

TITLE 18. FRANCHISE TAX BOARD

As required by Government Code section 11346.4, this is notice of the intention to amend section 23334 in title 18 of the California Code of Regulations, which provides that in certain circumstances a corporation must obtain a tax clearance certificate from the Franchise Tax Board before the California Secretary of State will file any document that would dissolve, withdraw, or otherwise reduce or terminate the existence of a corporation. There will not be a public hearing unless one is requested by an interested person at least 15 days before the close of the written comment period. Any request for a public hearing should be submitted to the Regulation Coordinator specified herein.

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., August 5, 2002. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the Regulation Coordinator specified herein.

AUTHORITY & REFERENCE

Revenue and Taxation Code section 19503 authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with Revenue and Taxation Code section 17001), Part 10.2 (commencing with Revenue and Taxation Code section 18401), Part 10.7 (commencing with Revenue and Taxation Code section 21001) and Part 11 (commencing with Revenue and Taxation Code section 23001). The proposed regulatory action interprets, implements, and makes specific Revenue and Taxation Code section 23334.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulatory action clarifies that a dissolving or withdrawing corporation continues to exist for state tax purposes until the corporation obtains a tax clearance certificate from the Franchise Tax Board, and files the tax clearance certificate with the California Secretary of State. The proposed regulatory action also clarifies that the Franchise Tax Board cannot issue a tax clearance certificate to a suspended or forfeited corporation. In addition, the proposed regulatory action clarifies the effect of recent legislative changes upon the tax clearance process, including a description of the legislative changes to the tax clearance process for corporate mergers.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

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.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost to directly affected private persons/businesses potential: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

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

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

Effect on small business: The effect on small business would be negligible. The proposed regulatory action clarifies that a dissolving, withdrawing and, in certain situations, merging corporation continues to exist for state tax purposes until the corporation obtains and files a valid tax clearance certificate. Any effect on small business would be to their benefit, as the proposed regulatory action clarifies what steps need to be taken to obtain and file a tax clearance certificate to avoid additional taxes and penalties.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that there are no alternatives considered which would be more effective in carrying out the purpose of the proposed regulatory action or would be as effective and less burdensome to affected private persons or small businesses than the proposed regulatory action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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 proposed regulatory action may also be adopted with modifications if the changes are nonsubstantive or the resulting regulation is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the proposed regulatory action as modified could result from that originally proposed. The text of the proposed regulatory action as modified will be made available to the public at least 15 days prior to the date on which the proposed regulatory action is adopted. Requests for copies of any modifications to the proposed regulatory action specified in this notice should be sent to the attention of the Regulation Coordinator specified herein.

ADDITIONAL COMMENTS

If an oral public hearing is held, the hearing room will be accessible to persons with physical disabilities. Also, any person who is in need of a language interpreter, including sign language, should contact the Regulation Coordinator specified herein at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

CONTACT

All inquiries concerning this notice, including requests that an oral hearing be held, should be directed to the Regulation Coordinator for this proposed regulatory action, Colleen Berwick, at the Franchise Tax Board Legal Branch, 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, Doug Powers; Tel.: (916) 845-4962, Fax: (916) 845-3648; E-Mail: doug.powers@ftb.ca.gov. In addition, all questions on the substance of the proposed regulation can be directed to Carissa Lynch: Tel. (916) 845-7835. This notice, the initial statement of reasons and the express terms of the regulation are also available at the Franchise Tax Board's website at <http://www.ftb.ca.gov/>.