

## PERSONAL INCOME TAX ADJUSTMENT PROCESS

If the Employment Development Department (EDD) audits the employer's business records and determines that the employer failed to properly withhold California Personal Income Tax (PIT) from the wages paid to the workers, the EDD will issue an assessment for the PIT that should have been withheld. However, the employer has the opportunity to gain relief from some or all of the PIT liability, and related penalties and/or interest, through the use of the *Claim for Adjustment or Refund of Personal Income Tax*, DE 938P. The *Declaration*, DE 6028P, may be used to gain relief from some or all of the PIT assessed and some of the interest, however, the penalties will not be reduced. Please read the following information carefully before completing these forms.

**NOTE:** The relief granted for PIT through the use of the following methods does not adjust the assessed liability for Unemployment Insurance, Employment Training Tax, or State Disability Insurance.\*

### FIVE METHODS FOR ADJUSTING A PIT ASSESSMENT

PIT may be adjusted using one or more of the following methods:

#### 1. Recalculation of PIT Based on the Worker's Federal or California's Employee Withholding Allowance Certificate, Form W-4/DE 4

The employer may reduce the PIT assessment, and related penalties and interest, by recalculating the amount of PIT that should have been withheld.

If the auditor assessed PIT at a flat rate or estimated at six percent (6%) due to the unreported wages being unallocated and/or the payroll periods not clearly identified, and the employer has a signed Form W-4 or DE 4 from the worker during the time that he or she worked for the employer, the employer may recalculate their PIT withholding. Use the filing status and number of allowances on the Form W-4 or DE 4 and the appropriate tax withholding table in the *California Employer's Guide*, DE 44, for the year(s) of the assessment. The employer must submit a completed worksheet for each worker assessed when the employer recalculates PIT using this method.

Prior year PIT withholding schedules are available on the EDD website at [www.edd.ca.gov/Payroll\\_Taxes/Rates\\_and\\_Withholding.htm](http://www.edd.ca.gov/Payroll_Taxes/Rates_and_Withholding.htm).

#### 2. Recalculation of PIT Based on Single With Zero Allowances (S-0)

If the employer does not have a signed Form W-4 or DE 4 from the worker, the employer may use a filing status of Single with zero allowances (S-0) to recalculate the PIT. This may reduce the amount assessed below the estimated level. The employer must submit a completed worksheet for each worker assessed when the employer recalculates PIT using this method.

#### 3. Recalculation of PIT Using a Reasonable Sample

If the auditor included a large number of workers in the PIT assessment, the employer may use a reasonable sample to recalculate the PIT that should have been withheld.

The sample must include at least four representative pay periods during the most recent calendar year for which the unreported wages are equal to or greater than the average unreported wages per pay period.

The employer must schedule the individual wage payments for the four pay periods, calculate the percentage of PIT that should have been withheld from each wage payment based on the Form W-4/DE 4 or S-0 filing status, and apply that percentage to the total unreported wages for the four pay periods to recalculate the total PIT.

The EDD will adjust the assessment if the PIT percentage from the sample is less than the flat rate percentage used in the audit assessment.

#### 4. Certification by the Worker That the Wages Were Reported to the Franchise Tax Board (FTB) on a DE 938P

The employer may be relieved of PIT assessed for any worker who certifies that he or she reported the wages on his or her California state income tax return. The worker must complete the DE 938P, items (5) through (7).

This certification does not relieve the employer from penalties for failure to withhold PIT, or from certain portions of the interest on the PIT assessment. For this reason, it may be to the employer's advantage to also recalculate PIT using one of the other methods described above.

\*Includes Paid Family Leave (PFL)

## 5. Declaration That the Workers Were Issued a Federal Form 1099, Form W-2, or Schedule K-1 on the DE 6028P\*\*

The employer may be relieved of the PIT assessed if the employer can declare under penalty of perjury that the workers were issued a Form [1099-MISC, Form W-2](#) (which includes state and local income tax information for the State of California), or [Schedule K-1](#), and that the forms were filed timely with the Internal Revenue Service (IRS) and/or the FTB. Be advised that the DE 6028P is signed under penalty of perjury.

If the employer can make this declaration under penalty of perjury, the DE 6028P should be completed and submitted to the auditor. The EDD may verify with the workers, the IRS, or the FTB that the forms were furnished and filed.

If your Form(s) W-2 are filed by your agent, it is your responsibility to verify that the electronic Form(s) W-2 file contains information about state and local income taxes for the State of California. If the Form(s) W-2 files contain another state's income tax information or did not contain any state income tax data, the DE 6028P process should not be used. You may request to be relieved of the PIT assessed through any of the other four available methods.

This declaration does not relieve the employer from penalties for failure to withhold PIT, or from certain portions of the interest on the PIT assessment. For this reason, it may be to the employer's advantage to also recalculate PIT using one of the other methods described above.

**Note:** Even if the employer uses the worker certification adjustment (Method 4), or declaration (Method 5), it may be to the employer's advantage to recalculate the PIT using Method 1, 2, or 3 in order to receive the greatest possible adjustment to the PIT assessment.

### RECALCULATION OF INTEREST

Interest will be recalculated when the worker certifies on the DE 938P that he or she paid quarterly estimated taxes to the FTB. Interest will also be recalculated when the worker certifies that the wages were reported on his or her California state income tax return. Generally, the employer is relieved of any interest charged for periods after the worker paid the taxes or filed the return.

### SPECIAL INSTRUCTIONS FOR CURRENT YEAR AND LAST COMPLETED CALENDAR YEAR PIT ASSESSMENT

#### DE 938P

If the EDD assessed PIT on wages for the current year and/or prior completed calendar year(s), the employer must prepare separate DE 938P(s). The employer may obtain

the worker's certification and signature after the worker has filed his or her California state income tax return with FTB for the current and/or last completed calendar year. However, the employer may submit DE 938P(s) at any time for those workers who have filed quarterly estimates with FTB and have signed a DE 938P.

### TIME LIMITS TO FILE CLAIMS FOR REFUND

Filing forms DE 938P and DE 6028P with the EDD constitutes a claim for refund under Section 1178 of the California Unemployment Insurance Code (CUIC). There is no time limit for submitting these forms when the assessed PIT has not been paid. However, if the assessed PIT has been paid, Section 1178 of the CUIC provides strict time limits for filing a claim for refund with EDD. Claims for refund must be filed either:

- Within three years from the last day of the calendar month following the close of the calendar quarter for which the overpayment was made.
- Within six months after the assessment becomes final.
- Within 60 days from the date of overpayment, whichever period expires later.

### NO EXTENSION OF TIME TO FILE PETITION FOR REASSESSMENT

A complete explanation of the employer's appeal rights is included with the official *Notice of Assessment*, DE 6517. If the employer chooses to file a petition for reassessment, the employer must file it within 30 days from the date of the assessment.

The PIT adjustment process DOES NOT extend the time limit for the employer to file a petition for reassessment. If the employer wishes to file a petition for reassessment, the employer must file it within 30 days from the date of the assessment. Refer to Section 1222 of the CUIC.

**Note:** If the employer failed to pay the assessment amount on or before the assessment becomes final, a fifteen percent (15%) penalty of the delinquent contributions will be added pursuant to Section 1135 of the CUIC. Additionally, failure to file a petition and untimely payment of the assessment amount will result in state tax liens being filed.

### ADDITIONAL INFORMATION

When the employer has completed the DE 938P(s) and/or DE 6028P(s), the forms should be sent to the office shown on the front. If you need assistance in completing any part of the PIT adjustment process, please contact the auditor.

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling 888-745-3886 (voice) or TTY 800-547-9565.

\*\*The DE 6028P only applies to audits completed after July 1, 2008.

This information sheet is provided as a public service and is intended to provide nontechnical assistance. Every attempt has been made to provide information that is consistent with the appropriate statutes, rules, and administrative and court decisions. Any information that is inconsistent with the law, regulations, and administrative and court decisions is not binding on either the Employment Development Department or the taxpayer. Any information provided is not intended to be legal, accounting, tax, investment, or other professional advice.