

Amnesty – Administrative Matters

I. Implemented Administrative Matter -- Expedite Processing of Audits/Protests for Protective Claim Situations

The Franchise Tax Board received protective claims payments in connection with the Tax Amnesty Program (February 1, 2005 through March 31, 2005). Taxpayers made payments to avoid post amnesty related penalties, and estimated amounts that may be owed in connection with ongoing or anticipated audits, protests, appeals, or settlements of additional tax liabilities.

The following charts detail protective claims by taxpayer group, claims status, and amounts paid by corporations:¹

Protective Claims by Taxpayer Group		
Group	Claims ²	Amount (in millions)
Personal Income Tax	194	\$ 58
Corporations	641	\$ 3,488
Total	835	\$ 3,546

Claims Status	Open		Closed	Total
	FTB	IRS ³		
Claims ⁴	645	142	48	835
Tax Years	1,713	360	88	2,161
Refunds (in millions)			\$ 7	

¹ Data as of August 26, 2005.

² Represents the number of taxpayers.

³ Currently under IRS examination and cannot be resolved until the federal adjustment is final.

⁴ Represents the number of taxpayers.

Payments by Corporations		
Dollar Range	Claims ⁵	Amount (in millions)
More than \$5 million	110	\$ 2,999
\$1 - \$5 million	159	404
Less than \$1 million	371	85
Total	640	\$ 3,488

Staff has identified various audit techniques that it intends to employ to expedite the processing of audits and protests from protective claims. Specifically, staff intends to redirect audit and legal resources, as necessary, to ensure adequate staffing is available and to use both audit supervisors and legal staff earlier in the process to ensure that audits of the affected taxpayer universe will be appropriately focused and susceptible of being closed by April 15, 2006 (assuming taxpayer cooperation).

The following chart provides the workload changes comparing the normal timeframes to the protective claim timeframes:

Workload Stages	Normal Timeframes	Protective Claims Timeframes
Stage 1: Audit	12 - 24 months	12 months
Stage 2: Protest	12 - 33 months	12 - 24 months
Stage 3: Appeal	10 - 14 months	10- 14 months
Stage 2A/3A: Settlement	9 months	9 months

This course of action ensures that those taxpayers who paid significant sums outside of amnesty will receive expeditious identification and consideration of their potential tax liabilities so that their payments may be applied on a timely basis.

⁵ Represents the number of taxpayers.

II. Administrative Matter for Potential Board Action -- Adopt Spidell and Cal-Tax Interpretation of "Due and Payable"

Problem: For amounts that become final after the last day of amnesty, the amnesty penalty will be calculated as an amount equal to 50% of the interest computed on the final amount unpaid as of March 31, 2005, from the original due date of the return for that tax year to March 31, 2005. Use of the term "due and payable" in Revenue and Taxation Code section 19777.5 is the basis for differing arguments of when the amnesty penalty applies and the extent to which timing of payments can reduce the penalty amount.

Proposed Solution from Spidell and Cal-Tax: Define "due and payable" consistent with section 19049 that generally states that a deficiency becomes "due and payable" 15 days from the date a notice and demand of final assessment is mailed to a taxpayer.

Justification: Section 19049 states that an assessment is not "due and payable" until 15 days following notice and demand of final assessment. Under this definition, a taxpayer could make payments after amnesty, but before 15 days following notice and demand of final assessment, for purposes of computing the post-amnesty penalty.

Revenue: This proposal is estimated to result in a combined revenue loss of \$140 million for fiscal years 2005/06, 2006/07 and 2007/2008.

Other Considerations: Under current California law (section 19041.5 and FTB Notice 99-9), unless the taxpayer specifically designates an advance payment as a cash bond, it will be treated as a prepayment of tax liability expected to be due for the year and stop the running of deficiency interest as well as earn interest if it is ultimately refunded. In the case of those taxpayers who filed protective claims and deposited monies outside of the amnesty program, FTB will refund any deposit the taxpayer did not designate as a cash bond upon request where there is no final liability. Adoption of this proposal may have the effect of increasing the number of taxpayers who would request a refund of their protective claim monies.