

DISCUSSION TOPICS

Franchise Tax Board Interested Parties Meeting - Single Sales Factor Election Regulation 25128.5 June 1, 2010

1. BACKGROUND

During 2009, the California Legislature adopted Revenue & Taxation Code section 25128.5, operative for taxable years beginning on or after January 1, 2011. This new statute allows certain taxpayers subject to the California franchise or income tax the opportunity to elect an alternate method of apportionment that uses only a sales factor instead of the current three-factor formula based on property, payroll, and sales. Section 25128.5, subdivision (c), authorizes the Franchise Tax Board to issue necessary or appropriate regulations regarding the making of the election.

The first interested parties meeting was held on January 28, 2010 and a [summary](#) of that meeting was posted on the Franchise Tax Board website. Public input regarding possible regulatory language and various fact scenarios was elicited at the first interested parties meeting. In a separate document, the Hearing Officer is providing proposed language for the new regulation. This second interested parties meeting is for the purpose of discussing this [proposed language](#).

2. STAFF'S EXPECTATIONS FOR THE MEETING

The FTB seeks to allow the public an opportunity to share ideas on the proposed regulatory language. Staff believes that the following core principles provide an objective basis upon which to evaluate proposed regulation content. Among these principles are:

- (1) Equity: Are all similarly situated taxpayers being treated in a similar manner?
- (2) Administration: Is a rule as clear and simple as possible? Can taxpayers and the FTB apply a rule?
- (3) Elimination of potential disputes: Does a rule raise new concerns that could lead to new disputes?
- (4) Recordkeeping: Does a rule use existing records as much as possible to minimize the burdens of recordkeeping on taxpayers?

3. POSSIBLE MODEL REGULATIONS

The water's edge election statutes and regulations provided the basis for the proposed regulatory language for the single sales factor election because they address many of the possible factual scenarios that could arise in the context of making a single sales factor election. Taxpayers participating in the meeting are encouraged to review the following statutes and regulations:

- Revenue & Taxation Code section 25110 (two versions, both applicable to taxable years beginning on or after January 2006)
- California Code of Regulations, title 18, section 25110
- Revenue & Taxation Code section 25113
- California Code of Regulations, title 18, section 25113 (adopted May 6, 2009, applicable to taxable years beginning on or after January 1, 2008, see attached)

The FTB anticipates hosting an open discussion to address concerns presented by the corporate taxpayer community. Interested parties should provide feedback on the proposed language for the new regulation to administer the single sales factor election, keeping in mind that the underlying objective is to eliminate disputes and create straightforward rules that may be easily applied by taxpayers and administered by the FTB.