

TITLE 18. FRANCHISE TAX BOARD

As required by Government Code section 11346.4, this is notice of intention to adopt amendments to California Code of Regulations, title 18, section 24344, subsection (c), pertaining to offset of interest expense incurred for foreign investment. There will not be a public hearing unless 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 agency officer named below.

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., July 22, 2002. 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 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. The proposed regulatory action interprets, implements, and makes specific Revenue and Taxation Code section 24344, subdivision (c).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Code of Regulations, title 18, section 24344, subsection (c), currently sets forth a definition of "commonly controlled group" that was based upon the prior version of Revenue and Taxation Code section 25105 and the case law decided thereunder. Revenue and Taxation Code section 25105 was amended in 1994 to incorporate the interpretations of what constitutes a "commonly controlled group" found in the case law. Additionally, Revenue and Taxation Code sections 24411 and 25110, and the regulations thereunder, relating to the computation of the California tax liability of a unitary group the members of which are affiliated with foreign corporations, have been amended to refer to Revenue and Taxation Code section 25105 rather than to set forth a separate definition of a "commonly controlled group."

This is an amendment that will incorporate the definition of "commonly controlled group" as found in Revenue and Taxation Code section 25105 into California Code of Regulations, title 18, section 24344, subsection (c). Additionally, the amendment would correct the word "and" to "or" and make the requirements of California Code of Regulations, title 18, section 24344, subsections (c)(2)(A)1.a. and b., disjunctive rather than conjunctive.

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 that 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 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 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: None because the regulation affects small businesses in the same manner as it affects individuals and other businesses.

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 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 INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The express terms of the proposed regulatory action, as well as the initial statement of reasons and all 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 regulation 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 regulation as modified could result from that originally proposed. The text of the regulation as modified will be made available to the public at least 15 days prior to the date on which the regulation is adopted. Requests for copies of any modified regulations should be sent to the attention of the agency officer named below.

ADDITIONAL COMMENTS

If a 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 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 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 Karen Smith; Tel.: (916) 845-3347. This notice, the initial statement of reasons, and the express terms of the proposed regulation are also available at the Franchise Tax Board's website at <http://www.ftb.ca.gov/>.