

**Summary of Second Interested Parties Meeting**  
**Regulation Section 23663-6, Assignment of Credits –**  
**Eligible Assignees and Reorganizations**

- I. **Administration:** On June 12, 2018 at 1:00 p.m., at the Franchise Tax Board (FTB) central office in Sacramento, interested members of the public (Participants) attended the second Interested Parties Meeting (IPM) on the potential adoption of California Code of Regulations (CCR), Title 18, section 23663-6 (Regulation). Participants attended in person and by telephone. Participants physically present were asked to register at the entrance and phone participants introduced themselves.

Richard Tay, FTB Tax Counsel III, and Ciro Immordino, FTB Tax Counsel IV, served as the IPM Facilitators (Facilitator(s)). Mr. Tay listed the documents made available as handouts which would be addressed at the meeting: the IPM notice; an explanation and background of the Regulation; and draft language of the Regulation. Mr. Tay then explained the purpose of the meeting was to provide the public with an opportunity to discuss and provide comments on the proposed Regulation. Participants were advised they had until July 10th to submit written comments, and that this summary of the IPM and comments would thereafter be prepared and published online.

- II. **Discussion:** The IPM discussion was organized by reviewing the proposed Regulation sections in their numerical order.
- III. **Summary:** The opening remarks for each section of the proposed Regulation are presented below and are followed by a summary of the comments, if any, received during the IPM and in writing by the close of the IPM comment period, i.e., July 10, 2018.

Discussion Topic 1 – Subsection (a) – In general  
*Facilitator Remarks*

The Facilitator discussed the purpose of the Regulation as set forth in subsection (a), which is to give taxpayers guidance in situations following corporate reorganizations and other corporate restructurings. Specifically, the Regulation addresses situations in which the assignor or the members of the assignor's combined reporting group has changed in between the time a credit was originally earned and when it would be assigned.

*Comments*

A commenter indicated uncertainty about procedural aspects of the Regulation, including what situations gave rise to the Regulation project, and whether the Regulation would apply retroactively. Staff responded as follows:

- FTB has received numerous inquiries as to how to assign credits after corporate reorganizations and other corporate restructurings. The purpose of the Regulation is

to provide guidance to taxpayers with regard to those situations, though FTB staff cannot comment on any proceedings with specific taxpayers.

- FTB regulations generally apply prospectively.

#### Discussion Topic 2 – Subsection (b) – Eligible Credit

##### *Facilitator Remarks*

The Facilitator discussed subsection (b) and noted that the Regulation clarifies that the definition of 'eligible credit' includes those credits that the assignor did not originally earn but received as a result of another transaction such as a merger. The facilitator noted that the definition does not include credits received by assignment or sale.

##### *Comments*

No Comments Received

#### Discussion Topic 3 – Subsection (c) – Eligible Assignee

##### *Facilitator Remarks*

The Facilitator discussed subsection (c) and how the Regulation will require any 'eligible assignee' to have been a member of the combined reporting group of the taxpayer that originally earned the credit. The Facilitator also discussed the four examples under subsection (c), including the Regulation's examples regarding Internal Revenue Code (IRC) section 355 transactions.

##### *Comments*

No Comments Received

#### Discussion Topic 4 – Subsection (d) – Pre-Reorganization Credits

##### *Facilitator Remarks*

The Facilitator discussed subsection (d) and two examples under this subsection. Subsection (d) addresses the situation in which the assignor did not originally earn the credits it wishes to assign, but the credits had been acquired as a result of a corporate reorganization. In this situation, there may be confusion as to which members are eligible to receive that credit assignment under the statute. To determine which potential assignees are eligible, the Regulation provides that the taxpayer that originally earned the credits will be treated as the assignor for purposes of the statutory requirement that the assignee had to have been in the assignor's combined reporting group when the assignor earned the credit. The Facilitator also discussed the two examples under subsection (d).

##### *Comments*

No Comments Received

## Discussion Topic 5 – Subsection (e) – F Reorganizations

### *Facilitator Remarks*

The Facilitator discussed the Regulation's clarification regarding F reorganizations and the example that illustrates this subsection. The Facilitator indicated that if an entity meets all other requirements to be an eligible assignee except that they were subject to a reorganization under IRC section 368(a)(1)(F), the Regulation provides that they will be an eligible assignee for purposes of this section and California Revenue and Taxation Code section 23663.

### *Comments*

No Comments Received

## Discussion Topic 6 – Subsection (f) – Ineligible Assignee

### *Facilitator Remarks*

The Facilitator discussed this subsection, which provides for a business assets test applied to situations in which a member of the assignor's combined reporting group merges with another entity (a much larger company), with the member being the surviving entity. In this situation, if the member of the combined reporting group acquired a company whose assets comprised more than 80% of the resulting entity, then the resulting entity after the merger is not an eligible assignee. The draft language of the Regulation will be revised such that the fair market value of the total assets and the acquired assets is determined as of the time immediately after the acquisition.

### *Comments*

No Comments Received

## Discussion Topic 7 – Subsection (g) - Limitations

### *Facilitator Remarks*

The Facilitator discussed the last subsection, which sets forth the rule that any limitations that apply to the assignor's use of the credit against its tax will also apply to the assignee's use of the credit after the credit assignment. The Facilitator also discussed the example, which illustrates this rule and its operation using the EZ credit's limitations to show that the limitations apply to the assignee in the same way that they applied to the assignor prior to the credit assignment.

### *Comments*

No Comments Received

- IV. Next Steps:** The Facilitator indicated that staff would review comments received, and next, likely request permission from the FTB Board to enter into the formal Administrative Procedure Act (APA) process.