

Request for Permission to Proceed with the Formal Regulatory Process to Adopt Proposed Regulation Section 18416.5, Relating to Implementation of an Alternative Communication Method

The purpose of proposed Regulation Section 18416.5 is to implement the alternative communication method authorized under Revenue and Taxation Code section 18416.5, which section authorizes the Franchise Tax Board (FTB), by regulation, to establish the rules governing such an alternative communication method. Under the terms of the proposed regulation, following the request of the taxpayer or the taxpayer's authorized representative, the FTB will provide notification to the taxpayer in a preferred electronic communication method that a notice, statement, bill, or other communication is available for viewing in the taxpayer's limited access secure folder on the FTB's Internet Web site (MyFTB). This regulation would also establish rules for the implementation of an alternative communication method that would allow the taxpayer or the taxpayer's authorized representative to file a protest, notification, and/or other communication to the FTB via MyFTB.

Subsection (a) of the proposed regulation provides definitions of the terms used in the proposed regulation.

Subsection (b) specifies how taxpayers and their authorized representatives may elect into the alternative communication method, the consequences of such election, the authorization to use the alternative communication method by the taxpayer's authorized representative, revocation of the election into the alternative communication method, and the consequences of delivery failure.

Subsection (c) describes the manner in which a taxpayer or their authorized representative may use an electronic communication method to submit a protest, notification, or other correspondence to FTB by way of the MyFTB folder. This subsection would allow the taxpayer's authorized representative to file a protest, notification, and/or other communication on behalf of the taxpayer in a secure electronic manner.

Subsection (d) provides that the proposed regulation shall apply to elections under this regulation made and protests or other correspondence filed on or after July 1, 2015.

An interested parties meeting (IPM) was held on March 14, 2014 to discuss the proposed Regulation 18416.5. Numerous topics were discussed at this first IPM and staff has taken that input to produce a draft regulation that contains the specific information regarding how to elect into the alternative communication method, the consequences of electing to receive alternative communication method notices, and how protests and other correspondence can be submitted through FTB's secure internet web site, MyFTB. As discussed at that IPM, due to technology and budgetary constraints, not all notices will be immediately available to all taxpayers and representatives for viewing or electronic notification, and different forms of electronic communication can be expected to become available at a later date as technology advances. As the capability for viewing and receiving notification of each notice

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becomes available, and the capability to file protests and other correspondence electronically becomes available, staff will publish information on FTB's Internet web site, along with instructions for taxpayers and representatives about how to elect any additional types of electronic notification, as they become available. Until electronic viewing and notification becomes available for each notice, FTB will continue to send paper copies of that notice by United States mail.

A second IPM was held on August 27, 2014, during which a draft of the proposed regulation language was discussed with the public. The language of the proposed regulation section was generally acceptable to the interested parties in attendance. A number of questions were raised about specific implementation features of the MyFTB folder, including whether electronic notifications could be implemented for various actions taken by taxpayers on MyFTB that do not currently receive paper notifications when taken by a taxpayer through current processes. Staff addressed these concerns based on the current proposed features of the system, and will communicate these issues to the system designers, but explained that details of how the system would work go beyond the scope of the current regulation. Other comments and questions dealt with issues pertaining to designation of taxpayer's authorized representatives for business entities. Staff answered attendees concerns but determined that addressing power of attorney concerns was likewise outside the scope of this regulation.

Staff believes that the proposed regulation provides appropriate criteria and guidance in implementing the alternative communication method provided in Revenue and Taxation Code Section 18416.5 and requests permission to commence the formal regulatory process under the Administrative Procedure Act.

Section 18416.5 is adopted to read:

§ 18416.5. Alternative Communication Method.

(a) Definitions. For purposes of this regulation:

(1) "MyFTB folder" means the taxpayer's limited access secure folder or the taxpayer's authorized representative's secure folder which is accessed through the taxpayer's or taxpayer's authorized representative's account on FTB's internet web site or mobile application.

(2) "PECM" means the preferred electronic communication method selected by the taxpayer or the taxpayer's authorized representative, which may include traditional email, text, or other alternate forms of electronic communication that may become available in the future.

(3) "TPEA" means Taxpayer Provided Electronic Address, which may include an email address, text number, or other electronic delivery service address designated by the taxpayer to receive notification and which is accessible by the taxpayer electronically.

(4) "RPEA" means Representative Provided Electronic Address, which may include an email address, text number, or other electronic delivery service address designated by the taxpayer's authorized representative to receive notification and which is accessible by the representative electronically.

(5) "Successfully transmitted" means when the document or text is stored as a document or text in the taxpayer's MyFTB folder. The taxpayer or taxpayer's authorized representative should confirm that the document or text is viewable in the taxpayer's MyFTB folder to verify successful transmission.

(b) Election of Alternative Communication Method.

(1) Election Process. From the MyFTB folder, the taxpayer or the taxpayer's authorized representative may select the specific preferred method of alternative communication (e.g., e-mail, text or other FTB approved alternative electronic method of communication as described on the Franchise Tax Board's Internet Web site) and enter the TPEA or RPEA, as applicable, to obtain notification via the PECM.

(2) Consequences of Election. The consequences of making an election under subsection (b)(1) are as follows:

(A) By consenting to receive Franchise Tax Board notices via the taxpayer's or taxpayer's authorized representative's chosen PECM, the Franchise Tax Board's action in sending the notification to the TPEA or the RPEA via the PECM and making an image of the actual notice available for viewing in MyFTB folder shall be considered notice to the taxpayer on the date the notification via PECM is transmitted and the notice is made available for viewing on MyFTB folder. Notifications and notices provided pursuant to this regulation shall be treated as if the actual notice was a notice mailed on that day by United States first-class mail, postage prepaid.

- (B) Once the election to receive notification through the selected alternative communication method is confirmed, FTB notifications transmitted through the PECM will indicate that a notice from FTB is available for viewing in MyFTB folder. The notification sent through the PECM will contain plain language, either in the body of the message or by means of an internet link to the FTB website, informing the taxpayer that a failure to take appropriate action set forth on the notice in the MyFTB folder may cause the taxpayer to forego procedural or administrative rights to challenge the proposed action contained within the actual notice available in the taxpayer's MyFTB folder.
- (3) Authorized Representatives. A taxpayer's appointment of a representative constitutes authorization for FTB to send notification to the taxpayer's authorized representative using an alternative communication method. Authorized taxpayer representatives electing to enroll in an alternative communication method to receive notification on behalf of a taxpayer are subject to the same election, revocation, and consequences of electing to receive notification via the alternative communication method as the taxpayer, as described in this regulation.
- (4) Revoking Election - Electing out of Previously Selected PECM. If a taxpayer or the taxpayer's authorized representative who has previously selected a PECM in the MyFTB folder no longer wishes to receive notification under the currently-selected PECM, the taxpayer or the taxpayer's authorized representative may access the taxpayer's MyFTB folder and make a new election under subsection (b)(1).
- (5) Delivery Failure. The taxpayer is responsible to ensure that the TPEA is correct and that the taxpayer can receive notification at that TPEA. If FTB discovers that the delivery of any notification sent via a taxpayer's chosen PECM has failed, FTB may make one or more attempts to re-deliver a notification using the PECM to the TPEA. FTB may inform the taxpayer of the failure to deliver notification to the TPEA and the need to remedy delivery failures to the TPEA.

FTB may revoke the election of the taxpayer's PECM and use standard United States mail delivery to send copies of future notices to the taxpayer.

(c) Filing a Protest or Other Correspondence. From the MyFTB folder, the taxpayer or taxpayer's authorized representative may file a protest, notification, and other communication with the Franchise Tax Board. The filing date of the protest or date of other correspondence or response shall be the date that the document or text provided by the taxpayer or taxpayer's authorized representative is "successfully transmitted" to the Franchise Tax Board.

(d) This regulation shall apply to elections made and protests or other correspondence filed on or after July 1, 2015.

NOTE: Authority cited: Section 19503, Revenue and Taxation Code.
Reference: Section 18416.5, Revenue and Taxation Code.