

## DISCUSSION POINTS

Franchise Tax Board (FTB) Interested Parties Meeting  
Regulation Section 25111: Water's-Edge Election  
Proposed Regulation Section 25113: Water's-Edge Election  
March 25, 2008

Some items to include in this project are:

1. Amend Regulation section 25111 to indicate that a valid election made under that section will be deemed to have elected under the new rules of RTC section 25113 for taxable years beginning on or after January 1, 2003.
2. Draft the new Regulation section 25113 to include the explanation of the terms substantial performance, water's-edge group, original return, and effect of different fiscal years from Regulation section 25111.
3. Incorporate any other relevant portion of Regulation section 25111.
4. Define/explain terms in the new Regulation section 25113:
  - a. Original, timely filed return
  - b. Objective evidence of water's-edge election
  - c. Commencement date for corporations electing pursuant to RTC section 25113
  - d. Commencement date for corporations that elected pursuant to RTC section 25111
  - e. Net book value
  - f. Unitary affiliate group
  - g. New unitary affiliate group
  - h. Component unitary group
  - i. Combined reporting group
  - j. Group return
  - k. Self-assessed combined reporting group
5. Address in the new Regulation section 25113 rules for:
  - a. An election ending mid-year.
  - b. Elections made by a group of unitary taxpayers with different tax year ending dates.
  - c. How total business assets of the corporations should be evaluated for purposes of determining the prevailing method of filing, e.g., net book value, federal tax basis, California tax basis, etc.
  - d. The date for which total business assets of the corporations should be evaluated for purposes of determining the prevailing method of filing.
    - i. If electing and non-electing corporations are instantly unitary.
    - ii. If electing and non-electing corporations become unitary subsequently, e.g., after 3 months, 9 months, 2 years etc.
    - iii. If the unitary filing group changed as a result of an FTB audit determination.
  - e. Filing requirements that the taxpayer must satisfy for terminations and re-elections.
  - f. Effective dates of terminations and re-elections.

- g. Does the phrase "good cause" in RTC section 25113(c)(11) have the same meaning as in RTC section 25113(c)(10)(A)?
  - h. Forms to be used for:
    - i. Making a water's-edge election
    - ii. Request to terminate water's-edge election
    - iii. Request to re-elect
    - iv. Tax Return for water's-edge filers
6. Incorporate relevant examples and explanations from FTB Notice 2004-2.
7. Address other problem area that participants identify during the interested parties process.