

Explanation of Discussion Draft for
Proposed Regulation Section 18416.5

An interested parties meeting (IPM) was held on March 14, 2014 to discuss the proposed Regulation 18416.5, implementing an alternative communication method as authorized under Revenue and Taxation Code section 18416.5. That section authorizes the Franchise Tax Board (FTB), by regulation and at the request of the taxpayer or the taxpayer's authorized representative, to provide notification to the taxpayer in a preferred electronic communication method (PECM) that a notice, statement, bill, or other communication is available for viewing in the taxpayer's limited access secure folder on the Franchise Tax Board'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 Franchise Tax Board via MyFTB.

Numerous topics were discussed at the IPM and staff has taken that input as well as its own research and has produced 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. As discussed at the 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, Franchise Tax Board will publish information on its Internet web site, along with instructions for taxpayers and representatives about how to elect each additional type of electronic notification. Until electronic viewing and notification becomes available for each notice, Franchise Tax Board will continue to send paper copies of that notice by United States mail.

This Explanation is meant to accompany the proposed draft regulation to allow members of the public to understand the reasons underlying the proposed regulation and provides a background for further discussion regarding the proposed regulation at the next interested parties meeting scheduled for 1:30 PM on August 27, 2014.

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 will allow FTB to offer additional notification methods as technology permits, such as notification by text or other electronic forms of communication.

Subsection (a)(3) defines "TPEA" as 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. This definition will allow FTB to include additional methods of communication when the technology becomes available.

Subsection (a)(4) defines "RPEA" as Representative's 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. 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 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 are received by FTB through the taxpayer or the taxpayer's authorized representative's MyFTB folder. MyFTB will enable immediate viewing of documents transmitted to FTB in this manner, which will then be immediately viewable to the taxpayer or 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. The taxpayer or taxpayer's authorized representative must enter their TPEA or RPEA in order to receive the notices through the selected alternative communication method. By choosing the type of alternative communication method and providing a TPEA or RPEA, the taxpayer or taxpayer's authorized representative has elected into the alternative communication method.

Subsection (b)(2) describes the consequences of making the election to receive notices through the alternative communication method. Because 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. 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 an alternative communication method, the taxpayer agrees that by sending the notification that a new notice is in the taxpayer's MyFTB folder and making an image of that notice available to the taxpayer on the taxpayer's MyFTB account 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 State first-class mail, postage prepaid. The notifications made through the alternative electronic 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 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 the proposed regulation.

Subsection (b)(4) describes how a taxpayer or the taxpayer's authorized representative revokes their election to receive notification by the alternative communication method. A taxpayer or the taxpayer's authorized representative may access the taxpayer's 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 (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 that TPEA. The taxpayer is in the best position to confirm that their TPEA works and to confirm that they are receiving notifications from FTB. 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.

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's authorized representative to file a protest, notification, and/or other communication on behalf of the taxpayer in a secure electronic manner. This subsection describes that the filing date of a protest, correspondence or notification will be the date that the document or text provided by the taxpayer or taxpayer's authorized representative is

"successfully transmitted" to the FTB. Subsection (a)(5) defines the term "successfully transmitted" as 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. The definition is needed to specify how a taxpayer or taxpayer's authorized representative may confirm that the documents are received by FTB through the taxpayer or the taxpayer's authorized representative's MyFTB folder. MyFTB will enable immediate viewing of documents transmitted to FTB in this manner, which will then be immediately viewable to the taxpayer or taxpayer's authorized representative.

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