

Notice of Modification to Text of California Code of Regulations, Title 18, Proposed Section 19032

On June 7, 2002, a notice of public hearing was issued concerning the adoption of California Code of Regulations, title 18, proposed section 19032 (hereinafter "Regulation 19032"). The hearing was held on August 19, 2002. During the regulation hearing comments were received that required modifications of the proposed text of Regulation 19032. Staff presented the revised proposed regulation to the Franchise Tax Board on November 26, 2002. The Franchise Tax Board approved the proposed changes but directed staff to make one additional modification to the proposed regulation.

Pursuant to the requirements of Government Code section 11346.8, subdivision (c), and California Code of Regulations, title 1, section 44, the Franchise Tax Board is providing notice of changes made to proposed Regulation 19032, relating to audit procedures.

The proposed changes constitute sufficiently related changes within the meaning of Government Code section 11346.8. The changes reflected in this notice are in bold double underscore for additions and bold double strikeout for deletions. The regulation changes covered by this notice may be summarized as:

Subsection (a)(3) of Regulation 19032 added an example of the auditor and taxpayer or the taxpayer's representative working together in a cooperative effort to complete the audit in a timely fashion.

Subsection (a)(4)(E) of Regulation 19032 adds language to make it clear that Franchise Tax Board staff will apply the law and regulations in a consistent manner regardless if the result of the audit is additional tax or a refund.

Subsection (b)(5)(C) of Regulation 19032 adds language to provide that, before issuing a formal notice and demand to furnish information or proposing any penalties in connection with any notices and demands issued, the auditor will exercise discretion in a reasonable manner that is appropriate under the circumstances related to that particular audit. This change is not intended to create a new legal standard for imposition of the failure to furnish information penalty, but is instead simply intended to ensure that the auditor gives due consideration to the circumstances of the particular audit in determining whether the penalty is to be proposed, rather than applying a mechanical standard to assess the penalty whenever the statutory prerequisites exist. Furthermore, in testimony before the Franchise Tax Board advocating this addition, the proponent explained that issuing the failure to furnish information penalty should not be automatic. Instead the auditor should take the appropriate action given the facts and circumstances of that particular audit.

Subsection (b)(5)(I) of Regulation 19032, relating to copy of audit file, is deleted by order of the Franchise Tax Board.

These sufficiently related changes are being made available for the public for the 15 day period required by Government Code section 11436.8, subdivision (c), and California Code of Regulation, title 1, section 44. Written comments regarding these changes will be accepted until 5:00 pm on January 15, 2003. The Franchise Tax Board is sending a copy of the proposed amendments to proposed Regulation 19032 to individuals who requested notification of such changes, as well as those who commented on the previously noticed regulation.

All inquires and written comments concerning this notice should be directed to Colleen Berwick (916) 845-3306, FAX (916) 45-3648, E-Mail: colleen.berwick@ftb.ca.gov or by mail to the Legal Branch, Attn: Colleen Berwick, P.O. Box 1720, Rancho Cordova, CA 95741-1720. This notice and the proposed regulation will also be made available at the Franchise Tax Board website at <http://www.ftb.ca.gov/>.