

TITLE 18. FRANCHISE TAX BOARD
AMENDMENTS TO PROPOSED
REGULATION SECTIONS 25106.5-0, 25106.5, 25106.5-2,
25106.5-3, 25016.5-4, 25106.5-9 and 25106.5-10

A hearing was held on October 30, 1998, by Michael E. Brownell of the Franchise Tax Board Legal Staff, the "hearing officer," on proposed new Regulation Sections 25106.5-0, 25106.5, 25106.5-2, 25106.5-3, 25016.5-4, 25106.5-5 25106.5-9 and 25106.5-10, which were noticed in the California Regulatory Notice Register on September 11, 1998. 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 adopted, would provide rules for combined reporting in various circumstances.

After department staff review of the regulations and as a result of the hearing and the comments submitted, the hearing officer recommends that certain amendments to the proposed regulations be made for purposes of clarity, to insert language regarding effective dates, and to correct typographical errors. The changes in this notice affect proposed Regulation Sections 25106.5-0, 25106.5-1, 25106.5-2, 25106.5-3, 25106.5-4, 25106.5-9 and 25106.5-10. Nonsubstantial changes (within the meaning of Govt. Code Section 11346.8) and sufficiently related changes (within the meaning of Govt. Code Section 11346.8) recommended by the hearing officer are reflected in the attachment hereto. Deletions to the indicated regulations are reflected by strike-out, and additions to the regulations are reflected by underscore. The proposed "sufficiently related" changes are summarized below.

Regulation 25106.5

- (b)(12) At the end of the subdivision add: "A principal member need not be a taxpayer member."
- (b)(14) In lieu of the word "corporation" insert "taxpayer member."
- (c)(6) In lieu of the phrase "the combined reporting group" insert "each of the taxpayer members of the group."
- (c)(6) In lieu of the phrase "the group's" insert the "each taxpayer member's."
- (c)(6)(B)3. In lieu of "25135 and" insert "25134-"
- (c)(6)(B)3. At the end of the subdivision add: "Except as otherwise provided, in the application of Section 25136 and sales factor provisions in Section 25137 (and the regulations respectively thereunder), for purposes of determining values in the numerator of the sales factor, the term

"taxpayer" refers to the specific member of the group which was entitled to receive the proceeds of the sale."

(e)(3) In lieu of the phrase "related to the creditable activity" insert the phrase "or conducted the activity described in the applicable credit provision."

(f) In lieu of the sentence "This regulation shall apply to income years beginning on or after January 1, 1999." Insert the following:

" Except for subsection (c)(6) (and references to that subsection in other subsections of this regulation), this regulation shall apply to income years open to adjustment under applicable statutes of limitation. Except for taxpayers which are members of a combined reporting group required to fiscalize their income, subsection (c)(6) shall apply to income years beginning on or after January 1, 1999. For taxpayers which are members of a combined reporting group required to fiscalize the income of its members to the accounting period of the principal member, subsection (c)(6) shall apply to principal member accounting periods beginning on or after January 1, 1999. Combined reporting groups required to fiscalize the income of its members for income years beginning before January 1, 1999, may not designate a new principal member with a substantial purpose of avoiding application of subsection (c)(6)."

Regulation 25106.5-2

Add new subsection (h) to read:

"This regulation shall apply to all income years open to adjustment under applicable statutes of limitation, except that the application of subsection 25106.5(c)(6) of the California Code of Regulations shall not apply. In lieu thereof, the gains and losses described by this regulation shall be apportioned to the taxpayer members of the combined reporting group in a manner consistent with the opinions of the Appeal of Finnigan (Cal. St. Bd. of Equalization, August 25, 1988, 88-SBE-022, modif. by Opin. on Pet. Rehg., January 24, 1990, 88-SBE-022-A) and the Appeal of NutraSweet (Cal. St. Bd. of Equal., October 29, 1992, 92-SBE-024) (see FTB Notice 90-3, June 8, 1990)."

Regulation 25106.5-3

(b)(3) In lieu of the word "taxpayer" insert "the members of the combined reporting group (as determined)."

Regulation 25106.5-9

(c)(2) In lieu of the word "taxpayer's" insert "member's."

The nonsubstantive 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 December 10, 1998.

Government Code § 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 on December 15, 1998 to consider the proposed regulations noticed in the California Regulatory Notice Register on September 11, 1998, as well as the amendments to those proposed regulations 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 comment 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 Beverly Moore (916) 845-3354, FAX (916) 845-3648, E-Mail (bev_moore@ftb.ca.gov), or by mail to the Legal Branch, Attn: Beverly Moore, P.O. Box 1720, Rancho Cordova, CA 95741-1720. The notice and the proposed amendments are also available at the Franchise Tax Board's website at www.ftb.ca.gov.