



STATE OF CALIFORNIA
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July 28, 1999

FTB NOTICE 99-8

**SUBJECT: REQUEST FOR PUBLIC COMMENT
DISCUSSION DRAFT ADDITION TO REGULATION SECTION 17951-4**

The Franchise Tax Board staff has prepared a discussion draft of a proposed amendment to Title 18 Cal. Code Regs. § 17951-4. The proposed amendment:

1. Provides that the apportionment rules of Revenue and Taxation Code sections 25128 through 25139, inclusive, apply at the entity level in determining the source of business income of a multistate sole proprietorship, partnership or S corporation for purposes of taxing a proprietor, partner or shareholder.
2. Provides that Personal Income Tax sourcing rules apply at the individual level in determining the source of nonbusiness income of a multistate sole proprietorship, partnership or S corporation for purposes of taxing a proprietor, partner or shareholder.
3. Sets out the following rules if a unitary relationship exists between one or more sole proprietorships, partnerships, or S corporations:
 - a. If a partner or S corporation shareholder owns less than a 20 percent interest in the partnership or S corporation, unitary principles will not normally be applied. However, if necessary to properly reflect income for such interests, the Franchise Tax Board may compute income using unitary methods. Before it can do so, however, the Franchise Tax Board must conduct a comparable uncontrolled price examination under Section 482, Internal Revenue Code, similar to the rule for combining S corporations (Section 23801(d), Rev. and Tax. Code).
 - b. If a partner or S corporation shareholder owns a 20 percent or more interest in the partnership or S corporation, unitary combination will apply at the partner or shareholder level to the extent of the partner or S corporation shareholder's interest in such entity, as well as to any unitary sole proprietor activity.

4. Sets out the rule that the source of income from a covenant-not-to-compete executed in connection with the sale of a business is determined by reference to the factors for apportioning business income of the business sold.

Due to the potentially broad impact of this amendment, the Franchise Tax Board is making the draft of the proposed amendment available to the public for review and comment prior to formal regulatory notice.

For further information regarding this notice, contact Beverly Moore at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3354; Fax: (916) 845-3648; E-Mail: bev_moore@ftb.ca.gov. The draft of the proposed amendment and this notice are also available at the Franchise Tax Board's website at www.ftb.ca.gov.

Written comments may also be addressed to Ms. Moore and should be submitted by August 27, 1999. If significant public interest is voiced and written comments are received, the department will hold a public meeting or symposium on this proposed amendment prior to commencement of the formal hearing process for approval. If the discussion draft of the regulation is officially noticed, comments received in response to this notice, as well as symposium comments, will be entered into the regulation record. 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 entered into the regulation record, if any.

The department has tentatively scheduled a symposium to discuss the draft of the proposed amendment to the regulation on September 29, 1999, at the Franchise Tax Board, Central Office, 9645 Butterfield Way, Sacramento, CA, in Room 1040, beginning at 10:00 a.m. **If no public interest is voiced and no written comments are received by August 27, 1999, the symposium will be cancelled. Notice of cancellation will be published on the Franchise Tax Board's website on September 3, 1999.** If you have any questions regarding the symposium, please contact Ms. Moore.

If you are interested in obtaining supplements to the draft proposed amendment or the formal notice of the proposal to amend the regulation, in the event such a notice is issued, please advise Ms. Moore at the above address, and she will add your name to the mailing list.

The principal author of this notice is Richard Gould of the Franchise Tax Board, Legal Branch. Mr. Gould can be contacted at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720.