

Summary of Sixth Interested Parties Meeting

Regulation Section 25136-2, Market-Based Sourcing Rules for Sales of other than Tangible Personal Property

I. Administration:

On June 4, 2021, at 10:00 a.m., the Franchise Tax Board (FTB) held a telephonic Interested Parties Meeting (IPM) that was attended by interested members of the public (Participants) concerning potential amendments to California Code of Regulations (CCR), Title 18, section 25136-2 (Regulation). This was the sixth IPM on this Regulation project. Participants were able to submit written comments by email and verbally during the IPM.

Thomas Lo Grossman, FTB Tax Counsel IV, Ellen Swain, FTB Tax Counsel IV, Red Gobuty, FTB Tax Counsel IV, and Matt Cappel, FTB Tax Counsel, served as the IPM Facilitators (Facilitator(s)). A Facilitator listed the documents made available as handouts: the IPM announcement, draft language, and a draft language explanation document (Explanation Document). A Facilitator explained the purpose of the IPM was to provide the public with an opportunity to discuss and provide comments on draft amendments to the Regulation. Participants were advised they had thirty days to submit written comments, and that this summary of the IPM and comments would thereafter be prepared and published online.

II. Discussion:

The IPM discussion was telephonic in nature due to the pandemic. The IPM was organized by the Facilitators first describing proposed changes to the language followed by the Facilitator addressing written questions received during the pendency of the IPM. Thereafter members of the public asked questions and made comments which the Facilitators responded to.

III. Summary:

Facilitator remarks for each set of proposed Regulation amendments are presented below and are followed by a summary of the comments received during the IPM comment period.

Discussion Topic 1. Asset Management Services definition at (b)(1) on pp.1-2.

Facilitator's Remarks

A Facilitator mentioned the definition is required to inform taxpayers which activities require asset management service gross receipts to be assigned under subsection (c)(2), particularly considering the newly-proposed rule for professional services at subsection (c)(3) (see item 4 below).

Comments

One Participant suggested that the use of the term "fund" in the proposed rule was too broad.

Discussion Topic 2. Professional services definition at (b)(9) on pp.4.

Facilitator's Remarks:

A Facilitator mentioned the definition was developed after discussion with stakeholders in certain professional services industries and is required considering the newly-proposed rule for professional services at subsection (c)(3) (see item 4 below).

Comments:

One Participant suggested that the definition used be an inclusive open set of professional services rather than the proposed exclusive closed set of professional services.

Discussion Topic 3. Changed Law Corp example to Architecture Corp example at (c)(1)(E).2 on pp.9.

Facilitator's Remarks:

A Facilitator mentioned that the Law Corp was proposed to be changed to Architecture Corp because legal services are proposed to be professional services and therefore changing the facts of the example was necessary to illustrate the same legal principle.

Comments:

There were no comments on this discussion topic.

Discussion Topic 4. Added rule for professional services at (c)(3) on pp. 15-16.

Facilitator's Remarks:

A Facilitator mentioned Participants previously stated that certain professional services are difficult to assign under the proposed rules at (c)(1) due to administrative issues and that a professional services rule would help alleviate this issue.

Comments

A Participant suggested that the term "substantially similar" as illustrated in the example was so specific that it might make it difficult for law firms to fall within the scope of the professional services rule.

A Participant suggested that the term "substantially similar" be determined based on the filing taxpayer's internal books and records.

A Participant suggested that the professional services rule be available to lines of services with less than 250 customers if that service line constituted less than 5% of gross receipts.

Discussion Topic 5. Changed applicability date of amendments to 2023 at (j)(3) on pp.30.

Facilitator's Remarks:

A Facilitator mentioned that in recognition of the duration of the amendment process timeline, Staff had proposed changing the applicability date to taxable years beginning on or after January 1, 2023.

Comments:

There were no comments on this discussion topic.

Discussion Topic 6. Deletion of paragraph (j)(4) on pp.30.

Facilitator's Remarks:

A Facilitator mentioned Staff proposed deleting this paragraph because it is obsolete.

Comments:

There were no comments on this discussion topic.

Additional comments not directly related to topics Facilitators introduced at the IPM.

Comments:

A Participant proposed bringing back the retroactive elective language from formerly proposed subsection (j)(5) from the 5th IPM, stating that the interpretive language of a statute could be retroactively valid and that there may have been some reliance on language proposed in prior IPMs.

A Participant mentioned that the population of the "50 states" does not include Puerto Rico and Washington DC and that population information from such jurisdictions was obtainable from the U.S Census Bureau.

A Participant proposed that the rules for sales of services to the US government should be substantially revised due to shortcomings the Participant saw in the language as proposed.

A Participant suggested that the proposed amendment to the rules which substitute the population of "foreign jurisdictions" for "foreign countries" will impose burdens on taxpayers and FTB alike.

A Participant objected to the use of a delivery rule for tangible personal property in the simplifying rules.

A Participant objected to the use of the term "substantiate" in the proposed amendments to the Regulation, on the grounds that the term is undefined.