

TITLE 18. FRANCHISE TAX BOARD

As required by Section 11346.4 of the Government Code, this is notice of intention to consider the adoption of section 19089 in Title 18 of the California Code of Regulations, pertaining to notice requirements for bankruptcy or receivership fiduciaries. There will not be a public hearing unless requested by an interested person at least 15 days before the close of the written comment period. Any request for a public hearing should be submitted to the agency officer named below. Government Code section 15702, subdivision (b), provides for consideration by the three-member Franchise Tax Board of any proposed regulatory action if any person makes such request in writing.

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., May 24, 2012. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

AUTHORITY AND REFERENCE

Revenue and Taxation Code section 19503 authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with section 17001), Part 10.2 (commencing with section 18401), Part 10.7 (commencing with section 21001) and Part 11 (commencing with section 23001). Revenue and Taxation Code section 19089 requires adoption of this regulation in order to implement the notice requirements specified in that section.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Revenue and Taxation Code section 19089 provides, in part, that “[e]very trustee in a case under Title 11 of the United States Code, receiver, assignee for the benefit of creditors or like fiduciary shall give notice of qualification as such to the Franchise Tax Board in the manner and at the time that may be required by regulations of the Franchise Tax Board” and that “[t]he Franchise Tax Board may by regulation provide any exemptions from the requirements of this section that the Franchise Tax Board deems proper.” The Franchise Tax Board has not adopted regulations under this section. The proposed new regulation is designed to implement this section.

The proposed regulation is modeled after Treasury Regulation section 301.6036-1, and implements the notice requirement for bankruptcy or receivership fiduciaries. The proposed regulation is modified from the federal regulation language to eliminate the requirement to give notice in probate cases, since Probate Code section 9202, subdivision (c), already specifies the notice required in estate administration under California probate law.

The proposed language for this regulation addresses who is required to give notice of qualification as a fiduciary in bankruptcy and receivership proceedings; the manner in which parties must provide the Franchise Tax Board with notice; the time requirement for providing the Franchise Tax Board with notice; whether any exemptions to the notice requirement may be appropriate; and the notice to the Franchise Tax Board of administration of bankruptcy by

fiduciaries, thereby aiding tax collection functions as anticipated by Revenue and Taxation Code section 19089.

The Franchise Tax Board has evaluated the proposed regulation and determined that the adoption of this regulation is not inconsistent or incompatible with existing state regulations. There are no other comparable existing state regulations.

Anticipated Benefits from the Proposed Regulation

Taxpayers and fiduciaries will benefit from having direction on how to comply with a statute that is not currently self-executing. Franchise Tax Board will save resources by receiving timely notifications rather than having to locate affected taxpayers.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code section 17500, of Division 4: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost to directly affected private persons/businesses potential: There may be a very minor impact since currently no notice is being provided. The cost is a result of the statute, not the regulation.

Effect on small business: Based on the 200 notifications received each year, approximately 80 percent of the total businesses affected by this regulation are in small businesses.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Pursuant to Government Code section 11346.3, subdivision (b), the Franchise Tax Board has determined in the economic impact analysis that there are no effects on the creation or elimination of jobs in the state, no effect on the creation of new businesses or elimination or expansion of existing businesses within the state and that the proposed regulation will benefit taxpayers and fiduciaries by providing direction on how to comply with a statute that is not currently self-executing. In addition, the Franchise Tax Board will save resources by receiving timely notifications rather than having to attempt to locate affected taxpayers.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Franchise Tax Board must determine that no reasonable alternative considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Franchise Tax Board has prepared an initial statement of the reasons for the proposed regulatory action. The express terms of the proposed regulatory action, the initial statement of the reasons for the regulatory action, and all the information upon which the proposed regulatory action is based are available upon request from the agency officer named below. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board's website at www.ftb.ca.gov.

CHANGE OR MODIFICATION OF ACTIONS

The regulations and amendments may also be adopted with modifications if the changes are nonsubstantive or the resulting regulations are sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulations as modified could result from that originally proposed. The text of the regulations as modified will be made available to the public at least 15 days prior to the date on which the regulations are adopted. Requests for copies of any modified regulations should be sent to the attention of the agency officer named below.

ADDITIONAL COMMENTS

If a hearing is held, the hearing room will be accessible to persons with physical disabilities. Any person who is in need of a language interpreter, including sign language, should contact the officer named below at least two weeks prior to any scheduled hearing so that the services of an interpreter may be arranged.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing, who is in need of a language interpreter, including sign language should contact the officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

CONTACT

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Telephone (916) 845-3306; Fax (916) 845-3648; E-Mail: colleen.berwick@ftb.ca.gov. In addition, all questions on the substance of the proposed regulation can be directed to Amanda Vassigh Sigal; Telephone (916) 845-7689. This notice, the initial statement of reasons and express terms of the proposed regulation are also available at the Franchise Tax Board's website at www.ftb.ca.gov.