

## Voluntary Compliance Initiative-SB 614

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:  
CHAPTER 9.5. TAX SHELTERS

**19751.** (a) The Franchise Tax Board shall develop and administer a voluntary compliance initiative for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this chapter.

(b) The voluntary compliance initiative shall be conducted during the period from January 1, 2004, to April 15, 2004, inclusive, pursuant to Section 19754. This initiative shall apply to tax liabilities attributable to the use of abusive tax avoidance transactions for taxable years beginning before January 1, 2003.

(c) The Franchise Tax Board shall issue forms and instructions and may take any other actions necessary, including the use of closing agreements, to implement this chapter.

(d) The Franchise Tax Board shall publicize the voluntary compliance initiative so as to maximize public awareness of and participation in the initiative. The Franchise Tax Board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this chapter.

(e) Any correspondence mailed by the Franchise Tax Board to a taxpayer at the taxpayer's last known address outlining the voluntary compliance initiative under this chapter constitutes "contact" within the meaning of Treasury Regulation Section 1.6664-2(c)(3), relating to qualified amended returns, and paragraph (3) of subdivision (e) of Section 19773 and Section 19777, regarding increased interest rate.

**19752.** Any taxpayer who meets the requirements of Section 19754 may elect the application of either, but not both, of the following:

(a) Voluntary compliance without appeal. If this option is elected, then each of the following shall apply:

(1) The Franchise Tax Board shall waive or abate all penalties

imposed by this part, for all taxable years where the taxpayer elects to participate in the initiative, as a result of the underreporting of tax liabilities attributable to the use of abusive tax avoidance transactions.

(2) Except as provided in Section 19753, no criminal action shall be brought against the taxpayer for the taxable years with respect to issues for which the taxpayer voluntarily complies under this chapter.

(3) No penalty may be waived or abated under this chapter if the penalty imposed is attributable to an assessment of taxes that became final prior to December 31, 2003.

(4) Notwithstanding Chapter 6 (commencing with Section 19301) of this part, the taxpayer may not file a claim for refund for the amounts paid in connection with abusive tax avoidance transactions under this chapter.

(b) Voluntary compliance with appeal. If this option is elected, then each of the following shall apply:

(1) The Franchise Tax Board shall waive or abate all penalties, except the accuracy-related penalty under Section 19164 (as in effect immediately before enactment of the act adding this section), imposed by this part, for each of the taxable years for which the taxpayer elects to participate in the initiative, that are owed as a result of the underreporting of tax liabilities attributable to the use of abusive tax avoidance transactions.

(2) Except as provided in Section 19753, no criminal action may be brought against the taxpayer for each of the taxable years for which the taxpayer voluntarily complies under this section.

(3) No penalty may be waived under this chapter if the penalty imposed is attributable to an assessment of taxes that became due and payable prior to December 31, 2003.

(4) The taxpayer may file a claim for refund under Chapter 6 (commencing with Section 19301) of this part. Notwithstanding Section 19331, the taxpayer may not file an appeal to the board until after either of the following:

(A) The date the Franchise Tax Board takes action on the claim for refund for the tax year to which this chapter applies.

(B) The later of either of the following dates:

(i) The date that is 180 days after the date of a final determination by the Internal Revenue Service with respect to the transaction or transactions to which this chapter applies.

(ii) The date that is four years after the date the claim for refund was filed or one year after full payment of all tax, including penalty and interest was made, whichever date is later.

(5) The taxpayer shall be subject to the accuracy-related penalty under Section 19164.

(A) The penalty may be assessed:

(i) When the Franchise Tax Board takes action on the claim for refund.

(ii) When a federal determination becomes final for the same issue, in which case the penalty shall be assessed (and may not be abated) if the penalty was assessed at the federal level.

(B) In determining the amount of the underpayment of tax, Treasury Regulation Section 1.6664-2(c)(2), as promulgated under Section 6664 of the Internal Revenue Code, relating to qualified amended returns, shall not apply. The amount of the underpayment is the difference between the amount of tax shown on the original return and the correct amount of tax for the taxable year. The underpayment amount shall not be less than the amount of the claim for refund filed by the taxpayer under paragraph (4) that was denied.

(C) The penalty is due and payable upon notice and demand pursuant to Section 19049. Only after the taxpayer has paid all amounts due, including the penalty, and the claim is denied in whole or in part, may the taxpayer file an appeal under Chapter 6 (commencing with Section 19301), of this part in conjunction with the appeal filed under paragraph (4).

(c) A taxpayer's election under this section shall be made for all taxable years of the taxpayer governed by this chapter. A separate election for each taxable year governed by this chapter is not allowed.

**19753.** (a) This chapter does not apply to violations of this part for which, as of December 31, 2003, any of the following applies:

(1) A criminal complaint was filed against the taxpayer in connection with an abusive tax avoidance transaction or transactions.

(2) The taxpayer is the subject of a criminal investigation in connection with an abusive tax avoidance transaction or transactions.

(b) No refund or credit shall be granted with respect to any penalty paid prior to the time the taxpayer participates in the voluntary compliance initiative authorized by this chapter.

(c) For purposes of this chapter, an "abusive tax avoidance transaction" means a plan or arrangement devised for the principal purpose of avoiding tax. Abusive tax avoidance transactions include, but are not limited to, "listed transactions" as described in subdivision (a) of Section 18407.

**19754.** (a) The voluntary compliance initiative described in this chapter applies to any taxpayer who was not eligible to participate in the Internal Revenue Service's Offshore Voluntary Compliance Initiative described in Revenue Procedure 2003-11, and during the period from January 1, 2004, to April 15, 2004, does both of the following:

(1) Files an amended tax return under this part for each taxable year for which the taxpayer has previously filed a tax return using an abusive tax avoidance transaction to underreport the taxpayer's tax liability for that taxable year. Each amended return shall report all income from all sources, without regard to the abusive tax avoidance transaction.

(2) Except as provided in subdivision (b), pays in full all taxes and interest due.

(b) The Franchise Tax Board may enter into an installment payment agreement in lieu of the full payment required under paragraph (2) of subdivision (a). Any installment payment agreement authorized by this subdivision shall include interest on the unpaid amount at the rate prescribed in Section 19521. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) After April 15, 2004, the Franchise Tax Board may issue a

deficiency assessment upon an amended return filed pursuant to subdivision (a), impose penalties, or initiate criminal action under this part with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 19752.

(d) In addition to any other authority to examine returns, for the purpose of improving state tax administration, the Franchise Tax Board may inquire into the facts and circumstances related to the use of abusive tax avoidance transactions to underreport the tax liabilities for which a taxpayer has participated in the voluntary compliance initiative under this chapter. Taxpayers shall cooperate fully with inquiries described in this subdivision. Failure by a taxpayer to fully cooperate in an inquiry described in this subdivision shall render the waiver of penalties under this chapter null and void and the taxpayer may be assessed any penalties that may apply.