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FTB NOTICE 99-9

SUBJECT: 1999 Legislative Changes

Cash Bonds: AB 41 (Stats. 1999, Ch. 463) added Revenue and Taxation Code section 19041.5, providing that certain payments designated as cash bonds shall not be treated as a payment of tax. FTB will generally follow the procedures as set forth in IRS Rev. Proc. 84-58, 1984-2 C.B. 501, as applicable under California law. The new provision is effective for payments made on or after January 1, 2000. Taxpayers desiring to have payments treated as a cash bond should clearly designate in writing in a statement attached to or submitted together with the payment that the payment is intended as a cash bond and not a payment of tax.

Commencing Corporations – Minimum and Estimated Tax: AB 10 (Stats. 1999, Ch. 64) amended RTC sections 23153 and 23221 to eliminate the minimum franchise tax for a corporation's first taxable year (prepaid to the Secretary of State) and second taxable year (first income year) for corporations incorporating or qualifying to do business in California on or after January 1, 2000.

Taxpayers and practitioners should be aware that under AB 10, because the first taxable year is a zero tax year, then under RTC section 19147(a)(1)(A) the prior year exception to the addition to tax for underpayment of estimated tax cannot apply. That exception can only apply "if a return showing liability for tax" was filed for the preceding year. See IRC section 6655(d)(1), Rev. Rul. 92-54, 1992-2 CB 320. Therefore, taxpayers who expect to have taxable income in their first income year should plan to make appropriate estimated tax payments for the first income year to avoid an addition to tax.

Refund Statute of Limitations: AB 414 (Stats 1999, Ch. 614) amended RTC section 19306 to equalize the statute of limitations for assessments and for refunds where taxpayers have filed timely tax returns under extension. For all open years where the statute of limitations for filing claims has not expired on January 1, 2000, claims may be filed by the later of four years from the original due date of the return or four years from the date the timely return was filed. If a return is delinquently filed (i.e. after the extension period) then no extension exists and the four-year statute of limitations begins running on the original due date.

Interest Abatement for IRS Abatement Periods: SB 603 (Stats. 1999, Ch. 203) amends RTC section 19104 to allow FTB to abate interest accruing from a deficiency based on a final federal determination of tax for the same period that interest was abated on the related federal deficiency amount by the IRS. This change applies to final interest abatements made on or after January 1, 2000, with respect to ministerial acts for which interest accrued on or after September 25, 1987, or for any managerial act applicable to a taxable or income year beginning on or after January 1, 1998. Taxpayers wishing to claim interest abatement for periods of corresponding federal abatement should use FTB Form 3701, Request for Abatement of Interest, and attach a copy of documentation showing the period and amount for which the IRS has abated interest.

Federal Determinations: SB 1229 (Stats. 1999, Ch. 987) amended RTC section 18622 to:

- Limit the exception for which notification of federal changes or amended returns is required to taxpayers subject to the Personal Income Tax Law where there is no increase to California tax resulting from the federal adjustments.

- Require that for a notification of a federal change or correction to be effective it must be sufficiently detailed so that the resulting California tax change can be computed, and

- Define the date of each federal determination as the date on which each adjustment or resolution resulting from an IRS examination is assessed ("23C date").

Pursuant to Section 105 of the chaptered bill, the amendments made by SB 1229 apply to federal determinations that become final (as defined in the act) on or after January 1, 2000.

This means that for determinations with federal assessment dates on or after January 1, 2000:

- All taxpayers subject to the Bank and Corporation Tax Law must report federal changes and federal amended returns whether or not the change would increase the amount of California tax payable.

- Reports of federal adjustments should be made by letter or amended return detailing the California tax effect of the federal determination, together with copies of federal documents and original returns as appropriate. See FTB Pub 1008, Federal Tax Adjustments and Your Notification Responsibilities to California.

- The definition of the date of "final determination" in 18 Cal. Code Regs. section 19059 has been superseded and no longer applies to determinations assessed on or after January 1, 2000.

The principal author of this notice is Bruce R. Langston of the Franchise Tax Board, Legal Branch. For further information regarding this notice, contact Mr. Langston at the Franchise Tax Board, Legal Branch, P. O. Box 1720, Rancho Cordova, CA 95741-1720.