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Court Finds California LLC Fee Unconstitutional

LLC Fee Unconstitutional?

In a proposed statement of decision issued on March 3, 2006 the California Superior Court held that California's gross receipts based LLC Fee is unconstitutional. *Northwest Energetic Services, LLC v. Franchise Tax Board* (San Francisco Superior Court Case No. CGC-05-437721).

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notified Northwest of a balance due. Northwest paid the outstanding balance and filed a claim for a refund. The court ruled that the lack of apportionment of the LLC Fee violates both the Commerce and Due Process Clauses of the United States Constitution.

It is not clear whether the statute itself is invalid (affecting all LLCs in California), or whether the statute will be upheld if the fee is calculated by apportioning income between states (affecting only LLCs with income both within and without California). For now, when filing LLC returns, you must still pay the LLC Fee, without apportioning, or the FTB will send you a bill for the LLC Fee plus inter-

est. However, ***you should file a protective claim for refund for any LLC that has paid the LLC Fee***, for all tax years for which the statute of limitations has not yet run. This is a unique refund claim to protect your interests due to a contingency in the tax law. For calendar-year LLCs that filed a 2001 tax return by the original due date, the LLC must file a claim for that year by April 17, 2006.

The FTB has established special procedures for filing protective claims based on *Northwest*. However, it will not issue any refunds, or process any protective claims for refunds, until there is a final appellate court decision.



Tax Corner

- **IRS Audit Rates for Sole Proprietors are on the Rise.** For fiscal year 2005, the IRS audited one out of every 27 tax return filers showing over \$100,000 in gross income, almost double the audit rate for 2004. (Source: The Kiplinger Tax Letter, Vol. 81, No.6.)
- **Keep an Eye on your Payroll Tax Deposit Agent.** A recent case held that the employer remained responsible for payroll taxes, and interest and penalties thereon, after the payroll service it hired filed phony returns and embezzled the payroll tax deposits. (Pediatric Affiliates, D.C., N.J.)
- **Another Payroll Tax Reminder: Leased or Temporary Employees.** You are the employer of a leased or temporary employee, and therefore responsible for withholding and payment of state payroll taxes, *unless* the employee leasing agency or temporary services agency performs *all* of the following tasks: (1) Negotiate with clients for such matters as time, place, type of work, working conditions, quality, and price of the services; (2) Determine assignments or reassignments of workers, even though workers retain the right to refuse specific assignments; (3) Return the authority to assign or reassign a worker to other clients when the worker is determined to be unacceptable by a specific client; (4) Assign or reassign the worker to perform services for a client; (5) Retain the right to hire and terminate workers; (6) Pay the worker from the agency's own account(s); (7) Set the rate of pay of the worker, whether or not through negotiation. (Source: California Employer, Vol. 59, No.1.)

Reminders

- **If a corporation or LLC needs to make changes to an officer or director mid year, you can file an amended Statement of Information with the Secretary of State without a filing fee.**
- **It's the time of year for many annual meetings. We have a large conference room available if you would like to use it for your meeting. Mark and Tamara can also be available to attend your annual meeting if requested.**



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Dates to Remember

April 14 Good Friday - some courts and government offices closed
April 16 Easter Sunday
April 17 Taxes Due!!!
May 16 Mother's Day
May 29 Memorial Day - courts and government offices closed
June 18 Father's Day

Did you know?

Most Nascar teams use nitrogen in their tires instead of air.

"I am" and "I do" are the shortest complete sentences in the English language.

In every episode of Seinfeld there is a Superman somewhere.

Pound for pound, hamburgers cost more than new cars.

If you keep a goldfish in a dark room, it will eventually turn white.

Women blink nearly twice as much as men.

Law On Line

A preliminary search for name availability for corporations and LLCs can be performed online at <http://www.ss.ca.gov>



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