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CALIFORNIA STARTS LLC FEE REFUNDS ON VENTAS DECISION

By Victor Sy, CPA

Background: *Ventas Finance, LLC* was a Delaware LLC that registered with the California Secretary of State and earned income [within and outside California](#). *Ventas* sued and [won](#). Both the California Court of Appeal and the First Appellate District held that former Revenue and Taxation Code section 17942 was **unconstitutional** as applied to *Ventas* because the LLC fee was based on *Ventas*' **total income** from all sources and instead of income derived solely from California. Decision in *Ventas* is now **final**. **You may now apply for refund.**

Do You Qualify for Refund? LLCs with substantially the **same factual situation** - LLCs that earned income within and outside of California - qualify for the refund.

How Do You Claim Refund? There are two methods - default and alternative. FTB will use the Default Method, unless you inform FTB by August 20, 2009, that you wish to use the Alternative Method.

1. **Default Method:** FTB will use the LLC's [Schedule R, Apportionment and Allocation of Income](#), filed with [Form 568, Limited Liability Company Return of Income](#). LLCs that did not attach a Schedule R to the originally filed Form 568 must submit a Schedule R. FTB will calculate the revised LLC fee and the refund amount, if any.
2. **Alternative Method:** The LLC must complete and submit the LLC Income Worksheet from the 2008 [Form 568, Limited Liability Company Tax Booklet](#), with the respective information for each tax year that a claim for refund is filed. Based on the information provided that you, FTB will then calculate the revised LLC fee and the refund amount, if any.

How do I Use the Alternative Method? If you want to use the Default Method to calculate your refund, but did not attach a Schedule R, or you choose to have the refund calculated using the [Alternative Method](#), provide the following:

1. The LLC's name, address, name and phone number of the managing member or designated contact person.
2. The LLC's Secretary of State file number or Franchise Tax Board temporary LLC number (for unregistered entities) and Federal Employer Identification Number.
3. Tax years involved.
4. Choose either A or B below:
 - A. For the Default Method: a completed Schedule R, if the LLC did not attach a Schedule R to the original Form 568 filed for each tax year that a claim for refund is filed.
 - B. For the Alternative Method: a completed 2008 LLC Income Worksheet with the respective information for each tax year that a claim for refund is filed.

If you have not filed a claim for refund, but want to [keep the statute of limitation to remain open](#), write a letter mentioning the four items listed above. Include the following statement "[This letter constitutes a claim for refund for \(LLC name\) – Income Earned Within and Outside California.](#)" Have the claim for refund signed by the LLC's managing member or a representative with a power of attorney.

Send your information by:

- Faxing (916) 845-9796 or
- Mailing to:
ABS 389 MS F340
C/O FTB Notice 2009-04
Franchise Tax Board
PO Box 942867
Sacramento CA 94267-8888.