

## **25136-2 -- Summary of July 8, 2014 Interested Parties Meeting**

### **Issues Summary**

- (1) What is the definition of the term "marketable securities" as it appears in California Revenue and Taxation Code (RTC) Section 25136(a)(2)?
- (2) What are the rules for assignment of sales of marketable securities under RTC Section 25136(a)(2)?
- (3) How would a taxpayer reasonably approximate assignment of a sale of a minority interest in a corporation or pass-through entity or a sale of an interest in a startup company if the taxpayer did not have available to it the factor information of the underlying corporation?
- (4) How are fees of asset management activities which are not assignable under California Code of Regulations (CCR) Section 25137-14 assigned for purposes of CCR Section 25136-2?
- (5) How are dividends assigned for purposes of CCR Section 25136-2?
- (6) How is interest assigned for purposes of CCR Section 25136-2?
- (7) How is goodwill assigned for purposes of CCR Section 25136-2?

### **Comments Summary**

#### **Issue (1)**

There were no comments on the general definition of "marketable securities." There were however comments on the definition of "marketable securities" for broker-dealer type taxpayers.

#### **Comments on issue (1)**

A commentator questioned to whom the definition applied and asked what was the definition of "principally engaged"? Several commentators suggested referring to the definition of a securities dealer contained in IRC section 475. Another commentator asked whether the definition of "principally engaged" would be entity specific or would it be applied to the group.

A commentator asked whether the definition was looking at "gross receipts" or "gross income."

A staff member suggested that a RTC section 25128 approach might work.

Two commentators suggested that the definition of a securities dealer contained in Internal Revenue Code (IRC) section 475 would be preferable. One of these commentators also suggested it should be a gross receipts test and not a gross income test.

A staff member suggested that the definition may have to be more specific than the IRC section 475 definition.

## **Issue (2)**

What are the rules for assignment of sales of marketable securities under RTC Section 25136(a)(2)?

## **Comments on Issue (2)**

Staff related that a commentator who could not be present at the Interested Parties Meeting (IPM) had suggested that an example be drafted to indicate that for assignment of sales to business entities, that customer's billing address would be an acceptable method for reasonably approximating assignment of those sales. Staff also pointed out that Chief Counsel Ruling 2011-01 (dealing with the "on behalf of" amendments to CCR section 25136) provides that where it is impracticable to determine the commercial domicile of hundreds of business customers, the billing address of those customers is a reasonable proxy for the commercial domicile of those customers for purposes of assignment of sales under CCR section 25136.

## **Issue (3)**

How is the sale of an interest in a company assigned by reasonable approximation where the taxpayer may not have available the factor information of the underlying corporation or pass-through entity, such as where a taxpayer has a minority interest or an interest in a startup company?

## **Comments on Issue (3)**

In the Discussion Draft for the July 8, 2014 IPM, this language was deleted. A commentator indicated that he liked the deletion of the draft language for this issue. This same commentator complained that a taxpayer owning 26% of a corporation may have more information about the corporation whose stock is being sold than a taxpayer owning 10% of a corporation, and as a result two different results could occur: the taxpayer owning 26% of a corporation would follow the sale of stock rules but the taxpayer owning 10% of a corporation would follow reasonable approximation rules to assign the sales. A staff member stated that taxpayers should do the best they can with the information they have and that the statute requires location of the use and a special carve-out rule for marketable securities. Another commentator wanted a throw-out rule

as an alternative for the sale of stock assignment rules. Staff advised that throw-out was not compatible with a market based sourcing rules and in any event there was no authority for a throw-out rule.

**Issue (4)**

How are fees of asset management activities which are not assignable under CCR Section 25137-14 assigned for purposes of CCR Section 25136-2?

**Comments on issue (4)**

No comments were received.

**Issue (5)**

How are dividends assigned for purposes of CCR Section 25136-2?

**Comments on issue (5)**

No comments were received.

**Issue (6)**

How is interest assigned for purposes of CCR Section 25136-2?

**Comments on issue (6)**

Two commentators suggested that incorporation of the assignment of interest rules under the receipts factor provisions under 25137-4.2 might be too broad. They suggested that it would be a good idea to incorporate only specific parts of those assignment rules.

**Issue (7)**

How is goodwill assigned for purposes of CCR Section 25136-2?

**Comments on issue (7)**

One commentator asked how goodwill was proposed to be assigned. Staff responded that it would follow the sale of stock rules.