

TITLE 18. FRANCHISE TAX BOARD

As required by Section 11346.4 of the Government Code, this is notice of intention to adopt amendments to California Code of Regulations, title 18, sections 25130 and 25137, subsection (b)(1), pertaining to special rules for the property factor. There will not be a public hearing unless requested by an interested person at least 15 days before the close of the written comment period. Any request for a public hearing should be submitted to the agency officer named below.

This is an amendment to an existing regulation, California Code of Regulations, title 18, section 25137, subsection (b)(1), providing special rules for the property factor, with these amendments specifically addressing how rent shall be determined for interests in timber, oil, gas and hard minerals located on the property of someone other than the taxpayer. The amendments would codify current administrative practice, as set forth in Franchise Tax Board Legal Ruling 97-2, December 17, 1997, with certain modifications. The amendments also provide definitions of words and phrases used in the regulation.

Additionally, the amendments to California Code of Regulations, title 18, section 25130, are made because of and to coordinate with the amendments to California Code of Regulations, title 18, section 25137, subsection (b)(1).

Minor stylistic changes have been made to both sections and headings have been added to California Code of Regulations, title 18, section 25137, subsection (b)(1).

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., November 8, 2004. 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).

The proposed regulatory action interprets, implements, and makes specific sections 25130 and 25137 of the Revenue and Taxation Code.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The amendments provide for treating royalty and other payments made for timber, oil, gas and hard mineral interests located on the property of someone other than the taxpayer as rent for property factor purposes. The amendments reflect the Franchise Tax Board's current administrative practice, as set forth in Legal Ruling 97-2, that such payments constitute fair rental values and provide appropriate property factor representation for the assets at issue.

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: The Franchise Tax Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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. The regulations are generally utilized by large multinational corporations and not small businesses.

Significant effect on housing costs: none

CONSIDERATION OF ALTERNATIVES

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

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 proposed regulatory action may be adopted after consideration of any comments received during the comment period.

The regulation may also be adopted with modifications if the changes are nonsubstantive or the resulting regulation is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation as modified could result from that originally proposed. The text of the regulation as modified will be made available to the public at least 15 days prior to the date on which the regulation is adopted. Requests for copies of any modified regulations should be sent to the attention of the agency officer named below.

ADDITIONAL COMMENTS

If a hearing is held, the hearing room will be accessible to persons with physical disabilities. Also, any person who is in need of a language interpreter, including sign language, should contact the agency 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 the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306; Fax: (916) 845-3648; E-Mail: colleen.berwick@ftb.ca.gov, or the designated backup, Doug Powers, Tel.: (916) 845-4962; Fax: (916) 845-3648; E-Mail: doug.powers@ftb.ca.gov. In addition, all questions on the substance of the proposed regulation can be directed to Karen D. Smith, Tel.: (916) 845-3347; Fax: (916) 843-6016; E-Mail: karen.smith@ftb.ca.gov. This notice, the initial statement of reasons, and the express terms of the proposed regulations are also available at the Franchise Tax Board's website at www.ftb.ca.gov.