

**TITLE 18. FRANCHISE TAX BOARD**  
**(Notice Published June 27, 2014)**  
**NOTICE OF PROPOSED RULEMAKING**

As required by Section 11346.4 of the Government Code, this is notice of intention to consider the adoption of section 24465-3 in Title 18 of the California Code of Regulations, pertaining to annual reporting requirements for transfer(s) of appreciated property to an insurer. There will be no 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. Government Code section 15702, subdivision (b), provides for consideration by the three-member Franchise Tax Board of any proposed regulatory action if any person makes such request in writing.

**WRITTEN COMMENT PERIOD**

Written comments will be accepted until 5:00 p.m., September 11, 2014. 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 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). Revenue and Taxation Code section 24465, subdivisions (c) and (j), provide for adoption of this regulation in order to implement the annual reporting requirements specified in subdivision (c) of that section.

**INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

Revenue and Taxation Code section 24465 is an anti-abuse provision enacted in 2003 by the Legislature to proscribe the use of specified insurers as receptacles of appreciated assets transferred by affiliated corporations, effectively eroding the corporation tax base as those insurers are subject only to the gross premiums tax. Nevertheless, RTC section 24465 allows for a deferral of gain recognition if the transferred asset is used in the active conduct of the insurer's trade or business.

In order to provide the Franchise Tax Board with sufficient notice of the status of such transferred assets and subsequent trigger of the deferred gain, RTC section 24465, subdivision (c), provides that until that asset is subsequently disposed of and gain is fully recognized, an annual statement must be filed with FTB. This regulation would prescribe the parameters for the contents of, filing methodology, and records retention for that annual statement.

The Franchise Tax Board has evaluated the proposed regulation and determined that the adoption of this regulation is not inconsistent or incompatible with existing state regulations. There are no other comparable existing state regulations.

### Anticipated Benefits from the Proposed Regulation

The regulation as proposed provides appropriate guidance regarding the annual statement prescribed in Revenue and Taxation Code section 24465, subdivision (c). The Franchise Tax Board will save resources by receiving timely notifications rather than having to physically track transferred property.

### **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: Any cost is a result of the statute, not the regulation.

Effect on small business: The department has made an initial determination that the adoption of the proposed regulation will not affect small businesses. The proposed regulation merely clarifies existing requirements imposed by RTC section 24465. The department does not expect the proposed regulation to have any impact on the number of small businesses. Any impact is a result of the statute, not the regulation.

Significant effect on housing costs: None.

### **RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

Pursuant to Government Code section 11346.3, subdivision (b), the Franchise Tax Board has determined in the economic impact analysis that there are no effects on the creation or elimination of jobs in the state, no effect on the creation of new businesses or elimination or expansion of existing businesses within the state and that the proposed regulation will benefit taxpayers as the proposed regulation provides appropriate guidance regarding the annual statement prescribed in Revenue and Taxation Code section 24465, subdivision (c). The Franchise Tax Board will save resources by receiving timely notifications rather than having to physically track transferred property.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: None.

## **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 or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## **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 [www.ftb.ca.gov](http://www.ftb.ca.gov).

## **CHANGE OR MODIFICATION OF ACTIONS**

The regulations and amendments may also be adopted with modifications if the changes are nonsubstantive or the resulting regulations are sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulations as modified could result from that originally proposed. The text of the regulations as modified will be made available to the public at least 15 days prior to the date on which the regulations are 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. 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.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing, who is in need of a language interpreter, including sign language should contact the 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 Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Telephone (916) 845-3306; Fax (916) 845-3648; E-Mail: [colleen.berwick@ftb.ca.gov](mailto:colleen.berwick@ftb.ca.gov). In addition, all questions on the substance of the proposed regulation can be directed to Tommy Leung; Telephone (916) 255-3474. This notice, the initial statement of reasons and express terms of the proposed regulation are also available at the Franchise Tax Board's website at [www.ftb.ca.gov](http://www.ftb.ca.gov).