

TITLE 18. FRANCHISE TAX BOARD

As required by section 11346.4 of the Government Code, this is notice that a public hearing has been scheduled to be held at 10:00 a.m., on January 13, 2010, at Franchise Tax Board, 9646 Butterfield Way, Town Center, Golden State Room A, Sacramento, California, to consider amendments to Regulation section 25137-7 and adoption of Regulation section 25101.3 under Title 18 of the California Code of Regulations.

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.

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.

WRITTEN COMMENT PERIOD

Any interested persons or their representatives may submit written comments to the agency officer named below. Written comments will be accepted until 5:00 p.m. January 13, 2010. The Franchise Tax Board will consider all relevant matters presented before the proposed regulatory action is taken.

AUTHORITY AND REFERENCE

Revenue and Taxation Code section 19503 authorizes the Franchise Tax Board to prescribe regulations necessary to implement, interpret and make specific 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 makes necessary amendments to Regulation section 25137-7 and would adopt Regulation section 25101.3.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The proposed amendment to Regulation section 25137-7 and adoption of new Regulation section 25101.3 would clarify that air transportation companies conducting business inside California and outside California will group aircraft by model, rather than by type as currently required, to determine the payroll, sales and property factors used to apportion income.

Regulation section 25137-7

Current Regulation section 25137-7 requires aircraft of an air transportation company to be grouped by enumerated types of aircraft when determining the payroll factor and the sales factor of the apportionment formula. The type grouping is based on aircraft power plant and, in some cases, the aircraft model. (Cal. Code Regs., tit. 18, § 25137-7, sub. (e).)

Proposed amendments to Regulation section 25137-7 would change aircraft groupings for the payroll factor and sales factor to aircraft model. Aircraft model groupings would be based on the manufacturer's designation system. Examples of groupings are included in the proposed amendments.

New Regulation section 25101.3

Proposed Regulation section 25101.3 would require grouping aircraft by model to determine the property factor of the apportionment formula. The State Board of Equalization ruled in the unpublished *Appeal of Alaska Airlines* (February 28, 2007) decision that Revenue and Taxation Code section 25101.3 does not require taxpayers to group aircraft for calculating the property factor. The proposed new regulation would require air transportation companies that conduct business both inside California and outside California to group aircraft by model when calculating the property factor. This is consistent with proposed regulatory amendments that would require grouping aircraft by model for the payroll factor and sales factor. Examples of groupings by model are included in the proposed new regulation.

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.

The Franchise Tax Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost impacts on a representative private person or business: 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.

Effect on the creation or elimination of jobs in the state: None.

Effect on the creation of new businesses or elimination of existing businesses within the state: None.

Effect on the expansion of businesses currently doing business within the state: None.

Significant effect on housing costs: None.

Effect on small business: These regulations do not impact small businesses because they impact large multinational taxpayers.

CONSIDERATION OF ALTERNATIVES

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

The proposed regulatory action pertains to corporate taxpayers and therefore does not affect private persons.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS TO AND ADOPTION OF THE REGULATIONS

The Franchise Tax Board has prepared an initial statement of 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 officer named below.

CHANGE OR MODIFICATION OF ACTIONS

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

The amendments to the regulations 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 amendments to the regulations are adopted. Requests for copies of any modified regulations should be sent to the attention of the agency officer named below.

AVAILABILITY OF FINAL STATEMENT OF REASONS

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/>.

ADDITIONAL COMMENTS

If you plan to attend or make an oral presentation at the regulation hearing, please contact the agency officer named below.

The hearing room will be accessible to persons with physical disabilities. Any person needing a language interpreter, including sign language, should contact the agency officer named below at least two weeks prior to any scheduled hearing so that the services of an interpreter can be arranged.

CONTACT

All inquiries concerning this notice or any request for a public hearing should be directed to Colleen Berwick at the Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306 Fax: (916) 845-3648; E-Mail:

colleen.berwick@ftb.ca.gov. In addition, all questions on the substance of the proposed amendment to the existing regulations and adoption of the proposed new regulation section should be directed to Brian Miller, Tax Counsel III, Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3075; Fax: (916) 843-6023; E-Mail: brian.miller@ftb.ca.gov. The notice, initial statement of reasons and express terms of the regulation are also available at the Franchise Tax Board's website at www.ftb.ca.gov.