



Hanna Cho, Tax Counsel III
Franchise Tax Board
Legal Department
P.O. Box 1720
Rancho Cordova, CA 95741

February 15, 2024

Dear Ms. Cho:

Thank you for submitting the standardized regulatory impact assessment (SRIA) and summary for the proposed regulation on Market Based Rules for Sales Other than of Tangible Personal Property, as required in the California Code of Regulations, title 1, section (a)(1). Comments are based upon the SRIA and other publicly available information.

The proposed regulation would simplify and clarify the rules for determining whether particular sales are attributed to California for purposes of apportioning the income of a multi-state business filer for state income tax purposes, starting with the 2024 tax year. It would apply only to business filers in the professional and financial services sectors with at least 250 total customers who conduct business in multiple states. The Franchise Tax Board (FTB) estimates that this regulation will impact about 4,700 business filers in California, with more than half of the impact expected to be incurred by technology consulting firms. FTB states that any one business filer within the aforementioned sectors' tax liability may rise, fall, or stay the same as a result of the regulation, and estimates that California taxes paid by those business filers with higher liability may increase by as much as \$51 million per year starting in 2024. This regulation is not expected to impose any additional costs for compliance for impacted filers. The benefit of the regulation (apart from reduced taxes for those business filers whose tax liabilities would decrease) would be through easier compliance measures as well as reduced uncertainty for the 4,700 business filers in the professional and business services sectors. The estimated fiscal impact of the proposed regulation is a change in state individual and corporate (depending on the organizational form of the impacted business) income tax revenue, which would be equal to the aggregate change in tax liability for the impacted business filers. FTB estimates this impact in 2024 to be between a \$51 million gain and a \$52 million loss. Local government revenue would be unaffected, and the regulation is not expected to impose any additional administrative costs on FTB or other state agencies or local governments.

Finance generally concurs with the methodology, with the following exceptions. First, the SRIA must include two regulatory alternatives to the proposed regulation, not including the status quo in the absence of the regulation. While the public discussions did not yield any proposed alternatives, the SRIA must nonetheless provide a second alternative (along with the listed alternative that would nest the additional professional services rules within the existing regulation), such as implementing the proposed rules for professional services but not for financial services.

Second, the SRIA must explain if and why this proposed regulation is not expected to have disparate impacts on different socioeconomic, geographic, age-specific, or ethnic populations.

These comments are intended to provide sufficient guidance outlining revisions to the impact assessment. If any significant changes to the proposed regulations during the rulemaking process result in economic impacts not discussed in the SRIA, please note that the revised economic impacts must be reflected on the Standard Form 399 for the rulemaking file submittal to the Office of Administrative Law. Please let us know if you have any questions regarding our comments.

Sincerely,

Somjita Mitra Digitally signed by Somjita Mitra
Date: 2024.02.15 17:57:20 -08'00'

Somjita Mitra
Chief Economist

cc: Ms. Dee Dee Myers, Director, Governor's Office of Business and Economic Development
Mr. Kenneth Pogue, Director, Office of Administrative Law
Ms. Selvi Stanislaus, Executive Officer, Franchise Tax Board