Fundamentals of Fraud Prevention and Detection

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Thursday, May 12 9:00 a.m. to 12:30 p.m. Pacific Time

- Potential red flags indicating that material fraud may exist
- The typical profile of someone that commits fraud, embezzlement, or misappropriates assets
- The fraud triangle: pressure, opportunity, and rationalization
- O Why individuals commit fraud
- The most common types of fraud, and when fraud is most likely to occur
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MyFTB account March update

The FTB has made some improvements and given more guidance for practitioners using the system.

By Lynn Freer, EA Publisher

The new MyFTB has been up and running for two months, and we continue to hear from practitioners with questions or concerns about the system. The FTB has been helping us answer those questions and has even made some changes to make things easier for practitioners using the new accounts.

Recent changes

Last month, we provided instructions on how to add a client to your Client List page (your default homepage on MyFTB). The FTB recently made an enhancement to make this process easier. Now, when you access your account, the following buttons appear at the top of the Client List page:

- Add Individual Client
- Add Business Client
- File a Power of Attorney

Click on one of these tabs to add your client or file a POA. To view a screenshot, go to:

www.caltax.com/spidellweb/public/editorial/cat/0316myftb.jpg

Registration notification

When you add a client to your Client List, you must acknowledge that you have your client's permission to view their account. Once added, your client will receive a letter from the FTB indicating that you have added them as a client on MyFTB.

We suggest that you alert your clients by mail or e-mail, as well as by phone or in person, that you are adding them to your Client List so you can view their information. Alert them that the FTB will be sending them a letter so that they are not worried about identity theft when it arrives.

No firm access

An individual (taxpayer, business representative, and POA) can register as a preparer to view clients in the MyFTB account. A firm or an office does not register; rather, each individual preparer registers. So, if there are three partners in an office and each needs access to a client's account, each partner must register as a tax preparer for the taxpayer and add the client to their Client List. Just like a Power of Attorney, these relationships are granted to people, not entities.

Once a preparer has access to an account, only the taxpayer or the tax preparer can revoke the access via MyFTB. This means that if a member of a firm leaves, another preparer at the firm may not remove the access.

The taxpayer can access the Authorized Representatives page, find the tax preparer, and then access the relationship detail page (which is based on the type of relationship, such as business representative, POA, or tax preparer) to revoke it.

EXAMPLE 3-1: Jeff is a partner in ABC CPAs, LLP. Jeff leaves the firm and under the terms of his departure, he may not contact the clients. Jeff has tax preparer access to 20 client accounts in MyFTB. Jeff's former partners may not remove access to these clients on his MyFTB. ABC must contact the clients, and they must remove Jeff from their accounts.

E-mail alerts

The FTB will send you an automatic e-mail when any of the following occurs:

- You log in to your own personal MyFTB account;
- You log in to your tax preparer account; or
- You are a POA with a valid e-mail address on the declaration, and a notification has become available in your client's account.

If you register as an individual taxpayer, you will also receive an e-mail when a new notice is available on your personal MyFTB account and your contact preference is e-mail/paper.

The login e-mails are designed to prevent identity theft by notifying you each time someone logs in to the system as you. You cannot opt out of receiving these e-mails.

POA notices

If you have a POA on file, you will receive an e-mail notification when one of your clients has a notice available in their MyFTB account. With very few exceptions, POA representatives will no longer receive a copy of a notice by U.S. mail.

This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional advice and assumes no liability whatsoever in connection with its use. Since tax laws are constantly changing and are subject to differing interpretations, we urge you to do additional research before acting on the information contained in this publication.

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Practitioner pointer

The e-mail address used for the POA representative is the e-mail address provided on each separate POA declaration, not the e-mail in the tax preparer's profile. We suggest you confirm the e-mail address on each active POA declaration.

If you have an active POA declaration on file, you will have the ability to view notices and correspondence on MyFTB for the taxpayer (specific to the tax years specified on the POA). Correspondence and notices are only visible if sent or received after January 1, 2016.

A POA can also view all e-filed return images. However, a request must be submitted for paper-filed returns to be made visible on MyFTB.

Contact preference

With the enhanced MyFTB, taxpayers can elect to receive electronic notification (e-mail and/or text) in addition to a mailed notice when a notice is available for viewing in their MyFTB account.

You can select your notification preference in MyFTB to e-mail alerts or hard copy notices. Text is an option in addition to either e-mail or hard copy (text cannot be the only option).

The FTB is moving toward sending the majority of notices based on the preference selected on MyFTB, but that will happen over time. **Note:** There are a handful of notices that the FTB must send in hard copy, regardless of the notification preference, for legal reasons.

For taxpayers who request electronic notification preference, an e-mail is sent when a new notice is available on their individual MyFTB.



Will the FTB disallow HOH status for student dependents?

The form and instructions are misleading.

By Lynn Freer, EA Publisher

The FTB requires taxpayers filing as head of household to attach to the return Form 3532, Head of Household Filing Status Schedule. Part III, line 4 asks for the gross income of the qualifier. However, there is no place to indicate that the qualifying child is a full-time student or disabled. So, if the amount included on this line is greater than \$4,000, practitioners are concerned the FTB could disallow the filing status.

California fully conforms to the federal filing status provisions for head of household taxpayers, so a child who is a full-time student under age 24 is a qualifying child and is not subject to the gross income requirements. Unfortunately, the instructions for Form 3532 are completely inadequate, and they do not address this fact.

According to the FTB, they will not automatically disallow the filing status during processing. They have told us they can tell if the child qualifies because the child's date of birth is included on the form. Thus, it appears the FTB will allow the filing status if the child is under age 24.

However, if the child is disabled, there is no place to include that information. Although the FTB has said they won't automatically disallow the filing status during processing, if certain criteria are met, a follow-up audit could occur.

Comment

In past years, we have heard of the FTB incorrectly disallowing the filing status for disabled children who don't meet the age requirement.

Form instructions

The form instructions include a reference to IRS Publication 17. But it would have been better if the FTB had provided complete information on who qualifies as head of household, including a copy of the chart and instructions from Pub. 17.

We have requested that the FTB revise the instructions to include this issue as soon as possible this year. We have also requested a change to the form next year to accommodate this situation.

See Spidell Publishing Inc.'s® Head of Household flowchart on page 14.



IRC §2(b); R&TC §17042

Business personal property tax statements are due soon

Understand the filing requirements to avoid penalties and overassessments.

By Kathryn Zdan, EA Contributing Editor

Unlike real property, business personal property is reappraised annually. Business owners with taxable personal property having an aggregate cost of at least \$100,000 must file a business property statement with the county assessor, detailing costs of all supplies, equipment, and fixtures at each business location.

Most counties have mailed their business personal property tax statements to business owners, and while the due dates for returning the completed statements vary by county, the deadline to avoid penalties is May 9, 2016. Most counties use Form BOE-571-L, Business Property Statement.

Find your local assessor

For your county assessor's contact information, go to:

www.boe.ca.gov/proptaxes/assessors.htm

Penalties

If a business is required to file the statement and fails to do so, the county assessor will estimate a value and add a penalty of 10% of the estimated assessed value of the unreported property. As a result, failure to return Form BOE-571-L can result in an overassessment.

The tax rate is usually a little more than 1% of the assessed value. However, the tax bill might also include special assessments voted into effect within the property's taxing jurisdiction. Generally, using a rate of 1.2% will give a conservative estimate.

For example, if the assessed value is \$12,000, the property taxes on the business asset will be about \$144 ($$12,000 \times 1.2\%$).

Penalty abatement

Effective January 1, 2016, AB 571 (Ch. 15-501) changed the reasonable cause exception to the penalty for failure to file business personal property tax statements, and failure to report a change in ownership to the BOE.²

Penalty abatement will now be granted if the failure to file the property statement or change in ownership statement was "due to reasonable cause and circumstances beyond the assessee's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect."

Previously the exception simply stated, "due to reasonable cause and not due to willful neglect."

Electronic filing

Many counties provide online filing for most businesses. In most of these counties, once a taxpayer chooses the e-file option, the taxpayer will no longer receive a paper copy of Form BOE-571-L unless one is specifically requested.

For a list of the counties participating in the e-file program, go to:

www.calbpsfile.org

Which assets are subject?

Every business that owns taxable personal property (other than a manufactured home) having an aggregate cost of \$100,000 or more for any assessment year must file a property statement with the county assessor.

Businesses with property below the threshold value are required to file only if the county assessor mails the business a property statement to complete. Alternatively, the assessor may use direct billing.³ Direct billing may be used for smaller, established businesses whose aggregate property cost is under \$100,000 and the value of which changes very little from year to year. These businesses may only be required to file statements every three or four years.⁴

All machinery, office furniture, computers, equipment, and supplies are subject to tax. Business inventories, licensed vehicles, and intangible assets are exempt from assessment.⁵

Assessment begins with the cost of the asset, including sales tax, freight, and installation, but not including any trade-in value. The assessor applies an index factor to the asset's cost and then applies a depreciation factor to the result, and this becomes the assessed value. The assessor's depreciation schedule is different from the franchise or income tax depreciation schedule, as it is based on expected economic life.⁶

Payment dates

Property tax statements are due May 9. After the statements are filed, the counties will assess the businesses, and property tax bills will be issued. For taxpayers who do not own the real property where the business is conducted, the business personal property tax bill should arrive about the middle of July. Payment is due by the end of August.

For taxpayers who do own the real property, the assessed value of the business assets will be added to the value of the real property, and the tax will be paid in the December and April tax payments.

Audits

Remember that property listed on Form BOE-571-L should also be listed on the depreciation schedules on the tax return. At least once every four years, county assessors are required to audit the books and records of any trade or business whose business personal property and trade fixtures have a FMV of \$400,000 or more.⁷

Property tax and the repair regulations

Because the IRC §263(a) repair regulations were never adopted for California property tax purposes, businesses preparing a California Business Property Statement may be required to keep separate sets of fixed asset records. For more information on this, see "IRC §263(a) repair regulations and California property taxes" in the November 2015 issue of Spidell's California Taxletter®.



- R&TC §§441, 463, 501
- ² R&TC §§463(d), 483
- 3 R&TC §441
- BOE Assessor's Handbook, Section 504, available at: www.boe.ca.gov/proptaxes/pdf/ah504.pdf
- ⁵ R&TC §§212, 219, 224
- BOE Assessor's Handbook, Section 504
- ⁷ R&TC §469

FTB continues to conduct nonfiler audits

The FTB obtains information from a variety of outside sources to determine whether a taxpayer has a filing requirement.

By Kathryn Zdan, EA Contributing Editor

In an effort to close the tax gap, the FTB has several programs to bring in taxpayers who have not filed a tax return. The FTB partners with other state and federal agencies to gain information that may indicate that a nonfiling taxpayer does have a filing requirement.

Note: The luxury vehicle program, in which the FTB used luxury vehicle registration information from the DMV to find taxpayers who may have a filing requirement, was a pilot program that concluded in June 2014.

Mortgage interest nonfilers

The FTB looks at mortgage interest paid to determine if a nonfiling taxpayer has enough income to trigger a filing requirement.

Based on the amount of mortgage interest paid to the financial institution, the FTB will estimate income. Generally, the FTB uses the amount of interest paid multiplied by six in order to estimate taxable income.

City Business Tax Program expanded

The FTB's City Business Tax Program helps the FTB identify self-employed individuals who are not filing required individual and business entity income tax returns, while cities identify businesses that may have a local business tax filing requirement. Beginning in 2016, the FTB may enter into an information sharing agreement with counties.²

Participating cities and counties send the FTB their data, which the FTB matches with their records, and sends notices to taxpayers with business licenses who didn't report business income to the FTB. In return, the FTB sends their tax data to the cities and counties, and taxpayers who reported business income but have no city business license can expect to hear from their city or county.

For more information and a list of participating cities, see "FTB's tax-sharing information program expanded" in the October 2015 issue of Spidell's California Taxletter®.

Professional (occupational) licenses

The FTB uses occupational license information sources to identify nonfilers. If the individual has a California address and a license, such as a contractor's license, real estate license, cosmetology license, etc., and does not file a return, the FTB sends a nonfiler notice.

If the individual fails to respond by filing a return, or fails to provide an explanation of why a return is not required, the FTB will assess tax based on an "average" amount of gross income earned by someone with that license.

Professional license suspension

The Delinquent Taxpayer Accountability Act³ significantly increased collection enforcement authority for the BOE and the FTB. Among other things, the Act requires California licensing agencies to suspend occupational, professional, and drivers' licenses of the taxpayers or business entities appearing on the Top 500 Tax Delinquencies list, which is published quarterly by the BOE and semi-annually by the FTB.

Upon list publication, the FTB will provide the list, with identifying information, to state licensing agencies, including:

- Alcoholic Beverage Control;
- California State Bar;
- California Highway Patrol;
- Department of Business Oversight;
- Commission on Teacher Credentialing;
- Department of Consumer Affairs (including the Medical Board, Dental Board, Board of Accountancy, etc.);
- Department of General Services Office of the State Architect;
- Department of Motor Vehicles;
- Bureau of Real Estate;
- Department of Insurance;
- Office of Real Estate Appraisers;
- Horse Racing Board;
- Housing and Community Development; and
- Toxic Substances Control.

The licensing agencies will mail letters to taxpayers on the list explaining that their licenses will be suspended in 90 days if they do not come into compliance with the FTB.

Including letters from the FTB and licensing boards, the taxpayer will be sent a minimum of seven notices before license suspension. The notices relating to the "Top 500" will contain a dedicated phone number for the taxpayer to call to resolve the FTB debt.

Note: In 2015, a California court of appeal ruled that the automatic license suspension procedure applied to taxpayers included on the FTB's and BOE's Top 500 delinquent lists was unconstitutional because it failed to provide a meaningful opportunity to contest the license suspension. See "Taxpayers have right to hearing before licenses are suspended" in the March 2015 issue of *Spidell's California Taxletter*®.

Integrated Nonfiler Compliance (INC) System

The INC system uses various income sources to identify wage earners, self-employed individuals, individuals with unreported capital gains, nonresidents with California-source income, individuals who have partnership income, and any other individuals with unreported income.⁴

More than 500 million income records are provided to the FTB by the IRS, EDD, BOE, financial institutions, and other sources. The income information is loaded into the INC system and compared with the FTB's accounting systems to determine whether a tax return has been filed.

In cases with no record of a tax return on file, taxpayers are sent a letter requesting a tax return, proof that a return was filed, or an explanation of why a return is not required.

With the implementation of MyFTB, individuals may now contact the FTB via Secure Chat or Send Secure Message, as well as through existing avenues such as phone, e-mail, and correspondence.

If no response is received, either by the filing of a return or contacting the FTB, the INC system continues by issuing a Notice of Proposed Assessment.

Business entity nonfilers

The FTB receives information from the IRS, EDD, BOE, financial institutions, cities, and other businesses, and matches this information against its tax records to identify potential nonfiler corporations, LLCs, LLPs, and LPs.⁵

Businesses contacted by the FTB will have 30 days to file a tax return or show why there is no filing requirement. Taxpayers who neither file tax returns nor demonstrate that they are not required to file will receive a tax assessment based on income and other information that was reported to the FTB.

Businesses who receive such a notice from the FTB can request more time to respond, gain more information, and request tax forms through the FTB's website, or by calling:

(866) 204-7902

Other sources

The FTB also sends filing enforcement notices to individuals who:

- File a federal return with a California address; or
- Have income reported on W-2s, 1099s, and K-1s if reported as California-source income or with a California address.

0

- R&TC §19551.1
- ² AB 279 (Ch. 15-180); R&TC §§19551.1, 19551.5
- ³ AB 1424 (Ch. 11-455); R&TC §19195
- www.ftb.ca.gov/aboutftb/reports/Supp Audit Compliance/2014-15.pdf
- 5 ld.

More information on California's new EITC

Income not subject to withholding does not qualify for the credit.

By Renée Rodda, J.D. Editor

Practitioners have begun filing returns claiming California's new refundable Earned Income Tax Credit (EITC). The preparation of those returns has raised some questions about whether household employees qualify for the credit. This article addresses those questions and provides some additional information from the FTB.

Household employees

California generally follows the federal definition of earned income but only includes wages, salaries, tips, and other employee compensation included in gross income if such amounts are subject to California withholding. California, unlike federal law, does not include self-employment income in earned income for purposes of the EITC.

There is no provision within R&TC §17052 that specifically addresses the treatment of payments made to household employees for purposes of the California EITC. However, UIC §13009 provides that wages, for purposes of personal income tax withholding, does not include remuneration paid for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

The FTB has confirmed that because remuneration paid for domestic services is not considered wages for purposes of personal income tax withholding and therefore is not subject to personal income tax withholding, payments made for domestic services are generally not considered earned income for purposes of the California EITC.

Exception

The FTB did state that if the household employer and employee have effectively entered into a voluntary agreement to subject the household employee's remuneration to personal income tax withholding as described in 22 Cal. Code Regs. §4329-1, then the remuneration would be treated as wages subject to personal income tax withholding and would be considered earned income for purposes of the California EITC.

So, it appears that household employees' earnings will not be considered earned income for purposes of the EITC, unless they enter into a written agreement consenting to withholding on those earnings.

IHSS payments

The FTB recently released revised instructions to Form FTB 3514, California Earned Income Tax Credit, which state that for purposes of the EITC, taxpayers must exclude any Medicaid waiver payments, In Home Supportive Services (IHSS) payments, or IHSS supplementary payments that are included on the wages line of the taxpayer's Form 540.

Note: For federal EITC purposes, household employee's earnings are earned income whether or not there is a withholding agreement.

Complete the checklist

Form FTB 3596, Paid Preparer's California Earned Income Tax Credit Checklist, must be submitted for all paper and electronic tax returns and all other California EITC claims. Failure to do so will result in a denial of the credit.

California also conforms to the federal \$500 penalty imposed against paid tax preparers who fail to comply with the due diligence requirements for determining a taxpayer's eligibility for the EITC.²

FTB may request additional information

The FTB will be reviewing EITC returns for improper payments during processing. As a result, taxpayers may receive a letter requesting documentation. The letter is notice FTB 4502, Additional Documentation Required – Refund Pending.

The FTB may request copies of any or all of the following:

- Social Security cards;
- Birth certificate(s);
- School/doctor records;
- Proof of disability or student status;
- Paycheck stubs; and/or
- W-2s.

To confirm it is a legitimate request, please compare the address and fax number on the notice. The address and fax should be:

Franchise Tax Board MS 151 P.O. Box 1468 Sacramento CA 95812-1462

(916) 845-9351

Must have SSN

In order to claim the federal EITC, taxpayers are now required to have a valid Social Security number on or before the due date for filing the return for the tax year.³ The same rule applies for the taxpayer's spouse or qualifying child.

Prior to the PATH Act, taxpayers could claim the federal EITC for the taxable year at any time within the statute of limitations. This allowed taxpayers to amend returns and retroactively claim the EITC once the Social Security numbers were issued.

The FTB will also follow the new PATH Act guidance.

For more information on California's EITC, see "Forms and Instructions for claiming California's EITC" in the November 2015 issue of Spidell's California Taxletter[®].

Federal/state EITC differences

Key differences between the federal and state credits include:

- The state credit is determined by multiplying a modified federal credit amount by an "adjustment factor," which is set at "0" but may be increased by the Legislature in the Budget Act each year.⁴ For 2015, the adjustment factor is equal to 85%;
- To remain in effect, the Budget Act must also authorize resources for the FTB to oversee and audit returns on which the credit is claimed;⁵
- "Earned income" for purposes of the state credit does not include self-employment income; and
- The credit is only available to individuals who have a qualifying principal place of abode in California.

Because California does not include self-employment income in the definition of "earned income," those self-employed individuals who qualify for the federal credit will qualify for the state credit only if they have wage income and meet other qualifications as well.

Like the federal credit, the state EITC is a percentage of the taxpayer's earned income, and the credit phases out as income increases above the earned income amount.

However, unlike the federal credit:

- The state credit will begin to phase out immediately once the state earned income amount is reached;
- The state phaseout percentage is equal to the credit percentage; and
- There is no increase in the phaseout amounts for joint filers (so married taxpayers will receive the same amount of credit as single filers or HOHs; MFS filers are ineligible for the credit).



- R&TC §17052
- 2 R&TC §19167(f)
- Protecting Americans from Tax Hikes Act of 2015 §204
- 4 R&TC §17052(a)(2)(B)
- R&TC §17052(a)(2)(C)

FTB and EDD establish working group to address W-2 mismatches

Currently there is no way to fix a mismatch of FTB and EDD W-2 information.

By Sandy Weiner, J.D. California Editor

Once again this year, we're hearing complaints on our Message Board from preparers who've been told by the FTB that the wage information they have does not match what is on the W-2 submitted by the taxpayer. This issue arises for both small and large employers and even with W-2s issued by payroll services. Unfortunately, the FTB tells taxpayers and their preparers to contact the EDD to see why the figures don't match, while the EDD tells them to contact the FTB.

In response to a request from Spidell, the FTB and EDD have established a working group to resolve this issue. We will keep you posted as we learn more, but below is the information the EDD has provided us as to the current "best practices" to resolve these issues.

Where to start

The employee should first contact their employer to see if the employer can help resolve this issue. If the employer identifies any errors, the employer should file EDD Form 9ADJ, Quarterly Contribution and Wage Adjustment Form, to address them.

If the employer is unable, unwilling, or unavailable to help, there is currently no specific person or unit in the EDD for a taxpayer to contact. At this time, the only procedure available is for the individual employee to request a list of their California employers and total subject wages. Information is available for the last seven years.

To do this, fax a letter with the taxpayer's name, address, telephone number, Social Security number, signature, and the years for which they want information to:

(916) 255-6453 Attention: Base Wages A request may also be mailed to the following address:

Employment Development Department Document Management Group, MIC 23B P.O. Box 826880 Sacramento, CA 94280-0001

If a tax practitioner seeks information on behalf of a client, a written authorization/consent form must be provided. EDD Form DE 48, Power of Attorney (POA) Declaration, can be used for this purpose.

The request must be signed and dated, and must specify to whom the consent is provided, the time periods requested, and the specific information to be disclosed. The authorization must be provided to the EDD within 30 days of the date it is signed or within the time limit specified in the authorization/consent form.

But note that information on the employer's account is confidential and will not be shared with unauthorized individuals.

Use MyFTB

We suggest you add the client to your MyFTB account. You will be able to see the client's W-2 information. If you file a POA with the FTB, you will be able to use the online chat and secure message functions to resolve the problem.

Discrepancies between amount withheld and amount reported to the FTB

According to the EDD, if there is a discrepancy between the withholding amount claimed on the W-2 and the amount reported to the FTB by the EDD, taxpayers can contact the FTB at:

(800) 852-5711

Taxpayers should use this number unless a different number is listed on a letter from the FTB regarding their withholding.

Comment

If you are calling on behalf of your client, we suggest you instead use the Practitioner Hotline rather than the general toll free number listed above. The hotline number is:

(916) 845-7057

If the taxpayer is unable to provide pay stubs or the employer is not available, FTB staff will review the account on a case-by-case basis to determine whether to allow the withholding. The documents needed to help validate the claim may differ depending on other information available to the FTB.

Common discrepancy scenarios

The EDD has identified the following as the most common scenarios in which discrepancies between the amount withheld and the amount reported to the FTB may arise:

 The employer issues Forms W-2 on an accrual basis instead of on a cash basis (accounting method). This may occur when the employer's accounting system is automatically formatted to the accrual method;

- The employer did not include the employee's last paycheck or first paycheck on the Form W-2 because an incorrect beginning/ending date was used;
- The employee worked in California and also had earnings in another state and did not receive a Form W-2 with their earnings from California;
- The employer was audited, and the reclassified wages for the tax year were not included on the Form W-2; and
- The employer reported an employee benefit provided or paid as taxable, and the
 employee disagrees. Certain employee benefits such as cafeteria plans and fringe
 benefits may be excluded from wages in full, partially, or only to the extent that certain
 conditions are met.

We will let you know of any changes or new procedures that come out of the FTB/EDD working group.



Taxability of Porter Ranch disaster relief payments clarified

Who makes the payments determines whether the disaster relief is excludable.

By Sandy Weiner, J.D.

California Editor

In the February 2016 issue of *Spidell's California Taxletter*®, we erroneously stated that disaster relief payments from the state were not excludable from income. The following is a correction and clarification.

Payments received from state and local governmental agencies are excludable under IRC §139(b)(4) and (c)(4). If only the Governor and the local governments declare a state of emergency, payments received from private entities such as Southern California Gas Company or other nonprofits are not excludable unless the President also declares the area a disaster area.

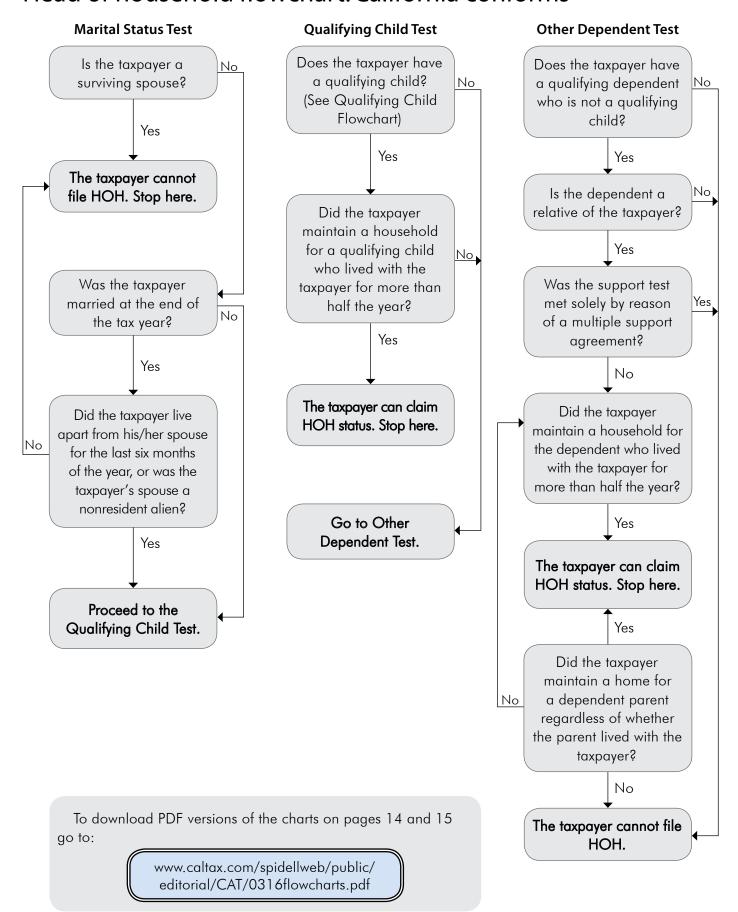
Because the Governor has declared a state of emergency for the Porter Ranch area as a result of the gas leak, disaster relief payments paid by the state to Porter Ranch gas leak victims are excludable from both federal and California taxable income. However, because the President has *not* declared the area to be a disaster area, any payments made by Southern California Gas Company are included in taxable income for both federal and state purposes.

Note: Also in last month's newsletter, we incorrectly referred to the location of the gas leak as Porter Valley. The gas leak is actually located near the Los Angeles neighborhood of Porter Ranch.

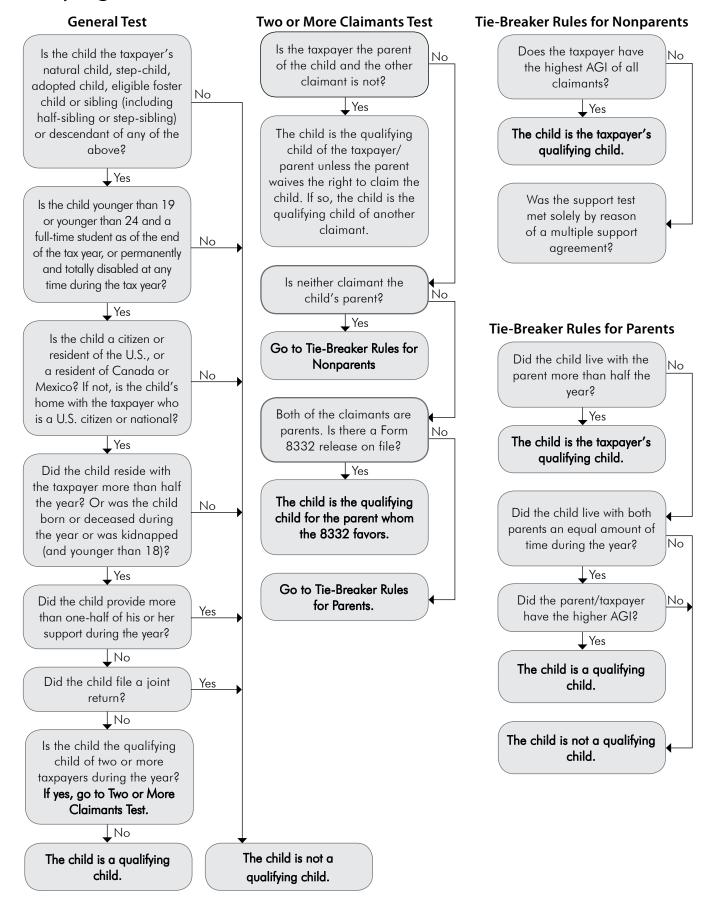


 $^{\mbox{\tiny 1}}$ IRC §139(b)(4) and (c)(4); R&TC §§17131, 24329

Head of household flowchart: California conforms



Qualifying child flowchart: California conforms



Settlement in real estate sales associate worker classification case

Will the IRS or the EDD follow up?

By Sandy Weiner, J.D. California Editor

It has been reported that Coldwell Banker has agreed to pay \$4.5 million (\$1.5 million of which was paid to the attorneys) to settle a class action lawsuit involving 5,600 real estate sales associates who claimed they were misclassified as independent contractors rather than employees.¹

The sales associates claimed that because they were employees and not independent contractors, Coldwell Banker was required to reimburse them for business expenses (e.g., licensing fees, motor vehicle expenses, cellphone expenses, etc.),² pay penalties and damages for failing to keep accurate itemized wage statements,³ and pay other damages allowed under the Business and Professions Code.⁴

Comment

Neither Bararsani's attorneys nor Coldwell Banker would confirm or deny the amounts, which have been reported on numerous websites. However, assuming the numbers are correct, each individual will receive approximately \$800, with the law firm taking 1/3 of the spoils.

The associates claimed that they were employees because Coldwell Banker controlled their activities, including:

- Prohibiting them from working for other brokerages or companies;
- Mandating how commissions would be paid;
- Specifying where the associates would work;
- Requiring associates to attend company trainings, obtain and maintain auto and liability insurance, pay for legal assistance fees, and sign and adhere to anti-sexual harassment policies; and
- Imposing conditions and requirements on computer hardware and software use.

Comment

This lawsuit primarily sought reimbursement of employee business expenses. It will be interesting to see if the IRS or the EDD pursues employee versus independent contractor audits.



- Bararsani v. Coldwell Banker Residential Brokerage Company, Los Angeles County Superior Court, Case No. BC495767, order approving class action settlement and entry of order and judgment, January 14, 2016
- Labor Code §2802
- ³ Labor Code §226
- ⁴ B&PC §17200, et seq.

THUMB TAX

Corporation extensions of time: File voucher if you owe — California grants corporate taxpayers an automatic extension to file tax returns without a formal request for extension.¹ However, to avoid late payment penalties, a corporate taxpayer who owes tax must send payment, along with a payment voucher, by the original due date of the return. A calendar-year corporation that does not file a 2015 return on or before March 15, 2016, should send payment with Form FTB 3539, Payment for Automatic Extension for Corporations and Exempt Organizations.

The FTB grants an automatic extension even if the taxpayer does not pay the balance by the due date of the return. The FTB will not assess a late-filing penalty, even if there is a balance due, provided the taxpayer files the tax return on or before the extended due date of the return. The FTB will assess late-payment penalties and interest on the balance due.

For extensions, California law is different from federal law in two ways:

- The California late-payment penalty is 5% plus 0.5% per month for each month after the original due date, while the federal penalty is 0.5% per month; and
- California grants a seven-month extension rather than the IRS six-month extension.
 Thus, the extended due date for a California calendar-year corporate return is
 October 17, 2016.
- R&TC §18604

1099s for turf removal rebates — The Metropolitan Water District (MWD) of Southern California is mailing 1099s for turf removal rebates. This means that most people who got a turf rebate will receive a 1099, as the average rebate was around \$3,000. MWD said it believes that it is obligated to send the 1099s and that it is leaving it up to taxpayers how and if to report it. Despite what they say, the rebates are taxable for federal purposes but not for California purposes. There are federal exclusions that exist for energy rebates, but we are unaware of any federal exclusions for other types of rebates, such as turf removal.

- Goldstein, T. (January 21, 2016) "Turf rebate recipients will have to decide how to report funds on federal taxes" Los Angeles
 Times. Available at: www.latimes.com/local/lanow/la-me-ln-turf-rebate-taxes-20160121-story.html
- ³ R&TC §§17138.2, 24308.2

Requests to skip installment payment on MyFTB; 1099-Gs to be loaded soon — Eligible individual taxpayers may now submit a request to skip an installment agreement payment using the MyFTB website. To do so, taxpayers must log in to MyFTB and then select "Skip Installment Agreement Payment" from the Services drop down menu.

The FTB has also stated that the Forms 1099-G will be loaded on MyFTB within the next three weeks. The paper 1099-Gs have already been sent out.

<u>BOE offers relief for business owners affected by gas leak</u> — Emergency tax relief is available from the BOE for business owners and feepayers directly affected by the gas leak in Aliso Canyon. Tax relief may include:

- Extended filing return dates;
- Relief of penalties and interest; or
- Replacement of copies of records lost due to the severe winter storms.

For more information, see BOE News Release NR 8-16-G (February 8, 2016):

www.boe.ca.gov/news/2016/8-16-G.htm

FTB interest rates for second half of 2016 — The FTB has announced that for July 1, 2016, through December 31, 2016, the interest rate on personal income tax overpayments and underpayments and on corporation tax underpayments will remain at 3% and that the interest rate on corporation tax overpayments will remain at 0%.4

⁴ "Adjusted Interest Rate" FTB Tax News (February 2016)

FTB refund mobile app — The FTB's refund mobile app is now available for download at the Apple App Store for mobile devices with an iOS operating system.⁵

The FTB is offering the app because users accessing the FTB website from a mobile device has doubled each year over the past four years.

The initial version of the app allows individuals, and/or their authorized representative, access to their current year refund status information from a mobile device.

The following information is required to check the status of a current-year California personal income tax refund:

- Social Security number;
- Mailing address; and
- Refund amount shown on the current-year tax return.
- FTB Public Service Bulletin 16-3 (January 15, 2016)

MPORTANT TAX RULINGS

Attorney fees awarded in case successfully challenging change-of-ownership reassessment — A Los Angeles superior court judge awarded over \$250,000 in attorneys' fees to the attorneys who successfully challenged a property tax change-of-ownership reassessment at the appellate court level. The court held that buyers could avoid real property tax reassessment where they bought the legal entity selling the property rather than the real estate it held, if no one buyer personally acquired a controlling (greater than 50%) interest. The attorneys had previously been awarded over \$250,000 in fees in connection with the lower court and administrative appeals.

For a write-up on this case, see "Sailing the Ocean decision to avoid property tax reassessments" in the September 2014 issue of Spidell's California Taxletter®.

Ocean Avenue, LLC v. County of Los Angeles (January 11, 2016) Los Angeles County Superior Court, Case No. BC462619

California Competes Credit regulation limiting use of contingency fees was invalid — A California superior court has ruled that the GO-Biz regulation limiting contingency fees charged by tax consultants assisting taxpayers applying for the California Competes Credit to an amount equivalent to what would be charged using a "reasonable hourly rate" exceeded GO-Biz's authority.² There was nothing in the statute that would ban or limit tax consultants assisting taxpayers applying for the credit from charging a contingency fee.

Ryan U.S. Tax Services, LLC v. State of California (January 7, 2016) Sacramento County Superior Court, Case No. 34-2014-00167988

California Contacts			
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For a list of the counties participating in the e-file program, go to:	www.calbpsfile.org		
Businesses who receive a nonfiler notice from the FTB can request more information by calling:	(866) 204-7902		
To confirm that an EITC request is from the FTB, contact:	Franchise Tax Board MS 151 • P.O. Box 1468 • Sacramento CA 95812-1462 • (916) 845-9351		
To request a list of an employee's California employers and total subject wages, fax or mail a letter with the taxpayer's name, address, telephone number, Social Security number, signature, and the years for which they want information to:	Employment Development Department • Document Management Group, MIC 23B • P.O. Box 826880 Sacramento, CA 94280-0001 • Fax: (916) 255-6453 Attention: Base Wages		
Taxpayers can contact the FTB if there is a discrepancy between the withholding amount claimed and the amount reported to the FTB by the EDD at:	(800) 852-5711 • Practitioner Hotline: (916) 845-7057		
For more information on emergency tax relief for business owners affected by the Aliso Canyon gas leak, go to:	www.boe.ca.gov/news/2016/8-16-G.htm		

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About the presenter:



Arturo Ramudo, CPA, CISA

Arturo is a former Board of Accountancy investigator, a nationally recognized public speaker, researcher, and seminar leader with almost 30 years of experience in taxation, ethics, standards of practice, and internal quality control. Art owns and operates his own public accountancy firm offering services to both the public and private sectors. He represents CPAs before the California Board of Accountancy's disciplinary committee, provides litigation support, performs peer reviews, and offers advisory services concerning all aspects of ethical practice.



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San Diego	Monday	July 18, 2016	Scottish Rite Event Center	
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