to fully implement California backup withholding specific to gross proceeds (1099-B).

Pursuant to your request, we recently reviewed the legislation and the backup withholding requirement as it relates to gross proceeds (1099-B). As part of our analysis, we reviewed the legal analysis set forth in your letter of December 15, 2009, the cost benefit analysis set forth in your letter of December 17, 2009, the legislative history of Assembly Bill X4 18, the legislative history of Assembly Bill 1848, our Legislative Proposal 08-07 (LP 08-07), and various revenue estimates, all of which included gross proceeds (1099-B). We conclude that our position remains correct. For the reasons also set forth in our letter of December 10, backup withholding is required under the law as enacted by Assembly Bill X4 18, including backup withholding on gross proceeds (1099-B) when backup withholding is required under federal law. Under the newly enacted California law, backup withholding is required for certain payments made beginning January 1, 2010.



Franchise Tax Board
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Your letters also identified the need for a delayed effective date. The effective date, technically referred to the "operative date" of this law is statutorily mandated and cannot be changed, absent a legislative amendment. As set forth in our letter of December 10, we have agreed not to assess penalties on failures to backup withhold on gross proceeds (1099-B) for the 2010 year. This includes penalties for failure to withhold as well as liability for amounts not withheld. In not imposing any penalties or liabilities for failures to backup withhold on gross proceeds (1099-B) during the 2010 year, we are further agreeing to a 12 month delay before backup withholding will need to begin for gross proceeds (1099-B) and an additional seven and a half months (until July 28, 2011) before any penalty for failure to remit amounts withheld will be imposed. Legislation requiring back up withholding was enacted on July 28, 2009; therefore giving up to 24 months before any penalty for failure to remit amounts on backup withholding on gross proceeds (1099-B) will be imposed.

As addressed in your letter, we are mindful of some of the system changes necessary to come into compliance. To that end, we would request a summary progress report by June 30, 2010, to understand how industry is meeting the backup withholding requirement for gross proceeds (1099-B) and evaluate progress. We are willing to work with the industry to implement these changes.

We will continue to focus on education and outreach as promised, giving until January 1, 2011, to come into compliance with our backup withholding requirements. If you have any questions, please do not hesitate to contact me.

Sincerely,

Roger Lackey, on behalf of
Phillip Gray
Withholding Services and Compliance Section

cc: Selvi Stanislaus
Anne Miller
Mark Shijo