



MARCH 30, 2020

FTB NOTICE – 2020-02

SUBJECT: Time Sensitive Acts Postponed Due to the COVID-19 State of Emergency

PURPOSE:

The purpose of this Notice is to allow an extension of time for taxpayers to claim a refund, to file a protest of a Notice of Proposed Assessment (NPA) with the Franchise Tax Board (FTB) and to file an appeal or a petition for rehearing with the Office of Tax Appeals (OTA). It also allows an extension of time for the FTB to issue an NPA.

BACKGROUND:

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of the threat of the spread of COVID-19. He followed this proclamation with Executive Order N-25-20 on March 12, 2020, where he ordered that FTB use its administrative powers, where appropriate, to provide individuals and businesses affected by complying with state and local public health officials' imposition or recommendation of social distancing measures related to COVID-19 with extensions of time for filing, payment, audits, billing, notices, assessments, and claims for refund as well as relief from subsequent penalties and interest.

As a result of the Governor's declared State of Emergency and Executive Order N-25-20, California Revenue and Taxation Code (RTC) section 18572, which incorporates Internal Revenue Code (IRC) section 7508A, gives FTB the authority to postpone the time sensitive acts outlined in this Notice.

PROCEDURES:

Claims for refund

A taxpayer must file a claim for refund within the applicable statute of limitations found in the RTC in order for the claim to be timely. For example, RTC section 19306 provides that a taxpayer must file a claim for refund within the later of four years from the date the return was filed, if filed during the automatic extension period, four years from the original due date of the return, or one year from the date of the overpayment.

In cases where an applicable statute of limitations to file a timely claim for refund expires during the period of March 12, 2020, through July 15, 2020 ("postponement period"), the FTB will consider the claim timely if filed on or before July 15, 2020. This

extension applies to a taxpayer filing a letter claim for refund or filing an amended tax return claiming an overpayment.

For purposes of claiming a refund within one year of an overpayment, the look-back period will consider payments made within one year of the actual expiration of the statute of limitations; however, if that date expires during the postponement period, the claim for refund will be considered timely if filed on or before July 15, 2020.

Protests of Notices of Proposed Assessment

If the FTB issues an NPA for additional tax, the taxpayer has 60 days to file a written protest against the proposed deficiency assessment pursuant to RTC section 19041. If the taxpayer fails to protest the NPA within the 60-day period, the assessment becomes final.

If the period to file a timely written protest of an NPA expires during the postponement period, the FTB will consider the protest timely if filed on or before July 15, 2020.

Appeals Filed with the Office of Tax Appeals

The RTC provides specific deadlines and appeal rights for a taxpayer to file a timely appeal with OTA when the taxpayer disagrees with FTB's determination. For example, a taxpayer has 30 days to file a timely appeal with OTA from a Notice of Action (NOA) sustaining a proposed assessment of additional tax and 90 days to file a timely appeal with OTA when FTB issues an NOA denying in full or in part the taxpayer's claim for refund. (Reference, RTC sections 19045 and 19324.)

For time periods that expire during the postponement period to file a timely appeal with OTA challenging FTB's determination, the appeal will be considered timely if filed with OTA on or before July 15, 2020.

For an appeal that a taxpayer has already filed with OTA, this Notice does not impact the 60-day briefing extension OTA announced in OTA Legal Notice 2020-01. However, this Notice does impact the time deadlines outlined in Cal. Code of Regs. Tit. 18, Div. 4.1, section 30203(a) (1) – (9), section 30204 and section 30205.

Petitions for Rehearing Filed with the Office of Tax Appeals

RTC section 19048 provides for 30 days from OTA's determination for the taxpayer or FTB to file a timely petition for rehearing with OTA whenever either party disagrees with OTA's determination on appeal. Cal. Code Regs. Tit. 18, Div. 4.1, section 30505 specifies this 30-day period to request reconsideration starts to run from the date OTA issues its written opinion.

For time periods that expire during the postponement period, a petition for rehearing seeking reconsideration of a written opinion issued by OTA will be considered timely if filed on or before July 15, 2020.

This Notice does not impact the 60-day briefing extension OTA announced in OTA Legal Notice 2020-01 for petitions for rehearing that a taxpayer or the FTB has already filed with OTA. However, this Notice does impact the time deadlines outlined in Cal. Code of Regs. Tit. 18, Div. 4.1, section 30602.

FTB Issuing NPAs to taxpayers

The RTC provides specific statutes of limitation for FTB to issue an NPA to a taxpayer assessing additional tax. For example, pursuant to RTC section 19057(a), the statute of limitations for FTB to issue an NPA is four years after the return is filed.

For any statute of limitations to assess additional tax that expires during the postponement period, including for example, any agreed upon time to assess under RTC section 19067, the FTB has until July 15, 2020, to issue a timely NPA.

The principal author of this Notice is Craig 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.