

FTB NOTICE

California Franchise Tax Board - Legal Division



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FTB NOTICE 95-1

SUBJECT: SEPARATE STATE ELECTIONS

The Franchise Tax Board ("FTB") has received several questions that relate to whether a taxpayer may make election for California purposes that is different than the election made for federal tax purposes with regard to the same item. The purpose of this notice is to clarify the FTB's position regarding the circumstances in which taxpayer may make a different election for California purposes than was made for federal purposes.

Revenue and Taxation Code ("RTC") sections 17024.5(e) and 23051.5(e) state:

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code and regulations issued by "the secretary" shall be deemed to be a proper election for purposes of this part, unless otherwise expressly provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) To obtain treatment other than that elected for federal purposes, a separate election shall be filed with the Franchise Tax Board at the time and in the manner which may be required by the Franchise Tax Board.

RTC sections 17024.5(f) and 23051.5(f) state:

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall apply to that application or consent.

It is the position of the FTB that the language in RTC sections 17024.5(e)(3) and 23051.5(e)(3) generally allow taxpayers to make a different election for California purposes than for federal purposes, unless otherwise provided in the RTC or FTB regulations. For example, RTC sections 17279(b)(2)(A) and 24355.5(b)(2)(A), pertaining to the amortization of intangible assets, specifically state that any federal election made under Internal Revenue Code ("IRC") section 197 is binding for California purposes. Therefore, a different California election shall not be permitted for federal elections made under IRC section 197.

In addition, under RTC sections 17024.5(f) and 23051.5(f), the general language of RTC sections 17024.5(e)(3) and 23051.5(e)(3) also applies to applications for changes of accounting periods and methods. In these instances, the Franchise Tax Board has the right not to approve the request to adopt a different method for California purposes than adopted for federal purposes where the adoption of such different method is for the avoidance or evasion of income tax, or does not clearly reflect income.

DRAFTING INFORMATION

The principal author of this notice is Debra S. Petersen of the Franchise Tax Board Legal Division. For further information regarding this notice, contact Ms. Petersen at the Franchise Tax Board Legal Division, P.O. Box 1468, Sacramento, CA 95812-1468.