

SUBJECT: REVENUE PROCEDURE 92-20

The Taxpayers' Bill of Rights, Franchise Tax Board Chief Counsel Rulings Guidelines (FTB Notice 89-277) provides that where provisions of the Personal Income Tax Law and the Bank and Corporation Tax Law are in substantial conformity with the Internal Revenue Code, the Franchise Tax Board will generally follow federal regulations, procedures and rulings. However, federal rulings and procedures will not be binding on the Franchise Tax Board for California purposes if an authorized officer or employee of the Franchise Tax Board has publicly indicated in writing that the ruling or procedure will not be followed.

The purpose of this notice is to provide direction regarding the extent to which the Franchise Tax Board will follow Revenue Procedure (Rev. Proc.) 92-20, 1992-1 C.B. 685.

Rev. Proc. 92-20 provides general procedures for a taxpayer to obtain consent of the Commissioner of Internal Revenue to change a method of accounting. The Franchise Tax Board will generally follow Rev. Proc. 92-20 with the following exceptions:

1. The Franchise Tax Board will not grant a request to change a method of accounting under Rev. Proc. 92-20 if to do so results in the deferral of the adjustments to a year or years in which the taxpayer is no longer taxable. For example, if an entity that is held in receivership by a government or quasi-government corporation is not subject to state income or franchise tax after the date of receivership and requests under Rev. Proc. 92-20 to change its method of accounting so as to defer the reporting of the adjustments to income from the taxable pre-receivership to the non-taxable post-receivership years, the taxpayer will not be permitted to use a change in method of accounting granted pursuant to Rev. Proc. 92-20.

2. The Franchise Tax Board will not grant a request to change a method of accounting under Rev. Proc. 92-20 if a California statute covers the reporting of that change for California purposes. For example, Revenue and Taxation Code Section 18622 states, in part:

If the amount of gross income or deductions for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in gross income or deductions, that taxpayer shall report the change or correction, or the results of such renegotiation, within six months after the final federal determination of the change or correction or renegotiation, or as required by the Franchise Tax Board, and shall concede the accuracy of such determination or state wherein it is erroneous.

If a taxpayer was audited by the Internal Revenue Service and agreed with the federal audit adjustments, the taxpayer will not be permitted to change its method of accounting for state purposes using Rev. Proc. 92-20 to defer to later years the reporting of the agreed federal adjustments since there is an existing statute which provides for the proper method of reporting those changes.

3. Since the federal and California administrative processes differ, for purposes of determining when an examination of a taxpayer is considered to end, Section 3.02 of Revenue Procedure 92-20 does not apply. Instead, for California purposes, an examination of a taxpayer is considered to end at the earliest of the date:

- a. the taxpayer receives a "no change" letter from the Franchise Tax Board;
- b. the Franchise Tax Board issues its Notice of Proposed Assessment;
- c. the Franchise Tax Board issues its Notice of Action on Cancellation, Credit, or Refund;
- d. the taxpayer files an appeal with the State Board of Equalization;
- e. the taxpayer files suit in superior court;
- f. on which a jeopardy assessment is made.

The Franchise Tax Board reserves the right to audit the change in accounting method request when (1) a similar request was filed with the Internal Revenue Service and the Internal Revenue Service did not audit the request; (2) the request relies upon state law that differs from federal law; or (3) a change in accounting method request is made for state purposes only. The Franchise Tax Board also reserves the right to announce other situations under which it will not grant a change of accounting method request filed under Revenue Procedure 92-20.

DRAFTING INFORMATION

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