



Date: 11.01.16

FTB NOTICE 2016-03

Subject: Processing of Cases Raising the Compact Election Issue After the United States Supreme Court Denied the Petition for a Writ of Certiorari in *The Gillette Company v. Franchise Tax Board*

This notice supersedes FTB Notices 2012-01 and 2016-01, which are hereby withdrawn.

Purpose: This notice is issued to advise taxpayers and their representatives of the intended courses of action of the Franchise Tax Board (FTB) on Multistate Tax Compact election cases. Taxpayers are advised to comply with all applicable laws and procedures to protect their rights and interests, and should not rely on any information in this notice that may result in any activity contrary to statutes or regulations.

Background: On December 31, 2015, the California Supreme Court issued its decision in *The Gillette Company v. Franchise Tax Board* (2015) 62 Cal.4th 468. This case addresses the issue of whether taxpayers may elect to utilize the apportionment formula contained in the Multistate Tax Compact, former Revenue and Taxation Code section 38006, rather than the double-weighted sales factor mandated in the prior version of Revenue and Taxation Code section 25128. The California Supreme Court held that an election was not available as a matter of law. Plaintiffs' petition for a writ of certiorari was denied by the United States Supreme Court on October 11, 2016.

FTB has been holding cases raising the compact election issue pending resolution of the *Gillette* litigation. Now that litigation in this matter has concluded, FTB will take the following actions in cases where taxpayers attempted to make an election based on the Multistate Tax Compact, former Revenue and Taxation Code section 38006.

Action on Cases:

Claims for Refund. The Franchise Tax Board will process claims for refund based on the compact election issue in the normal course of business. Taxpayers may expect to receive formal notices in response to their claims for refund over the next several months.

Administrative Protests, and Administrative Appeals Before The State Board of Equalization. The FTB will place administrative protests that include the compact election issue into active status and resume working those cases in the normal course of business. In addition, the FTB will work with the State Board of Equalization (the "Board") to return administrative appeals involving the compact election issue to active status before the Board.

Audits. The FTB will process audits involving the compact election issue in the normal course of business. Taxpayers should consult with the auditors assigned to such cases to determine the anticipated timeline in each case.

Stopping Accrual of Interest on Deficiency Assessments. To stop the accrual of interest, taxpayers may make tax deposits pursuant to Revenue and Taxation Code section 19041.5, or may pay proposed deficiency assessments.

Penalties. Penalties will be imposed as appropriate on a case-by-case basis.

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