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FTB NOTICE 98-2

SUBJECT: DRAFTING SYMPOSIUM - AMENDMENT OF REGULATION 25111 RELATING TO THE MAKING AND PERFECTION OF WATER'S-EDGE ELECTIONS, AND LEGISLATIVE PROPOSAL ALLOWING FOR PERFECTION OF ELECTIONS FOR PRIOR YEARS AND SIMPLIFIED ELECTION PROCESS FOR SUBSEQUENT YEARS

Effective for income years beginning in 1988, taxpayers have been allowed to make an election to file on a “water’s-edge” combined report basis. The election is made pursuant to a contract filed in conjunction with the original return for the year. The decision to make, or not to make, a water’s-edge election can have a significant impact on a taxpayer’s tax liability and compliance costs. The election, once made, is effective for a period of years without any further action on a taxpayer’s part. If an error is made in the election procedures, it frequently is not discovered for a number of years with the consequence that other years are affected for which the taxpayer cannot take corrective or mitigating action. There have been numerous situations where disputes have arisen as to whether a valid election has been made.

The Franchise Tax Board believes that it was the intent of the Legislature that every taxpayer desiring to make an election should be permitted to do so. In order to effectuate this legislative intent, a symposium will be held for the purpose of drafting amendments to the current regulation, Regulation Section 25111, which will address the problems that have been identified so that questions as to whether a valid election has been made can be resolved in favor of the election.

At the Franchise Tax Board meeting of January 12, 1998, suggestions for related regulatory subjects included the definition of an “original return,” implementation of “common parent elections” and a description of what constitutes “substantial compliance” for purposes of making an election. This list is not exhaustive. The staff is currently developing a list of the problems which exist with respect to water’s-edge elections. When this list is completed, it will be available upon request. It will also be made available on the department’s website at www.ftb.ca.gov.

The symposium will be held on March 11, 1998, at 10:00 a.m. at the Board of Equalization, 450 N Street, Room 121, Sacramento, California.

The Franchise Tax Board has invited members of the public to provide drafts of amendments for consideration at the symposium. Anyone wishing to submit drafts should direct them to the Franchise Tax Board, Legal Division, attention Colleen Berwick, P.O. Box 1720, Rancho

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Amendments submitted prior to the symposium will be made available to anyone wishing to review them on the department's website at www.ftb.ca.gov. The drafting process will be facilitated by the early submission of drafts so everyone has an opportunity for review and comment.

Over the past several years legislation has been enacted which has provided taxpayer with limited windows of opportunity to perfect invalid elections. Not all affected taxpayers have been able to take advantage of these opportunities. The Franchise Tax Board supports new legislation which would provide standards for the perfection of previous efforts to elect and simplify the election process for subsequent years. The staff of the Franchise Tax Board has prepared draft legislation to accomplish this result. This draft legislation will be used as a framework for developing a consensus legislative proposal. A copy of the draft legislation is available on the department's website at www.ftb.ca.gov.

DRAFTING INFORMATION

The principal author of this notice is Ben Miller of the Franchise Tax Board, Legal Branch.
For further information regarding this notice, contact Mr. Miller at the Franchise Tax Board, Legal Branch, P. O. Box 1720, Rancho Cordova, CA 95741-1720.