

FINAL STATEMENT OF REASONS
FOR THE PROPOSED AMENDMENT OF REGULATION, TITLE 18, SECTION 25137-8, AND THE
ADOPTION OF PROPOSED REGULATION, TITLE 18, SECTION 25137-8.2

The proposed regulations do not impose any mandate on local agencies or school districts.

Update of Initial Statement of Reasons

The public notice required by section 11346.4 of the Government Code was mailed and published in the California Notice Register on July 29, 2011. The hearing was held, as noticed on September 13, 2011, to consider the amendment of Regulation section 25137-8 and the adoption of Regulation section 25137-8.2, both of which establish rules of apportionment for Motion Picture and Television Film Producers, Distributors, and Television Networks.

One oral comment was received at the hearing, which was repeated in a written submission received during the written comment period which ended on September 16, 2011. The comment raised an issue with respect to the effective date of the proposed changes. In addition, at the hearing of September 13, 2011 staff provided a number of non-substantive amendments to proposed regulation section 25137.8-2 and requested comments with respect to those amendments. No objections were raised with respect to those changes. Staff prepared a response to the comments received and recommended no change in the effective date.

A 15-day notice of proposed changes to the two regulations based upon staff's proposals was published on October 27, 2011. A single comment was received with respect to that 15-day notice. That comment again raised the issue regarding the effective date for the proposed changes. After discussion with the commentator, staff agreed to change the effective date of the changes to the existing regulation and the adoption of the new regulation from January 1, 2010, to January 1, 2011.

The proposed changes to the two regulations noticed in the 15-day notice and a change in the effective date of the two regulations were presented to the Franchise Tax Board at its meeting of December 1, 2011. The Board was provided with all of the comments received during the regulatory process and staff's responses to those comments. The Board approved adoption of the regulations, subject to providing a second 15-day notice of the changes in the effective date of the two regulatory actions, by a vote of 3-0.

A second 15-day notice addressing only the changes in the effective date was published on December 13, 2011. No comments were received.

With respect to the amendment of Regulation section 25137-8 to renumber it as Regulation section 25137-8.1 the only change from the proposed amendments from the original Notice are to change the effective date as set forth in subsection (a) of the regulation from taxable years beginning before January 1, 2010 to taxable years beginning before January 1, 2011.

With respect to the adoption of proposed Regulation section 25137-8.2, the changes from the proposed regulation as initially noticed are as follows:

Subsection (a) was amended to make it applicable to producers or distributors of television commercials to make it consistent with Regulation section 25137-8-1.

Subsection (b), Definitions, was reordered to place the definitions in alphabetical order and group the definitions of film in one subsection.

Subsection (c) was amended by adding a sentence to deal with new technologies.

Subsection (c)(1)(A)(i) was amended for clarity as to the treatment of other property

Subsection (d) was amended to change the effective date from taxable years beginning on or after January 1, 2010 to taxable years beginning on or after January 1, 2011.

Nonsubstantive changes were made including technical, punctuation, and grammar errors during OAL's review process.

Alternatives Determined

The Franchise Tax Board has not received any proposed alternatives that would lessen the adverse economic impact that the proposed regulations would have on small businesses. The Franchise Tax Board has determined that no alternative would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.