

NOTE: This handout is intended only for purposes of facilitating discussion at the Interested Parties Meeting on June 30, 2017.

## DISCUSSION TOPICS

On February 18, 1978, California Code of Regulations, title 18, ("CCR") section 25137(g) was adopted. (Register 78, No. 7.) On March 30, 1985, CCR section 25137(g) was renumbered CCR section 25137(d). (Register 85, No. 13.) CCR section 25137(d) provides:

In cases deemed appropriate by the Franchise Tax Board [as defined in California Revenue and Taxation Code [{"CRTC"}] section 23031] it may elect to hear and decide petitions filed pursuant to [CRTC] Section 25137 instead of having this function performed by the staff. As a condition to having such petition considered by the Board, the petitioning taxpayer shall waive in writing the confidentiality provisions of [CRTC] Section 19542 with respect to such petition and to any other facts which may be deemed relevant in making a determination. Consideration of said petitions by the Board shall be in open session at a regularly scheduled meeting.

At its September 19, 2000 meeting, the Franchise Tax Board adopted FTB Resolution 2000-10, which provides:

[CCR] Section 25137(d) ... provides in part "In cases deemed appropriate by the Franchise Tax Board it may elect to hear and decide petitions filed pursuant to Section 25137...." The Franchise Tax Board has determined that all cases involving the application of Section 25137 in which the taxpayer has requested a hearing before the Board and where the staff recommends that the petition be denied are appropriate for consideration by the Franchise Tax Board and pursuant to [CCR] Section 25137(d) shall be heard by the Franchise Tax Board in open session.

Other than the guidance set forth in CCR section 25137(d) and FTB Resolution 2000-10, there is no other formal guidance as to how petitions filed pursuant to CRTC section 25137 ("Section 25137 petitions") should be considered by staff and/or the three-member Franchise Tax Board itself. With this in mind, at its July 12, 2016 meeting, the Franchise Tax Board approved staff's request to commence the informal rulemaking process by holding one or more Interested Parties Meetings to begin discussions with interested parties, with the ultimate goal of possibly providing more formal guidance to practitioners and the taxpayer community as to how Section 25137 petitions should be considered by staff and/or by the three-member Franchise Tax Board itself. To that end, an Interested Parties Meeting (IPM) set for June 30, 2017, has been scheduled.

In order to promote a robust examination of the issue, what follows are possible topics to be discussed:

- As a prerequisite for Section 25137 petitions to be considered by the Franchise Tax Board, how should Section 25137 petitions initially be considered by Franchise Tax Board staff?

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- What should the contents of a 25137 petition be? Should the materials submitted by taxpayers with respect to Section 25137 petitions be set forth in a standardized format?
- Should Franchise Tax Board staff's determination pertaining to Section 25137 petitions be set forth in a standardized format?
- With respect to the materials considered by the Franchise Tax Board, should there be a formal time frame for their submission?
- When Section 25137 petitions are considered by the Franchise Tax Board, should there be formal time limits imposed on the various parties with respect to their verbal presentations?
- When Section 25137 petitions are considered by the Franchise Tax Board, in what order should the verbal presentations occur? (i.e. after the various parties have presented their case in chief, should the taxpayer be allowed a final summation?)
- If a Section 25137 petition is denied by the three-member Franchise Tax Board, should the taxpayer have an opportunity for reconsideration by the Franchise Tax Board and should there be a time limit for requesting such reconsideration?
- When Section 25137 petitions are considered by the Franchise Tax Board, should the Franchise Tax Board issue a written determination with respect to its decision?
- Should witnesses be allowed to testify when Section 25137 petitions are considered by the Franchise Tax Board? If so, what procedures (if any) should be established as to whether witnesses should be sworn under penalty of perjury and whether the opposing party should be allowed to pose questions to the witnesses?
- Should different procedures be established for Section 25137 petitions filed while issues are under examination by the Franchise Tax Board's Audit Division (as opposed to when a Section 25137 petition has been filed with Legal), both while staff is considering the petition and when the three-member Franchise Tax Board is considering a taxpayer petition following Franchise Tax Board staff action? For example, should a taxpayer bringing a Section 25137 petition while under examination by the Audit Division be required to enter into a waiver of the applicable statute of limitations for issuing a proposed assessment for some reasonable period of time as a condition to having its Section 25137 petition considered by the Franchise Tax Board?

The preceding is not an all-encompassing or exhaustive list of topics that can be discussed during the scheduled IPM. Participants are encouraged to provide their own topics that they want discussed.