

TITLE 18. FRANCHISE TAX BOARD

As required by Government Code section 11346.4, this is notice that a public hearing has been scheduled at 10:00 a.m., December 1, 2006, at 9646 Butterfield Way, Town Center Golden State Room A/B, Sacramento, California, to consider the proposed amendments of California Code of Regulations, title 18, section 25110, subsection (d)(2)(F).

An employee of the Franchise Tax Board will conduct the hearing, and a report will be submitted to the three-member Franchise Tax Board for its consideration, along with a recommendation as to whether the three-member Board should hold a hearing on the proposed regulatory action. Government Code section 15702, subdivision (b), provides for consideration by the three-member Franchise Tax Board of any proposed regulatory action, if any person makes such a request in writing. If a written request is received, the three-member Franchise Tax Board will consider the proposed regulatory action prior to adoption.

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.

On August 22, 2006, the Organization For International Investment ("OFII"), pursuant to Government Code section 11340.6, filed a petition with the Franchise Tax Board to amend title 18, section 25110, and specifically subsection (d)(2)(F)(1), to exclude from the definition of "United States source income" certain types of "not effectively connected income" ("NECI").

Existing California Code of Regulations, title 18, section 25110, subsection (d)(2)(F)(1), defines United States income to mean the income of a foreign corporation that is effectively connected, or treated as effectively connected under the provisions of the Internal Revenue Code, with a United States trade or business (ECI) and the United States source income which is NECI if such income is considered business income under Revenue and Taxation Code section 25120 and the regulations thereunder. After a review, the Franchise Tax Board concluded that treating NECI as United States source income for water's-edge purposes was inconsistent with the legislative history of Revenue and Taxation Code section 25110.

In addition, a technical amendment is proposed to reference a Treasury regulation that details how expenses related to effectively connected income are to be determined.

Accordingly, at the September 20, 2006, meeting of the Franchise Tax Board it was determined that proposed amendments to California Code of Regulations, title 18, section 25110, consistent with those proposed in the petition filed by OFII, should be noticed for public hearing pursuant to the Administrative Procedures Act.

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., December 1, 2006. 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 AND REFERENCE

Revenue and Taxation Code section 19503 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 25110(d) of the Revenue and Taxation Code.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The proposed amendments to the existing regulation, California Code of Regulations, title 18, section 25110, subsection (d)(2)(F), will prescribe the extent to which United States income of a foreign corporation is to be included in a water's-edge combined report in a manner that is consistent with the legislative intent of the underlying statute.

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.

Significant statewide adverse economic impact directly affecting 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: None. Based upon a recent analysis of the applicable statutes by the Franchise Tax Board's staff, they represent the practice that will be employed by the department on a forward-going basis, even in the absence of the amendments.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Franchise Tax Board has prepared an initial statement of the reasons for the proposed regulatory action. The express terms of the proposed regulatory action, the initial statement of the reasons for the regulatory action, and all the information upon which the proposed regulatory action is based are available upon request from the agency officer named below. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board's website at <http://www.ftb.ca.gov>.

CHANGE OR MODIFICATION OF ACTIONS

The Franchise Tax Board may adopt the proposed regulatory action after consideration of any comments received during the comment period. Government Code section 15702, subdivision (b), provides for consideration by the three-member Board of any proposed regulatory action, if any person makes such a request. If a request is received, the three-member Board will consider the proposed regulatory action prior to adoption.

The regulations and amendments may also be adopted with modifications if the changes are nonsubstantive or the resulting regulations are sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulations as modified could result from that originally proposed. The text of the regulations as modified will be made available to the public at least 15 days prior to the date on which the regulations are adopted. Requests for copies of any modified regulations 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, including sign language should contact the 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 Franchise Tax Board, Legal Department, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Telephone (916) 845-3306; Fax (916) 845-3648; E-Mail: colleen.berwick@ftb.ca.gov. In addition, all questions on the substance of the proposed regulation can be directed to Ben Miller at Telephone (916) 845-3320. This notice, the initial statement of reasons and express terms of the proposed regulations are also available at the Franchise Tax Board's website at www.ftb.ca.gov.