

**MAP 12  
INTEREST**

- 12.1 INTEREST DEFINED**
- 12.2 INTEREST CHARGED**
- 12.3 INTEREST PAID ON OVERPAYMENT**
- 12.4 INTEREST RATES**
- 12.5 INTEREST CALCULATIONS**
- 12.6 ADDITIONAL TWO PERCENT INTEREST (AKA HOT INTEREST)**
- 12.7 AVON INTEREST ADJUSTMENT**
- 12.8 INTEREST ABATEMENT**
- 12.9 SUSPENSION OF INTEREST - PIT CASES ONLY**

**Rev. 7/17**

NOTE: ((\*\*)) = Indicates confidential and/or proprietary information has been deleted.

<b>12.1 INTEREST DEFINED</b>	Interest is charged on balances due to the Franchise Tax Board and paid on overpayments from the FTB. Interest is not a penalty, but is considered a charge for the use of money.	Rev. 7/17
<b>12.2 INTEREST CHARGED</b>	Taxes are due and payable as of the original due date of the taxpayer's return (without regard to extension). If the tax reported on the taxpayer's return is not paid by the original due date, or if the Franchise Tax Board assesses additional tax, interest must be computed and charged on the balance due, including penalties, if any (R&TC Section 19101). Interest is compounded daily (R&TC Section 19521) and begins accruing from the date payment is due (R&TC Section 19101).	

**MAP 12  
INTEREST**

	<p>Interest is assessed, collected, and paid in the same manner as the tax. Compute interest from the date payment of tax is due (usually coincides with the original due date of the tax return) until the date the deficiency is paid. If the tax is paid in installments, interest accrues on the unpaid portions of the liability until the entire balance due is paid (R&amp;TC Section 19101); also <i>Appeal of Richard E. and Geraldine Goodman, 84-SBE-145, October 10, 1984</i>.</p> <p>R&amp;TC Section 19104(c) provides for the abatement of interest charged on certain erroneous refunds where the taxpayer did <u>not in any way</u> cause the erroneous refund. The interest on the erroneous refund that should be abated is for the period from the date of the refund to 30 days after the repayment demand (letter or Notice of Proposed Assessment).</p> <p>If an erroneous refund is determined under R&amp;TC Sections 19368 and 19104(c) and the refund check is returned, no interest should be charged on the amount erroneously refunded after the date of the refund. See MAP 4.5 Erroneous Refunds.</p> <p>Suspension of interest may apply to some PIT taxpayers for some tax years. See MAP 12.9 Suspension of Interest.</p> <p style="text-align: right;">Rev. 7/17</p>
<b>12.3 INTEREST PAID ON OVERPAYMENTS</b>	<p>Interest is paid on overpayments resulting from an audit. It is compounded daily and computed from the date of overpayment to the date that is no more than 30 days prior to the issue date of the refund, to allow for processing (R&amp;TC Section 19340). In other words, interest will be paid from the date of the overpayment to the date of the refund, except for a period of no more than 30 days to allow for processing.</p> <p style="text-align: right;">Rev. 7/17</p>
<b>12.4 INTEREST RATES</b>	<p>The rate of interest is provided by statute and is adjusted periodically. We cannot charge interest at any other rate than the <b>adjusted annual rate</b>. Interest, at the rate specified by law, is compounded and accrues on the balance due until the date the liability is completely paid. This means that interest accrues not only on the tax and applicable penalties, but also on the interest balance due (R&amp;TC Section 19521; IRC Section 6621).</p>

**MAP 12  
INTEREST**

We compute the interest rate semi-annually. Interest accruing after June 30, 1983 is compounded daily on:

- Unpaid tax and LLC fees
- Interest
- All penalties, except the monthly portion of the late payment of tax penalty
- Unpaid Water's-Edge fees, when applicable

We compute interest on tax from the original return due date to the date the tax is paid. We compute the interest on the underpayment and not the monthly portion of late payment of tax and accuracy-related penalties from the return due date, including extensions. Except for suspended corporations, we compute interest on the delinquent filing penalty from the due date of the tax return. We compute all other penalties from the notice date to the date paid in full.

If the taxpayer pays the entire assessment within 15 days of the original notice, we charge no additional interest subsequent to the date of the notice.

Suspension of interest may apply to some PIT taxpayers for some tax years. For details, see MAP 12.9 Suspension of Interest.

Rev. 7/17

**12.5 INTEREST  
CALCULATIONS**

**ADINT**

You can use the ADINT program (available on the Mainframe system) to compute interest automatically on a debit or credit balance. You can also compute the estimate penalty using ADINT.

**MAP 12  
INTEREST**

If you use the ADINT program to give estimates of interest due, you must notify the taxpayer that it is an estimate only.

**PASS Template**

An interest computation template is available on PASS. It is available in the Schedule, Bottom Drawer, and Audit Support Folders entitled **Manual Computation**.

**Requesting an Interest Computation for Business Entities**

Request an interest computation from Audit Business Support when either one of the following applies:

- An Avon Interest Adjustment is necessary (see MAP 12.7 Avon Interest Adjustment).
- You need an exact figure.

The fastest way to get a corporate interest computation is to request an interest calculation from BES. You should receive the computation within 48 hours.

Rev. 7/17

**12.6 ADDITIONAL  
TWO PERCENT  
INTEREST (AKA HOT  
INTEREST)**

In certain circumstances, an additional two percent interest rate is applicable for large C corporations for taxable years beginning on or after January 1, 1992. This rule applies to tax underpayments of over \$\*\*\*\*\* for a taxable year.

Once the corporation meets the cumulative **threshold amount** of \$\*\*\*\*\* in unpaid tax, all underpayments for that year are subject to the additional two percent interest from the later of January 1, 1992, or the earliest applicable date occurring for that year.

**MAP 12  
INTEREST**

	<p>The <b>threshold amount</b> includes regular tax and alternative minimum tax, but not penalties and interest.</p> <p style="text-align: right;">Rev. 7/17</p>
<p><b>12.7 AVON INTEREST ADJUSTMENT</b></p>	<p><i>Avon Products v. U.S.</i> (42 AFTR 2d. 78-6226) 588 F.2d 342 held generally that interest can only be charged on a deficiency from the time that the deficiency becomes both "due and unpaid". The Avon decision is based on the <b>use of money</b> principle. This principle essentially means that interest on a deficiency should not be charged for the period the government had use of the taxpayer's money for the same tax year without paying interest.</p> <p>When a taxpayer's original return reflects an overpayment that was credited to another year or refunded without interest, and there is a subsequent assessment for the same tax year, interest is not charged on the additional tax (to the extent of the overpayment) from the overpayment effective date to the refund or transfer date, whichever the case may be. Currently, FTB follows Revenue Ruling 99-40, which allows favorable treatment of credit transfers to reduce subsequently assessed deficiency interest. See TAM 99-1030. For more information see the "Computation of Deficiency Interest" outline.</p> <p>The Avon decision applies to timely and delinquent filed returns.</p> <p>An Avon interest calculation is required when the following requirements are met:</p> <ul style="list-style-type: none"><li>• The taxpayer made a prepayment on the return liability, regardless of the amount.</li><li>• The overpayment on the return was refunded or applied to another balance owing without allowing for interest.</li><li>• A deficiency assessment is subsequently issued for the same tax year</li></ul> <p style="text-align: right;">Rev. 7/17</p>

**MAP 12  
INTEREST**

<b>12.8 INTEREST ABATEMENT</b>	<p>Interest is not a penalty imposed on the taxpayer. It is simply compensation for the use of money (<i>Appeal of Audrey C. Jaegle</i>, 76-SBE-070, June 22, 1976). The imposition of interest upon a deficiency is mandatory, and FTB is not allowed to abate interest except where authorized by law. (<i>Appeal of Amy M. Yamachi</i>, 77-SBE-095, June 28, 1977). The timeliness of FTB's examination and issuance of the Notice of Proposed Assessment (NPA) prior to the expiration of the statute of limitations does not constitute an error or delay for purposes of the interest abatement statute. The general statute of limitations (R&amp;TC section 19057), allows FTB four years from the date the tax return was filed to issue the NPA. (<i>Charles A. Nerad v. Commissioner</i>, T.C. Memo. 1999-376.)</p> <p>Under R&amp;TC Section 19104(a), the FTB may abate all or part of the interest for errors or delays in the performance of ministerial or managerial acts by an FTB or IRS employee or officer.</p> <p><b>Error or Delay in the Performance of a Ministerial or Managerial Act (R&amp;TC Section 19104(a) and IRC Section 6404)</b></p> <p>A "<b>ministerial act</b>" is a procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act. (Treas. Reg. §301.6404-2(b)(2).) The examination or auditing of a return and the determination of a deficiency are not ministerial acts. Determining facts and applying the law in the course of the examination of a return is a discretionary act and not a ministerial act. (<i>Appeal of Michael and Sonia Kishner</i>, 99-SBE-007, September 29, 1999)</p> <p>A "<b>managerial act</b>" is an administrative act that occurs during the processing of a taxpayer's case which involves the temporary or permanent loss of records. A managerial act is also the exercise of judgment or discretion relating to management of personnel. A decision concerning the proper application of state (or federal) law is not a managerial act. Also, a general administrative decision such as the decision on how to organize the processing of tax returns or a delay in implementing a new computer system are not managerial acts. (Treas. Reg. §301.6404-2(b)(1).)</p>

## MAP 12 INTEREST

R&TC Section 19104(a)(3) provides that where the **IRS has abated interest** under IRC Section 6404(e) based on an error or delay which occurred on or before the issuance of a final federal determination, the FTB may also abate interest accruing on a related deficiency based on a final federal determination of tax, for the same period of time that the IRS abated interest.

R&TC Section 19104(a) applies only to interest accrued after September 25, 1987. The managerial act provision is applicable to taxable or income years beginning on or after January 1, 1998, for which the FTB may propose an assessment or allow a claim for refund.

### **Restrictions on Interest Abatement**

The error or delay must have occurred after the FTB has contacted the taxpayer in writing about the deficiency or payment. (R&TC Section 19104(b)(1).)

Also, in order for interest to be abated, no significant aspect of the error or delay can be attributed to the taxpayer. (R&TC Section 19104(b)(1).)

### **When claim for interest abatement may be filed**

If the taxpayer has received an NPA, the request to abate unpaid interest must accompany the protest or a subsequent appeal from the FTB's Notice of Action on the protest, or the taxpayer is barred from thereafter filing a request. The only exception is for interest which accrued after the deficiency became final. (R&TC Section 19104(b)(4).)

Requests for abatement of **paid interest** must be filed within the applicable statute of limitations for requesting a refund.

### **Office of Tax Appeals Jurisdiction**

If the FTB denies the taxpayer's request for an abatement of **unpaid interest**, the taxpayer will receive a Notice of Determination Not to Abate Interest explaining rights of appeal to the Office of Tax Appeals (OTA). The taxpayer may also appeal the interest on the Notice of Action (NOA). If the taxpayer intends to file an appeal from the FTB's Notice of Determination or an NOA,

**MAP 12  
INTEREST**

	<p>the appeal must be filed within 30 days of the date of mailing of the Notice of Determination or NOA (R&amp;TC Section 19104(b)(2)(A)(i) &amp; (b)(4)).</p> <p>If the FTB denies the taxpayer's request for an abatement of <b>paid interest</b>, the taxpayer will receive notice of the FTB's action/determination explaining rights of appeal to the OTA. If the taxpayer intends to file an appeal from the FTB's notice of action denying interest abatement, the appeal must be filed within 90 days of the date of mailing of the notice of action/determination. (R&amp;TC Section 19104(b)(2)(A)(ii).)</p> <p>If the FTB fails to mail a Notice of Determination to the taxpayer within six months of the filing of the taxpayer's request for abatement of interest, the taxpayer may consider the request to be denied (i.e., <b>deemed denial</b>) and file an appeal with the OTA. This provision does not apply to interest abatement requests which are made with protests of NPA's. (R&amp;TC Section 19104(b)(3).)</p> <p>The taxpayer may make a request to abate interest on a final liability of tax, penalty or interest on Form FTB 3701, <b>Request for Abatement of Interest</b>. However, the taxpayer may not make a request for abatement of interest for the period prior to the date a deficiency becomes final if the taxpayer previously filed an appeal of the underlying deficiency assessment.</p> <p>For additional information and definitions, see <a href="https://www.ftb.ca.gov/forms/misc/58471.html">https://www.ftb.ca.gov/forms/misc/58471.html</a></p> <p style="text-align: right;">Rev. 11/17</p>
<b>12.9 SUSPENSION OF INTEREST - PIT CASES ONLY</b>	If we fail to issue a Notice of Proposed Assessment within a notification period, we must suspend (not charge) interest on the assessment from the end of the notification period to 15 days after the notice date. This suspension applies <b>only</b> to PIT taxpayers' returns that were filed on time (including extensions) (See R&TC Section 19116).



**MAP 12  
INTEREST**

**Notification Period**

For notices issued after January 1, 2011, the notification period for NPAs not based on federal action is 36 months, beginning on the later of the date the timely return is filed or the due date of the return without regard to extensions.

**Prior Law:** for notices issued on or before January 1, 2011, the notification period for NPAs not based on federal action was 18 months.

**Interest Suspension**

We suspend interest only for returns filed on time (including extensions). We charge interest for the first 36 months from the later of the following:

- The return's original due date (normally April 15 of the next year) for returns filed before the original due date.
- The date the original return was filed (no later than October 15, in order to be considered timely).

We suspend interest beginning the day after the 36-month notification period **until 15 days after we issue a Notice of Proposed Assessment.**

Example Tax Year	2010	2010	2010
<b>Tax Return File Date</b>	<b>4/15/2011</b>	<b>8/15/2011</b>	<b>12/15/2011</b>
Interest Suspended AFTER	36 Months	36 Months	N/A
NPA Issued	8/15/2014	6/15/2015	8/15/2014
Interest Computation (Notification Period)	4/15/2011 to 4/15/2014	8/15/2011 to 8/15/2014	4/15/2011 until payment is received
Interest Suspension Period	4/16/2014 to 8/30/2014	8/16/2014 to 6/30/2015	No Interest Suspension

Interest accrues on balances due from the original due date of the return, even if the return is filed under extension.

## MAP 12 INTEREST

The correct amount of interest is calculated automatically on the Notices of Proposed Assessment. However, you must manually compute the interest for a position letter or AIPS.

### **Revenue Agent Reports (RARs)**

We may also suspend interest for assessments based on Revenue Agent Reports. The suspension period for Notices of Proposed Assessment based on federal changes depends on **when** the taxpayer or IRS notifies us of the change.

If we were notified of the IRS change **up to six months after** the final federal determination date, then we suspend interest starting **one year** after the date we were notified.

If we were notified of the IRS change **more than six months** after the final federal determination date, then we suspend interest starting **two years** after the date we were notified.

Once we issue our Notice of Proposed Assessment beyond the 36-month notification period, interest is not charged from the end of the notification period to 15 days after the date of the NPA. Whether the taxpayer protests the assessment does not affect interest suspension.

### **Using ADINT**

You can use ADINT to calculate interest. Be careful to use the correct beginning and ending dates. ADINT does not use enough information to make the determination if suspension of interest applies.

### **Amended Returns**

**MAP 12  
INTEREST**

Interest is suspended on self-assessed amounts on amended returns according to R&TC Section 19116 and FTB Notice 2005-4. However, for amended returns filed on or after January 1, 2011, the notification period begins on the day the amended return is filed. (See R&TC Section 19116(b)(3) and R&TC Section 19116(i)(2).)

**Tax Shelters**

Special rules apply to determine if we suspend interest when a tax shelter is involved. Please see R&TC Section 19116(d) and R&TC Section 19116(f) regarding this. Note that R&TC Section 19116(d)(8), which prohibits interest suspension in the case of an abusive tax avoidance transaction as defined by R&TC Section 19777 (as in effect beginning on March 24, 2011), is effective for notices issued, or amended returns filed, on or after January 1, 2012. (See R&TC Section 19116(i)(3).)

Rev. 7/17