

**FINAL STATEMENT OF REASONS  
PROPOSED AMENDMENTS TO REGULATION SECTION 25136-2, RELATING TO SALES OTHER  
THAN SALES OF TANGIBLE PERSONAL PROPERTY**

**UPDATE OF INITIAL STATEMENT OF REASONS**

The Notice of Proposed Rulemaking was mailed and published in the California Notice Register on September 13, 2024, as required by Government Code section 11346.4. Twenty-four (24) comments were received during the period the proposed regulatory text was available to the public during the written comment period from September 13, 2024 through October 31, 2024, including comments to request a public hearing. These comments are summarized and addressed below. After considering the comments received by the close of the written comment period, the proposed regulatory text was revised and noticed to the public in a 15-day Notice of Modifications to Text and Notice of Public Hearing, on January 6, 2025, as detailed below. The public hearing was held on January 30, 2025. Eighteen (18) comments were received at the hearing and during the period the proposed regulatory text was available to the public during the written comment period from January 6, 2025 through February 5, 2025. These comments are summarized and addressed below. After considering the comments received by the close of the first modified text written comment period, the proposed regulatory text was revised again and was published with a 15-day Second Notice of Modifications to Text on May 20, 2025. One (1) comment was received during the period the proposed regulatory text was available to the public during the second modified text notice period from May 20, 2025 to June 5, 2025. Following the close of the second modified text written comment period, five nonsubstantive edits were made to the proposed regulatory text to correct minor grammatical and formatting errors and are detailed below.

**COMMENTS RECEIVED AFTER NOTICE OF PROPOSED RULEMAKING DURING WRITTEN  
COMMENT PERIOD SEPTEMBER 13, 2024 THROUGH OCTOBER 31, 2024**

**Comment 1:** A commenter asked to confirm that the proposed language does not allow an election to apply the rules to previous tax years.

**Reject:** FTB responded to the commenter confirming that there is no election to apply the rules to previous tax years. No textual edits were made in response to this comment.

**Comment 2:** Multiple commenters stated Example 3 in subsection (c)(3) should be removed from the proposed regulation text.

**Accept:** Example 3 in subsection (c)(3) was removed. Example 3 was inadvertently included in the proposed text, but should have been removed in accordance with the reasons provided in the Initial Statement of Reasons.

**Comment 3:** A commenter requested a copy of proposed regulation text.

**Reject:** FTB responded to the commenter providing the requested regulation text. No textual edits were made in response to this comment.

**Comment 4:** Multiple commenters asked whether there will be an Interested Parties Meeting or a public hearing on the proposed changes to the regulation and whether the public hearing information will be provided on the FTB website.

**Reject:** FTB responded to the commenters by providing them with updates on the hearing. FTB held a public hearing on January 30, 2025 in accordance with Gov. Code section 11346.8. Notice of public hearing was updated on FTB's website once the hearing was scheduled and each commenter was separately provided notice of the public hearing. No textual edits were made in response to this comment.

**Comment 5:** Multiple commenters requested an extension on the comment period for the proposed regulation.

**Reject:** These comments were rejected because FTB did not extend the original 45-day comment period. FTB provided an opportunity for the public to provide input at the public hearing and provided additional comment periods with each notice of modified text.

**Comment 6:** Several commenters made requests for a public hearing.

**Reject:** FTB noticed and held a public hearing on January 30, 2025 in accordance with Gov. Code section 11346.8. No textual edits were made in response to this comment.

**Comment 7:** A commenter stated that in some instances, application of the proposed amendments to Regulation 25136-2 could violate the Constitution by including business that did not purposely avail themselves of the California market, but had sufficient sales assigned under 25136-2 to satisfy factor-presence, or where the results do not fairly represent the extent of business activities in California.

**Reject:** The proposed amendments are mostly clarifying and do not violate the Constitution. No textual edits were made in response to this comment.

**Comment 8:** A commenter suggested replacing the word "customer" with "purchaser" throughout the proposed regulation to be consistent with the statute.

**Reject:** The use of the word "customer" is not inconsistent with the statute. Other than where specifically prescribed, the terms "customer" and "purchaser" are used interchangeably throughout the proposed regulation to promote readability and appropriate use of grammar and sentence structure. No textual edits were made in response to this comment.

**Comment 9:** A commenter suggested retaining the billing address assignment rule for services to individuals at Regulation 25136-2(c)(1), and to use the billing address rule more liberally throughout the proposed regulation.

**Reject:** The rules were simplified into one set of rules for individuals and businesses in the proposed regulation in order to accurately assign receipts based on where the purchaser of the service received the benefit of the service. No textual edits were made in response to this comment.

**Comment 10:** A commenter stated that other professional service providers described in North American Industry Classification System (NAICS) 54 should be able to use the professional services rule in the proposed regulation at subsection (c)(3).

**Reject:** The proposed definition of “professional services” was intended to be limited to the specific service providers that have been identified as having significant numbers of customers, which was based on industry input and FTB staff’s observation. No textual edits were made in response to this comment.

**Comment 11:** A commenter stated that requiring 250 customers under the proposed regulation at subsection (c)(3) is arbitrary and excludes small businesses that need the simplicity of a billing address method.

**Reject:** Requiring 250 customers is a reasonable standard which balances making the rule administrable for taxpayers with large customer bases with assigning the sales accurately based on the location where the benefit of the is received. No textual edits were made in response to this comment.

**Comment 12:** A commenter stated that there is no guidance on how to determine if a service “predominately relates” to tangible personal property, intangible property, or an individual under the proposed regulation at subsection (c)(1)(A)1.

**Reject:** The phrase “predominantly relates” appears to be clear and administrable in most instances, with many of the examples in proposed regulation at subsection (c)(1)(G) helping to illustrate the rule. No textual edits were made in response to this comment.

**Comment 13:** A commenter stated the proposed regulation at subsection (d)(1)(A) change from “is used in this state at the time of the sale” to “will be used by the purchaser” fails to reflect the statute and imposes difficult standards upon taxpayers to know how unrelated purchasers will use the property at an unspecified time in the future. The commenter suggests retaining original language or further guidance on determining where a purchaser will use the property in the future, and for how long a taxpayer must monitor the purchaser’s use of the property.

**Reject:** The language in proposed regulation at subsection (d)(1)(A) clarifies that the relevant consideration in determining the location of the use of the intangible property is to look to the use by the purchaser. The current regulation’s reference to “the use of the intangible property by the purchaser” is now reflected in the first sentence of the proposed regulation to clearly show that the use is by the purchaser. The change from “is used” to “will be used by the purchaser” was made to be more grammatically correct and to clearly reflect that for subsection (d)(1)(A) to apply, you look to the contract, or taxpayer’s books and records, at

the time of the sale to determine the use by the purchaser for the year at issue. No textual edits were made in response to this comment.

**Comment 14:** Several commenters stated that the applicability date should be changed to January 1, 2025 or January 1, 2026.

**Accept:** In response to the comments by interested parties received during the written comment period and at the public hearing requesting a prospective applicability date, the proposed regulation was modified to reflect an applicability date of January 1, 2025.

**Comment 15:** A commenter stated that all taxpayers should be permitted to apply the proposed regulation retroactively to all open years since it presumably reflects the statutory purpose of market-based sourcing better than the existing regulation.

**Reject:** The proposed regulation's clarifying changes are prospective only unless specifically stated to have retroactive effect. Making the proposed regulation changes prospective only was based on interested party input. No textual edits were made in response to this comment.

**Comment 16:** A commenter stated that staff should re-request permission of the Board before proceeding any further with the proposed regulation. Since the Board approved the formal regulatory process in 2021, FTB issued Legal Ruling 2022-01 which revoked Chief Counsel Rulings 2015-03 and 2017-01 and was not considered by the Board.

**Reject:** A legal ruling that revokes a chief counsel ruling does not require the Board's re-review of the proposed regulation because the current language is substantially similar to the language approved by the Board in 2021. No textual edits were made in response to this comment.

**Comment 17:** A commenter stated that the definition of "professional services" in the proposed regulation at subsection (c)(3) should be expanded to use inclusive rather than exclusive language which includes "other similar services" to investment advisory services and services related to the underwriting of debt or equity securities.

**Reject:** The proposed definition of "professional services" was intended to be limited to the specific service providers that have been identified as having significant numbers of customers, which was based on industry input and FTB staff's observation. No textual edits were made in response to this comment.

**Comment 18:** A commenter asked to confirm whether to source an independent contractor's 1099 income from a California company to the location of the customer (the California company) under the current regulation and whether the proposed regulation would change this to look through to the location of the customer's customer.

**Reject:** A determination of where a specific customer received the benefit of the service is a fact intensive inquiry that cannot be answered based on the limited facts provided in this

comment. FTB believes the rules are clear and provide sufficient guidance to apply the rule in such circumstances. No textual edits were made in response to this comment.

**Comment 19:** A commenter stated that the proposed regulation at subsection (c)(2) should include an assignment rule for large volume asset management services whereby taxpayers with more than 100 investors and beneficial owners should be permitted on an elective basis to assign gross receipts from such services in accordance with default rule under proposed regulation at subsection (c)(1).

**Reject:** The proposed regulation's sourcing rule for asset managers was suggested through industry input and FTB staff's observations. After discussions with industry, including through many Interested Parties Meetings during the regulatory process, this rule most accurately determines the location where the benefit of the asset management services is received. No textual edits were made in response to this comment.

**Comment 20:** A commenter stated the proposed regulation at subsection (c)(2) should permit taxpayers to use direct tracing of asset management receipts in addition to the average value of interest method ("AVI"). The commenter states that in a number of fact patterns, the AVI method does not accurately reflect the economic realities of the market standard asset management services arrangements and imposes undue burdens on the taxpayer.

**Reject:** Based on industry input received throughout the regulatory process and FTB staff's observations, the asset management rule was drafted in this manner because using AVI to determine the location of the receipt of the benefit of the service appears to be administrable in most cases. The concerns highlighted in this comment relate to potential imprecision in the proposed regulation. While the proposed regulation strives to be precise, apportionment and assignment rules are generally a rough approximation, which must also remain administrable. No textual edits were made in response to this comment.

**Comment 21:** A commenter suggested adopting a flexible rule under which a taxpayer may elect to assign receipts to the domicile of either the aggregator or the beneficial owners of the aggregator's assets if the taxpayer can substantiate the location of domiciles of those beneficial owners.

**Reject:** The proposed regulation's sourcing rule for asset managers was suggested through industry input and FTB staff's observations. After discussions with the industry, including through many Interested Parties Meetings during the regulatory process, using the asset's investors or beneficial owners in this state to determine the location of the receipt of the benefit of the service strikes the balance of administrability and accuracy in sourcing these receipts. The concerns highlighted in this comment relate to potential imprecision in the proposed regulation. While the proposed regulation strives to be precise, apportionment and assignment rules are generally a rough approximation, which must also remain administrable and simple. No textual edits were made in response to this comment.

**Comment 22:** A commenter stated that the definition of "beneficial owner" excludes feeder funds and other entities to the extent these entities meet the definitional requirement of

having independent decision-making power to invest their assets set forth in proposed regulation subsection (b)(2). The commenter stated that exclusion of feeder funds from the definition creates additional complexities in the context of feeder funds organized in certain foreign jurisdictions and treated as corporations for U.S. federal income tax purposes.

**Reject:** The proposed regulation's definition of "beneficial owner" was suggested through industry input and FTB staff's observations. After discussions with the industry, including through many Interested Parties Meetings during the regulatory process, this definition of "beneficial owner" was developed as a clear and administrable rule covering the appropriate scope of persons making an independent decision to invest assets. No textual edits were made in response to this comment.

**Comment 23:** A commenter stated a safe harbor substantiation provision should be included in the proposed regulation to allow investment managers to gather information, through standard forms, from investors at the outset of an investment and on a set periodic basis.

**Reject:** FTB may at some point consider creating a form to assist in taxpayers' ability to obtain information through standard forms. However, FTB does not believe a safe harbor provision in the proposed regulation is necessary for taxpayers to properly apply the rules as provided. No textual edits were made in response to this comment.

**Comment 24:** A commenter asked how to access public comments and whether FTB will accept comments after the deadline.

**Reject:** The FTB responded to the commenter that public comments are included in the rulemaking file and in the Final Statement of Reasons, which are posted on the FTB's website. Relevant comments included in the rulemaking file are available for public inspection and copying pursuant to Government Code Section 11347.3. No textual edits were made in response to this comment.

#### Updates Pertaining to Notice of Modifications of Text

Following the publication of the 45-day Notice of Proposed Rulemaking, FTB made substantive and sufficiently related changes to the proposed text of the regulation which were published in the Notice of Modifications to Text and Notice of Hearing on January 6, 2025, and which are identified in the Updated Informative Digest. The reasons for the textual changes are provided below.

First, the header of the proposed regulation was modified from "in this is State" to "in This State" to remove the unnecessary word "is" and to capitalize the word "this" to properly and consistently format the heading.

Second, the reference to "under subsections (d)(1)(A)1.a. and b." in subsection (b)(5) was updated to properly reference the relevant provisions in the regulation which are now provided under "subsections (d)(1)(A)1.a. through f."

Third, the word "paragraph" in subsections (c)(1)(E) and (j)(2)(C) was changed to "subparagraph" to be consistent in the naming structure of the provisions throughout the regulation.

Fourth, the word "subdivision" in subsections (c)(2), (c)(3) and (c)(3)(A)1. was changed to "subsection" to be consistent in the naming structure of the provisions throughout the regulation.

Fifth, in response to public comments as stated above, Example 3 in subsection (c)(3)(A)3. was deleted from the proposed regulatory text. This example should have been deleted as specifically provided for in the Initial Statements of Reasons, but was inadvertently left in the proposed regulatory text.

Sixth, internal formatting edits were made to subsection (d)(1)(A)1.a. and (f)(4) to more accurately represent changes to the proposed regulatory text from the current regulation language.

Seventh, during review of the proposed subsection (d)(1)(A)1.f.iii, FTB staff discovered the proposed regulatory text inadvertently omitted the word "tax". The proposed regulatory text was modified to include the word "tax" as the provision was intended to reference the California franchise tax return and to be consistent throughout the regulation.

Eighth, the letter "(A)" was removed from before the word "Example" in subsection (e)(2) to make all singular examples formatted consistently throughout the proposed regulation.

Ninth, the word "subparagraph" in subsection (e)(3) was changed to "paragraph" in subsection (e)(3), to be consistent in the naming structure of the provisions throughout the regulation.

Tenth, in response to public comments as stated above, "subsection (f)(4)" was added to the internal reference provision in subsection (j)(2). The reference to "subsection (f)(4)" was intended to be included because it also governs the assignment of "sales of marketable securities" along with "subsections (f)(1), (2), and (3)." "Subsection (f)(4)" in the proposed regulation was renumbered and updated from the text of the current regulation at (e)(3). Therefore, the proposed regulatory text was modified to add "subsection (f)(4)" as one of the subsections governing assignment of sales of marketable securities under this applicability date provision.

Finally, in response to public comments as stated above, the applicability date in subsection (j)(3) in subsection (j)(3) was changed from January 1, 2024 to January 1, 2025 to have the proposed amendments be applicable for taxable years beginning on or after January 1, 2025.

In addition, the following nonsubstantive and sufficiently-related changes to the proposed regulatory text, which have been identified in the Updated Informative Digest were made for the following reasons:

The changes to remove the comma in subsection (c)(1)(A), to add the word "the" in subsection (c)(1)(B), to add the words "four hundred" and the parentheses in subsection (c)(1)(F)1., to replace the symbol "%" with "percent" in subsection (c)(3), and to replace the period with a comma in subsection (d)(1)(D)1. were made to correct grammatical errors. The formatting changes to remove parentheses and add periods in subsections (c)(1)(A)2., (c)(1)(B), and (c)(1)(F)9., to add the double underline formatting in subsection (c)(1)(F)2., to change the letter "S" to lowercase in subsections (c)(1)(F)4. and (c)(3)(A)2., to add or remove the extra spacing in subsections (c)(1)(F)5., (d)(1)(A)1.b., (c)(1)(A)2., (d)(1)(D)2., (d)(2)(D)8., (d)(2)(D)9., (f)(4), (g), (h), (i), (i)(1)(A), (i)(2)(C) and (j), to add the strikeout formatting in subsection (d)(1), and to add the number 2 with the strikeout formatting in subsection (f)(4) were made to correctly and consistently illustrate the changes being made to the regulation. Periods were added after the internal references contained in subsections (c)(1)(F)6., (c)(1)(F)7., (c)(1)(F)8., and (j)(2), the internal reference to "section 17007" was relocated within the same sentence in subsection (f)(1), and the word "subdivision" was replaced with the word "subsection" in subsections (c)(2) and (c)(3) to correctly use the appropriate grammar and formatting for the internal cross referencing of these subsections and do not change the meaning of the provisions.

**COMMENTS RECEIVED AFTER PUBLICATION OF NOTICE OF MODIFICATIONS TO TEXT AND NOTICE OF HEARING, AND DURING WRITTEN COMMENT PERIOD JANUARY 6, 2025 THROUGH FEBRUARY 5, 2025, INCLUDING DURING PUBLIC HEARING HELD ON JANUARY 30, 2025**

**Comment 1:** Multiple commenters expressed concern that FTB would apply the amendments to the regulation retroactively and requested clarification on whether the proposed regulation applies prospectively only, given an applicability date of January 1, 2025.

**Accept:** In response to the comments by interested parties requesting a prospective applicability date, the proposed regulation was modified to reflect an applicability date of January 1, 2026.

**Comment 2:** A commenter expressed confusion as to whether the proposed regulation's new examples at subsection (c)(1)(F)6 and 7, which appear to contemplate look through sourcing, is a clarification or a change.

**Reject:** These examples are intended to clarify the rules present in the current regulation, which assign sales from services to this state to the extent the customer of the taxpayer receives the benefit of the service in this state. No textual edits were made in response to this comment.

**Comment 3:** A commenter expressed confusion on whether the new general presumptions in the proposed regulation at subsection (c)(1)(A) - which look to whether a service predominantly relates to real property, tangible property, intangible property, or individuals - are a change in FTB's interpretation of where the benefit is received under the current regulation or is this a clarification.



**Reject:** The presumptions are intended to clarify the rules and examples present in the current regulation which assign sales from services to this state to the extent the customer of the taxpayer receives the benefit of the service in this state. No textual edits were made in response to this comment.

**Comment 4:** A commenter expressed confusion as to whether a service must fit within one of the four presumption categories in proposed regulation at subsection (c)(1)(A).

**Accept:** While it is anticipated that most services will fit within one of the four presumption categories, it is possible there may be services that do not. To help clarify, language was added to the proposed regulatory text at subsection (c)(1)(B) to indicate that it applies to all services, including those that fall under the four presumptions and those that do not. This reflects FTB's existing interpretation of the regulation that all services are subject to the rules in proposed subsections (c)(1)(B) through (c)(1)(F), as well as the examples in (c)(1)(G).

**Comment 5:** A commenter stated that the proposed regulation at subsection (c)(1)(A) does not explain when a service relates to an individual. Many clients provide services to business customers, which is not one of the four categories. The new examples at subsection (c)(1)(F) 6 and 7 involve services provided to a business, but they ultimately related to individuals that benefited from the service.

**Reject:** The phrase "predominantly relates to individuals" appears to be clear and administrable in most instances, with many of the examples in proposed regulation at subsection (c)(1)(G) helping to illustrate the rule. Examples 6 and 7 illustrate how to determine the location where the business customers receive the benefit of the service. No textual edits were made in response to this comment.

**Comment 6:** A commenter sought clarification whether the four presumptions in the proposed regulation at subsection (c)(1)(A) are only applied as part of the books and records cascading rule, or whether they are also applied at each of the other cascading rules. The commenter provided examples questioning in one example whether the four presumptions also apply to the all other sources of information rule.

**Accept:** In response to public comments expressing a desire for additional clarification, FTB made clarifying edits to the text of the proposed regulation at subsection (c)(1) to clearly indicate when the presumptions apply. These presumptions inform at each level of the cascading rules (proposed regulation subsection (c)(1)(B) through (c)(1)(F)). The proposed examples at subsections (c)(1)(G) 4. through (c)(1)(G) 8. serve to illustrate the proper application of the rules under subsections (c)(1)(A) through (c)(1)(F).

**Comment 7:** A commenter noted a concern that the changes made to the proposed regulation at subsection (j)(2) with an applicability date of January 1, 2015 creates an extreme risk for penalties.

**Accept:** In response to this comment, FTB staff reviewed the proposed regulatory text and discovered that the reference to subsection (f)(1), a newly added subsection, was not intended to be included in the January 1, 2015 applicability date provisions at (j)(2). As a result, FTB edited subsection to (j)(2) to remove the reference to subsection (f)(1).

**Comment 8:** A commenter expressed concerns about the all-or-nothing approach using ultimate destination for a logistics service example included in subsection (c)(1)(G) and suggests a mileage approach is a better reflection of the benefit received from the service.

**Reject:** This example at proposed regulation subsection (c)(1)(G)3. was promulgated in response to industry input during the regulatory process and illustrates the application of the presumption in the proposed regulations at subsection (c)(1)(A)1.b., which seeks to properly assign sales from services that predominantly relate to tangible personal property. No textual edits were made in response to this comment.

**Comment 9:** A commenter stated that the definition of “customer” in proposed regulation subsection (f)(1) includes a look-through provision which is problematic because sellers do not have this information.

**Reject:** For sales derived from marketable securities, FTB has determined that the “customer” is generally the person, without regard to intermediaries, who gains the greatest possession of economic rights in marketable securities, which is clearly reflected in the definition at proposed regulation subsection (f)(1). No textual edits were made in response to this comment.

**Comment 10:** A commenter stated that the definition of “customer” in proposed regulation subsection (f)(1) includes a “look-through provision” which is problematic because it is unclear and a consistent definition of customer for the entire regulation should be added.

**Reject:** The regulation is anticipated to be used by a multitude of taxpayers engaged in various industries. In the interest of maintaining flexibility and recognizing that not all industries share a common definition of “customer,” it is preferred to not provide a standardized definition at this time. No textual edits were made in response to this comment.

**Comment 11:** A commenter requested a copy of the rulemaking file.

**Reject:** The FTB responded to the commenter and referred their inquiry to the FTB Disclosure Office. No textual edits were made in response to this comment.

**Comment 12:** A commenter stated that they will be in attendance at the public hearing.

**Reject:** No textual edits were made in response to this comment.

**Comment 13:** A commenter requested clarification on why the retroactive provision was subsequently removed.

**Reject:** The FTB responded to the commenter that the draft language was removed based on feedback from interested parties during the IPM process against inclusion of the retroactive provision language. No textual edits were made in response to this comment.

**Comment 14:** A commenter expressed confusion about whether the “new” presumptions in subsection (c)(1)(A)1 are clarifying the application of the presumption in subsection (c)(2)(A), or whether they are intended to be new presumptions. If new, the commenter asked whether these “new” presumptions control over the books and records presumption in subsection (c)(1)(A).

**Accept:** The presumptions are intended to clarify the rules and examples present in the current regulation which assign sales from services to this state to the extent the customer of the taxpayer receives the benefit of the service in this state. In response to public comments expressing a desire for additional clarification, FTB made clarifying edits to the text of the proposed regulation at subsection (c)(1) to clearly indicate when the presumptions apply. These presumptions inform at each level of the cascading rules (proposed regulation subsection (c)(1)(B) through (c)(1)(F)). The proposed examples at subsections (c)(1)(G)4. through (c)(1)(G)8. serve to illustrate the proper application of the rules under subsections (c)(1)(A) through (c)(1)(F).

**Comment 15:** A commenter expressed confusion about how FTB determines whether a service relates to an individual.

**Reject:** The phrase “predominantly relates to individuals” appears to be clear and administrable in most instances, with many of the examples in proposed regulation at subsection (c)(1)(G) helping to illustrate the rule. Examples 6 and 7 illustrate how to determine the location where the business customers receive the benefit of the service. No textual edits were made in response to this comment.

**Comment 16:** A commenter expressed confusion on whether the presumptions in draft language inform how to apply the proposed regulatory text at each level of the cascading rules.

**Accept:** In response to public comments expressing a desire for additional clarification, FTB made clarifying edits to the text of the proposed regulation at subsection (c)(1) to clearly indicate when the presumptions apply. These presumptions inform at each level of the cascading rules (proposed regulation subsection (c)(1)(B) through (c)(1)(F)). The proposed examples at subsections (c)(1)(G)4. through (c)(1)(G)8. serve to illustrate the proper application of the rules under subsections (c)(1)(A) through (c)(1)(F).

**Comment 17:** A commenter stated that the “new” presumption regarding services “predominantly related” to individuals at proposed regulation subsection (c)(1)(A)1.d. and the various related examples contemplate “look-through sourcing,” which the commenter stated appeared to be consistent with Legal Ruling 2022-01. The commenter requested clarification on whether these provisions in the proposed regulation are changes in law or clarifications.

**Reject:** The rule in proposed regulation subsection (c)(1)(A)1.d and the related examples are intended to be a clarification of the rules present in the existing regulation. See for instance the sourcing methodology used in the "Web Corp" example in the existing regulation subsection (c)(2)(E)4. No textual edits were made in response to this comment.

**Comment 18:** A commenter stated that the term "other countries" should be used instead of "foreign jurisdiction" and "geographic area" because those terms otherwise raise numerous issues.

**Reject:** This change was made based on feedback from the public at interested parties meetings and based on FTB staff observations. Additionally, FTB believes the proposed regulation's use of "foreign jurisdiction" is clear and administrable. No textual edits were made in response to this comment.

#### Updates Pertaining to Second Notice of Modifications to Text

Following the Notice of Modifications to Text and Notice of Public Hearing, and the Public Hearing held on January 30, 2025, FTB made the following substantive and sufficiently related changes to the proposed regulatory text, which were published in the Second Notice of Modifications to Text on May 20, 2025 and which are identified in the Updated Informative Digest. The reasons for the textual changes are provided below.

First, the phrase "benefit of a service" in subsections (b)(3) and (b)(13) was changed to "benefit of the service." Upon reviewing the proposed regulation, the phrases "benefit of a service" and "benefit of the service" were used inconsistently when intended to reference the same thing and the change was made to achieve consistency and clarity throughout the regulation.

Second, the language at previous subsection (c)(1)(A) was relocated to subsection (c)(1)(B) and the language was revised to be consistent with the language used throughout subsection (c)(1). These edits provide requested clarity to the public that the presumptions at proposed subsection (c)(1)(A)1. apply before substantiating the location of the receipt of the benefit of the service using proposed subsections (c)(1)(B) through (c)(1)(F). In addition, the phrase "for any service" has been added; this addition clarifies that the rule applies to both services falling under the four presumption rules, as well as any other "service" defined in subsection (b)(11). Also, the words "of the receipt" have been added to be consistent with the language used in other parts of subsection (c)(1). The word "presumed" was replaced by the word "substantiated" to properly reflect that this rule substantiates the location of the receipt of the benefit of the service in response to public comment requesting clarity on how the four presumptions interact with the other rules within subsection (c)(1) and the relocation of the four presumptions to proposed subsection (c)(1)(A).

Third, the phrase "the location of the receipt of the" in subsection (c)(1)(A)1., was added for clarity and to be consistent with the language of subsection (c)(1). In addition, the phrase "kept in the normal course of business" was added and the term "any" was replaced with "all" in subsection (c)(1)(A)2. This newly proposed language provides clarity and prevents

confusion by using language consistent with the language used in the other subsections. Lastly, the term "used" was removed for clarity in subsection (c)(1)(A)2.

Fourth, the rule previously at subsection (c)(1)(B) was relocated to subsection (c)(1)(C). This rule was relocated because the contracts or books and records language previously at subsection (c)(1)(A) was relocated to subsection (c)(1)(B) to provide clarity that the four presumption rules apply before substantiating the location of the receipt of the benefit of the service, as detailed above. As a result, all the rules following it in subsection (c)(1) were renumbered. Further, in response to public comments requesting more clarity around this rule's interaction with the four presumption rules discussed above and the inclusion of the four presumption rules in proposed subsection (c)(1)(A), the phrase: "service falls under one of the presumptions in subsection (c)(1)(A)(1), or if the presumption in subsection (c)(1)(A)(1), has been overcome, and the" was removed. This deletion clarifies that the rule applies to both services falling under the four presumption rules, as well as any other "service" defined in subsection (b)(11). Also, the words "of the receipt" was added to be consistent with the language used in other parts of subsection (c)(1). Lastly, the phrase "using the taxpayer's contracts or books and records" was replaced with "pursuant to subsection (c)(1)(B)" to use consistent language with the rules in proposed subsections (c)(1)(C) through (c)(1)(F) while retaining the same meaning.

Fifth, the reasonable approximation rule previously at subsection (c)(1)(C) was relocated to subsection (c)(1)(D). This rule was relocated because the contracts or books and records language previously at subsection (c)(1)(A) was relocated to subsection (c)(1)(B) to provide clarity that the four presumption rules apply before substantiating the location of the receipt of the benefit of the service, as detailed above. As a result, all the rules following it in subsection (c)(1) were renumbered. Also, the phrase "of the receipt" was added to be consistent with the language used in other parts of subsection (c)(1). Lastly, the internal references to subsections (c)(1)(A) and (B) were updated to use the newly renumbered subsections for those rules, subsections (c)(1)(B) and (C), respectively.

Sixth, the customer's billing address rule previously at subsection (c)(1)(D) was relocated to subsection (c)(1)(E). This rule was relocated because the contracts or books and records language previously at subsection (c)(1)(A) was relocated to subsection (c)(1)(B) to provide clarity that the four presumption rules apply before substantiating the location of the receipt of the benefit of the service, as detailed above. As a result, all the rules following it in subsection (c)(1) were renumbered. Also, the phrase "of the receipt" was added to be consistent with the language used in other parts of subsection (c)(1). Lastly, the internal references to subsections (c)(1)(A), (B), and (C) were updated to use the newly renumbered subsections for those rules, subsections (c)(1)(B), (C) and (D), respectively.

Seventh, the U.S. government contracts rule previously at subsection (c)(1)(E) was relocated to subsection (c)(1)(F). This rule was relocated because the contracts or books and records language previously at subsection (c)(1)(A) was relocated to subsection (c)(1)(B) to provide clarity that the four presumption rules apply before substantiating the location of the receipt of the benefit of the service, as detailed above. As a result, all the rules following it in subsection (c)(1) were renumbered. Also, the term "sale" was revised to "location of the receipt of the benefit of the service" to avoid confusion and to be consistent with the language used in other parts of subsection (c)(1). The phrase "assigned pursuant to the

method and substantiation rules under" has been replaced with the clarifying phrase "determined pursuant to" to use consistent language with the rules in subsections (c)(1)(C) through (c)(1)(E) while retaining the same meaning. Lastly, the internal references to subsections (c)(1)(A), (B), or (C), and subparagraph (D) were updated to use the newly renumbered subsections for those rules, "subsections (c)(1)(B), (C), or (D), and "subparagraph (E), respectively.

In addition, the examples previously at subsection (c)(1)(F) were relocated to subsection (c)(1)(G). These examples were relocated because the language previously at subsection (c)(1)(A) was relocated to proposed subsection (c)(1)(B) to provide clarity that the four presumption rules apply before substantiating the location of the receipt of the benefit of the service, as detailed above. As a result, all the rules following it in subsection (c)(1) were renumbered. Minor edits were made to this subsection to use consistent language, add additional clarifying language, and to provide accurate titles for the examples, as detailed below.

In Examples 1 and 2, at subsections (c)(1)(G)1. and (c)(1)(G)2., the phrase "under the presumption at subsection (c)(1)(A)1.a." was added to clarify that the presumption is being applied in this example. Further, the word "predominantly" was added to use consistent language with proposed subsection (c)(1)(A)1., while retaining the same meaning.

Example 3 at subsection (c)(1)(G)3., which was formerly Example 4, previously located at subsection (c)(1)(F)4. was relocated because, like Examples 1 and 2, it only addressed the four presumption rules; in contrast, all the other later examples appearing in subsection (c)(1)(G) address both the presumption rules and the rules at subsections (c)(1)(B) through (c)(1)(F). This reordering will provide more clarity to the public on the scope of each example. Next, subsection (c)(1)(G)3. was revised to provide additional clarity by maintaining consistency in language throughout the example: the term "benefit" was changed to "fees," the phrase "warehousing, repackaging and other" was added and the phrase "fees for the" was added. The phrase "under the presumption at subsection (c)(1)(A)1.b." was also added to clarify that the presumption is being applied in this example. Also, to provide clarity and consistency with the language in other examples, the phrase "are assigned to" was replaced with "is received in." Lastly, the word "predominantly" was added to use consistent language with proposed subsection (c)(1)(A)1., while retaining the same meaning.

Example 4 at proposed subsection (c)(1)(G)4., which was formerly Example 3, previously located at subsection (c)(1)(F)3. was revised to add the phrase "and Contracts or Books and Records, subsection (c)(1)(B)." to the example title to signify that the example illustrates one of the presumptions and the contracts or books and records rule at subsection (c)(1)(B). Next, the sentence "The taxpayer's books and records kept in the normal course of business provide the location where the tank is delivered." was moved from the fifth sentence to the seventh sentence to make the example easier to understand and the phrase "The taxpayer's" was changed to "Contractor Corp's" to use consistent language throughout the example. In the sixth sentence, the word "predominantly" was added to use consistent language with subsection (c)(1)(A)1., while retaining the same meaning. In the eighth sentence, the phrase "As such, under subsection (c)(1)(B)" replaced "Furthermore" to clarify that subsection (c)(1)(B) is applied to reach this conclusion. In that same sentence, the phrases "the receipt of" and "of the service" were added to be consistent with the language

of subsection (c)(1). Lastly, in the final sentence, the language was revised to add the phrase "benefit of the" was added before the word "service, to replace the phrase "is received by" with "receipt from," to replace the word "in" with "into Contractor Corp is assigned to," to replace the word "where" with "because," and to remove the phrase "to the foreign geographic area" from the last sentence to be more clear and use consistent terms with the rest of subsection (c)(1) without changing the meaning.

In Example 5, at subsection (c)(1)(G)5., the phrase "and Contracts or Books and Records, subsection (c)(1)(B)." was added to the example title to signify that the example illustrates one of the presumptions and the contracts or books and records rule at subsection (c)(1)(B). The phrase "receipt of the" was added to two sentences to be consistent with the language of subsection (c)(1). Further, the word "predominantly" was added to use consistent language with proposed subsection (c)(1)(A)1., while retaining the same meaning. Finally, the phrase "under subsection (c)(1)(B)," was added to clarify that subsection (c)(1)(B) is applied to reach this conclusion. Within that same sentence, "contracts and books and records" was changed to "contracts or books and records" to use consistent language throughout the regulation.

In Example 6, at proposed subsection (c)(1)(G)6., the phrase "and Contracts or Books and Records, subsection (c)(1)(B)." was added to the example title to signify that the example illustrates one of the presumptions and the contracts or books and records rule. Further, the word "predominantly" was added to use consistent language with proposed subsection (c)(1)(A)1., while retaining the same meaning. Finally, the phrase "under subsection (c)(1)(B)," was added to clarify that subsection (c)(1)(B) is applied to reach this conclusion.

In Example 7, at proposed subsection (c)(1)(G)7., the phrase "Other Sources of Information," was added and the subsection reference was revised to (c)(1)(C) in the example title to signify that the example illustrates both one of the presumptions and the other sources of information rule. Further, the word "received" was replaced with "delivered" to use consistent language with subsection (c)(1)(A)1.d. and the word "predominantly" was added to use consistent language with subsection (c)(1)(A)1., while retaining the same meaning. Next, the phrase "under subsection (c)(1)(C)" replaced "However" to clarify that subsection (c)(1)(C) is applied to reach this conclusion. In the same sentence, the phrases "the receipt of" and "contracts or" were added to be consistent with the language of subsection (c)(1) and subsection (c)(1)(B), respectively. Finally, the phrases "other sources of" and "receipt of the" were added and the phrase "reasonably available" was removed consistent with the language of subsection (c)(1)(C).

In Example 8, at proposed subsection (c)(1)(G)8., the phrase "Presumption, subsection (c)(1)(A)1.c. and" was added and the subsection reference was revised to subsection (c)(1)(F) to signify that the example illustrates one of the presumptions and the U.S. government customer rule. Additionally, the word "customer" in the example title was revised to be capitalized, consistent with the other example titles' formatting. Further, the word "predominantly" was added to use consistent language with subsection (c)(1)(A)1., while retaining the same meaning. Lastly, the phrase ", under subsection (c)(1)(F)" was added to clarify that subsection (c)(1)(F) is applied to reach this conclusion.

In Example 9, at subsection (c)(1)(G)9., the word "presumption" in the example title was revised to be capitalized and the word "at" was removed, consistent with the other example titles' formatting. Also, in the example title, the subsection reference to (c)(1)(A)2. was revised as the example primarily addresses overcoming a presumption, which is addressed at subsection (c)(1)(A)2.. Next, the phrase "pursuant to a contract" was added to clarify that the taxpayer in the example overcame the presumption using contracts or books and records. Further, the word "predominantly" was added to use consistent language with subsection (c)(1)(A)1., while retaining the same meaning. The final sentence was revised by adding the phrase "based on a preponderance of the evidence" to provide more clarifying detail on the standard for overcoming a presumption as required in subsection (c)(1)(A)2. Lastly, in that same sentence, the phrase "can overcome" was revised to "overcomes" in order to exemplify using subsection (c)(1)(A)2., rather than just the potential to use it. Further, the phrase "contracts or books and records kept in the normal course of business" replaced the term "documentation" in order to correctly apply the method for overcoming a presumption as required in subsection (c)(1)(A)2.

Eighth, subsection (j)(2) was modified to remove the reference to subsection (f)(1) because it inadvertently included in error. These internal references in this provision were intended to include only the subsections governing assignment of "sales of marketable securities" present in the current regulation. The reference to subsection (f) should have been removed when the other provisions were renumbered. The subsection (f)(1) is a newly added subsection, and the former reference to "subsection (f)(1)" was updated to (f)(2).

Lastly, the applicability date in subsection (j)(3) was changed from January 1, 2025 to January 1, 2026 to have the proposed amendments be prospectively applicable for taxable years beginning on or after January 1, 2026.

In addition, while the Second Notice of Modifications to Text stated that nonsubstantive changes were made to subsections (d)(1)(A)1. and (d)(1)(A)2., no edits to these subsections were actually made.

#### **COMMENTS RECEIVED AFTER SECOND NOTICE OF MODIFICATIONS TO TEXT DURING WRITTEN COMMENT PERIOD MAY 20, 2025 THROUGH JUNE 5, 2025**

**Comment:** A commenter stated that the definition of "professional services" in proposed regulation at subsection (c)(3) should be expanded to use inclusive rather than exclusive language which includes "other similar services" to investment advisory services and services related to the underwriting of debt or equity securities.

**Reject:** The proposed definition of "professional services" was intended to be limited to the specific service providers that have been identified as having significant numbers of customers, which was based on industry input and FTB staff's observation. No textual edits were made in response to this comment.

#### **Updates Made to Text of Proposed Regulations After Second Notice of Modifications to Text**



Following the Second Notice of Modifications to Text, FTB made the following nonsubstantive and sufficiently-related changes to the proposed regulatory text which have been identified in the Updated Informative Digest and are reflected in the Final Text of Regulation. The changes to subsections (c)(1)(G)5., (c)(1)(G)6., (c)(1)(G)9., (c)(2)(C)1., (c)(3), and (d)(1)(D)3. were made to correct minor grammatical, numbering, and formatting errors in order to clarify the language and to be consistent throughout the proposed regulation.

#### **ALTERNATIVES DETERMINED**

The FTB has determined that no alternative to the proposed regulation it considered would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of the law, in accordance with Government Code section 11346.9 subdivision (a)(4).

#### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS OR SMALL BUSINESSES**

The FTB has determined the proposed regulation will not have a significant impact on affected private persons or small businesses. The proposed regulation will provide clarity to businesses with sales, other than sales of tangible personal property. Since this regulation is currently in place, the proposed regulation may cause some initial short-term administrative adjustments for some taxpayers. However, in the long-term the proposed regulation would have the benefit of reducing confusion for taxpayers and tax practitioners currently applying this regulation to assign sales, other than sales of tangible personal property.

#### **LOCAL MANDATE DETERMINATION**

The proposed regulation does not impose any mandate on local agencies or school districts.