

**FINAL STATEMENT OF REASONS
PROPOSED AMENDMENTS TO REGULATION SECTION 25137, RELATING TO
OTHER APPORTIONMENT METHODS**

UPDATE OF INITIAL STATEMENT OF REASONS

The public notice required by Government Code section 11346.4 was mailed and published in the California Notice Register on January 20, 2023. The notice stated that there would not be a public hearing unless requested by an interested person at least 15 days before the close of the written comment period, which ended March 7, 2023. No request was made for a public hearing, and no hearing was held.

One comment was received during the period the text was available to the public during the notice period from January 20, 2023 through March 7, 2023 and one comment was received after the March 7, 2023 notice period. Both comments are summarized and the Franchise Tax Board (FTB) response for both comments is set forth below.

Updates Pertaining to the Proposed Text of the Regulation

The nonsubstantive changes made to the proposed text of the regulation which have been identified in the Updated Informative Digest were made for the following reasons:

The changes to add underline, italics, cross-out, and space formatting were made to correctly illustrate the changes being made to the regulation. The changes in subsections (d)(2), (d)(3), and (d)(2)(D) were made to correct internal cross referencing of these subsections and do not change the meaning of the provisions since each subsection is already included in subsection (d). The change to the Government Code citation in subsection (d)(2)(A) was to correct a cross reference due to a recodification of the California Public Records Act. (See Stats.2021, c. 614 (A.B.473), operative January 1, 2023.) The changes in subsections (d)(2)(H) and (d)(3)(C) were made to correct grammatical errors. The change in subsection (d)(2)(B)6 was made because a good cause earlier effective date upon filing was requested and the effective date has now been determined to be November 3, 2023. Subsection (d)(5) was removed because the default rule for regulatory actions is prospective applicability and as such this subsection is not necessary. Finally, with regard to the references in the Reference subsection, Government Code section 19507(a) was deleted because that code does not exist, Government Code section 11430.10 was added because the regulation implements this section under subsection (d)(4), and all other proposed reference citations to the Government Code and to Revenue and Taxation Code have been deleted as they are cross references and therefore not necessary under this subsection.

The final text of CCR section 25137, as published with the notice on January 20, 2023 and modified by the nonsubstantive changes detailed above, is included in the rulemaking file. The FTB has complied with the requirements of Section 44 of Title 1 of the California Code of Regulations.

COMMENTS RECEIVED DURING THE PERIOD THE PROPOSED AMENDED REGULATION WAS AVAILABLE TO THE PUBLIC DURING THE NOTICE PERIOD JANUARY 20, 2023 THROUGH MARCH 7, 2023

Comment: J. Marshall Bellando requested a copy of the final proposed text.

Response: The FTB accepts this comment. The FTB provided the commenter a link to the draft text on our website. A copy of the comment and the FTB's response is included in the rulemaking file.

COMMENTS RECEIVED AFTER THE PERIOD THE PROPOSED AMENDED REGULATION WAS AVAILABLE TO THE PUBLIC DURING THE NOTICE PERIOD JANUARY 20, 2023 THROUGH MARCH 7, 2023

Comment: Shirley Wei of Deloitte Tax LLP questioned whether the CCR section 25137 imposes a requirement for a taxpayer to petition the FTB, itself, upon receiving an adverse variance action determination under Revenue and Taxation Code (RTC) section 25137 from FTB staff, before that taxpayer may appeal the same matter to the Office of Tax Appeals.

Response: The FTB accepted this untimely comment and provided a response that noted petitions to the FTB, itself, are not required pursuant to the CCR section 25137. The response noted that the proposed regulatory language provides clear rules, conditions, and deadlines for filing petitions with the FTB, itself, clarifies the briefing process and specifies the procedures related to hearings on said petitions, as well as addresses the application of the ex-parte communication rule. A copy of the untimely comment and the FTB's response is included in the rulemaking file.

ALTERNATIVES DETERMINED

The FTB has determined that no alternative has been identified or been brought to the attention of the FTB that would be more effective in providing taxpayers with improved guidance on the procedural rules, deadlines and conditions for filing petitions with the FTB, itself, or procedures for the briefing process and procedures related to hearings on said petitions, as well as the application of the ex-parte communication rule. The FTB has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, 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.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

The FTB has determined that the proposed amendments to the regulation at CCR section 25137 will not have a significant impact on small business. The proposed regulation provides procedural guidance for petitions filed pursuant to RTC section 25137. The clarifications made to the regulation will streamline the application process for a small number of multistate taxpayers who submit petitions to the FTB, itself, to use an alternative apportionment method. The clarity from the proposed regulatory action will likely reduce confusion for taxpayers and tax practitioners and effect consistency throughout the petition process. Therefore, the FTB has determined that any adverse economic impact on small businesses will not be significant.

LOCAL MANDATE DETERMINATION

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