



STATE OF CALIFORNIA
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November 28, 2005

FTB NOTICE 2005-6

SUBJECT: 2005 Legislation: Conformity to IRC Section 6603 Tax Deposit Procedures; Cash Bond Procedures Repealed; FTB Notice 99-9 Superseded in Part.

Introduction

Section 45 of AB 115 (Stats. 2005, Ch. 691) amended Revenue and Taxation Code (RTC) section 19041.5 to repeal the "deposit in the nature of a cash bond" provisions and replace them with conformity to the "tax deposit" provisions of federal Internal Revenue Code (IRC) section 6603. This notice explains that the Franchise Tax Board (FTB) will generally follow corresponding federal interpretations and procedures relating to tax deposits, and will apply these rules to amounts paid before the conclusion of the tax amnesty period to avoid the accrual of interest and the post-amnesty penalty. In addition, interest will be paid at the statutory overpayment rate on tax deposit amounts that are refunded without being applied to a final tax liability.

Before the AB 115 amendment was enacted, many taxpayers made advance payments and filed "protective claims" before the end of the tax amnesty program period to prevent the statute of limitations from running on potential refunds of the advance payment amounts. Under RTC section 19041.5 as amended, protective claims are not necessary because the one-year statute of limitations under RTC section 19306 does not begin to run until the tax deposit amount is either specified as a payment of tax in a written statement by the taxpayer or applied by FTB to satisfy a final tax liability.

Applicable Law

Section 842(a) of federal Public Law 108-357 added IRC section 6603, which streamlined and simplified the federal system of applying advance tax deposits for purposes of suspending the running of interest. Subsection (a) of IRC section 6603 provides authority for taxpayers to make cash deposits that may be used by the IRS to satisfy any tax liability that has not been finally assessed at the time the deposit is made. Subsection (b) provides that when the tax deposit is used by the IRS to satisfy a liability that becomes final, then for purposes of computing underpayment interest, the tax is treated as paid as of the date when the deposit was made. Subsection (c) provides that the IRS will return to the taxpayer any amount of the deposit (to the extent not used for payment of tax) that the taxpayer requests in writing. Subsection (d) provides that interest on a tax deposit that is returned to the taxpayer will be paid at the statutory overpayment rate unless the amount of the deposit exceeds a taxpayer's reasonable estimate of the maximum amount of tax attributable to disputable items. Subsection (e) provides the order in which tax deposits are to be applied.

Revenue Procedure 2005-18, 2005-13 I.R.B. 798, sets forth procedures applicable to tax deposits under IRC section 6603. These procedures include directions for designating remittances as deposits for a specific tax year, treatment of undesignated remittances, treatment of deposits made during an examination, treatment of deposits made after an examination, conversion of amounts previously deposited as cash bonds to tax deposits, requests for return of deposits, and determination of underpayment interest where a tax deposit has been made.

Under RTC section 19041.5 as amended, the provisions of IRC section 6603 are incorporated by reference, except as otherwise provided. RTC section 19041.5, subdivision (a), specifically provides that a tax deposit payment will not be treated as a payment of tax for purposes of the running of the statute of limitations, converting an administrative protest or appeal to a refund action, or filing suit for refund, until a written designation is provided or a tax liability becomes final.

RTC section 19306 provides that a claim for refund of any overpayment must be filed within one year of the date of the overpayment or within four years from the original due date or timely filing date of a tax return for the year, whichever is later. Under RTC section 19041.5, a tax deposit is not considered to be a "payment" for purposes of this section until it is designated as such or it is applied to a final deficiency.

RTC section 19322.1 was added by section 25 of AB 1115 (Stats. 2001, Ch. 920) and provides that a claim for refund that is otherwise valid, but that is made before full payment of the entire tax assessed or asserted, is an informal claim that may be perfected to become a valid refund claim for the year at the time full payment is made. FTB Notice 2003-5 clarified that all amounts due for the year, including tax, penalty and interest, must be paid to perfect an informal claim under RTC section 19322.1. Under RTC section 19041.5, tax deposit amounts are not considered "payments" for purposes of RTC section 19322.1 until they are designated as such or applied to a final deficiency.

RTC section 19335 provides that if with or after the filing of a protest or appeal, the taxpayer pays the tax protested, FTB treats the protest or appeal as a claim for refund or an appeal from the denial of a claim for refund. Under RTC section 19041.5, tax deposit amounts are not considered "payments" for purposes of RTC section 19335 until they are designated as such or applied to a final deficiency.

RTC section 19384 provides that a suit for refund must be filed within one year from the date of full payment of tax for the year (or within other time periods not relevant here). Under RTC section 19041.5, tax deposit amounts are not considered "payments" for purposes of RTC section 19335 until they are designated as such or applied to a final deficiency.

Procedures

These new procedures apply only to payments made for a tax year after a return is filed and before a final liability is assessed. Payments made before a return is filed are

estimated tax payments, not deposits, on which the statute of limitations for filing a refund claim runs if no return is filed within the statutory period. (*Miller v. United States*, 38 F.3d 473, 475 [74 AFTR 2d 94-6694] (9th Cir. 1994).) Payments made after a final liability is determined are applied to the final liability according to normal payment allocation rules, normally to the year designated, and thereafter to the oldest tax year. (Rev. Proc. 2002-26, 2002-1 C.B. 746.)

Any advance payments, including pre-payments made outside of the tax amnesty program (protective claim payments) to reduce potential amnesty penalties that have not been applied to a final tax liability as of the effective date of AB 115, are tax deposits under RTC section 19041.5.

FTB will no longer provide a procedure to treat payments made during protest and appeal as "cash bonds" under former RTC section 19041.5. Instead, taxpayers should use the tax deposit procedures outlined in this notice. As a result, FTB Notice 99-9 is hereby superseded on this issue.

Taxpayers who have previously made deposits in the nature of a cash bond may redesignate those payments as tax deposits pursuant to RTC section 19041.5, subdivision (c), by providing, **in writing**, the information set forth in section 5 of Revenue Procedure 2005-18.

For taxpayers interested in making a future tax deposit under this notice, the procedures set forth in section 4.01 of Revenue Procedure 2005-18 should be followed. The written statement should indicate the type of tax (personal income tax or corporation tax), tax year(s) and the amount of and basis for the disputable tax (i.e., potential amount due from audit, protest, appeal, federal action, etc.). In addition to providing the information required by Revenue Procedure 2005-18, taxpayers should indicate whether they want any tax deposit amounts remaining after application to the final tax liability to be refunded or retained on deposit for the tax year.

FTB will treat "protective claims" filed under the amnesty program instructions and responses to tax deposit notification letters as written statements designating the advance payment as a tax deposit.

Taxpayers desiring to request return of a tax deposit should provide, **in writing**, the information set forth in section 6 of Revenue Procedure 2005-18.

If the tax year at issue has been assigned to a specific FTB auditor, attorney or other FTB staff member, the written statements designating a remittance as a tax deposit and requests for return or transfer of tax deposits should be submitted directly to that person. Where the tax year at issue has not been so assigned, written statements should be sent to:

Individuals, Estates, and Trusts

Franchise Tax Board
P.O. Box 942840
Sacramento, CA 94240-0040

Business Entities

Franchise Tax Board
P.O. Box 942857
Sacramento, CA 94257-0540

Mandatory EFT taxpayers should direct the written statement to the staff member assigned to the case, or if no staff member is assigned, to the P.O. Box shown above before the EFT is remitted. Please remit the EFT payment using the Notice of Proposed Assessment tax type code (Code Number 02512; a water's-edge taxpayer should use Code Number 03572).

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