



05.24.2018

FTB NOTICE 2018 - 02

SUBJECT: California Revenue and Taxation Code Section 25137– Oral Presentations Pertaining to Staff-Initiated Proposed Alternative Apportionment

PURPOSE

The purpose of this Notice is to inform taxpayers and their representatives that they may request permission to make oral presentations to Franchise Tax Board (FTB) staff in connection with FTB staff-initiated proposed alternative apportionment under California Revenue and Taxation Code (CRTC) section 25137.

BACKGROUND

On October 19, 2017, FTB issued Legal Notice 2017-05, which permits taxpayers and their representatives to request permission to make oral presentations to FTB staff in connection with taxpayer-initiated CRTC section 25137 petitions. This notice is intended to supplement Legal Notice 2017-05.

CRTC section 25137 provides that FTB, through its staff, may initiate proposed alternative apportionment under CRTC section 25137, which generally involves FTB proposing a variance from the application of the otherwise standard apportionment formula in circumstances where standard apportionment does not fairly represent the extent of the taxpayer's business activity in this state. Historically, neither taxpayers nor their representatives have been permitted to orally present their position against the proposed variance before FTB staff makes its decision on the appropriateness of the proposed variance. Rather, the taxpayer would be notified of the imposition of the variance in correspondence from FTB staff. Hereinafter, a taxpayer, or the taxpayer's representative, will be notified in writing when FTB staff proposes to institute a variance from the application of the standard apportionment formula. In cases where the taxpayer or the taxpayer's representative wishes to contest the proposed imposition of the variance from use of the standard apportionment formula, the taxpayer or the taxpayer's representative may directly present its opposition to the imposition of a variance orally to FTB staff.

PROCEDURE TO MAKE REQUEST MAKING AN ORAL PRESENTATION

If a taxpayer or its representative seeks to make an oral presentation to FTB staff with respect to a pending CRTC section 25137 petition or a proposed variance initiated by FTB staff, the taxpayer or its representative should notify the assigned staff member as early in the proceedings as possible. Thereafter, the FTB staff to whom the case is assigned will contact the taxpayer, or its representative, to arrange for a date and time at which such oral presentation may be made to FTB staff. In order to expedite matters and to make sure staff

is made fully aware of any taxpayer concerns, it is recommended that the taxpayer provide its position in writing, fully explaining all pertinent facts and supporting legal authority and analysis, to FTB staff prior to the oral presentation.

The principal author of this Notice is Maria Huseinbhai of the Franchise Tax Board, Legal Division. For further information regarding this Notice, contact Ms. Huseinbhai at P.O. Box 1720, Rancho Cordova, CA 95741-1720, or at Maria.Huseinbhai@ftb.ca.gov.