

REQUEST FOR PERMISSION TO HOLD AN INTERESTED PARTIES MEETING TO CONSIDER REVISING EXISTING REGULATION SECTION 25137-12, REGARDING THE APPORTIONMENT OF INCOME FOR PRINT MEDIA BUSINESSES.

In 1992, California adopted regulation section 25137-12 to provide rules for the allocation and apportionment of income for taxpayers involved in the print media business. The California regulation is substantially similar to the regulation adopted by the Multistate Tax Commission (MTC). Its most significant provision was the use of a market-based formula for allocating gross receipts from advertising to the sales factor. It has been approximately 15 years since this regulation was adopted.

There have been numerous changes in the "print media" industry since regulation section 25137-12 was promulgated. For example, in the past, "print media" was limited to forms that one could see, touch, physically store, and ship. Now, with e-commerce, there is an increase in geographic diversity and rather than the old print-and-distribute process, the new global model is to distribute and, at the recipient's choice, to print, download, or transfer electronically to another receiver. Print media is no longer dependent upon the old-time printing press, but on orbiting satellites, undersea transmission cables, and telephone lines. Much of the industry operates online and offshore, and may not be physically located in any particular state. Due to mergers and acquisitions, today's corporations are rarely involved solely in the print media business, but have diversified into television broadcasting, radio, and other advertising-driven media.

In addition, traditional "print media" activities now include online advertising services that are not covered under any of the Revenue and Taxation Code section 25137 special industry regulations. These online ads provide a "click through" feature and are geographically targeted.

Staff would like to hold an interested parties meeting to discuss with industry representatives whether existing regulation section 25137-12 should be amended given the rapidly changing nature of the "print media" industry and/or whether a separate regulation might be appropriate for advertising activities. Staff requests that the Board authorize it to hold one or more interested parties' meetings to receive input on these questions. After input is received from interested parties, staff will report back to the Board for direction as to how to proceed.

§ 25137-12. Print Media.

(a) In general. Except as specifically modified by this regulation, when a taxpayer in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to sections 25120 through 25137 of the Revenue and Taxation Code and the regulations adopted pursuant thereto.

(b) Definitions. The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(1) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(2) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

(c) Apportionment of business income- sales factor numerator. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

(1) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

(2) Except as provided in subsection (c)(3), gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the income year. Each publisher of printed material containing advertising shall determine a California circulation factor for each of its publications. This circulation factor shall be equal to the ratio that particular publication's in-state circulation to purchasers and subscribers bears to its total circulation to purchasers and subscribers everywhere.

The circulation factor for an individual publication shall be determined by reference

to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If no sources are available or, if available, not in a form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

(3) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Franchise Tax Board may require, that such receipts be attributed on the basis of a regional or local geographic area circulation factor and not be included in the calculation of the circulation factor provided by subsection (c)(2). A regional or local geographic circulation factor shall be determined for each individual publication and each regional or local geographic area and shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to the taxpayer's total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area.

(4) In the event that the purchaser or subscriber is the United States Government or the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

Note: Authority cited: Section 19503, Revenue and Taxation Code.
Reference: Section 25137, Revenue and Taxation Code.