

TITLE 18. FRANCHISE TAX BOARD
PROPOSED AMENDMENTS TO
REGULATIONS 25106.5-0, 25106.5, and 25106.5-2

A hearing was held on November 19, 1999, by Michael E. Brownell of the Franchise Tax Board Legal Staff, the "hearing officer," on proposed amendments to Regulation Sections 25106.5-0, 25106.5, and 25106.5-2, which were noticed in the California Regulatory Notice Register on October 1, 1999. Section 25106.5 of the Revenue and Taxation Code authorizes the Franchise Tax Board to promulgate regulations relating to the mechanics of combined reporting. The indicated regulations, if amended, would provide detailed rules for combined reporting in various circumstances.

After the above hearing, the United States Supreme Court issued its decision in *Hunt-Wesson v. Franchise Tax Board* (No. 98-2043, Feb. 22, 2000) ___ U.S. ___, ___ L.Ed. 2d. ___, holding that Revenue and Taxation Code Section 24344(b), the "interest offset," was unconstitutional. As a result of that decision, the hearing officer recommends that certain amendments to the proposed regulations be made to remove references to the interest offset and to Section 25106.5-5 of the California Code of Regulations, which provides a specific rule related to the interest offset. In their place, the proposed amendment makes only general reference to the allocation of expenses between items of business and nonbusiness income. The changes in this notice affect only the proposed amendments to Section 25106.5 of the California Code of Regulations. Sufficiently related changes (within the meaning of Govt. Code Section 11346.8) and nonsubstantial changes (within the meaning of Govt. Code Section 11346.8) recommended by the hearing officer are reflected in the proposed regulation.

Amendments provided by this notice are reflected by bold double strikeout, and additions to the regulations are reflected by bold dotted underscore. The proposed "sufficiently related" changes are summarized below.

Regulation 25106.5

(c)(3) At the end of the subdivision add: "Expenses shall be assigned to their respective class of income (reserved)."

This amendment is not intended to displace any existing rule regarding assignment of expense or to contain any new substantive rule. It is placed in the regulation simply to identify the point in the sequence of the combined reporting process that assignment of expenses will occur. The word "reserved" identifies that there may be additional regulatory activity dealing with assignment of expenses at some later date.

(c)(5) Delete the reference to the interest offset and to Regulation Section 25106.5-5 of the California Code of Regulations.

(d) Delete the reference to the interest offset.

(d)(3) Delete the reference to the interest offset and to Regulation Section 25106.5-5 of the California Code of Regulations.

(d)(4) Delete the reference to the interest offset.

All other changes are nonsubstantial changes (within the meaning of Govt. Code Section 11346.8). The nonsubstantial and sufficiently related changes are being made available to the public for the 15-day period required by Government Code Section 11346.8(c) and Section 44 of Title 1 of the California Code of Regulations. Written comments regarding these changes will be accepted until 5:00 p.m. on May 8, 2000.

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. A hearing will be held by the three-member Board to consider the proposed amendments to regulations noticed in the California Regulatory Notice Register on October 1, 1999, as well as the amendments to those proposed amendments that are the subject of this notice.

A copy of the proposed amendments is being sent to all individuals who requested notification of such changes as well as those who attended the hearing and those who commented orally or in writing and will be available to other persons upon request from the agency officer named below.

All inquiries and written comments concerning this notice should be directed to Colleen Berwick (916) 845-3306, FAX (916) 845-3648, E-Mail (colleen_berwick@ftb.ca.gov), or by mail to the Legal Branch, Attn: Colleen Berwick, P.O. Box 1720, Rancho Cordova, CA 95741-1720. The notice and the proposed amendments will also be made available at the Franchise Tax Board's website at www.ftb.ca.gov.