

**TITLE 18. FRANCHISE TAX BOARD
(Notice published January 20, 2023)**

NOTICE OF PROPOSED RULEMAKING

Pursuant to California Government Code section 11346.4, the Franchise Tax Board ("FTB") hereby gives notice of its intention to amend California Code of Regulations, title 18, section ("Regulation") 25137, relating to alternative apportionment method petition procedures.

PUBLIC HEARING

The FTB has not scheduled a public hearing on this proposed action. However, the FTB will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period indicated below. The request should be submitted to the FTB officer named below. In addition, Government Code section 15702, subdivision (b) provides for consideration by the three-member Board ("the Board, itself"), of any proposed regulatory action if any person makes such request in writing.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the FTB. The written comment period closes on **March 7, 2023**. The FTB will consider only comments received at the FTB offices by that time. The FTB encourages submission of 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:

Hanna Cho, Tax Counsel III
Legal Division MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720
Fax: (916) 845-7298

AUTHORITY & REFERENCE

California Revenue and Taxation Code section ("Section") 19503 authorizes the FTB to prescribe regulations necessary for the enforcement of Part 11 (commencing with section 23001) of the Revenue and Taxation Code. The proposed amendments to Regulation 25137 implement, interpret, and make specific provisions in Section 25137 which is included in Part 11 of the Revenue and Taxation Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

SUMMARY OF EXISTING LAWS & REGULATIONS

Section 25137 permits a taxpayer to petition for the use of an alternative apportionment method if the standard allocation and apportionment provisions do not fairly reflect the extent of a taxpayer's business activity in California. Regulation 25137, subsection (d), currently provides that, in cases deemed appropriate, the FTB may elect to hear and decide petitions filed pursuant to Section 25137 instead of having this function performed by the staff, and that consideration of said petitions will be heard in open-session by the Board, itself at a regularly scheduled meeting.

EFFECT OF THE PROPOSED ACTION

The effect of the proposed rulemaking action is to give taxpayers certainty by providing clear guidance related to petitions filed with the Board, itself, pursuant to Section 25137. The proposed amendments will provide clear rules, conditions, and deadlines for filing petitions with the Board, itself, clarify the briefing process and specify the procedures related to hearings on said petitions, as well as address the application of the ex-parte communication rule. Such procedural guidance will streamline the petition process and ensure consistent application of procedures to all petitions filed pursuant to Section 25137.

The proposed amendments to Regulation 25137, subsection (d), streamlines the subject matter and serves as an introductory paragraph to the procedural amendments that follow it. Subsection (d)(1) provides definitions of key terms used throughout the proposed regulation. Subsection (d)(2) provides clear procedures, conditions, and deadlines for filing a petition with the Board, itself. This subsection also specifies that any records submitted to the Board, itself, as well as the decision of the Board, itself, are subject to the California Public Records Act and the Bagley-Keene Act and clarifies the briefing process. Subsection (d)(3) of the proposed regulation addresses procedures related to hearings on petitions filed pursuant to Section 25137. Subsection (d)(4) provides the general ex-parte communication rule and provides specific exceptions to the general rule. This subsection also provides procedures to be followed in the event an ex-parte communication occurs. Subsection (d)(5) creates an applicability date to provide clarity as to when the proposed amendments to Regulation 25137 will apply.

OBJECTIVES OF PROPOSED AMENDMENTS

The broad objective of the proposed rulemaking action is to ensure that taxpayers, their representatives, and the state of California have certainty surrounding the petition process when petitioning the Board, itself, for the use of an alternative apportionment method pursuant to Section 25137, and to provide clarity on the procedures related to hearings on said petitions, as well as the application of the ex-parte communication rule during the petition process.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The proposed regulatory action will benefit taxpayers, tax practitioners, and the State of California by providing clarity that does not currently exist through guidance for procedures for Section 25137 petitions filed with the Board, itself. The proposed regulatory action will clarify procedural rules related to filing of petitions, provide deadlines, and set forth the conditions under which petitions will be considered by the Board, itself. It will also provide procedural rules for the briefing process, hearings on petitions, and the ex-parte communication rule. The clarity from the proposed regulatory action will reduce confusion for taxpayers and tax practitioners, facilitate tax administration for the State of California by providing clear rules, and effect consistency throughout the petition process. These benefits are the result of goals developed by the FTB with input from interested parties and based on broad statutory authority.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing this proposed regulation, the FTB, pursuant to Government Code Section 11346.5, subdivision (a)(3)(D), conducted a search of any similar state regulations and has concluded that this proposed regulation is neither inconsistent nor incompatible with any existing state regulations.

COMPARISON TO FEDERAL REGULATIONS

There is no comparable federal law.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: The proposed regulation provides procedural guidance for petitions filed by taxpayers pursuant to Section 25137. The amendments would identify, implement, and streamline these procedures. To the extent that the adoption of the proposed regulation reduces the amount of staff time spent on these procedures, it may result in some cost savings but, the FTB anticipates these potential cost savings to be insignificant.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code section 17500, of Division 4: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: The proposed regulation provides procedural guidance for petitions filed by taxpayers. To the extent that the proposed regulation would identify, implement, and streamline these procedures, it could result in minor cost savings for multistate businesses doing business within and without California.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: The proposed regulation provides procedural guidance for petitions filed by taxpayers. The amendments would identify, implement, and streamline these procedures. Therefore, the proposed regulation would not have any statewide adverse economic impact on California business.

Significant effect on housing costs: None.

Effect on small business: The FTB has determined that the proposed regulation would not affect tax owed by small businesses. The proposed regulation provides procedural guidance for petitions filed by taxpayers pursuant Section 25137. To the extent that the proposed regulation would identify, implement, and streamline these procedures for petitions filed by multistate small business taxpayers, it could result in minor cost savings.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

In accordance with Government Code section 11346.3(b), the FTB has determined in the economic impact assessment regarding the proposed regulatory action: The proposed regulation would not affect the creation of California jobs, the creation of new businesses nor would it affect the expansion of existing California businesses. The FTB does not anticipate any elimination of jobs or elimination of existing businesses within California as a result of the proposed clarification to this proposed regulation. The proposed amendments would provide the benefit of giving clarity to taxpayers and tax preparers regarding petitions filed by taxpayers, however, there is no expected significant direct change to the health and welfare of California residents, worker safety or California's environment as a result of the proposed amendments.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the FTB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the FTB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The FTB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period or if a hearing is requested at the scheduled hearing.

CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:

Hanna Cho, Tax Counsel III
Legal Division MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720
Telephone: (916) 845-7298
Email: FTBRegulations@ftb.ca.gov

The backup contact person for these inquiries is:

Jayson Gottman
Legal Division MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720
Telephone: (916) 845-4576
Email: FTBRegulations@ftb.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Gottman at the above address or send the request by email to FTBRegulations@ftb.ca.gov.

AVAILABILITY OF DOCUMENTS

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The FTB will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. Copies can be obtained on the FTB's website at www.ftb.ca.gov or by contacting Mr. Gottman at the address, phone number or email address listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period and considering all timely and relevant comments received, the FTB may amend the proposed regulation substantially as described in this Notice. If the FTB makes substantive modifications sufficiently related to the proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the FTB amends the regulation as revised. Copies of the modifications will be published on the FTB's website at ftb.ca.gov and mailed to anyone who submitted written comments to the FTB, and to anyone who has expressed an interest in receiving the modification information. Please send requests for copies of any modified regulations to the attention of Mr. Gottman at the address, phone number or email address indicated above. The FTB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be published on the FTB's website at www.ftb.ca.gov may also be obtained by contacting Mr. Gottman using the contact information provided above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations can be accessed through the FTB's website at www.ftb.ca.gov