

Regulation section 25401(b) is renumbered and amended to read:

§ 19002. Credit for Tax Withheld.

(a) The tax deducted and withheld under Article 5 (commencing with Section 18661) of the Revenue and Taxation Code or Section 13020 of the Unemployment Insurance Code~~Section 26134~~ is allowable as a credit against the tax of the recipient of the income on a return for the taxable year with respect to which the amount was withheld~~imposed by the Bank and Corporation Tax Law~~. If the tax has actually been withheld at the source ~~as required by Reg. 26131-2~~, credit or refund shall be made to the recipient of the income even though such tax has not been paid over to the Franchise Tax Board. For the purpose of the credit, the recipient of the income is the ~~corporation taxpayer~~ who received amounts which were subject to withholding as required by Reg. 26131-2, and included those income amounts on a return. Under RTC section 19307, no refund or credit of tax withheld or estimated tax paid or tax withheld can be allowed unless and until a taxpayer has filed a valid return for the year.

(b) The tax withheld under Reg. 26131-4 during any calendar year shall be allowed as a credit against the tax imposed by the Bank and Corporation Tax Law for the income taxable year of the recipient of the income which begins in that calendar year. If such recipient has more than one income taxable year beginning in that calendar year, the credit shall be allowed against the tax for the income taxable year in which the income was recognized and included on a return.

(c) Payments to Pass-Through Entities. Tax deducted and withheld from payments to pass-through entities must be passed through to the entity's partners or shareholders according to their ownership interest in the pass-through entity (unless a special allocation rule applies, in which case, the allocation of withholding follows the special allocation of the income), except that all or a portion of the withholding may be claimed as a credit against the entity's tax due for the taxable year. (See Regulation section 18662-7.) No refund of tax deducted and withheld from payments to pass-through entities is allowed. Any credit passed through must be claimed by the partners or shareholders on their own tax return.

(d) Special Rule for Pass-Through Entity Year-End Distributions. Tax withheld from payments made after the close of the taxable year can be applied as payments to the taxable year to the extent those payments represent income required to be included in the return for that taxable year.

(e) Date of Credit.

(1) For purposes of computing the statute of limitations on refund claims, the date of all withholding payments is deemed to be the original due date of the return.

(2) For estimated tax penalty purposes, the date the withholding is credited to the account is the date withheld. For individuals, withholding is treated as paid 25% on

each estimated tax payment due date, unless an individual taxpayer elects to treat all withholding at source for the year as paid on the date withheld. (See Internal Revenue Code section 6654, subsection (g).)

(3) For interest and penalty purposes, the date of withholding payments is the date such payments are remitted to the Franchise Tax Board.

(f) Federal regulations applicable. Regulations issued under the Internal Revenue Code relating to the crediting of tax withheld shall apply except as otherwise provided in California law or this regulation. See, e.g., Treasury Regulation sections 1.31-1 and 301.6513-1.

Note: Authority cited: Section ~~26442~~19503, Revenue and Taxation Code.
Reference: Section ~~25401b~~19002, Revenue and Taxation Code.