

**Request for Permission to Proceed with Formal Regulation Process on the Adoption of
California Code of Regulations, Title 18, Section 24451, Relating to
California Non-Conformity with IRS Notice 2008-83**

IRS Notice 2008-83, I.R.B. 2008-42, dated October 20, 2008, provides that "[f]or purposes of section 382(h), any deduction properly allowed after an ownership change (as defined in section 382(g)) to a bank with respect to losses on loans or bad debts (including any deduction for a reasonable addition to a reserve for bad debts) shall not be treated as a built-in loss or a deduction that is attributable to periods before the change date." The IRS Notice further provides that "[c]orporations described in section 1 of this notice may rely on the treatment set forth in this notice, unless and until there is additional guidance."

At the December 4, 2008, meeting of the Franchise Tax Board, the three-member Board directed staff to draft a regulatory proposal to make IRS Notice 2008-83 not applicable for California tax purposes, to conduct an Interested Parties Meeting, and to return to the Board with this proposal at the next Board meeting.

Section 1261 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), enacted February 17, 2009, which provides that IRS Notice 2008-83 shall have no legal force or effect for any ownership change occurring after January 16, 2009, also makes, in part, the following relevant legislative findings –

"(a) FINDINGS.—Congress finds as follows:

(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

(2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m).

(3) The legal authority to prescribe Internal Revenue Service Notice 2008–83 is doubtful."

An interested parties meeting was held on February 23, 2009, to solicit input from the affected industry. Interested parties were given the opportunity to comment on whether to make IRS Notice 2008-83 not applicable for California tax purposes. No comments were received.

Staff requests permission to begin the formal regulatory process to adopt this proposed regulation.

Regulation Section 24451 is adopted to read:

§ 24451. Applicability of federal regulations related to limitations on certain built-in losses following an ownership change; force and effect of IRS Notice 2008-83 exempting banks from limitation.

- a. IRS Notice 2008-83, I.R.B. 2008-42 (October 20, 2008), relating to treatment of deductions under Internal Revenue Code section 382(h) following an ownership change, shall not be applicable for purposes of the taxes imposed under Part 11 (commencing with Section 23001) of the Revenue and Taxation Code with respect to any ownership change occurring at any time.

Note: Authority cited: Sections 23051.5 and 19503, Revenue and Taxation Code.

Reference: Section 24451, Revenue and Taxation Code.