

TITLE 18. FRANCHISE TAX BOARD

As required by Section 11346.4 of the Government Code, this is notice that a public hearing has been scheduled to be held at 10:00 a.m., May 8, 2000, in Room 1040 at 9645 Butterfield Way, Sacramento, California, to consider adoption of an amendment to Section 25137(c)(1)(A) under Title 18 of the California Code of Regulations, authorized under Section 25137 of the California Revenue and Taxation Code.

An employee of the Franchise Tax Board will conduct the hearing. Thereafter, a report will be made to the three-member Franchise Tax Board for its consideration. Government Code Section 15702(b) provides for consideration by the three-member Board of any proposed regulatory action if any person makes such a request. The three-member Board will consider the proposed regulation and comments submitted with respect to the proposed regulation prior to acting upon it at one of its meetings.

During the initial symposium regarding this proposed amendment of the existing regulation, industry representatives made numerous suggestions for changes to the proposed amendments. Among these were to define the following terms which are contained within existing Regulation Section 25137 (a) and (c): "taxpayer", "substantial", and "occasional". The terms "substantial" and "occasional" have been addressed by the Board of Equalization in the past on a facts and circumstances basis. Comments suggesting proposed definitions for these terms, or addressing the need to define these terms in the first instance, will be considered during the hearing process.

Industry has also requested that the proposed amendment of the existing regulation be enacted on a prospective basis only. This suggestion is still under consideration by staff and may be implemented during the regulatory process.

Interested persons are invited to present comments, written or oral, concerning the proposed regulatory action. It is requested, but not required, that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

WRITTEN COMMENT PERIOD:

Written comments will be accepted until 5:00 p.m., May 8, 2000. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

AUTHORITY & REFERENCE:

Section 19503 of the Revenue and Taxation Code authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 10.7 (commencing with Section 21001) and Part 11 (commencing with Section 23001) of the Revenue and Taxation Code. The proposed regulatory action interprets, implements, and makes specific section 25137(c) of the

Revenue and Taxation Code. The proposed regulatory action is based upon Franchise Tax Board Legal Ruling 97-1, which was issued on October 15, 1997.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW:

Regulation Section 25137(c)(1)(A), as currently written, provides for the exclusion from the sales factor of the apportionment formula, gross receipts derived from an occasional sale of a fixed asset, if the gross receipts from the sale are substantial. The proposed amendments to the existing regulation will apply the same rule to sales of intangible property, e.g., stock in an affiliate, patents, and trademarks.

The proposed amendment to the existing regulation reflects the Franchise Tax Board's position, as set forth in Legal Ruling 97-1, that the same rationale that applies to the current regulation's treatment of occasional sales of fixed assets also applies with equal force to the occasional sale of intangibles. The inclusion of such gross receipts in the sales factor does not fairly reflect the taxpayer's day to day business activity and therefore causes excessive income to be apportioned to the state where the occasional sale took place. This is especially true if the growth of built-in appreciation in value of the asset occurs over a substantial period of time, because taking the gross receipts into account in the year of a recognition event does not reflect the gradual effects of appreciation in value of the asset over several years.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code Section 17500, of Division 4: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Adverse Economic Impact on business including the ability of California businesses to compete with businesses in other states: None.

Cost to directly affected private persons/businesses potential: None.

Significant effect on the creation or elimination of jobs in the state: None.

Significant effect on the creation of new businesses or elimination of existing businesses within the state: None.

Significant effect on the expansion of businesses currently doing business within the state: None.

Effect on small business: The effect on small businesses will be minimal because the regulation applies primarily to multijurisdictional businesses. In addition, many of the provisions of the proposed regulations reflect existing administrative practices.

The express terms of the proposed action written in plain English are available from the agency contact person named in this notice.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code Section 11346.5(a)(12), the Board must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

The proposed regulatory action pertains to corporate taxpayers and therefore does not affect private persons.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS:

An initial statement of reasons has been prepared setting forth the facts upon which the proposed regulatory action is based. The statement includes the specific purpose of the proposed regulatory action and the factual basis for determining that the proposed regulatory action is necessary.

The express terms of the proposed amended regulatory action, written in plain English, as well as the initial statement of reasons and all information upon which the proposed regulatory action is based, are available upon request from the agency officer named below.

CHANGE OR MODIFICATION OF ACTIONS:

The proposed regulatory action may be adopted by the three-member Franchise Tax Board after consideration of any comments received during the comment period.

The regulation may also be adopted with modifications if the changes are nonsubstantive or the resulting regulation is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation as modified could result from that originally proposed. The text of the regulation as modified will be made available to the public at least 15 days prior to the date on which the proposed regulatory action is adopted. Requests for copies of any modified regulation should be sent to the attention of the agency officer named below.

ADDITIONAL COMMENTS:

If you plan on attending or making an oral presentation at the regulation hearing, please contact the agency officer named below.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing who is in need of a language interpreter or sign language assistance should contact the agency officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

CONTACT:

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; telephone (916) 845-3306; Fax (916) 845-0770; E-Mail: colleen_berwick@ftb.ca.gov. The notice, initial statement of reasons and express terms of the regulation are also available at the Franchise Tax Board's website at www.ftb.ca.gov.