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IN THIS ISSUE

<i>Exclusion of Gain from Sale of Principal Residence</i>	
<i>No Deferral of Gain if Residence Sold within 18 Months</i>	
<i>Contributions to IRA's</i>	
<i>Solar/Residential Energy Credit</i>	
<i>Minimum Qualifications for Tax Preparers</i>	
<i>Extra Deductions for Elderly or Handicapped</i>	
<i>Disclosure of Bookkeeping Records</i>	
<i>Newly Introduced Legislation</i>	

PAGE

1
1
2
2
3
3
3
4

EXCLUSION OF GAIN FROM SALE OF RESIDENCE

Although both Federal and California Governments enacted laws in 1978 that allow taxpayers to exclude gains from the sale of their principal residence, there are more differences than similarities.

-For federal purposes, the taxpayer (or spouse) must be age 55 or over on the date of the sale, but California has no age limits.

-The federal law applies to sales after July 26, 1978, while the California law applies to sales on or after January 1, 1978.

-The amount of the federal exclusion is \$100,000, or \$50,000 if married filing separately, while the California exclusion is \$100,000 for a single, head of household, or taxpayer married filing separately, and \$200,000 if married filing a joint return if the property was jointly owned.

-The residence must have been receiving either the Disabled Veteran's Exemption or Homeowners Exemption in order to qualify for the California exclusion, but there are no comparable federal requirements.

-While the federal exclusion is really a change and liberalization of the prior age 65 or over law, the California exclusion is a new statute and the age 65 or over statute remains unchanged. This allows California taxpayers to exclude the \$100,000 or \$200,000 gain from the sale of one residence, and use the age 65 or over exclusion on another residence.

-The property must have been the taxpayers principal place of residence for three of the last five years for federal purposes, but for only two prior years to qualify for the California exclusion.

-If married filing a joint return, both spouses must sign a consent to exclude the gain on the California return.

-The Federal Government has only one Form (2119) to report the sale of residence and take the exclusion, but California now has two: one (3805J) to report the sale of residence and defer the gain, and another (3535) to exclude the gain.

-If the gain is greater than the exclusion and the taxpayer buys another residence within the statutory limits, the excess gain must be deferred on the federal return, but is taken into income as capital gains on the California return. (Sections 17154, 17155, 18091)

NO DEFERRAL OF GAIN IF RESIDENCE SOLD WITHIN 18 MONTHS

The Federal Revenue Act of 1978 allows a taxpayer to defer the gain on the sale of a personal residence within 18 months of purchase if the sale was due to a job change and other requirements are met.

Since the California Legislature had adjourned prior to the passage of this law, there is no corresponding provision and the gain is taxable. (Section 18091)

CONTRIBUTIONS TO IRA'S

Although federal legislation was enacted in 1978 that allows contributions to an Individual Retirement Account to be made up to the due date of the tax return plus extensions, no corresponding legislation was passed in California.

Therefore, unless a calendar year taxpayer made his IRA contribution by February 14, it will not be deductible on his 1978 California tax return.

However, it will not be necessary to file a Form 3805P, Statement of Individual Retirement Savings Arrangement unless there is a penalty. (Section 17240)

SOLAR/RESIDENTIAL ENERGY CREDIT

In 1978, the U.S. Congress passed a residential energy credit law, and the California Legislature made some changes to the existing solar energy credit. Although there are some similarities, there are also many differences.

-The federal credit is available only to individual taxpayers, and only on principal residences which may be occupied either as an owner or a tenant. The California credit is available to individuals, banks, and corporations, and may be taken on property located in California that is owned and controlled by the taxpayer, or by tenants with at least three years remaining on their lease.

-The federal credit applies to renewable energy sources (solar or wind) and energy property (insulation, fuel saving equipment, etc.) while the California credit applies only to solar or wind energy used to produce heat, cold, or electricity, and insulation installed in conjunction with the system.

-The renewable energy source must have a useful life of at least 5 years to qualify for the federal credit, but only 3 years to qualify for the California credit.

-The amount of federal credit for renewable energy sources is 20% of the first \$10,000 of cost and 10% of the next \$2,000 of cost for a maximum credit of \$2,200. The amount of California credit on a single family dwelling is 55% of the cost up to a maximum of \$3,000. For other than single family dwellings in California, if the cost of the system is less than \$12,000, the credit is 55% of the cost up to a maximum credit of \$3,000, and if the cost of the system is more than \$12,000, the credit is 25% of the cost.

-The federal credit for energy sources installed after April 17, 1977 and before January 1, 1978 should be taken on the 1978 federal return even though it was installed in a prior year. The California credit should be taken in the year the system was installed, and if it wasn't, an amended return should be filed for that year.

-The California credit must be reduced by the amount of the allowable federal credit, if any. If a California credit was taken in 1977 and the federal credit wasn't taken until 1978, the California return should be amended and the credit reduced by the amount of the federal credit.

In spite of the differences, both federal and California laws have provisions for carrying over any unused credits to subsequent years. (Sections 17052.5 and 23601)

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Editor and Publisher—Robert A. Spidell
Contributing Editors—Mitchell Schwary, Jr., LLB, CPA;
John W. Clark, E.A.

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MINIMUM QUALIFICATIONS FOR TAX PREPARERS?

At present there are no minimum knowledge or education requirements for tax preparers in California. Anyone who wants to can become a tax preparer by being bonded and paying \$25 to the State Department of Consumer Affairs for registration.

This will change if AB77 (Lockyer) is enacted. This Bill would establish minimum requirements for registration, and establish specific educational requirements as a condition of practice or continuing practice.

Currently, only one other State, Oregon, even requires tax preparers to register, but Oregon also has continuing education requirements.

Even if the Lockyer Bill does pass, there is some doubt that it would become Law. A similar Bill, SB 686, passed both houses of the Legislature in 1978, only to be vetoed by the Governor.

EXTRA DEDUCTIONS FOR ELDERLY OR HANDICAPPED

In 1977, some little-known legislation was enacted that provides deductions up to \$25,000 each year for repairing or remodeling any building, facility or transportation vehicle to facilitate its use by elderly or handicapped individuals.

Usage must be by the taxpayer, his family, or the general public in his trade, business, or residence. The residence must be located in the state of California.

A handicapped individual is one who has a physical or mental disability, including blindness or deafness, which causes a functional limitation on employment or major life activities, and elderly means age 65 or older.

Line 30 has been added for this deduction under "miscellaneous deductions", Schedule A, for individual taxpayers. The deduction is allowable for tax years beginning after December 31, 1976, and before January 1, 1980. (SB 977, Code Sections 17237.5 and 24380)

DISCLOSURE OF BOOKKEEPING RECORDS

Recently the Attorney General was asked for an opinion on the following question:

"Does Civil Code Section 1799.1 preclude a business entity that performs bookkeeping services from disclosing to third parties the contents of records prepared by it without the consent of the subjects of such records, even though the identities of such subjects would not be disclosed with the information?"

The Attorney General concluded: "Civil Code Section 1799.1 precludes a business entity that performs bookkeeping services from disclosing to third parties the contents of records prepared by it without the consent of the subjects of such records, even though the identities of the individual subjects would not be disclosed with the information" (C V 78/78, Jan. 4, 1979).

Civil Code Section 1799.1 was passed by the legislature in 1977, and provides in part: "No business entity which performs bookkeeping services shall disclose in whole or in part the contents of any record, including the disclosure of information in the record in any composite of information, which is prepared or maintained by such business entity to any person, other than the individual or business entity which is the subject of the record, without the express written consent of such individual or business entity."

The section expressly exempts certain disclosures that are made pursuant to a subpoena, court order, judicial discovery request, or search warrant, or disclosures to law enforcement or taxing agencies.

Section 1799.2 authorized the filing of a civil action for damages with a minimum recovery of \$500 plus costs and attorney fees against any business entity that violate Section 1799.1.

In determining whether to permit disclosing of records even though the identities of the subjects would not be disclosed, the Attorney General relied heavily on statutory construction. Simply stated, the rule of statutory construction is to ascertain the intent of the legislature so as to effectuate the purpose of the law.

NEWLY INTRODUCED LEGISLATION

Although it is still early in the year, it appears that 1979 will be an interesting year for California Tax Law Changes. The Legislature didn't start meeting regularly until the first week in January, but by the middle of February, there had been 50 Assembly Bills, 35 Senate Bills, 7 Assembly Constitutional Amendments and 5 Senate Constitutional Amendments introduced that would change various tax laws.

In many cases, several proposed changes were made on the same subject. These have been grouped under separate headings.

RENTERS CREDIT

AB 15--Would increase the Renters Credit to \$70.

AB 81--Would increase the Renters Credit to \$300.

AB 267--Would allow taxpayers who received Public Assistance to be eligible for the Renters Credit for taxable years beginning on or after January 1, 1978.

SB 164--Would increase the Renters Credit to \$137.

BUSINESS INVENTORY TAX

AB 61--Would incrementally exempt business inventories from property tax until fiscal year 1983-84 when it would be completely exempt.

AB 66--Would exempt business inventories from property tax for fiscal year 1980-81 and thereafter.

AB 115 & SB 54--Would exempt business inventories from property tax on and after the lien date in 1980.

SB 7--Would exempt business inventories from property tax for 1979-80 fiscal year and thereafter.

GIFT AND INHERITANCE TAXES

AB 17--Would increase the amount that is exempted on transfers to the decedents spouse from \$60,000 to \$150,000.

SB 195--Would postpone effective date of carryover basis.

AB 264--Would eliminate Gift and Inheritance Taxes after 1979.

OTHER

AB 66--Would increase Bank and Corporation Tax Rates.

AB 71--Would eliminate various credits, exemptions, deductions, allowances, etc. and simplify taxes.

AB 234--Would increase Personal Exemptions from \$100 to \$135 and from \$200 to \$270, and increase the low income credit from \$5,000 to \$7,000 and from \$10,000 to \$14,000.

AB 285--Would increase the Military Exclusion from \$1,000 to \$5,000.

SB 20--Would change the 1978 Personal Exemption Credit of \$100 and \$200 from temporary to permanent.

SB 56--Would increase amount allowed for charitable mileage to 17¢ per mile.

One copy of each bill may be obtained by writing to:

Legislative Bill Room
1149 State Capitol
Sacramento, Cal. 95814