

Interested Parties Meeting
CCR §25128.5 Discussion Points
January 28, 2010

The following discussion lists situations that need to be addressed by CCR §25128.5 and provides the water's edge regulation (CCR §25113) provision for each.

1. Definitions:

2. Execution of the election: [WE = water's edge]

- Where and when to make the election: [WE: timely filed original return.]
- Who makes the election: [WE: every member of the combined reporting group.]
- Election made on a group return: [WE: is an election by each member of that combined reporting group.]
 - Individual corporation fails to make the election on its own individual return
 - Parent makes election and includes the income and apportionment factors of the non-electing taxpayer. [WE: deemed election.]
 - Parent includes income and apportionment factors of non-electing taxpayer and notification of election is signed by an authorized agent of the parent or a corporation with authority to bind the non-electing taxpayer. [WE: deemed election.]
 - Corporations included in the group that are not subject to tax under Part 11 (franchise/income tax) in the year of the election, but then become subject to tax under Part 11. [WE: deemed election.]
 - Corporations added to the electing combined reporting group at audit by the FTB. [WE: deemed election if the value of the total business assets of the electing taxpayers is greater than those of the non-electing taxpayers.]
- Taxpayers engaged in more than one trade or business: [WE: separate elections for each trade or business.]
- Validity of Election:

WE requires the following:

 - Tax computed in a manner consistent with the election.
 - Taxpayer files on the designated forms.
 - FTB may look at objective evidence that an election has been made.
- Timing of the Election:

WE provides the following rules:

 - Election made on a timely filed original return.

- Later timely filings that supplement an earlier return, or correct math errors.
 - no election made in later timely filing: The later return is considered as incorporating the previously filed return, to the extent not inconsistent, and is treated as the original return for purposes of making a water's-edge election if there is objective evidence that supports the conclusion that a water's-edge election was intended as provided in subsection (c).
 - withdraw election in later timely filing: Where the later return clearly reflects an intent to withdraw an election made on a previously filed return , the later filing is treated as an original return and there is no valid election.
- Copy of election: WE requires that this be attached to later returns filed for that taxable year.

3. Termination of the election

4. Re-election

5. Election, those affected:

- General: [WE requires that all members of the group elect before the election to be effective.]
- Changes in affiliation: [WE determines the status of the election for the group and individual members by looking at the value of total business assets.]
 - Members leave the group: [For WE, the election remains in effect as to the departing taxpayer members and any remaining taxpayer members.]
 - Different election commencement dates: [For WE, the election commencement date of the new group is the commencement date of the taxpayer whose total business assets are the largest.]
 - Electing and non-electing in one group or a non-taxpayer becomes a member of a new group: [For WE, the non-electing taxpayer is deemed to have elected if the value of the total business assets of the electing taxpayer is greater than those of the non-electing taxpayer or non-taxpayer. Otherwise, the election is automatically terminated at the time the electing members become part of the combined report.]
 - Two non-electing, different termination dates: [For WE, the termination date for the entity that has the largest total business assets is the termination date of the new group.]

6. Different Fiscal Years: [For WE, each member makes its election on its own return and the election is effective as of the beginning of the taxable year of the member of the group that files its return and election with the latest year end. For portions of the year prior to that, each member of the group calculates its tax on a non-electing basis.]