

GO-Biz Finalizes Proposed California Competes Tax Credit Regulations

By Michael J. Cataldo

The Governor's Office of Business and Economic Development ("GO-Biz") releases final proposed regulations on the California Competes Tax Credit.

On January 31, 2014, GO-Biz released final proposed regulations for the California Competes Credit ("CCC").¹ Since GO-Biz will proceed with these regulations under the emergency regulation provisions of the Administrative Procedures Act ("APA"),² the public has until February 18, 2014, to submit written comments.³

While most of the changes from the draft proposed regulations are relatively minor,⁴ Go-Biz added a section to the final proposed regulations to protect from public disclosure certain confidential information submitted by taxpayers during the application process. Specifically, section 8020(e) of the final proposed regulations states:

Any information submitted to GO-Biz that the applicant considers to be trade secret, confidential, privileged or otherwise exempt from disclosure under the Public Records Act (California Government Code Section 6250, et seq.) shall not be publically disclosed by GO-Biz unless it is required to do so by court order or applicable law. An applicant shall assert a claim of exemption by identifying each of the items to be restricted and the section of law that provides for the exemption (i.e. Government Code Section 6254.15) at the time its application form is submitted to GO-Biz. In the event GO-Biz is required to publically disclose information identified by the applicant as a trade secret, confidential, privileged or otherwise exempt from disclosure, GO-Biz shall notify the applicant at least five (5) business days prior to the release of such information in order to allow the applicant to seek an injunction, if applicable.

¹ The final proposed regulations can be accessed at the following link:

http://business.ca.gov/Portals/0/Users/038/38/38/California%20Competes%20Regs%201_31_14.pdf

² See GO-Biz Notice of Emergency Regulations at the following link:

<http://business.ca.gov/Portals/0/Users/038/38/38/Notice%20of%20Emergency%20Regs.pdf>

³ The public comment period for proposed emergency regulations is five (5) calendar days after they are posted on the website of the Office of Administrative Law ("OAL"). California Government Code section 11349.6(b). The final proposed regulations were posted on the OAL website on February 10, 2014. Since February 15, 2014, falls on a weekend, and February 17, 2014 is a state holiday, comments must be submitted by February 18th.

⁴ Please see our [Client Alert](#) of December 4, 2013 for details of the California Competes Credit and proposed regulations pertaining thereto.

Taxpayers should identify any confidential information as it is submitted in the application process and cite to the applicable law providing for non-disclosure of that information to assert a claim that the information is exempt from public disclosure.

Some of the other changes made to the draft proposed regulations include:

- expansion of employee benefits to be considered in the application process to include nontaxable benefits and benefits paid for an employee's spouse or dependents,
- disclosure of entities or persons with at least 25 percent ownership interest in the applicant (changed from disclosure of those with at least 5 percent ownership interests in the applicant),
- clarification that GO-Biz may have multiple application periods for a single fiscal year CCC allocation,
- specification that Go-Biz may require applications be submitted either in paper form or electronically, and
- clarification that pending applications may be amended until the last day of the application period.

Taxpayers interested in submitting written comments to the final proposed regulations should begin preparing those comments now, as they must be received by the OAL by February 18, 2014.

This material is not intended to constitute a complete analysis of all tax considerations. Internal Revenue Service regulations generally provide that, for the purpose of avoiding United States federal tax penalties, a taxpayer may rely only on formal written opinions meeting specific regulatory requirements. This material does not meet those requirements. Accordingly, this material was not intended or written to be used, and a taxpayer cannot use it, for the purpose of avoiding United States federal or other tax penalties or of promoting, marketing or recommending to another party any tax-related matters.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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