

STAFF REQUEST TO RECONSIDER REGULATING UNDER
REVENUE AND TAXATION CODE SECTION 25137 TO ADDRESS THE
APPORTIONMENT OF THE INCOME OF MEMBERS OF THE
TELECOMMUNICATIONS INDUSTRY.

In 1995 staff held a symposium to discuss a possible regulation under Revenue and Taxation Code section 25137 that would have established rules for the apportionment of income of members of the telecommunications industry. Subsequent regulatory work after the symposium was thereafter suspended for several years because of budget considerations and workloads.

A report on the symposium and a request for permission to proceed was presented to the Board at the January 12, 1998, meeting. At least one Board member questioned the need for the regulation but no action was taken with respect to the regulation at that meeting. At its meeting of February 4, 1998, the Board directed staff to cease working on a proposed telecommunications industry regulation. The Board directed staff to come back and request permission of the Board if, and when, it determined there was a need for such a regulation before commencing work on it again.

Staff believes there is a need for such a regulation now. First, the department is currently involved in a bankruptcy proceeding where the issue is the proper apportionment of the income of a member of the telecommunications industry. Second, staff has seen a shift in the reporting positions taken by members of the telecommunications industry on their California returns, or in claims for refund, that greatly reduces the amount of income they assign to California. There have been many changes in the manner in which the telecommunications industry operates in recent years, but staff does not believe these changes provide support for the filing position changes. Third, the Uniformity Committee of the Multistate Tax Commission has been considering this issue for several years and appears to be close to proposing a model regulation. As a Compact member, California will be requested to take a position on whether any proposed regulation should be submitted for a hearing by the Commission staff.

At this time, authorization by the Board to consider regulating with respect to the telecommunications industry is not an immediate request to hold a symposium, prepare a draft regulation or notice a proposed regulatory hearing. Before any such actions are taken, the issue will be brought back to the Board for specific direction. Staff is only requesting permission to become involved in the preparation and consideration of such a proposed regulation by the Multistate Tax Commission and to consider whether it would be appropriate for California to consider adopting any proposal approved by the Commission or prepare its own proposal and receive industry input.

September 20, 2006