

STAFF REQUEST FOR PERMISSION TO PROCEED INTO FORMAL APA PROCESS ON PROPOSED
REGULATION SECTION 19089
NOTICE REQUIRED OF RECEIVER, ASSIGNEE FOR THE BENEFIT OF CREDITORS, OR OTHER LIKE
FIDUCIARY

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.

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 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. 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.

The proposed language is modeled after Treasury Regulation section 301.6036-1 – and implements the notice requirement for bankruptcy or receivership fiduciaries - as modified to eliminate the requirement to give notice in probate cases. This is due to the existence of California Probate Code section 9202, subdivision (c), which governs 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.

The following minor changes were made to the regulation language after the interested parties meeting:

- (1) The title of the regulation was modified to more accurately reflect those who are required to give notice.
- (2) A minor typographical error was corrected in subsection (a)(2).
- (3) As discussed at the second interested parties meeting, subsection (d), which specifies the operative date of the notice provisions contained in this regulation, was clarified. Specifically, in the case of proceedings other than in bankruptcy, the regulation will apply to appointments, authorizations to act, or the date of taking possession that occur on or after the date which is 60 days after the date the regulation becomes effective under Government Code section 11343.4, subdivision (b). In the case of assignments for the benefit of creditors, the regulation will apply to assignments that occur on or after the date which is 60 days after the date the regulation becomes effective under Government Code section 11343.4, subdivision (b).

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

December 1, 2011

Report on Second Interested Parties Meeting
Proposed Regulation Section 19089,
Relating to Notice of Bankruptcy or Receivership
November 1, 2011

Administration

A first interested parties meeting was held on December 3, 2010, at 9:00 a.m. at the Franchise Tax Board Central Office in Sacramento. As no comments were made or questions asked regarding possible regulatory language, the Franchise Tax Board drafted proposed language for review by interested parties. A second interested parties meeting was held on November 1, 2011 at 1:03 p.m. at the Franchise Tax Board Central Office in Sacramento. Approximately nine individuals attended in person. Representing the department was Amanda Vassigh Sigal, Tax Counsel III, of the Legal Division.

Background

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 purpose of this second interested parties meeting was to elicit public input into the proposed language the Franchise Tax Board drafted for the new regulation. The proposed language for the regulation is modeled after Treasury Regulation section 301.6036-1 – and implements the notice requirement for bankruptcy or receivership fiduciaries - as modified to eliminate the requirement to give notice in probate cases. This is due to the existence of California Probate Code section 9202, subdivision (c), which governs the notice required in estate administration under California probate law.

The proposed language addresses 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.

Staff Commentary

Staff opened the meeting by describing the purpose of the future regulation and inviting comments, questions, and suggestions for the draft language.

Attendee Commentary

No questions were asked.

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December 1, 2011

Subsequent Action

At the conclusion of the meeting, staff reiterated its interest in hearing and receiving additional comments. Staff will next request permission from the Board to proceed to the formal APA process.

Minor Modifications to Regulation Language

The following minor changes were made to the regulation language after the interested parties meeting:

- (1) The title of the regulation was modified to more accurately reflect those who are required to give notice.
- (2) A minor typographical error was corrected in subsection (a)(2).
- (3) As discussed at the second interested parties meeting, subsection (d), which specifies the operative date of the notice provisions contained in this regulation, was clarified. Specifically, in the case of proceedings other than in bankruptcy, the regulation will apply to appointments, authorizations to act, or the date of taking possession that occur on or after the date which is 60 days after the date the regulation becomes effective under Government Code section 11343.4, subdivision (b). In the case of assignments for the benefit of creditors, the regulation will apply to assignments that occur on or after the date which is 60 days after the date the regulation becomes effective under Government Code section 11343.4, subdivision (b).

A Track Changes version of the modified regulation language is available [here](#).

Section 19089 is adopted to read:

§ 19089. Notice Required of Receiver, Assignee for the Benefit of Creditors or Other Like Fiduciary.

(a) *Who must give notice* —

(1) *Exemption for bankruptcy cases.* (A) A bankruptcy trustee, debtor in possession, or other like fiduciary in a bankruptcy case is not required by this section to give notice of appointment, qualification or authorization to act to the Franchise Tax Board. (However, see the notice requirements under the Federal Rules of Bankruptcy Procedure.)

(2) *Proceedings other than bankruptcy.* A receiver in a receivership proceeding or a similar fiduciary in any proceeding (including a fiduciary in aid of foreclosure), other than in a bankruptcy proceeding, designated by order of any court of the United States or of any state or territory or of the District of Columbia as in control of all or substantially all the assets of a debtor or other party to such proceeding shall, on, or within 10 days of, the date of his or her appointment or authorization to act, give notice thereof in writing to the Franchise Tax Board. Moreover, any fiduciary in aid of foreclosure not appointed by order of any such court, if he takes possession of all or substantially all the assets of the debtor, shall, on, or within 10 days of, the date of taking possession, give notice thereof in writing to the Franchise Tax Board.

(3) *Assignment for benefit of creditors.* An assignee for the benefit of a creditor or creditors shall, on, or within 10 days of, the date of an assignment, give notice thereof in writing to the address and unit that the Franchise Tax Board shall designate by FTB Notice. For purposes of this subparagraph, an assignee for the benefit of creditors shall be any person who, by authority of law, by the order of any court, by oral or written agreement, or in any other manner acquires control or possession of or title to all or substantially all the assets of a debtor, and who under such acquisition is authorized to use, reassign, sell, or in any manner dispose of such assets so that the proceeds from the use, sale, or other disposition may be paid to or may inure directly or indirectly to the benefit of a creditor or creditors of such debtor.

(b) *Contents of notice* —

(1) *Proceedings other than bankruptcy.* The written notice required under subsection (a)(2) shall contain:

(A) The name and address of the person giving such notice and the date of his or her appointment or of his or her taking possession of the assets of the debtor or other person whose assets are controlled, and

(B) The name, address, and taxpayer identification number of the debtor or other person whose assets are controlled,

December 1, 2011

- (2) *In the case of a court proceeding:*
- (A) The name and location of the court in which the proceedings are pending,
 - (B) The date on which such proceedings were instituted,
 - (C) The number under which such proceedings are docketed, and
 - (D) When possible, the date, time, and place of any hearing, meeting of creditors, or other scheduled action with respect to such proceedings.
- (3) *Assignment for benefit of creditors.* The written notice required under subsection (a)(3) shall contain:
- (A) The name and address of the person giving such notice,
 - (B) The name and address of, and the date the asset or assets were assigned to, the assignee,
 - (C) The name, address and taxpayer identification number of the debtor whose assets were assigned,
 - (D) A brief description of the assets assigned,
 - (E) An explanation of the action expected to be taken with respect to such assets, and
 - (F) When possible, the date, time, and place of any hearing, meeting of creditors, sale, or other scheduled action with respect to such assets.
- (c) The notice required by this section shall be sent to the address and unit that the Franchise Tax Board shall designate by FTB Notice.
- (d) *The provisions of this regulation shall apply only to –*
- (1) proceedings described in subsection (a)(2) where the date of the appointment or authorization to act or the date of taking possession occurs on or after the date which is 60 days after the effective date of this regulation under Government Code section 11343.4, subdivision (b), and
 - (2) assignments described in subsection (a)(3) where the date of assignment occurs on or after the date which is 60 days after the effective date of this regulation under Government Code section 11343.4, subdivision (b),
- (e) *Cross references.*

- (1) For notices required in the case of estate administration, see Probate Code section 9202, subdivision (c).
- (2) For criminal penalty for willful failure to supply information, see Revenue and Taxation Code sections 19701 and 19706.
- (3) For criminal penalties for willfully making false or fraudulent statements, see Revenue and Taxation Code sections 19701, 19705, and 19706.
- (4) For time for performance of acts where the last day falls on a Saturday, Sunday, or legal holiday, see Government Code sections 6700-6724.

NOTE: Authority cited: Section 19503, Revenue and Taxation Code.
Reference: Section 19089, Revenue and Taxation Code.