

## TITLE 18. FRANCHISE TAX BOARD

The Franchise Tax Board will not hold a 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.

However, if a public hearing is requested, it will be held at 10:00 a.m., on Monday, September 21, 2009, at 9646 Butterfield Way, Town Center Golden State Room A, Sacramento, California, to consider the adoption of Regulation 24451 under Title 18 of the California Code of Regulations, pertaining to the applicability of federal regulations related to limitations on certain built-in losses following an ownership change; force and effect of IRS Notice 2008-83, exempting banks from limitation.

If a hearing is held, it will be posted on our website and notification will be mailed to individuals on our mailing list. You may also contact the persons named below to confirm.

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 a request in writing.

### WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., September 21, 2009. 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 19503 of the Revenue and Taxation Code 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. Sections 17024.5, subdivision (d), and 23051.5, subdivision (d), of the Revenue and Taxation Code provide that temporary or final regulations promulgated by the Secretary of the Treasury that relate to provisions of the Internal Revenue Code that have been incorporated into California law shall apply as regulations under Part 10 or Part 11 to the extent they do not conflict with Part 10 or Part 11 or with regulations issued by the Franchise Tax Board. The proposed regulatory action will implement, interpret, and make specific the proposed adoption of section 24451 of the Revenue and Taxation Code.

### INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The Franchise Tax Board proposes to adopt California Code of Regulations, title 18, section 24451. The proposed regulation will clarify FTB's position regarding the force and effect of IRS Notice 2008-83, relating to banks and net operating and built-in loss limitations following an ownership change.

California law generally follows federal law under Internal Revenue Code (IRC) section 382. In October of 2008, the Treasury Department issued Notice 2008-83, making IRC section 382 limitations on loss carryovers (including any deduction for a reasonable addition to a

reserve for bad debts) in change of ownership circumstances inapplicable to banks. As further discussed in the initial statement of reasons, this federal Notice is inconsistent with the legislative intent behind IRC section 382 and is beyond the scope of Treasury's authority. As a result, FTB is issuing proposed Regulation section 24451 in order to clarify its position that IRS Notice 2008-83 is inapplicable for California purposes as if it had never been issued by the Secretary of the Treasury.

#### 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.

Potential cost impact on private persons or businesses affected: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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.

Effect on small business: The regulation pertains only to banks, as defined under federal tax law, that are in the business of receiving deposits and making loans and discounts, and that are subject by law to supervision and examination by state, territorial, or federal authority having supervision over banking institutions. As a result, the regulation has no impact on small business.

Significant effect on housing costs: None.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no alternative considered by it 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. In addition, the proposed regulatory action pertains to banks and therefore does not affect private persons.

## 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.

The express terms of the proposed text of the regulation and the initial statement of reasons and the rulemaking file are prepared and 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, or by accessing the Franchise Tax Board's website mentioned below.

## CHANGE OR MODIFICATION OF ACTIONS

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. 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 agency officer named below.

## ADDITIONAL COMMENTS

If you plan on attending or making an oral presentation at the regulation hearing, please contact the agency officer named below.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing who is in need of a language interpreter or sign language assistance, should contact the officer named below at least two weeks prior to the 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 Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Telephone (916) 845-3306; Fax (916) 845-3648; E-Mail: [colleen.berwick@ftb.ca.gov](mailto:colleen.berwick@ftb.ca.gov). In addition, all questions on the substance of the proposed regulations can be directed to Jenna Mayfield at Telephone (916) 845-7965 or Email [jenna.mayfield@ftb.ca.gov](mailto:jenna.mayfield@ftb.ca.gov) or to Irina Iskander Krasavtseva at Telephone (916) 845-7469 or Email [irina.krasavtseva@ftb.ca.gov](mailto:irina.krasavtseva@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).