



October 24, 2003

FTB NOTICE 2003- 9

SUBJECT: Revenue Procedure 2003-33 – Automatic Extensions to Make Internal Revenue Code Section 338 Elections

The Internal Revenue Service (hereinafter "IRS") issued Revenue Procedure (hereinafter "Rev. Proc.") 2003-33 (2003-16) on April 21, 2003, generally effective for Internal Revenue Code (hereinafter "IRC") section 338 elections filed after April 2, 2003. Rev. Proc. 2003-33 grants a twelve-month extension of time to file an election under IRC section 338 from the date of discovery of the failure to file a timely election under that section to any person described in Section 4 of Rev. Proc. 2003-33 that complies with the requirements set forth in Section 5 thereof. Rev. Proc. 2003-33 was issued pursuant to Treasury Regulation (hereinafter "Treas. Reg.") section 301.9100-3, which regulation was promulgated under the authority of IRC section 7805.

Revenue and Taxation (hereinafter "Rev. and Tax.") Code section 23051.5, subdivision (d), states that when applying the IRC, regulations promulgated in final form or issued as temporary regulations shall be applicable to the extent that they do not conflict with part 11 of the Rev. and Tax. Code or with regulations issued by the Franchise Tax Board (hereinafter "FTB"). Rev. and Tax. Code section 23051.5, subdivision (e)(1), states that whenever a taxpayer is allowed to make an election under the Rev. and Tax. Code, a proper election filed with the IRS in accordance with the IRC or regulations issued by the Secretary shall be deemed a proper election for purposes of part 11 of the Rev. and Tax. Code, unless otherwise expressly provided in that part or in regulations issued by the FTB. Rev. and Tax. Code section 23051.5, subdivision (e)(3), states that to obtain treatment other than that elected for federal purposes, a separate election shall be filed with the FTB at the time and in the manner which may be required by the FTB.¹

If a taxpayer makes a proper federal election under IRC section 338 for federal income tax purposes, the election will be deemed a proper election for California tax purposes, unless the taxpayer makes a separate California election. If, in making a proper federal election under IRC section 338, the taxpayer receives an extension of time to make the election pursuant to Rev. Proc. 2003-33 or other relevant authority, the election will still be proper for California tax purposes. Although the federal election is made pursuant to

¹ A separate election is one in which the taxpayer either chooses not to make the same election for California tax purposes as the taxpayer made for federal income tax purposes or chooses to make an election for California tax purposes that the taxpayer has not made for federal income tax purposes. In both situations, the election must be allowable under both federal and California tax law.

California Revenue Tax Code 2003

Krishna Mazumdar, West Editorial Staff

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Table of Contents California Revenue Tax Code 2003

1. Understanding the eBook California Revenue Tax Code 2003
 - The Rise of Digital Reading California Revenue Tax Code 2003
 - Advantages of eBooks Over Traditional Books
2. Identifying California Revenue Tax Code 2003
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an California Revenue Tax Code 2003
 - User-Friendly Interface
4. Exploring eBook Recommendations from California Revenue Tax Code 2003
 - Personalized Recommendations
 - California Revenue Tax Code 2003 User Reviews and Ratings

-
- California Revenue Tax Code 2003 and Bestseller Lists
5. Accessing California Revenue Tax Code 2003 Free and Paid eBooks
 - California Revenue Tax Code 2003 Public Domain eBooks
 - California Revenue Tax Code 2003 eBook Subscription Services
 - California Revenue Tax Code 2003 Budget-Friendly Options
 6. Navigating California Revenue Tax Code 2003 eBook Formats
 - ePub, PDF, MOBI, and More
 - California Revenue Tax Code 2003 Compatibility with Devices
 - California Revenue Tax Code 2003 Enhanced eBook Features
 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of California Revenue Tax Code 2003
 - Highlighting and Note-Taking California Revenue Tax Code 2003
 - Interactive Elements California Revenue Tax Code 2003
 8. Staying Engaged with California Revenue Tax Code 2003
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers California Revenue Tax Code 2003
 9. Balancing eBooks and Physical Books California Revenue Tax Code 2003
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection California Revenue Tax Code 2003
 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
 11. Cultivating a Reading Routine California Revenue Tax Code 2003
 - Setting Reading Goals California Revenue Tax Code 2003
 - Carving Out Dedicated Reading Time
 12. Sourcing Reliable Information of California Revenue Tax Code 2003
 - Fact-Checking eBook Content of California Revenue Tax Code 2003
 - Distinguishing Credible Sources

13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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