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DATE: 10.05.12

FTB NOTICE 2012-01

Subject: Filing Protective Claims for Refund to raise the Compact Election Issue currently pending in Gillette v. Franchise Tax Board.

Purpose: This notice will explain how a taxpayer that wants to raise the Compact Election Issue should file protective claims for refund.

Background: Pending litigation, Gillette v. Franchise Tax Board, Calif. First Dist. Ct. App. Dkt. No. A-130803, involves the issue of whether taxpayers may elect to utilize the apportionment formula contained in the Multistate Tax Compact (Revenue and Taxation Code Section 38006) instead of the mandatory double-weighted sales factor methodology contained in Revenue and Taxation Code Section 25128. The trial court dismissed the suit for refund on the grounds that such an election was not available as a matter of law. The Court of Appeal reversed the trial court's judgment of dismissal and held that such an election was available. If the Franchise Tax Board seeks review by the California Supreme Court and the decision of the Court of Appeal is not reversed, upon remand to the trial court, the Franchise Tax Board will raise other defenses to Gillette's claim for refund, including the issue of whether such an election can be made on an amended return. The Franchise Tax Board takes the position that a taxpayer cannot elect to utilize the methodology contained in the Multistate Tax Compact on an amended return and that such an election must have been made on the taxpayer's original return for the taxable period for which the election applies.

Despite the Franchise Tax Board's position that a taxpayer may not elect the Compact apportionment method retroactively, the Franchise Tax Board has received numerous inquiries asking how a taxpayer should file a protective claim for refund purporting to make the Compact Method election. This Notice explains how an interested taxpayer should file such a protective claim for refund. The Franchise Tax Board will treat such a protective claim as a request that Franchise Tax Board take no action on the claim currently, but rather that the claim is filed to avoid the bar of refunds by the statute of limitations. Franchise Tax Board will only take action on the claim once Gillette has been fully resolved.

PROTECTIVE CLAIM PROCEDURE

If a taxpayer wants to file a protective claim purporting to retroactively elect to utilize the apportionment method contained in the Multistate Tax Compact, the taxpayer or its representative should mail an amended return or a letter claim to the following address:

US Mail:

Compact Method 347 MS: F381
Franchise Tax Board
C/O FTB Notice 2012-01
P.O. Box 1673
Sacramento, CA 95812-1673

For Courier Service Delivery or Private Courier Mail:

Compact Method 347 MS: F381
Franchise Tax Board
C/O FTB Notice 2012-01
Sacramento, CA 95827

The amended return should indicate at the top of the return in red "COMPACT METHOD" and should include a revised Schedule R as well as a computation of the refund amount. An amended return of this nature is necessary for each year in which the taxpayer purports to make such a retroactive election.

If a taxpayer wishes to make such a claim through the use of a letter, the letter must set forth the following:

1. The name, the California corporate number, and the federal identification number for the taxpayer and, if applicable, that the taxpayer is acting on behalf of a combined reporting group for which it is the key corporation for the year or years in issue.
2. That this letter is a protective claim raising the Compact Method election issue.
3. The tax year(s) involved.
4. The amount of the claim for each of the years involved.
5. Schedules showing the computation of the amount of the claim for each of the years involved.

The letter must be signed by a representative with a valid POA or signed by the taxpayer itself.

Caution: The procedures listed above are for the Compact Method claims only.

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