

Summary of Second Interested Parties Meeting Proposed Regulation at §18001, Other State Tax Credit

I. Administration

On July 30, 2020 at 10:00 a.m., the Franchise Tax Board (FTB) held a telephonic Interested Parties Meeting (IPM) that was attended by interested members of the public (Participants) concerning proposed amendments to the regulation at Title 18 of the California Code of Regulations (CCR), Section 18001-1 (Regulation). Participants were able to submit written comments by email during the IPM and verbally during the IPM.

Veronica Long, FTB Tax Counsel, Adam Susz, FTB Attorney V, and Red Gobuty, FTB Tax Counsel IV, served as the IPM Facilitators (Facilitators). Facilitators explained the purpose of the IPM was to provide the public with an opportunity to provide comments on the proposed amended draft Regulation language. Participants were advised they had until August 27, 2020 to submit written comments.

II. Discussion

The purpose of the meeting was to receive public input on proposed draft language amending the Regulation, to clarify the statutory term "net income taxes paid to another state" for purposes of the Other State Tax Credit (OSTC) contained in California Revenue and Taxation Code (RTC) section 18001.

Facilitators opened the discussion for public input on this topic, and received comments as detailed below:

A commenter expressed concern that the proposed amendments to the Regulation would prevent S corporation shareholders from claiming the OSTC for gross and net income taxes paid, as permitted by RTC Section 18001. The commenter also disagreed with the proposed amendments to the extent that they define net income taxes as taxes that are only on net income. The commenter disagreed with FTB's interpretation of case law.

The Facilitators clarified that the proposed draft language does not restrict the ability of S corporation shareholders to claim the OSTC for their pro rata share of S corporation taxes paid for gross or net income taxes. This is because RTC Section 18001 broadens the definition of "net income taxes" for purposes of S corporation shareholders and the application of this statute is not deterred by the proposed amendment.

Another commenter expressed concern with the position taken by the proposed draft Regulation language, and by the FTB in its Legal Ruling 2017-01. The commenter detailed his disagreement with FTB's position as expressed in Legal Ruling 2017-01. The commenter also stated his agreement that the proposed draft language would not prevent S corporation shareholders from claiming the OSTC for their share of S corporation taxes paid on gross and net income, as provided for under RTC Section

18001. The commenter suggested that additional language could be included in the draft language to clarify that it does not preclude S corporation shareholders from claiming the OSTC for gross and net income taxes as provided under RTC Section 18001.

Facilitators thanked all commenters for their input and stated that all commentary would be taken under consideration.

III. Closing

The Facilitators indicated that staff would review comments received from the public during the comment period and prepare this summary.