



UPDATE | Extended Again: Federal and California Tax Relief for California Storms

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October Update

As practitioners predicted, the California Franchise Tax Board has adopted the federal November 16, 2023 extensions for similar state returns and payments.

To those CPAs and taxpayers who pulled all-nighters to get returns filed this past Monday, October 16, 2023, the IRS that same day channeled Emily Litella and said, "Never mind." **The deadline is now extended to Thursday November 16, 2023.** The additional extension applies to various federal individual and business tax return filings, as well as payment deadlines. Eligible taxpayers will now have until November 16, 2023 to complete:

1. individual tax returns;
2. corporate, LLC and partnership business returns; and
3. tax-exempt organization returns.

The extended deadline also applies to individual estimated tax payments that would otherwise be due January 16, April 18 and September 15, 2023. (If you already mailed in your checks because of the looming "old" October 16 deadline, you can't recall those.)

The disaster relief is an automatic benefit that the IRS provides to eligible taxpayers with an address of record in the designated disaster areas (basically, every California county other than Lassen, Modoc and Shasta in the far northeast). If an eligible taxpayer receives a late notice from the IRS, the taxpayer should contact the IRS immediately because that taxpayer is eligible for abatement.

Although California likely will similarly extend deadlines for its own income and franchise returns and payments to November 16, 2023, as of today it has not yet officially done so.

March Update

As another deluge of storms ravages California and the Southeast, the Internal Revenue Service (IRS) on February 24, 2023 announced a further extension of the May 15 tax deadline to October 16, 2023 for taxpayers that reside in most California counties, as well as parts of Alabama and Georgia. The additional extension applies to various federal individual and business tax return filings as well as payment deadlines. For example, eligible taxpayers will now have until October 16, 2023 to complete individual tax returns (otherwise due April 18, 2023 without extension); corporate, LLC and partnership business returns (otherwise due March 15 or April 18, 2023 without extension, for calendar-year filers); and tax-exempt organization returns (otherwise due May 15, 2023 without extension, for calendar-year filers). The extended deadline also applies to individual estimated tax payments otherwise due January 16, April 18 and September 15, 2023.

The IRS also has extended relief to individuals and businesses in almost all California counties.

Additional relief is being provided to specific classes of individuals, such as farmers. For such individuals, the deadline to contribute to 2022 IRAs and health savings accounts also was extended to October 16, 2023.

The disaster relief is an automatic benefit that the IRS provides to eligible taxpayers with an address of record in the disaster areas. If an eligible taxpayer receives a late notice from the IRS, the taxpayer should contact the IRS immediately because that taxpayer is eligible for abatement.

This relief from the IRS towards affected taxpayers is a timely, well-needed moment of respite for those already burdened by concerns over house, home and livelihood. Although California likely will similarly extend deadlines for its own income and franchise returns and payments to October 16, 2023, as of March 1, 2023, it has not yet officially done so. We will continue to keep you apprised of updates to federal and state tax relief notices.

Our original eAlert:

Federal and California tax agencies have announced several relief measures for taxpayers affected by the storms that started shortly before New Year's Eve and ended (for the time being) on Martin Luther King Jr. Day. Natural disasters – like wildfires or earthquakes of course – are familiar to Californians, but the geographic scope of this tax relief (like the storm damage) is unprecedented, affecting taxpayers up and down the state in 41 out of California's 58 counties (including almost all coastal counties).

Guidance is evolving but below is a summary of federal and California relief as of January 18, 2023.

Federal

The Federal Emergency Management Agency (FEMA) has declared the following 41 California counties to be disaster areas: Alameda, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Mono, Monterey, Napa, Orange, Placer, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San

Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Ventura, Yolo and Yuba. As a result, and under Treasury Regulation § 301.7508A-1 and IRS Revenue Procedure 2018-58, the IRS in a January 8, 2023 news release (updated January 11) announced the following tax relief for individuals residing in those counties and businesses (including corporations, partnerships, LLCs and sole proprietorships, as well as exempt organizations) having their principal place of business in those counties (“Affected Taxpayers”). Relief is automatic for a taxpayer with an IRS address of record in those counties: Taxpayers do not need to contact the IRS to be eligible.

- ***MOST tax returns otherwise due on or after January 8 and before May 15, 2023, and any tax payment with such return, are now due May 15, 2023.*** Returns eligible for postponement include individual, corporate and estate and trust income tax returns; partnership returns, S corporation returns and trust returns; estate, gift and generation-skipping transfer tax returns; annual information returns of tax-exempt organizations; Form 5500 returns for retirement plans; and employment and certain excise tax returns that have either an original or extended due date in this time span. Affected Taxpayers that have an estimated income tax payment originally due during the time span also will not be subject to penalties for failure to pay estimated tax installments as long as such payments are paid on or before May 15, 2023.
- ***However, not ALL returns and payments are eligible for postponement.*** As one might expect, most ineligible documents are those that businesses must issue to other taxpayers to aid the other taxpayers’ own return preparation. For example, the following are *not* eligible for postponement: information returns in the W-2 (wage reporting), 1094/ 1095 (health insurance) or 1099 (independent contractor and other payments) series; or Forms 1042-S (reporting of income to foreign persons), 3921/ 3922 (employee stock options), or 8027 (employer annual information return). Also, employment and excise tax deposits still must be made by their regular dates. However, penalties on deposits due on or after January 8, 2023, and before January 23, 2023, will be abated as long as the tax deposits were made by January 23, 2023.
- ***Many deadlines for taking other time-sensitive actions have been extended to May 15, 2023 as well.*** These deadlines include, for example, making a contribution to an IRA, 401k, HSA or Archer MSA for 2022.
- ***However, the rules for 1031 exchanges are more complex.*** The relief for completing section 1031 exchanges (specifically, meeting the 45-day deadline for identifying a replacement property and the 180-day deadline for closing on a replacement property) is more complicated: The Affected Taxpayer may either proceed under Section 6 or Section 17 of Revenue Procedure 2018-58 and the choice depends on the taxpayer’s unique facts and should be taken only with consultation with a section 1031 expert.

Section 6 essentially provides a flat extension of both the 45-day identification and 180-day closing periods to May 15, 2023, regardless of when the taxpayer sold the relinquished property to start the 45- and 180-day clocks running. For example, if the taxpayer sold the relinquished property on November 16, 2022, the 45-day identification deadline would have been December 31, 2022 but the exchange period – which normally would have ended on March 15, 2023 – is now extended to May 15, 2023.

Section 17 applies only if the taxpayer had sold the relinquished property on or before the FEMA disaster declaration (here, January 8, 2023). Here the 45- and 180-day deadlines that have not-yet passed can be extended for 120 days or until May 15, 2023 (whichever is later). However, the postponement period may not extend beyond the due date (including extensions) of the taxpayer’s tax return, or for one year. For example, if the relinquished property were sold October 16, 2022, the last day of the 45-day identification period would remain November 30, 2022, since that date passed before the FEMA declaration of the disaster. The 180-day exchange deadline, however, will not have passed, so the deadline will be extended to May 15, 2023 (*i.e.*, the later of that date or 120 days after the relinquished property’s sale date).

- ***Affected Taxpayers may claim disaster-related casualty losses on their federal income tax return for either 2023 or 2022.*** Individuals may deduct personal property losses that are not covered by insurance or other

reimbursements. For details, Affected Taxpayers claiming the disaster loss on their return should put the Disaster Designation “California, severe winter storms, flooding and mudslides” in bold letters at the top of the form and include the FEMA disaster declaration number (FEMA-3591-DR) on any return. For details, see Publication 547 (Casualties, Disasters and Thefts) as well as Form 4684 (Casualties and Thefts) and accompanying instructions.

California

- **Franchise Tax Board (FTB).** The FTB so far is the only California tax agency that has provided “blanket” relief for filing returns and paying taxes within its purview (income taxes, franchise taxes, LLC annual fees and withholding taxes outside of the employment context). Basically, the FTB’s deadline extensions track those for the comparable federal returns.
- **Employment Development Department (EDD).** The EDD is not at this time granting any “blanket” relief for taxes and returns within its purview (employee income tax withholding and state payroll taxes), though it may grant relief on a case-by-case basis. See the EDD web site under Emergency and Disaster Assistance for Employers for more details.
- **California Department of Tax and Fee Administration (CDTFA).** Like the EDD, the CDTFA is not at this time granting any “blanket” amnesty for taxes and returns within its purview (sales, use, fuel and similar excise taxes). Businesses may request relief on a case-by-case basis at the CDTFA’s web site under State of Emergency Tax Relief.
- **Property taxes.** Only the California legislature by statute can extend due dates for property taxes (second installment due April 10, 2023). County tax collectors have indicated, however, that they may waive penalties and interest for late payments upon application and on a case-by-case basis. An owner whose property has been damaged may also file a claim for a lower assessed value as a result.

Federal, state and local governments are amending and expanding their storm-related filing and payment extensions on an almost hourly basis. Further, although forecasters are predicting a lull for the time being, storms may well resume in later January or early February with resulting floods, mudslides wave surge and beach erosion (and possible additional tax relief as a result). (For long-term forecasts, see the National Weather Service Climate Prediction Center’s website that updates daily.)