

TITLE 18. FRANCHISE TAX BOARD
PROPOSED AMENDMENTS TO REGULATION SECTION 25106.5,
RELATING TO ASSIGNMENT OF SALES OF TANGIBLE PERSONAL PROPERTY

A hearing was held on February 6, 2013 by John Su, the "hearing officer" from the Franchise Tax Board Legal Division. The hearing was on proposed amendments to Regulation section 25106.5, which was noticed in the California Regulatory Notice Register on December 7, 2012.

Department staff reviewed the proposed regulation language and considered the comments submitted during and after the hearing. The hearing officer recommends that two changes to the proposed regulation be made to clarify that (1) Revenue and Taxation Code section 25137 is not considered in applying the "gross business receipts" test under Revenue and Taxation Code section 25128 to determine the applicable apportionment formula for an apportioning trade or business, and (2) intrastate apportionment does not assign the total group combined report business income to a taxpayer member whose tax is not measured by net income. These proposed changes are summarized below:

1. Subsection (c)(7)(A)1.b., describing how to arrive at the California property factor, payroll factor, and sales factor of a combined reporting group, is revised to specify the scope of clause 1.b. of subsection (c)(7)(A). Such specificity is necessary to clarify that Revenue and Taxation Code section 25137 may modify the computation of a combined reporting group's California apportionment factors, but is not considered in determining the applicable apportionment formula for that apportioning trade or business as described in subsection (c)(7)(A)1.a.

In the application of subsection (c)(7)(A)1.b. of this regulation, except as modified under Section 25137 of the Revenue and Taxation Code:

2. Subsection (c)(7)(A)2, describing the intrastate apportionment methodology, is revised to clarify that the intrastate apportionment methodology assigns the total group combined report business income only to taxpayer members whose tax is measured by net income. For purposes of subsection (c)(7)(A)2, the definition of "taxpayer member" is modified to include only taxpayer members whose tax is measured by net income. The modification of the definition clarifies that the total business income of the combined reporting group is not assigned to corporations protected by Public Law 86-272, even though such corporate taxpayer members must file a tax return in this state because they are subject to the minimum franchise tax.

Intrastate Apportionment of Taxpayer Member Income, In General. The resulting California source total group combined report business income, determined under the preceding subsection (c)(7)(A)1, is intrastate apportioned between the taxpayer members of the group, to arrive at each taxpayer member's California source combined report business income. That value is determined by multiplying the group's California source combined

report business income by that member's intrastate apportionment percentage to arrive at the taxpayer member's California source combined report business income. For purposes of this clause, "taxpayer member" means a taxpayer member, as defined in subsection (b)(11) of this regulation, whose tax is measured by net income. The steps of intrastate apportionment are as follows:

These nonsubstantial or sufficiently related changes are being made available to the public for the 15-day period required by Government Code section 11346.8, subdivision (c), and Section 44 of Title 1 of the California Code of Regulations. Written comments regarding these changes will be accepted until 5:00 p.m. on July 25, 2013.

A copy of the proposed amendments is being sent to all individuals who requested notification of such changes, as well as those who attended the hearing and those who commented orally or in writing, and will be available to other persons upon request. All inquiries and written comments concerning this notice should be directed to Colleen Berwick (916) 845-3306, FAC (916) 845-3648, E-Mail: colleen.berwick@ftb.ca.gov, or by mail to the Legal Division, Attn: Colleen Berwick, P.O. Box 1720, Rancho Cordova, CA 95741-1720. This notice and the proposed amendments and adoptions will also be made available at the Franchise Tax Board's website at www.ftb.ca.gov.