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FTB NOTICE 98-6

**SUBJECT: INCREASED INTEREST ON LARGE CORPORATE
UNDERPAYMENTS FTB NOTICE 91-5 MODIFIED**

FTB Notice 91-5, issued December 11, 1991, announced California's conformity to the federal 2% increased interest rate on certain large corporate underpayments, and notified taxpayers that to the extent applicable, federal rulings and regulations would apply in this area. It stated that where corporations included in a single combined report have elected to file a single return, the \$100,000 threshold and the applicable date will be determined with reference to the combined underpayment of all corporations included in that return for the income year.

S.B. 3 (Stats. 1993, Ch. 31) renumbered and consolidated the various Revenue and Taxation Code sections involved without substantive change. Former §§ 19269 and 25901 were renumbered to current §19521. Former §25901b was consolidated with former §18688 and renumbered to current §19104.

T.D. 8447, 11/10/1992, issued final Treasury Regulation §301.6621-3.

Legal Ruling 95-2 (July 7, 1995) provided that if taxpayer members of a unitary group have participated in filing a group return (Schedule R-7 of Schedule R), and separate assessments or refunds must be issued, the tax paid by the group into the key corporation's account must be reassigned back to the respective member or members based upon intrastate apportionment procedures of Legal Ruling 234 (modified, as applicable, by FTB Notice 90-3).

In the Appeal of Nicholas Schillace, 95-SBE-005, Cal. St. Bd. of Equal. August 2, 1995, the State Board of Equalization explained that under California law, interest associated with a proposed deficiency assessment does not arise until and unless the deficiency becomes a due and payable final assessment.

Treas. Reg. §301.6621-3(b)(2)(iii) explains that both the existence of a threshold underpayment of tax and the amount of a large corporate underpayment are determined only when a (final) assessment is made with

respect to the taxable period. Amounts shown on proposed deficiency assessments do not determine whether there is a large corporate underpayment.

In light of the above authorities, FTB has reconsidered its method of computing the additional 2% interest on large corporate underpayments where a single return for a corporate group is involved:

- Only after a proposed deficiency becomes final, will FTB consider whether the 2% additional interest is applicable to any resulting underpayment. California law requires that, after apportionment and allocation of income is complete, corporate tax liabilities of the taxpayer members of a unitary group must be determined on an entity basis. Participation in a Schedule R-7 filing is only a filing convenience and does not change the liabilities of the respective members (for a general discussion of the significance of the Schedule R-7 filing, see Legal Ruling 95-2 and Appeal of First Pacific Bankcorp (95-SBE-013, November 9, 1995)). Thus, the 2% additional interest under §19104 is required to be determined with respect to the underpayments of each taxpayer member, reflected by means of intrastate apportionment.

The Schedule R-7 and instructions state that the taxpayer members in an R-7 filing should disclose their respective intrastate liabilities in the Schedule R-7, in the "total self-assessed tax" column. However, if taxpayers participating in an R-7 filing do not supply that data, the department may not be able to accurately compute the additional 2% interest resulting from underpayment of the liabilities of the respective members. In those situations, the Franchise Tax Board will compute the additional 2% interest on the basis of the total underpayment of the entire group, as if the tax change was entirely attributable to the key corporation, and notify the key corporation to that effect. If members of the R-7 group can provide sufficient data to show the specific underpayments of each of the taxpayer members, the FTB will recompute the proper amount of interest for those members.

- Where a single Notice of Proposed Assessment, Return Information Notice, or other notice pursuant to §19521(c) (1) has been issued jointly proposing additional tax for members of the group, and the amount shown on that

notice remained unpaid for the specified period, an applicable date will be established for all members of the group, and the amount shown on that notice remained unpaid for the specified period, an applicable date will be established for all members of the group whose liabilities composed the unpaid amount due.

An earlier applicable date may be established with respect to a particular corporation if that corporation individually received a separate notice that remained unpaid for the specified period.

- Where a partial payment is received with respect to a notice, FTB will allocate the payment in accordance with Legal Ruling 95-2 to determine if the notice was “fully paid” within the meaning of Treas. Reg. §301.6621-3(c)(5) with respect to a specific taxpayer.

Drafting Information

The principal author of this notice is Craig Swieso of the Franchise Tax Board, Legal Branch. For further information regarding this notice, contact Mr. Swieso at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720.