



10.12.2009

FTB NOTICE 2009-08

Subject: Franchise Tax Board Ruling Guidelines

PURPOSE

The purpose of this notice is to update and supersede FTB Notice 89-277 with respect to guidelines relating to the issuance of written advice by the Franchise Tax Board, including Chief Counsel Rulings. FTB Notice 2009-09 updates and supersedes FTB Notice 89-277 with respect to relief under the Taxpayers' Bill of Rights when taxpayers rely on written advice of the Franchise Tax Board.

SUMMARY

Pursuant to Revenue and Taxation Code (R&TC) section 21012, subdivision (h), this Franchise Tax Board (FTB) Notice (hereinafter "Notice") explains how the FTB provides guidance to taxpayers on issues under FTB's jurisdiction. This Notice explains the types of guidance FTB provides, clarifies areas in which the FTB will not issue rulings, and prescribes the form and manner in which a taxpayer may request guidance.

A. Types of Guidance Provided by FTB

1. Chief Counsel Rulings

A Chief Counsel Ruling is a written statement issued to a taxpayer by the Chief Counsel of the FTB (or his or her designee) that interprets and applies California income or franchise tax laws to a taxpayer's specific set of facts. FTB will not issue a Chief Counsel Ruling unless requested by the taxpayer, and will only issue such a ruling if the taxpayer submitting the request complies with the procedures for requesting a Chief Counsel Ruling set forth in this Notice. The FTB also will not issue a requested ruling where the request involves a matter where the FTB declines to issue a ruling. Once issued, a Chief Counsel Ruling may be revoked or modified, as explained in this Notice.

2. Legal Rulings, FTB Notices, and Other Guidance

- a. A Legal Ruling is a published interpretation of California income or franchise tax laws by the Chief Counsel of the FTB. A Legal Ruling is the conclusion of the Chief Counsel of the FTB on how the law should be applied to a specific set of hypothetical facts, and is equivalent to an IRS Revenue Ruling. Legal Rulings are issued for the information and guidance of taxpayers, FTB personnel, and other

interested parties. Because Legal Rulings are generally interpretive of existing law, they have retroactive effect unless otherwise stated in the ruling.

Because each Legal Ruling represents the conclusion of the Chief Counsel of the FTB regarding the application of law to the entire statement of facts specified, taxpayers, FTB personnel, and other interested parties are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are the same. In addition, taxpayers, FTB personnel, and other interested parties should consider the effect of subsequent legislation, regulations, court decisions, legal rulings, notices, procedures, and other guidance.

- b. An FTB Notice can be a written statement regarding a procedure that affects taxpayers or other members of the public under the R&TC, related statutes, or regulations. In these circumstances, an FTB Notice is equivalent to an IRS Revenue Procedure.

An FTB Notice can also be a written statement that is issued to provide information concerning well-established principles, recent statutory changes, recent court decisions, new or revised FTB publications, proposed regulations or other matters that should be brought to the attention of the public. In these circumstances, an FTB Notice is equivalent to an IRS Notice or Announcement.

- c. News releases, press releases, and similar matters published by FTB involve a non-technical explanation of California tax laws, decisions, or other topical events. A news release is not issued by the Legal Division nor the Chief Counsel of the FTB, and thus is not offered as a substantive interpretation of the law. The FTB publication *Tax News* is an example of this type of item.

3. Oral Advice

FTB does not issue Chief Counsel Rulings orally. FTB also will not issue Chief Counsel Rulings in response to an oral request from a taxpayer or representative.

However, FTB personnel are available to discuss orally whether FTB will rule on a particular issue or to answer questions relating to procedural matters about submitting requests for Chief Counsel Rulings with a taxpayer or the taxpayer's representative.

Substantive issues may be also discussed orally. Such a discussion, however, will not be binding on FTB in general or on the Legal Division in particular and cannot be relied upon as a basis for obtaining relief pursuant to R&TC section 21012.

Substantive tax issues involving a taxpayer that are related to an audit, a protest, an appeal, or pending litigation will not be discussed by FTB employees that are not directly involved in the audit, protest, appeal, or litigation unless the discussion is coordinated with those FTB employees who are directly involved in the audit, protest, appeal, or litigation. As a result, FTB employees will routinely ask the taxpayer or the

taxpayer's representative whether the oral request for guidance or information relates to a pending audit, protest, appeal, or litigation.

A taxpayer may seek oral technical guidance from an FTB taxpayer service representative when preparing a return or report. However, this oral guidance is advisory only, and FTB is not bound to follow that guidance, for example, in a later examination of the taxpayer's return.

FTB will not respond to letters seeking to confirm the substance of oral discussions, and the absence of a response to such a letter will not be construed, for purposes of the Taxpayer's Bill of Rights, as confirmation of the substance of the letter.

B. Procedure for Requesting a Chief Counsel Ruling

FTB will issue a Chief Counsel Ruling for an individual or entity when the ruling is appropriate in the interest of sound tax administration.

1. Each request must contain a complete statement of all facts relating to the transaction, entity, plan or arrangement:
 - a. The request must contain the taxpayer's name and taxpayer identification number.
 - b. True or certified copies of all contracts, deeds, agreements, instruments, or other documents must be submitted with the request.
 - c. The request must also disclose if the identical issue is reflected in a prior return of the taxpayer or an affiliate for a previous year, or subject to an existing audit, protest, appeal, or litigation concerning the taxpayer or affiliate.
2. If the requestor is a professional preparer or paid representative acting on behalf of the taxpayer, the requestor must provide his or her legal analysis and conclusion. The requestor must provide authorities for this legal analysis with the request.
3. If the requestor is a professional preparer or paid representative acting on behalf of the taxpayer, the requestor must also provide a draft of the requested ruling, and a draft redacted version of such ruling for release to the public.
4. The request should be addressed to:

Franchise Tax Board
Legal Division (Attn: Chief Counsel Ruling Request)
P.O. Box 1720
Rancho Cordova, CA 95741-1720

To expedite delivery, requests may be faxed to (916) 845-3648, prominently identified as a Chief Counsel Ruling Request.

C. No-Ruling Areas

FTB generally follows federal policy with respect to no-ruling areas and will ordinarily not issue Chief Counsel Rulings in certain areas because of the highly factual nature of the problems involved. The Chief Counsel also has the discretion to decline to issue a ruling on other grounds, whenever warranted by the facts or circumstances of a particular case. Normally, the Chief Counsel will decline to issue a Chief Counsel Ruling in circumstances including, but not limited to, situations where:

1. The request involves an area in which the Internal Revenue Service has announced that it will not issue an advance ruling. These areas include, but are not limited to:
 - a. alternative plans of proposed transactions;
 - b. hypothetical situations; and
 - c. frivolous issues. For purposes of this Notice, a "frivolous issue" is one without basis in fact or law that espouses a position that has been held by the courts to be frivolous or groundless.
2. The taxpayer failed to provide either the taxpayer's name or the taxpayer identification number.
3. The request does not include the required legal analysis and conclusion, a draft of the proposed ruling, and a redacted version of the proposed ruling (where required).
4. The applicable law is clear and reasonably thorough research would provide the answer.
5. State and federal law on the issue are the same and the application of federal law is dispositive of the issue.

In general, where the provisions of the Personal Income Tax Law or the Corporation Tax Law are in substantial conformity with the Internal Revenue Code, federal administrative guidance will be applicable for California income or franchise tax purposes.

6. The answer to the question depends principally upon factual issues. For example: whether a unitary business exists, whether a taxpayer is a resident for a particular year, or the value of property as of a certain date.

D. Taxpayers' Bill of Rights Relief

R&TC section 21012, subdivision (a), authorizes relief from assessed taxes, interest and penalties in certain situations where taxpayers relied on written advice of the Franchise

Tax Board. FTB Notice 2009-09 provides a detailed explanation regarding the relief provided.

A Chief Counsel Ruling, which is issued by the Legal Division and signed by the Chief Counsel or his or her designee, is considered written advice which may provide relief from taxes, interest, additions to tax, and penalties.

Every Chief Counsel Ruling will contain an advisory declaration, pursuant to subdivision (e) of R&TC section 21012, explaining that the tax consequences may be subject to change for any of the reasons specified in paragraph (5) of subdivision (b) of R&TC section 21012 or in this Notice. A copy of a Chief Counsel Ruling received by a taxpayer should be attached to the return or returns that reflect the transactions to which it pertains.

Under no circumstances may a taxpayer rely on a Chief Counsel Ruling issued to another taxpayer.

E. Revocation or Modification of a Chief Counsel Ruling

A Chief Counsel Ruling found to be in error or not in accord with the current views of FTB or the Chief Counsel may be revoked or modified at any time. If a Chief Counsel Ruling is revoked or modified, the revocation or modification applies to all years open under the relevant statutes of limitations, unless FTB uses its discretionary authority under subdivision (a) of R&TC section 19503 to limit the retroactive effect of the revocation or modification.

1. A Chief Counsel Ruling may be revoked or modified due to:

- a. The enactment of legislation.
- b. A decision from the United States Supreme Court, California Supreme Court, a California Appellate Court, or a published decision of the California State Board of Equalization.
- c. A change in federal interpretation in situations where the ruling was predicated upon a federal interpretation.
- d. The issuance of temporary or final regulations, either federal or state.
- e. The issuance of a Legal Ruling, FTB Notice, or other published statement of the FTB.
- f. A change in material facts or circumstances relating to the taxpayer.

Consistent with these provisions, if a Chief Counsel Ruling relates to a continuing action or a series of actions, it ordinarily will be applied until any one of the events described above occurs or until it is specifically withdrawn.

2. Except in rare or unusual circumstances, the revocation or modification of a Chief Counsel Ruling will not be applied retroactively to the taxpayer for whom the ruling was issued or to a taxpayer whose tax liability was directly involved in the ruling provided that:
 - a. There has been no misstatement or omission of material facts;
 - b. The facts at the time of the transaction are not materially different from the facts on which the Chief Counsel Ruling was based;
 - c. There was no change in the applicable law;
 - d. The Chief Counsel Ruling was originally issued for a proposed transaction; and
 - e. The taxpayer directly involved in the Chief Counsel Ruling acted in good faith in relying on the Chief Counsel Ruling, and revoking or modifying the Chief Counsel Ruling retroactively would be to the taxpayer's detriment.

Except as otherwise limited herein, if a Chief Counsel Ruling is revoked or modified, the revocation or modification applies to all years open under the relevant statutes of limitations.

Where the revoked or modified Chief Counsel Ruling was requested after January 1, 1989, the relief provisions of R&TC section 21012 may apply. Taxpayers should follow the procedures outlined in FTB Notice 2009-09 to request relief from taxes, interest, penalties, and/or additions to tax.

H. Availability of Chief Counsel Rulings

Generally, Chief Counsel Rulings are confidential. However, redacted versions of rulings will generally be posted on FTB's website. The name and identifying characteristics of a specific taxpayer will be deleted.

The principal author of this Notice is Douglas K. Powers of the Franchise Tax Board, Legal Division. For further information regarding this Notice, contact Mr. Powers at the Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720.