

Summary of Interested Parties Meeting Regulation Sections 19131 and 19132, First-Time Abate

- I. **Administration:** On December 3, 2010 at 10:30 a.m., members of the public attended an interested parties meeting at the Franchise Tax Board central office in Sacramento. Parties attended in person and by telephone. Those physically present were asked to register at the entrance and telephone participants introduced themselves. The session was audio recorded for reference, but there will be no attribution of comments and no transcript.

The Hearing Officer, Jane Perez, listed the documents available as handouts: the notice of the meeting, copies of Revenue and Taxation Code sections 19131 and 19132 and a copy of the IRS Penalty Manual section 20.1.1.3.6.1 that provides the federal policy. Parties were then told that they could submit written comments and that a summary of the interested parties meeting and any written comments would be posted online. The Hearing Officer explained that the purpose of the meeting was to provide the public with an opportunity to discuss and provide comments on these potential new regulations that would provide for a California first-time abate process similar to the federal policy.

- II. **Background:** The Franchise Tax Board imposes penalties under Revenue and Taxation Code sections 19131 and 19132 for a taxpayer's failure to file a return (19131) and failure to pay tax (19132). Both of these penalties are imposed unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

These sections generally conform to Internal Revenue Code section 6651. The Internal Revenue Service has an administrative policy in the IRS Penalty Manual that provides for a "first time" abatement procedure. This policy applies if the taxpayer had not previously been required to file a return or if no prior late filing or underpayment penalties have been assessed in the prior three years (with the exception of the estimated tax penalty). If a taxpayer meets the requirements for this first-time abate procedure, the Internal Revenue Service abates the federal failure to file or failure to pay tax penalty without considering any reasonable cause argument. The Revenue and Taxation Code has no provision similar to this federal first-time abate policy, nor does the Franchise Tax Board have any formal administrative policy that is similar to the federal policy.

- III. **Discussion:** The discussion and comments below are not necessarily replicated in the order spoken, but rather are grouped topically. The numbering of the comments is for ease of reference, and thus, readers should not assign any importance to one comment over any other comment. Public questions/comments have been italicized.

1. *What is the reason behind this proposal? Is this something the Franchise Tax Board wants to do?*

The Franchise Tax Board is proposing these regulations as a way to further conform California law to the corresponding federal law and rules.

2. *How many of these penalties are currently imposed?*

At this point, we do not have the data showing the number of penalties imposed for failure to file and failure to pay tax. These penalties are, for the most part, automatically imposed by Franchise Tax Board's processing systems. Data on the number of penalties currently imposed will be gathered later in the regulation process.

3. *If a taxpayer files a federal return, but not a California return, would the first-time abate regulations apply? Will a taxpayer's federal filing history apply?*

Staff believes that only a taxpayer's California filing history should be relevant in determining qualifications for California first-time penalty abatement. Staff believes that federal filing history should not be used.

4. *Would these regulations apply if this is the first time a taxpayer files a California return?*

Yes, these regulations would apply in this situation.

5. *When will this regulation process be completed?*

It is anticipated that the regulation process will be completed in 2012.

6. *When would these regulations become effective? At the start of the regulation project or when the regulations are enacted?*

The effective date of these regulations is yet to be determined. The first-time abatement provisions would likely apply to penalties imposed after this date, regardless of tax year.

IV. Written Comments: The Franchise Tax Board has not received any written comments either prior to or after the December 2010 Interested Parties Meeting.

An additional Interested Parties Meeting will be held after draft language has been developed so that the public may have an opportunity to comment on the proposed language of the new regulations.