

**INITIAL STATEMENT OF REASONS
FOR THE ADOPTION OF CALIFORNIA CODE OF REGULATIONS,
TITLE 18, REGULATION SECTIONS 20501 - 20505**

REGULATION 20501

SPECIFIC PURPOSE OF THE REGULATION

This proposed regulation will establish the definition of the term "medical incapacity" for purposes of allowing a claimant under the Senior Citizens Homeowners and Renters Property Tax Assistance Law (referred to hereinafter as the "HRA Law"; Rev. and Tax. Code §§ 20501 through 20564) to file a claim under this program outside the generally established filing period if that claimant suffered from "medical incapacity" during that established filing period. The proposed regulation defines a person who suffers "medical incapacity" as an individual being unable to attend to his or her own personal needs and activities of daily life, including but not limited to, matters such as their own personal hygiene or nutritional needs.

REGULATION 20502

SPECIFIC PURPOSE OF THE REGULATION

This proposed regulation will establish the definition of the term "substantially equivalent to property taxes" for purposes of allowing a claimant under the provisions of the HRA Law to be eligible for assistance when he or she lives in a property that is exempt from property tax but pays an amount in lieu of property tax that is . . .substantially equivalent to property taxes paid on properties of comparable market value." (See Rev. and Tax. Code § 20509, subd. (a).)

The proposed regulation defines an amount "substantially equivalent to property taxes" as being an amount at least 80% of the amount of taxes assessed on a property of comparable assessed value.

REGULATION 20503

SPECIFIC PURPOSE OF THE REGULATION

This proposed regulation clarifies under what circumstances the claimant under the HRA Law will be required to provided copies of the property tax bill applicable to the property in which they resided during the qualifying year.

REGULATION 20504

SPECIFIC PURPOSE OF THE REGULATION

This proposed regulation clarifies the acceptable forms and documentation that the Franchise Tax Board will accept from claimants in proving disability under the definition for eligibility under the HRA Law.

REGULATION 20505

SPECIFIC PURPOSE OF THE REGULATION

This proposed regulation is designed to provide notice to a claimant together with a reasonable opportunity for claimants to perfect their claims in a timely manner if they fail to initially provide the documentation required under the above

NECESSITY

The Legislature adopted the HRA Law to assist elderly and disabled individuals with the payment of property tax assessments on their places of residence. As part of that assistance program, the Legislature established a system for filing claim forms in order to establish a claimant's entitlement to the property tax assistance. The filing period for those claims is established in Revenue and Taxation Code section 20563. Claims must be filed during that period or they cannot be allowed unless the claimant establishes that he or she was "medically incapacitated" during that established claim period.

To administer this program, the Franchise Tax Board reviewed similarly worded California and federal statutes and case law seeking a definition for the term "medical incapacity." This search was conducted within the limitation that the Legislature made clear its intention that "medical incapacity" was to be a condition more debilitating than the applicable definition of disability by allowing an extension of the filing period for those already disabled if they became "medically incapacitated."

The definition which appeared to be the most analogous to what was intended by the Legislature was found in federal Treasury Regulation section 1.44A-1(b)(4), which defines physical or mental incapacity with regard to eligibility to claim the dependent care tax credit. That regulation defines physical or mental incapacity, in part, as ". . . the individual is incapable of caring for his or her hygienical or nutritional needs"

Under this proposed regulation, the term "medical incapacity" is defined, patterned after the above-cited federal regulation, as "an individual being unable to attend to his or her own personal needs and activities of daily life, including but not limited to, matters such as their own personal hygiene or nutritional needs, in an appropriate manner."

As the proposed definition defines a condition beyond the specified definition of "disability," the Franchise Tax Board has proposed this regulation to allow a consistent and appropriate administration of this program.

Under the HRA Law, the Legislature also allowed assistance for those who pay an "in lieu" assessment. The statute sets forth that that assistance was to be limited to only those that lived in a residence that paid an amount in lieu of the tax that was "substantially equivalent to the tax assessed and paid on similar properties."

Since the term "substantially equivalent," as used in this context, was not previously defined, the proposed regulation provides a basis for uniform decisions under the statute as to what is "substantially equivalent," allowing the Franchise Tax Board to determine a claimant's eligibility on this issue without question as to the acceptable amount of in lieu payment.

To administer this program, the Franchise Tax Board searched for similar provisions in California and federal statutes and case law seeking a definition for the term "substantially equivalent." Several examples of such definitions were found in tax statutes. These included a property tax statute relating to the sale-leaseback of publicly owned property, which statute defines the term "substantially all" to mean at least 85 percent. (Rev. & Tax. Code § 107.8, subd. (b).) In a sales and use tax statute defining "sale" and "purchase" at a social gathering, "substantially all" is defined as 80 percent or more. (Rev. & Tax. Code § 6010.30, subd. (b).) And in a sales tax regulation relating to the transfer of business property, "substantially all property" means 80 percent or more. (Cal. Code Regs., tit. 18, § 1595, sub. (b)(2).)

Considering these statutes, as well as others, the State Board of Equalization issued a published opinion (citable authority) in the Appeals of *Helen Cantor, et al.* 2002-SBE-008, November 13, 2002. In that decision the State Board of Equalization agreed that the appropriate definition for "substantially equivalent to property taxes" was 80 percent or more of the amount of taxes assessed on comparable properties.

Under this proposed regulation, the Franchise Tax Board defines "substantially equivalent to property taxes" based on a synthesis of the various other tax statutes defining "substantially equivalent" and the opinion of the State Board of Equalization by defining "substantially equivalent to property taxes" as payments in lieu of property taxes equal to at least 80 percent of the amount of property taxes assessed on a property of comparable assessed value.

As the proposed definition sets forth a non-discretionary standard, the Franchise Tax Board has proposed this regulation to allow a consistent and appropriate administration of this program.

Part of the HRA Law is Revenue and Taxation Code section 20561. As originally enacted, and amended effective March 15, 1978, Revenue and Taxation Code section 20561 required that a homeowner claimant attach a property tax bill to the claim form for each year a claim was filed. This section was subsequently amended, effective as of January 1, 2003, and no longer sets forth any specific requirement as to the documentation that must be attached by a claimant to the claim form to show that property tax was assessed on their residence. Instead, the Franchise Tax Board

is now specifically authorized under that section to prescribe, by regulations, the information necessary to constitute a valid claim for assistance under the HRA Law.

The proposed regulation is designed to set forth the information needed by the Franchise Tax Board to verify that the claimant is eligible for the assistance as the owner of a residence within California that is subject to property tax. The proposed regulation also allows the FTB to verify the amount of tax assessed. This information is essential to processing the claims under the statutory requirements for eligibility for assistance and for calculating the amount to which the claimant is entitled.

The proposed regulation provides to the Franchise Tax Board the ability to gather the information needed, as well as relieving the claimant from continuing to obtain and provide a copy of their property tax bill each year, as long as they own and reside in the same property.

The proposed regulation allows the Franchise Tax Board to continue to effectively administer the HRA Law while simultaneously reducing the number of times claimants are required to provide a copy of their property tax bill.

For purposes of eligibility under the HRA Law, "disabled" is defined to mean being unable to engage in any substantial gainful activity because of a medically recognized physical or mental impairment, which is expected to last for a period of not less than 12 consecutive months. Under this definition, impairment must be so severe that the claimant is not only unable to perform his or her previous type of work, but cannot engage in any other type of gainful activity, considering the claimant's age, education and work experience. (Rev. § Tax. Code § 20505; Welf. & Inst. Code § 12050.) The referenced standard is the standard used by the Social Security Administration to determine disability under section 1614(a) of Part A of Title XVI of the Social Security Act.

As the standard referenced by the HRA Law for determining disability is the standard utilized by the Social Security Administration, the Franchise Tax Board has identified the types of documentation that would be readily available to a claimant if they were disabled pursuant to that definition. The first three types of proof could be obtained by anyone who is disabled under the definition and who has applied for and been awarded Social Security benefits. Further, FTB has limited ability to verify a claimant's Social Security eligibility through an interagency agreement with the Department of Health Services with regard to the current year.¹

The fourth type of proof will be determinations made by a local, state, or federal agency to verify that a claimant is disabled. Reliance on a finding of disability by a governmental agency is consistent with the HRA statutory scheme because, as indicated above, the Legislature has adopted the federal definition of disability as the standard for the HRA program.

¹ The Department of Health Services only has one year at a time available on its system to which FTB presently has access. Further, due to the way the HRA computer system operates, if there is another issue regarding the claimant's eligibility such as whether the property is exempt from property tax, FTB cannot utilize the Health Services data system as it does not allow for the determination of the other issues before a decision to allow the assistance is made based solely on disability status.

As the standard utilized by the State of California for awarding health benefits is a different standard than that referenced by the HRA Laws, the Franchise Tax Board did not include, nor can it rely upon, California state benefits cards or notifications of eligibility to establish the claimant's disability. Thus, only a determination by a local, state, or federal agency that uses the same definition of disability as that found at in section 1614(a) of Part A of Title XVI of the Social Security Act will be acceptable.

The proposed regulation is designed to provide the information needed by the Franchise Tax Board to verify that the claimant is eligible for the assistance in the most accurate and least invasive manner possible.

Because some of the documentation required by these regulations may not be in the possession of the claimants or the claimants may not be aware that such documentation is required, the proposed regulation is also designed to provide a reasonable opportunity for claimants to provide the additional documentation needed before the claim will be denied. In general, a "reasonable" opportunity, as notices from the Franchise Tax Board have allowed time to respond on previous forms, has been implemented using periods between 30 and 60 days from the date the claimant is notified additional information is required.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON

The Franchise Tax Board relied upon the Revenue and Taxation Code sections, sections of Title 18 of the California Code of Regulations, and federal tax regulations referenced above.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Franchise Tax Board considered trying to use other sources of information to validate ownership and property tax information for each homeowner claimant. However, the labor intensive nature of utilizing online data services or contacting the county assessors make this impracticable considering the number of claims received each year.

The Franchise Tax Board has also entered into a relationship with the Department of Health Services, which does track the eligibility of some individuals for Social Security benefits. However, the information provided through that service is not always updated fast enough to allow the Franchise Tax Board to administer this program in a timely and accurate manner.

There were no other alternatives presented to or considered by the Franchise Tax Board which would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to implement the intention of the Legislature or to the affected individuals.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS OR SMALL BUSINESS

The purpose of this proposed regulation is to define the situation under which the Franchise Tax Board can allow the late filing of a claim under the program, can allow the claim of an individual living in property that is exempt from property taxes but makes sufficient payments to the respective county in lieu of property taxes, provides a legitimate way for the claimant to provide proof of disability and establishing a minimal need to supply a property tax bill for purposes of establishing the property tax amounts.

This proposed regulation is designed to meet the needs of the Franchise Tax Board in properly implementing this HRA Law while finding a way of creating fewer burdens on the claimant. Further, the regulation provides the claimants an opportunity to supplement their claim, if information is missing, before it will be denied.

As such, the proposed regulation does not create any adverse impact on the affected individuals, and in fact it reduces the burden on affected private persons who are claimants.

ADVERSE ECONOMIC IMPACT ON BUSINESS

The program is only available to individuals. As such, no adverse impact to business has been identified.