



STATE OF CALIFORNIA
Franchise Tax Board

CalCPA Liaison Meeting

Committee on Taxation



November 18, 2025

Disclaimer

The Franchise Tax Board's presentation and accompanying documents are for information purposes only and do not constitute legal advice. While we strive to provide current and accurate information, the tax laws are complex and subject to change.



STATE OF CALIFORNIA
Franchise Tax Board

Litigation Update



Kiewit Corporation v. FTB

Issues/Background

- Whether dividends received were 100% deductible pursuant to R&TC section 24411(c) (i.e., whether such dividends were “derived from construction projects”).
 - Subsidiaries paid dividends to KCC which were allegedly derived from construction projects.
 - KCC paid those dividends to its parent, KCG.
 - The issue is whether the dividends paid from KCC to KCG retained their character as being “derived from a construction project” as they passed through KCC.
- Whether deductible dividends are includible in the denominator of the sales factor.

Kiewit Corporation v. FTB

Trial Court Ruling

- Court granted FTB's MSJ, and denied Kiewit's MSJ.
- Court agreed with FTB that plaintiff is not entitled to the 100% deduction.
 - The disputed dividends were derived from KCC's stock ownership activities and KCC never performed any construction work.
 - The regulations look at the earnings and profits of the dividend payor and only the portion of those dividends traced to construction project activities are 100% deductible.
- Court agreed with FTB that the deducted dividends were properly excluded from the sales factor.
 - Court relied on Legal Ruling 2006-1, Chase Brass & Copper Co. v. FTB, and R&TC 25128.9.
- Plaintiff has appealed.

California Taxpayer's Association and National Taxpayers Union v. FTB

Background

- In Legal Ruling 2006-1, FTB determined income related to activities that were excluded from apportionable income should be excluded from the apportionment factor.
- In Appeal of Southern Minnesota Beet Sugar, a 2023 precedential opinion, the OTA held the taxpayer properly included in the apportionment factor its property, payroll, and sales related to its deductible member income under R&TC section 24404.
- In Appeal of Microsoft Corp., a 2024 non-precedential opinion, the OTA held dividends deducted from income pursuant to R&TC 24411 were includible in the taxpayer's sales factor.
- In 2024, the Legislature enacted R&TC 25128.9, which clarified gross receipts, for purposes of the sales factor, excludes receipts from activities that generate income not included in net income subject to apportionment.

California Taxpayer's Association and National Taxpayers Union v. FTB

Legal Issues

Determine whether R&TC 25128.9...

- Is vague in violation of the Due Process Clause of the U.S. Constitution.
- Has retroactive application in violation of the Due Process Clauses of the U.S. and California Constitutions.
- Violates the separation of powers doctrine.
- Violates the single subject rule.
- Unlawfully delegates legislative power to FTB.

California Taxpayer's Association and National Taxpayers Union v. FTB

Current Status

- All parties filed Motions for Summary Judgment.
- The trial court granted FTB's motions, ruling:
 1. Neither CTA nor NTU had standing because they failed to present evidence that their members paid any disputed tax or exhausted their administrative remedies.
 2. The case was not ripe because there was no evidence presented to indicate how FTB will apply R&TC 25128.9 to CTA's/NTU's members or other taxpayers.

Worthington Oil & Gas Corp. v. FTB

Background

Plaintiff's allegations...

- Sold two corporate auto dealerships in Alaska.
- Plaintiff did not conduct any business in Alaska and the two Alaskan corporations did not conduct business in California.
- Included the goodwill from the sale of the dealerships in the denominator of the sales factor.

After an audit, FTB excluded the goodwill from the sales factor (thereby increasing the income apportioned to California) pursuant to Regulation 25137(c)(1)(A) [exclusion of substantial gross receipts from occasional sale].

Worthington Oil & Gas Corp. v. FTB

Issues

Whether the proceeds from Plaintiff's sale of its two Alaskan car dealerships/corporations should have been excluded from the denominator of the sales factor.

- Plaintiff argued FTB deviated from the standard apportionment formula in R&TC 25134 and improperly sought to apply the approach in R&TC 25137.
- Plaintiff further argued if FTB wants to deviate from the standard apportionment factor, it has the burden of proof under R&TC 25137.
- FTB argued the standard apportionment formula under Regulation 25137(c)(1)(A) [exclusion of substantial gross receipts from occasional sale) applies to exclude the proceeds from the sales factor.



Worthington Oil & Gas Corp. v. FTB

Current Status

- Trial court denied Plaintiff's Motion for Summary Judgment
 - Trial court ruled that where a specific regulation provides the method of apportionment (e.g., Regulation 25137(c)(1)(A)), that is the standard which will apply and any party seeking to deviate from that standard must show clear and convincing evidence that the regulation does not fairly represent the extent of the taxpayer's activities in California.
- Trial scheduled June 22, 2026.

Wynnefield Bros. Int'l v. FTB

Background

Plaintiff's allegations...

- Taxpayer sold all of its domestic assets and stock in three foreign subsidiaries for a gain.
- Taxpayer included the gross receipts from the transactions in its sales factor.
- FTB is auditing taxpayer and has “preliminarily” taken the position that all of the gross receipts from the transactions should be excluded from the sales factor pursuant to Regulation 25137(c)(1)(A).
- Plaintiff asserts Regulation 25137(c)(1)(A), on its face and as applied to Plaintiff, violates the Due Process and Commerce Clauses of the U.S. Constitution
- Plaintiff asserts FTB has the burden to show that the standard apportionment factor, under R&TC 25134, does not fairly represent the extent of Plaintiff's activities in California.
- Plaintiff seeks declaratory relief regarding the constitutionality and applicability of Regulation 25137(c)(1)(A).



Wynnefield Bros. Int'l v. FTB

Current Status

- FTB filed a demurrer.
 - The sole legal avenue for resolving tax disputes is a post-payment refund action
 - Plaintiff failed to exhaust administrative remedies.
- Trial court sustained FTB's demurrer without leave to amend.
- Plaintiff has appealed.

Questions





STATE OF CALIFORNIA
Franchise Tax Board

Pass-Through Entity (PTE) Elective Tax and Credit Overview and Updates



Federal Legislation

2017 Tax Cuts and Jobs Act

Limited the state and
local tax deduction

\$10,000



SALT Cap

California Legislation



In 2021, the California legislature enacted Assembly Bill (AB) 150 which created the Pass-Through Entity (PTE) Elective tax and credit.



Senate Bill (SB) 113 added guaranteed payments to qualified net income (QNI) and other changes.



SB 851 made changes to the other state tax credit calculations.

PTE Elective Tax and Credit 2021-2025



Small Business Relief Act, Part 10.4, Division 2 of R&TC

Sections 19900-19906



Part 10, Personal Income Tax of R&TC

Section 17052.10

Common Questions

PTE Elective Tax and Credit 2021-2025

Election Requirement

- Timely filed original return
- Superseding vs. amended return

Payment Requirement

- 2021
- 2022-2025

PTE elective credit

- Carryover

How to Make an “Election”

Qualified entities must:

- Form 3804
 - Consenting partners/shareholders/members
- Entity Return
 - Partnership: Form 565, line 25
 - S Corporation: Form 100S, line 29
 - Limited Liability Company (LLC): Form 568, line 4

TAXABLE YEAR 2024 **Pass-Through Entity** **Elective Tax Calculation** **CALIFORNIA FORM** 3804

Attach to Form 100S, Form 565, or Form 568.
Election of Qualified PTE Business name (see instructions on tax return) ☐ PTE ☐ CA Corp no. ☐ CA S05 file no.

Part I Elective Tax

1 Total qualified net income from all qualified taxpayers (combine all box amounts from the Schedule of Qualified Taxpayers below, Side 2, and any additional pages) 1 00

2 Elective tax rate 2 9.3%

3 Multiply line 1 by line 2. This is the total amount of elective tax. Enter the result here and on Form 100S, line 29; or Form 565, line 25; or Form 568, line 4. See instructions. 3 00

Part II Schedule of Qualified Taxpayers (SMLLCs, estates, and trusts, see instructions.)
(If there are more than seven qualified taxpayers, use Side 2 to continue. Do not attach Side 2 of the Schedule of Qualified Taxpayers, if blank.)

	First name	Initial	Last name	SSN or ITIN	L/F/E/N
1					
a.	Sum of pro-rata or distributive share and guaranteed payments included in qualified net income				
b.	Elective tax credit amount (Multiply box a by 9.3% and enter the result)				
2					
a.	Sum of pro-rata or distributive share and guaranteed payments included in qualified net income				
b.	Elective tax credit amount (Multiply box a by 9.3% and enter the result)				
3					
a.	Sum of pro-rata or distributive share and guaranteed payments included in qualified net income				
b.	Elective tax credit amount (Multiply box a by 9.3% and enter the result)				
4					
a.	Sum of pro-rata or distributive share and guaranteed payments included in qualified net income				
b.	Elective tax credit amount (Multiply box a by 9.3% and enter the result)				
5					
a.	Sum of pro-rata or distributive share and guaranteed payments included in qualified net income				
b.	Elective tax credit amount (Multiply box a by 9.3% and enter the result)				
6					
a.	Sum of pro-rata or distributive share and guaranteed payments included in qualified net income				
b.	Elective tax credit amount (Multiply box a by 9.3% and enter the result)				
7					
a.	Sum of pro-rata or distributive share and guaranteed payments included in qualified net income				
b.	Elective tax credit amount (Multiply box a by 9.3% and enter the result)				

For Privacy Notice, get FTB 1131 EN-SP. 8761243 FTB 3804 2024 Side 1

“Timely Filed Original Return”

Timely filed: if filed by the due date of the return, including extensions.

- The extensions are either 6 or 7 months depending on the entity type.
- The only exception: tax relief for a disaster declaration.

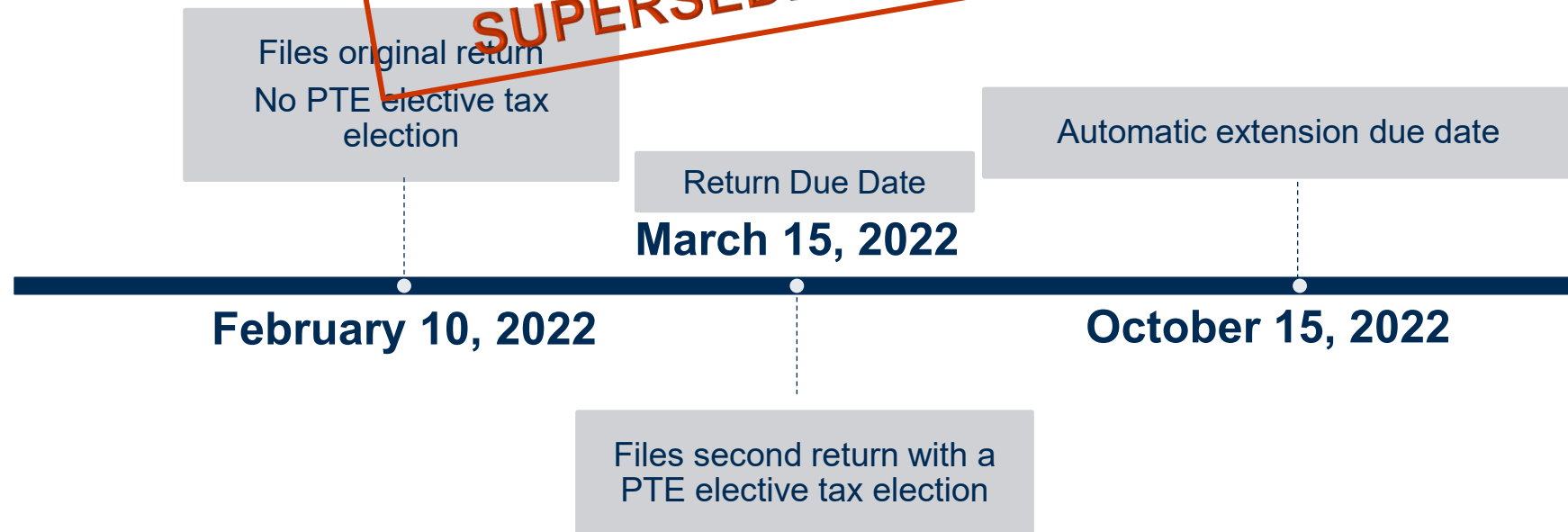
Original: if made on an original return, and NOT an amended return.

- An original return is the first one filed or is a return that supersedes the original return

Superseding vs. Amended Return

Example 1

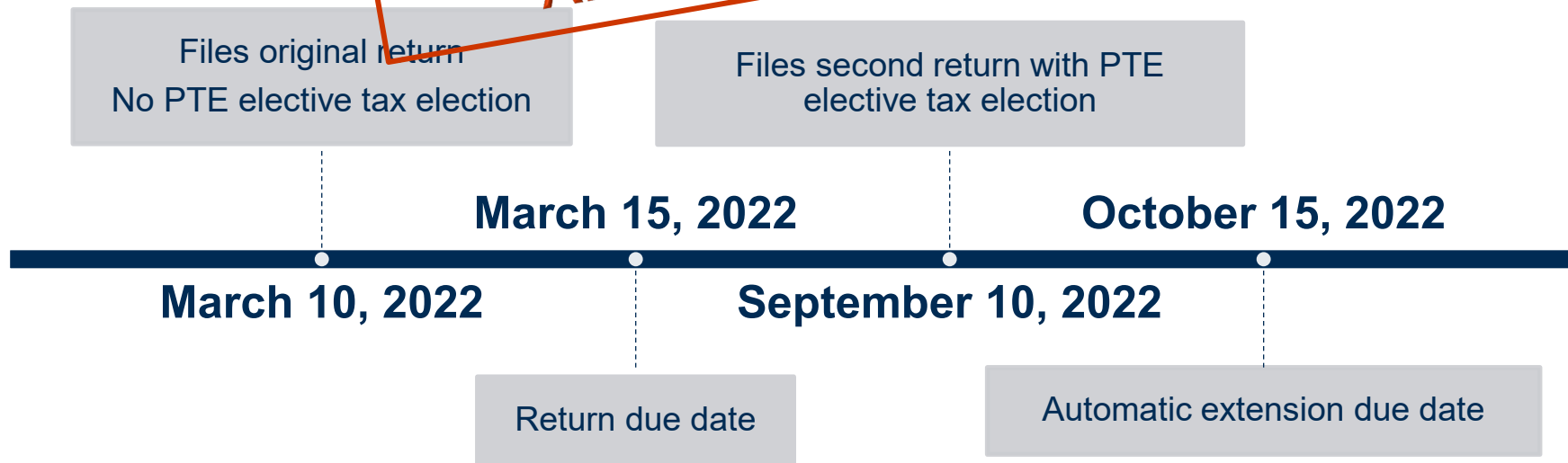
SUPERSEDING RETURN



Superseding vs. Amended Return

Example 2

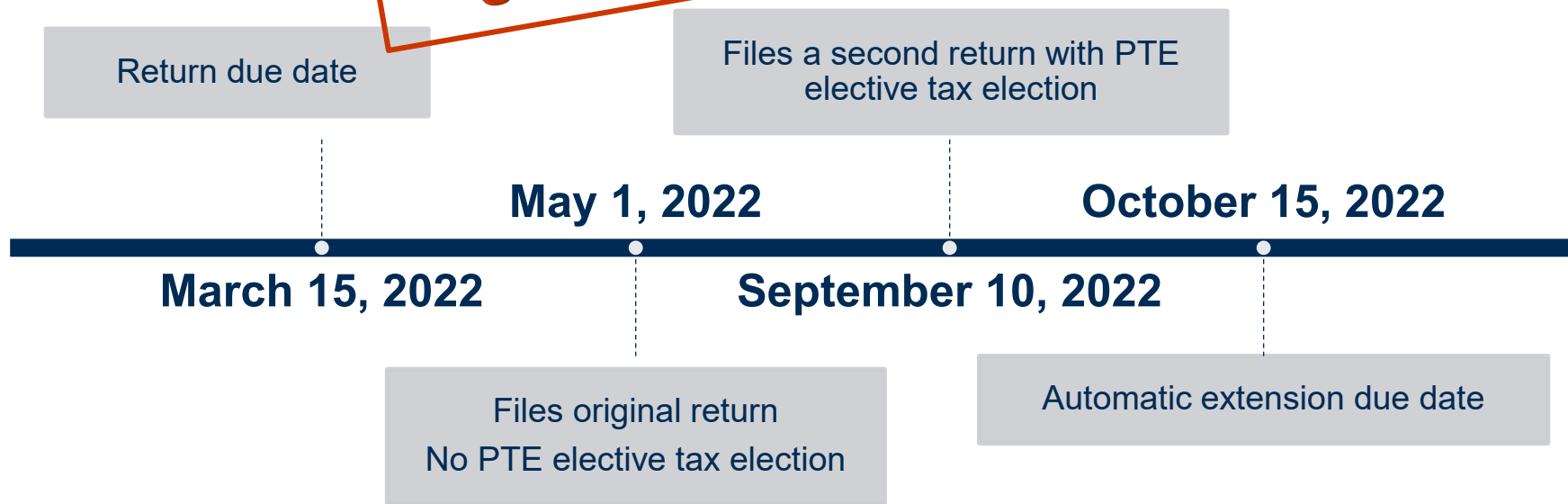
AMENDED RETURN



Superseding vs. Amended Return

Example 3

SUPERSEDING RETURN



Payment Requirement

TY 2021

- No prepayment requirement
- Pay the entire elective tax on or before the original due date of the return (without regard to extensions).

TYs 2022 - 2025

- On or before June 15th during the taxable year of the election, an amount equal to, or greater than:
 - \$1,000 or
 - 50% of the elective tax paid in the prior yearWhichever is greater
- Pay the remaining amount on or before the original due date of the return (without regards to extension)

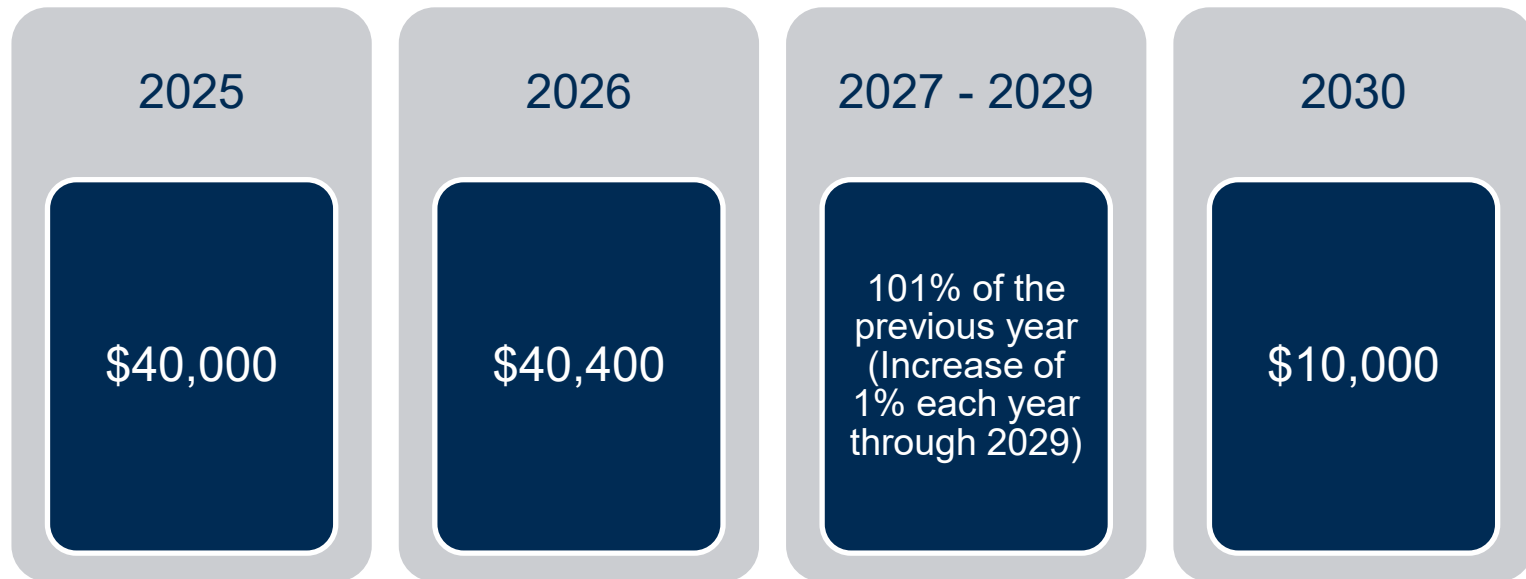
Credit

- Form 3804-CR
- Not subject to \$5M credit limitation under R&TC section 17039.4
- Carried over 5 years

TAXABLE YEAR		CALIFORNIA FORM	
2024		3804-CR	
Attach to your California tax return. Name(s) as shown on your California tax return (SMLLCs see instructions) <input type="checkbox"/> SSN or ITIN <input type="checkbox"/> FEIN			
Part I Elective Tax Credit Amount. See specific line instructions.			
	(a) Electing qualified pass-through entity (PTE) name	(b) Entity identification number	(c) PTE elective tax credit(s)
1			
a			
b			
c			
d			
e			
f			
g			
h			
i			
j			
2	Total PTE elective tax credit amount. Add the amounts in column (c) and enter total here.		
Part II Available Credit			
1	Total credit from electing qualified PTEs. See instructions.	1	00
2	Credit carryover from prior year.	2	00
3	Total available credit. Add line 1 and line 2.	3	00
4	Enter the amount of the credit claimed on the current year tax return. See instructions.	4	00
5	Credit carryover available for future years. Subtract line 4 from line 3.	5	00

One Big Beautiful Bill Act (OBBBA)

The State and Local Tax Deduction Limits



Senate Bill 132

PTE Elective Tax and Credit 2026-2030



**Added Part 10.4.1 of Division 2
of the R&TC**

Sections 19910-19916



Added R&TC section 17052.11

Version 1 vs. Version 2

	Part 10.4 (version 1)	Part 10.4.1 (version 2)
Election	R&TC section 19900	R&TC section 19910
Qualified Entity	R&TC section 19902	R&TC section 19912
Payments and Deadlines	R&TC section 19904	R&TC section 19914
Reference to Federal Limit Operative Date	R&TC section 19906	R&TC section 19916
PTE Elective Tax Credit (Part 10)	R&TC section 17052.10	R&TC section 17052.11

Notable Differences

Calendar year and fiscal year filers

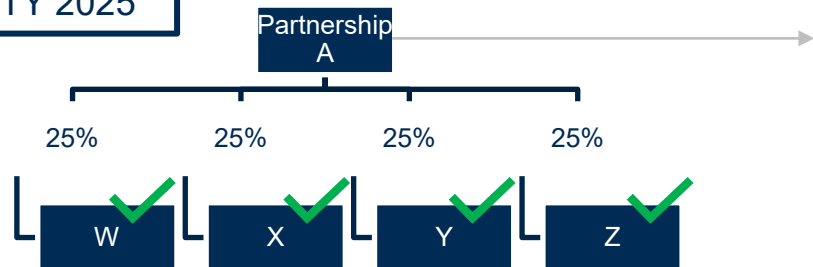
- R&TC sections 17052.10(d) and 17052.11(d)

Remedy for not meeting the June 15th payment requirement

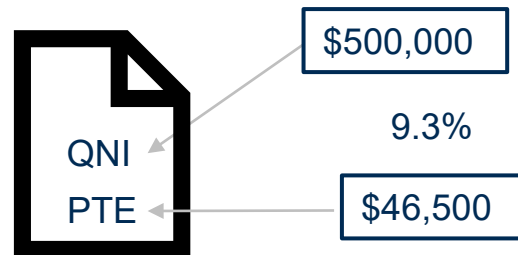
- R&TC section 19914(b)
- Reduction in Credit under R&TC section 17052.11(b)(2)(B)

Example 4

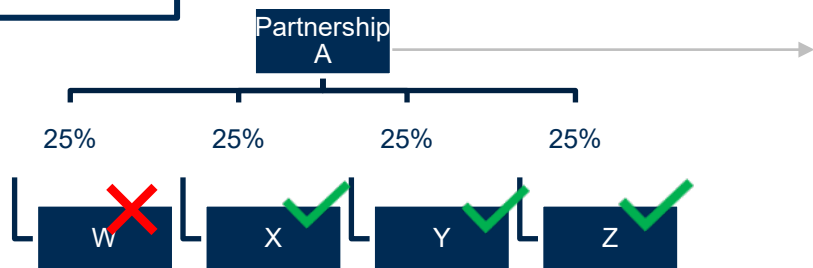
TY 2025



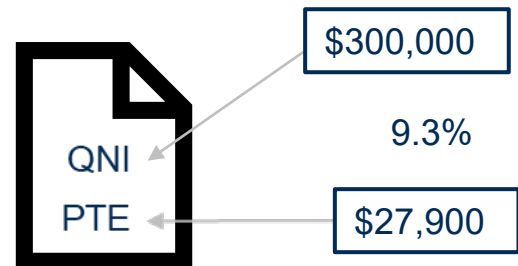
June
15
\$1,000



TY 2026



June
15
\$10,000
↓
\$23,250



How do we determine the reduced credit?

Under R&TC section 17052.11(b)(2)(B): “qualified amount” means an amount equal to the amount described in subparagraph (A), reduced by an amount equal to 12.5 percent of the qualified taxpayer’s pro rata share of the amount due but not paid under paragraph (1) of subdivision (a) of Section 19914.

$$\text{reduced credit per partner} = \left[9.3\% \times \frac{300,000}{3} \right] - \left[12.5\% \times \frac{23,250 - 10,000}{3} \right]$$

$$\text{credit per partner } \$8,848 = 9,300 - 552$$

Example 5 - Unusually high-income year

TY 2025

S corp A

Shareholder



\$5,000,000



\$200,000



\$1,000



\$5,200,000

9.3%

QNI

PTE

\$483,600

TY 2026

S corp A

Shareholder



\$200,000



\$18,600



\$241,800



\$200,000

9.3%

QNI

PTE

\$18,600

Example 2 continued

$$\begin{aligned} & \text{reduced credit} = \\ & [9.3\% \times 200,000] - [12.5\% \times 241,800 - 18,600] \end{aligned}$$

$$\text{shareholder's credit } \$0 = 18,600 - 27,900$$

Overpayments

Can a taxpayer request FTB move a credit balance on a tax year forward to the next year as a PTE prepayment (6/15 date)?

- FTB does not have statutory authority to do this type of transaction. This requires a legislative change.
- There are multiple other considerations as well, which FTB is currently researching.

Questions





STATE OF CALIFORNIA
Franchise Tax Board

FTB Responses to CalCPA Members' Questions

Question #1

Disaster Extensions and Postponements

Question #1

- Established cross-functional team of SMEs.
- Increased timely communications:
 - Updated website including clarifying directions, FAQs, postponement chart, and banners.
 - How to claim a disaster.
 - Tax News flashes and articles.
 - Social media.

Question #1

- Improved customer service:
 - Established dedicated communication channels for disasters affecting large populations.
 - Updated our IVR messaging.
 - Suspended mail to impacted ZIP codes.
 - In-person outreach through DRCs and LACs.
- Collaboration with other state agencies.

Question #1

- Increased collaboration with external partners:
 - Direct communication with IRS disaster SMEs.
 - R&TC section 18572 partnership with DOF.
 - Tax professional community.
 - CTP software companies.
- FTB system enhancements.

Question #1

Open for Discussion

Question #14

OTA Decision in the *Appeal of R. Pomrehn*

Question #14

- FTB's longstanding disaster relief process requires taxpayers to mark the disaster on the top of their return (or via electronic software options).
- The most common reason disaster relief is not applied to a taxpayer who qualifies for relief is that the taxpayer did not mark they were affected by the disaster on their return.
- However, *Appeal of R. Pomrehn* and other cases arising from the disasters declared in recent years have highlighted areas where FTB could improve both its external and internal communication.

Question #14

- Communication improvements
 - Special customer service communication channels
 - Email for San Diego County Floods in 2024
 - Email and telephone line for Los Angeles County Fires in 2025
 - FTB added an explanation to its external website of how disaster postponement periods interact with statute of limitation periods.

Question #14

- Training
 - FTB is currently developing comprehensive training in collaboration with subject matter experts to ensure consistent understanding and application of tax relief rules by staff across all business areas.

Question #14

Open for Discussion

Question #2

Form 568 instructions, Schedule IW, and
Lower-Tier LLC Reporting

Question #2

- Each LLC in the example files a Form 568.
- It is important that each LLC fill out Schedule B, Schedule IW, and Schedule EO accurately.
- If there is a concern about receiving a notice, a statement is helpful for FTB. If a statement is attached, please provide the **name** and **ID** of the LLC that already paid the LLC fee.

Question #2

Open for Discussion

Question #4

CA LLC – Out-of-State Limited Partnership
Income and LLC Fee

Question #4

- Part A

- RTC section 17942 applies for calculation of LLC fee, which provides for using the rules for assigning sales under RTC section 25135 and 25136, the related CCRs, and as modified by CCR 25137.
- CCR section 25136-2(d) provides rules of assignment for sales of intangible property. See CCR section 25136-2(d)(1)(A)2 for how to assign income from interest; CCR section 25136-2(d)(1)(A)2 for how to assign income from dividends or capital gains from sale of stock.

Question #4

- Part B

- RTC section 17942(b)(1)(A) "total income from all sources derived from or attributable to this state" does not include allocation or attribution of income or gain or distributions made to an LLC in its capacity as a member of, or holder of an economic interest in, another LLC **if** the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income that is subject to the payment of the LLC fee.

Question #4

Open for Discussion

Question #16

Form 568 Instructions Clarifying Questions

Question #16

- a) Question X ensures consistency between federal and state reporting, which improves tax compliance.
- b) RTC section 17941(g)(1); an LLC filing Form 568 for its first year of doing business can also check the box providing it has previously, or ever, operated outside of California.
- c) If LLC member contributed cash and another manages the LLC and owns a carried interest, then fill out Part I only because member no longer holds full ownership of 100%.

Question #16

Open for Discussion

Question #3

Reallocation of Estimated Tax Payments and Attestation Requirement

Question #3

- If a taxpayer inadvertently directs the application of a payment, FTB will accommodate a request in applying the payment as intended
- The request must be in writing and include certain statements
- FTB has standard language that covers these points

Question #3

- The standard language includes:
 - Date and amount of payment
 - Taxable year they want it moved to and from
 - Acknowledgement that payment move may result in penalties and interest on the year it was moved from
- The standard language does not include a waiver of any administrative rights
- The taxpayer still has the administrative right to request a penalty and/or interest waiver under the law

Question #3

Open for Discussion

Question #6

Trust and Web Pay

Question #6

- FTB previously acknowledged we would consider adding website instructions for estates/trusts to use Web Pay.
- Delayed due to resource constraints and website redesign.
- Added instructions to website in October.
- Will consider suggestion to show estate/trust name like BE Web Pay.

Question #6

Open for Discussion

Question #8

Real Estate Withholding Form 593

Question #8

R&TC 18662 outlines that the person or entity that has control of the item of income is required to withhold.

For the sale of real property, the buyer is required to withhold because they have control of the payment, regardless of the transaction type.

Question #8

Elect Out of Subsequent Installment Payment Withholding

- Report the entire gain on your tax return for the year of the transaction.
- Send a written request to release the buyer from withholding.
- Approval or denial will be received within 30 days.
- Withholding is required until approval is received.

Question #8

Open for Discussion

Question

FTB VDA and WVCP Teams Short Staffed

Question #11

Programs to assist existing taxpayers come into compliance with tax filing or withholding obligations:

- Voluntary Disclosure Program
- Filing Compliance Agreement
- Withholding Voluntary Compliance Programs

Question #11

- On average, approximately 200 applications received each year.
- In most cases agreements are received within 90 days of application.
- Recently launched a new online portal for submitting VDP and FCA applications.

Question #11

Open for Discussion

Question #9

SB 711 Personal Income Tax Law

Question #9

FTB forms and instructions will reflect the current version of the law and will not incorporate potential changes to law that may be introduced next year

Question #9

Open for Discussion

Question #10

Power of Attorney

Question #10

MyFTB provides enhanced tools for both taxpayers and tax professionals.

Visit our website for how-to videos

[Online services | FTB.ca.gov](https://ftb.ca.gov)



Question #10

Open for Discussion

Question #12 a & b

FTB 2020-03 Petitions

Question #12 a & b

- a) Timing guidelines for working 25137 variance requests
 - FTB 2020-03 – applicable for settlements
 - California Regulation Section 19032 – completion of audits within 2 years
- b) Timing of variance request when there is an ongoing audit on non-apportioning issues
 - Our normal audit procedure is to work the variance request with other issues.

For specific questions on cases, contact supervisor or manager

Question #12 a & b

Open for Discussion

Question #12 c

Top Audit Program

Question #12 c

- FTB Audit Division employs staff nationwide.
- They are involved in a variety of audit workloads/programs and supporting workloads.
- The division includes FTB criminal investigations.
- Most resources are spent on our professional audit workloads for both individuals and businesses.
- Our automated and semi-automated audit workloads have a range of topics and are mainly derived from IRS Adjustments and California Schedule CA.

Question #12 c

Open for Discussion

Question #13

Status of RAR program



Question #13

- IRS Revenue Agent Report data continues to be received and processed by the Franchise Tax Board
- Certain data types delayed this past year (3-6 months)
- No additional information from IRS regarding delays or changes to data reporting cycles
- [FTB Publication 1008 | FTB.ca.gov](#)

Question #13

Open for Discussion

Question #15

Denied Refund Claims Protest Process

Question #15

FTB Legal's role in refund claims

- Refund claim processing
- During the appeals process
- OTA appeal request

Question #15

Open for Discussion

