

Request for Permission to Proceed to Interested Parties Meeting for a Proposed Regulation under California Code of Regulations, Title 18, Section 25106.5-6, Relating to Calculation of Net Operating Loss Carryovers and Carrybacks Between Years Using Different Apportionment Methods

Revenue and Taxation Code (R&TC) section 25106.5 allows the Franchise Tax Board to adopt regulations pertaining to taxpayers whose California-source income is determined by the use of allocation and apportionment. Such taxpayers often generate net operating losses that can be applied in subsequent taxable years, or carried back into previous taxable years, for purposes of determining their California-taxable income. The determination of net operating losses in California is currently governed by R&TC sections 17276.20 and 24416.20.

Industry has requested that the Franchise Tax Board develop regulations that provide guidance on how to determine the proper application of net operating loss carry-forwards and carry-backs when net operating losses are carried forward and applied in years when the apportionment rules differ from those in effect when the net operating losses were generated, or when losses may be carried back into earlier years with a different apportionment method than the one applicable when a loss was generated.

If approved, staff will schedule an interested parties meeting to solicit public input, discuss issues relating to a proposed regulation, and develop proposed regulatory language to address this issue. Staff anticipates presenting the results of the interested party meetings to your Board and may request permission to enter into the formal regulatory process at a future Board meeting.
