

REVENUE AND TAXATION CODE

SECTION 25101-25108

25101. When the income of a taxpayer subject to the tax imposed under this part is derived from or attributable to sources both within and without the state the tax shall be measured by the net income derived from or attributable to sources within this state in accordance with the provisions of Article 2 (commencing with Section 25120). However, any method of apportionment shall take into account as income derived from or attributable to sources without the state, income derived from or attributable to transportation by sea or air without the state, whether or not the transportation is located in or subject to the jurisdiction of any other state, the United States or any foreign country.

If the Franchise Tax Board reapportions net income upon its examination of any return, it shall, upon the written request of the taxpayer, disclose to it the basis upon which its reapportionment has been made.

25101.1. The amendments made at the 1957 Regular Session of the Legislature to Section 25101 of the Revenue and Taxation Code shall be applicable only with respect to income years beginning after December 31, 1956. The determination as to whether income derived from or attributable to transportation by sea or air is allocable to or taxable by California for any income year beginning before January 1, 1957, shall be made as if Section 25101 had not been amended at the 1957 Regular Session of the Legislature and without inferences drawn from the fact that such amendments were not expressly made applicable with respect to income years beginning before January 1, 1957.

25101.15. If the income of two or more taxpayers is derived solely from sources within this state and their business activities are such that if conducted within and without this state a combined report would be required to determine their business income derived from sources within this state, then such taxpayers shall be allowed to determine their business income in accordance with Section 25101.

25101.3. The property factor as it relates to the aircraft of an air carrier or foreign air carrier, as defined in Section 1150, or the operator of an air taxi, as defined in Section 1154, shall be allocated on the basis of a formula consisting of time and arrivals and departures as follows:

(a) The time in state is the proportionate amount of time, both in the air and on the ground, that certificated aircraft have spent within the state during the taxable year as compared to the total time everywhere during the taxable year. This factor shall be multiplied by 75 percent.

(b) Arrivals and departures is the number of arrivals in and departures from airports within the state of certificated aircraft

during the taxable year as compared to the total number of arrivals in and departures from airports both within this state and elsewhere during the taxable year. This factor shall be multiplied by 25 percent.

(c) The time in state factor shall be added to the arrivals and departures factor.

(d) The figure produced by application of subdivision (c) equals the allocation to be applied to the original cost of property owned or rented by the taxpayer determined under the provisions of Section 25130.

(e) If annual statistics for the taxpayer's taxable year are not available, statistics for representative periods designated by the Franchise Tax Board shall be used provided that permission to do so has been granted to the taxpayer by the Franchise Tax Board.

25102. In the case of two or more persons, as defined in Section 19 of this code, owned or controlled directly or indirectly by the same interests, the Franchise Tax Board may permit or require the filing of a combined report and such other information as it deems necessary and is authorized to impose the tax due under this part as though the combined entire net income was that of one person, or to distribute, apportion, or allocate the gross income or deductions between or among such persons, if it determines that such consolidation, distribution, apportionment, or allocation is necessary in order to reflect the proper income of any such persons.

25103. In the case of a corporation doing business within the meaning of this part, whether under agreement or otherwise, in such manner as either directly or indirectly to benefit the members or stockholders of the corporation, or any of them, or any person or persons, directly or indirectly interested in such business, by rendering services of any nature whatsoever, or acquiring or disposing of its products or the goods or commodities in which it deals, at less than a fair price therefore, the Franchise Tax Board, in order to prevent evasion of taxes or clearly to reflect the income of such corporation, may require a report of such facts as it deems necessary, and may determine the amount which shall be deemed to be the entire net income allocable to this State of the business of such corporation for the calendar or fiscal year, and compute the tax upon such net income. In determining the entire net income the Franchise Tax Board shall have regard to the fair profits which, but for any agreement, arrangement, or understanding, might be or could have been obtained from dealing in such products, goods or commodities.

25104. In the case of a corporation liable to report under this part owning or controlling, either directly or indirectly, another corporation, or other corporations, and in the case of a corporation liable to report under this part and owned or controlled, either directly or indirectly, by another corporation, the Franchise Tax Board may require a consolidated report showing the combined net income or such other facts as it deems necessary. The Franchise Tax Board is authorized and empowered, in such manner as it may determine, to assess the tax against either of the corporations whose net income is involved in the report upon the basis of the combined

entire net income and such other information as it may possess, or it may adjust the tax in such other manner as it shall determine to be equitable if it determines it to be necessary in order to prevent evasion of taxes or to clearly reflect the net income earned by said corporation or corporations from business done in this State.

25105. (a) For purposes of this article, other than Section 25102, the income and apportionment factors of **two or more corporations shall be included** in a **combined report** only if the corporations, otherwise meeting the requirements of Section 25101 or 25101.15, are members of a **commonly controlled group**.

(b) A **"commonly controlled group" means** any of the following:

(1) A parent corporation and any one or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, **but only if--**

(A) The parent owns stock possessing more than **50 percent** of the voting power of at least one corporation, and, if applicable,

(B) Stock cumulatively representing more than 50 percent of the voting power of each of the corporations, except the parent, is owned by the parent, one or more corporations described in subparagraph (A), or one or more other corporations that satisfy the conditions of this subparagraph.

(2) Any two or more corporations, if stock representing **more than 50 percent of the voting power** of the corporations is owned, or constructively owned, by the same person.

(3) Any two or more corporations that constitute stapled entities.

(A) For purposes of this paragraph, **"stapled entities" means** any group of two or more corporations if more than 50 percent of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests.

(B) Two or more interests are stapled interests if, by reason of form of ownership restrictions on transfer, or other terms or conditions, in connection with the transfer of one of the interests the other interest or interests are also transferred or required to be transferred.

(4) Any two or more corporations, all of whose stock representing more than 50 percent of the voting power of the corporations is **cumulatively owned** (without regard to the constructive ownership rules of paragraph (1) of subdivision (e)) by, or for the benefit of, **members of the same family**. Members of the same family are limited to an individual, his or her spouse, parents, brothers or sisters, grandparents, children and grandchildren, and their respective spouses.

(c) (1) If, in the application of subdivision (b), a corporation is eligible to be treated as a member of more than one commonly controlled group of corporations, the corporation shall elect to be treated as a member of only one commonly controlled group. This election shall remain in effect unless revoked with the approval of the Franchise Tax Board.

(2) Membership in a commonly controlled group shall be treated as terminated in any year, or fraction thereof, in which the conditions of subdivision (b) are not met, except as follows:

(A) When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group shall not be terminated, if the requirements of subdivision (b) are again met immediately after the sale, exchange, or disposition.

(B) The Franchise Tax Board may treat the commonly controlled group as remaining in place if the conditions of subdivision (b) are again met within a period not to exceed two years.



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(d) A taxpayer may exclude some or all corporations included in a "commonly controlled group" by reason of paragraph (4) of subdivision (b) by showing that those members of the group are not controlled directly or indirectly by the same interests, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subdivision, the term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised.

(e) Except as otherwise provided, stock is "owned" when title to the stock is directly held or if the stock is constructively owned.

(1) An individual constructively owns stock that is owned by any of the following:

(A) His or her spouse.

(B) Children, including adopted children, of that individual or the individual's spouse, who have not attained the age of 21 years.

(C) An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children.

(2) Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than 50 percent of the voting power of the corporation.

(3) Stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner's capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner.

(4) In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership.

(f) For purposes of this section, each of the following shall apply:

(1) "Corporation" means a subchapter S corporation, any other incorporated entity, or any entity defined or treated as a corporation pursuant to Section 23038 or 23038.5.

(2) "Person" means an individual, a trust, an estate, a qualified employee benefit plan, a limited partnership, or a corporation.

(3) "Voting power" means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation.

(4) "More than 50 percent of the voting power" means voting power sufficient to elect a majority of the membership of the board of directors of the corporation.

(5) "Stock representing voting power" includes stock where ownership is retained but the actual voting power is transferred in either of the following manners:

(A) For one year or less.

(B) By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor.

(g) The Franchise Tax Board may prescribe any regulations as may be necessary or appropriate to carry out the purposes of this section, including, but not limited to, regulations that do the following:

(1) Prescribe terms and conditions relating to the election described by subdivision (c), and the revocation thereof.

(2) Disregard transfers of voting power not described by paragraph (5) of subdivision (f).

(3) Treat entities not described by paragraph (2) of subdivision

(f) as a person.

(4) Treat warrants, obligations convertible into stock, options to acquire or sell stock, and similar instruments as stock.

(5) Treat holders of a beneficial interest in, or executor or trustee powers over, stock held by an estate or trust as constructively owned by the holder.

(6) Prescribe rules relating to the treatment of partnership agreements which authorize a particular partner or partners to exercise voting power of stock held by the partnership.

(h) This section shall apply to taxable years beginning on or after January 1, 1995.

25106. (a) (1) In any case in which the income of a corporation is or has been determined under this chapter with reference to the income and apportionment factors of one or more other corporations with which it is doing or has done a unitary business, all dividends paid by one to another of any of those corporations shall, to the extent those dividends are paid out of the income previously described of the unitary business, be eliminated from the income of the recipient and, except for purposes of applying Section 24345, shall not be taken into account under Section 24344 or in any other manner in determining the tax of any member of the unitary group.

(2) (A) For purposes of this section, the dividends described in paragraph (1) include dividends paid out of the income previously described of the unitary business by a member of the unitary group to a corporation formed subsequent to the accrual of the income, if the recipient corporation was part of the unitary group during the period from its formation to its receipt of those dividends.

(B) The Franchise Tax Board may deny any dividend elimination for the dividends described in this paragraph if the board determines that a transaction is entered into or structured with a principal purpose of evading the tax imposed by this part.

(3) For purposes of this section, "income previously described of the unitary business" shall include income earned by members of the unitary group during taxable years when no member of the unitary group was taxable in this state to the extent that the income of the unitary group would have been determined under this chapter had any member of the corporation's unitary group been subject to tax in this state at the time that income was earned.

(b) The Franchise Tax Board may prescribe any regulations that may be necessary or appropriate to carry out the purpose of this section, which is to prevent taxation of dividends received by a member of a unitary group where those dividends were paid from the income previously described of the unitary business by another member of the same unitary group.

25106.5. (a) The Franchise Tax Board may adopt regulations necessary to ensure that the tax liability or net income of any taxpayer whose income derived from or attributable to sources within this state which is required to be determined by a combined report pursuant to Section 25101 or 25110 of this chapter, and of each entity included in the combined report, both during and after the period of inclusion in the combined report is properly reported, determined, computed, assessed, collected, or adjusted.

(b) Notwithstanding subdivision (a), the Franchise Tax Board shall not adopt regulations under the authority of this section which shall in any manner determine, prescribe, or otherwise affect (1) the inclusion or exclusion in the combined report of those entities

whose income and apportionment factors are to be taken into account pursuant to Sections 25101 and 25110 of this chapter, or (2) after the period of inclusion, cause the income or expenses of an entity which is excluded from a combined report pursuant to Sections 25101 and 25110 of this part to be included in a combined report.

25107. (a) For the purposes of allocation and apportionment of income under Sections 25101 and 25121, an international banking facility maintained by a bank within California shall be considered doing business without the state. Intangible personal property and sales reflected on the segregated books and records recognized by the Board of Governors of the Federal Reserve System as attributable to the international banking facility shall be attributed to that international banking facility in determining the property, payroll, and sales factors of the bank.

(b) As used in this section, "bank" means a commercial bank, the principal office of which is located in this state and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25 (a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604 (a).

25108. (a) For corporations whose income is subject to the provisions of Section 25101 or 25101.15, the net operating loss determined in accordance with Section 172 of the Internal Revenue Code for a particular taxable year shall be the corporation's "net loss for state purposes" as defined in subdivision (c).

(b) The net operating loss deduction allowed by Sections 24416, 24416.1, and 24416.2, for a taxable year shall be deducted from "net income for state purposes" (as defined in subdivision (c)) for that taxable year.

(c) "Net income (loss) for state purposes" means the sum of the net income or loss of that corporation apportionable to this state and the income or loss allocable to this state as nonbusiness income, as provided by Chapter 17 (commencing with Section 25101).