

**DISCUSSION TOPICS
FRANCHISE TAX BOARD INTERESTED PARTIES MEETING-
LIMITED LIABILITY COMPANY FEES, PROPOSED REGULATION SECTION 17942
OCTOBER 4, 2011**

1. BACKGROUND

The first interested parties meeting for proposed Regulation section 17942 was held on June 17, 2008. The Discussion Topics from the June 17, 2008 interested parties meeting provided a general background of the purpose behind the proposed Regulation, and potential issues that may arise with regard to the proposed Regulation, and will not be repeated in this Discussion Topics. ([June 17, 2008 IPM Discussion Topics](#).) The second interested parties meeting for proposed Regulation section 17942 was held on [November 19, 2010](#). The November 19, 2010 interested parties meeting addressed specific issues in follow-up to the June 17, 2008 interested parties meeting, and will not be repeated in this Discussion Topics.

2. APPLICATION OF RTC SECTION 25136 FOR ASSIGNING SALES OF OTHER THAN TANGIBLE, PERSONAL PROPERTY, AND THE EFFECTS OF THE SINGLE FACTOR SALES ELECTION.

In the prior version of proposed Regulation section 17942, for purposes of assigning a location for occasional sales, subsection (d)(2) provided that "the normal rule contained in Revenue and Taxation Code section 25136 will apply and total income from all sources derived from or attributable to this state will be assigned to the location where the income producing activity associated with the sale occurred." The proposed regulation was drafted prior to the adoption of the current version of RTC section 25136 by the Legislature. In its latest version, the method of assignment under RTC section 25136 is tied to the apportioning trade or business' choice to either elect, or not elect, to use the single factor sales apportionment method. If such an election is made pursuant to RTC section 25128.5, then RTC section 25136, subdivision (b), is the method used to assign sales to the California numerator of the apportionment formula; if not, then RTC section 25136, subdivision (a), is used to assign the sales.

Proposed Amendment

Proposed Regulation section 17942, subsections (d) and (d)(2), are amended to account for the apportionment methodology elected pursuant to RTC section 25128.5. The proposed changes alter the regulation such that assignment of sales for LLC fee purposes is made in conformity with the taxpayer's election for assignment of sales for apportionment purposes. A proposed example is provided to illustrate this concept.