

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
LEGAL DIVISION MS A260

P.O. Box 1720,
Rancho Cordova, CA 95741-1720

**NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATION
SECTION 18416.5 IN TITLE 18, CALIFORNIA CODE OF REGULATIONS
RELATING TO THE ALTERNATIVE COMMUNICATION METHOD**

NOTICE OF DOCUMENTS ADDED TO THE RULEMAKING RECORD

Notice of Modification of Proposed Regulation section 18416.5

A Notice of Proposed Rulemaking was published in the California Regulatory Notice Register on February 27, 2015 in accordance with section 11346.4 of the Government Code, providing notice to the public of Franchise Tax Board's (FTB's) intention to consider the adoption of section 18416.5 in Title 18 of the California Code of Regulations. Section 18416.5 is a proposed regulation pursuant to Revenue and Taxation Code section 18416.5, pertaining to the alternative electronic communication method. The Notice of Proposed Rulemaking provided the public with an opportunity to request a public hearing. A public hearing was not held because FTB did not receive a request for a hearing during the original public comment period. The Notice of Proposed Rulemaking and two subsequent Notices of Modification to Text of the Proposed Regulation provided the public with the opportunity to submit written comments through July 3, 2015.

Department staff has reviewed the proposed regulation language and determined certain additional minor changes to the proposed regulation are necessary, which changes are identified below. These changes constitute sufficiently-related or nonsubstantial changes within the meaning of Government Code section 11346.8. The changes to the language of proposed section 18416.5 are summarized below:

- Added the location of this section in the California Code of Regulations as Title 18, Division 3, Chapter 2.6, Subchapter 1 to the heading of the regulation.
- In subdivision (a)(1): Deleted “or mobile application” from the regulation text.
- In subdivision (a)(3): Revised “text number” to “text enabled phone number capable of receiving text messages”.
- In subdivision (a)(3): Inserted “s” after “notification.”

- In subdivision (a)(4): Revised “text number” to “text enabled phone number capable of receiving text messages ”.
- In subdivision (a)(4): Inserted “s” after “notification.”
- In subdivision (b)(2)(A): Revised “...the notice is made available for viewing on MyFTB folder.” to “...the notice is made available for viewing in the MyFTB folder.”
- In subdivision (b)(2)(B): Revised “confirmed” to “complete.”
- In subdivision (b)(2)(B): Revised the second sentence adding text in bold to read as follows: "The notification sent through the PECM will contain plain language, either in the body of the message or by means of an internet link to the FTB website, **which shall state the required notification pursuant to Revenue and Taxation Code Section 18416.5(a)**, informing the taxpayer that a failure to take appropriate action set forth on the notice in the MyFTB folder may cause the taxpayer to forego procedural or administrative rights to challenge the proposed action contained within the actual notice available in the taxpayer's MyFTB folder."
- In subdivision (b)(3): Inserted “s” after “notification.”
- In subdivision (b)(3): Revised “...subject to the same election, revocation, and consequences...” to “...subject to the same election and revocation process and consequences...”.
- In subdivision (b)(4): Revised “...and make a new election under subsection (b)(1)” to “...and make a new election pursuant to the election process described in subdivision (b)(1)”.
- In subdivision (b)(5): In addition to nonsubstantial changes, additional clarification was added to the last sentence of this paragraph to clarify how FTB will notify a taxpayer when there has been redelivery attempt which it is aware was also not deliverable. Because of the number of notices or correspondence that FTB may issue to a taxpayer through the PECM, FTB has determined that once a redelivery attempt to the taxpayer's PECM has failed, FTB will notify the taxpayer of such failure and thereafter the taxpayer will receive all notices by United States first class mail postage prepaid. This provision is to ensure that taxpayers receive ongoing notices from FTB. The new text also clarifies the manner in which as taxpayer can provide a new TPEA by way of the taxpayer making a new election pursuant to the election process described in subdivision (b)(5). Revised subdivision (b) to read as follows: “The taxpayer is responsible for ensuring that the provided TPEA is correct and that the taxpayer can receive notifications at that TPEA. If FTB discovers that the delivery of notifications sent via a taxpayer’s chosen PECM has failed, FTB shall make one or

more attempts to redeliver a notification **to the TPEA using the PECM**. If FTB determines that the redelivery is unsuccessful, FTB shall inform the taxpayer **by United States first class mail postage prepaid** of the failure to deliver notifications to the TPEA and advise the taxpayer of the need to remedy delivery failures to the TPEA. **All further notices to the taxpayer will thereafter be made by United States first class mail postage prepaid until a the taxpayer makes a new election pursuant to the election process described in subdivision (b)(1).**"

- In subdivision (b)(5): Deleted the last sentence and established a new subdivision (d) to provide when FTB may revoke an election or ability to file an online protest or other correspondence/response. See addition of subd. (d) below.
- In subdivision (c): Revised heading to read as follows: "Filing a Protest or Other Correspondence/Response".

In subdivision (d): Added new subdivision and text to establish "Good Cause Revocation" of a taxpayer's election of a PECM. Subdivision (d) also includes good cause revocation of the ability to file protests, correspondence or other responses through the MyFTB Folder. This new provision was necessary to identify circumstances in which FTB may revoke a taxpayer's ability to elect a PECM and added examples to explain situations in which a good cause revocation may occur. Such a good cause situation may occur when FTB becomes aware that the taxpayer for whom the notice is intended is not receiving the notice. This could occur when an email account name is reassigned or assumed by another person or business or the taxpayer's email identity has been stolen or security of that email account was compromised. FTB also requires the ability to have good cause revocation of the ability of a taxpayer to submit a protest, correspondence/response under subdivision (c). Examples of some situations that would constitute good cause revocation under subdivision (c) include submitting materials which include a virus or other software damaging or malicious code that could damage or impede FTB's computer systems, repeated submission of large documents or data for non-tax purposes which slow or stop MyFTB services for other taxpayers or damage FTB's computer systems, such as voluminous non tax related documents, offensive pictures or threats to FTB employees, or repeated frivolous submissions. Such documents are costly for FTB to scan for malicious code and to maintain data storage for non tax related data on its systems. Without the ability to prevent the submission of such documents, the necessity to continually protect its systems from taxpayers who are known to have previously submitted damaging materials would slow FTB's computer services, causing inconvenience to other taxpayers as well as additional costs to FTB. Under new subdivision (d)(3), upon good cause revocation, FTB will mail a notification to the taxpayer via United States first class mail postage prepaid and state the reason(s) for the revocation. After such notice, the taxpayer will be aware that they are not longer permitted to submit documents in the manner provided under subdivision (d) and that in order to submit a protest, document, or response to FTB, the taxpayer must submit their protest, document, or response in the manner otherwise provided by law or established by FTB.

The new subdivision (d) reads as follows:

(d) Good Cause Revocation

(1) Upon good cause, FTB may revoke the election of the taxpayer's PECM and use United States first class mail postage prepaid to send copies of future notices to the taxpayer. Upon good cause, FTB may also revoke the ability to file protests or other correspondence/response pursuant to subdivision (c). Good cause may include, but is not limited to, entries or submissions via the MyFTB folder that damage or impede FTB's computer systems, when FTB has received information that the notifications via email to the PECM are not being received by the taxpayer, and repeated submission of non tax related materials or frivolous submissions that have not been requested by FTB.

(2) In the event of a good cause revocation pursuant to this subdivision, FTB shall promptly mail a notice to the taxpayer by United States first class mail postage prepaid which shall state the reason(s) for the revocation.

(3) Upon good cause revocation, notices shall thereafter be made by United States first class mail postage prepaid. If FTB revokes the ability to file protests or other correspondence/response pursuant to subdivision (c), those submissions shall be made to FTB in the manner otherwise permitted under the law or as established by FTB.

Public Comment Period for Amendments to Proposed Text

These nonsubstantial or sufficiently related changes are being made available to the public for the 15 day period required by Government Code section 11346.8, subdivision (c), and section 44 of Title 1 of the California Code of Regulations. Written comments regarding these changes will be accepted during the period beginning on December 2, 2015 and ending on December 17, 2015.

If you have any comments regarding the proposed changes in this notice, FTB will accept written comments regarding these changes, which must be submitted during the period beginning on December 2, 2015 and ending on December 17, 2015. All written comments must be submitted no later than 5:00 p.m. on December 17, 2015, and addressed to:

Nancy Parker
Legal Division MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720
Email: Nancy.Parker@ftb.ca.gov

All written comments received timely that pertain to the indicated changes will be reviewed and responded to by FTB's staff as part of the compilation of the rulemaking file.

Notice of Documents Added to the Rulemaking Record

Pursuant to Government Code section 11347.1, FTB hereby adds the following documents that were not originally included in the rulemaking file:

- 1) Summary of the Second Interested Parties Meeting, dated August 27, 2014.
- 2) Legislative History Documents for Revenue and Taxation Code Section 18416.5 consisting of the following:
 - "Concurrence in Senate Amendments", Committee Analysis of AB 2177, published July 30, 2010 (no date on document) (3 pages).
 - "Senate Rules Committee, Floor Analysis, Third Reading", Bill Number AB 2177, dated June 30, 2010 (4 pages).
 - "Senate Revenue and Taxation Committee Hearing", Summary of AB 2177 hearing dated June 9, 2010 (6 pages).
 - "Assembly Committee on Appropriations Hearing", Summary of AB 2177 hearing dated April 28, 2010 (2 pages).
 - "Assembly Committee on Revenue and Taxation Hearing", Summary of AB 2177 hearing, dated April 12, 2010 (5 pages).

These documents are being added to the rulemaking record and are made available to the public for the 15 day period required by Government Code section 11347.1. These documents are available on FTB's public website, www.ftb.ca.gov. The complete regulatory file, including the new documents added by this notice, is located at FTB's Central Office, Legal Division, 9646 Butterfield Way, Sacramento, CA, 95827.

If you have any comments regarding the proposed additional documents being added to the rulemaking record, FTB will accept written comments regarding these additional documents, which must be submitted during the period beginning on December 2, 2015 and ending on December 17, 2015. All written comments must be submitted no later than 5:00 p.m. on December 17, 2015, and addressed to:

Nancy Parker
Legal Division MS A260
Franchise Tax Board
P.O. Box 1720
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All written comments received timely that pertain to the additional documents will be reviewed and responded to by FTB's staff as part of the compilation of the rulemaking file.