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SB 813: Expanded Voluntary Disclosure Program

By Eddie Beeby

The California Franchise Tax Board sponsored Senate Bill 813, which took effect Jan. 1, 2018. SB 813 expands California's Voluntary Disclosure Program and is codified at Cal. Rev. & Tax. Code Sections 19191- 19192. It is predicted to lower tax revenue by \$100,000 annually.

The program solves a dilemma that frequently plagues taxpayers who have failed to file or pay their taxes, sometimes for years. They could come forward. If they do the FTB might assert penalties. Even worse, since there is no statute of limitations for an unfiled return, their liabilities could go back decades.

Or they can stay in the shadows. However, each year their potential liability grows and grows.

The Voluntary Disclosure Program fixes this problem. The program allows certain taxpayers to come in from the cold and disclose their liabilities voluntarily. In exchange, the taxpayer only files and pays the past six years' taxes and



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the FTB waives certain penalties.

Unfortunately, not everyone is eligible. Prior to 2018, the program was only available to certain out-of-state residents, C Corporations, S Corporations, and trusts without any California resident beneficiaries. Out-of-state LLCs taxed as partnerships were also eligible, but actual partnerships were ineligible. No one knows why. (Partnerships do not pay state income taxes but they do have filing obligations, so the Voluntary Disclosure Program still matters to them.)

Additionally, although out-of-state S Corporations and LLCs taxed as S Corporations were eligible for the program, a

legislative oversight robbed them of some of its benefits. The law did not authorize the FTB to waive the often largest penalty S Corporations suffer: Cal. Rev. & Tax. Code Section 19172.5, which penalizes failure to file an S Corporation return with an \$18 per shareholder assessment for each month it is late. It adds up fast. By contrast, LLCs taxed as partnerships, which face a similar penalty, could get waiver.

SB 813 expands Voluntary Disclosure Program eligibility to more legal entities. Now out-of-state trusts with California resident beneficiaries are eligible, as well as out-of-state general partnerships, limited partnerships, and limited liability partnerships with nonresident partners. This eliminates inconsistent treatment among similarly-situated entities.

Additionally, SB 813 allows the FTB to waive the penalty for an S Corporation's failure to file an informational return. Cal. Rev. & Tax. Code Section 19172.5.

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