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SECOND NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATION SECTION 25136-2 IN TITLE 18 OF THE CALIFORNIA CODE OF REGULATIONS RELATING TO SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY

PUBLISHED MAY 20, 2025

On September 13, 2024, the Franchise Tax Board ("FTB" or "the Board") published a Notice of Proposed Rulemaking in the California Regulatory Notice Register in accordance with Government Code section 11346.4, providing notice to the public of the FTB's intention to amend portions of California Code of Regulations, Title 18, Section ("Regulation") 25136-2, relating to sales other than sales of tangible personal property. The Notice of Proposed Rulemaking provided the public with an opportunity to submit written comments on the proposed amendments to Regulation 25136-2 until 5:00 p.m. on October 31, 2024. The Notice of Proposed Rulemaking also provided the public with an opportunity to request a public hearing if the request was received no later than fifteen (15) days before the close of the written comment period. Requests for a public hearing by interested parties were received by FTB prior to fifteen (15) days before the close of the written comment period.

Additionally, FTB staff reviewed the proposed amended language to Regulation 25136-2 and determined that certain substantive and sufficiently related changes were necessary, and on January 6, 2025, FTB published a Notice of Modifications to Text of Proposed Regulation 25136-2 and Notice of Public Hearing. That Notice established that FTB would hold a public hearing on January 30, 2025. On January 30, 2025, the public hearing was held, during which FTB accepted oral comments. Pursuant to the Notice, FTB also accepted written comments until 5:00pm on February 5, 2025.

FTB staff has now reviewed the comments from the public hearing and written comments received by the February 5, 2025 deadline and again determined that certain additional substantive and sufficiently related changes are necessary, as identified below. In addition, nonsubstantive changes in subsections (d)(1)(A)1. and (d)(1)(A)2. were made to correct minor formatting errors for internal consistency in paragraph structure. Pursuant to the requirements of Government Code section 11346.8(c), and section 44 of Title 1 of the California Code of Regulations, the FTB is hereby providing notice of the additional modifications made to the proposed regulation. These new secondary modifications to the proposed amended regulation text are detailed below, and appear in **bold double underline** for new additions, and ~~**bold double underline**~~ for new deletions. Previously proposed amendments to the regulation from the January 6, 2025 Notice of Modifications to Text of Proposed Regulation Section 25136-2 and Notice of Public Hearing remain in double underline and ~~double underline~~. Additionally, previously proposed amendments to the regulation from the September 13, 2024 Notice of Proposed rulemaking remain in single underline.

underline and ~~single-strikeout~~. Each new change to the proposed amended regulation is followed by an explanation.

1. Regulation 25136-2(b)(3) Using Phrase "Benefit of the Service":

~~(3)(1)~~ "Benefit of ~~a~~the service is received" means the location where the taxpayer's customer has either directly or indirectly received value from delivery of that service.

Explanation

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. As such, the references in this section to "benefit of a service" were changed to "benefit of the service" to become consistent with the rest of the regulation.

2. Regulation 25136-2(b)(13) Using Phrase "Benefit of the Service":

~~(13)(10)~~ "To the extent" means that if the customer of a service receives the benefit of ~~a~~the service or uses the intangible property in more than one state, the gross receipts from the performance of the service or the sale of intangible property are included in the numerator of the sales factor according to the portion of the benefit of the services received and/or the use of the intangible property in this state.

Explanation

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. As such, the references in this section to "benefit of a service" were changed to "benefit of the service" to become consistent with the rest of the regulation.

3. Regulation 25136-2(c)(1) Clarifying the Application of the Four Presumptions, Rules in (c)(1)(B)-(F), and Examples:

~~(1)(2)~~ In the case where a corporation or other business entity is the taxpayer's customer, The location of the receipt of the benefit of the service shall be determined as follows:

~~(A) The location of the benefit of the service shall be presumed to be received in this state to the extent the contract between the taxpayer and the taxpayer's customer or the taxpayer's books and records kept in the normal course of business, notwithstanding the billing address of the taxpayer's customer, indicate the benefit of the service is in this state. This presumption may be overcome by the taxpayer or the Franchise Tax Board by showing, based on a preponderance of the evidence, that the location (or locations) indicated by the contract or the taxpayer's books and records was not the actual location where the benefit of the service was received.~~

~~(A) The location of the benefit of the service shall be presumed to be received in this state to the extent the taxpayer's contracts or books and records kept in the normal course of business indicate the benefit of the service is in this state.~~

(A) Presumptions.

1. ~~Presumptions.~~ The location of the receipt of the benefit of the service shall be presumed to be in this state to the extent the service predominantly relates to:

a. Real property that is located in this state.

b. Tangible personal property and the tangible personal property is located in this state when the service is received. If the tangible personal property is delivered directly or indirectly to the customer after the service is performed, the benefit of the service is received where the property is delivered, regardless of where the service is performed.

c. Intangible property that is used in this state.

d. Individuals who are physically present in this state at the time the service is delivered.

2. The taxpayer or the Franchise Tax Board may overcome a presumption identified in subsection (c)(1)(A)(1), by showing, based on a preponderance of the evidence, that the benefit of the service is received at a location other than that provided under subsection (c)(1)(A)(1). The party attempting to overcome a presumption shall first consider the information contained in the taxpayer's contracts or books and records kept in the normal course of business before considering any all other sources of information used to overcome the presumption.

~~(B) If neither the contract nor the taxpayer's books and records provide the location where the benefit of the service is received, or the presumption in subparagraph (A) is overcome, then the location (or locations) where the benefit is received shall be reasonably approximated.~~

(B) For any service, the location of the receipt of the benefit of the service shall be substantiated by the taxpayer's contracts or books and records kept in the normal course of business.

~~(CB) If the 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 location of the receipt of the benefit of the service cannot be substantiated pursuant to subsection (c)(1)(B) using the taxpayer's contracts or books and records, all other sources of information may be used to substantiate the location of the benefit.~~

~~(C)~~ If the location where the benefit of the service is received cannot be determined under subparagraph (A) or reasonably approximated under subparagraph (B), then the location where the benefit of the service is received shall be presumed to be in this state if the location from which the taxpayer's customer placed the order for the service is in this state.

~~(DE)~~ If the location of the receipt of the benefit of the service cannot be determined pursuant to subsection (c)(1)(~~BA~~) or (~~CB~~), the location where the benefit of the service is received shall be reasonably approximated.

~~(D)~~ If the location where the benefit of the service is received cannot be determined pursuant to subparagraphs (A), (B), or (C), then the benefit of the service shall be in this state if the taxpayer's customer's billing address is in this state.

~~(ED)~~ If the location of the receipt of the benefit of the service cannot be determined pursuant to subsection (c)(1)(~~BA~~), (~~CB~~), or (~~DE~~), the location where the benefit of the service is received shall be this state if the customer's billing address as indicated in the taxpayer's books and records is in this state.

~~(FE)~~ Notwithstanding subparagraph (~~ED~~), for services provided under U.S. government contracts, if the location of the receipt of the benefit of the service ~~sale~~ cannot be determined pursuant to assigned pursuant to the method and substantiation rules under subsection (c)(1)(~~BA~~), (~~CB~~), or (~~DE~~), such as when a contract cannot be disclosed and no information about the service is publicly available, then the benefit of the service is deemed received by the fifty (50) states of the United States. The receipt shall be assigned to this state based on the ratio of California population over U.S. population as determined by the most recent U.S. census data as of the beginning of the taxable year.

~~(GE)~~(E) Examples.

1. ~~Benefit of the Service—Business Entity, subsection (c)(2)(A). Payroll Services Corp contracts with Customer Corp to provide all payroll services. Customer Corp is commercially domiciled in this state and has employees in a number of other states. The contract between Payroll Services Corp and Customer Corp does not specify where the service will be used by Customer Corp. Payroll Services Corp's books and records indicate the number of employees of Customer Corp in each state where Customer Corp conducts its business. Payroll Services Corp shall assign its receipts from its contract with Customer Corp by determining the ratio of employees of Customer Corp in this state compared to all employees of Customer Corp and assign that percentage of the receipts from Customer Corp to this state.~~

1. Benefit of the Service—Presumption, subsection (c)(1)(A)1.a. Rental Property Corp owns one hundred (100) rental properties in this state and four hundred (400) rental properties in State A, and contracts with Landscape Corp for landscape services for all the rental properties. Under the presumption at subsection (c)(1)(A)1.a., the benefit of the service is received

in both State A and in this state because it predominantly relates to real property located in both State A and in this state.

2. Benefit of the Service—~~Business Entity Presumption~~, subsection (c)(21)(A)1.a. Law Corp Architecture Corp located in State C-A has a contracts with Client Corp that has manufacturing plants in this state and State B. Law Architecture Corp handles a major litigation matter plant expansion for Client Corp concerning a manufacturing plant owned by its client in this state. Under the presumption at subsection (c)(1)(A)1.a., ~~Regardless of where the Architecture Corp staff conduct their operations, the recipient of the service, Client Corp, receives all of the benefit of the service in this state because All gross receipts from Law Corp's services related to the litigation are attributable to this state because Law Corp's books and records kept in the normal course of business indicate that the services~~ predominantly relates to Client Corp's manufacturing plant operations in this state.

3. Benefit of the Service—~~Business Entity~~, subsection (c)(2)(A). Audit Corp is located in this state and provides accounting, attest, consulting, and tax services for Client Corp. The contract between Audit Corp and Client Corp provides that Audit Corp is to audit Client Corp for taxable year ended 20XX. Client Corp's books and records kept in the normal course of business, as well as Client Corp's internal controls and assets, are located in States A, B and this state. As a result, Audit Corp's staff will perform the audit activities in States A, B and this state. Audit Corp's business books and records track hours worked by location where its employees performed their service. Audit Corp's receipts are attributable to this state and States A and B according to the taxpayer's books and records which indicate time spent in each state by each staff member.

~~34.~~ Benefit of the Service—Presumption, subsection (c)(1)(A)1.b. For a flat fee, Logistics Corp located in State A contracts with Customer Corp to arrange for the pickup and delivery of Customer Corp's goods between State B and this ~~s~~State. Within the contract there is also a provision for warehousing, repackaging, and other services performed in State B with separately stated fees. The ~~fees~~ benefit for these warehousing, repackaging, and other services ~~is~~ are assigned independently from the ~~fees for the~~ services to move the goods from State B to this state. Under the presumption at subsection (c)(1)(A)1.b., ~~The benefit of both services is~~ are received in ~~assigned to~~ this state because the services predominantly relate to tangible personal property that was delivered to this state.

~~43.~~ Benefit of the Service—Presumption, subsection (c)(1)(A)1.b. and Contracts or Books and Records, subsection (c)(1)(B). Contractor Corp provides repair services for tanks and other heavy equipment to an agency of the U.S. government pursuant to contract. A tank becomes inoperable in a foreign geographic area. That tank is delivered to and repaired by Contractor Corp in this state. Upon completion of the repairs, Contractor Corp delivers the

~~tank to the U.S. government agency in a foreign geographic area. The taxpayer's books and records kept in the normal course of business provide the location where the tank is delivered.~~ Under the presumption at subsection (c)(1)(A)1.b., the benefit of the service is received at the delivery location of the tangible personal property to which the service **predominantly relates. Contractor Corp's books and records kept in the normal course of business provide the location where the tank is delivered. As such, under subsection (c)(1)(B) Furthermore,** the location of **the receipt of the benefit of the service** is substantiated as the foreign geographic area using taxpayer's books and records, which demonstrate that the foreign geographic area is where the taxpayer delivers the tangible personal property. Therefore the **benefit of the service is received by receipt from** the U.S. government agency **into Contractor Corp is assigned to** the foreign geographic area **where because** the tank is delivered **to the foreign geographic area.**

5. Benefit of the Service — Business Entity, subsection (c)(2)(B). Same facts as Example 4 except Web Corp cannot determine the location from which the advertisement is viewed and/or clicked on through its books and records, so Web Corp shall reasonably approximate the location of the receipt of the benefit by assigning its gross receipts from advertising by a ratio of the number of its viewers in this state to the number of its viewers everywhere.

5. Benefit of the Service—Presumption, subsection (c)(1)(A)1.c. and Contracts or Books and Records, subsection (c)(1)(B). R&D Corp located in State A enters into an agreement with Pharmaceutical Corp located in this state- for the development of pharmaceuticals. Pursuant to contract, R&D Corp receives milestone payments once clinical tests are performed in this state and State B. Under the presumption at subsection (c)(1)(A)1.c, the location of the **receipt of the** benefit of the service is where the customer uses the intangible property to which the service **predominantly** relates. Furthermore, **under subsection (c)(1)(B),** the location of the **receipt of the** benefit of the service is substantiated by the taxpayer's contracts **and/or** books and records, which indicate the intangible will be used in this state and State B. Therefore the milestone payments from Pharmaceutical Corp to R&D Corp are assigned to this state and State B because the clinical tests to be performed by R&D Corp are a service related to an intangible used in this state and State B.

6. Benefit of the Service — Business Entity, subsection (c)(2)(C). For a flat fee, Painting Corp contracts with Western Corp to paint Western Corp's various sized, shaped and surfaced buildings located in this state and four (4) other states. The contract does not break down the cost of the painting per building or per state. Painting Corp's books and records kept in the normal course of business indicate the location of the buildings that are to be painted but do not provide any method for determining the extent that the benefit of the service is received in this state, i.e. the size, shape, or surface of each building, or the materials used for each building to be painted. In addition, there is no method for reasonably approximating the location(s) where the

~~benefit of the service was received. Since neither the contract nor Painting Corp's books and records indicate how much of the fee is attributable to this state and there is no method of reasonably approximating the location of where the benefit of the service is received, the sale will be assigned to this state if the order for the service was placed from this state.~~

~~64. Benefit of the Service—Business Entity—Presumption, subsection (c)(21)(A)1.d. and Contracts or Books and Records, subsection (c)(1)(B).~~ Web Corp, located in State A, provides internet content to its viewers and receives revenue from providing advertising services to other businesses. ~~Web Corp's contracts with other businesses do not indicate the location (or locations) where the benefit of the service is received. Pursuant to contract with its business customers, the advertisements are shown via the website to Web Corp viewers and the fee Web Corp collectsed is determined by reference to the number of times the advertisement is viewed and/or clicked on by viewers of the website. If Web Corp, through its books and records kept in the normal course of business, can determine the location from which the advertisement is viewed and/or clicked on by viewers of the website, Under the presumption at subsection (c)(1)(A)1.d., the service receipts will be assigned to the location where the individuals are physically present when the service is received because the service predominantly relates to individuals. then Furthermore, under subsection (c)(1)(B), the location of the receipt of the benefit of the service is substantiated by the taxpayer's books and records, which indicate that ten (10) percent of individuals viewing the advertisement and/or clicking the advertisement are in this state. Therefore the gross receipts from the advertising will be assigned to this state by a ratio of the number of viewings and/or clicks of the advertisement in this state to the total number of viewings and/or clicks on the advertisement everywhere.~~

~~7. Benefit of the Service—Business Entity, subsection (c)(2)(D). Same facts as Example 6 except the sale cannot be assigned under subsection (c)(2)(C), so that the sale shall be assigned to this state if Western Corp's billing address is in this state.~~

~~7. Benefit of the Service—Presumption, subsection (c)(1)(A)1.d. and Other Sources of Information, subsection (c)(1)(C).~~ Call Center Corp, located in this state, provides call center services for business customers. Fly Fishing Corp, located in State A, sells equipment, training services, and travel services to its customers. It also provides call center services to those customers. Fly Fishing Corp subcontracts its call center operations to Call Center Corp. Call Center Corp does not maintain records regarding the location from which Fly Fishing Corp's customer calls originate. Under the presumption at subsection (c)(1)(A)1.d., the benefit of the service Call Center Corp provides is located where individuals are physically present when the service is ~~received~~ **delivered** because the service **predominantly** relates to individuals. ~~Under subsection (c)(1)(C) However,~~ the location of **the receipt of** the benefit of the service cannot be substantiated by the taxpayer's **contracts or** books and

records. Therefore, the taxpayer may use all **other sources of** information ~~reasonably available~~ to substantiate the location of the **receipt of the** benefit of the service. Taxpayer knows from Fly Fishing Corp's website that thirty (30) percent of Fly Fishing Corp's total sales are made to customers located in this state. Therefore, Call Center Corp shall assign thirty (30) percent of the gross receipts to this state.

8. Benefit of the Service—**Presumption, subsection (c)(1)(A)1.c. and U.S. Government eCustomer, subsection (c)(1)(F).** Contractor Corp provides military field support services to an agency of the U.S. government. As disclosed in its contract, Contractor Corp maintains software for a military computer network. Under the presumption at subsection (c)(1)(A)1.c., the benefit of the service is received by the U.S. government where it uses the software intangible to which the service **predominantly** relates. However, Contractor Corp is unable to disclose or does not know the location where the software intangible is used by military personnel, and no information regarding the customer's use of the software is publicly available. Therefore, **under subsection (c)(1)(F)** the location where the benefit of the software maintenance is received shall be based upon the ratio of the population in this state compared to the population of the United States.

9. Benefit of the Service—Overcoming a ~~p~~**Presumption, at (c)(1)(A)2.** Pursuant to a contract, Assembly Corp, located in this state, contracts with Storage Corp, located in State A, to assemble light sensor units. Assembly Corp documentation demonstrates that Storage Corp will incorporate the light sensor units into various security cameras placed on Storage Corp shipping containers located in State B and State C. Storage Corp provides the component materials of the light sensor units to Assembly Corp, which assembles the light sensor units in this state. Assembly Corp delivers the assembled light sensor units to Storage Corp in this state. Because Assembly Corp's service is **predominantly** related to tangible personal property, and because delivery of that tangible personal property occurs in this state, under the presumption at subsection (c)(1)(A)1.b, the benefit of the service Storage Corp received is presumed to be in this state. However, pursuant to subsection (c)(1)(A)2., Assembly Corp ~~can~~ **overcomes** the presumption, **based on a preponderance of the evidence, with contracts or books and records kept in the normal course of business—documentation** showing that Storage Corp will not employ the light sensor units in this state.

Explanation

Overview

FTB staff received comments by interested parties expressing confusion on how to apply proposed Regulation 25136-2(c)(1)(A)'s four presumptions applicable to when a service predominantly relates to real property, tangible personal property, intangible personal

property, or individuals. Interested parties' comments included uncertainty whether all services must fall under one of the four presumption categories and how the presumptions interact with the other rules within proposed Regulation 25136-2(c)(1). Upon review, clarifying edits were made to the text of Regulation 25136-2(c)(1) as necessary to clearly reflect the proper application of the four presumption rules as well as their interaction with the regulation's other rules within proposed subsection (c)(1). Additionally, minor edits were necessary to use consistent language throughout this subsection and update internal references to properly reflect the renumbered subsections under proposed subsection (c)(1). These changes are explained in detail below.

Proposed Subsection (c)(1)(A)

The contracts or books and records language previously at subsection (c)(1)(A) was moved to proposed subsection (c)(1)(B) and the language was revised to be consistent with the language used throughout proposed 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).

Further, in proposed subsection (c)(1)(A)1., the phrase "the location of the receipt of the" has been added for clarity and to be consistent with the language of subsection (c)(1). Next, in proposed subsection (c)(1)(A)2., the phrase "kept in the normal course of business" was added and the term "any" was replaced with "all". 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.

Proposed Subsections (c)(1)(B) - (c)(1)(F)

In accordance with the changes to proposed subsection (c)(1)(A), minor corresponding edits were made by renumbering the subsections following subsection (c)(1)(A), which are now in proposed subsections (c)(1)(B)-(F). In addition, subsections (c)(1)(B)-(F) were also revised to use consistent language within each of these rules, and to add language to clarify some of these rules in response to public comments, as detailed below.

First, as discussed above, the contracts or books and records rule previously at subsection (c)(1)(A) is now relocated to proposed subsection (c)(1)(B). In response to public comments requesting more clarity around this rule's interaction with the four presumption rules, 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). Lastly, 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).

Second, the all other sources of information rule previously at subsection (c)(1)(B) is now relocated to proposed 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 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) shifted locations. 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" has been 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" have been 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" has been 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.

Third, the reasonable approximation rule previously at subsection (c)(1)(C) is now relocated to proposed 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 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) shifted locations. Also, the words "of the receipt" have been 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.

Fourth, the customer's billing address rule previously at subsection (c)(1)(D) is now relocated to proposed 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 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) shifted locations. Also, the words "of the receipt" have been 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.

Fifth, the U.S. government contracts rule previously at subsection (c)(1)(E) is now relocated to proposed 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 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) shifted locations. 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" in order to use consistent language with the rules in proposed subsections (c)(1)(C) through (c)(1)(E) while retaining the same meaning. Lastly, the internal references to subsections (c)(1)(A), (B), (C), and subparagraph (D) were updated to use the newly renumbered subsections for those rules, subsections (c)(1)(B), (C), (D), and subparagraph (E), respectively.

Proposed Subsection (c)(1)(G)

The examples previously at subsection (c)(1)(F) are now relocated to proposed subsection (c)(1)(G). This rule was relocated because the contracts or books and records 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) shifted locations. 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.

Example 1, at proposed subsection (c)(1)(G)1., 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 2, at proposed subsection (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 proposed subsection (c)(1)(G)3., was formerly Example 4, previously located at subsection (c)(1)(F)4. This example was relocated because, like Examples 1 and 2, it only addresses the four presumption rules; in contrast, all the other later examples appearing in proposed subsection (c)(1)(G) address both the presumption rules *and* the rules at proposed subsections (c)(1)(B) through (c)(1)(F). This reordering will provide more clarity to the public on the scope of each example. Next, proposed subsection (c)(1)(G)3. has been 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., was formerly Example 3, previously located at subsection (c)(1)(F)3. The phrase "and Contracts or Books and Records, subsection (c)(1)(B)." was added to the example title to signify that the example illustrates both one of the presumptions and the contracts or books and records rule at proposed 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 proposed 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 proposed 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 be more clear and use consistent terms with the rest of proposed subsection (c)(1) without changing the meaning,

Example 5, at proposed 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 both 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 proposed 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.

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 both 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 proposed subsection (c)(1)(B) is applied to reach this conclusion.

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 proposed subsection (c)(1)(A)1.d. and the word "predominantly" was added to use consistent language with proposed subsection (c)(1)(A)1., while retaining the same meaning. Next, the phrase "under subsection (c)(1)(C)" replaced "However" to clarify that proposed 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 proposed 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 proposed subsection (c)(1)(C).

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 proposed subsection (c)(1)(F) to signify that the example illustrates both 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 proposed subsection (c)(1)(A)1., while retaining the same meaning. Lastly, the phrase ", under subsection (c)(1)(F)" was added to clarify that proposed subsection (c)(1)(F) is applied to reach this conclusion.

Example 9, at proposed 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 proposed 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 proposed 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 proposed subsection (c)(1)(A)2. Lastly, in that same sentence, the phrase "can overcome" was revised to "overcomes" in order to exemplify using proposed 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 proposed subsection (c)(1)(A)2.

4. Section 25136-2(j)(2) Removing Reference to Subsection (f)(1) Which is a New Subsection Under the Proposed Regulation Inadvertently Included here:

(2) The amendments contained in this Regulation which includes subsection (a) "In General" clarification of statutory reference, subsection (b)(~~75~~) definition of "Marketable securities," subsection (b)(~~86~~) definition of "marketable securities" for securities dealers, ~~subsections (c)(2)(E)6 and 7 "Examples" of assignment of asset management fees,~~ subsection (d)(1)(A)1, assignment of "dividends or goodwill," subsection (d)(1)(A)2, assignment of an "interest," and subsections (f)(~~1~~), (2), and (3), and (4) assignment of "sales of marketable securities" are applicable for taxable years beginning on or after January 1, 2015.

Explanation

FTB staff received comments by interested persons expressing concerns about Regulation 25136-2(j)(2) listing Regulation 25136-2(f)(1) as one of the subsections with an applicability date of January 1, 2015. Upon reexamining this section of the proposed regulatory text, FTB

staff noticed that the proposed Regulation 25136-2(j)(2)'s reference to "subsection (f)(1)" was inadvertently included, when the subsection (f) reference here was intended to only include the subsections governing assignment of "sales of marketable securities" present in the current regulation. The proposed text in Regulation 25136-2(f)(1) is a newly added subsection, and the former reference to "subsection (f)(1)" was updated to (f)(2). Therefore, FTB staff is now editing to remove the reference to "subsection (f)(1)".

5. Section 25136-2(j)(3) Changing Applicability Date:

(3) The amendments to this Regulation filed with the Secretary of State on [insert date here] are applicable to taxable years beginning on or after January 1, ~~2024~~ ~~2025~~ 2026.

Explanation

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 regulatory text in this subsection has been modified to reflect an applicability date of January 1, 2026.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the FTB within the written comment period. The written comment period closes at **5:00 p.m. on June 5, 2025**. The FTB will consider only comments received at the FTB offices by that time. The FTB encourages submission of written comments in electronic form, rather than in paper form. Comments may be submitted by email to FTBRegulations@ftb.ca.gov.

Comments in paper form may be submitted to:

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