

Summary of Interested Parties Meeting

Regulation § 25106.5, Sales Factor: Sales of Tangible Personal Property

- I. **Administration:** On May 26, 2011 at 11:00 a.m., members of the public attended an interested parties meeting at the Franchise Tax Board's office in Sacramento. Parties attended in person and by telephone. Those physically present were asked to register at the entrance and those on the telephone were asked to fax a business card to Colleen Berwick for later correspondence. Phone participants introduced themselves. The session was to be tape recorded for reference but there would be no attribution of comments and no transcript. However, there were technical difficulties and no recording was available for purposes of preparing this summary.

The Hearing Officer, John Su, listed the five documents available as handouts: notice of the meeting, discussion topics, a copy of Revenue and Taxation Code section 25135, a copy of the current California Code of Regulations ("Regulation") section 25106.5, a copy of Regulation section 25137-14, and a copy of FTB Notice 90-3. Notice of the meeting and discussion topics were posted online. Parties were told they had until June 3, 2011 to submit written comments, and that a summary of the interested parties meeting would be posted online.

John Su explained the purpose of the meeting was for the public to provide input on the content of possible amendments to the existing regulation that will give guidance on how to assign the receipts from sales of tangible personal property (TPP) by members of a combined reporting group.

- II. **Discussion:** John Su began the discussion by summarizing past administrative agency interpretation of Revenue and Taxation Code section 25135 relating to the assignment of sales of TPP for sales factor purposes. In 2000, the FTB amended Regulation section 25106.5 to provide guidance for assigning sales of TPP using the *Joyce* rule. Due to the 2009 legislative change that codified the *Finnigan/NutraSweet* rule in Revenue and Taxation Code section 25135, it is necessary to amend the existing Regulation section 25106.5 to reflect the statutory change affecting taxable years beginning on and after 1/1/2011.

Attendees commented that FTB staff provided two versions of draft regulations for the public to consider during the regulation promulgation process that took place during the year 2000. One version of the draft regulation applied the *Joyce* rule that was eventually adopted into the existing Regulation at section 25106.5(c)(7)(B)3. The other version of the draft regulation that was not adopted in the year 2000 applied the *Finnigan/NutraSweet* rule. The attendees asked if the 2000 version of the draft regulation using the *Finnigan/NutraSweet* rule could be a starting point for this regulation project. A short discussion ensued. There was a general consensus that, instead of drafting new language to amend the regulation, staff should start with the 2000 version of the draft regulation.

Attendees raised a concern that the regulation may not be ready when the FTB prints the 2011 tax return forms and instructions. Comments were made that this is not an issue because regulations can be retroactive if needed.

III. Subsequent Action

The *Finnigan/NutraSweet* version of the draft regulation from the year 2000 will be posted on the FTB website.

The draft of proposed language to amend the existing Regulation section 25106.5 will be posted on FTB's website.