



STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

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09.07.16

Chief Counsel Ruling 2016-04

\*\*\*\*\*  
ATTN:\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

RE: \*\*\*\*\* and \*\*\*\*\*

Dear \*\*\*\*\*. \*\*\*\*\* :

You requested a Chief Counsel Ruling regarding the California return filing and reporting requirements for the following entities: (1) \*\*\*\*\* (Federal Employer Identification Number:\*\*\*\*\*); and (2) \*\*\*\*\* , Doing Business As (DBA) \*\*\*\*\* (Federal Employer Identification Number: \*\*\*\*\* ).

**FACTS**

\*\*\*\*\* ( \*\*\*\*\* ) is a state-chartered credit union operating in the State of \*\*\*\*\* . \*\*\*\*\* incorporated under the credit union law of the State of \*\*\*\*\* on \*\*\*\*\* \*\*\*\*\* , \*\*\*\*\* . \*\*\*\*\* is a \*\*\*\*\* domestic non-profit cooperative corporation without stock (Entity Number: \*\*\*\*\* ; \*\*\*\*\* Business ID: \*\*\*\*\* ).

\*\*\*\*\* had been exempt from federal income tax under the group exemption of the \*\*\*\*\* , a State of \*\*\*\*\* governmental entity (“\*\*\*\*\*”). Specifically, \*\*\*\*\* would file a group Return of Organization Exempt from Income Tax (Form 990) for the state-chartered credit unions within the group, including \*\*\*\*\* . However, \*\*\*\*\* instructed the individual credit unions in the group to begin filing their own Form 990's beginning with the \*\*\*\*\* calendar year. \*\*\*\*\* has filed the Form 990 for each of the years beginning with taxable year \*\*\*\*\* . It has recently come to \*\*\*\*\* attention that \*\*\*\*\* believes it has terminated the group exemption. Accordingly, on \*\*\*\*\* \*\*\*\*\* \*\*\*\*\* , \*\*\*\*\* filed an application with the Internal Revenue Service for federal income tax exemption as an organization described in Internal Revenue Code section 501(c)(14).

\*\*\*\*\* is the sole member of \*\*\*\*\* , \*\*\*\*\* , DBA \*\*\*\*\* , a \*\*\*\*\* domestic limited liability company (Entity Number:\*\*\*\*\* \*\*\*\*\* )

Business ID: \*\*\*\*\* ) that originates loans in \*\*\*\*\* (the "\*\*\*\*\* SMLLC").  
The \*\*\*\*\* SMLLC is a disregarded entity for federal income tax purposes.

In the near future, the \*\*\*\*\* SMLLC will begin transacting intrastate business in California by originating loans secured by California real property. As such, it will be "doing business" in California within the meaning of California Revenue and Taxation Code ("RTC") section 23101. The \*\*\*\*\* SMLLC and its sole owner, \*\*\*\*\* , will both register/qualify to do business with the California Secretary of State ("CA SOS"). The \*\*\*\*\* SMLLC will be appropriately licensed as a Residential Mortgage Lender by the California Department of Business Oversight, Division of Corporations. The \*\*\*\*\* SMLLC will not own any California property; however, it will have California payroll.

\*\*\*\*\* will file an Exemption Application (California Form 3500) with the Franchise Tax Board seeking exemption from California franchise and corporate income tax as an organization described in RTC section 23701y. \*\*\*\*\* will annually file California Exempt Organization Annual Information Returns (California Form 199) to report the activities of the \*\*\*\*\* SMLLC.

For purposes of this Chief Counsel Ruling, it has been represented that the income of the \*\*\*\*\* SMLLC is not unrelated business taxable income ("UBTI") for California franchise or income tax purposes. As such, the Franchise Tax Board is not being asked to opine (nor does it opine) whether the income of the \*\*\*\*\* SMLLC is UBTI for California franchise or income tax purposes.

## ISSUES

Assuming the income of the \*\*\*\*\* SMLLC is not UBTI for California franchise or income tax purposes and assuming \*\*\*\*\* obtains (and then subsequently continues to maintain) exemption from California franchise and income tax as an organization described in RTC section 23701y, the following questions are raised:

1. Whether the \*\*\*\*\* SMLLC will have a California return filing requirement and obligation to pay all applicable taxes and fees?
2. Whether \*\*\*\*\* will have a California return filing requirement and obligation to pay all applicable taxes and fees?

## HOLDINGS

1. Yes. The \*\*\*\*\* SMLLC should annually file the California Limited Liability Company Return of Income (California Form 568). The \*\*\*\*\* SMLLC is subject to the \$800 annual LLC tax under RTC section 17941, as well as the LLC fee under RTC section 17942.
2. Yes. If \*\*\*\*\* obtains (and then subsequently maintains) exemption from California franchise and corporate income tax as an organization described in

RTC section 23701y, it should annually file California Form 199.<sup>1</sup> Additionally, in any taxable year that \*\*\*\*\* has UBTI for California franchise or income tax purposes, it should also file the California Exempt Organization Business Income Tax Return (California Form 109) to report and pay tax on its UBTI.

## DISCUSSION

### ISSUE 1

RTC section 23038(b)(2)(B)(iii) provides that an eligible business entity (such as a single member limited liability company [SMLLC]) that is disregarded for federal income tax purposes will also be generally disregarded for California tax purposes; however, this general rule does not apply for purposes of the \$800 LLC tax,<sup>2</sup> the LLC fee,<sup>3</sup> and the LLC return filing requirement.<sup>4</sup> The relevant provisions of California law that result in a disregarded SMLLC having a California filing requirement and being subject to the LLC tax and fee are the following: (1) Registration to do business in California with the CA SOS;<sup>5</sup> (2) Being organized in California with the CA SOS;<sup>6</sup> or (3) "Doing business" in California within the meaning of RTC section 23101.<sup>7</sup> If any of these three provisions apply in a given taxable year, then a disregarded SMLLC will have a California return filing requirement and will be subject to the LLC tax and fee.<sup>8</sup>

Subdivision (a) of RTC section 23101 states that "doing business" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Subdivision (b) of Section 23101 provides that for taxable years beginning on or after January 1, 2011, a taxpayer is "doing business" in this state if the taxpayer is: (1) organized or commercially domiciled in this state; (2) has sales in this state that exceed the lesser of five hundred thousand dollars (\$500,000), or 25 percent of the taxpayer's total sales; (3) the real property and tangible personal property of the taxpayer in this state exceed the lesser of fifty thousand dollars (\$50,000) or 25 percent of the taxpayer's total real property and tangible

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<sup>1</sup> When completing Form 199, \*\*\*\*\* must report all of its activities, including its non-California activities.

<sup>2</sup> Cal. Rev. & Tax Code, section 17941.

<sup>3</sup> Cal. Rev. & Tax. Code, section 17942.

<sup>4</sup> Cal. Rev. & Tax. Code, section 18633.5.

<sup>5</sup> Cal. Rev. & Tax. Code, sections 18633.5(i)(1) and 17941(b)(1).

<sup>6</sup> Cal. Rev. & Tax. Code, sections 18633.5(i)(1) and 17941(b)(1).

<sup>7</sup> Cal. Rev. & Tax. Code, sections 18633.5(i)(1) and 17941(a).

<sup>8</sup> Every LLC that is subject to the tax under Section 17941 is also subject to the fee under Section 17942. (See Cal. Rev. & Tax Code, section 17942(a).)

personal property; or (4) compensation paid in this state exceeds the lesser of fifty thousand dollars (\$50,000) or 25% of total compensation paid by the taxpayer.<sup>9</sup>

You have represented that the \*\*\*\*\* SMLLC will be "doing business" in California within the meaning of RTC section 23101. Additionally, you have represented that the \*\*\*\*\* SMLLC will register/qualify to do business with the CA SOS. Therefore, the \*\*\*\*\* SMLLC, a SMLLC classified as a disregarded entity for tax purposes, and wholly owned by \*\*\*\*\* , has a California filing requirement (California Form 568) pursuant to RTC section 18633.5 and is subject to the LLC tax and fee pursuant to RTC sections 17941 and 17942.

## ISSUE 2

\*\*\*\*\* is the sole member of the \*\*\*\*\* SMLLC, a foreign disregarded SMLLC that you represent plans to be "doing business" in California within the meaning of RTC section 23101.

As explained in FTB Legal Ruling 2011-01, if the separate entity status of the SMLLC is disregarded for franchise and income tax purposes, the activities of the SMLLC are treated in the same manner as a sole proprietorship, branch, or division of the owner.<sup>10</sup> Thus, if the activities of a branch or division are sufficient to be considered "doing business" in California, those activities are sufficient to treat the sole owner as "doing business" in California.<sup>11</sup>

Additionally, you also represent that \*\*\*\*\* plans to register/qualify to do business with the CA SOS.

Accordingly, \*\*\*\*\* will have a California return filing requirement. So long as \*\*\*\*\* obtains (and then subsequently continues to maintain) exemption from California franchise and income tax as an organization described in RTC section 23701y, it should annually file California Form 199.<sup>12</sup> Additionally, in any taxable year that \*\*\*\*\* has UBTI for California franchise or income tax purposes, it should also file California Form 109 to report and pay tax on its UBTI.

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<sup>9</sup> The dollar amounts specified above are indexed annually for inflation. (See Cal. Rev. & Tax. Code, section 23101(c).)

<sup>10</sup> See Treas. Regs. section 301.7701-2(a); Cal. Code Regs., tit. 18, section 23038(b)-2(a).

<sup>11</sup> See, e.g., *Appeal of Atlantic, Gulf and Pacific Company of Manila, Inc.*, 82-SBE-255 (Nov. 17, 1982) [Activities of Taxpayer's machinery sales division in California sufficient to create nexus to impose California franchise tax].

<sup>12</sup> As noted in Footnote 1, when completing Form 199, \*\*\*\*\* must report all of its activities, including its non-California activities.

## **CONCLUSION**

The \*\*\*\*\* SMLLC should annually file California Form 568 and is subject to the \$800 annual LLC tax under RTC section 17941 as well as the LLC fee under Section 17942.

And, so long as \*\*\*\*\* obtains (and then subsequently maintains) exemption from California franchise and income tax as an organization described in RTC section 23701y, it should annually file California Form 199.<sup>13</sup> Additionally, in any taxable year that \*\*\*\*\* has UBTI for California franchise or income tax purposes, it should also file California Form 109 to report and pay tax on its UBTI.

Please be advised that the tax consequences expressed in this Chief Counsel Ruling are applicable only to the named taxpayers and are based upon and limited to the facts you have submitted. In the event of a change in relevant legislation, or judicial or administrative case law, a change in federal interpretation of federal law in cases where our opinion is based upon such an interpretation, or a change in the material facts or circumstances relating to your request upon which this opinion is based, this opinion may no longer be applicable. It is your responsibility to be aware of these changes, should they occur.

This letter is a legal ruling by the Franchise Tax Board's Chief Counsel within the meaning of paragraph (1) of subdivision (a) of section 21012 of the RTC. Please attach a copy of this letter and your request to the appropriate return(s) (if any) when filed or in response to any notices or inquiries which might be issued.

Very truly yours,

Adam J. Susz  
Tax Counsel IV

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<sup>13</sup> As noted in Footnotes 1 and 12, when completing Form 199, \*\*\*\*\* must report all of its activities, including its non-California activities.