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June 8, 1990

FTB Notice 90-3
410:BRL:CN-90-363

Re: Sales Factor Throwback; Revenue and Taxation Code §25135

In the ~~Appeal of Finnigan Corporation~~, 88-SBE-022, August 25, 1988, the State Board of Equalization (SBE) specifically ruled that the word "taxpayer" as used in Revenue & Taxation Code Section 25135(b)(2) means "all of the corporations within the unitary group." Therefore, the SBE held that when sales were shipped from California to another state by a member of a group conducting a unitary business in California, the throwback rule does not apply if ~~any~~ of the corporations within the unitary group is taxable in the other state. In the ~~Appeal of Finnigan Corporation~~, Opn. on Pet. for Rehg., 88-SBE-022A, January 24, 1990, the SBE expressly overruled the apportionment rule announced in the ~~Appeal of Joyce, Inc.~~, Cal. St. Bd. of Equal., November 23, 1966, that the income attributable to the California activities of a corporation exempt from taxation by this state because of Public Law 86-272 had to be separately computed by application of the apportionment method and then excluded from the measure of the franchise tax. In practice, the ~~Joyce~~ rule was accomplished by excluding from the numerator of the apportionment formula, but not the denominator, the California factors of corporations within the unitary group that were not themselves taxable by this state. Under ~~Finnigan~~, this restriction no longer applies.

Accordingly, the Franchise Tax Board's administrative practice with respect to multi-entity apportionment formula rules previously governed by ~~Joyce~~ has now changed as follows:

1. Sales of goods shipped from California to other states are to be assigned to this state under the throwback rule only when none of the corporations within the unitary group is taxable within the destination state.
2. The California property, payroll and sales of each corporation within a unitary group will be taken into account in the apportionment of business income to this state, including amounts attributable to entities exempt from taxation in this state because of Public Law 86-272. The total business income thus apportioned to California will be assigned to the individual corporations taxable by this state by use of the "revised method" currently authorized by Legal Ruling 234, as modified in the following example.

NOTE: ((---)) = Indicates obsolete information.

EXAMPLE

Corporations A, B and C are engaged in a unitary business. Corporations A and C are taxable by California, but Corporation B is exempt from taxation in California under Public Law 86-272.

The basic computations necessary to determine the amounts of business income from California sources attributable to Corporations A and C are as follows:

COMBINED APPORTIONABLE BUSINESS INCOME \$1,000,000
 APPORTIONMENT FACTORS:

TOTAL	<-----WITHIN CALIFORNIA----->			
<u>EVERYWHERE</u>	<u>CORP A</u>	<u>CORP B</u>	<u>CORP C</u>	<u>TOTAL CA</u>
PROPERTY \$ 600,000	\$ 24,000	\$ 0	\$ 36,000	\$ 60,000
PAYROLL 400,000	14,000	0	26,000	40,000
SALES 5,000,000	150,000	450,000	400,000	1,000,000

COMBINED CALIFORNIA APPORTIONMENT FORMULA:

PROPERTY PERCENTAGE	4.00%	0.00%	6.00%	10.00%
PAYROLL PERCENTAGE	3.50%	0.00%	6.50%	10.00%
SALES PERCENTAGE	3.00%	9.00%	8.00%	20.00%
 TOTAL	 40.00%			
AVERAGE	13.33%			

BUSINESS INCOME APPORTIONED TO CALIFORNIA: \$133,333

LR 234 "REVISED METHOD" - RELATIVE FORMULA PERCENTAGE CALCULATION

	<u>CORP A</u>	<u>CORP B</u>	<u>CORP C</u>	<u>TOTAL CA</u>
PROPERTY FACTOR %	4.00%	N/A	6.00%	10.00%
PAYROLL FACTOR %	3.50%	N/A	6.50%	10.00%
SALES FACTOR %	3.00%	N/A	8.00%	11.00%
 TOTAL PERCENT	 10.50%	 N/A	 20.50%	 31.00%
AVERAGE PERCENT	3.50%	N/A	6.83%	10.33%

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RELATIVE PERCENT	33.87%	0.00%	66.13%	100.00%
BUSINESS INCOME APPORTIONED TO EACH CALIFORNIA TAXPAYER	\$45,161	\$0	\$88,172	\$133,333

DRAFTING INFORMATION

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