

INITIAL STATEMENT OF REASONS FOR THE  
ADOPTION OF AMENDMENTS TO  
CALIFORNIA CODE OF REGULATIONS,  
TITLE 18, SECTION 24344(c)

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS

The statutory scheme for water's-edge groups to compute the measure of tax and apportion the appropriate amount to California requires Revenue and Taxation Code section 24344, subdivision (c), to operate in conjunction with Revenue and Taxation Code sections 24411 and 25110-25115.

California Code of Regulations, title 18, section 24344, subsection (c), currently sets forth a definition of "commonly controlled group" that was based upon the prior version of Revenue and Taxation Code section 25105 and the case law decided thereunder. Revenue and Taxation Code section 25105 was amended in 1994 to incorporate the interpretations of what constitutes a "commonly controlled group" found in the case law. Additionally, Revenue and Taxation Code sections 24411 and 25110, and the regulations thereunder, relating to the computation of the California tax liability of a unitary group the members of which are affiliated with foreign corporations, have been amended to refer to Revenue and Taxation Code section 25105 rather than to set forth a separate definition of a "commonly controlled group."

SPECIFIC PURPOSE OF THE REGULATION

The proposed amendment to California Code of Regulations, title 18, section 24344, subsection (c), changes the definition of "commonly controlled group" to conform to that found in Revenue and Taxation Code section 25105.

In addition, there is one change of a clean up nature that will be made at this time. California Code of Regulations, title 18, section 24344, subsections (c)(2)(A)1.a. and b., currently define a foreign investment for purposes of the regulation as stock or other equity investment in "a. an entity whose dividends would be qualifying dividends for purposes of Revenue and Taxation Code section 24411, and b. a nonaffiliated corporation which is organized under the laws of a country or political subdivision of a country other than the United States." However, those two types of entities are mutually exclusive such that there could not be an investment in one entity which would satisfy both conditions. Consequently, the proposed change would correct the word "and" to "or."

NECESSITY

This amendment will make the regulatory scheme applicable to the computation of the California tax liability of a water's-edge unitary group, the members of which are affiliated with foreign

corporations, uniform with the definitions used consistently elsewhere throughout the applicable regulations. It will also correct the definition of a foreign investment for purposes of the regulation.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON.**

In drafting the proposed regulation, the Franchise Tax Board relied upon Revenue and Taxation Code sections 25110, subdivision (b)(1), 25105, and 24411, and the regulations thereunder.

Other than the items described in the preceding paragraph, the Franchise Tax Board did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing adoption of this regulation.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS OR SMALL BUSINESS.**

The Franchise Tax Board has determined that there were no alternatives considered which would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons or small businesses than the proposed regulation.

**ADVERSE ECONOMIC IMPACT ON BUSINESS**

None identified.