

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor here at McGeorge School of Law in its Capital Lawyering program.

Today's podcast is looking at the governor's executive orders that impact state tax obligations here in the state of California. On March 30th, Governor Gavin Newsom issued Executive Order N-40-20, which is intended to provide relief to California's small businesses.

This particular executive order has a number of provisions related to state tax laws that are intended to provide extensions for small businesses and individuals. You may be aware that on March 4th, Governor Newsom proclaimed a state of emergency.

It currently remains in effect for the entire state of California due to the threat of COVID-19. California's Emergency Services Act provides that, pursuant to Government Code Section 8571, the governor can waive certain statutes and regulations that might hinder or delay appropriate actions.

Now, among numerous other provisions, this particular executive order -- again, it's N-40-20 -- the first provision allows the California Department of Tax and Fee Administration -- I know it's a mouthful, so I'm going to utilize its acronym, CDTFA -- they can offer a 90-day extension for tax returns and tax payments for all businesses who file a return that owe less than \$1 million in taxes.

Now, note, this threshold is based upon the amount of taxes owed rather than our normal threshold, which is either a gross receipts amount or an employee threshold. Again, this 90-day extension is available based upon the amount of taxes paid.

Specifically here, the provisions of the California Revenue and Taxation Code -- we're going to use an acronym here, too, the CRTC -- that apply to any taxes and fees administered by the CDTFA that require a request for an extension and the filing of a statement under penalty of perjury may be suspended by the CDTFA for up to three months after the due date of the return or payment.

This applies to individuals or businesses who file a return, again, for less than \$1 million in taxes. This means the extension is in effect through July 31st, 2020. Now, CDTFA has posted on its website that if your tax liability is \$1 million or more, you may still request an extension if you're unable to file and pay in a timely manner.

These requests, again, for \$1 million or more of tax liability, will be evaluated by CDTFA on a case-by-case basis. All taxpayers will be notified if their extension has been approved or if it has been denied.

In addition, the governor's executive order impacts certain provisions of the CDTFA's rules for tax appeals. What do I mean by that? Under current law, the CDTFA appeals by taxpayers, they must do so within 30 days after a determination by CDTFA.

Now, this applies to individuals or to businesses. The governor's executive order extends for a period of 60 days this time to file an administrative appeal, so long as it a result of the emergency.

What that means is this time extension remains in effect through July 31st of 2020. Now, the final item under CDTFA's purview, before we turn over to our other tax agency, began on April 2nd.

Basically, what it provides is that small business taxpayers -- these are defined as those with less than \$5 million in taxable, annual sales -- can take advantage of a 12-month interest-free payment plan up to \$50,000 of sales and use tax liability.

In other words, a small business -- again, that \$5 million threshold -- they would normally owe sales tax on any sales of tangible property that they sell. Of course, every quarter, those taxpayers must file a sales and use tax return with CDTFA and remit the sales or use taxes that they have collected on behalf of the state and submit them to the state of California.

What the state has effectively done is it's created a loan program. It says the first \$50,000 of sales and use tax that you can collect, you can hold onto it for as much as 12 months and then pay it back.

It's basically an interest-free loan by the state. Now, again, the small business is going to have to pay over whatever amount that they hold, up to the \$50,000, but they can do so after a 12-month period.

Let's turn over to our other tax agency, the Franchise Tax Board, the FTB. The governor's executive order also extends the deadline for a couple of provisions related to the FTB.

First is that every year the FTB staff prepares an annual report to the legislature on all the changes that were made in the prior year, so this is 2019, to the Federal Internal Revenue Code with an explanation of what the federal government did and what is the equivalent or corresponding provision of state law.

Now, basically, the governor's executive order granted the FTB staff an additional 60 days in order to prepare it.

Now, in Governor Newsom's Executive Order N-25-20, which he issued on March 12th, he told the FTB to use its administrative powers to provide extensions of time to individuals and businesses who are affected by complying with state and local public health recommendations on social distancing and dealing with the COVID-19 crisis.

What they are doing is that they are postponing due dates. Now, according to the Franchise Tax Board, they say that California Revenue and Taxation Code -- again, the CRTS -- section 18572 gives the Franchise Tax Board the authority to postpone deadlines in accordance with the governor's orders.

They issued -- this is an FTB notice, as opposed to the governor's executive order -- FTB Notice 2020-02, gives the FTB until July 15th to issue any proposed tax assessments for years where the statute of limitations expired between March 12th and July 15th.

In addition, on March 18th, the Franchise Tax Board announced some special tax relief for all California taxpayers due to the COVID-19 pandemic. What did the FTB do?

In conformity to the Internal Revenue Service, the federal government, who extended the due date of our April 15th normal tax deadline to July 15th, so did the Franchise Tax Board. Which means the FTB extended the filing and the payment deadlines for both individuals and businesses until July 15th.

This includes the 2019 tax returns, the 2019 payments for those tax returns, the 2020 first and second quarter estimated payments that are both due now July 15th, the 2020 LLC taxes and fees, and any 2020 nonwithholding payments.

According to the Franchise Tax Board, to give taxpayers a deadline consistent with that of the Internal Revenue Service, the FTB is following the federal government relief described in Notice 2020-17.

Then finally, on March 30th, the Franchise Tax Board also announced an extension of time, also to July 15th, 2020, for California taxpayers to complete certain time-sensitive administrative acts related to their state taxes being due.

Here, the FTB issued Notice 2020-02, and they said, "July 15th is now the deadline for claims for a refund, protest of proposed tax assessments, and any appeals to the Office of Tax Appeals for any notices of actions that either denied a claim for refund or that affirmed tax assessments against taxpayers," again, individually or businesses.

You can see that all of this stemmed from the governor's executive orders, but ultimately, our two tax agencies -- the Franchise Tax Board, FTB, and the California Department of Tax and Fee Administration, CDTFA -- have both extended either specific time periods to July 15th or July 31st certain deadlines that affect both individual and business taxpayers here in the state of California.

I hope this overview of some of the new state tax law implications that are associated with the COVID-19 pandemic has been helpful for you to better understand your state tax filing obligations.

Thanks for joining. I hope you enjoyed it.