

**TITLE 18. Franchise Tax Board  
NOTICE OF PROPOSED RULEMAKING**

The Franchise Tax Board proposes to adopt the proposed regulation after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

The Franchise Tax Board will not hold a public hearing unless requested by interested persons or their representatives at least 15 days before the close of the written comment period. Any request for a public hearing should be submitted to the officer named below.

**WRITTEN COMMENT PERIOD**

Any interested persons or their representatives may submit written comments to the officer named below. Written comments will be accepted until 5:00 p.m., June 7, 2004. The Franchise Tax Board will consider all relevant matters presented before the proposed regulatory action is taken.

**AUTHORITY AND REFERENCE**

Revenue and Taxation Code section 19503 authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 10.7 (commencing with Section 21001) and Part 11 (commencing with Section 23001) of the Revenue and Taxation Code. The proposed regulatory action implements, interprets and makes specific Section 19133 of the Revenue and Taxation Code, which is included in Part 10.2 of the Revenue and Taxation Code.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Franchise Tax Board proposes to adopt California Code of Regulations, title 18, section 19133.

Revenue and Taxation Code section 19133 provides the Franchise Tax Board with the discretionary authority to assess a notice and demand penalty upon those taxpayers who fail to file a tax return upon notice and demand by the Franchise Tax Board.

The proposed regulation is to clarify under what circumstances the Franchise Tax Board will impose a notice and demand penalty upon individual taxpayers. Under the proposed regulation, the Franchise Tax Board will impose the notice and demand penalty only upon those individual taxpayers who are determined to be "repeat nonfilers". A repeat nonfiler is an individual who has received a proposed assessment of tax after receiving and failing to respond to either a request for tax return or a demand for tax return within the previous four years. A repeat nonfiler who fails to respond to a current demand for tax return in the manner and within the time period specified on the demand for tax return will be subject to the imposition of the notice and demand penalty.

## **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Franchise Tax Board has made the following initial determinations:

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.

The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

Cost impacts on a representative private person or business: Because the proposed regulation addresses the limited circumstances under which the Franchise Tax Board imposes the notice and demand penalty, 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 the creation or elimination of jobs in the state: None

Effect on the creation of new businesses or elimination of existing businesses within the state: None

Effect on the expansion of businesses currently doing business within the state: None

Significant effect on housing costs: None.

Effect on small business: Sole proprietors are taxpayers who file individual tax returns and are treated as individual taxpayers. Thus, the proposed regulation would affect sole proprietorships in the same manner as it affects individuals. Only those sole proprietors who are repeat nonfilers and who fail to respond to a current demand for tax return would be subject to the notice and demand penalty. This regulation is not applicable to any other business entity such as corporations, partnerships or limited liability companies.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Franchise Tax Board must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of the Franchise Tax 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 regulatory action.

The Franchise Tax Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

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

The Franchise Tax Board has prepared an initial statement of reasons for the proposed regulatory action. The express terms of the proposed regulatory action, the initial statement of reasons for the regulatory action, and all the information upon which the proposed regulatory action is based are available upon request from the officer named below.

### **CHANGE OR MODIFICATION OF ACTIONS**

The Franchise Tax Board may adopt the proposed regulatory action after consideration of any comments received during the comment period. Government Code section 15702, subdivision (b), provides for consideration by the three-member Board of any proposed regulatory action, if any person makes such a request in writing. If a written request is received, the three-member Board will consider the proposed regulatory action prior to adoption.

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. The text of the regulation as modified will be made available to the public at least 15 days prior to the date on which the regulation is adopted. Requests for copies of any modified regulation should be sent to the attention of the officer named below.

### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

When the final statement of reasons is available, it can be obtained by contacting the officer named below, or by accessing the Franchise Tax Board's website at <http://www.ftb.ca.gov/>.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

This notice, the initial statement of reasons, and the express terms of the proposed regulation are also available at the Franchise Tax Board's website at <http://www.ftb.ca.gov/>.

### **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 Colleen Berwick at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306; Fax: (916) 845-3648; E-Mail: [colleen.berwick@ftb.ca.gov](mailto:colleen.berwick@ftb.ca.gov), or the designated backup, Craig Scott, Tel.: (916) 845-6510; Fax: (916) 0536; E-Mail [craig.scott@ftb.ca.gov](mailto:craig.scott@ftb.ca.gov). In addition, all questions on the substance of the proposed regulation can be directed to Craig Scott.