



California

Forms & Instructions

100-WE

1996

Water's-Edge Booklet

Members of the Franchise Tax Board
Kathleen Connell, Chair
Johan Klehs, Member
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This booklet contains:

[Form 100-FEE-A](#), Amended Water's-Edge Election Fee Supplemental Schedule

[Form 100-FEE-X](#), Amended Water's-Edge Election Fee [Form 100-WE](#), Water's-Edge Contract

[FTB 1116](#), Notice of Nonrenewal of Water's-Edge Election

[FTB 1117](#), Request to Terminate Water's-Edge Election

[FTB 2416](#), Retained Earnings of Controlled Foreign Corporations

[FTB 2424](#), Water's-Edge Foreign Investment Interest Offset

[FTB 2426](#), Water's-Edge Cover Sheet

Taxpayers that elect to file their California return on a water's-edge basis under Revenue and Taxation Code Section 25110 must attach form [FTB 2426](#), Water's-Edge Cover Sheet, to [Form 100](#) or [Form 100S](#).



State of California
Franchise Tax Board

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Other Publications

Other publications prepared by the Franchise Tax Board include:

- FTB Pub. 1038, Guide for Corporations Dissolving, Surrendering (Withdrawing) or Merging
- FTB Pub. 1050, Application and Interpretation of Public Law 86-272
- FTB Pub. 1060, Guide for Corporations Starting Business in California
- FTB Pub. 1061, Guidelines for Corporations Filing a Combined Report
- FTB Pub. 1063, Guide for Corporations that May be Subject to the Provisions of the California Bank and Corporation Tax Law

These publications may be obtained by writing to:

TAX FORMS REQUEST UNIT
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

Instructions for Taxpayers Making a Water's-Edge Election

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 1993**, and to the California Revenue and Taxation Code (R&TC).

Tax Law Changes

Recent legislation amended R&TC Section 24411 to allow a flat 75% deduction for all qualifying dividends received effective for income years beginning on or after January 1, 1996. Dividends resulting from specified construction projects are 100% deductible. Form FTB 2411, Water's-Edge Dividend Deduction has been eliminated. To compute your water's-edge dividend deduction refer to Schedule H in the Form 100, California Corporation Franchise or Income Tax Return or Form 100S, California S Corporation Franchise or Income Tax Return instruction booklets.

Amendments were also made to R&TC Section 24344(c), the foreign investment interest offset effective for income years beginning on or after January 1, 1997.

Filing Requirements

R&TC Section 18634 was repealed, thereby eliminating the filing requirement (form FTB 2427, Worldwide Affiliation Schedule) for any bank or corporation with total worldwide assets (including related entities) exceeding \$200 million, operative for information returns due on or after January 1, 1996. The due date includes approved extensions to file the information return.

Introduction

For income years beginning on or after January 1, 1988, California law allows corporate taxpayers to elect to compute income attributable to California on the basis of a water's-edge combined report. In general, under a water's-edge election, affiliated foreign corporations are excluded from the combined report.

The statute allowing the election to file on a water's-edge basis does not supersede the concept of unity, however; it merely limits the unitary entities included in the combined report. (For a discussion of the concepts of the unitary method of taxation and its application by the State of California, refer to FTB Pub. 1061, Guidelines for Corporations Filing a Combined Report.) Once the taxpayer has computed its income attributable to California on the water's-edge combined report basis, the taxpayer can either file a separate return or can elect to file a single return with the other taxpayers in the water's-edge group (See Schedule R-7, Election to File a Unitary Taxpayers' Group Return and List of Affiliated Corporations, which is included in Schedule R, Apportionment and Allocation of Income).

This booklet explains how the water's-edge election is made, which entities must be included in the water's-edge combined

report and other key features of the law. This booklet should be used in conjunction with Form 100, California Corporation Franchise or Income Tax Return, or Form 100S, California S Corporation Franchise or Income Tax Return.

Significant Changes to Water's-Edge Provisions

There were significant changes to the water's-edge provisions effective for **income years beginning on or after January 1, 1994**. The changes include:

- Revocation of all water's-edge contracts entered into for income years beginning prior to January 1, 1994;
Note: All taxpayers that are members of a water's-edge group consisting of taxpayers with different income years will continue to be bound by the contract in effect as of December 31, 1993, until the income years beginning before January 1, 1994, and ending in 1994, have ended.
- Requiring new water's-edge elections for banks and corporations desiring to file on a water's-edge basis for income years beginning on or after January 1, 1994;
- A seven year (84 month) contract period;
- Elimination of the election fee;
- Elimination of the Domestic Disclosure Spreadsheet for water's-edge filers;
- Revisions to the termination provisions of the water's-edge election; and
- Elimination of provisions that allowed FTB to disregard water's-edge elections for specified reasons.

All contracts entered into for income years beginning prior to January 1, 1994, are rescinded. Taxpayers that wish to continue filing on a water's-edge basis must make a **new** water's-edge election for their income year beginning on or after January 1, 1994.

For information regarding these changes, get FTB Notice 93-7 and Legal Ruling 95-4.

Water's-Edge Combined Report Entities Included

For income years beginning on or after January 1, 1988, taxpayers may elect to determine their income derived from or attributable to California sources on the basis of a water's-edge combined report. The water's-edge combined report includes only the income and apportionment factors of the members of the unitary group that meet the criteria listed below. If an entity meets any one of the criteria **and** is uni-

tary, it must be included in the combined report. If an entity does not meet any of the criteria, it must be excluded from the combined report.

1. Any domestic international sales corporation, as defined in IRC Section 992 and any foreign sales corporation, as defined in IRC Section 922.
2. Any corporation, regardless of where incorporated, if the average of its property, payroll and sales factors within the U.S. is 20% or more. This rule does not apply to foreign incorporated banks.
3. Any bank or corporation incorporated in the U.S., more than 50% of whose stock is controlled directly or indirectly by the same interests, except for corporations making an election under IRC Section 936.
4. Any export trade corporation as defined in IRC Section 971.
5. Any controlled foreign corporation, as defined in IRC Section 957, that has Subpart F income as defined in IRC Section 952. The income and apportionment factors of such corporations are included in the combined report based on the ratio of the total Subpart F income of such entity for the year to its current year earnings and profits (E&P). If the current year E&P are zero or less, none of the income and factors of the entity are included in the combined report. Subpart F income defined in IRC Sections 956 and 956A is not included.
6. Any foreign organized bank, or any corporation not described in items 1 through 5 with less than 20% of its average property, payroll and sales in the U.S., that has income attributable to sources within the U.S. Such entities are included in the combined report only to the extent of their U.S. located income and factors. In general, U.S. located income includes income that is effectively connected (ECI) with a U.S. trade or business, or is treated as effectively connected, under the provisions of the IRC. Immunity provisions of a tax treaty are not considered in determining ECI. U.S. source income that is business income under R&TC Section 25120 is included in the water's-edge combined report regardless of whether such income is considered effectively connected income under the IRC.

For more information, see R&TC Section 25110(a) and the regulations thereunder.

Intercompany Transactions

FTB Notice 89-601, dated September 20, 1989, states that the Franchise Tax Board

(FTB) will issue proposed regulations prescribing the treatment of transactions between 2 or more entities engaged in a single unitary business, and it provides interim guidance for the treatment of certain intercompany transactions in water's-edge combined reports. No timetable has been established for issuing the proposed regulations. The interim water's-edge treatment can be summarized as:

1. If a combined group has deferred gain or loss from intercompany transactions, a water's-edge election under R&TC Section 25111 will cause certain previously deferred gains or losses to be taxed over a 60 month period beginning with the first day of the election period. This applies only to transactions where either the transferee, the transferor, or both, are to be excluded from a combined report by reason of the water's-edge election. It does not apply if both the transferor and the transferee are included in the water's-edge combination.
2. Generally, such gains or losses will be apportioned using the percentage used in the last worldwide combined report which preceded the first water's-edge year. FTB Notice 89-601 provides that the percentage of the year of the original transaction can be used in certain circumstances.

When a combined group uses the elimination/carryover basis method to account for transfer of certain assets between members of the combined report, the transferor's basis will carryover to the transferee. Any profit eliminated as a result of using this method would be recognized by the transferee when the asset is sold outside the combined reporting group.

Taxpayers may wish to review the treatment of intercompany transactions prescribed in FTB Pub. 1061 and the federal rules under Treas. Reg. Section 1.1502-13.

Water's-Edge Election

Contract Requirement

To make the water's-edge election, **each taxpayer** must enter into a contract with the FTB by filing Form 100-WE, Water's-Edge Contract. In consideration for being allowed to file on a water's-edge basis, the taxpayer must:

- Agree to file on a water's-edge basis for a period of 84 months;
- Agree to business income treatment of dividends received from: (1) over 50% owned entities engaged in the same general line of business as the members of the water's-edge group, or (2) entities that are a significant source of supply to, or a significant purchaser of the output of the members of the

water's-edge group. Significant means an amount equal to 15% or more; and

- Consent to the taking of depositions from key employees or officers of the members of the water's-edge group and to the acceptance of subpoenas duces tecum requiring the reasonable production of documents.

For more information, see R&TC Section 25110(b) and the regulations thereunder.

Taxpayers Covered by Election

For the election to be effective, all affiliated taxpayers engaged in a single unitary business must file on a water's-edge basis. A taxpayer or an affiliated group of taxpayers that is engaged in more than one unitary business may make a water's-edge election with respect to any one or more of its businesses, but it need not elect for all of its businesses. For example, a taxpayer engaged in two unitary businesses may elect water's-edge for one of the businesses and may remain subject to worldwide combined reporting treatment for the other business.

The common parent of a controlled group that files a consolidated federal return, or the common parent wherever domiciled or organized, may file an election binding upon all members of the controlled group that are part of the water's-edge combined report group. The common parent need not be a California taxpayer.

In cases where the water's-edge election is not entered into by a common parent, each taxpayer included in the combined report must enter into a separate contract.

Time of Making the Contract

The contract must be entered into by all unitary taxpayers at the time the original return is filed for the first income year the contract is to be effective. The contract may not be entered into through an amended return.

CAUTION: The contract must be attached to the original return for the election to be valid.

A copy of the original contract must be attached to all subsequent returns filed during the election period.

Taxpayers With Different Fiscal-Year Ends

Taxpayers engaged in a unitary business with different fiscal-year ends will make the election with each of its individual returns. For each member of the group, the election period will begin on the first day of the income year of the last member of the water's-edge group to file its return and make the election. Each taxpayer whose income year is earlier than the last member of the group, will compute its tax liability on its initial return using a hybrid worldwide/water's-edge combination method.

For more information see Title 18 Cal. Code Reg. Section 25111-1(g).

Automatic Renewal

Once the contract period starts, it will automatically renew on the anniversary date of the contract. The anniversary date of the contract is the later of the original due date of the return or the due date of the return as extended. The anniversary date is determined by the first income year of the election and does not change. The automatic renewal provision extends the 84-month period of the contract for an additional 12 months. The contract period will automatically renew each annual anniversary date, unless the taxpayer files form FTB 1116, Notice of Nonrenewal of Water's-Edge Contract, at least 90 days prior to an anniversary date.

Notice of Nonrenewal

A taxpayer may file form FTB 1116 at any time during the contract period. To prevent the automatic renewal provisions, form FTB 1116 must be filed with the FTB at least 90 days prior to the anniversary date of the contract. **Form FTB 1116 must be filed separately from any other form.**

Mail form FTB 1116 to:

FRANCHISE TAX BOARD
PO BOX 1779
RANCHO CORDOVA CA 95741-1779

Example:

Corporation A, a calendar year taxpayer, makes a water's-edge election with its return filed October 15, 1997. The contract covers income years 1996 through 2002. If Corporation A does not file form FTB 1116 at least 90 days prior to its anniversary date on October 15, 1998, the contract automatically renews and extends the election through the 2003 income year. If Corporation A, files form FTB 1116 at least 90 days prior to October 15, 1998, the contract period will end on December 31, 2002.

All members of the water's-edge group must consent to the notice of nonrenewal. Similar to the water's-edge contract, the common parent of a controlled group may file form FTB 1116 for all taxpayers in the water's-edge combined group. If the water's-edge election was not entered into by a common parent, each taxpayer must timely file form FTB 1116.

Form FTB 1116 prevents the automatic renewal provision that extends the contract period. Once form FTB 1116 is filed, the taxpayer must continue to file on a water's-edge basis until the contract period expires.

Effect of Changes in Affiliations

In general, taxpayers are bound by any contract they enter into, or by any contract entered into by a unitary affiliate, for the entire term of the contract. For example, a

bank or corporation that is subject to California tax and becomes a member of an electing water's-edge group subsequent to an election having been made by the group, or a unitary affiliate of an electing taxpayer that becomes subject to California tax subsequent to the election, is deemed to have consented to and is bound by the original election and contract for the remaining term of the contract. A water's-edge election is a tax attribute that carries over to the surviving entity in a reorganization or liquidation. When a taxpayer ceases to be a member of the water's-edge group, the taxpayer must continue to file on a water's-edge basis until the contract period expires.

A nonelecting bank or corporation that is subsequently proven to be unitary with a water's-edge group pursuant to an audit determination of the FTB is deemed to have made a water's-edge election.

When an affiliation change occurs, a statement should be attached to the return identifying which affiliates were included in the original group, the appropriate California corporation numbers and what changes have occurred.

For more information, see Title 18 Cal. Code Reg. Section 25111-1(d)(2).

Under certain circumstances, taxpayers adversely affected by the above rules may terminate their election.

Termination of Election

A taxpayer may terminate its water's-edge election prior to the expiration of the contract period only if:

- The taxpayer is acquired by an unrelated, nonelecting entity or group of entities that has larger equity capital than the taxpayer; or
- The FTB grants the taxpayer written permission to terminate the election. A taxpayer may request permission to change its election at any time. In general, the request will be granted only if the taxpayer demonstrates to the satisfaction of the FTB that filing on a water's-edge basis instead of a worldwide basis results in a significant disadvantage to the taxpayer, and that such disadvantage is the result of an extraordinary and significant event that could not have been reasonably anticipated at the time the election was originally made.

In general, the effective date of any request that is granted by the FTB will be for the income year immediately following the income year in which the qualifying event occurs. Form FTB 1117, Request to Terminate Water's-Edge Election, must be filed no later than the due date of the return for the income year the termination is effective.

A taxpayer must timely file form FTB 1117, **separately from any other form** to termi-

nate its water's-edge election. Mail form FTB 1117 to:

FRANCHISE TAX BOARD
PO BOX 1779
RANCHO CORDOVA CA 95741-1779

For more information, see R&TC Section 25111 and the regulations thereunder.

Water's-Edge Election Fee

Effective for income years beginning on or after January 1, 1994, the water's-edge election fee provisions have been repealed.

Form 100-FEE-X, Amended Water's-Edge Election Fee, and Form 100-FEE-A, Amended Water's-Edge Election Fee Supplemental Schedule, are included in this booklet if the taxpayer finds it necessary to amend a prior year's water's-edge election fee.

Electronic Funds Transfer (EFT)

Corporations that remit a bank or corporation estimated tax or extension payment in excess of \$20,000 or that have a total tax liability in excess of \$80,000 must pay through EFT. Corporations that meet the threshold must remit all payments, including water's-edge fee payments, through EFT rather than by paper check. The FTB will notify corporations that are subject to this requirement. Those that wish to participate on a voluntary basis may do so. For more information, call FTB's EFT Section at (916) 845-4025, or get FTB Pub. 3817, Electronic Funds Transfer Program Information Guide.

Foreign Dividend Deduction

R&TC Section 24411 provides a 75% deduction of qualifying dividends received and included in the water's-edge return. Dividends received from banks **do not qualify** for the water's-edge dividend deduction. A deduction of 100% is provided for dividends from certain foreign construction projects.

Both business and nonbusiness dividends qualify for the dividend deduction. The allowable business dividend deduction is determined by multiplying the total dividend deduction (business and nonbusiness) by the ratio of qualifying business dividends to total qualifying dividends. The remaining dividend deduction is the nonbusiness dividend deduction.

In no event will a R&TC Section 24411 deduction be allowed with respect to a dividend for which a deduction was allowed under R&TC Section 24402 or Section 24410 or which was eliminated under R&TC Section 25106.

Intercompany dividends received within the current year's water's-edge group should be eliminated pursuant to R&TC Section 25106, before computing the dividend deduction.

Sources of Distributions

In general, dividends will be considered to be paid first out of current E&P and then out of accumulated E&P in reverse order of accumulation (LIFO method).

For an entity that is partially included in the combined report, E&P eligible for elimination under R&TC Section 25106 shall be computed based on the ratio of current year income included in the water's-edge combined report to the total E&P of the entity for the year.

Dividends are subject to exclusion under R&TC Sections 24402, 24410 and 25106 prior to R&TC Section 24411.

Subpart F Income

Since California does not conform to IRC Subpart F provisions, Subpart F income is not treated as a deemed dividend for California purposes and is not subject to a dividend deduction. California does not follow the federal rules set forth in IRC Section 959 as to the sources of distributions from an entity with Subpart F income.

Definitions

Current year qualifying dividends

These are dividends received by any current member of the water's-edge group from a corporation (regardless of the place of incorporation) if:

- The average of the payer's property, payroll and sales factors within the U.S. is less than 20%; and
- More than 50% of the total combined voting power of all classes of voting stock is owned directly or indirectly by a member of the water's-edge group at the time the dividend is received.

The payer need not be in a unitary relationship with the recipient or any other member of the water's-edge group.

Construction project

A construction project is defined as an activity attributable to an addition to real property or to an alteration of land or any improvement thereto. The construction project, the location of which is not subject to the taxpayers' control, must be undertaken for an entity, including a governmental entity, that is not affiliated with the water's-edge group.

For more information, see R&TC Section 24111 and the regulations thereunder.

To compute your water's-edge dividend deduction refer to the Schedule H instructions in the Form 100, California Corporation Franchise or Income Tax Return Booklet or Form 100S, California S Corporation Franchise or Income Tax Return Booklet.

Foreign Investment Interest Offset

R&TC Section 24344(c) provides that interest expense incurred for purposes of foreign investment is offset against the dividends deductible under R&TC Section 24411. The offset will not be greater than the deduction allowed pursuant to R&TC Section 24411. Complete and attach form FTB 2424, Water's-Edge Foreign Investment Interest Offset, to the return. For these purposes, foreign investment means stock or other equity investment, including accumulated E&P, in a foreign entity owned by a member of the water's-edge group.

In general, the amount of interest expense incurred for purposes of foreign investment is determined by multiplying the total interest expense of the water's-edge group by the ratio of the group's total foreign investments to its total assets. However, direct tracing of interest expense to specific assets is required if:

- The underlying debt was incurred in connection with a specific property;
- The proceeds of the borrowing were actually applied to the specific property; and
- The creditor's only security is the specific property.

In addition, interest expense paid with respect to debt incurred on or after January 1, 1988, will not be considered incurred for purposes of foreign investment if the proceeds of the debt are paid into an account that is restricted to preclude its use for foreign investment and the account is not in fact used for foreign investment.

Total amounts of interest, foreign investment and assets are reduced by any items qualifying for specific tracing before the application of the apportionment formula based on assets.

The remaining interest expense, after the amount of interest expense offset against dividends deductible under R&TC Section 24411, is subject to the provisions of R&TC Section 24344(b).

For more information, see R&TC Section 24344(c) and the regulations thereunder.

For income years beginning on or after January 1, 1997, R&TC Section 24344(c) has been amended allowing for the interest expense offset to be multiplied by the same percentage used to determine the water's-edge dividend deduction.

Retained Earnings of Controlled Foreign Corporations

R&TC Section 25110(a)(6) provides that a portion of the income and apportionment factors of any controlled foreign corporation (defined in IRC Section 957) that has IRC Subpart F income, as defined in IRC Section 952, must be included in the combined

report of a taxpayer making a water's-edge election. See form FTB 2416, Retained Earnings of Controlled Foreign Corporations, on pages 17 and 18 to compute the income and apportionment factors to be included in the combined report.

Key Corporation

A key corporation must be designated if the California taxpayers elect to file a single return on a combined basis. Generally, the key corporation is the California taxpayer with the most assets included in the water's-edge group. Once a corporation is designated as the key corporation, it must continue to be the key corporation so long as the water's-edge contract remains in effect and the corporation is a taxpayer in the water's-edge group.

Example:

Corporation A, the common parent of the federal controlled group A, B, C, D and E, is not a California taxpayer. Corporation A elects water's-edge treatment for the unitary group B, C and E, which are all California taxpayers. The largest of either B, C or E will be designated as the key corporation if the taxpayers file a single tax return on a combined basis.

If the key corporation is changed, a statement should be attached to the return identifying the original key corporation with its California corporation number and the new key corporation with its California corporation number.

Return Filing Requirements

Any year a corporation files a return determining its California taxable income on a water's-edge basis, it is required to attach the following:

- A copy of the filed Form 100-WE, Water's-Edge Contract, effective for the current year; and
- Form FTB 2426, Water's-Edge Cover Sheet.

Corporations must attach form FTB 2426 to the front of their Form 100 or Form 100S return.

Records Maintenance Requirements

Any taxpayer filing on a water's-edge or worldwide basis, is required to keep and maintain records and make available upon request the following:

- Any records as may be appropriate in determining the correct treatment of items reported on the worldwide or water's-edge combined report for purposes of determining the income attributable to California.
- Any records as may determine the treatment of items as nonbusiness or business income.

- Any records as may be appropriate to determine the apportionment factor.
- Documents and information, to determine the proper attribution of income to the U.S. or foreign jurisdictions under IRC Subpart F, IRC Section 882, or other similar provisions of the IRC.

For more information refer to R&TC Section 19141.6. A corporation may be required to authorize an agent to act on its behalf in response to requests for information or records pursuant to R&TC Section 19504.

1996 Water's-Edge Cover Sheet

2426

For income year beginning

MONTH	DAY	YEAR
		1996

, and ending

MONTH	DAY	YEAR

.

Attach this form to the face of Form 100 or Form 100S.

Corporation and Contract Information

Corporation name	California corporation number
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THE WATER'S-EDGE CONTRACT PERIOD BEGINS

MONTH	DAY	YEAR

 AND ENDS

MONTH	DAY	YEAR

.

Indicate which of the following forms are included with this return by checking all applicable boxes:

<input type="checkbox"/>					
FTB 2416	FTB 2424	Form 100-FEE-A	Form 100-FEE-X	Form 100-WE	Copy of Form 100-WE from prior year election

THIS FORM MUST BE ATTACHED TO THE FRONT OF FORM 100 OR FORM 100S

Please Sign Here	Signature of officer	Title	Date	Telephone
	Print or type name of signing officer			()

General Information

Purpose

Use form FTB 2426 as a cover sheet whenever a corporation files a return determining its California income on a water's-edge basis.

California Corporation Number for Unitary Group Single Return

Enter the California corporation number of the member designated to make the election to file a Unitary Group Single Return.

General Instructions

Form FTB 2426 should be attached to the front of Form 100 or Form 100S.

Do not attach form FTB 1116, Notice of Nonrenewal of Water's-Edge Contract, or form FTB 1117, Request to Terminate Water's-Edge Election, to this form. Mail each form separately from any other form.

Form 100-WE, Water's-Edge Contract, must be signed and attached to the original return to be valid.

A copy of the contract must be attached to all subsequent returns filed during the contract period.

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1996 Water's-Edge Contract

100-WE

Attach this form to the back of Form 100 or Form 100S.

Corporation name		California corporation number
Number and street		
City	State	ZIP code

WATER'S-EDGE CONTRACT

Pursuant to Revenue and Taxation Code (R&TC) Section 25111 and subject to the representations and conditions set forth herein and in the R&TC, the parties agree and contract as follows:

- I The Franchise Tax Board (FTB) shall allow the **ELECTOR** to determine the amount of income derived from or attributable to sources within this state pursuant to R&TC Section 25110 and related provisions (including incorporated federal provisions, as may be amended during the contract period); and
- II The **ELECTOR** consents to the taking of depositions from key domestic corporate individuals, wherever located, and acceptance of subpoenas duces tecum, both as provided in R&TC Section 25110(b)(2)(A), and agrees that the dividends described in R&TC Section 25110(b)(2)(B) are functionally related and presumed to be business income.

PARTIES: The parties to this Contract shall be the **FTB and** _____, **ELECTOR.**

This contract shall be effective only if each and every bank and corporation that is or was required to file a return under the R&TC which is or was a member of the water's-edge group **at any time** during the income year joins in the election.

Check here if the common parent is electing on behalf of the water's-edge group. List each bank or corporation covered by this contract on Side 2. As the common parent of a controlled group, the bank or corporation hereby contracts for all members of the controlled group which are includable in the water's-edge combined report.

Any taxpayer which subsequently becomes a member of the water's-edge group or is subsequently proved to be a member of the water's-edge group will be deemed to have consented to the election subject to the provisions of R&TC Section 25111 and the regulations thereunder.

PERIOD: The contract shall begin on _____, the first day of the income year for which the election can be made and shall, except as otherwise provided by statute or herein, continue for seven years (84 calendar months) from that date.

MONTH DAY YEAR

RENEWAL: Unless a notice of nonrenewal is filed at least ninety (90) days prior to the anniversary date, the contract shall automatically be extended for one year (12 calendar months). The "anniversary date" shall be defined as the original due date or the due date as extended for the income year for which the election was made.

TERMINATION: If the **ELECTOR** requests, the FTB may, subject to conditions as provided by statute or regulation, allow this contract to be terminated prior to the expiration of its term.

JURISDICTION: This is a legally binding contract. Any disputes arising under this contract shall be subject to the jurisdiction of the Superior Court of the State of California.

_____	Corporation Name
_____	Signature of Officer
_____	Print or type name and title of signing Officer

**SIGN FORM 100-WE AND ATTACH TO FORM 100 OR FORM 100S
KEEP A COPY FOR YOUR RECORDS**

1996 Notice of Nonrenewal of Water's-Edge Contract**1116**

Key corporation name (as filed on original water's-edge return)	Key California corporation number
Number and street	Federal employer identification number
City, state, ZIP code	

 INDIVIDUAL TAXPAYER NOTICE OF NONRENEWAL

hereby notifies the Franchise Tax Board (FTB) of its intention not to renew its water's-edge contract

dated _____ providing for a water's-edge election pursuant to Revenue and Taxation Code (R&TC) Section 25110. The last day of the income year for which the contract shall continue in effect is _____.

In order for nonrenewal of the water's-edge contract to be effective, each taxpayer making a water's-edge election within the group must file a separate notice of nonrenewal of water's-edge contract.

Date

Signature of Officer

Print or type name and title of signing Officer

 COMMON PARENT NOTICE OF NONRENEWAL

a common parent hereby notifies the FTB of its intention not to renew its contract

dated _____, providing for a water's-edge election pursuant to R&TC Section 25110.

The last day of the income year for which the contract shall continue in effect

is _____.

Date

Signature of Officer

Print or type name and title of signing Officer

Affiliated taxpayers included in the water's-edge group must be listed on the back of this form.

THIS FORM MUST BE FILED SEPARATELY FROM THE TAX RETURN

Mail separately to: FRANCHISE TAX BOARD
PO BOX 1779
RANCHO CORDOVA CA 95741-1779

Parts IV, V and VI apply only if you are requesting permission to terminate the election. Otherwise, go to Part VII.

Part IV Complete only by taxpayers requesting permission to terminate the election.

Provide a list of all gains or losses on stock or assets during the water's-edge election period of any affiliated banks or corporations included in the combined report prior to the water's-edge election. See Part VI.

Bank or Corporation Name	Item Disposed Of	Date Sold/Disposed Of	Gain/Loss

Part V Complete only by taxpayers requesting permission to terminate the election.

Tax As Computed

Income Year Ended	Water's-Edge Method	Worldwide Method	Difference

Attach a statement showing computations, estimates and assumptions made.

Part VI Applies only to taxpayers requesting permission to terminate the election.

Conditions:

A request for permission to terminate an election is subject to the following.

- Dividends received during the remaining period of the contract from affiliated banks or corporations not included in the water's-edge combined report will be considered to have been paid first out of the earnings and profits not included in the combined report of a unitary business for purposes of computing any allowable dividend exclusion under R&TC Section 25106. To the extent the dividends exceed such earnings and profits, they may be subject to the exclusion.
the contract from affiliated banks or corporations not included in the water's-edge combined report will not be deferred or eliminated. Loss(es) from the sale or worthlessness of stock or from the sale or other disposition of assets of affiliated banks or corporations not included in the water's-edge combined report will be allowed only to the extent of dividend income or other gain(s) recognized as a result of the change in election.
- Gain(s) on distribution with respect to stock that is not a dividend or from the sale or other disposition of assets received during the remaining period of
3. Gain(s) or loss(es) on the disposition of stock or assets of an affiliated bank or corporation that was included in a combined report prior to the election and
that was excluded from the water's-edge combined report will be included in income in the first return filed after permission is granted. Loss(es) will only be included to the extent of gain(s) recognized as a result of the change in election.
- The books and records with respect to the gain(s) and loss(es) listed above, earnings and profits of affiliated banks and corporations, the nature of the event giving rise to the request, the consequences of such event, and such other relevant matters must be made available upon request of the FTB.

By signing this form the taxpayers requesting permission to terminate the water's-edge election agree to the four conditions listed above.

Part VII Signature and Verification. Complete in all cases.

- I attest to the accuracy of factual statements.
- I attest to the belief that the termination of the water's-edge election is permitted by law.
- I agree to the terms and conditions for all affected taxpayers.

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge, it is true, correct and complete.

Signature of officer Title Date

Print or type name of person to contact Telephone

Mail separately to:
FRANCHISE TAX BOARD
PO BOX 1779
RANCHO CORDOVA CA 95741-1779

Instructions for form FTB 1117

Request to Terminate Water's-Edge Election

General Information

Purpose

Use form FTB 1117 to request to terminate the water's-edge election or to request the FTB's permission to terminate the water's-edge election.

Under the tax law changes made by SB 671 (Stats. 1993, Ch. 881, Sec. 23), all water's-edge contracts entered into for income years beginning before January 1, 1994, will automatically be rescinded for the income years remaining on the contract that began on or after January 1, 1994. (**Note:** All taxpayers that are members of a water's-edge group consisting of taxpayers with different income years will continue to be bound by the contract in effect as of December 31, 1993, until the income years beginning before January 1, 1994 and ending in 1994, have ended.) It is not necessary to file termination requests to cause the contracts to automatically be rescinded.

R&TC Section 25111 provides how and when the water's-edge election is to be made. In addition, this section provides the manner in which the water's-edge election may be terminated at any time prior to the expiration of the contract period. The election may be terminated if the taxpayer requests:

- To terminate the election; or
- The FTB's permission to terminate the election.

The taxpayer should clearly state under which criteria it is requesting the termination and the specific facts involved.

Specific Instructions

Request to Terminate

Part II, Line 1

An electing water's-edge taxpayer may terminate its water's-edge election if it is acquired directly or indirectly by an unrelated nonelecting entity that is larger in terms of equity capital than the taxpayer.

In the case of termination by reason of acquisition by a larger entity, the request to terminate an election will affect only the member of the water's-edge group making the request.

Permission to Terminate

Part II, Line 2

In general, the request for permission to terminate the water's-edge election will be granted only if the taxpayer demonstrates that the requirement to file returns on a water's-edge basis, rather than on a worldwide combined basis, for the unexpired term of the contract will result in a significant disadvantage to the

taxpayer and that such disadvantage is the consequence of an extraordinary and significant event that could not have been reasonably anticipated at the time the original election was made.

An example of an event that could be considered extraordinary and significant includes, but is not limited to change in ownership or affiliation.

A taxpayer requesting permission to terminate the water's-edge election by reason of change in ownership or affiliation must request permission to terminate no later than the due date of the return for the income year immediately succeeding the income year in which the change in ownership or affiliation occurred.

The basis for permission to terminate the water's-edge election must be in writing and must state the reason(s) for the request. In addition, the statement should explain why filing on the water's-edge combined basis results in a significant disadvantage to the taxpayer and how such disadvantage is the consequence of an extraordinary and significant event that could not have been reasonably anticipated at the time the original election was made.

A significant disadvantage includes a material difference that is unfavorable to the taxpayer between the tax under the water's-edge reporting and the tax under worldwide reporting for the remaining life of the election. Any assumptions, estimates, and computations made to determine such material difference must be included with the request for permission to terminate the election.

Taxpayers requesting permission to terminate must complete Part IV and Part V of form FTB 1117.

Basis for Request to Terminate

Part II, Line 3

Provide a detailed explanation of the basis for requesting permission to terminate.

Changing an Election

A request for permission to terminate an election under Part II, line 2 of this form is subject to the conditions outlined in Part VI of form FTB 1117.

Action on Request

Within 90 days of receipt of a request to terminate the water's-edge election, the FTB will either act on the request or advise the taxpayer what additional information is needed to consider the request. Upon receipt of the additional information requested, the FTB will act on the request within 90 days.

If the FTB takes no action or requests no additional information, the request to terminate the water's-edge election under Part II,

line 1 of this form is deemed allowed upon expiration of the 90 day period unless this time period is specifically extended by the taxpayer.

If the FTB takes no action or requests no additional information, the request for permission to terminate the water's-edge election under Part II, line 2 of this form is deemed disallowed upon expiration of the 90 day period unless this time period is specifically extended by the taxpayer.

The taxpayer may withdraw its request at any time prior to the FTB's taking action on such request.

Effective Date

The effective date of a terminated election varies depending on whether the taxpayer is requesting to terminate or requesting permission to terminate and on the basis for the change. A terminated election, based on acquisition by a larger entity, is effective for the succeeding income year.

In general, requests for permission to terminate the water's-edge election are effective for the first income year of the return that is due, including extensions, after the date the qualifying event occurred.

The FTB may grant the change effective for a later income year. However, requests will not be allowed retroactively.

For additional information, refer to R&TC Section 25111 and the regulations thereunder.

Due Date of form FTB 1117

Any request to terminate an election described in Part II, line 1 must be filed with the FTB no later than the due date, including extensions, of the return for which the termination would be effective. A request for permission to terminate an election described in Part II, line 2 may be filed at any time.

Where to Mail

A taxpayer must file form FTB 1117, Request to Terminate Water's-Edge Election, separately from any other form to request termination of its water's-edge election. Form FTB 1117 filed with a return is **not** valid, and **will not** terminate a taxpayer's water's-edge election. Mail form FTB 1117 to:

FRANCHISE TAX BOARD
PO BOX 1779
RANCHO CORDOVA CA 95741-1779

For more information, see R&TC Section 25111 and the regulations thereunder.

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1996 Retained Earnings of Controlled Foreign Corporations 2416

Corporation name		California corporation number									
	(a) Corporation name	(b) Country of incorporation	(c) Country of primary bus. activity	(d) Principal bus. activity code	(e) Subpart F income	(f) Current year earnings and profits	(g) Percentage (e) ÷ (f)				
1											
2											
3											
4											
5											
6											
7											
8											
	(h) Net income	(i) (g) x (h)	(j) Average property everywhere	(k) (g) x (j)	(l) Rent expense Capitalized (x 8)	(m) (g) x (l)	(n) Payroll everywhere	(o) (g) x (n)	(p) Sales everywhere	(q) (g) x (p)	
1											
2											
3											
4											
5											
6											
7											
8											
9 TOTAL											

Attach additional sheets if necessary.

ATTACH TO FORM 100 OR FORM 100S

Instructions for Form FTB 2416

Retained Earnings of Controlled Foreign Corporations

General Instructions

A Purpose

R&TC Section 25110(a)(6) provides that the income and apportionment factors of any controlled foreign corporation (CFC) (as defined in IRC Section 957) that has Subpart F income (defined in IRC Section 952) are to be included in the combined report of a taxpayer making a water's-edge election. For these purposes, Subpart F income does not include income defined in IRC Section 956 or 956A.

Use form FTB 2416 to compute the net income and apportionment factors required to be included in the water's-edge combined report.

B Controlled Foreign Corporation

In general, a foreign corporation is a corporation that is not created or organized in the U.S. or under the laws of the U.S. or any other state.

A CFC is any foreign corporation if more than 50% is owned or considered to be owned (per IRC Section 958(b)) by U.S. shareholders.

C Apportionment

The amounts included in income and the apportionment factors are determined by multiplying the total income and each component of the apportionment factors by a fraction. The numerator of the fraction is the current year total Subpart F income defined in IRC Section 952 and the denominator is the current year E&P.

See R&TC Section 25110(a)(6) and the regulations thereunder for more information.

Specific Instructions

Column (b) – Country of incorporation

Enter the country of incorporation in column (b). Use the list of country codes on page 18.

Column (c) – Country of primary business activity

Enter the country in which the CFC conducts its primary trade or business in column (c). Use the country codes listed on page 18. This country may be different from the country of incorporation.

Column (d) – Principal business activity code

Enter the principal business activity code of the CFC. These codes are listed on page 24 of the 1996 Form 100, California Corporation Franchise or Income Tax Return Instruction booklet and on page 17 of the

1996 California S Corporation Franchise or Income Tax Return Instruction booklet.

Column (e) – Subpart F income

In determining whether a bank or corporation has Subpart F income for purposes of R&TC Section 25110(a)(6) and the regulations thereunder, the limitation and exclusions provided for in IRC Section 954(b) shall apply and IRC Section 952(c) shall not apply.

Include both business and nonbusiness income as defined under R&TC Section 25120 for the current year.

Column (f) – Current year earnings and profits

E&P, as defined in IRC Section 964, includes both business and nonbusiness income for the current year. In most cases, this figure can be taken from federal Form 5471, Schedule H, line 5d.

If there is no E&P, STOP; none of the income or factors of this corporation will be included in the water's-edge combined report.

Column (g) – Percentage

The percentage may not exceed one hundred or be less than zero.

Column (h) – Net income

Report the total net income as reflected on the corporation's books and records, adjusted to conform to California tax law.

Columns (j), (l), (n) and (p) – Apportionment factors

Determine the apportionment factors for the foreign corporation to be included in the water's-edge combined report including total average property everywhere, rent expense everywhere, payroll everywhere and sales everywhere based on the apportionment factor rules set forth in R&TC Sections 25129 through 25137. See Schedule R, Apportionment and Allocation of Income, for more information.

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1996 Water's-Edge Foreign Investment Interest Offset

2424

Attach this form to the back of Form 100 or Form 100S.

Key Corporation name	Key California corporation number		
1 R&TC Section 24411 dividend deduction from Form 100, Side 1, line 11 or Form 100S, Side 1, line 10. See instructions	1		
If line 1 is zero, this offset is zero. Do not complete this form.			
2 Total interest expense	2		
3 Interest expense specifically assignable to foreign investment.	3		
4 Interest expense specifically assignable to domestic investments or other property	4		
5 Unassigned interest expense, add line 3 and line 4, and subtract from line 2.	5		
6 Unassigned interest expense from line 5, paid on debt incurred prior to January 1, 1988.	6		
7 Unassigned interest expense from line 5, paid on new debt incurred on or after January 1, 1988.	7		
8 Interest expense included in line 7, paid with respect to debt proceeds deposited in restricted accounts.	8		
9 Subtract line 8 from line 7	9		
10 Unassigned interest expense subject to allocation. Add line 6 and line 9	10		
11 Unassigned foreign investment	11		Hatched area
12 Unassigned total assets	12		
13 Percentage. Divide line 11 by line 12	13		
14 Interest expense assigned to foreign investment. Multiply line 10 by line 13	14		
15 Interest expense attributable to foreign investment. Add line 3 and line 14	15		
16 Enter the amount from line 1 or line 15, whichever is less. Enter here and on Schedule R, Side 1, line 1(b) and Schedule R-5, line 2	16		

Note: The remaining interest expense is subject to the provisions of R&TC Section 24344(b).

Instructions for Form FTB 2424

Water's-Edge Foreign Investment Interest Offset

General Instructions

R&TC Section 24344(c) provides that interest expense incurred for purposes of foreign investment (as defined below) may be offset against the foreign dividend deduction allowed under R&TC Section 24411. The foreign investment interest offset may not exceed the total foreign dividend deduction allowed for the income year.

The amount of interest expense subject to the foreign investment interest offset is equal to the amount of interest expense specifically assigned to foreign investment plus the amount of unassigned interest expense allocated to foreign investment. Unassigned interest expense is allocated by formula.

To the extent that the interest expense specifically assigned and allocated to foreign investment is greater than the foreign dividend deduction, it will be subject to the usual interest offset computation of R&TC Section 24344(b).

Note: If there is no foreign dividend deduction, then no foreign interest offset computation will be necessary.

A Definitions

1. Foreign investment

Foreign investment is stock or other equity investment, regardless of when it was made, in:

- An entity whose dividends would be qualifying dividends for purposes of R&TC Section 24411; and/or
- A nonaffiliated bank or corporation that is organized under the laws of a country or political subdivision of a country other than the U.S.

2. Interest expense assigned to specific property

If the existence of all of the facts and circumstances described below is established, interest expense is considered to be related solely to specific property. Specific property may be either a foreign investment, domestic investment or other property.

- The indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing, maintaining or improving the specific property;
- The proceeds of the borrowing were actually applied to the specified purpose; and
- The creditor can look only to the specific property (or any lease or other interest therein) as security for payment of the principal and interest of the loan and, thus, has no secured interest in any other property of the borrower or

the borrower itself with respect to repayment of the loan.

Even though the above facts and circumstances are present in substance as well as form, a deduction for interest will not be considered definitely related to a specific property where the motive for structuring the transaction in the manner described above was without any economic significance.

3. Unassigned interest expense

Interest expense paid that does not meet the above conditions is unassigned interest expense.

4. Interest expense on restricted accounts

Interest expense on restricted accounts is interest expense paid on new debt incurred on or after January 1, 1988, if the proceeds of the debt are deposited into an account that prevents its use for foreign investment and the account is not, in fact, used for foreign investment. However, debt shall not be treated as incurred on or after January 1, 1988, if the majority of the proceeds were used to refinance debt incurred prior to January 1, 1988, or the debt arises pursuant to a line of credit or similar arrangement.

5. Total assets

Total assets means all of the assets of a bank or corporation included in a water's-edge combined report by reason of R&TC Section 25110, after the elimination of intercompany accounts of assets.

6. Average values of assets

An average of values shall be computed for the year on the basis of values of assets at the beginning and the end of the year.

B Asset Values

Assets other than stock or other equity investments are taken into account at federal tax book value (original cost for federal tax purposes less depreciation, amortization or depletion).

Stock or other equity investments are taken into account at adjusted basis for federal tax purposes:

- Increased by the amount of the E&P of such bank or corporation attributable to such stock or other equity investment and accumulated during the period the stock or other equity investment was owned by another affiliated bank or corporation; and
- Reduced (but not below zero) by any deficit in E&P of such bank or corporation attributable to such stock or other equity investment for such period.

For more information see R&TC Section 24344(c) and the regulations thereunder.

Specific Instructions

Line 1

Enter the Water's-Edge Dividend Deduction claimed on Form 100, line 11 or Form 100S, line 10.

Line 2

Total interest expense for all entities included in the water's-edge combined report filed pursuant to R&TC Section 25110.

Line 3

Enter the interest expense specifically assignable to foreign investments. See R&TC Section 24344(c) and the regulations thereunder for further information.

Line 4

Enter the interest expense specifically assignable to domestic investments or other property.

Line 6

Enter unassigned interest expense included in line 5 that is for debt incurred prior to January 1, 1988.

Line 7

Enter unassigned interest expense included in line 5 that is for debt incurred on or after January 1, 1988.

Line 8

Enter interest expense paid on restricted accounts.

Line 11

Unassigned foreign investment is the average value of all foreign investment to which interest is not specifically assigned.

Line 12

Unassigned total assets is the average value of all assets to which interest is not assigned.

Line 13

In calculating the ratio, foreign investment and assets to which interest expense has been specifically assigned are not to be considered.

19 Amended Water's-Edge Election Fee

100-FEE-X

MONTH	DAY	YEAR	MONTH	DAY	YEAR
For income year beginning _____, and ending _____.					
Please Type or Print Corporation Name and Address					
California corporation number				Was the original Form 100-FEE paid on a combined report basis? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Corporation name					
Number and street				Has Form 100 or Form 100S been amended? <input type="checkbox"/> YES <input type="checkbox"/> NO	
City		State	ZIP code		

Part I Election Fee

On line 1, enter the DIFFERENCE between the amount reported on your original Form 100-FEE-A and the amount reported on the attached Amended Form 100-FEE-A. Use brackets to indicate negative amounts.

1 Election fee (net change)	■	1	
---------------------------------------	---	---	--

Part II Payments and Credits

2 Overpayments from prior year allowed as credit	2		
3 Estimated election fee payments	3		
4 Amount paid with form FTB 3539	4		
5 Payment with original Form 100-FEE	5		
6 Amount credited from franchise or income tax	6		
7 Other payments (explain)	7		
8 Total payments. Add line 2 through line 7.	8		
9 Overpayment, if any, shown on original Form 100-FEE.	9		
10 Balance. Subtract line 9 from line 8	10		

Part III Election Fee Due or Refund

11 Total correct election fee (from Amended Form 100-FEE-A).	11	
12 Additional election fee due. Subtract line 10 from line 11.	12	
13 Refund. Subtract line 11 from line 10	13	<input type="checkbox"/>

Part IV Explanation of Changes to Property, Payroll, Sales, etc. (see General Instruction C)

THIS FORM MUST BE ATTACHED TO THE FRONT OF FORM 100-FEE-A

Please Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete. Declaration of preparer (other than the taxpayer) is based on all information of which preparer has any knowledge.			
	Signature of officer	Title	Date	Telephone ()
Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's social security no.
	Firm's name (or yours, if self-employed) and address	FEIN	Telephone ()	

Instructions for Form 100-FEE-X

Amended Water's-Edge Election Fee

General Instructions

For corporations that are taxed under Chapter 3 of the R&TC, the term "income year," as used in these instructions, means taxable year.

Use Form 100-FEE-X, Amended Water's-Edge Election Fee to amend Form 100-FEE, Water's-Edge Election Fee. Form 100-FEE-X must be used as a cover form and attached to the front of the revised Form 100-FEE-A, Amended Water's-Edge Election Fee Supplemental Schedule.

First complete Form 100-FEE-A for the income year you wish to amend. Then clearly mark the word "REVISED" on the top of that form and attach it and any supporting schedules to the Form 100-FEE-X. Form 100-FEE-X must be attached to the face of the package.

For corporations filing on a water's-edge basis that wish to amend their tax return, refer to Form 100X, Amended Corporation Franchise or Income Tax Return.

Replacement Property

If new investment in California, used in a prior year to reduce the election fee base, subsequently becomes replacement property, **do not file Form 100-FEE-X**. Refer to Form 100-FEE-A, Specific Line Instructions, line 24 - Investment Property Recalculation.

A When to File

Form 100-FEE-X may be filed only after the original Form 100-FEE is filed. Generally, a claim for refund may be filed within four years from the original due date, or within one year from the date the fee was paid, whichever is later. Original Form 100-FEE and Form 100-FEE-A filed before the due date are considered to be filed on the due date.

B Where to File

Mail Form 100-FEE-X with a refund or an election fee due to the address listed to the right. When an election fee is due, attach a separate check or money order payable to the Franchise Tax Board.

Write "Form 100-FEE-X" and the California corporation number on the check or money order and mail with Form 100-FEE-X to:

FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO CA 94257-4091

Note: If Form 100X is also being filed, attach a separate check for any additional tax due.

Electronic Funds Transfer (EFT)

Corporations that remit a bank or corporation estimated tax or extension payment in excess of \$20,000 or that have a total tax liability in excess of \$80,000 must pay through EFT. Corporations that meet the threshold must remit all payments, including Water's-Edge payments, through EFT rather than by paper check. The FTB will notify corporations that are subject to this requirement. Those that wish to participate on a voluntary basis may do so. For more information, call the FTB's EFT Section at (916) 845-4025, or get FTB Pub. 3817, Electronic Funds Transfer Program Information Guide.

C Explanation of Changes to Property, Payroll, Sales, etc.

A detailed explanation of changes to the election fee must be shown in Part IV. Show line number references and any needed computations. Attach additional sheets if necessary.

1996 Instructions for Form 100-FEE-A, Amended Water's-Edge Election Fee Supplemental Schedule

General Information

Effective for income years beginning on or after January 1, 1994, the annual water's-edge election fee provisions have been repealed. Form 100-FEE-A, Amended Water's-Edge Election Fee Supplemental Schedule, should only be used when amending the election fee for an income year beginning prior to January 1, 1994. Form 100-FEE-A should be attached to Form 100-FEE-X, Amended Water's-Edge Election Fee.

Definitions

1. Base Year

- A. The base year used to calculate property and payroll for purposes of the election fee is an income year of 12 full months ending in the calendar year 1986. If there is no income year of 12 full months ending in the calendar year 1986, property and payroll for the first immediately preceding income year of 12 full months must be used if it exists.
- B. The base year used to calculate sales for purposes of the fee shall be the current income year. Such income year need not be 12 full months.

2. Short Period Return

If a taxpayer files a short period return on a water's-edge basis, the fee shall be based on: (1) sales for the current period; and (2) the base year amounts for California property and payroll, multiplied by a fraction, the numerator of which is the number of months in the short period and the denominator of which is 12.

3. New Investment in California

For purposes of computing the election fee using the .0003 calculation, new investment (a new plant or facility) in California can be used to reduce the fee base. A new plant or facility is both certain tangible personal property and real property, as described in R&TC Section 70, acquired during the income year. The annual new investments acquired since January 1, 1987, to the last day of the income year that is being amended are then accumulated.

Certain tangible personal property includes any new tangible personal property acquired by the taxpayer during the income year, when the original use commences in this state.

Examples: New machinery and equipment for industry, profession and trade; new tools, molds, dies and jigs; or new computers and related equipment.

R&TC Section 70 defines a new plant or facility as "newly constructed" and "new

construction." "newly constructed" and "new construction" include:

- Any substantial addition (including fixtures) to land or the improvements on the land. For purposes of R&TC Section 70, "fixtures" are improvements to property, the use or purpose of which directly applies to or augments the process or function of a trade, industry or profession.

Examples: The construction of a new building; a swimming pool, retaining wall, or sewer; or the addition of square-footage to an existing building.

- For purposes of R&TC Section 70, "major rehabilitation" is any rehabilitation, renovation or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture. This includes the substitution of a new fixture for an old one. "Substantial equivalency" is ascertained by comparing the productive capacity, normally expressed in units per hour, of the rehabilitated fixture to its original productive capacity.

Examples: Alteration to a warehouse making it usable as a retail store or a restaurant; preparation of a vacant lot for use as a parking facility; alteration of rolling, grazing land to level irrigated crop land; and site development of rural land for the purpose of establishing a residential subdivision.

The term "newly constructed" or "new construction" does **not** include:

- Any active solar energy system constructed or added before January 1, 1991.
- The portion of reconstruction or improvement to a structure constructed of unreinforced masonry bearing wall construction, necessary to comply with a local seismic safety ordinance for the first 15 years after the reconstruction or improvement.
- The construction or installation of any of the following fire protection improvements that are constructed or installed in an existing building on or after November 7, 1984:
 1. Fire sprinkler systems;
 2. Other fire extinguishing systems;
 3. Fire detection systems; and
 4. Fire-related egress improvements.
- Ordinary maintenance and repair.
Examples: Routine annual preparation of agricultural land; interior or exterior painting; replacement of roof coverings; the addition of aluminum siding for improvements; or the replacement of work machine parts.

- Any land, improvement or fixture that is restored, reconstructed or repaired in a timely manner following a disaster and that is substantially equivalent to that which existed prior to the disaster. Any reconstruction of real property that is not substantially equivalent to the damaged or destroyed property is deemed to be "new construction," unless the exception noted above applies. However, a new plant or facility may not be a replacement, in whole or in part, of an existing plant or facility in California.

New investment in California that meets the definition of replacement property cannot reduce the fee base.

4. Replacement Property

A plant or facility which includes both certain tangible personal property and real property as described in R&TC Section 70 will be deemed a replacement if the taxpayer, or an affiliated bank or corporation closes, takes out of service, sells or leases to an unrelated party, a plant or facility with a cost basis equal to 25% or more of the cost basis of the new plant or facility. The replacement property test must be applied to the 3 calendar years immediately preceding and the 3 calendar years immediately succeeding the date the new plant or facility is first included in the property factor for apportionment purposes.

5. California Work Years

For purposes of computing work years in California (Form 100-FEE-A, line 6, line 7, line 8 and line 10), a work year means:

- 2,000 paid hours in the case of employees who are paid an hourly wage; or
- A total of 12 paid months in the case of salaried employees.

To determine the total amount "paid" to employees, see the instructions for Schedule R, Apportionment and Allocation of Income.

Specific Line Instructions for Form 100-FEE-A

Side 1

Line 1 – Base Year California Property

Enter the total amount of California property for the base year. See General Information Definitions. See the instructions for Schedule R for the definition of California property.

Note: Intangibles included in the factor pursuant to R&TC Section 25137 are not includible in the property factor for determining the fee base regardless of the fact that they may be included in the apportionment formula. Intangible drilling costs included in the factor pursuant to

ant to R&TC Section 25130 are included in the fee base.

Line 2 – Base Year California Payroll

Enter the total amount of California payroll for the base year. See General Information Definitions. See the instructions for Schedule R for the definition of California payroll.

Note: If a taxpayer files a short period return, modifications must be made. The base year amounts on line 1 and line 2, respectively, must be multiplied by a fraction, the numerator of which is the number of months in the short period and the denominator of which is 12.

Line 3 – California Sales for the Income Year Being Amended

Enter the total amount of California sales for the income year that is being amended. See the instructions for Schedule R for the definition of California sales.

Note: If a taxpayer files a short period return, no proration to line 3 is required.

Line 5 – New Investment in California Property

Enter the cumulative amount expended from January 1, 1987, to the last day of the income year that is being amended, for investment in new plants or facilities located in California. See General Information Definitions for the definition of "new investment in California."

If a taxpayer files a short period return, enter the cumulative amount expended since January 1, 1987 on new investment in California property through the end of the short period income year.

Line 6, Line 7 and Line 8 – 1985, 1986 and 1987 California Work Years

Enter the total number of California work years for income years 1985, 1986 and 1987, respectively. See General Information Definitions for the definition of a California work year.

Line 10 – California Work Years for the Income Year Being Amended

Enter the total number of California work years for the income year being amended.

Line 12 – New California Employees

The number of new employees in California is determined by comparing the total number of California work years for the income year to the greater of the average of the total number of California work years for income years 1985, 1986 and 1987, or the total number of California work years for income year 1987.

Line 13 – California Payroll for the Income Year Being Amended

Enter the total amount of California payroll for the income year being amended.

Line 15 – Increase in California Payroll

The increase in California payroll is determined by multiplying the number of new California employees by the average California payroll for the income year being amended.

Line 16 – Total Adjusted California Property, Payroll and Sales

The total adjusted California property, payroll and sales is determined by adding the new investment in California property (line 5) and the increase in the California payroll (line 15) and subtracting the result from the total of base year California property and payroll and amended income year California sales (line 4).

Line 18 – California Property for the Income Year Being Amended

Enter the total amount of California property for the income year being amended.

If a taxpayer files a short period return, multiply the California property by a fraction, in which the numerator is the number of months in the short period and the denominator is 12.

Line 19 and Line 20 – California Payroll and Sales for the Income Year Being Amended

Enter the total amount of California payroll and sales for the income year being amended.

Note: If a taxpayer files a short period return, no modification to line 19 or line 20 is required.

Line 24 – Investment Property Recalculation

If a plant or facility considered to be new investment property in a prior year becomes replacement property in the current year, the prior year's fee(s) must be recalculated to exclude the new investment now considered to be replacement property. Enter the difference between the prior year's fee(s) as filed and the prior year's fee(s) recalculated to exclude any investment property deemed to be replacement property.

Line 25 – Total Amended Election Fee

Enter the amount on Form 100, Side 1, line 30, total tax, identifying the amount as a water's-edge fee recalculation.

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Amended Water's-Edge Election Fee Supplemental Schedule

100-FEE-A

Corporation name, California corporation number, Key California corporation number

Table with 25 numbered rows for calculations: 1 Base year California property, 2 Base year California payroll, 3 California sales for the income year being amended, 4 Total California property, payroll and sales. Add line 1 through line 3, 5 New investment in California property (amount expended since January 1, 1987, on new plants or facilities located in California). See instructions, 6 1985 California work years, 7 1986 California work years, 8 1987 California work years, 9 Average California work years. Add line 6 through line 8 and divide the result by 3, 10 California work years for the income year being amended, 11 Greater of average or 1987 California work years. Enter the greater of line 8 or line 9, 12 New California employees. Subtract line 11 from line 10. If less than zero, enter -0-, 13 California payroll for the income year being amended, 14 Average California payroll for the income year being amended. Divide the amount on line 13 by the amount on line 10, 15 Increase in California payroll. Multiply the amount on line 12 by the amount on line 14, 16 Total adjusted California property, payroll and sales. Add line 5 and line 15 and subtract the result from line 4, 17 Multiply line 16 by 0.03% (.0003), 18 California property for the income year being amended, 19 California payroll for the income year being amended, 20 California sales for the income year being amended, 21 Total. Add line 18 through line 20, 22 Multiply line 21 by 0.01% (.0001), 23 Amended Election Fee. Enter the greater of line 17 or line 22. Enter -0- if no tax liability is owed under Revenue and Taxation Code Sections 25101 and 25110, 24 Amount of investment property recalculation. See instructions, 25 Add line 23 and line 24. Total Amended Election Fee

Complete one form for each taxpayer.

THIS FORM MUST BE COMPLETED AND ATTACHED TO THE BACK OF FORM 100-FEE-X.

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How To Get California Tax Information

Regular Toll-Free Phone Service

Our regular toll-free phone service is available from 7:00 a.m. until 8:00 p.m. Monday through Friday from January 2 through April 15, 1997. The best times to call are between 7:00 and 10:00 in the morning and between 6:00 and 8:00 in the evening. Service is also available on Saturday, April 5 and April 12, from 8:00 a.m. until 5:00 p.m. After April 15, service is available Monday through Friday, between 8:00 a.m. and 5:00 p.m.

From within the United States 1-800-852-5711
From outside the United States 1-916-845-6500
(not toll-free)
For hearing impaired with TDD 1-800-822-6268
For federal tax questions,
call the IRS at 1-800-829-1040

Bilingual Assistance

Para obtener servicio bilingüe de información sobre impuestos o formularios, llame al número de teléfono (anotado arriba) que le corresponde.

Letters

We can serve you quickly if you call us for information to complete your California income tax return, or to find out about your tax refund. However, you may want to write to us if you are replying to a notice we sent you, or to get a written reply. If you write to us, be sure to include your California Corporation number or federal employer identification number, your daytime and evening telephone numbers and a copy of the notice with your letter. Send your letter to:

FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO CA 94257-0540

We will acknowledge receipt of your letter within six to eight weeks. In some cases, we may need to call you for additional information.

Your Rights As A Taxpayer

Our goal at the FTB is to make certain that your rights are protected so that you will have the highest confidence in the integrity, efficiency and fairness of our state tax system. FTB Pub. 4058, California Taxpayers' Bill of Rights, includes information on your rights as a California taxpayer, the Taxpayers' Rights Advocate Program and how you can request written advice from the FTB on whether a particular transaction is taxable. You can order FTB Pub. 4058 by calling or writing the FTB using the address above for letters.

Where To Get Income Tax Forms

By Internet – If you have Internet access, you may download, view and print California income tax forms and publications. Our Internet address is:
<http://www.ftb.ca.gov>

By phone – Use F.A.S.T. to order the 1996 California tax forms listed to the right. To order a form on the list:

- Call 1-800-338-0505, from within the United States; or
- 1-916-845-6600, from outside the United States (not toll-free)
- Select bank and corporations income tax form requests.
- Enter the three-digit code shown to the left of the form title when you are instructed to do so.

We will send you two copies of each tax form and one copy of each set of instructions. Please allow two weeks to receive your order.

For prior year California tax forms, call our toll-free number listed under "Regular Toll-Free Phone Service."

In person – Most libraries, post offices and banks provide free California tax booklets during the filing season. Many libraries and some quick print businesses have forms and schedules for you to photocopy (you may have to pay a nominal fee). Note that employees at libraries, post offices, banks and quick print businesses cannot provide tax information or assistance.

By mail – Write to: TAX FORMS REQUEST UNIT, FRANCHISE TAX BOARD, PO BOX 307, RANCHO CORDOVA CA 95741-0307.

California Tax Forms and Publications

- 817 California Corporation Tax Forms and Instructions. This booklet contains:
Form 100, California Corporation Franchise or Income Tax Return
- 821 Schedule P (100), Alternative Minimum Tax and Credit Limitations — Corporations
- 822 FTB 3885, Depreciation/Amortization
- 807 FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Corporations
- 816 California S Corporation Tax Forms and Instructions. This booklet contains:
Form 100S, California S Corporation Franchise or Income Tax Return
- 823 Schedule B(100S), S Corporation Depreciation and Amortization
Schedule C (100S), S Corporation Tax Credits
Schedule H (100S), Dividend Income
- 824 Schedule D (100S), Capital Gains and Losses and Built-In Gains
- 825 Schedule K-1 (100S), Shareholder's Share of Income, Deductions, Credits
- 826 FTB 3830, S Corporation's List of Shareholders and Consents
- 814 Form 109, Exempt Organization Business Income Tax Return
- 818 Form 100-ES, Corporation Estimated Tax
- 813 Form 100X, Amended Corporation Return
- 815 Form 199, Exempt Organization Return
- 819 Schedule R, Apportionment and Allocation of Income
- 812 FTB Pub. 1038, Guide for Corporations Dissolving, Withdrawing or Merging
- 809 FTB Pub. 1060, Guide for Corporations Starting Business in California
- 810 FTB Pub. 1061, Guidelines for Corporations Filing a Combined Report
- 827 Form 100-WE, Water's-Edge Booklet
- 829 FTB 3564, Authorization of Agent Under Revenue and Taxation Code Section 19141.6
- 820 FTB Pub. 1068, Exempt Organizations Requirements for Filing Returns and Paying Filing Fees
- 802 FTB 3500, Exemption Application
- 808 FTB 3539, Payment Voucher for Automatic Extension for Corporations and Exempt Organizations
- 803 FTB 3555, Request for Tax Clearance
- 804 FTB 3557, Application for Revivor
- 811 FTB 3560, S Corporation Election or Termination/Revocation
- 806 FTB 5806, Underpayment of Estimated Tax by Corporations



F.A.S.T. Toll-Free Phone Service

Call Fast Answers about State Taxes, the F.A.S.T. toll-free phone service you can use to:

- Get recorded answers to many of your questions about California taxes; and
- Order current year California tax forms.

F.A.S.T. is available in English and Spanish to callers with touch-tone or rotary dial telephones.

When Is F.A.S.T. Available?

To answer your questions, F.A.S.T. is available 24 hours a day, seven days a week. To order forms F.A.S.T. is available from 6:00 a.m. to 10:00 p.m., seven days a week, except state holidays.

How To Use F.A.S.T.

Have paper and pencil handy to take notes.

Call from within the United States 1-800-338-0505

Call from outside the United States (not toll-free) . . . 1-916-845-6600

Follow the recorded instructions and enter the three-digit code when you are instructed to do so.

To Order Forms

Refer to Where to Get Tax Forms on previous page.

To Get Information

If you need an answer to any of the following questions, call 1-800-338-0505, select general tax information, follow the recorded instructions and enter the three-digit code when you are instructed to do so.

Code-Filing Assistance:

- 715 – If my actual tax is less than the minimum franchise tax, what figure do I put on line 22 of Form 100?
- 717 – What are the tax rates for corporations?
- 718 – How do I get an extension of time to file?
- 722 – When do I have to file a short-period return?
- 730 – May I claim net operating losses in the first year?
- 731 – Are corporations allowed to use MACRS/ACRS or Section 179 expensing?
- 733 – Can the prepayment to the Secretary of State be applied to my last year of business?
- 734 – What is the difference between franchise tax and income tax?

S Corporations

- 704 – Is an S corporation subject to the minimum franchise tax?
- 705 – Are S corporations required to file estimate payments?
- 706 – What forms do S corporations file?
- 707 – The tax for my S corporation is less than the minimum franchise tax. What figure do I put on line 21 of Form 100S?
- 708 – Where do S corporations make the state tax adjustment on Schedule K-1(100S)?

Exempt Organizations

- 709 – How do I get tax exempt status?
- 710 – Does an exempt organization have to file Form 199?
- 735 – How can an exempt organization incorporate without paying corporation fees and costs?
- 736 – I have exempt status. Do I need to file Form 100 or Form 109 in addition to Form 199?

Minimum Tax and Estimate Tax

- 711 – Why can't I claim my prepayment tax as credit or estimate payment on my return?
- 712 – What is the minimum franchise tax?
- 714 – I'm not doing business; do I have to pay the minimum franchise tax?
- 716 – When are my estimate payments due?

Billings and Miscellaneous Notices

- 723 – I received a bill for \$250. What is this for?
- 728 – Why was my corporation suspended?
- 729 – Why is my subsidiary getting a request for a return when we file a combined report?

Tax Clearance

- 724 – How do I dissolve my corporation?
- 725 – What do I have to do to get a tax clearance?
- 726 – How long will it take to get a tax clearance certificate?
- 727 – My corporation was suspended/forfeited. Can I still get a tax clearance?

Miscellaneous

- 700 – Who do I need to contact to start a business?
- 701 – I need a state ID number for my business. Who do I contact?
- 702 – Can you send me an employer's tax guide?
- 703 – How do I incorporate?
- 719 – How do I properly identify my corporation when dealing with the Franchise Tax Board?
- 720 – How do I change my corporation name?
- 721 – How do I change my accounting period?
- 732 – What is the water's-edge election?
- 737 – Where do I send my payment?
- 738 – What is electronic funds transfer?
- 739 – How do I get a copy of my state corporate tax return?

