

INITIAL STATEMENT OF REASONS FOR
PROPOSED REGULATION SECTION 19089,
RELATING TO NOTICE OF BANKRUPTCY OR RECEIVERSHIP

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENTS, OR OTHER CONDITION OR
CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS

The proposed regulation is designed to implement Revenue and Taxation Code section 19089, pertaining to notice requirements for bankruptcy or receivership fiduciaries.

SPECIFIC PURPOSE OF THE REGULATION

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 FTB with notice;
- The time requirement for providing the FTB with notice; and
- Whether any exemptions to the notice requirement may be appropriate.

NECESSITY/PROBLEM THE REGULATION INTENDS TO ADDRESS

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 yet adopted regulations under this section.

The Franchise Tax Board has received inquiries from practitioners regarding how to comply with Revenue and Taxation Code section 19089. Historically fiduciaries have in many cases simply filed a copy of the federal notice required under Treasury Regulation section 301.6036-1 with the Franchise Tax Board, but since there are minor differences between federal law and California law on whom is required to file these notices (specifically, California requires filing on notice in probate cases under Probate Code section 9202, subdivision (c), whereas under federal law the existing federal regulation includes probate filings), the Franchise Tax Board has determined that a stand-alone state regulation is necessary.

A regulation addressing the notice requirement of Revenue and Taxation Code section 19089 is further necessary to implement the specific statutory requirement that the Franchise Tax Board adopt a regulation to specify who is required to give notice of qualification, the manner in which notice must be provided, the time requirement for providing the notice, and whether any exemptions to the notice requirement are appropriate. Without adopting this regulation, the Franchise Tax Board cannot otherwise require or compel fiduciaries to file the notice required under Revenue and Taxation Code section 19089, as the statute is not self-executing with respect to the notice requirement and requires regulations to be adopted by the Franchise Tax Board.

BENEFITS OF THE REGULATION

Receivers and fiduciaries will benefit from having direction on how to comply with a statute that is not currently self-executing. The Franchise Tax Board will save resources by receiving timely notifications rather than having to locate affected taxpayers. There are no benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

In drafting the proposed regulation, the Franchise Tax Board primarily relied upon Revenue and Taxation Code section 19089 and existing Treasury Regulation section 301.6036-1. The existing Treasury Regulation implements the substantially similar requirement under federal income tax law found in Internal Revenue Code section 6036. As a result, the Franchise Tax Board did not rely upon any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON PRIVATE PERSONS OR SMALL BUSINESS

In accordance with the requirement of Government Code section 11346.2, subdivision (b)(5), that the Franchise Tax Board consider alternatives to the proposed regulatory action, staff of the Franchise Tax Board conducted two interested parties meetings.

A first interested parties meeting was held on December 3, 2010, to solicit input from the public. Staff did not provide language at that time, but rather sought to elicit input on the content of a potential regulation that would implement the notice requirement of Revenue and Taxation Code section 19089. As no comments were made or questions asked regarding possible regulatory language, the Franchise Tax Board drafted proposed language for review by interested parties. This language was modeled after the federal regulation, Treasury Regulation section 301.6036-1, since the federal notice statute applicable to fiduciaries, Internal Revenue Code section 6036, is substantially similar to Revenue and Taxation Code section 19089, and staff believed that using substantially similar language would minimize any impact on fiduciaries attempting to comply with the proposed regulatory

action. This language was provided for public review and comment at a second interested parties meeting held on November 1, 2011. No questions or comments were submitted at this second interested parties meeting.

As a result, the Franchise Tax Board has determined that no alternative would lessen any adverse impact on private persons or small businesses, and has estimated that compliance with the notice filing requirement under the proposed regulation will require fiduciaries to spend no more than 15 minutes in clerical time to prepare and file each required notification.

ECONOMIC IMPACT ANALYSIS

The purpose of Revenue and Taxation Code section 19089 is ensure that the Franchise Tax Board is notified by receivers, assignees for the benefit of creditors, or other like fiduciaries of the existence of a receivership or other similar proceeding, including assignments for the benefit of creditors, and other than a bankruptcy proceeding, to assist the Franchise Tax Board in both identifying and collecting potential tax liabilities relating to such receivership or other similar proceeding, including assignments for the benefit of creditors. Revenue and Taxation Code section 19089 requires the Franchise Tax Board to adopt a regulation to specify who is required to provide such notice and the manner in which such notice is to be required by the Franchise Tax Board.

The proposed regulation implements and makes specific Revenue and Taxation Code section 19089, relating to notice required of receiver, assignee for the benefit of creditors, or other like fiduciary. The purpose of the proposed regulation is to identify who is required to give notice of qualification, the manner in which notice must be provided, the time requirement for providing the notice, and whether any exemptions to the notice requirement are appropriate. Receivers and fiduciaries will benefit from having direction on how to comply with a statute that is not currently self-executing. The Franchise Tax Board will save resources by receiving timely notifications rather than having to locate affected taxpayers. Pursuant to Government Code section 11346.3, subdivision (b), the Franchise Tax Board has made the following assessments regarding the proposed regulation:

Creation or Elimination of Jobs Within the State

Since the proposed regulation only affects certain receivers and fiduciaries that will now be required to file notice with the Franchise Tax Board, there are no effects on the creation or elimination of jobs within the state since these fiduciaries are already required to file a similar notice with the Internal Revenue Service and it is anticipated that the additional clerical time to file the notice required under this proposed regulation will not exceed 15 minutes per notice.

Creation of New or Elimination of Existing Businesses Within the State

Since the proposed regulation only affects certain receivers and fiduciaries that will now be required to file notice with the Franchise Tax Board, there will be no effect on the creation of new businesses or elimination of existing businesses within the state.

Expansion of Businesses or Elimination of Existing Businesses Within the State

Since the proposed regulation only affects certain receivers and fiduciaries that will now be required to file notice with the Franchise Tax Board, there will be no effect on the expansion of businesses or the elimination of existing business within the state.

ADVERSE ECONOMIC IMPACT ON BUSINESS

The Franchise Tax Board estimates that approximately 200 businesses, principally fiduciaries for non-bankruptcy receiverships, will be impacted by the proposed regulation. Of this amount, it is anticipated that approximately 80 percent, or 160, of such businesses are small businesses. Since the proposed regulation will clarify the filing requirements for certain receivers and fiduciaries, and compliance with the proposed regulation will require no more than 15 minutes of clerical time for each filing required under the proposed regulation, the Franchise Tax Board has determined that there will be no adverse economic impact on business.