

TITLE 18. FRANCHISE TAX BOARD

[Notice published August 7th, 2015]

NOTICE OF PROPOSED RULEMAKING

The Franchise Tax Board ("Board") proposes to adopt proposed amendments to a regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on September 22, 2015 at the Franchise Tax Board Golden State Room A and B, 9646 Butterfield Way, Sacramento, CA 95827. The auditorium is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

In addition, Government Code section 15702, subdivision (b) provides for consideration by the Board of any proposed regulatory action if any person makes such request in writing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916)843-2114 or by email to Melissa.Williams@ftb.ca.gov. The written comment period closes at **5:00 p.m. on September 22, 2015**. The Board will consider only comments received at the Board offices by that time. Submit comments to:

Melissa Williams, Tax Counsel IV
Legal Division MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720

AUTHORITY AND REFERENCE

Revenue and Taxation Code ("RTC") section 25136(b) authorizes the Board to adopt these proposed amendments to the regulation. The proposed amendments to the regulation implement, interpret, and make specific provisions in RTC section 25136-2 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific the market based rules for assigning sales from services and sales from intangible property.

The purpose of proposed amendments to Code of Regulations, Title 18, ("CCR") section 25136-2 is to instruct multistate taxpayers on how to assign sales of other than sales of tangible personal property based on the location of the taxpayer's market. The proposed amendments to the regulation will achieve the purpose of defining and making specific provisions in RTC section 25136 by providing definitions, guidelines, and examples relating to marketable securities, asset management fees, dividends, goodwill, and interest.

Specifically, the proposed amendments will accomplish the following. Subdivision (a)(2) of RTC section 25136 provides that "Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state." However, CCR section 25136-2 does not currently provide a definition of "marketable securities." Second, CCR section 25136-2 does not address how to assign the sales of marketable securities; in other words, there are no provisions on how to determine whether a customer is in this state. Third, CCR section 25136-2 does not address how to assign asset management fees for those taxpayers who do not come under the provisions of CCR, section 25137-14 for mutual fund service providers. Fourth, CCR section 25136-2 does not address assignment rules for receipts such as interest, dividends, and goodwill. Finally, the proposed amendments to the regulation address a number of non-substantive clean-up issues.

Anticipated Benefits of the Proposed Regulation:

The broad objective of the proposed amendments to this regulation is to ensure that taxpayers, their representatives, and the state of California have guidance on how to assign certain sales from services and sales from intangible property. The specific benefits anticipated from the proposed amendments to the regulation is the providing of definitions guidelines, and examples relating to marketable securities, asset management fees, dividends, goodwill and interest.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Board has determined that these proposed amendments to this regulation are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that concern the sales of other than sales of tangible personal property.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

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 in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business. The proposed amendments will have no impact on a private person. The Franchise Tax Board has no reason to believe that the proposed amendments will increase or decrease the cost of doing business in the State of California because the regulation is already in place, and the proposed modifications will assist businesses by providing clarity that does not currently exist in connection with how to assign sales from services and sales from intangible property. The proposed regulation amends current regulations and clarifies existing Franchise Tax Board practices for sales from services and sales from intangible property. Providing clearer administrative guidance may reduce the cost of taxpayer compliance but is not expected to result in any additional costs. Based on the analysis above, the 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.

Statewide adverse economic impact directly affecting businesses and individuals: The proposed amendments will have no impact on individuals. This regulation applies only to large multistate businesses, those that do business within and without the state of California. Although the proposed amendments will directly affect businesses that do business within and without the state California, the Board concludes that the adverse economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Board concludes that (1) the regulation impacts taxpayers who apportion sales from services and sales from intangible property, (2) there is no expected impact on the creation, elimination or expansion in the number of businesses within California or on the creation or elimination of jobs within California as a result of the proposed amendments, (3) the proposed amendments to the regulation clarify existing Board practices for sales from services and sales from intangible property which may reduce the cost of taxpayer compliance but is not expected to result in any additional costs, (5) as a result, the amendments facilitate tax administration, and (6) there is no expected impact to the health and welfare of California residents, worker safety, and the state's environment.

Benefits of the Proposed Action: The proposed amendments will benefit taxpayers, tax practitioners, and the state of California by providing clarity that does not currently exist in

connection with how to assign sales from services and sales from intangible property. The benefits are the result of goals developed by the Board based on broad statutory authority. There are no benefits of the proposed amendments to the health and welfare of California residents, worker safety and the state's environment.

Small Business Determination: The Board has determined that the proposed amendments to the regulation do not affect small businesses. Entities that are required to apportion their income and use this regulation for determining how to assign their sales from services and sales from intangible property are large multistate businesses that do business both within the state of California and outside the state of California.

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 the attention of the Board 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 action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Melissa Williams, Tax Counsel IV

Legal Division MS A260

Franchise Tax Board

P.O. Box 1720

Rancho Cordova, CA 95741-1720

Telephone: (916) 845-7831; Facsimile (916) 843-2114

The backup contact person for these inquiries is:

Teresa Bush-Chavey

Legal Division MS A260

Franchise Tax Board

P.O. Box 1720

Rancho Cordova, CA 95741-1720

Telephone: (916) 845-7847; Facsimile: (916) 855-5525

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Bush-Chavey at the above address or send the request by email to teresa.bushchavey@ftb.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies can be obtained on the Franchise Tax Board's website at ftb.ca.gov or by contacting Teresa Bush-Chavey at the address, phone number or email address listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Copies of the modifications will be published on the Franchise Tax Board's website at ftb.ca.gov and mailed to anyone that has expressed an interest in receiving the modification information. Please send requests for copies of any modified regulations to the attention of Teresa Bush-Chavey at the address or email address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be published on the Franchise Tax Board's website at www.ftb.ca.gov and may also be obtained by contacting Ms. Bush-Chavey at the above address or email address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at www.ftb.ca.gov.