NOTE: This handout is intended only for purposes of facilitating discussion at the interested parties meeting on August 3, 2016.

18 CCR 23038(b)-1 – Amendments – dft4a
(13 Jun 16)

§ 23038(b)-1. Classification of Organizations for California Income and Franchise Tax Purposes

(a) Organizations for California income and franchise tax purposes -- (1) In general. The Revenue and Taxation Code prescribes the classification of various organizations for California income and franchise tax purposes. Whether an organization is an entity separate from its owners for California income and franchise tax purposes is a matter of California income and franchise tax law and does not depend on whether the organization is recognized as an entity under local law.

(2) Certain joint undertakings give rise to entities for California income and franchise tax purposes. A joint venture or other contractual arrangement may create a separate entity for California income and franchise tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for California income and franchise tax purposes if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. Nevertheless, a joint undertaking merely to share expenses does not create a separate entity for California income and franchise tax purposes. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they have not created a separate entity for California income and franchise tax purposes. Similarly, mere co-ownership of property that is maintained, kept in repair, and rented or leased does not constitute a separate entity for California income and franchise tax purposes. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for California income and franchise tax purposes.

(3) Certain local law entities not recognized. An entity formed under local law is not always recognized as a separate entity for California income and franchise tax purposes. For example, an organization wholly owned by a state is not recognized as a separate entity for California income and franchise tax purposes if it is an integral part of the ~~S~~state. Similarly, tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. §477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. §503, are not recognized as separate entities for California income and franchise tax purposes.

(4) Single owner organizations. Under Regs. §23038(b)-2 and §23038(b)-3, certain organizations that have a single owner can choose to be recognized or disregarded as entities separate from their owners, subject to certain statutory provisions which recognize the existence of otherwise disregarded entities for certain purposes including the tax and fee of a limited company under Sections 17941 and 17942 of the Revenue and Taxation Code, the return filing requirements of a limited liability company under Section 18633.5 of the Revenue and Taxation Code, and the credit limitations of a disregarded entity under Sections 17039 and 23036 of the Revenue and Taxation Code.

(b) Classification of organizations. The classification of organizations that are recognized as separate entities is determined under Regs. §23038(b)-2, §23038(b)-3, and §23038(a)(3) unless a provision of the Revenue and Taxation Code (such as section 860A of the Internal Revenue Code addressing Real Estate Mortgage Investment Conduits (REMICs), as applicable for California purposes pursuant to section 24870 of the Revenue and Taxation Code) provides for special treatment of that organization. For the classification of organizations as trusts, see Reg. §23038(a)(3). That regulation provides that trusts generally do not have associates or an objective

to carry on business for profit. Regulations §23038(b)-2 and §23038(b)-3 provide rules for classifying organizations that are not classified as trusts.

(c) ~~Qualified~~ ~~c~~Cost sharing arrangements. A ~~qualified~~ cost sharing arrangement ("CSA") that is described in Treas. Regs. §1.482-7 ~~and any arrangement that is treated by the Commissioner as a qualified cost sharing arrangement under Treas. Reg. §1.482-7~~, including any arrangement that the Commissioner treats as a CSA under Treas. Reg. § 1.482-7(b)(5), as applicable for California income and franchise tax purposes pursuant to Sections 23051.5 and 24725 of the Revenue and Taxation Code (except as provided in Article 1.5 of Chapter 17 of the ~~Bank and~~ Corporation Tax Law, commencing with Section 25101 of the Revenue and Taxation Code), is not recognized as a separate entity for purposes of the Revenue and Taxation Code. See Treas. Regs §1.482-7 for the ~~proper treatment of qualified cost sharing arrangements~~ rules regarding CSAs.

(d) Domestic and foreign business entities. ~~For purposes of this regulation and Regs. §23038(b)-2 and §23038(b)-3, an entity is a domestic entity if it is created or organized in the United States or under the laws of the United States or of any state; an entity is foreign if it is not domestic~~. See Reg. § 23038(b)-5 for the rules that determine whether a business entity is domestic or foreign.

(e) State. For purposes of this regulation and Reg. §23038(b)-2, the term state includes the District of Columbia.

(f) Effective/applicability dates. Except as provided in the following sentence, ~~T~~this regulation is effective for taxable or income years commencing on or after January 1, 1997. The rules of ~~paragraph~~ subsection (c) of this ~~section~~ regulation are applicable on January 5, 2009.

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