

TITLE 18. Franchise Tax Board

NOTICE OF PROPOSED RULEMAKING

The Franchise Tax Board proposes to adopt the five proposed regulations after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Franchise Tax Board will not hold a public hearing unless requested by interested persons or their representatives at least 15 days before the close of the written comment period. Any request for a public hearing should be submitted to the officer named below.

WRITTEN COMMENT PERIOD

Any interested persons or their representatives may submit written comments to the officer named below. Written comments will be accepted until 5:00 p.m., January 5, 2005. The Franchise Tax Board will consider all relevant matters presented before the proposed regulatory action is taken.

AUTHORITY AND REFERENCE

Revenue and Taxation Code section 19503 authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 10.7 (commencing with Section 21001) and Part 11 (commencing with Section 23001) of the Revenue and Taxation Code. This regulatory authority is made applicable to Part 10.5 by Revenue and Taxation Code section 20642. The proposed regulatory action implements, interprets and makes specific Revenue and Taxation Code sections 20505, 20511, 20561, and 20563, which are included in Part 10.5 of the Revenue and Taxation Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Regulation 20501

The Franchise Tax Board proposes to adopt California Code of Regulations, title 18, section 20501.

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"; Revenue and Taxation Code sections 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 personal hygiene and nutritional needs.

Regulation 20502

The Franchise Tax Board proposes to adopt California Code of Regulations, title 18, section 20502.

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. & Tax. Code, § 20509, subd. (a).)

Under this proposed regulation, the term "substantially equivalent to property taxes" is defined in various other tax statutes defining "substantially equivalent" and a published opinion of the State Board of Equalization as payments in lieu of property taxes that are equal to at least 80 percent of the amount of property taxes assessed on a property of comparable assessed value.

Regulation 20503

The Franchise Tax Board proposes to adopt California Code of Regulations, title 18, section 20503.

As this program is based on the assessment of property tax, the Franchise Tax Board must determine both that property tax was assessed and the amount thereof in the case of a homeowner claimant. This proposed regulation clarifies under what circumstances the homeowner claimant under the HRA Law will be required to provide copies of the property tax bill applicable to the property in which they resided during the qualifying year.

Regulation 20504

The Franchise Tax Board proposes to adopt California Code of Regulations, title 18, section 20504.

For purposes of homeowner and renter assistance eligibility, "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," as defined in section 1614(a) of Part A of Title XVI of the Social Security Act. The proposed regulation designates the three types of proof in the form of notices from the Social Security Administration, which would be readily available to a claimant if they were disabled

pursuant to that definition. The fourth, documentation accepted by a local, state or federal agency to support its determination of disability.

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.

Regulation 20505

The Franchise Tax Board proposes to adopt California Code of Regulations, title 18, section 20505.

As noted in proposed regulations 20501 through 20504, there are various types of documentation that must be forwarded to the Franchise Tax Board with a claim form in order for the claim to be allowed. 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.

This proposed regulation is designed to provide notice to a claimant together with a reasonable opportunity for claimants to provide the additional documentation needed in a timely manner before the claim will be denied by the Franchise Tax Board. In general, the Franchise Tax Board intends that a "reasonable" opportunity within the meaning of this regulation shall be specified in communications with claimants, which communications shall generally provide for response periods between 30 and 60 days from the date the claimant is notified that additional information is required.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Franchise Tax Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

Other non-discretionary cost 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 a representative, private person, or business: Because the proposed regulations address only the definition of terms as utilized by the Legislature in creating this program and the sending of notices regarding those definitions, the Franchise Tax 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 elimination of existing businesses within the state: None

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

Significant effect on housing costs: None.

Effect on small business: None. The regulation affects small businesses in the same manner as it affects individuals and other businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Franchise Tax Board must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of the Franchise Tax 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.

The Franchise Tax Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Franchise Tax Board has prepared an initial statement of reasons for the proposed regulatory action. The express terms of the proposed regulatory action, the initial statement of reasons for the regulatory action, and all the information upon which the proposed regulatory action is based are available upon request from the officer named below.

CHANGE OR MODIFICATION OF ACTIONS

The Franchise Tax Board may adopt the proposed regulatory action after consideration of any comments received during the comment period. Government Code section 15702, subdivision (b), provides for consideration by the three-member Board of any proposed regulatory action, if any person makes such a request in writing. If a written request is received, the three-member Board will consider the proposed regulatory action prior to adoption.

The regulation(s) may also be adopted with modifications if the changes are nonsubstantive or the resulting regulation(s) is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation(s) as modified could result from that originally proposed. The text of the regulation(s) as modified will be made available to the

public at least 15 days prior to the date on which the regulation(s) is adopted. Requests for copies of any modified regulation(s) should be sent to the attention of the officer named below.

AVAILABILITY OF FINAL STATEMENT OF REASONS

When the final statement of reasons is available, it can be obtained by contacting the officer named below, or by accessing the Franchise Tax Board's website at <http://www.ftb.ca.gov/>.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

This notice, the initial statement of reasons, and the express terms of the proposed regulations are also available at the Franchise Tax Board's website at <http://www.ftb.ca.gov/>.

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 officer named below at least two weeks prior to any scheduled hearing so that the services of an interpreter may be arranged.

CONTACT

All inquires concerning this notice or any request for a public hearing should be directed to Colleen Berwick at the Franchise Tax Board, Legal Department, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306; Fax: (916) 845-3648; E-Mail: colleen.berwick@ftb.ca.gov, or the designated backup, Suzanne Small; Tel.: (916) 845-3066; Fax: (916) 845-3648; E-Mail: suzanne.small@ftb.ca.gov. In addition, all questions on the substance of the proposed regulations can be directed to Suzanne Small.