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*California Franchise Tax Board
approves market-sourcing
regulatory proposal, moves
forward with DISA, Finnigan,
and other measures*

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The California Franchise Tax Board on December 1 held a meeting, at which the three-member Board voted to approve a proposed regulation regarding sales of other than tangible personal property (*i.e.*, market-based sourcing). At this stage, the proposal is at the end of the formal rule-making process, the public having already had an opportunity to provide comment. The record is closed, and the Office of Administrative Law (OAL) now has 30 working days to conduct its review. The OAL must review the rule-making record to determine whether the procedural requirements of the state Administrative Procedures Act were satisfied. If it so finds, the OAL will file the regulation with the Secretary of State, and the regulation will be effective within 30 days and printed in the California Code of Regulations.

The Board also approved a proposal with respect to apportionment for motion picture and television film producers and television networks. However, prior to approval, the Board amended the proposal to move the effective date forward from Jan. 1, 2010 to Jan. 1, 2011. As a result, the proposal will require an additional 15-day public notice period before the final rule-making record is submitted to the OAL.



The Board also voted to begin the formal OAL rule-making process on a number of regulations, including with respect to Financial Institution Record Match (FIRM), the sales factor *Finnigan* rule, and intercompany transactions (concerning Deferred Intercompany Stock Accounts, or DISA). For these proposals, the FTB now must submit the proposed text of the regulations, the Initial Statement of Reasons, the Fiscal Impact Statement, and the Notice of Proposed Regulatory Action to the OAL, after which a 45-day public comment period and hearing is required. If the FTB decides to change any of these proposals in response to public comments, and the changes are substantial and sufficiently relate to the original proposal, the FTB must allow 15 more days for public comments.

In addition, the Board approved its 2012 Rulemaking Calendar, which includes four new possible regulation projects. The FTB's Chief Counsel, Geoff Way, described these additions as "placeholders" for potential regulatory action. The four new projects would (1) address market sourcing of sales of stock, dividends, and asset management activities; (2) address combined group intercompany transaction conformity with the Federal consolidated group regulations, as it pertains to liquidations and the elimination of DISAs; (3) address a proposal to align the timing of filing California returns with certain Federal holidays; and (4) provide an alternative communication method of notice (in connection with the FTB's Enterprise Data to Revenue (EDR) Project). We will be monitoring the development of these potential regulation projects and will provide more information as it becomes available.

[Click here](#) for the complete FTB meeting agenda with links to items under consideration.

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