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State of California  
**Franchise Tax Board**

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FTB Notice 2011-02

Subject: BOE Formal Opinion in Appeal of NASSCO, 2010-SBE-001

**PURPOSE**

The purpose of this notice is to provide guidance regarding the Board of Equalization's formal opinion in Appeal of NASSCO, 2010-SBE-001 (November 17, 2010).

**BACKGROUND**

On November 17, 2010, the Board of Equalization (BOE) issued a formal opinion involving a corporate taxpayer's claim it properly applied Enterprise Zone (EZ) Tax Credits and Manufacturer's Investment Credits (MIC) to reduce the corporation's Alternative Minimum Tax (corporate AMT) liability for taxable years 1994, 1995, 1999, 2000, and 2001. The BOE concluded corporate taxpayers are entitled to apply EZ and MIC credits to reduce their corporate AMT liability.

A. Guidance – Scope of BOE Opinion in Appeal of NASSCO

The language of the BOE opinion limits the conclusion in a number of specific ways:

1. The BOE concluded the use of the term "tax" in Revenue and Taxation Code (RTC) section 23036 was ambiguous and relied on legislative history to resolve such ambiguity. The term "tax" in RTC section 23036 is uniquely applicable to the Corporation Tax Law in Part 11 of the RTC. Therefore, the BOE opinion only applies to corporations liable for the corporate AMT. (As used in this Notice, EZ credits refers to those credits listed under current and former RTC sections 23612, 23612.2, 23622, and 23622.7, and the MIC credit is that credit listed under former RTC section 23649.)
2. In addition, the legislative history relied upon by the BOE was specific to the EZ and MIC credits at issue, and did not discuss other tax credits listed in subdivision (d)(1) of RTC section 23036. Therefore, the BOE opinion only permits a corporate taxpayer to apply EZ and MIC credits to reduce its corporate AMT liability, and does not permit a corporate taxpayer to apply any other credits listed in subdivision (d)(1) of RTC section 23036 to reduce the corporate AMT liability.

3. Furthermore, because the legislation relied upon by the BOE was effective for taxable years beginning on or after January 1, 1994, the BOE opinion applies for taxable years beginning on or after January 1, 1994. (In the case of the MIC credit, it should be noted that while a MIC credit could be generated for eligible property placed in service after January 1, 1994, the MIC could not be claimed prior to a taxpayer's 1995 taxable year.)

As a result of the BOE opinion, corporate taxpayers who are or were liable for AMT in any taxable year beginning on or after January 1, 1994, which had or have valid EZ or MIC credits, may need to revise their tax credit carryover amounts and/or file claims for refund with the Franchise Tax Board.

#### B. Guidance – Collateral Consequences of BOE Opinion in Appeal of NASSCO

As a result of the BOE opinion in Appeal of NASSCO, some corporate taxpayers may be entitled to refunds. These corporate taxpayers may need to re-determine the correct amount of their EZ and MIC credit carryovers prior to filing tax returns or assigning EZ and MIC credits pursuant to RTC section 23663. Corporate taxpayers who are barred by applicable statute of limitations from seeking such refunds may also need to re-determine the correct amount of their EZ and MIC credit carryovers. The following guidance is offered to assist such taxpayers.

1. Redetermining Correct Amount of Credit Carryovers. Corporate taxpayers who have paid a corporate AMT liability in a prior taxable year may be entitled to a refund if they could have applied EZ or MIC credits against such liability. Corporate taxpayers who file a timely claim for refund for previously paid corporate AMT will be required to demonstrate the claimed credits were not allowed or allowable against corporate AMT in a taxable year prior to the taxable year for which the claim for refund is made. Similarly, corporate taxpayers who claim or claimed EZ or MIC credits against their "tax" will also be required to demonstrate the claimed credits were not allowed or allowable against corporate AMT in a prior taxable year. If a corporate taxpayer was entitled to apply those same credits in a prior taxable year, the corporate taxpayer is not entitled to claim them in the later taxable year since those credits were "allowable" in such earlier year.

2. Assignments. Corporate taxpayers who wish to assign EZ and MIC credits pursuant to RTC section 23663 will be required to demonstrate the credits to be assigned were neither allowed nor allowable against corporate AMT in a taxable year prior to the taxable year in which the assignment election is made. (See RTC section 23663, sub. (e)(2).) An "eligible assignee" who has been previously assigned EZ and MIC credits pursuant to RTC section 23663 will also be required to demonstrate the EZ and MIC credits were not allowed or allowable to the assigning corporation in a taxable year prior to the taxable year in which the assignment election is made.

3. Schedule P(100). In January 2011, FTB revised California Schedule P(100) for the 2010 taxable year. As revised, the form allows corporate taxpayers to reduce their AMT liability by available EZ and MIC credits. Thus, for any corporate taxpayer filing its 2010 tax return, no modification of the current year form should be necessary to apply EZ and MIC credits against its corporate AMT liability. However, as discussed above, if the credits were allowed or allowable against corporate AMT in a prior taxable year, the corporate taxpayer is not entitled to claim them in the current taxable year.

The principal author of this notice is William F. Gardner of the Franchise Tax Board, Legal Division. For further information regarding this notice, contact Mr. Gardner at P.O. Box 1720, Rancho Cordova, CA 95741-1720.