

INITIAL STATEMENT OF REASONS FOR THE  
ADOPTION OF CALIFORNIA CODE OF REGULATIONS,  
TITLE 18, SECTION 18416.5

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

The intent of the proposed regulation is to implement the alternative communication method authorized under Revenue and Taxation Code section 18416.5. The regulation will allow the Franchise Tax Board, at the request of the taxpayer or the taxpayer's authorized representative, to provide notification to the taxpayer in a preferred electronic communication method designated by the taxpayer that a bill, notice, or other communication required under Part 10, Part 10.2, or Part 11 of the Revenue and Taxation Code is available for viewing on the Franchise Tax Board's limited access secure website. The proposed regulation would also allow a taxpayer or taxpayer representative to electronically file a protest, notification, and/or other communication to the Franchise Tax Board on the Franchise Tax Board's limited access secure website. Any electronic notification provided to a taxpayer using the alternative communication method authorized by RTC section 18416.5 shall include plain language advising the taxpayer that a failure to act on the electronically communicated notification may cause the taxpayer to forgo procedural or administrative rights to challenge the proposed action. (Revenue and Taxation Code section 18416.5, subdivision (b).)

**SPECIFIC PURPOSE OF THE REGULATION**

Revenue and Taxation Code section 18416.5 authorizes the Franchise Tax Board to implement the alternative communication method by regulation. This regulation will provide guidance as to the manner in which taxpayers 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 an electronic delivery failure. The proposed regulation also describes the manner in which a taxpayer or taxpayer's authorized representative may use an electronic method to submit a protest, notification, or other correspondence to FTB by way of the MyFTB folder. The proposed regulation by its terms shall apply to elections made and protests or other correspondence filed on or after July 1, 2015.

**NECESSITY/PROBLEM THE REGULATION INTENDS TO ADDRESS**

The proposed regulation is needed in order to implement the alternative communication method authorized by Revenue and Taxation Code section 18416.5. Without the regulation, Franchise Tax Board is required to deliver all notices by first-class mail postage paid pursuant to Revenue and Taxation Code section 18416. This regulation would allow taxpayers to choose the option of using the alternative communication method, under which taxpayers will have the benefit of immediate notice, rather than the delay waiting for a notice to be received via U.S. Mail.

The proposed regulation would provide key definitions, requirements, and consequences of a taxpayer's or a taxpayer's representative's optional use of the electronic communication method. Subsection (a) provides key definitions used in the regulation. Under subsection (a)(1), "MyFTB folder" is defined to refer to a taxpayer's or a taxpayer's authorized representative's secure folder that is accessible through FTB's internet website or mobile application. This definition is needed as the taxpayer or taxpayer's authorized representative must have established access to the taxpayer's limited access secure folder or the taxpayer's authorized representative's secure folder in order to participate in the alternative communication method.

Subsection (a)(2) defines "PECM" as the preferred electronic communication method, which is the type of communication method selected by the taxpayer or the taxpayer's authorized representative. Currently, FTB anticipates notification will initially be available by email. However, this definition specifies that it includes other alternate forms of electronic communication that may become available in the future to allow the taxpayer to choose additional methods of communication as new technology becomes available.

Subsection (a)(3) defines "TPEA" as Taxpayer's 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. This definition is drafted to allow the taxpayer to choose additional methods of communication as new technology becomes available.

Subsection (a)(4) defines "RPEA" as Representative's 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. Like the definitions above, this definition will also allow FTB to include additional methods of communication when the technology becomes available.

Subsection (a)(5) defines "successfully transmitted" as the point in time when the document or text is stored as a document or text in the taxpayer's MyFTB folder. The proposed regulation provides that 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. The term "successful transmission" is used in filing a protest, notification, or other correspondence with FTB under Section (c) of the proposed regulation. The definition is needed to specify how a taxpayer or taxpayer's authorized representative may confirm that the documents have been successfully received by FTB through the MyFTB folder. The MyFTB folder will enable immediate viewing of documents transmitted to FTB in this manner, which will then be immediately viewable to the taxpayer and the taxpayer's authorized representative.

Subsection (b) specifies how taxpayers 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, as further described below.

Subsection (b)(1) describes the process by which a taxpayer or a taxpayer's authorized representative elects into receiving notifications by an alternative communication method. A taxpayer and/or taxpayer's authorized representative may select the specific type of available alternative communication method (e-mail, text, or yet to be determined electronic method) from within the MyFTB folder. Since use of this alternative communication method is at the election of the taxpayer, the taxpayer or taxpayer's authorized representative must enter their TPEA or RPEA, as applicable, in order for the taxpayer to receive the notices through the selected alternative communication method. By choosing the type of alternative communication method and providing a TPEA or RPEA, as applicable, the taxpayer has elected into the alternative communication method.

Subsection (b)(2) describes the consequences to the taxpayer and the taxpayer's authorized representative of making the election to receive notices through the alternative communication method. Once the taxpayer chooses to receive notices through the alternative communication method, the taxpayer will receive a notification to log on to their MyFTB folder and view the notice within the MyFTB folder. If the authorized representative receives notice through the alternative communication method, the authorized representative will receive an electronic notification to log on to their MyFTB folder and from their list of clients, they may access notices and other portions of the taxpayer's folder that they are authorized to view. Notifications sent via the alternative communication method will not contain the actual text of the notice itself due to privacy and security issues posed by current electronic communications. By electing to receive notification through this alternative communication method, the taxpayer agrees that once the Franchise Tax Board sends the notification that a new notice is in the taxpayer's MyFTB folder and makes an image of that notice available to the taxpayer on the taxpayer's MyFTB account, at that point such notification will be considered legal notification of the content of the notice in the MyFTB folder. Notification(s) on the taxpayer's MyFTB account by way of the taxpayer's chosen alternative communication method will be treated as if actual notice was mailed to the taxpayer's last known address via United States first-class mail, postage prepaid. The notifications made through the alternative communication method will advise the taxpayer in that message or by a link to the FTB website that failure to take appropriate action set forth in the notice in the MyFTB folder may cause the taxpayer to forgo legal and administrative rights to challenge the proposed action contained within the actual notice.

Subsection (b)(3) provides that when a taxpayer appoints an authorized representative, the taxpayer also authorizes FTB to send notification to the taxpayer's authorized representative using an alternative communication method. This subsection also provides that authorized taxpayer representatives electing to enroll in an alternative communication method to receive notification 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 the proposed regulation.

Subsection (b)(4) describes how a taxpayer or the taxpayer's authorized representative may revoke the taxpayer's election to receive notification by the alternative communication method. A taxpayer or the taxpayer's authorized representative may access the MyFTB folder and make a new election as described under subsection (b)(1). The taxpayer or the

taxpayer's authorized representative could then choose a preferred communication method for the taxpayer (United States mail, email, text) and/or revise their TPEA or RPEA.

Subsection (b)(5) provides that it is the taxpayer's responsibility to ensure that the TPEA they provide is correct and that they can receive FTB notification(s) at the TPEA. The taxpayer is in the best position to confirm that the TPEA works and to confirm that they are receiving notifications from FTB. If FTB discovers that the delivery of a notification sent via a taxpayer's chosen PECM has failed, FTB shall make one or more attempts to re-deliver a notification using the PECM to the TPEA. If FTB determines that the delivery was unsuccessful, FTB shall then inform the taxpayer of the failure to deliver notification to the TPEA by U.S. mail and advise the taxpayer of 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. This subsection is necessary because of the important legal consequences of an election to use the alternative communication method rather than simply receiving notices and other forms of communication by U.S. mail, so that once FTB discovers that any notice sent to the TPEA via the taxpayer's chosen PECM has failed, FTB will re-commence mailing notices by U.S. mail to ensure the taxpayer is receiving such notices and other forms of communication. If the taxpayer later wishes to choose a new PECM and to designate a new TPEA, then they may simply follow the rules in this regulation and make a new election.

Subsection (c) describes the manner in which a taxpayer or taxpayer's authorized representative may use an electronic method to submit a protest, notification, or other correspondence to FTB by way of the MyFTB folder. This subsection would allow the taxpayer or the taxpayer's authorized representative to file a protest, notification, and/or other communication in a secure electronic manner. This subsection provides that the filing date of a protest, correspondence or notification shall be the date that the document or text provided by the taxpayer or taxpayer's authorized representative is "successfully transmitted" to the FTB (as defined in subsection (a)(5)). The taxpayer or taxpayer's authorized representative should always confirm that the document or text is viewable in the MyFTB folder to verify successful transmission, since there are legal consequences, such as filing deadlines, which the taxpayer and taxpayer's representative remain subject to under the alternative communication method and this regulation.

Subsection (d) provides that the proposed regulation shall apply to elections made and protests or other correspondence filed on or after July 1, 2015 to allow the taxpayer notice of the change. In addition, the Franchise Tax Board anticipates this function of the MyFTB folder will be available beginning July 1, 2015.

## **BENEFITS OF THE REGULATION**

Taxpayers will benefit from the implementation of the alternative communication method, which will add taxpayer convenience of retrieving notices via the internet, thereby reducing the burdens and costs of mailing for both Franchise Tax Board and taxpayers and their authorized representatives.

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

In drafting the proposed regulation, the Franchise Tax Board primarily relied on Revenue and Taxation Code section 18416.5, its legislative history, and suggestions from members of the public obtained throughout the course of two Interested Parties Meetings. The Franchise Tax Board did not rely on 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 AFFECTED 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.

The first Interested Parties Meeting was held on March 14, 2014 to discuss 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 folder. 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 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.

The second Interested Parties Meeting 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 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 folder that do not currently receive paper notifications when taken by a taxpayer through current processes (i.e., by first-class mail as required by Revenue and Taxation Code section 18416). 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.

#### **ECONOMIC IMPACT ANALYSIS**

Revenue and Taxation Code section 18416.5 authorizes the Franchise Tax Board to implement, by regulation, a secure alternative communication method. The proposed

regulation is expected to impact up to four million businesses, including C corporations, S corporations, partnerships, limited liability companies, and sole proprietorships, operating within California. Of this total amount, it is estimated that approximately 90 percent of the four million affected businesses will be small businesses. However, since the regulation simply allows taxpayers the option of selecting new methods of communicating with the Franchise Tax Board, and these methods should make it easier for taxpayers to conduct business with the Franchise Tax Board, it is expected that there will be no additional costs to businesses, including small businesses, as a result of this proposed regulation. Further, it is expected that the proposed regulation, by providing more efficient electronic means of communicating with the Franchise Tax Board, may enable businesses, including small businesses, to reduce their cost of doing business within California.

#### Creation or Elimination of Jobs Within the State

Since the regulation simply allows taxpayers the option of selecting new methods of communicating with the Franchise Tax Board, there is no expected change in the number of new jobs created or existing jobs eliminated within California as a result of this proposed regulation.

#### Creation of New or Elimination of Existing Businesses Within the State

Since the regulation simply allows taxpayers the option of selecting new methods of communicating with the Franchise Tax Board, there is no expected change in the number of new businesses created or existing businesses eliminated within California as a result of this proposed regulation.

#### Expansion of Businesses or Elimination of Existing Businesses Within the State

Since the regulation simply allows taxpayers the option of selecting new methods of communicating with the Franchise Tax Board, there is no expected change in the number of businesses expanded or existing businesses eliminated within California as a result of this proposed regulation.

#### **ADVERSE ECONOMIC IMPACT ON BUSINESS**

The Franchise Tax Board has determined that proposed Regulation section 18416.5 will not have a significant overall economic impact on business.