



STATE OF CALIFORNIA  
**FRANCHISE TAX BOARD - Legal Branch**  
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April 2, 1998

## FTB NOTICE 98-5

### SUBJECT: AB 713 - INTEREST ABATEMENT REQUESTS

AB 713 (Stats. 1997, Ch. 600) enacted California provisions based on the federal Taxpayers' Bill of Rights 2, (P.L. 104-168). Revenue and Taxation Code section 19104(c) was amended to conform to the amendments made to Internal Revenue Code section 6404(e). This statutory change will allow the Franchise Tax Board (FTB) to abate interest, the accrual of which is attributable in whole or in part to unreasonable error or delay in FTB's performance of a ministerial or managerial act, and allow an appeal to the State Board of Equalization of determinations by FTB not to abate interest. The term "deficiency" as used in the statute means a final (due and payable) deficiency assessment, not a proposed deficiency assessment. (See Appeal of Nicholas Schillace, 95-SBE-005; 508 Clinton Street Corp. v. Commissioner (1987) 89 T.C. 352; 354-355; Meyers v. Comm. T.C. Memo 1996-219.)

The new provision which added the "unreasonable" and "managerial act" language is effective for taxable or income years beginning on or after January 1, 1998. The new language allowing appeals to the State Board of Equalization applies to formal denial notices of requests for abatement made on or after January 1, 1998.

Rev. Proc. 87-42, 1987-2 C.B. 589, sets forth the IRS procedure for requesting interest abatement under Internal Revenue Code section 6404(e)(1). Under federal practice, taxpayers are directed to use IRS Form 843 "Claim for Refund and Request for Abatement" to request interest abatement.

FTB staff has developed a corresponding form, FTB 3701, Request for Abatement of Interest, for taxpayers to use to request waiver of interest for periods attributable in whole or in part to error or delay by an officer or employee of the Franchise Tax Board in performing a ministerial or managerial act. The form may be downloaded from FTB's internet website ([www.ftb.ca.gov](http://www.ftb.ca.gov)), or requested by telephone from FTB's Information Center at (800) 852-5711.

Completed interest abatement request forms should be mailed to:

Franchise Tax Board  
Taxpayer Advocate Bureau  
Interest Abatement Coordinator  
PO Box 1468  
Sacramento CA 95812-1468

If and when an interest abatement request made after January 1, 1998 is formally denied, in whole or in part, the taxpayer has the right to appeal this denial to the State Board of Equalization within 180 days after FTB mails its notice of determination not to abate interest to the taxpayer. The State Board of Equalization has not yet issued guidelines with respect to interest abatement appeals, however, Tax Court Rules 280-284, applicable to federal actions for review of requests for abatement after July 30, 1996, require taxpayers to file a petition together with a copy of the final determination notice denying interest abatement and “[c]lear and concise lettered statements of the facts on which the petitioner relies to establish that the Commissioner’s final determination not to abate interest was an abuse of discretion.” (Rule 281(b)(5).)

### **Drafting Information**

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