
California – Withholding Voluntary Compliance Program underway

July 26, 2013

In brief

The Franchise Tax Board (FTB) has implemented a new Withholding Voluntary Compliance Program that allows eligible withholding agents (any person or entity, including partnerships, with control, receipt, custody, or payment of California source income) to remit past-due, nonwage withholding for the previous two calendar years (the look-back period), including interest, in exchange for: (1) liability limited to the look-back period and (2) waiver of information return penalties. The program is offered to withholding agents that are subject to resident, nonresident, and real-estate withholding requirements and that have not previously withheld.

California's nonwage withholding requirement is a frequent trap for the unwary. Often, taxpayers find themselves in a situation where they owe withholding for many years. Typical transactions subject to withholding that are often missed include: (1) payments to nonresident independent contractors or subcontractors; (2) rent or lease payments to nonresidents; (3) royalty payments to nonresidents; and (4) payments to nonresident limited partners from partnerships conducting business in California. Information returns must be filed with the FTB for entities paying wages, salaries, fees, or other compensation to a nonresident director. A withholding agent failing to withhold is generally liable for the amount required to be withheld for the nonresident regarding such payments, plus interest. Additionally, a filing return fee is assessed.

[[*Withholding Voluntary Compliance Program*](#), California Franchise Tax Board (7/15/2013)]

In detail

California's nonwage withholding requirement

California generally requires payers of California source income in excess of \$1,500 to withhold 7% of nonwage compensation paid to nonresidents. Withholding is required for such payments made to independent contractors and other nonresidents that do not have a waiver or an exemption.

Nonwage compensation includes: real estate transactions; interest and dividends; rents and royalties; prizes and winnings; premiums and annuities; compensation for personal services; and other fixed or determinable annual or periodic gains, profits, and income.

Program benefits

The program offers a 'qualified' withholding agent the

opportunity to become current on its withholding obligations. In exchange for participation in the program, the FTB will:

- waive information return penalties for the required look-back period
- refrain from pursuing withholding audits prior to the look-back period

- limit the tax withholding liability to the look-back period, plus interest.

The FTB will not waive interest.

Program participation

The program is available to all withholding agents, except an agent that:

- participated in the 2008 Nonresident Withholding Incentive Program (12/2008 – 3/16/2009)
- was audited by the FTB for nonwage withholding
- was assessed a withholding liability or information return penalty for nonwage withholding.

Participating withholding agents must submit an application (Form [FTB](#)

[4827](#)) to the FTB and submit payment of its estimated withholding amount for each calendar year covered, plus interest. Accepted participants must agree to (1) comply with the state's nonwage withholding requirements prospectively and (2) make all books and records available to the FTB to verify the withholding liability calculation included in the application.

The takeaway

The Withholding Voluntary Compliance Program allows withholding agents the ability to limit their look-back to the past two years by paying all amounts due, plus interest, for those two years. Sources at the FTB explained that this is a pilot project. There is no indication as to when the program will end, so

interested taxpayers should act quickly to secure program benefits. The FTB anticipates that it will be able to process these applications in a timely manner.

Once accepted, the agent will be required to sign an agreement and will be provided the amount due plus interest. To complete the process, the agent will then be allowed 30 days to make payment.

State voluntary programs may be difficult to navigate, could be time consuming, and may involve some uncertainty in the absence of administrative guidelines. Taxpayers with outstanding withholding liabilities should consider the benefits, obligations, and administrative requirements of the program before applying.

Let's talk

For more information about California's Withholding Voluntary Compliance Program, please contact:

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