

NIESAR & VESTAL LLP
ATTORNEYS AT LAW

90 NEW MONTGOMERY STREET 9TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
TELEPHONE (415) 882-5300
FACSIMILE (415) 882-5400
www.nvllp.com

Law Alert

To: Firm Clients and Contacts

From: Niesar & Vestal LLP

Date: July 30, 2013

Re: **Developments in Penalties and Taxes on Limited Liability Companies Doing Business in California**

For tax years beginning January 1, 2013, the California Franchise Tax Board will assess a \$2,000 penalty against any limited liability company doing business in California, whether domestic or foreign, if it is not registered, is suspended, or forfeited its status to do business in California.

The problem arises when many foreign limited liability companies are not aware that they are “doing business” in California. Under Section 23101 of California’s Revenue and Taxation Code, effective January 1, 2011, a limited liability company is considered to be “doing business” in California during the year if:

- it is organized or commercially domiciled in California;
- it actively engages in any transaction for the purpose of financial gain in California;
- its California sales, including sales by an agent or independent contractor, exceed the lesser of \$500,000 (adjusted annually for inflation) or 25% of the company’s total sales;

- the value of its California real property and tangible personal property exceeds the lesser of \$50,000 (adjusted annually for inflation) or 25% of the company's total real property and tangible personal property; or
- the amount of compensation paid to employees for personal services by the company in California exceeds the lesser of \$50,000 (adjusted annually for inflation) or 25% of the total compensation paid by the company.

Also beginning January 1, 2013, California Proposition 39 has removed the ability of foreign companies to choose how to calculate their California tax liability. All companies doing business in California now must use the single-sales factor method, which only uses sales to calculate California income tax. We believe this will inevitably lead to a higher California tax burden on almost all companies doing business in California.

If you would like to speak with a Niesar & Vestal attorney about any matter discussed in this law alert, please contact Gerald Niesar (gniesar@nvlawllp.com), Oscar Escobar (oescoabar@nvlawllp.com) or June Lin (jlin@nvlawllp.com).