

PERSONAL INCOME TAX ADJUSTMENT PROCESS

If an audit of your business records has disclosed that California personal income tax (PIT) was not properly withheld from wages paid to your workers, this determination will result in an assessment for the PIT that should have been withheld.

You have an opportunity to gain relief from some or all of the PIT liability and associated penalties and interest through the use of the *Claim for Adjustment or Refund of Personal Income Tax* (DE 938P). Please read the following information carefully before completing these forms.

Note: The relief granted for PIT through the use of the DE 938P process does **not** in any way adjust the assessed liability for unemployment insurance, State disability insurance,* or the employment training tax.

FIVE METHODS FOR ADJUSTING THE PIT

The PIT assessed can be adjusted using any of the following methods:

1. Recalculation of PIT based on the worker's W-4/DE 4.
2. Recalculation of PIT based on the worker being classified as Single with zero allowances (S-0).
3. Recalculation of PIT using a reasonable sample.
4. Certification by the worker that the wages were reported to the Franchise Tax Board (FTB).
5. Verification by the FTB.

Note: Even if you are able to take advantage of the employee certification adjustment process (Method 4), it may be to your advantage to recalculate the PIT (Method 1 or 2) to receive the greatest possible adjustment in your assessment.

1. Recalculation of PIT Based on the Worker's W-4/DE 4

You can reduce the PIT assessment and any related penalties and interest by recalculating the amount of PIT that should have been withheld. If the PIT was assessed at a flat rate by the auditor and you had a signed W-4 or DE 4 from the worker during the time

that he or she worked, you can recalculate PIT. Use the filing status and number of allowances that are on the 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.** This recalculation may reduce the PIT assessment and result in a reduction of any penalties and interest that were added to the PIT. A completed worksheet for each worker assessed must be attached when this PIT recalculation is performed.

2. Recalculation of PIT Based on the Worker Being Classified as Single With Zero Allowances

Even if you did not have a signed W-4 or DE 4 from the worker, you can take advantage of the recalculation process to reduce your assessment. To do so, you must 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. Again, a completed worksheet for each worker assessed must be attached to the DE 938P when this PIT recalculation is performed.

Please refer to the DE 44 for the appropriate tax withholding schedule.**

3. Recalculation of PIT Using a Reasonable Sample

If many workers are covered by the PIT assessment, you 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. You 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 W-4/DE 4 or S-0 filing status, and apply that percentage to the total unreported wages for the four pay periods to calculate total PIT. Your assessment will then be adjusted if the PIT percentage from the sample is less than the flat rate percentage used in the audit assessment.

*Includes Paid Family Leave (PFL).

**Historical PIT withholding schedules can be viewed on our Web site at www.edd.ca.gov/taxrep/taxrtehis.htm.

4. Certification by the Worker That the Wages Were Reported to the FTB

You can be relieved of the full amount of PIT assessed for any worker who certifies that the wages were reported on his or her California state income tax return. The worker must complete the worker portion of the DE 938P, items (5) through (7).

This certification does not relieve you from penalties imposed for failure to withhold PIT or from certain portions of the interest on the PIT assessment. That is why it may be to your advantage to recalculate PIT using one of the other methods described above.

5. Verification by the FTB

If you cannot secure the workers' signatures on the DE 938Ps, EDD will attempt to verify the workers' payment of the tax with FTB. However, verification with FTB is possible only if the DE 938Ps are submitted within four years after the end of the tax year for which the verification is being requested. For example, verification of wages paid during 2002 must be requested before the end of 2006. This time limit also applies for PIT assessments that have been petitioned. Do not delay your request that EDD verify a worker's payment of tax with FTB while you await a petition hearing.

Recalculation of Interest

Interest will be recalculated (lowered) when the worker certifies that quarterly estimated taxes were paid to the FTB. The worker can certify to this in the worker portion of the DE 938P. Interest is also recalculated when the worker certifies that the wages were reported on his or her California state income tax return. Generally, you are relieved of any interest charged for periods after the worker paid the taxes or filed the return.

Special Instruction for Current Year PIT Assessment

If PIT was assessed on wages for the current year, separate DE 938Ps must be prepared for those wages. Hold the forms until the workers have filed their California state income tax returns. Obtain the worker certification signature prior to submitting the DE 938P. Workers who filed quarterly estimates may sign the DE 938P now.

No Extension of Petition Rights

A complete explanation of your appeal rights will be included in the official notice of assessment, *Employer Account Statement* (DE 2176). If you do choose to file a petition for reassessment, the petition must be filed within 30 days from the date of the assessment.

The time limits for the filing of a petition for reassessment are not extended during the PIT adjustment process. If you wish to file a petition for reassessment, you should do so prior to the finality date of the assessment.

ADDITIONAL INFORMATION

When you have completed the DE 938Ps, send them immediately to the office shown on the front of the form.

Please contact the auditor if you:

- Cannot secure the signatures of the workers.
- Cannot compute the tax.
- Need assistance in completing any part of the process.

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 1-888-745-3886 (voice) or TTY 1-800-547-9565.