

Note: This handout is intended only for purposes of facilitating discussion at the Interested Parties Meeting scheduled for November 13, 2019.

## FRANCHISE TAX BOARD

### CALIFORNIA CODE OF REGULATIONS TITLE 18, DIVISION 3, CHAPTER 2.6, SUBCHAPTER 4, ARTICLE 7, SECTION 19133, REGARDING PENALTY FOR FAILURE TO FILE UPON RETURN AND DEMAND

#### Section 19133 is amended to read:

(a) In general. Revenue and Taxation Code section 19133 provides that if any taxpayer fails or refuses to file a return upon notice and demand by the Franchise Tax Board (FTB), unless the failure is due to reasonable cause and not willful neglect, the FTB may add a penalty of 25 percent of the amount of tax assessed pursuant to Revenue and Taxation Code section 19087 or of any deficiency tax assessed by the FTB concerning the assessment for which the return was required.

(b) Imposition of Penalty. For individuals subject to tax under Part 10 (Personal Income Tax Law), the notice and demand penalty under Revenue and Taxation Code section 19133 will only be imposed by the FTB if:

(1) the taxpayer fails to timely respond to a current Demand for Tax Return in the manner prescribed, and

(2) the FTB has proposed an assessment of tax under the authority of Revenue and Taxation Code section 19087, subdivision (a), after the taxpayer failed to timely respond to a Request for Tax Return or a Demand for Tax Return in the manner prescribed, ~~at any time during~~ for any taxable year that is within the four-taxable-year period preceding the taxable year for which the current Demand for Tax Return is issued.

(c) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) Demand for Tax Return. A "Demand for Tax Return" means a written notice and demand for a return from the FTB, which advises the taxpayer that failure to respond in the manner provided and within the time prescribed will make the taxpayer liable for a penalty under Revenue and Taxation Code section 19133 for failure to file upon notice and demand.

(2) Request for Tax Return. A "Request for Tax Return" means a written notice and request for a return from the FTB, which does not advise the taxpayer that failure to respond in the manner provided and within the time prescribed and will make the taxpayer liable for a penalty under Revenue and Taxation Code section 19133 for failure to file upon notice and demand.

(3) Timely Response. A "timely response" shall mean a response within the time period specified in the Demand for Tax Return or Request for Tax Return.

(d) Examples. The following examples are intended to illustrate the provisions of this regulation:

Example 1. Assume Taxpayer X has not filed a California personal income tax return for the 1999 taxable year. This is the first time that X has not filed a timely California personal income tax return. As a result of X's non-filing, the FTB mails a Request for Tax Return to X on January 15, 2001. When X does not timely respond to the Request for Tax Return, the FTB issues a Notice of Proposed Assessment (NPA) on March 20, 2001, assessing tax, a late filing penalty, and interest, but the NPA does not include a notice and demand penalty under Revenue and Taxation Code section 19133.

Example 2. Assume the same facts as in Example 1, and X does not file a California personal income tax return for the 2001 taxable year. Because X received an NPA for not filing a return for 1999, within one of the previous four taxable years, the FTB issues a Demand for Tax Return for the 2001 taxable year. If X fails to timely respond to the Demand for Tax Return, the FTB will issue an NPA that includes tax, a late filing penalty, interest, and a notice and demand penalty under Revenue and Taxation Code section 19133.

(e) Applicability Date. The amendments to subsections (b) and (d) of this regulation are applicable for notice and demand penalties imposed on a proposed assessment of tax under the authority of Revenue and Taxation Code section 19087, on or after January 1, 2020.