

TITLE 18. FRANCHISE TAX BOARD

Notice published March 31, 2023

NOTICE OF PROPOSED RULEMAKING

As required by section 11346.4 of the Government Code, the Franchise Tax Board (the Board) hereby gives notice of its intention to amend California Code of Regulations, title 18, section 18001-1 (Regulation section 18001-1), relating to the Other State Tax Credit (OSTC).

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period indicated below. The request should be submitted to the Board officer named below. In addition, Government Code section 15702, subdivision (b) provides for consideration by the three-member Board of any proposed regulatory action if any person makes such request in writing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes on May 16, 2023. The Board will consider only comments received at the Board offices by that time. The Board encourages submission of comments in electronic form, rather than in paper form. Comments may be submitted by email to FTBRegulations@ftb.ca.gov.

Submit comments in paper form to:

Desiree Macedo, Tax Counsel
Legal Division MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720
Fax: (916) 843-0995

AUTHORITY & REFERENCE

California Revenue and Taxation Code (RTC) section 19503 authorizes the Board to amend Regulation section 18001-1. The amended regulation implements and interprets provisions in RTC section 18001.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action will provide taxpayers with certainty regarding the term "net income tax."

The purpose of the proposed amendment of Regulation section 18001 is to provide clarity to taxpayers, tax practitioners, and the state with regards to "net income tax" for purposes of the OSTC.

Summary of Existing Laws and Regulations:

RTC section 18001 allows a credit against the net tax for net income taxes imposed by and paid to another state on specified income. Under RTC section 18001, the payment of tax to another state is generally eligible for the OSTC only where the other state's tax is a net income tax. A tax that is imposed on items other than net income is not considered a net income tax for purposes of the OSTC.

The current regulation promulgated under RTC section 18001, Regulation section 18001-1 was last amended on January 7, 2005

Effect of Proposed Rulemaking:

The effect of the proposed regulatory action is to give certainty to taxpayers, tax practitioners, and the state with regards to "net income tax" for purposes of the OSTC. The proposed amendments provide the appropriate criteria and guidance in implementing the OSTC as provided in RTC section 18001 and confirm the Board's long-standing administration of RTC section 18001.

Broad Objectives and Specific Benefits of the Proposed Rulemaking:

In addition to the benefits mentioned above in providing affected taxpayers with proper guidance regarding "net income tax," the broad objective of the proposed regulatory action is to ensure that taxpayers, their representatives, and the state of California have certainty on what qualifies as "net income tax" pursuant to RTC section 18001. The clarity from the proposed regulatory action will reduce uncertainty for taxpayers and tax practitioners and will facilitate tax administration for the state of California by providing additional clarity. These benefits are the result of goals developed by the Board with input from interested parties and based on broad statutory authority.

Consistency and Compatibility with Existing State Regulation:

During the process of developing the proposed amendments to this regulation the Board, pursuant to Government Code section 11346.5, subdivision (a)(3)(D), conducted a search of any similar state regulations and has concluded that this regulation is neither inconsistent nor incompatible with any existing state regulations.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

Mandate on local agencies and school districts: *None.*

Fiscal Impact Disclosures:

Cost to any agency or school district which must be reimbursed under Part 7, commencing with Government Code section 17500, of Division 4: *None.*

Other non-discretionary cost or savings imposed upon local agencies: *None.*

Cost or savings to any state agency: *The proposed amendment to the regulation would provide clarification of the term "net income tax" for purposes of the OSTC. The Board does not anticipate any cost savings.*

Cost or savings in federal funding to the state: *None.*

Significant effect on housing costs: *None.*

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: *This regulation does not affect the tax owed on business activity in California, so it does not affect the ability of California businesses to compete within or outside California. Therefore, this regulation would not result in any statewide adverse economic impact on the states' businesses.*

Potential cost impact to directly affected private person or business: *The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendment to the regulation will have no impact on a private person, and since it is informative in substance and does not change the law pertaining to the application of the OSTC, it would not result in additional compliance costs to businesses.*

Effect on small business: *The Board has determined that the proposed amendment to the regulation would not affect the tax owed by small businesses. The proposed amendment to the regulation provides clarification to the term "net income tax" for purposes of taxation of*

out-of-state business activity of California taxpayers and therefore would not affect small businesses.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

In accordance with the Government Code section 11346.3, subdivision (b), the Board has made the following assessments regarding the proposed regulatory action:

The proposed amendment to the regulation would not affect the creation of California jobs, the creation of new businesses, nor would it affect the expansion of existing California businesses. The Board does not anticipate any elimination of jobs or elimination of existing businesses within California as a result of the proposed amendments to this regulation. The proposed regulatory amendment provides guidance to taxpayers and tax practitioners with regards to the term "net income tax," and does not have any direct impact on the health and welfare of California residents, worker safety and the state's environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has been otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the comment period or if a hearing is requested at the scheduled hearing.

CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:

Desiree Macedo, Tax Counsel
Legal Division MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720
Telephone: (916) 845-7193
Email: FTBRegulations@ftb.ca.gov

The backup contact person for these inquiries is:

Jayson Gottman
Legal Divisions MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720
Telephone: (916) 845-4576
Email: FTBRegulations@ftb.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Jayson Gottman at the above address or send the request by email to FTBRegulations@ftb.ca.gov.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. Copies can be obtained on the Franchise Tax Board's website or by contacting Jayson Gottman at the address, phone number, or email address listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, after the close of the comment period, the Board may adopt the proposed amendments to the regulation substantially as described in this notice. If the Board makes substantive modifications sufficiently related to the proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Copies of the modifications will be published on the Board's website at ftb.ca.gov and mailed to anyone who submitted written comments to the Board, and to anyone who has expressed an interest in receiving the modification information. Please send requests for copies of any modified regulation to the attention of Jayson Gottman at the address, phone number, or email address indicated above. The Board will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion. Copies of the Final Statement of Reasons will be published on the Board's website and may also be obtained by contacting Jayson Gottman at the above address, phone number, or email address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our [website](#).