chair John Chiang
member Betty T. Yee
member Ana J. Matosantos

State of California
Franchise Tax Board

08.17.10 Information Letter 2010-5

****
****
****
****

Dear **********:

This information letter is in response to your correspondence dated May 18, 2010. In your letter you asked "[w]hat is the FTB's position with respect to the ability of a taxpayer or a tax preparer to rely on federal administrative guidance ...when the Revenue and Taxation Code adopts the underlying portion of the Internal Revenue Code ...without modifications that are relevant to the taxpayer's particular situation?" The purpose of this information letter is to provide clarification of the FTB position.

As explained below, it is well settled that where federal law and California law are the same, federal rulings dealing with the Internal Revenue Code are persuasive authority in interpreting the California statute. *J. H.McKnight Ranch v. FTB* (2003) 110 Cal.App.4th 978, at fn.1, citing *Calhoun v. Franchise Tax Bd*. (1978) 20 Cal.3d 881, 884.

Where the California Revenue and Taxation Code (R&TC) conforms to the Internal Revenue Code (IRC), federal administrative guidance applicable to the IRC shall, insofar as possible, govern the interpretation of conforming state statutes, with due account for state terminology, state effective dates, and other obvious differences between state and federal law.

Federal administrative guidance may include; federal revenue rulings, notices, revenue procedures, announcements, and other published administrative guidance promulgated by the U.S. Treasury or the Internal Revenue Service (IRS). Private letter rulings will only be considered federal administrative guidance with respect to the particular taxpayer for whom the ruling was issued; otherwise, federal administrative guidance does not include private letter rulings or any other administrative guidance issued by the Commissioner or Chief Counsel of the IRS with respect to a particular taxpayer.

Federal administrative guidance shall not apply to the California Tax and Revenue Code under the following circumstances:

(1) Where the related R&TC section is substantively different than the federal statute.

Legal Division MS A260
PO Box 1720
Sacramento CA 95741-1720
tel 916.845.6729
fax 916.845.3648
ftb.ca.gov

Example: R&TC section 17143 relating to nontaxable interest income is substantively different then its IRC counterpart section 103. Any federal administrative guidance relating to IRC section 103 cannot be relied on to interpret R&TC section 17143.

(2) Where the R&TC conforms to an IRC section that is modified after the California specified conformity date, any federal administrative guidance issued after the modification is inapplicable for California purposes.

Example: For taxable years beginning on or after January 1, 2008, California conforms by reference to the January 1, 2005 version of IRC section 108 relating to discharge of indebtedness. In 2007 Congress amended IRC section 108 by adding a new subparagraph (E) to IRC108(a)(1). Any federal guidance relating to the 2007 federal amendment would not be applicable for a 2008 California tax return.

(3) Where the federal administrative guidance conflicts with California statutes or regulations.

FTB has specific authority under R&TC sections 17024.5(d) to issue regulations that deviate from federal regulations issued under the federal section to which California conforms. This would most likely occur, for example, where a federal regulation (not the federal statute) specified a sourcing rule that directly conflicted with an existing California sourcing rule or principle.

Please be advised that the tax law discussed in this information letter is considered a well-established interpretation or principle of tax law. This letter is provided for general information only and is not intended nor shall be considered "written advice from the Board" within the meaning of Section 21012 of the Revenue and Taxation Code.

Sincerely,

Kristen Magers
Tax Counsel