

**TITLE 18. FRANCHISE TAX BOARD  
(Notice published February 27, 2015)**

**NOTICE OF PROPOSED RULEMAKING**

As required by section 11346.4 of the Government Code, the Franchise Tax Board hereby gives notice of its intention to adopt California Code of Regulations, title 18, section 18416.5, pertaining to the alternative electronic notification method.

Government Code section 15702, subdivision (b), provides for consideration by the three-member Franchise Tax Board of any proposed regulatory action if any person makes such request in writing.

**PUBLIC HEARING**

The Franchise Tax 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 agency officer named below.

**WRITTEN COMMENT PERIOD**

Written comments will be accepted until 5:00 p.m., April 13, 2015. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

**AUTHORITY & REFERENCE**

Section 18416.5 of the Revenue and Taxation Code authorizes the Franchise Tax Board to implement, by regulation, an alternative communication method that would allow the Franchise Tax Board, at the request of the taxpayer or the taxpayer's authorized representative, to provide notification to the taxpayer or taxpayer's authorized representative in a preferred electronic communication method designated by the taxpayer that that a bill, notice, or other communication required under Part 10, Part 10.2, or Part 11 of the Revenue and Taxation Code is available for viewing on the Franchise Tax Board's limited access secure website. The proposed regulation also describes the manner in which a taxpayer or taxpayer's authorized representative may use an electronic method to submit a protest, notification, or other correspondence to FTB by way of the MyFTB folder. The proposed regulation by its terms shall apply to elections made and protests or other correspondence filed on or after July 1, 2015. The proposed regulatory action implements and makes specific section 18416.5 of the Revenue and Taxation Code.

**INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW**

In 2010, the Legislature enacted AB 2177 (Stats. 2010, Ch. 136) which added Revenue and Taxation Code section 18416.5, authorizing the Franchise Tax Board, by regulation, to implement a paperless notification process for notices, statements, bills or other required communications under Parts 10, 10.2 and 11 of the Revenue and Taxation Code that are currently required to be sent by U.S. mail, at the option of the taxpayer, and to allow

taxpayers to submit certain documents electronically that currently are required to be mailed on paper. The statute and proposed regulation are part of a multi-year technology project that began July 1, 2011 and is scheduled to end December 31, 2016. As one of the key elements of this technology project, the Franchise Tax Board has developed a secure online taxpayer folder within the web-based function known as "My FTB Account" where taxpayers and representatives can file tax returns, view tax return data, check processing status of tax returns, access processing timeframes for returns and payments, make and view payments, access, update, and send correspondence, view bills and notices, view and update address and contact information and set contact and delivery preferences.

This proposed regulation would provide key definitions, specify how taxpayers and taxpayer's authorized representatives may elect into the alternative communication method, the consequences of such an election, a rule that appointment of an authorization representative by a taxpayer constitutes authorization to use the alternative communication method by the taxpayer's authorized representative, rules governing how to revoke the election into the alternative communication method, and the consequences of delivery failures. Additionally, the proposed regulation describes the manner in which a taxpayer or taxpayer's authorized representative may use an electronic method to submit a protest, notification, or other correspondence to FTB by way of the MyFTB folder and provides that the proposed regulation shall apply to elections made and protests or other correspondence filed on or after July 1, 2015.

Subsection (a) provides key definitions used in the regulation. Under subsection (a)(1), "MyFTB folder" is defined to refer to a taxpayer's or a taxpayer's authorized representative's secure folder that is accessible through FTB's internet website or mobile application. This definition is needed as the taxpayer or taxpayer's authorized representative must have established access to the taxpayer's limited access secure folder or the taxpayer's authorized representative's secure folder in order to participate in the alternative communication method.

Subsection (a)(2) defines "PECM" as the preferred electronic communication method, which is the type of communication method selected by the taxpayer or the taxpayer's authorized representative. Currently, FTB anticipates notification will initially be available by email. However, this definition specifies that it includes other alternate forms of electronic communication that may become available in the future so that FTB may offer additional electronic notification methods the taxpayer or taxpayer's authorized representative may select as technology permits, such as notification by text or other electronic forms of communication.

Subsection (a)(3) defines "TPEA" as Taxpayer Provided Electronic Address, which may include an email address, text number, or other electronic delivery service address designated by the taxpayer to receive notification and which is accessible by the taxpayer electronically. This definition is drafted to include other electronic delivery service addresses in order to allow a taxpayer to select new electronic methods of communication when new technology becomes available.

Subsection (a)(4) defines "RPEA" as Representative's Provided Electronic Address, which may include an email address, text number, or other electronic delivery service address designated by the taxpayer's authorized representative to receive notification and which is accessible by the representative electronically. Like the definition above, this definition will

also allow a taxpayer's authorized representative to select new electronic methods of communication when new technology becomes available.

Subsection (a)(5) defines "successfully transmitted" as the point in time when the document or text is stored as a document or text in the taxpayer's MyFTB folder. The proposed regulation provides that the taxpayer or taxpayer's authorized representative should confirm that the document or text is viewable in the taxpayer's MyFTB folder to verify successful transmission. The term "successful transmission" is used in filing a protest, notification, or other correspondence with FTB under subsection (c) of the proposed regulation. The definition is needed to specify how a taxpayer and taxpayer's authorized representative may confirm that the documents have been successfully received by FTB through the MyFTB folder. The MyFTB folder will enable immediate viewing of documents transmitted to FTB in this manner, which will then be immediately viewable to the taxpayer or taxpayer's authorized representative.

Subsection (b) specifies how taxpayers and taxpayer's representatives may elect into the alternative communication method, the consequences of such election, the authorization to use the alternative communication method by the taxpayer's authorized representative, revocation of the election into the alternative communication method, and the consequences of delivery failure, as further described below.

Subsection (b)(1) describes the process by which a taxpayer or a taxpayer's authorized representative elects into receiving notifications by an alternative communication method. A taxpayer and/or taxpayer's authorized representative may select the specific type of available alternative communication method (e-mail, text, or yet to be determined electronic method) from within the MyFTB folder. Since use of this alternative communication method is at the election of the taxpayer, the taxpayer or taxpayer's authorized representative must enter their TPEA or RPEA, as applicable, in order for the taxpayer to receive the notices through the selected alternative communication method. By choosing the type of alternative communication method and providing a TPEA or RPEA, as applicable, the taxpayer has elected into the alternative communication method.

Subsection (b)(2) describes the consequences to the taxpayer and the taxpayer's authorized representative of making the election to receive notices through the alternative communication method. Once the taxpayer chooses to receive notices through the alternative communication method, the taxpayer will receive a notification to log on to their MyFTB folder and view the notice within the MyFTB folder. If the authorized representative receives notice through the alternative communication method, the authorized representative will receive an electronic notification to log on to their MyFTB folder and from their list of clients, they may access notices and other portions of the taxpayer's folder that they are authorized to view. Notifications sent via the alternative communication method will not contain the actual text of the notice itself due to privacy and security issues posed by current electronic communications. By electing to receive notification through this alternative communication method, the taxpayer agrees that once the Franchise Tax Board sends the notification that a new notice is in the taxpayer's MyFTB folder and makes an image of that notice available to the taxpayer on the taxpayer's MyFTB folder, at that point such notification will be considered legal notification of the content of the notice in the MyFTB folder. Notification(s) on the taxpayer's MyFTB folder by way of the taxpayer's chosen alternative communication method will be treated as if actual notice was mailed to the taxpayer's last known address via United States first-class mail, postage prepaid. The

notifications made through the alternative communication method will advise the taxpayer in that message or by a link to the FTB website that failure to take appropriate action set forth in the notice in the MyFTB folder may cause the taxpayer to forgo legal and administrative rights to challenge the proposed action contained within the actual notice.

Subsection (b)(3) provides that when a taxpayer appoints an authorized representative, the taxpayer also authorizes FTB to send notification to the taxpayer's authorized representative using an alternative communication method. This subsection also provides that authorized taxpayer representatives electing to enroll in an alternative communication method to receive notification are subject to the same election, revocation, and consequences of electing to receive notification via the alternative communication method as the taxpayer as described in the proposed regulation.

Subsection (b)(4) describes how a taxpayer or the taxpayer's authorized representative may revoke the taxpayer's election to receive notification by the alternative communication method. A taxpayer or the taxpayer's authorized representative may access the MyFTB folder and make a new election as described under subsection (b)(1). The taxpayer or the taxpayer's authorized representative could then choose a preferred communication method for the taxpayer (United States mail, email, text) and/or revise their TPEA or RPEA.

Subsection (b)(5) provides that it is the taxpayer's responsibility to ensure that the TPEA they provide is correct and that they can receive FTB notification(s) at the TPEA. The taxpayer is in the best position to confirm that the TPEA works and to confirm that they are receiving notifications from FTB. If FTB discovers that the delivery of any notification sent via a taxpayer's chosen PECM has failed, FTB may make one or more attempts to re-deliver a notification using the PECM to the TPEA. FTB may then inform the taxpayer of the failure to deliver notification to the TPEA and the need to remedy delivery failures to the TPEA. FTB may revoke the election of the taxpayer's PECM and use standard United States mail delivery to send copies of future notices to the taxpayer. This subsection is necessary because of the important legal consequences of an election to use the alternative communication method rather than simply receiving notices and other forms of communication by U.S. mail, so that once FTB discovers that any notice sent to the TPEA via the taxpayer's chosen PECM has failed, FTB will re-commence mailing notices by U.S. mail to ensure the taxpayer is receiving such notices and other forms of communication. If the taxpayer later wishes to choose a new PECM and to designate a new TPEA, then they may simply follow the rules in this regulation and make a new election.

Subsection (c) describes the manner in which a taxpayer or taxpayer's authorized representative may use an electronic method to submit a protest, notification, or other correspondence to FTB by way of the MyFTB folder. This subsection would allow the taxpayer or the taxpayer's authorized representative to file a protest, notification, and/or other communication in a secure electronic manner. This subsection provides that the filing date of a protest, correspondence or notification shall be the date that the document or text provided by the taxpayer or taxpayer's authorized representative is "successfully transmitted" to the FTB (as defined in subsection (a)(5)). The taxpayer or taxpayer's authorized representative should always confirm that the document or text is viewable in the MyFTB folder to verify successful transmission, since there are legal consequences, such as filing deadlines, which the taxpayer and taxpayer's representative remain subject to under the alternative communication method and this regulation.

Subsection (d) provides that the proposed regulation shall apply to elections made and protests or other correspondence filed on or after July 1, 2015.

#### Anticipated Benefits from the Proposed Regulation

Taxpayers will benefit from the implementation of the alternative communication method, which will add taxpayer convenience of retrieving notices via the internet, thereby reducing the burdens and costs of mailing for both Franchise Tax Board and taxpayers and their authorized representatives.

#### Consistency and Compatibility with Existing State Regulations

During the process of developing this regulation, the Franchise Tax Board, pursuant to Government Code section 11346.5, subdivision (a)(3)(D), has 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.

Cost or savings to any state agency: None.

Cost to any local 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 in federal funding to the state: None.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impact to directly affected private persons/businesses potential: The Franchise Tax 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.

Effect on small business: The Franchise Tax Board is not aware of any effect on small business. This regulation is intended to reduce costs and provide greater efficiency in communications between the Franchise Tax Board and small businesses by providing alternative means of communication with the Franchise Tax Board.

Significant effect on housing costs: None.

Significant effect on the creation or elimination of jobs in the state: None.

Significant effect on the creation of new businesses or elimination of existing businesses within the state: None.

Significant effect on the expansion of businesses currently doing business within the state:  
None.

## RESULTS OF ECONOMIC IMPACT ANALYSIS

Pursuant to Government Code section 11346.3, subdivision (b), the Franchise Tax Board has determined in the economic impact analysis that there are no effects on the creation or elimination of jobs in the state, no effect on the creation of new businesses or elimination or expansion of existing business within the state, and that the proposed Regulation section 18416.5 will benefit taxpayers by providing an optional alternative communication method instead of U.S. Mail for receiving notices and transmission of correspondence and protests to the Franchise Tax Board.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Franchise Tax Board must determine that no reasonable alternative it considered or that has 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 has determined that no alternative has been identified or brought to the attention of the Board that 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 regulatory action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law as indicated above.

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

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

An initial statement of reasons has been prepared setting forth the facts upon which the proposed regulatory action is based. The statement includes the specific purpose of the proposed regulatory action and the factual basis for determining that the proposed regulatory action is necessary.

As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the express terms of the proposed text of the regulation, the initial statement of reasons referred to above, and the Economic Impact Statement (Form 399). The rulemaking file is available upon request from the agency contact person named in this notice. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below. The notice, text, initial statement of reasons and the final

statement of reasons will also be available at the public website for the Franchise Tax Board at [www.ftb.ca.gov](http://www.ftb.ca.gov).

#### CHANGE OR MODIFICATION OF TEXT

The proposed regulatory action may be adopted after consideration of any comments received during the comment period.

The regulation may also be adopted with modifications if the changes are nonsubstantive or the resulting regulation is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation as modified could result from that originally proposed.

Copies of any modifications to the regulation will be made available at least 15 days prior to the date on which the regulation is adopted by United States mail to (1) all persons who gave oral comments at the public hearing (if held), (2) to all persons who submitted written comments at the public hearing (if held), (3) all persons who submitted written comments to the persons named below during the written comment period and (4) all persons who specifically requested to be notified of any modifications. Additional requests for copies of any modified regulation can be obtained by sending a request to the Franchise Tax Board representatives identified below and by downloading the modifications from the Franchise Tax Board's public website at [https://www.ftb.ca.gov/Law/Regulatory\\_Activity.shtml](https://www.ftb.ca.gov/Law/Regulatory_Activity.shtml)

#### ADDITIONAL COMMENTS

If a hearing is held, the hearing room will be accessible to persons with physical disabilities. Any person who is in need of a language interpreter, including sign language, should contact the officer named below at least two weeks prior to any scheduled hearing so that the services of an interpreter may be arranged.

#### CONTACT

All inquiries concerning this notice or the hearing should be directed to Teresa Bush-Chavey at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Telephone (916) 845-7847; Fax (916) 855-5525; E-Mail: [Teresa.BushChavey@ftb.ca.gov](mailto:Teresa.BushChavey@ftb.ca.gov). In addition, all questions on the substance of the proposed regulation can be directed to Nancy Parker; Tel.: (916) 845-7968; E-Mail: [Nancy.Parker@ftb.ca.gov](mailto:Nancy.Parker@ftb.ca.gov). The notice, initial statement of reasons and express terms of the regulation are also available at the Franchise Tax Board's website at [www.ftb.ca.gov](http://www.ftb.ca.gov).