



California and Federal Tax Planning and Representation Newsletter

February 2005

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A PROFESSIONAL LAW
CORPORATION

*Protecting and Preserving
Wealth for Future
Generations*

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California Offers Amnesty for Income and Sales Taxes

The California Legislature has approved a tax amnesty program, which will begin February 1, 2005 and run through March 31, 2005. An applicant for amnesty will have all civil and criminal penalties for income, franchise, sales and use taxes for periods prior to January 1, 2003. The amnesty program does not apply to payroll or employment taxes, property taxes and other miscellaneous taxes.

Amnesty is available to individuals, businesses, fiduciaries, estates and trusts that fall into one of the following categories: (1) did not file pre-2003 California tax returns; (2) underreported taxes for one or more periods prior to 2003; or (3) did not pay income, franchise, sales or use taxes on time. Taxpayers that are not eligible for amnesty include: (1) those involved in a criminal court proceeding; (2) those under criminal investigation or prosecution for tax related matters; and (3) those involved in certain abusive tax shelter transactions. Taxpayers that are in active bankruptcy need approval from the bankruptcy court to participate in the amnesty program.

To participate in the Franchise Tax Board ("FTB") and Board of Equalization ("BOE") programs, a taxpayer must complete and return a signed amnesty application before April 1, 2005. Amnesty applicants must also file any required tax returns, including amended returns and pay any taxes or interest on or before May 31, 2005. In the alternative, applicants can enter into an amnesty installment agreement which would require the entire liability to be paid by June 30, 2006.

Tax amnesty will provide relief from penalties and fees, but the FTB and the BOE are prohibited from refunding or crediting any penalties and fees the taxpayer paid before applying for amnesty. As such, a taxpayer that has an existing balance due that includes penalties and/ or fees should apply any payments made prior to applying for amnesty to taxes and interest only.

A taxpayer under audit, or with an existing protest, appeal, amended return, etc... that has penalties associated with it may want to apply for amnesty to get penalty and fee relief.

New Penalties to be Applied. Beginning April 1, 2005, the FTB and BOE can impose substantial new penalties on taxpayers who were qualified to apply for amnesty and chose not to participate. The agencies will impose these penalties on all amnesty-eligible years and reporting periods, including those closed by the statute of limitations. The new penalties include: (1) a 40% (instead of 20%) accuracy related penalty; (2) for amounts that are “due and payable” on March 31, 2005, a penalty of 50% of interest due; and (3) for amounts that “become due and payable” after March 31, 2005, a penalty equal to 50% of the interest computed from the original due date of the return up to March 31, 2005. The BOE will also impose double the amount of existing penalties when issuing a deficiency determination for tax due from periods before 2003.

Many taxpayers don't realize they owe money to California on old returns or returns they may have forgotten to file. The state has records going back many years. The author personally knows of a case in which the FTB is investigated unpaid taxes going back to 1977. While you and your clients may believe you have always filed your tax returns, the author suggests that it may be wise to check with the FTB (for income and franchise taxes), and the BOE (for sales and use taxes) to see if these agencies believe you or your clients have unpaid taxes or are missing a tax return. If these agencies show that you or your clients owe money or have unfilled tax returns, advice on amnesty should be sought from a tax professional.

If you or your clients are undergoing a federal or state audit, there are extremely important decisions that must be made right now. Contact our office or another tax professional to discuss your options.

Can We Be of Assistance to You?

Dennis M. Sandoval, A Professional Law Corporation, specializes in estate planning (including probate administration and trust / will contests), asset protection planning, elder law (including qualifying for Medi-Cal coverage, conservatorships, and creation of Special Needs Trusts for disabled beneficiaries) and tax controversy work (including federal and state tax audits, appeals and litigation). All of your referrals will be handled promptly and professionally.

Mr. Sandoval is available to speak to your group or organization. Call (951) 787-7711 to schedule him to speak on any topic relating to estate planning, elder law, asset protection or taxes.

Upcoming Seminars / Classes for Professionals

The Mechanics of Drafting First Party and Third Party Special Needs Trusts in California	6/18/2005	9 am - noon	UNEX 3 hrs. Attorney CLE
Basics of Conservatorships in California	5/26/2005	Noon - 1 pm	Kaiser Hospital Riverside, California
Maintaining and Maximizing Government Benefits for Special Needs Beneficiaries: The Basics of Administering a Special Needs Trust	6/18/2005	1 pm - 4 pm	UNEX 3 hrs. Attorney CLE
Retirement Plan Distribution Rules: A Magical Mystery Tour; Federal Estate Tax Repeal Update and recent Tax Developments	9/29 - 10/2/2005	TBD	National Academy of Elder Law Attorneys Sheraton New Orleans New Orleans
Topics to be Determined	10/6 - 10/10/2005	TBD	American Academy of Estate Planning Attorneys Catamaran Hotel San Diego