



03.13.13

FTB NOTICE 2013-02

Subject: Filing of Notices Required Under Revenue and Taxation Code Section 19089

BACKGROUND

FTB Notice 2013-01 was issued on January 17, 2013, for the purpose of specifying the correct mailing address for the filing of certain notices required under Revenue and Taxation Code section 19089 and section 19089 of Title 18 of the California Code of Regulations, which was recently adopted by the Franchise Tax Board (FTB). FTB has determined that the following statement on page one of that Notice, standing on its own, may lead to some confusion – "Every trustee in a case under Title 11 of the United States Code. . . . shall give notice of such qualification. . . ."

FTB has determined that it is necessary to clarify that certain parties are exempt from giving notice under Regulation section 19089, and parties should refer to the text of Regulation section 19089 in order to determine whether or not they are required to give notice. The text of Regulation section 19089, as of the date of this Notice, is attached below. A current version of Regulation section 19089 can be obtained online at <http://ccr.oal.ca.gov>.¹

Regulation section 19089 identifies who is required to give notice of qualification, the manner in which notice must be provided, the time within which notice must be provided, and whether any exemptions to the notice requirement are appropriate. The regulation also requires FTB to specify an address where such notices shall be mailed or faxed. The purpose of this Notice is to provide the address to which the required information should be sent.

¹ The attached copy of Regulation section 19089 is current as of the date of this notice. Parties should check the Office of Administrative Law's website linked to in this notice for any revisions to the regulation.

ADDRESS FOR FILING OF NOTICES

Every such person required to give notice under Regulation section 19089 that is first appointed, authorized to act, takes possession, or has become an assignee for the benefit of creditors on or after March 18, 2013, which is the date that is 60 days after the effective date of this regulation, shall give notice of qualification as such to FTB at the address or fax number listed below:

BANKRUPTCY SECTION MANAGER MS A340
FRANCHISE TAX BOARD
PO BOX 2952
SACRAMENTO CA 95812-2952

FAX: 916-845-9799

EFFECT ON OTHER NOTICES

This notice supersedes FTB Notice 2013-01, which is hereby withdrawn.

DRAFTING INFORMATION

The principal author of this notice is Amanda Vassigh Sigal of the Franchise Tax Board, Legal Division. For further information regarding this notice, contact Ms. Vassigh Sigal at P. O. Box 1720, Rancho Cordova, CA 95741-1720.

18 CCR § 19089

Cal. Admin. Code tit. 18, § 19089

§ 19089. Notice Required of Receiver, Assignee for the Benefit of Creditors or Other Like Fiduciary.

(a) Who must give notice -

(1) Exemption for bankruptcy cases. (A) A bankruptcy trustee, debtor in possession, or other like fiduciary in a bankruptcy case is not required by this section to give notice of appointment, qualification or authorization to act to the Franchise Tax Board. (However, see the notice requirements under the Federal Rules of Bankruptcy Procedure.)

(2) Proceedings other than bankruptcy. A receiver in a receivership proceeding or a similar fiduciary in any proceeding (including a fiduciary in aid of foreclosure), other than in a bankruptcy proceeding, designated by order of any court of the United States or of any state or territory or of the District of Columbia as in control of all or substantially all the assets of a debtor or other party to such proceeding shall, on, or within 10 days of, the date of his or her appointment or authorization to act, give notice thereof in writing to the Franchise Tax Board. Moreover, any fiduciary in aid of foreclosure not appointed by order of any such court, if he takes possession of all or substantially all the assets of the debtor, shall, on, or within 10 days of, the date of taking possession, give notice thereof in writing to the Franchise Tax Board.

(3) Assignment for benefit of creditors. An assignee for the benefit of a creditor or creditors shall, on, or within 10 days of, the date of an assignment, give notice thereof in writing to the address and unit that the Franchise Tax Board shall designate by FTB Notice. For purposes of this subparagraph, an assignee for the benefit of creditors shall be any person who, by authority of law, by the order of any court, by oral or written agreement, or in any other manner acquires control or possession of or title to all or substantially all the assets of a debtor, and who under such acquisition is authorized to use, reassign, sell, or in any manner dispose of such assets so that the proceeds from the use, sale, or other disposition may be paid to or may inure directly or indirectly to the benefit of a creditor or creditors of such debtor.

(b) Contents of notice -

(1) Proceedings other than bankruptcy. The written notice required under subsection (a)(2) shall contain:

(A) The name and address of the person giving such notice and the date of his or her appointment or of his or her taking possession of the assets of the debtor or other person whose assets are controlled, and

(B) The name, address, and taxpayer identification number of the debtor or other person whose assets are controlled.

(2) In the case of a court proceeding:

(A) The name and location of the court in which the proceedings are pending,

(B) The date on which such proceedings were instituted,

(C) The number under which such proceedings are docketed, and

(D) When possible, the date, time, and place of any hearing, meeting of creditors, or other scheduled action with respect to such proceedings.

(3) Assignment for benefit of creditors. The written notice required under subsection (a)(3) shall contain:

(A) The name and address of the person giving such notice,

(B) The name and address of, and the date the asset or assets were assigned to, the assignee,

(C) The name, address and taxpayer identification number of the debtor whose assets were assigned,

(D) A brief description of the assets assigned,

(E) An explanation of the action expected to be taken with respect to such assets, and

(F) When possible, the date, time, and place of any hearing, meeting of creditors, sale, or other scheduled action with respect to such assets.

(c) The notice required by this section shall be sent to the address and unit that the Franchise Tax Board shall designate by FTB Notice.

(d) The provisions of this regulation shall apply only to -

(1) proceedings described in subsection (a)(2) where the date of the appointment or authorization to act or the date of taking possession occurs on or after the date which is 60 days after the effective date of this regulation under Government Code section 11343.4, subdivision (b), and

(2) assignments described in subsection (a)(3) where the date of assignment occurs on or after the date which is 60 days after the effective date of this regulation under Government Code section 11343.4, subdivision (b).

(e) Cross references.

(1) For notices required in the case of estate administration, see Probate Code section 9202, subdivision (c).

(2) For criminal penalty for willful failure to supply information, see Revenue and Taxation Code sections 19701 and 19706.

(3) For criminal penalties for willfully making false or fraudulent statements, see Revenue and Taxation Code sections 19701, 19705, and 19706.

(4) For time for performance of acts where the last day falls on a Saturday, Sunday, or legal holiday, see Government Code sections 6700-6724.

Note: Authority cited: Sections 19089 and 19503, Revenue and Taxation Code.
Reference: Section 19089, Revenue and Taxation Code.