

1999 Apportionment and Allocation of Income

R

Attach this schedule to your California tax return.

For calendar year 1999 or fiscal year beginning month day year 1999, and ending month day year

Corporation name California corporation number

Address PMB no.

City State (country) ZIP Code

Water's-Edge Filers Only: If controlled foreign corporations (CFCs) are included in the combined report, attach form FTB 2416, Retained Earnings of Controlled Foreign Corporations.

Be sure to complete Side 1 and all applicable schedules. See General Information for Schedule R.

Table with 3 columns: Description, Line Number, and Amount. Rows include: 1 a Net income (loss) after state adjustments... 1b Water's-edge foreign investment interest offset... 1c Total. Combine line 1a and line 1b

Total Nonbusiness Income (Loss) See General Information A for definitions and examples.

Table with 3 columns: Description, Line Number, and Amount. Rows include: 2 Dividends included on line 1a and not deducted... 3 Interest. Attach schedule... 4 Net income (loss) from the rental of property... 5 Royalties. Attach schedule... 6 Gain (loss) from the sale of assets... 7 Partnership or LLC income (loss)... 8 Miscellaneous income (loss)

Table with 3 columns: Description, Line Number, and Amount. Rows include: 9 Total nonbusiness income (loss)... 10 Balance. Subtract line 9 from line 1c... 11 Interest offset from Schedule R-5... 12 Business income (loss) from sources both within and outside of California... 13 a Average apportionment percentage... 13b Business income attributable to California

Nonbusiness Income (Loss) Allocable to California If no income is allocable to California, do not complete line 14 through line 21. Transfer the amount on line 13b to line 22a and complete line 22b, line 22c, line 23, and line 24.

Table with 3 columns: Description, Line Number, and Amount. Rows include: 14 Dividends and interest income (if taxpayer's commercial domicile is in California): 14a Dividends included in line 2 above, 14b Interest included in line 3 above... 15 Net income (loss) from the rental of property within California... 16 Royalties. Attach schedule... 17 Gain (loss) from the sale of assets within California... 18 Partnership or LLC income (loss)... 19 Miscellaneous income (loss)... 20 Total income (loss) allocable to California... 21 Interest offset from line 11... 22 a Net income (loss) for state purposes before contributions adjustment... 22b Post-apportionment amounts from capital gain/loss netting... 22c Total. Combine line 22a and line 22b... 23 Contributions adjustment from Schedule R-6... 24 Net income (loss) for state purposes

Schedule R-1 Apportionment Formula

The following information must be submitted by all corporations engaged in a trade or business activity conducted within and outside California, regardless of the apportionment method used.

	(a) Total within and outside California (omit cents)	(b) Total within California (omit cents)	(c) Percent within California ((b) ÷ (a))
1 Property: Use the average yearly value of owned real and tangible personal property used in the business at original cost. See General Information E. Exclude property not connected with the business and the value of construction in progress.			
Inventory			
Buildings			
Machinery and equipment (including delivery equipment)			
Furniture and fixtures			
Land			
Other tangible assets. Attach schedule			
Rented property used in the business. See General Information E			
Total property	●	●	● _____ %
2 Payroll: Use employee wages, salaries, commissions, and other compensation related to business income included in the return.			
Total payroll	●	●	● _____ %
3 Sales: Use gross receipts, less returns, and allowances			
a Sales delivered or shipped to California purchasers. See General Information G.			
(i) Shipped from outside California			
(ii) Shipped from within California			
b Sales shipped from California to:			
(i) The United States Government			
(ii) Purchasers in a state where the taxpayer is not taxable. See General Information G			
c Other gross receipts (rents, royalties, interest, etc.)			
Total sales	●	●	● _____ %
Divide Sales column (b) by Sales column (a) and multiply by 2 (except for qualified business activities. See General Information G)			● _____ %
4 Total percent. Add the percentages in column (c). See General Information J			
5 Average apportionment percentage. Divide line 4 by 4 (qualified business activities divide by 3, see General Information G) and enter here and on Schedule R, Side 1, line 13a. See General Information J			
			● _____ %

Schedule R-2 Sales and General Questionnaire Attach additional sheets if necessary.

- Describe briefly the nature and location(s) of your California business activities: _____
- State the exact title and principal business activity of all joint ventures, partnerships, or LLCs in which the corporation has an interest: _____
- Does the California sales figure on Schedule R-1 (or a comparable schedule in a combined report) include all sales shipped from California where the purchaser is the U.S. Government? Yes No If no, explain. _____
- Does the California sales figure on Schedule R-1 (or a comparable schedule in a combined report) include all sales shipped from California to states in which the taxpayer is not subject to tax? See General Information G. Yes No If no, explain. _____
- Are the nonbusiness items reported on Schedule R, Side 1, line 2 through line 8, and the apportionment factor items reported on Schedule R-1 treated consistently on all state tax returns filed by the taxpayer? Yes No If no, explain. _____
- Has this corporation or any member of its combined unitary group changed the way income is apportioned or allocated to California from prior year returns? Yes No If yes, explain. _____ See General Information I.
- Does the California sales figure on Schedule R-1 (or comparable schedule in a combined report) include all sales shipped to California destinations? Yes No If no, indicate the name of the selling member and the nature of the sales activity believed to be immune. _____
- Does the California sales figure on Schedule R-1 (or comparable schedule in a combined report) include all sales delivered to customers outside this state which have an ultimate destination in this state? Yes No If no, explain. _____

Schedule R-3 Net Income (Loss) From the Rental of Nonbusiness Property

	(a) Total outside California	(b) Total within California	(c) Total outside and within California ((a) + (b))
1 Income from rents			
2 Rental deductions			
3 Net income (loss) from rents. Subtract line 2 from line 1. Enter here and enter column (c) on Side 1, line 4; enter column (b) on Side 1, line 15			

Schedule R-4 Gain (Loss) From the Sale of Nonbusiness Assets

California sales include transactions involving: (1) real property located in California; (2) tangible personal property, if it had a situs in California at the time of sale, or if the corporation is commercially domiciled in California and not taxable in the state where the property had a situs at the time of sale; and (3) intangible personal property if the corporation's commercial domicile is in California or the income is otherwise allocable to California.

1 Description of property sold	Real estate and other tangible assets		Intangible assets		Total
	(a) Gain (loss) from outside California	(b) Gain (loss) from within California	(c) Gain (loss) from outside California	(d) Gain (loss) from within California	(e) Gain (loss)
2 Total gain (loss)					

Schedule R-5 Computation of Interest Offset Complete only if there are entries on line 2 and/or line 3 of Schedule R and if Schedule R-1 is required. See General Information K.

1 Total interest expense deducted	1		
2 Water's-edge foreign investment interest offset from Side 1, line 1b	2		
3 Balance. Subtract line 2 from line 1	3		
4 Total interest income (Form 100, Side 1, line 4 and Schedule F, line 5a and line 5b; or Form 100S, Side 1, line 3 and interest income included on Schedule F, line 5 and Schedule K, line 4a)	4		
5 Nonbusiness interest income from Side 1, line 3	5		
6 Business interest income. Subtract line 5 from line 4		6	
7 Balance. Subtract line 6 from line 3. If line 6 exceeds line 3, enter -0- here and on Side 1, line 11, and do not complete the rest of this schedule		7	
8 Total dividend income	8		
9 Deducted dividends from Form 100, Side 1, line 9 through line 11; or Form 100S, Side 1, line 9 and line 10	9		
10 Net dividend income. Subtract line 9 from line 8		10	
11 Business dividend income	11		
12 Deducted dividends from Form 100, Side 1, line 9 through line 11; or Form 100S, Side 1, line 9 and line 10, attributable to business dividend income	12		
13 Net business dividend income. Subtract line 12 from line 11		13	
14 Net nonbusiness dividend income. Subtract line 13 from line 10		14	
15 Total nonbusiness interest and dividend income. Add line 5 and line 14		15	
16 Enter the lesser of line 7 or line 15. Enter here and on Side 1, line 11		16	

If interest and/or dividend income is reported on Side 1, line 14a or line 14b, enter the allocable portion of line 16 on Side 1, line 21.

See General Information K. If no interest or dividend income is reported on Side 1, line 14a or line 14b, do not deduct any interest expense on Side 1, line 21.

Schedule R-6 Contributions Adjustment See General Information L.

1 Total contributions paid (current year and carryover amount)	1	
2 Net income after state adjustments from Side 1, line 1c	2	
3 Portion of dividends deductible under R&TC Sections 24402, 24410, and 24411 from Form 100, Side 1, line 10 through line 11; or Form 100S, Side 1, line 9 and line 10, and other adjustments. See General Information K	3	
4 Contributions deducted on Form 100 or Form 100S	4	
5 Total. Add line 2 through line 4	5	
6 Multiply line 5 by 10% (.10)	6	
7 Net income (loss) for state purposes before contributions adjustment from Side 1, line 22c	7	
8 Business dividends deductible on line 3 multiplied by the average apportionment percentage from Schedule R-1, line 5	8	
9 Amount of line 3 attributable to nonbusiness dividends reported on Side 1, line 14a	9	
10 Contributions deducted (from line 4 above) multiplied by the average apportionment percentage from Schedule R-1, line 5	10	
11 Total. Add line 7 through line 10	11	
12 Multiply line 11 by 10% (.10)	12	
Contributions Adjustment		
13 Enter the amount shown on line 10	13	
14 Amount of contributions allowable:		
a If line 1 equals or exceeds line 6, enter the lesser of line 1 or line 12	14a	
b If line 1 is less than line 6, divide line 11 by line 5. Then multiply line 1 by the result and enter here	14b	
15 Contributions adjustment. Subtract line 14a or line 14b from line 13. Enter here and on Side 1, line 23. If the result is a negative amount, enter in brackets	15	

Schedule R-7 Election to File a Unitary Taxpayers' Group Return and List of Affiliated Corporations

This election is an integral part of the return of all taxpayers participating in the election, and must be filed annually with the Schedule R. Signing the return is an acknowledgement that the key corporation and its electing affiliates agree to comply with the following terms and conditions:

Each of the taxpayers listed in Schedule R-7, Part 1, hereby elect to file a single unitary taxpayers' group return. The unitary taxpayers' group return constitutes the return for each member of the electing group and satisfies the requirement of each electing member to file its own return.

Each corporation that elects to file a group return agrees to be bound by the terms and conditions specified in this schedule and its instructions. The filing of its group return indicates acceptance of all terms and conditions. To be eligible, each corporation must: 1) be a taxpayer required to file a return in this state, 2) be a member of a single unitary group for its entire income year, 3) have the same income year as the key corporation or have an income year that is wholly included within the income year of the key corporation, and 4) have the same statutory filing date as the key corporation for the income year.

The key corporation must file the unitary taxpayers' group return. With the initial return and thereafter, any payment of taxes for the income year shall be made using the key corporation's California corporate number as designated below. The key corporation must be taxable in California and, where applicable, be the parent corporation. If the parent corporation is not a California taxpayer, the key corporation should be the taxpayer with the largest property factor numerator in California. For the election to be valid, the key corporation's powers, rights, and privileges must not be suspended or forfeited. The key corporation agrees to act as surety and agent for each member of the group. In addition, all electing members agree that subsequent adjustments to the liability of the members of the group may be assessed, billed, or paid to the key corporation on behalf of its members, either in the name of the key corporation or the name of the members. Adjustments to the liability of the members of the group will ordinarily be reflected in a single notice. However, supplemental schedules reflecting the adjusted liability of each member will be provided upon request.

Waiver of a statute of limitations (SOL) by the key corporation will waive the SOL for all electing member corporations. If the key corporation does not fulfill its obligation to pay tax or act on behalf of its members, each member may be independently assessed or billed for its own tax liability. If that becomes necessary, each member will generally be credited with taxes previously paid in accordance with the member's self-assessed tax liability (see Legal Ruling 95-2). It is the responsibility of the members of the group to assure that amounts paid by one member on behalf of another are properly accounted for between the members. For electing members subject to the franchise tax, the liability for each electing corporation cannot be less than the minimum tax. See General Information N.

The election is binding on all members for all matters for the income year of the election. If some or all of the corporations included in the election to file a unitary taxpayers' group return are later determined not to be members of the unitary group of the key corporation, the key corporation and electing members agree that any subsequent adjustment for any and all members included in the original group return may still be assessed, billed, or paid by the key corporation.

The election remains in effect for the payment of estimated tax and tax paid with an extension of time to file for the following year by the key corporation on behalf of the group, unless notice of termination of the election is provided to the Franchise Tax Board on or before the time of payment.

Part 1

List of Taxpayers Making Election to File a Single Unitary Taxpayers' Group Return. Attach additional sheets if necessary.			
Electing taxpayer corporation (Enter as much of the true legal name as possible. Use abbreviations only if the abbreviation is part of the legal name.)	California corporation number	Federal employer identification number (FEIN)	Total self-assessed tax
(Key corporation)			
	●		●
	●		●
	●		●
	●		●
	●		●
	●		●
	●		●
	●		●
	●		●
	●		●
	●		●
Total			

Part 2

List each affiliated corporation not listed in Part 1. A corporation is an affiliated corporation for this purpose if it is a member of the same commonly controlled group (see FTB Pub. 1061 for more information). All affiliated corporations should be listed whether or not they are California taxpayers or are unitary with the key corporation. Include the California corporation number for each taxpayer. If the California corporation number is not available, then include the federal employer identification number.

List of Affiliates not included in Part 1. Attach additional sheets if necessary.								
Affiliate corporation's name	California corporation number (if applicable) or FEIN	Is this corporation unitary with the electing group?		Does this corporation file a California return on a different fiscal year than the electing group?		Was this corporation acquired or disposed of during the year?		
		Yes	No	Yes	No	Acq.	Dis.	Date
	●	●		●		●		●
	●	●		●		●		●
	●	●		●		●		●
	●	●		●		●		●
	●	●		●		●		●
	●	●		●		●		●

Instructions for Schedule R

Apportionment and Allocation of Income

References in these instructions are to the California Revenue and Taxation Code (R&TC).

What's New

Sales Factor Numerator

The Board of Equalization ruled that, for income years beginning on or after April 22, 1999, unitary members must use the Joyce rule for combined reporting purposes (*Appeal of Huffy Corp.*, 99-SBE-005, April 22, 1999). Under *Joyce*, the California sales factor numerator of a combined report does not include California destination sales of a member of the unitary group that is not itself subject to tax in California (*Appeal of Joyce, Inc.*, 66-SBE-069, November 23, 1966). For income years beginning on or after April 22, 1999, the application of the *Joyce* rule also means that sales of tangible personal property with a destination in another state will be assigned to California if the seller is not taxable in the destination state, even if another member of the seller's combined reporting group is taxable in the destination state.

Private Mailbox

If you lease a mailbox from a private business rather than from the United States Postal Service, enter the box number in the special field labeled "PMB no."

General Information

This schedule is used by all taxpayers and partnerships who are required to apportion business income. Special instructions apply to individuals and partnerships. See General Information B, Individuals, and C, Partnerships and Limited Liability Companies.

Unless stated otherwise, the term "corporation" as used in these instructions and forms includes "banks."

For purposes of these instructions, the term "partnership" includes limited liability companies (LLCs) that are classified as partnerships for tax purposes and the term "partners" includes members of LLCs.

A Apportionment and Allocation

APPORTIONING TRADE OR BUSINESS –

A distinct trade or business whose business income is required to be apportioned under R&TC Sections 25101 and 25120 and limited, if applicable, by a water's-edge election under R&TC Section 25110. Apportionment of personal income tax business income is defined in Title 18 Cal. Code Regs. Section 17951-4.

APPORTIONMENT – Generally refers to the division of business income among states by the use of an apportionment formula.

ALLOCATION – Generally refers to the assignment of nonbusiness income to a particular state.

When a corporation's income is from sources both within and outside California, the portion of the corporation's total net income that has its source in California is determined using the allocation and apportionment provisions in the Uniform Division of Income for Tax Purposes Act (R&TC Sections 25120 through 25141 and the applicable regulations). The first step is to determine which portion of the corporation's net income is "business income" and which portion is "nonbusiness income."

Nonbusiness income is allocated to specific states as provided in R&TC Sections 25123 through 25127 and the applicable regulations. Business income is apportioned to the states in which the business is conducted, based on the property, payroll, and sales apportionment factors set

forth in R&TC Sections 25128 through 25137 and the applicable regulations. The sum (or net) of the business income apportioned to California, plus the nonbusiness income items directly allocated to California, is the corporation's California net income.

BUSINESS INCOME – Is defined by Title 18 Cal. Code Regs. Section 25120(a) as income arising from transactions and activities in the regular course of the corporation's trade or business. Business income includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the corporation's regular trade or business operations. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activities that are the elements of a particular trade or business. In general, all transactions and activities of the corporation that are dependent on or contribute to the operations of the corporation's economic enterprise as a whole give rise to business income.

Example 1 – Corporation Y owns 30% of Corporation X. Corporation Y makes substantial purchases from Corporation X for use in its unitary business operations and, except for the ownership percentage, would be considered unitary with Corporation X's business operations. A dividend from Corporation X paid to Corporation Y is business income.

Example 2 – Corporation A operates a multistate chain of men's clothing stores. Corporation A purchases a 5-story office building primarily for use in connection with its principal business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. It leases the remaining two floors to others. The rental of the two floors is incidental to the operation of Corporation A's business. The rental income is business income.

Example 3 – Corporation B is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business, Corporation B obtained patents on some of its products. Corporation B licensed the production of the chemicals in foreign countries. In return, Corporation B receives royalties. The royalties received by Corporation B are business income.

Example 4 – In conducting its multistate manufacturing business, Corporation C systematically sells and replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from those sales constitute business income.

Example 5 – Corporation D is engaged in a multistate manufacturing and selling business. Corporation D usually has working capital that it regularly invests in interest bearing securities. The interest income is business income.

NONBUSINESS INCOME – Means all income other than business income.

In accordance with R&TC Sections 25120 through 25141 inclusive, the income of the corporation is business income unless clearly classifiable as nonbusiness income. Nonbusiness income must be computed net of related expenses.

Example 6 – Corporation E operates a multistate chain of men's clothing stores. Corporation E invests in a 20-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining 18 floors are leased to others. The rental of the 18 floors is not incidental to, but rather is separate from, the operation of the trade or business of

Corporation E. The net rental income is nonbusiness income of the clothing store business.

Example 7 – Corporation F operates a multistate chain of grocery stores. An office building that had been used as the corporate headquarters did not provide adequate space. A new and larger building, located elsewhere, was acquired for use as the new headquarters. The old building was rented to an investment company under a 5-year lease. Upon expiration of the lease, the building was sold at a gain or (loss). The gain or (loss) on the sale is nonbusiness income and the rental income received during the lease period is nonbusiness income.

Note: Special rules apply to gain or loss from the sale by a corporation of a nonbusiness partnership interest:

- If 50% or less of the value of the partnership's assets at the time of sale consist of intangibles, divide the original cost of tangible property in California owned by the partnership at the time of the sale by the original cost of all tangible personal property owned by the partnership at the time of the sale. Multiply this ratio by the gain or loss to find the California amount; or
- If more than 50% of the value of the partnership's assets at the time of sale consist of intangibles, multiply the gain or loss by the sales factor of the partnership for its first full taxable period immediately preceding the taxable period during which the partnership interest was sold to find the California amount.

B Individuals

Nonresidents and resident individuals eligible for the other state tax credit who have income or loss from a trade or business activity conducted within and outside California must apportion their income in accordance with the provisions of R&TC Sections 25120 through 25139 (see Title 18 Cal. Code of Regs. Section 17951-4). Items of income or loss that would be treated as nonbusiness income under those sections if earned by a corporation should be sourced using the normal nonbusiness rules and reported on the appropriate line of Schedule CA (540) or Schedule CA (540NR). Individuals complete only Schedule R-1, R-2, and lines 12, 13a, and 13b on Schedule R. Enter on line 12 the total income from the trade or business after any adjustment for federal and state differences (see Schedule CA (540)). Nonresidents or part-year residents enter the amount from line 13b on Schedule CA (540NR), line 12, column E. In completing these schedules, replace the term "corporation" with "apportioning business activity."

C Partnerships and Limited Liability Companies

Partnerships and LLCs that are classified as partnerships for tax purposes, with income or loss from a trade or business conducted within and outside California, must apportion business income in accordance with the provisions of R&TC Sections 25120 through 25139 (see Title 18 Cal. Code Regs. Section 17951-4).

If a trade or business conducted by a partner or member is unitary with the trade or business of the partnership or LLC, the partner's or member's distributable share of business income of the partnership is treated as business income of the partner. The partner or member must add its share of the partnership's or LLC's property, payroll, and sales within and outside California to its own property, payroll, and sales within and outside California in order to apportion the combined income. This will be reflected on the partner's or member's own return. For further

information, see Title 18 Cal. Code Regs. Section 25137-1.

If the trade or business conducted by a partner or member is not unitary with the trade or business of the partnership or LLC, the partnership or LLC apportions its business income separately, using only Schedules R-1, R-2, R-3 and R-4. (For purposes of Schedule R-4, partnerships or LLCs should not allocate nonbusiness income from intangibles. Special rules apply to such income. (see below)) Then complete Schedule R, line 1 through line 13b, except for line 1b and line 11, which apply only to corporations. In completing these schedules replace the term "corporation" with "partnership" or "LLC." Line 13b from the partnership or LLC Schedule R is then added to line 13b from the partner or member's Schedule R to derive the total business income attributable to California.

Partnership or LLC items of nonbusiness income or loss are considered to be earned by the partner or member and allocated according to the rules under R&TC Sections 25123 through 25127. The rules for determining business or nonbusiness classification are the same as those used for corporations (under Title 18 Cal. Code Reg. 25120(c)).

Also see the instructions for Schedule K-1 in the Form 565 and Form 568 Booklets.

D Water's-Edge Filers

Corporations filing on a water's-edge basis that own controlled foreign corporations must complete form FTB 2416, Retained Earnings of Controlled Foreign Corporations, and attach it to Form 100, California Corporation Franchise or Income Tax Return, or Form 100S, California S Corporation Franchise or Income Tax Return.

Water's-edge filers who are subject to the foreign investment interest offset must complete form FTB 2424, Water's-Edge Foreign Investment Interest Offset, and attach it to Form 100 or Form 100S. The foreign investment interest offset requires the application of interest expense to offset the foreign dividend deduction. In general, the calculation requires the identification of interest incurred for purposes of foreign investment using the ratio of unassigned foreign assets over unassigned total assets.

For more information regarding water's-edge reporting, get Form 100-WE, Water's-Edge Booklet, and FTB Notice 93-7.

E Property Factor

The property factor is a fraction. The numerator is the value of real and tangible personal property owned or rented and used in California during the income year to produce business income. The denominator is the value of all the corporation's real and tangible personal property owned or rented and used during the income year to produce business income. Property owned by the corporation that is in transit between states is considered to be located at its destination.

Property is included in the factor if it is actually used or is available for use or capable of being used during the income year. It remains in the property factor until its permanent withdrawal is established by an identifiable event such as its sale or conversion to the production of nonbusiness income. Property used in the production of nonbusiness income is excluded from the factor.

Property owned by the corporation is valued at its original cost averaged over the income year. In general, "original cost" is the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the corporation and adjusted by subsequent capital additions or improvements, special deductions,

and partial disposition because of sale, exchange, abandonment, etc. Depreciation does not reduce original cost.

As a general rule, the average value of property owned by the corporation is computed by averaging the values at the beginning and ending of the income year. The Franchise Tax Board (FTB) may require or allow monthly averaging if this method is required to properly reflect the average value of property for the income year.

Rented property is valued at eight times the net annual rental rate. The net annual rental rate for any item of rented property is the total annual rents paid for the property, less the aggregate annual subrental rates paid by subtenants if the subrents constitute nonbusiness income. Subrents are not deducted when the subrents constitute business income.

F Payroll Factor

The payroll factor is a fraction. The numerator is the compensation paid in California during the income year to produce business income. The denominator is the total compensation paid during the income year to produce business income. Compensation connected with the production of nonbusiness income is excluded from the payroll factor.

The total amount "paid" to employees is determined on the basis of the corporation's accounting method. Under the accrual method, all compensation properly accrued is deemed to have been paid.

Regardless of the corporation's method of accounting, at the election of the corporation, compensation paid to employees may be included in the payroll factor by use of the cash method if the corporation is required to report the compensation under that method for unemployment compensation purposes.

The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid directly to employees for personal services. Payments made to an independent contractor, or any other person not properly classifiable as an employee, are excluded.

Compensation is paid in California if any one of the following tests, applied sequentially, are met:

1. The employee's service is performed entirely within California;
2. The employee's service is performed both within and outside of California, but the service performed outside of California is incidental to the employee's service within California ("incidental" service means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction);
3. If the employee's service is performed both within and outside of California, the employee's compensation will be attributed to California if:
 - The employee's base of operations is in California; or
 - There is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in California; or
 - The base of operations, or the place from which services are directed or controlled is not in any state that some part of the service is performed, but the employee's residence is in California.

"Base of operations" is the place of a permanent nature from which the employee starts work and returns in order to receive instructions or communications from customers or other persons, to replenish stock or other materials, to repair equipment, or to perform any other functions necessary to the exercise of the trade or profession at some other point or points.

Individuals and partners engaged in the practice of a profession may be subject to special rules for determining the payroll factor. Sole proprietors and partners engaged in the practice of law, accounting, medicine, engineering, or any other profession involving personal services where capital is not a material income producing factor should refer to Title 18 Cal. Code Regs. Section 17951-4(b) for information regarding computation of the payroll factor.

G Sales Factor

For income years beginning on or after January 1, 1993, the sales factor is double weighted for most corporations. However, corporations that derive more than 50% of their gross business receipts from conducting a "qualified business activity" will continue to use a single-weighted sales factor to apportion all of their business income.

Gross business receipts means all gross business receipts after eliminating any gross business receipts from intercompany transactions between members of a combined group required to be included in a combined report under R&TC Section 25101 or, if applicable, limited by Section 25110.

The following activities are "qualified business activities" for purposes of this exception:

- Extractive or agricultural business activities are qualified business activities for all income years beginning on or after January 1, 1993. Extractive business activities are activities relating to the production, refining, or processing of oil, natural gas, or mineral ore. Agricultural business activities means activities relating to any stock, dairy, poultry, fruit, furbearing animal, truck farm, plantation, ranch, nursery, or range. Other activities may qualify. See R&TC Section 25128(d)(2), Title 18 Cal. Code Regs. Section 25128, 25128-1, and 25128-2.
- Savings and loan activities are qualified business activities for income years beginning on or after January 1, 1994. A savings and loan activity means any activity performed by savings and loan associations or savings banks which have been chartered by federal or state law.
- Banking or financial business activities are qualified business activities for income years beginning on or after January 1, 1996. A banking or financial business activity means activities attributable to dealings in money or moneyed capital in substantial competition with the business of national banks.

Unitary corporations, partnerships, and LLCs must apply the 50% test to the business receipts of the entire group. If the entire group satisfies one of the exceptions, all members of the group must use a single weighted sales factor. If not, all members of the group must use a double weighted sales factor.

The sales factor is a fraction. The numerator is the gross receipts derived during the income year from transactions and activities attributable to California in the regular course of the unitary affiliates' trade or business. The denominator is the total gross receipts derived during the income year from transactions and activities everywhere in the regular course of the corporation's trade or business.

Gross receipts means gross sales less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to these gross receipts. If federal and state excise taxes (including sales taxes) are passed on to the buyer or included in the selling price of the product, they must be included in gross receipts. This applies regardless of where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

The following are rules for determining "sales" in various situations:

1. In the case of a corporation engaged in manufacturing and selling goods or products, "sales" includes all gross receipts from the sales of such goods or products held for sale to customers in the ordinary course of its trade or business. Goods or products also include other property of a kind that would properly be included in the inventory if on hand at the close of the income year.
2. In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.
3. In the case of a corporation engaged in providing services, such as the performance of equipment service contracts or research and development contracts, "sales" includes the gross receipts from the performance of such services, including fees, commissions, and similar items.
4. In the case of a corporation engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.
5. In the case of a corporation engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.
6. In the case of a corporation that derives receipts from the sale of equipment used in its business, these receipts constitute "sales." For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

Gross receipts from sales of tangible personal property with a destination in California (except sales to the U. S. government) are attributable to California if the property is delivered or shipped to a purchaser within California regardless of the f.o.b. point or other conditions of sale. For income years beginning before April 22, 1999, if the taxpayer is a member of a combined reporting group, California destination sales are assigned to this state if any member of the combined reporting group is taxable in this state (see *Appeal of NutraSweet* (Cal. St. Bd. of Equal., Oct. 29, 1992), FTB Notice 90-3). For income years beginning on or after April 22, 1999, California destination sales attributable to a member of a combined reporting group which is itself not taxable in California are not assigned to this state (*Appeal of Huffly Corp.*, 99-SBE-005, April 22, 1999).

For income years beginning before April 22, 1999, gross receipts from sales of tangible personal property (except sales to the U. S. Government) which is shipped from an office, store, warehouse, factory, or other place of storage within California are assigned to California unless the seller (or any member of its combined reporting group) is taxable in the state of the purchaser (see *Appeal of Finnigan* (Cal. St. Bd. of Equal., 88-SBE-022, August 25, 1988, pet. reh. den. 88-SBE-22A, January 24, 1990)). For income years beginning on or after April 22, 1999, such gross receipts are assigned to California unless the seller is taxable in the state of destination, even if another member of the seller's combined reporting group is taxable in the destination state. Any transportation of goods by vehicle is a form of shipment, whether the vehicle is owned by the seller, the purchaser, or a common carrier. If a seller transfers possession of goods to a purchaser at the purchaser's place of business in California, the sale is a California sale. However, if goods are transferred to the purchaser's employee or agent at some other location in California and the purchaser immediately transports the goods to another state, the sale

is not a California sale. See Legal Ruling 95-3 and General Information H, Taxable in Another State.

Gross receipts from sales of tangible personal property to the U. S. Government are attributable to California if the property is shipped from California. Only sales for which the U. S. Government makes direct payment to the seller according to the terms of a contract constitute sales to the U. S. Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the U. S. Government, do not constitute sales to the U. S. Government.

For income years beginning on or after January 1, 1994, sales of unprocessed timber or softwood cut in California and delivered to a purchaser outside the United States are included in the California numerator of the apportionment sales factor.

Sales, other than sales of tangible personal property, are apportioned to California if:

1. The income-producing activity is performed wholly within California; or
2. A portion of the income-producing activity is performed outside of California but a greater portion of this activity is performed within California than in any other state, based on costs of performance.

"Income-producing activity" means the transactions and activity directly engaged in by the corporation in the regular course of its trade or business for the ultimate purpose of earning gains or profits. "Income-producing activity" applies to each separate item of income. "Income-producing activity" does not include transactions and activities performed on behalf of a corporation, such as those conducted by an independent contractor.

"Costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with industry practices in the corporation's trade or business.

Special Rules. The following are special rules to determine if receipts from the income-producing activities are attributable to California:

1. Gross receipts from the rendering of personal services by employees or the use of tangible and intangible property by the corporation in performing a personal service are attributable to California to the extent that the personal services are performed within California.

However, when personal services are performed within and outside California, the gross receipts can be attributable to California as shown below. If services are related to:

- Separate income producing activities – personal service gross receipts are measured by the ratio of time spent within California versus the time spent performing services everywhere; or
- A single item of income – all gross receipts if a greater portion of personal services are performed within California based on costs of performance.

Time spent in performing personal services includes the amount of time expended in the performance of a contract or other obligation that gives rise to the gross receipts.

Personal service not directly connected with the performance of the contract or other obligation (for example, time expended in negotiating the contract) is excluded from the computations.

2. Gross receipts from the sale, rental, leasing, licensing, or other use of real property are attributable to California if the real property is located within California.
3. Gross receipts from the rental, leasing, licensing, or other use of tangible personal property are attributable to California if the property is located within California.

If tangible personal property is located within and outside of California during the rental, lease, or licensing period, gross receipts attributable to California are measured by the ratio which the time the property was physically present or was used within California bears to the total time or use of the property during the period.

There are instances where a corporation will exclude gross receipts from the sales factor in order for the apportionment formula to work fairly. See Title 18 Cal. Code Regs. Section 25137 for more information.

H Taxable in Another State

A corporation is "taxable in another state" if it meets either one of the two following tests:

1. The corporation is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax because of its business activity in another state; or
2. Another state has jurisdiction to tax net income, regardless of whether or not that state imposes such a tax on the corporation.

The first test applies only if a corporation carries on business activities in another state. However, the corporation is not taxable in another state if the corporation:

- Files and pays tax voluntarily, when not required to do so by the laws of that state; or
- Pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but does not actually engage in business activities in that state; or
- Engages in some activity, not sufficient to be taxed, and the minimum franchise tax bears no relation to the corporation's activities in that state.

The second test applies if the corporation's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States. Jurisdiction to tax is not present if the state is prohibited from imposing the tax because of Public Law 86-272, 15 U.S.C. 381-385.

I Consistency in Reporting

Corporations that changed the way the following items were treated in prior year returns, must disclose the nature and extent of these changes on Schedule R-2, line 6. Disclose any changes to:

- Classification of income as business or nonbusiness income;
- Valuation of property or inclusion of property in the property factor;
- Determination of the amount of compensation paid that is used in the payroll factor; or
- Inclusion of gross receipts in the sales factor.

Disclose only inconsistencies in the valuation or assignment of items in the three factors that materially affect the apportionment percentage. On Schedule R-2, line 5, explain (with references to the laws or regulations of the other state) any inconsistencies in the determination of nonbusiness income and in the factors due to a difference in state laws or regulations. Show the amount of inconsistency on a state-by-state basis.

When a corporation sells tangible personal property that is shipped from California and assigned to a state in which the corporation does not file a return or report, the corporation must identify the state to which the property is shipped, report the total amount of sales assigned to that state, and furnish the facts that the corporation relied on in establishing jurisdiction to tax by that state.

J Computation of Apportionment Percentage

When computing the average apportionment percentage for Schedule R-1, line 5, divide the total percent on line 4 by the number of factors that have amounts in column (a). For most corporations, the denominator is four (property, payroll, and twice the sales factor). For agricultural, extractive, savings and loans, and banking and financial business activities, the denominator is three (property, payroll, and sales). Those factors with zero balances in the totals of both column (a) and column (b) will not be included in the fraction. For example, if the corporation has no payroll then the average apportionment percentage would be computed by entering 1/3 of line 4 instead of the standard 1/4.

K Computation of Interest Offset

If a corporation's income is subject to apportionment by formula, the corporation's interest expense deduction is limited to interest income subject to apportionment plus the amount, if any, that the balance of interest expense exceeds nonbusiness interest and nonbusiness dividend income.

Interest expense not deductible under the preceding paragraph is directly offset against nonbusiness interest and nonbusiness dividend income.

In any case in which the tax of a corporation is or has been determined in a combined report with another corporation, all dividends paid by one to another of such corporations are, to the extent dividends are paid out of the earnings and profits of the unitary business, eliminated from the income of the recipient and are not taken into account for interest offset purposes.

Note: If no dividend or interest income is classified as nonbusiness income on Side 1, line 2 and line 3, it is not necessary to complete Schedule R-5. No intercompany interest paid from one member of a combined reporting group to another should be included in the interest offset computation.

Use Schedule R-5 to make the interest expense computation. Enter on Side 1, line 11, the amount of interest offset from Schedule R-5, line 7 or line 16. Enter on Side 1, line 21, the amount of interest expense applicable to California dividend and interest income by:

- Dividing the total of Side 1, line 14a and line 14b by the total of Side 1, line 2 and line 3; and
- Multiplying the result by the total of Side 1, line 11.

L Contributions Adjustment

For income years beginning on or after January 1, 1996, the limit for the charitable contributions deduction increased to 10% of a corporation's California net income before deducting contributions, adjusted for the use of the apportionment formula and any nonbusiness income and losses. Contributions that exceed the 10% limit may be carried over for up to five income years for contributions made during income years beginning on or after January 1, 1996.

For purposes of the charitable contribution limitation, net income is to be computed without regard to deductions for items included in Art. 2, Ch. 7, of the Bank and Corporation Tax Law (other than organizational expenses). Such adjustments should be included on Schedule R-6, line 3. Refer to R&TC Section 24358.

Use Schedule R-6 to compute deductible contributions for state purposes. If the contributions deducted do not exceed the 10% limit, and if no nonbusiness income or loss is classified on Side 1, line 14 through line 20, it is not necessary to complete Schedule R-6.

M Combined Report

The unitary method of computing California income is required when two or more corporations are engaged in a unitary business, a portion of which is carried on in California. A tax return for each corporation subject to the Bank and Corporation Tax Law is required, unless Schedule R-7, Election to File a Unitary Taxpayers' Group Return and List of Affiliated Corporations, is filed with the FTB. For detailed information, get FTB Pub. 1061, Guidelines for Corporations Filing a Combined Report, and see Title 18 Cal. Code Reg. Section 25106.5.

N Group Return Election

As a convenience for taxpayers, a group of unitary corporate taxpayers may elect to file a single group return. The election applies **only** to those members of a unitary group which are taxpayers (i.e., are themselves subject to the California income or franchise tax). Do not complete the Schedule R-7 for unitary groups that have only one California taxpayer.

The designated "key" corporation makes the election on behalf of itself and the electing taxpayer members by completing Schedule R-7 and attaching the schedule to the return. Schedule R-7 is effective only for the income year with which it is filed. Furthermore, in order to make a valid election, the key corporation's powers, rights, and privileges must not be suspended or forfeited.

The parent corporation of a unitary group should only be designated as the key corporation if it is qualified or incorporated in California, or if it is doing business in California. Combined returns are often filed with a parent corporation that is neither qualified nor doing business in California designated as the key corporation. This can result in an erroneous assessment of minimum tax to the parent corporation.

By filing a group return and the completed Schedule R-7, each electing member indicates acceptance of all terms and conditions set forth in Schedule R-7. The group return satisfies the requirement of each electing taxpayer member to file its own return. Failure to complete all of the items requested in this election may result in incorrect processing of the return.

The tax liability of each taxpayer member of the unitary group is computed using the combined reporting instructions described in Title 18 Cal. Code Reg. Section 25106.5 and FTB Pub. 1061. The tax liabilities of the electing taxpayer group members are then aggregated and reported on the group return.

Corporations That Cannot Elect to File a Group Return:

Because of statutory filing requirements, California taxpayers may not be included in a group return unless: 1) the taxpayer's income year is the same as or wholly within the key corporation's income year and 2) the due date of the taxpayer's return for the income year is the same as the due date of the key corporation's return. In addition, corporations may not file a group return if more than one unitary business is being conducted by any one taxpayer. For example: if Division 1 of Corporation A is engaged in a unitary business with Corporation B and Division 2 of Corporation A is engaged in a separate unitary business with Corporation C (i.e., the business of A-B and A-C are not unitary with each other), a group return may not be filed by A, B, and C. Two separate combined report computations will be necessary to determine and apportion the income of each of the businesses A (Division 1)-B and A (Division 2)-C.

Tax Liability of Electing Members: Show the total tax liability for each electing corporation on Schedule R-7 in the "Total self-assessed tax" column.

The liability of each corporation included in the group return is the same as if each member of the group filed a separate return. Thus, it is necessary to determine each corporation's share of the combined report income

apportioned to California using the factor method prescribed by Legal Ruling 234 and FTB Notice 90-3 (For income years beginning before April 22, 1999.). Each member then applies its own nonbusiness income or loss and its own net operating loss (if applicable) to that amount to arrive at the corporate taxpayer's net income (loss) for state purposes. In determining the member's tax liability, tax credits authorized by Chapter 3.5 of the Bank and Corporation Tax Law may be claimed only by the particular member that is eligible for the credit. Each member incorporated, qualified to do business, or doing business in California must pay at least the minimum franchise tax provided for in R&TC Sections 25135 and 23181. On a separate schedule, clearly show the computation of the tax liability for each member of the group. Get FTB Pub. 1061, for examples of the computational detail that should be provided.

Caution: Failure to indicate each member's correct self-assessed tax liability may result in incorrect processing if separate assessments or refunds are required. (See Legal Ruling 95-2.)

Payment of Tax: Any tax required to be paid with the group single return should normally be paid by the key corporation on behalf of its members, using the key corporation's California corporation number. In addition, if the group has made an election for the preceding income year, estimated taxes and payments with extension of time to file for the income year should be made by the key corporation on behalf of the members, using the key corporation's California corporation number.

Note: If the corporation must pay its tax liability using electronic funds transfer (EFT), all taxes must be remitted by EFT to avoid penalties. For information on who is required to make EFT payments, get FTB Pub. 3817, Electronic Funds Transfer Program Information Guide.

O Capital Loss Limitation

California conforms to the federal provisions for netting gains and losses from involuntary conversions, Section 1231 assets and capital assets. If the netting process results in net capital losses, the losses are not deductible in the current year, but may be carried over to subsequent years. In a combined reporting group, the members' business gains and losses in each class (i.e., the classes are voluntary conversion, 1231 short-term capital, or long-term capital) are combined, and each taxpayer member determines its share of the business gain/loss items based on its apportionment percentage. Then, each taxpayer member applies the federal netting rules to its share of post-apportioned business gain/loss items and its California-source nonbusiness gain/loss items. If a net loss results for any taxpayer member, it may be carried forward for up to five years. For more information regarding the application of the capital loss limitation in a combined report, see Title 18 Cal. Code Reg. Section 25106.5-2 and Pub. 1061. (Regulations that will provide rules for applying capital loss carryovers in subsequent years are pending.)