

TITLE 18. FRANCHISE TAX BOARD  
AMENDMENTS TO PROPOSED  
REGULATION SECTIONS 25128, 25128-1, and 25128-2

On November 23, 1998, Donald L. Buxton of the Franchise Tax Board's Legal Staff (the "hearing officer") held a hearing to receive public comment on proposed amendments to Regulation section 25128 and on the proposed adoption of new Regulation Sections 25128-1 and 25128-2, which were noticed in the California Regulatory Notice Register on October 9, 1998. The proposed regulations pertain to the weight to be given to the sales factor in the formula used to apportion the business income of corporate taxpayers that have business income from sources both within and without this state.

After department staff review of the proposed regulations, the hearing officer has recommended that certain amendments to the proposed regulations be made for purposes of clarity, to insert two examples regarding the definition of "extractive business activity," and to correct grammatical and typographical errors. The changes in this notice affect proposed Regulation Sections 25128, 25128-1, and 25128-2. Nonsubstantial changes (within the meaning of Govt. Code Section 11346.8) and sufficiently related changes (within the meaning of Govt. Code Section 11346.8) recommended by the hearing officer are reflected in the attachment hereto. Deletions to the indicated regulations are reflected by double strikeout of the old text, and additions to the regulations are reflected by dotted bold underscore of the new text. The proposed "sufficiently related" changes are summarized below.

Regulation 25128

- (c) An example is added to illustrate the application of the gross business receipts test to determine whether an apportioning trade or business is engaged in "extractive business activity."
- (d) Example 1 is added to illustrate the treatment of intercompany sales among the members of an apportioning trade or business and to illustrate what products produced from crude oil constitute gross business receipts from "extractive business activity."

Regulation 25128-1

- (h)(2) The phrase "purchased from unrelated third parties" is added to the next to the last sentence to clarify that the exception to the tracing rule applies to refined products purchased from outside the apportioning trade or business.

Regulation 25128-2

- (d) The phrase "as defined in Treasury Regulation section 1.175-3" is added to make clear that the business of farming being referred to is the same as that referred to in subsection (b)(1) of regulation 25128-2.
- (e)(3) This paragraph is the substantive counterpart of subsection (h)(3) of regulation 25128-1. The changes in this paragraph are designed to make its language substantially identical to its counterpart in regulation 25128-1 so that it is more clear that the same principles are applicable to exchanges under both regulations.

The nonsubstantial and sufficiently related changes are being made available to the public for the 15-day period required by Government Code Section 11346.8(c) and Section 44 of Title 1 of the California Code of Regulations. Written comments regarding these changes will be accepted until 5:00 p.m. on February 26, 1999.

A copy of the proposed amendments is being sent to all individuals who requested notification of such changes as well as those who attended the hearing on November 23, 1998, and those who commented orally or in writing. The proposed amendments will also be available to other persons upon request from the agency officer named below.

All inquiries and written comments concerning this notice should be directed to Beverly Moore (916) 845-3354, FAX (916) 845-3648, E-Mail (bev\_moore@ftb.ca.gov), or by mail to the Legal Branch, Attn: Beverly Moore, P.O. Box 1720, Rancho Cordova, CA 95741-1720. The notice and the proposed amendments are also available at the Franchise Tax Board's website at [www.ftb.ca.gov](http://www.ftb.ca.gov).