

## **REPORT ON INTERESTED PARTIES MEETING TO CONSIDER CHANGES TO THE AIR TRANSPORTATION AND AIR/TRUCKING INDUSTRY REGULATIONS**

**(Amendments to California Code of Regulations, Title 18, Section 25137-7, and Adoption of  
California Code of Regulations, Title 18, Section 25101.3)**

An interested parties meeting was held on March 27, 2008 at the Franchise Tax Board's Central Office in Rancho Cordova, California. Brian Miller, Tax Counsel III for the Franchise Tax Board, chaired this interested parties meeting.

This was the second interested parties meeting held on the above-referenced regulation sections. The first interested parties meeting was held September 6, 2007 at Franchise Tax Board's Central Office.

Air transportation company representatives attended the meeting telephonically. Air express company representatives participated both in person and telephonically.

The Franchise Tax Board invites written comments and reactions to this interested parties meeting and Discussion Draft regulations. Comments are requested within 45 days of the March 27 meeting (May 12, 2008).

A Discussion Draft of proposed amendments to Regulation section 25137-7 and proposed new Regulation section 25101.3 were made available on the Department web site before the meeting. A Discussion Topics document was made available with the Discussion Drafts to explain the reasoning behind the Franchise Tax Board's proposals.

The Discussion Draft of Regulation section 25137-7 includes amendments to clarify that under existing law, entities engaged in air transportation must apportion their income using Regulation 25137-7, even if the larger unitary group's main business is not air transportation.

Discussion Drafts of both Regulation section 25137-7 and 25101.3 include language proposing that air transportation companies organize aircraft for apportionment factor purposes by type of aircraft or model of aircraft. Industry representatives expressed that organizing aircraft by model or type is a more accurate measure of value than organizing by the entire fleet. Industry representatives also expressed that organizing by manufacturer and model of aircraft is a more precise measure of value than organizing by type (two engine, three engine, wide-body, narrow-body) of aircraft.

Industry representatives also stated a preference that series of the same aircraft model be grouped based on the model. Series for most manufacturers is usually expressed with a letter or number after the aircraft model number. But industry representatives pointed out that some manufacturers, including Airbus, use numbers to designate different series of aircraft without using the model number. The regulations should be crafted so aircraft of the same model are grouped by model, regardless of various designation methods used by

aircraft manufacturers. Meeting participants agreed to forward suggestions to assist crafting regulations that meet that goal.

The Discussion Draft of Regulation section 25137-7 includes language requiring air express companies to report revenue earned from both ground activity and air activity. Revenue from ground activity would be apportioned based on Regulation section 25137-11 (trucking regulation), while revenue from air transportation would be apportioned based on Regulation section 25137-7 (air transportation company regulation). The Discussion Draft language requires air express companies to divide revenue between ground and air based on the classification of such revenue amounts for the federal excise tax on air transportation.

Meeting participants expressed serious concern with the Discussion Draft's proposal to use the federal excise tax classification scheme to determine the amount of air transportation revenue to be apportioned. Concerns expressed included that the excise tax does not apply to international flights, there are different corporate structures and all companies may not reach a fair apportionment with the proposed methodology, and intercompany charges may affect revenue calculations. Participants also stated that they do not know of other states with a special formula for air express companies.

Participants also expressed concern over the need to develop a regulation to apply to the variety of air express companies doing business in California. Participants suggested that there would be few air express companies affected by the proposed methodology. Corporate structure was a key determinant in the impact of air express company regulations.

The meeting was concluded with invitations to the participants to comment on the potential regulation amendments. Franchise Tax Board staff will continue to keep industry involved and informed as the potential regulation amendments are crafted.