

## STATE & LOCAL TAX ALERT

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**August 14, 2013**

### **Is Your Business or Organization Making Payments/Distributions in Excess of \$1,500 to Nonresident Independent Contractors, Shareholders or Partners?**

If yes, then understanding the reporting requirements under California's nonwage income tax withholding rules should be an important consideration. California requires that payers of California source income in excess of \$1,500 withhold 7% for payments to nonresident payees who are not employees. Payees are defined as any person or entity that receives payment from a payer. Payees are often times referred to as the vendor in a transaction. Typical payments made include interest, dividends, prizes and winnings, rental income, royalties and compensation for personal services (e.g. payments to independent contractors).

Entities that have failed to withhold California income taxes are subject to tax exposure for the amount not withheld, plus applicable penalties and interest. The California Franchise Tax Board ("FTB") recently announced a voluntary compliance program for entities not previously meeting withholding requirements. For entities that have been noncompliant for a number of years, the new Withholding Voluntary Compliance Program ("WVCP") represents an opportunity to limit exposure and provides an indication that the FTB intends to be aggressive about pursuing withholding, under the law, going forward.

Under the WVCP, eligible taxpayers who voluntarily come forward, will be given the opportunity to become current on their withholding obligations. The FTB will limit the look back period to two years, abate penalties associated with the non-filing of withholding tax returns and will refrain from pursuing withholding audits prior to the look back period. The program is available to all taxpayers who were not previously audited by the FTB for withholding and who were not assessed penalties for the failure to file withholding tax returns for prior years. Taxpayers that take advantage of the WVCP must agree to the state's withholding requirements prospectively.

The WVCP is a pilot program offered by the FTB and at this time there is no defined end date to the program. Eligible taxpayers should seriously consider the benefits of participating in the program and should speak with their tax advisors on the best course of action. Note that both profit and nonprofit entities are required to comply with the withholding tax requirements and therefore both may take advantage of the WVCP. &

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