



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
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August 21, 2000

Information Letter 2000-0377

Re: *****

Dear *****:

Your letter of ***** , has been referred to me for response. In your letter, you ask for clarification of the due date of a Personal Income Tax return, and whether a return can be under automatic extension once filed for purposes of Internal Revenue Code (IRC) §1031(a)(3)(B). As explained below, the validity of an IRC §1031 exchange for California purposes is determined by whether the like-kind property is received by the extended due date of the taxpayer's federal return, not the due date of the state return.

California's automatic paperless extension requirements were explained in FTB Notice 91-3, November 1, 1991. (See also FTB Form 3519, Payment Voucher for Automatic Extension for Individuals.) For tax years 1991 and later, FTB allows an automatic six-month extension if the return is filed within six months of the original due date. If the return is filed before or after the extension period, no extension exists. If the return is filed within the extension period, then the "extended due date" for purposes of interest running from the extended due date, is six months after the original due date, generally October 15 for calendar year taxpayers.

Internal Revenue Code §1031(a)(3)(B) requires that property received by a taxpayer will be treated as property which is non like-kind property if the property is received after the earlier of 180 days from the transfer of the relinquished property or the due date (determined with regard to extensions) of the taxpayer's federal tax return.

California incorporates the provisions of IRC §1031 by reference in Revenue and Taxation Code (R&TC) §18031, (with effective date provisions set forth in §18043) and (R&TC) §24941. Therefore, the federal extended due date should be used in determining whether the property is disqualified under §1031(a)(3)(B).

California will follow the federal treatment, regardless of whether or not the California return was filed under extension.

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Very truly yours,

Bruce R. Langston
Tax Counsel