

FTB NOTICE

California Franchise Tax Board - Legal Division



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FTB NOTICE 93-1

February 1, 1993

Control Number:
410:CKL:DN-93-0028

Subject: Protective Claims - Water's-Edge Election Fees

Advice has been requested as to whether taxpayers which have elected to file on a water's-edge basis may, despite the provisions of 18 California Code of Regulations (Cal. Code. of Regs.) section 25111(i)(6), file "protective" claims for refund of the election fee based on the final outcome of litigation challenging the constitutionality of worldwide combined reporting. Because of the imminent expiration of the statute of limitations for the 1988 income year, those taxpayers whose claims are based solely on the possibility that a final appellate decision will hold worldwide combined reporting unconstitutional may file Form 1117, Request for Termination of Election, together with claims for refund of the election fee, as provided in 18 Cal. Code of Regs. Section 25111(i)(5) and (6). The requests may be filed for all open years and will be held pending the final outcome of the litigation.

Taxpayers should mail the Requests for Termination of Election, together with the Claims for Refund to:

Franchise Tax Board
International Audit
P.O. Box 1779
Rancho Cordova, CA 95741-1779

In the event that the Request for Termination of Election is allowed, it is the position of the Franchise Tax Board that all water's-edge contract provisions are inapplicable. Therefore, for example, the election fee refund will be offset by any tax attributable to inclusion of possessions corporations in the combined report or to restoration in income of the §24411 dividend deduction.

It should be noted that Section 26073, which provides the time period within which a claim for refund may be filed, was amended in 1992 to provide, effective January 1, 1993, that claims for refund must be filed within four years from the due date of the return (without regard to extensions) or one year from the date of the overpayment, whichever is later. (Stats. 1992, ch. 1295.)

DRAFTING INFORMATION

The principal author of this notice is Claudia K. Land of the Franchise Tax Board Legal Division. For further information regarding this notice, contact Ms. Land at the Franchise Tax Board Legal Division, P.O. Box 1468, Sacramento, CA 95812-1468.

NOTE: ((---)) = Indicates obsolete information.