



STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
MAIL STOP H-181  
PO BOX 942840  
SACRAMENTO CA 94240-0040

Notice Date: 06/22/2004

Account No: [REDACTED]

Tax Years: 1999 2000

SSN: [REDACTED]

[REDACTED]  
[REDACTED]  
CARMICHAEL CA [REDACTED]

We have received your California income tax return form(s) for the year(s) shown above and have determined that the form constitutes a frivolous or a frivolous/invalid state income tax return(s). California Revenue and Taxation Code (R&TC) Section 19179 provides that a penalty of \$500 shall be imposed for filing a frivolous return. The penalty is determined in accordance with Internal Revenue Code (IRC) Section 6702. As defined by IRC Section 6702, a purported return may be deemed frivolous if:

1. it does not contain information upon which the correctness of the tax may be judged, or the information on the face of the return indicates that the self assessment of tax is substantially incorrect; and
2. the conduct referred to herein is due to a position which is frivolous, or the desire (which appears on the purported return) is to impede or delay the administration of federal income tax laws, then such individual shall pay a penalty of \$500.

A valid return form requires a written declaration that the information submitted on the return is made under penalty of perjury. To alter the jurat or the space provided for the signature claiming that the document is filed under the penalty of perjury for a "return" is an attempt to retract or qualify the jurat; such qualifications render the document invalid (Sloan v. Commissioner, (7<sup>th</sup> Cir. 1995) 53 F. 3d 799).

If you wish to correct these filed forms and avoid involuntary assessment of tax, penalties, and interest, valid California income tax returns must be filed with this office within 30 days from the date of this letter. In the case of filed frivolous amended return forms, submit a letter to this office rescinding those amended return forms within 30 days.

R&TC Section 18501 requires that a valid tax return form be filed. A return form which does not contain any information relating to a taxpayer's income from which tax can be computed is not a return (United States v. Porth, (10<sup>th</sup> Cir. 1970) 426 F.2d 519, cert denied (1970) 400 U.S. 824, 27 L. Ed. 2d 53. In United States v. Kimball, (9<sup>th</sup> Cir 1991) 925 F.2d 356, the court ruled that a form containing no financial information whatsoever did not constitute a return for purposes of the tax code. In Kimball the court qualified and limited an earlier decision in U.S. v. Long, (9<sup>th</sup> Cir 1980) 618 F. 2d 74 that had concluded a taxpayer could not be convicted for misdemeanor willful failure to file a return when forms filled with zeros were submitted as a return. The financial information on the return form must include all taxable income from all sources. Compensation received in whatever form, including wages for services, constitutes taxable income (Lonsdale v. Commissioner, (5<sup>th</sup> Cir. 1981) 661 F. 2d 71).

This letter is a formal legal demand that you file the required tax return(s), pursuant to R&TC Section 18501, within 30 days and pay the balance due. Payment should include all taxes, penalties, and interest. The enclosed FTB 1140, provides an explanation of penalties and interest.

If we do not receive a valid return for each year shown above, within 30 days, you may be assessed tax, penalties, and interest based on available information. The assessment(s) may include the following penalties:

1. a demand penalty for failing to file a return after notice and demand. This penalty is 25 percent of the tax prior to the application of any refundable credits for failure to provide information after notice and demand; and
2. a delinquency penalty for failure to file a return by the due date. This penalty is 25 percent of the tax due after allowing for any timely payments and credits; and
3. if you do not file the required return(s), a filing enforcement fee of \$69.00 will be assessed to cover the costs of enforcing your filing requirements.

In addition, if a valid income tax return is not filed within 30 days, a frivolous return penalty may be imposed in accordance with R&TC Section 19179. The frivolous return penalty is \$500 for each tax form that purports to be a return. There is no provision in the law for protesting the frivolous return penalty. R&TC Section 19180 provides that you may only contest the penalty by payment of 15 percent of the penalty amount, and the filing of a claim for refund within 30 days of notice and demand for the penalty. If you do not pay and file a refund claim within the 30 day period, the frivolous return penalty will be fully collectible.

To ensure proper handling, please attach a copy of this letter to your reply and/or valid return(s) and return it in the enclosed envelope.

Individual Tax Collection Bureau  
Telephone: (916) 845-7755

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