

**Summary of Interested Parties Meeting Re
Possible Amendments to California Code of Regulations,
Title 18, sections 23038(b)-1 through 23038(b)-3**

I. **Administration:**

On January 11, 2016, the Franchise Tax Board (FTB) held an interested parties meeting to elicit public input regarding possible amendments to the regulations at California Code of Regulations, Title 18, sections 23038(b)-1, 23038(b)-2 and 23038(b)-3 (commonly referred to as the "check-the-box" regulations) to make California's regulations conform to corresponding federal regulations at CFR § 301.7701-1 to CFR § 301.7701-3. Participants attended in person and by telephone. Those physically present were asked to register at the entrance, and telephone participants introduced themselves. Participants were informed there would be no attribution of comments and no transcript. The assigned staff was Bradley Kragel. Available handouts were: notice of the meeting, a revisions key for the proposed language, and handouts of the proposed language.

II. **Discussion:**

The discussion was organized topically, covering the proposed draft language sections, with the assigned staff reviewing each proposed change in the regulations, and explaining why the proposed language is drafted in the manner that it is proposed, and inviting comments from the public on each change. During and after the meeting, the FTB received suggestions and comments regarding the proposed amendments.

Comments Regarding Section 23038(b)-1:

A commentator suggested that the phrase "or income" should be deleted from subsection (f) in section 23038(b)-1.

Comments Regarding Section 23038(b)-2:

A commentator suggested that the language "For purposes of the tax imposed under [Chapter 2 and] Chapter 3 of the Revenue and Taxation Code (commencing with Revenue and Taxation Code section 23501), the term corporation includes—" should be deleted from subsection (b) in section 23038(b)-2, and replaced with the phrase "For California income and franchise tax purposes, the term corporation means –".

In regard to the proposed addition of the phrase "An insurance company," in subsection (b)(4) of section 23038(b)-2, a commentator noted that some insurance companies are subject to the premium tax, not the income and franchise tax.

A commentator suggested that Example 1 under subsection (c) of section 23038(b)-2, should be revised by replacing the word "consolidated" with the word "combined" and by replacing the phrase "Internal Revenue Service (IRS)" with the phrase "Franchise Tax Board (FTB)."

A commentator suggested that the word "or" should be deleted from subparagraph 2 of subsection (d)(3)(A) in section 23038(b)-2, and added at the end of subparagraph 3.

Comments Regarding Section 23038(b)-3:

A commentator suggested that the word "original" should be inserted before the phrase "effective date" throughout subsections (b)(3)(A), (b)(3)(B), (b)(4)(A), and (b)(4)(A)1 of section 23038(b)-3, in order to ensure that the provisions addressing "existing eligible entities" are only applicable to those eligible entities that were in existence when the regulation was first effective, and not any subsequently formed eligible entities.

A commentator suggested that the phrase "(including any changes in the classification)" should be added to subsection (c) of section 23038(b)-3 in order to clarify that original classification elections and subsequent federal elections will be the same for California purposes.

Comments Regarding Section 23038(b)-4:

The assigned staff discussed and reviewed a possible proposed new regulation designated section 23038(b)-4 which is intended to conform to federal regulation 301.7701-5. A commentator suggested that the possible proposed new regulation section designated 23038(b)-4 should instead be designated 23038(b)-5 in order to make it match the equivalent federal regulation at CFR § 301.7701-5.

A commentator suggested that the definition of "foreign corporation" in the possible proposed new regulation section 23038(b)-4 may conflict with other provisions of the tax code because California uses a different definition of "foreign corporation" (a corporation outside of California) than the definition stated in 23038(b)-4 (a corporation outside of the United States).

III. Conclusion

FTB staff will schedule a second interested parties meeting sometime during 2016. Revisions to the proposed draft language sections, a discussion draft addressing the above-referenced comments, and a document detailing further discussion topics for the revised proposed draft language sections will be posted prior to the next meeting.