

STAFF REQUEST FOR PERMISSION TO PROCEED ON PROPOSED
CHANGES TO CALIFORNIA CODE OF REGULATIONS, TITLE 18, SECTION
17952, RELATING TO INCOME FROM INTANGIBLE PROPERTY

Pursuant to Board Resolution 98-7, staff requests the Board to authorize commencement of a regulation project to deal with these issues. Staff requests permission to release draft proposed changes to the existing regulation at California Code of Regulations, title 18, section 17952. These proposed changes address the timing of the sourcing of the gains from intangible personal property.

Revenue and Taxation Code section 17554 was repealed in 2002, operative for taxable years beginning on or after January 1, 2002. That section provided for the accrual of income under certain circumstances upon a change of residency.

Staff has identified a need to clarify when the sourcing of the sale of intangible property should be fixed for purposes of sourcing installment sales proceeds. Under the *mobilia* doctrine, absent a business situs, intangible property is sourced to the state of residence of the owner. If a California resident sells intangible property, the gain is taxable under a residency theory. If a California nonresident sells intangible property, the gain would be sourced to the nonresident's state of residence and California would not tax the gain, unless the intangible property had acquired a California business situs.

However, if a resident sells intangible property under the installment method and subsequently moves away, there may be some ambiguity as to the source of the gain. Arguably, the *mobilia* doctrine already provides that the source of the gain is in California because that is where the taxpayer was when the property was sold. The source could not have moved with the taxpayer because he or she no longer owned the property.

This has not been an issue in the past because California would have applied Revenue and Taxation Code section 17554 to assert that the gain had already accrued prior to the move. Without Revenue and Taxation Code section 17554, staff believes that a clarification would be prudent.

Staff requests approval to follow the partial symposium process described in the Chief Counsel's January 15, 1999, memorandum to the Board regarding processing regulations and to announce a tentative symposium date of August 13, 2003. If no public interest is expressed and/or no written comments are received by July 8, 2003, staff requests approval to cancel the symposium and to instead commence the formal regulatory process. In the event the symposium is cancelled, staff proposes to publish a notice of cancellation on the department's website fifteen days before the date set for the symposium.

To this end, staff requests permission to issue a Notice in the form attached.



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May XX, 2003

FTB NOTICE 2003-(Draft)

SUBJECT: REQUEST FOR PUBLIC COMMENT --
DISCUSSION DRAFT OF PROPOSED CHANGES TO CALIFORNIA
CODE OF REGULATIONS, TITLE 18, SECTION 17952

The Franchise Tax Board staff has prepared a discussion draft of proposed amendments to the existing regulations adopted under Revenue and Taxation Code section 17952. The proposed amendments would add provisions designed to address the timing of sourcing of gains on the sale or transfer of intangible personal property.

Due to the potentially broad impact of this addition, the Franchise Tax Board staff is making the draft of the proposed amendments and a brief explanation thereof available to the public for informal review and comment prior to commencement of the formal regulatory process. For copies of the discussion draft of the proposed changes to the regulation or for further information regarding this notice, contact Colleen Berwick at the Franchise Tax Board Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306; Fax: (916) 845-3648; E-Mail: Colleen.Berwick@ftb.ca.gov. The draft and explanation are also available at the Franchise Tax Board's website at <http://www.ftb.ca.gov/>.

Written comments may also be addressed to Ms. Berwick and should be submitted no later than July 8, 2003. If significant public interest is voiced and/or written comments are received, the department will hold a public meeting or symposium on these proposed amendments prior to commencement of the formal regulatory process. If the discussion draft proposed amendments are officially noticed, any comments received in the course of any symposium or public meeting will be included in the official rulemaking file (within the meaning of the Administrative Procedure Act). Participants may comment at the symposium without name attribution. A summary of the symposium will be made available to all participants, and will also be included in the official rulemaking file.

The department has tentatively scheduled a symposium to discuss the discussion draft proposed amendments on August 13, 2003, at the Franchise Tax Board, Central Office, 9646 Butterfield Way, Sacramento, CA, in Room 1040 of Phase II, beginning at 9:30 am. **If no public interest is voiced and no written comments are received by July 8, 2003, the symposium will be canceled. Notice of cancellation will be published**

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on the Franchise Tax Board's website no later than July 30, 2003. If you have any questions regarding the symposium, please contact Ms. Berwick.

If you are interested in obtaining supplements to the draft proposed amendments, or to be included on the mailing list for any formal rulemaking activity with respect to the proposed amendments, please advise Ms. Berwick at the above address and she will add your name to the mailing list.

The principal author of this notice is Natasha Sherwood Page of the Franchise Tax Board, Legal Branch. For further information regarding this notice, contact Ms. Page at the Franchise Tax Board, Legal Branch, P. O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-6729; Fax: (916) 843-6162; E-Mail: Natasha.Page@ftb.ca.gov.

Section 17952 is amended to read:

§17952. Income from Intangible Personal Property.

(a) Income of nonresidents from rentals or royalties for the use of, or for the privilege of using in this State, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property is taxable, if such intangible property has a business situs in this State within the meaning of (c) below.

(b) Income of nonresidents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is taxable as income from sources within this State only if the property has a situs for taxation in this State, except that if a nonresident buys or sells stock, bonds, and other such property in California, or places orders with brokers in California to buy or sell such property, so regularly, systematically and continuously as to constitute doing business in this State, the profit or gain derived from such activity is taxable as income from a business carried on here, irrespective of the situs of the property for taxation.

(c) Intangible personal property has a business situs in this State if it is employed as capital in this State or the possession and control of the property has been localized in connection with a business, trade or profession in this State so that its substantial use and value attach to and become an asset of the business, trade or profession in this State. For example, if a nonresident pledges stocks, bonds or other intangible personal property in California as security for the payment of indebtedness, taxes, etc., incurred in connection with a business in this State, the property has a business situs here. Again, if a nonresident maintains a branch office here and a bank account on which the agent in charge of the branch office may draw for the payment of expenses in connection with the activities in this State, the bank account has a business situs here.

If intangible personal property of a nonresident has acquired a business situs here, the entire income from the property including gains from the sale thereof, regardless of where the sale is consummated, is income from sources within this State, taxable to the nonresident.

(d) The source of gains and losses from intangible personal property is determined at the time of the sale or transfer of the property. For example, if a California resident sells intangible personal property under the installment method, and subsequently becomes a nonresident, any later recognized gain attributable to any installment payment receipts relating to that sale will be sourced to California. Further, a full-year California nonresident who sells intangible personal property would be taxed by California on gain as it is recognized upon receipt of future installment payments if the intangible personal property had a business situs in California at the time of the sale.

Note: Authority cited: Section ~~19503~~19253, Revenue and Taxation Code.
Reference: Sections 17041 and 17952, Revenue and Taxation Code.

April 29, 2003