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*Last call on California market-based sourcing regulation - FTB accepting comments until October 24*

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Following a hearing on August 10, 2011, the California Franchise Tax Board (FTB) proposed further amendments to California Code of Regulations section 25136-2 (renumbered from section 25136(b)), regarding sales of other than tangible personal property. The proposal would set rules for determining assignment of such sales on a "market" basis for taxpayers electing single sales factor apportionment. Interested taxpayers have until October 24, 2011 to submit written comments regarding the proposed changes. [[Proposed Cal. Code of Reg. Section 25136-2; 15 Day Notice](#)]

## **"Nonsubstantial or Sufficiently Related Changes."**

In general, the most recently amended version of the proposed regulation maintains the basic approach to market-based sourcing found in the prior version. For a summary of the prior version of the proposed regulation, [click here](#). The proposed amendments are identified as "nonsubstantial or sufficiently related changes," meaning that the changes are allowable under the state Administrative Procedure Act.

As anticipated, the proposed amendments add examples to indicate how the "cascading rules" for assigning sales operate, and specifically amend provisions regarding the "reasonably approximated" cascading rule. Other changes include the



deletion of unnecessary definitions, the addition of language to clarify provisions or to maintain consistency throughout the regulation and with other California regulations, and the addition of a provision to address how to assign receipts from the sale of an interest in a corporation or pass-through entity.

### ***PwC Observes***

"The guidance in this regulation may significantly impact taxpayers who are planning to elect single sales factor apportionment," observes Ligia Machado, Senior Managing Director with PwC's SALT National Tax Services in Sacramento. "Even taxpayers that do not plan to elect may be impacted if the single sales factor becomes mandatory in the future."

"The comment period requires impacted taxpayers to take swift action to ensure their concerns are considered by the FTB. Depending on the FTB's response to taxpayer input during this period ending October 24, this could be the last chance to advocate for changes or additions to the proposed language before the formal rule-making process begins. After considering taxpayer comments and possibly making further changes to the proposed regulation, the three-member FTB will approve the regulation and send it to the Office of Administrative Law (OAL) where there will be a formal regulation hearing. It is unlikely that the FTB will be receptive to substantive changes at that point due to the necessity of finalizing the regulation. Once finalized, the regulation is intended to be effective retroactive to January 1, 2011, the effective date of California's market sourcing statute."

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