

**STATE OF CALIFORNIA
LEGAL DIVISION MS A260
FRANCHISE TAX BOARD
PO BOX 1720
RANCHO CORDOVA, CA 95741-1720**

**NOTICE OF AMENDMENTS TO TEXT OF PROPOSED REGULATION
SECTION 24465-3 IN TITLE 18 OF THE CALIFORNIA CODE OF REGULATIONS
RELATING TO TRANSFER OF APPRECIATED PROPERTY TO INSURER**

A Notice of Proposed Rulemaking was published in the California Regulatory Notice Register on June 27, 2014 in accordance with section 11346.4 of the Government Code, providing notice to the public of Franchise Tax Board's intention to consider the adoption of section 24465-3 in Title 18 of the California Code of Regulations. Section 24465-3 is a proposed regulation pursuant to subdivision (c) of Revenue and Taxation Code (RTC) section 24465, pertaining to annual reporting for those corporations that transfer appreciated property to an insurer and claim gain deferral provided under subdivision (b) of RTC section 24465 (transferred property used in the active conduct of a trade or business of the insurer). The Notice of Proposed Rulemaking provided the public with an opportunity to request a public hearing if the request was received by August 28, 2014. A hearing was not held because Franchise Tax Board did not receive a request for a hearing by August 28, 2014. The Notice of Proposed Rulemaking also provided the public with an opportunity to submit written comments until 5:00 p.m. on September 11, 2014.

Department staff has reviewed the proposed regulation language and determined that certain additional minor changes to the proposed regulation are necessary, which changes are identified below. These changes constitute sufficiently-related changes within the meaning of Government Code section 11346.8 and non-substantial changes within the meaning of Government Code section 11346.8. The changes to the language of the Proposed regulation 24465-3 are summarized below:

1. In subsection (a) the word "required" was replaced with the word "authorized". This change was necessary because the annual statement is not required under Revenue and Taxation Code section 24465, subdivision (c), but rather, that section instead grants the Franchise Tax Board the authority, by regulation, to require the annual statement.
2. In subsection (a) the phrase "but is not limited to" was removed because it was duplicative. The original proposed language of Regulation section 24465-3 (a)(18) already informs affected parties that they should include all information that will enable the Franchise Tax Board to properly identify and analyze the transaction.
3. In subsection (b) the phrase "and in the manner" was removed to avoid a situation where the Franchise Tax Board would be required to identify all current methods of submission of the form, which in turn might preclude future, more efficient methods of submission of the form.

These non substantial or sufficiently related changes are being made available to the public for the 15-day period required by Government Code section 11346.8, subdivision (c), and section 44 of Title 1 of the California Code of Regulations. Written comments regarding these changes will be accepted during the period beginning on December 31, 2014 and ending at 5:00 p.m. on January 16, 2015.

Department staff also reviewed both the original Notice and the Initial Statement of Reasons for proposed adoption of Regulation section 24465-3, and staff has clarified some of the original findings relating to the cost impacts reflected in the original Notice and has also made minor revisions to the ISR, although none of these changes have an impact on the scope of the proposed regulation.

Changes to Certain Findings from Original 45-Day Notice –

- (1) **Anticipated Benefits from the Proposed Regulation:** The regulation as proposed provides appropriate guidance regarding the annual statement authorized under Revenue and Taxation Code section 24465, subdivision (c). Under Government Code section 11346.3, subdivision (d), the Franchise Tax Board finds that requiring the annual statement under the proposed regulation from businesses is necessary for the general welfare of the people of the State of California by ensuring businesses properly report certain deferred gains that are subject to taxation under the provisions of Revenue and Taxation Code section 24465 and saves the State of California resources by requiring that the Franchise Tax Board receive timely notifications from taxpayers rather than having to physically track property that was transferred and for which gain was deferred under the provisions of Revenue and Taxation Code section 24465, subdivision (b).
- (2) **Cost to directly affected private persons/businesses potential:** While the regulation implements the reporting requirement authorized by the statute, the transferor of the property subject to Revenue and Taxation Code section 24465 would be required to compute the amount of realized gain that is allowed to be deferred (not immediately recognized) under subdivision (b) of Revenue and Taxation Code section 24465 since upon later disposition of the transferred property, the deferred gain is then required to be recognized. Subdivision (b)(5) of Revenue and Taxation Code section 24465 contains various computational rules relating to the later recognition of the deferred gain that statutorily require the transferor to compute both the amount of the deferred gain and certain apportionment factors in the year of the original transfer. As a result, the regulation does not impose any new or additional costs on directly affected private persons or businesses beyond what the statute already requires.
- (3) **Effect on small business:** The department has made an initial determination that the adoption of the proposed regulation will not affect small businesses. While the regulation implements the reporting requirement authorized by the statute, the transferor of the property subject to Revenue and Taxation Code section 24465 would be required to compute the amount of realized gain that is allowed to be deferred (not immediately recognized) under subdivision (b) of Revenue and Taxation Code section 24465 since upon later disposition of the transferred property, the deferred gain is then required to be recognized. Subdivision (b)(5) of Revenue and Taxation Code section 24465 contains various computational rules relating to the later recognition of the deferred gain that statutorily require the transferor to compute both the amount of the deferred gain and certain apportionment factors in the year of the original transfer. As a result, the regulation does not impose any new or additional costs on small businesses beyond what the statute already requires. Furthermore, the department does not expect the proposed regulation to have any impact on the number of small businesses.

A copy of the revised ISR is being included with this mailing, and is also available for inspection in the public file of the Franchise Tax Board, upon request. Individuals may also provide comments on the revised Initial Statement of Reasons in writing during the 15-day period. Written comments regarding these changes will be accepted until 5:00 p.m. on January 16, 2015.

All inquiries and written comments concerning this notice should be directed to Teresa Bush-Chavey at (916) 845-7847, FAX (916) 855-5525, E-Mail: teresa.bushchavey@ftb.ca.gov or by mail to the Legal Division, Attn: Teresa Bush-Chavey, P.O. Box 1720, Rancho Cordova, CA 95741-1720. This notice and the proposed amendment will also be made available at the Franchise Tax Board's website at www.ftb.ca.gov.