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MULTISTATE INCOME/FRANCHISE TAX

California Franchise Tax Board proposes adoption of market-based sourcing regulation
Tax Alert

Overview

On September 13, 2024, the California Franchise Tax Board ("FTB") issued a notice of proposed rulemaking to amend California Code of Regulations, Title 18, section 25136-2, the market-based sourcing regulation. Written comments on the proposed amendments must be submitted to the FTB by 5:00 p.m. on October 31, 2024, and a public hearing will be held only if a written request is received from any interested parties no later than 15 days before the close of the written comment period. The FTB's Notice, Initial Statement of Reasons, and Draft Language for this version are available here.

Proposed amendments to market-based sourcing regulation

After holding six Interested Parties Meetings ("IPM"s) between 2017 and 2021 regarding proposed amendments to California Code of Regulations, Title 18, section 25136-2, in which it sought public input on draft changes to this market-based sourcing regulation for sales other than sales of tangible personal property [*see previously issued Multistate Tax Alert for details about the sixth IPM and notable draft proposed changes*], the FTB has formally proposed to adopt changes to the regulation.

The proposed amendments largely reflect the draft language released on June 4, 2021, in conjunction with the sixth IPM, with the primary updates being the change of the applicability date for the proposed amendments to taxable years beginning on or after January 1, 2024.

While the proposed amendments to the regulation would apply to taxable years beginning on or after January 1, 2024, it is important to note that the regulation itself has been in place for many years; first applicable to the assignment of sales other than sales of tangible property for taxable years beginning on or after January 1, 2011, but only if the taxpayer made the single sales factor election, and applicable for all taxpayers for taxable years beginning on or after January 1, 2013. Accordingly, the proposed amendments

to the regulation are meant to clarify the existing statutory and regulatory interpretation of the FTB.

The FTB has not scheduled a public hearing on the proposed amendments. However, the FTB will hold a hearing if it receives a written request for a public hearing from any interested parties, or their authorized representatives, no later than 15 days prior to the close of the written comment period. Written comments relevant to the proposed amendments must be submitted by October 31, 2024.

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