

## TITLE 18. FRANCHISE TAX BOARD

Pursuant to Government Code section 11346.4, the California Franchise Tax Board hereby gives notice of its intention to amend California Code of Regulations, Title 18, section 19513, pertaining to estates required to obtain a Tax Clearance Certificate from the Franchise Tax Board. There will not be a public hearing unless a public hearing is requested by an interested person at least 15 days before the close of the written comment period. All requests for a public hearing should be submitted to the agency officer named below.

### WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., September 21, 2001. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

### AUTHORITY & REFERENCE

Revenue & Taxation Code section 19513, subdivision (b), authorizes the Franchise Tax Board to prescribe regulations setting the minimum value of the assets of the estate at the death of the decedent and the minimum value of the assets distributable to one or more nonresidents, which will require the estate to obtain a Tax Clearance Certificate from the Franchise Tax Board. The proposed regulatory action interprets, implements, and makes specific Revenue & Taxation Code section 19513.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This is an amendment to the present regulation. The present regulation prohibits the probate court from accepting a final accounting from a fiduciary of an estate, unless the fiduciary obtains a Tax Clearance Certificate from the Franchise Tax Board, in those situations where: (1) the fair market value of the assets of the estate at the date of the decedent's death exceeds \$400,000; and (2) the fair market value of the assets distributable to one or more nonresident beneficiaries exceeds \$100,000. The proposed amendment would substitute \$1,000,000 for \$400,000 and \$250,000 for \$100,000, and thereby decrease the number of estates required to obtain a Tax Clearance Certificate. The specific objective of the proposed amendment to the regulation is to account for inflation occurring between 1980 and 2000, while retaining a 4 to 1 ratio between assets of the estate and distributable assets.

### DISCLOSURE REGARDING THE PROPOSED REGULATORY ACTION

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: The Franchise Tax Board anticipates a material reduction in the number of requests for Tax Clearance Certificates and a corresponding reduction in the time Franchise Tax Board personnel spend responding to such requests. There are no other costs or savings to any other agency.

Cost to any local agencies or school districts which must be reimbursed under Part 7, commencing with Government Code section 17500, of Division 4: None.

Other non-discretionary costs or savings imposed upon local agencies: None.

Cost or savings in Federal funding to the state: None.

The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on the creation or elimination of jobs in the state: None.

Effect on the creation of new businesses or the elimination of existing businesses within the state: None.

Effect on the expansion of businesses currently doing business within the state: None.

Effect on small business: Yes. Small businesses, which serve as probate estate fiduciaries, may receive a benefit if the fair market value of the estates they administer falls below the minimum values proscribed in the amendment to the regulation because the small businesses will not have to request a Tax Clearance Certificate from the Franchise Tax Board. Conversely, some of the small businesses that prepare the requests for Tax Clearance Certificates may incur a detriment because fewer Tax Clearance Certificates will be required from probate estate fiduciaries. Small businesses will only be required to enforce the amendment to the extent that they serve as fiduciaries for probate estates that fall below the proposed minimum values because only these small businesses will have the choice of whether or not to request a Tax Clearance Certificate. Finally, small businesses that are probate estate fiduciaries are not legally required to comply with the amendment because the amendment does not prohibit any probate estate fiduciary from requesting a Tax Clearance Certificate, it only relieves some probate estate fiduciaries of the affirmative duty to request the certificate.

Significant effect on housing costs: None.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Franchise Tax Board has prepared an initial statement of the reasons for the proposed regulatory action. The express terms of the proposed regulatory action, the initial statement of the reasons for the regulatory action, and all the information upon which the proposed regulatory action is based are available upon request from the agency officer named below. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board's website at <http://www.ftb.ca.gov>.

## CHANGE OR MODIFICATION OF ACTIONS

The proposed regulatory action may be adopted after consideration of any comments received during the comment period. The amendment to the regulation may be adopted with some modification if the modifications are non-substantial, solely grammatical in nature, or sufficiently related to the original text so that the public was adequately placed on notice that the change could result from the original proposed amendments to the regulation. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the Franchise Tax Board adopts, amends, or repeals the resulting regulation. In addition, any written comments regarding the change received by the Franchise Tax Board must be responded to in the final statement of reasons required by Government Code section 11346.9.

## ADDITIONAL COMMENTS

If a hearing is held, the hearing room will be accessible to persons with physical disabilities. Any person who is in need of a language interpreter, including sign language, should contact the agency officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

## CONTACT

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Telephone: (916) 845-3306; Fax: (916) 945-3648; E-Mail [colleen.berwick@ftb.ca.gov](mailto:colleen.berwick@ftb.ca.gov), or the designated backup, Doug Powers; Tel.: (916) 845-4962; Fax: (916) 845-3648; E-Mail: [doug.powers@ftb.ca.gov](mailto:doug.powers@ftb.ca.gov). In addition, all questions on the substance of the proposed regulation can be directed to Bradley Heller; Tel.: (916) 845-7483. This notice, the initial statement of reasons, and the express terms of the proposed amendment to the regulation are also available at the Franchise Tax Board's website at <http://www.ftb.ca.gov>.