

**NINETY-DAY NOTICE OF PROPOSED
AMENDMENTS
CALIFORNIA CODE OF REGULATIONS, TITLE 18,
SECTION 18662-7
MARCH 15, 2019**

The second interested parties meeting (IPM) for proposed draft language to California Code of Regulations, Title 18, Section 18662-7, Domestic Pass-Through Entity Withholding Regulation (Regulation), was held on September 8, 2017. At the second IPM, Franchise Tax Board (FTB) staff elicited and received public comments on proposed draft language for the Regulation. The FTB posted a summary of the second IPM that is hereby noticed, and now available online at the FTB's website at www.ftb.ca.gov.

Additionally, after considering comments made at the second IPM and during the comment period, FTB staff has now revised the proposed draft Regulation language, and has provided a discussion of these revisions. These additional documents are now also hereby noticed, and available online at the FTB's website.

The purpose of this notice is to elicit comments on the newly revised proposed draft Regulation language following the second IPM. In lieu of a third interested parties meeting, please submit written comments regarding the newly revised proposed draft Regulation language by 5:00 p.m. on **June 17, 2019**.

Following the close of the comment period, FTB staff intends to present the newly revised proposed draft Regulation language to the 3-member Franchise Tax Board (Board itself) to request permission to proceed with the formal Administrative Procedures Act (APA) regulatory process. However, staff may delay requesting permission from the Board itself in order to address any comments or concerns not previously considered or received from interested parties in response to this notice.

The main revisions to the proposed draft Regulation language are summarized below:

1. *Self-Certification*. FTB staff proposes to add self-certification under subsection (d)(1)(B)(2)(d) to act as a safe harbor for an upper tier pass-through entity that receives a late Form 592-B from its lower tier pass-through entity. If an upper tier pass-through entity receives a Form 592-B beyond its own Form 592-PTE January 31st due date, then a late filing penalty will not be imposed on the upper tier pass-through entity if it certifies that it is filing the Form 592-PTE within 30 days of receiving the Form 592-B, so long as it actually files the Form 592-PTE within 30 days of receiving the Form 592-B, and the self-certification is not fraudulent or otherwise

factually incorrect. Example 4 is additionally proposed under subsection (h) to illustrate self-certification.

2. *Elimination of 10 Day Notification Requirement.* FTB Staff proposes to eliminate the 10-day notification requirement under subsection (d)(2)(B) to avoid imposing additional administrative burdens on pass-through entities, and because a safe harbor in the form of self-certification was instead provided as relief for pass-through entities receiving a late Form 592-B. FTB Staff proposes to eliminate previously proposed Example 5 under subsection (h) which illustrated the 10-day notification requirement as a result of the new revision to eliminate the 10-day notification requirement. Staff additionally proposes to eliminate other language referring to the 10-day notification requirement for the same purpose.
3. *Clarification Language.* FTB Staff proposes revisions to clarify previously proposed subsections, including: subsection (a) to include the requirement for the withholding pass-through entity to withhold on behalf of each non-California S corporation owner in addition to each resident or nonresident owner of the non-California upper tier S corporation owner; subsection (b)(2) to include where the pass-through entity withholding agent finds the California source income subject to withholding; subsection (b)(4)(B)(1)-(2) to further define a Non-California Upper Tier Business Entity; subsection (b)(7) to add that the 1 percent mental health services tax rate and additional tax rates imposed by Proposition 30 are included in the highest marginal tax rate; subsection (d)(1)(B) to clarify January 31st as the annual basis due date; subsection (d)(2)(A) to clarify January 31st as the Form 592-B due date; subsection (g) to list and reference which penalties and relief apply for each withholding form; subsection (h) Example 2 to include the tax rate applicable within the example; and subsection (h) Example 7 to clarify upper tier S corporation as a non-California and non-financial S corporation.
4. *Other Edits.* For purposes of consistency and clarity, FTB staff proposes revisions, including: subsection (b)(3) to state "pass-through entity owner;" subsection (b)(8) to state "pass-through entity owner;" the addition of parenthesis to references; and renumbering subsections following proposed edits of adding or eliminating subsections.

Written comments regarding the newly revised proposed Regulation language will be accepted until 5:00 p.m. on **June 17, 2019**. All inquiries and written comments concerning this notice should be directed to Leah Thyberg per the below contact information.

- Email: Leah.Thyberg@ftb.ca.gov
- Telephone: (916) 845-3617
- Facsimile: (916) 843-8820
- Mailing Address: Franchise Tax Board
Legal Division (MS A260)
Att: Leah Thyberg

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This notice, the newly revised proposed draft Regulation language, and the discussion of the newly revised proposed draft Regulation language will also be made available at the Franchise Tax Board's website at www.ftb.ca.gov.

COST IMPACTS OF PROPOSED RULEMAKING

The department encourages submission of information from interested parties during the pre-APA process in order to assess the economic impact of a proposed rulemaking action on businesses (including small businesses), employees, jobs or occupations, competitiveness of California businesses, reporting requirements, or individuals.