In the Supreme Court of the State of California

THE GILLETTE COMPANY & SUBSIDIARIES, **Plaintiffs and Appellants,** v. CALIFORNIA FRANCHISE TAX BOARD, AN AGENCY OF THE STATE OF CALIFORNIA, **Defendant and Respondent.**	Case No. S206587

SUPREME COURT
FILED

APR 17 2013

Frank A. McGuire Clerk

Deputy

First Appellate District Division Four, Case No. A130803
San Francisco County Superior Court, Case No. CGC-10-495911
The Honorable Richard A. Kramer, Judge

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE MOTION, MEMORANDUM AND SUPPORTING PAPERS

KAMALA D. HARRIS
Attorney General of California
SUSAN DUNCAN LEE
Acting Solicitor General
KATHLEEN A. KENEALY
Chief Assistant Attorney General
PAUL D. GIFFORD
Senior Assistant Attorney General
W. DEAN FREEMAN
Supervising Deputy Attorney General
LUCY F. WANG
Deputy Attorney General
State Bar No. 199772
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5202
Fax: (415) 703-5480
Email: Lucy.Wang@doj.ca.gov
Attorneys for Defendant and Respondent Franchise Tax Board

MOTION

Pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rule 8.252, Respondent Franchise Tax Board (the "Board") moves this court to take judicial notice of the below-listed documents in support of its Opening Brief on Merits:

A. Minutes from a December 1, 1972 meeting of the Multistate Tax Commission. A true and correct copy of which is attached hereto as Exhibit A.

B. Fla. Stat. § 213.15 (1969), a true and correct copy of which is attached hereto as Exhibit B.

C. Fla. Session Laws, Chapter 71-908, House Bill No. 30-D, a true and correct copy of which is attached hereto as Exhibit C.

D. California Tax Form 100 for the year 1993 (entitled "California Corporation Franchise or Income Tax Return") together with the instructions thereto; Schedule R for the year 1993 (entitled "Apportionment and Allocation of Income") together with the instructions thereto; and the cover page of the 1993 Tax Forms Catalogue, true and correct copies of which is attached hereto as Exhibit D.

These documents are attached to this motion as required by California Rules of Court, rule 8.252, subdivision (a)(3). The motion is based on the attached memorandum of points and authorities, and supporting declaration, filed herewith.

Dated: April 17, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOYCE E. HEE
Supervising Deputy Attorney General

Lucy Wang

LUCY F. WANG
Deputy Attorney General
Attorneys for Defendant and Respondent
Franchise Tax Board

MEMORANDUM

This court should take judicial notice of the minutes from the Multistate Tax Commission, Florida statutes and California Corporate Income Tax Return Form 100 and Schedule R because these documents are judicially noticeable as (1) "[o]fficial acts of the legislative, executive and judicial departments of the United States and of any state of the United States" under Evidence Code section 452, subdivision (c), and (2) "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy" under Evidence Code section 452, subdivision (h). (See *Ordlock v. Franchise Tax Board* (2006) 38 Cal. 4th 897, 912 (judicial notice taken of Franchise Tax Board operations report as an "official act" that includes "records, reports and orders of administrative agencies" under Evid. Code section 452, subd. (c)); *Carleton v. Tortosa* (1993) 14 Cal.App.4th 745, 753 (judicial notice taken of an official publication and bulletin issued by California Department of Real Estate as an "official act.") Evidence Code section 459 provides that "[a] reviewing court may take judicial notice of any matter specified in Section 452."

The documents described above and attached hereto fall into these categories and judicial notice is proper as to these documents.

A. Why the Matters to be Noticed Are Relevant to the Appeal

The Board contends that the history of the Multistate Tax Compact supports the Compact member states' longstanding and consistent construction of the Compact that permits member states to eliminate or modify the election and income apportionment provisions contained in Articles III and IV of the Compact. The minutes from the December 1, 1972 meeting of the Multistate Tax Commission is relevant because it includes a resolution by Compact member states and the Multistate Tax Commission affirming Florida's legislative action in repealing the election and apportionment provisions contained in Articles III and IV of the Compact, and confirming Florida's continued good standing as a Compact member state. The Florida statutes consist of (1) Florida Statute § 213,15, the Multistate Tax Compact, and (2) the subsequent Florida session law, which repealed the election provision within Articles III and IV of the Multistate Tax Compact. Florida repealed Articles III and IV of the Multistate Tax Compact in December, 1971, and it became effective on January 1, 1972.

The minutes and Florida statutes are relevant because (1) Florida's actions occurred prior to California joining the Multistate Tax Compact in 1974, and (2) the Legislature's amendment of section 25128 to require a double-weighted sales factor apportionment formula was consistent with how Compact member states have long interpreted and acted under the Compact. These documents support the Board's contention that amended Rev. and Tax. Code section 25128 does not conflict with the Multistate Tax Compact contained in former Rev. and Tax. Code section 38006.

Further, California Corporate Income Tax Return Form 100 and Schedule R are relevant in demonstrating that the Legislature's amendment of section 25128 to double-weight the sales factor without repealing or amending the Compact did not create confusion in violation of the reenactment rule because a multistate taxpayer cannot determine its tax liability by looking only at the Compact. Exhibit D consists of California Corporate Income Tax Return Form 100 and Schedule R for 1993 together with the instructions. Page 1 of the Form 100 instructions, the section entitled "Tax Law Changes," states "[e]ffective for income years beginning on or after January 1, 1993, apportioning corporations must use a double-weighted sales factor." This is also set forth in Schedule R, entitled "Apportionment and Allocation of Income," as the actual computation of the apportionment formula itself is not on Form 100, but on the attached

Schedule R. Schedule R and instructions for 1993, together with the instructions for Form 100 (which every multistate corporation must complete), mathematically requires corporations to double-weight the sales factor. Thus, corporate taxpayers had notice of the change in the apportionment formula and could not have been confused.

B. Whether the Matters to Be Noticed Were Presented to the Trial Court

None of the documents presented in this request were presented to the trial court. The appeal in this matter was taken after the Board successfully demurred to plaintiffs' complaints in trial court.

C. Whether the Matters to Be Noticed Relate to Proceedings Occurring After Judgment

None of the documents presented in this request relate to any proceedings occurring after the order or judgment that is the subject of this action.

For each of the foregoing reasons, the Board respectfully request that the court take judicial notice of the minutes from the December 1, 1972 meeting of the Multistate Tax Commission, the Florida statutes and California Tax Form 100 and Schedule R, and the instructions thereto, for the year 1993.

Dated: April 17, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOYCE E. HEE
Supervising Deputy Attorney General

Lucy Wang

LUCY F. WANG
Deputy Attorney General
Attorneys for Defendant and Respondent Franchise Tax Board

SF2010900595

Multistate Tax Commission

EUGENE F. CORRIGAN, Executive Director

MINUTES OF THE MEETING OF THE MULTISTATE TAX COMMISSION

GENERAL SESSION
December 1, 1972
Denver, Colorado

Chairman Byron L. Dorgan called the meeting to order at 9:13 a.m. December 1, 1972, at the Radisson Hotel, Denver, Colorado.

Mr. Corrigan then took the roll call, which showed the following states present, two being recorded shortly after the roll call:

Regular Member States		Associate Member States
Alaska	Montana	Alabama
Arkansas	Nebraska	Arizona
Colorado	Nevada	California
Hawaii	New Mexico	
Idaho	North Dakota	
Illinois	Oregon	
Kansas	Texas	
Michigan	Utah	
	Washington	

Mr. Corrigan noted that regular member Indiana, associate members Minnesota, Ohio and Tennessee, and non-members Kentucky and New York had been taking part in the meeting during the week, making a total of 20 regular members, 6 associate members and 2 non-members in attendance.

Approval of Minutes

The minutes of the last meeting of the Commission having been mailed to the member states more than 30 days prior to this meeting in accordance with the requirements of the By-laws, and no proposed objections, changes or alterations being submitted from the floor, the Minutes were approved as presented.

[redacted]

Resolutions

Chairman Dorgan had, on November 30, appointed the following men to be members of the Resolutions Committee:

Arthur Fulmer, Florida, Chairman
Jene Bell, Montana
Sydney Goodman, Michigan
Nolan Humphrey, Arkansas
William Peters, Nebraska

On behalf of the Committee, Chairman Fulmer submitted resolutions for approval as follows:

RESOLUTION No. 1

WHEREAS, the State of Florida views its position as fully consistent with the principles of the Multistate Tax Compact and the Multistate Tax Commission as enunciated in Article I of the Compact; and

WHEREAS, the State of Florida has repealed Articles III and IV of the Multistate Tax Compact, while still legislatively, adhering to the spirit of the Compact; and

WHEREAS, the State of Florida will continue to strive together with tax administrators, national tax groups, and representatives of the business community to develop new and additional methods of resolving multistate tax problems;

NOW, THEREFORE, BE IT RESOLVED that the State of Florida be recognized as a regular member in good standing of the Multistate Tax Compact and the Multistate Tax Commission.

On motion made and seconded, the resolution was unanimously approved, Florida abstaining.

RESOLUTION No. 2

WHEREAS, the purpose of the Multistate Tax Commission is to bring uniformity to the tax laws of the various states of the United States insofar as said laws affect multistate business; and

WHEREAS, the Commission believes that the business community and the States should have a single place to which to take their tax problems;

NOW, THEREFORE, BE IT RESOLVED that the Multistate Tax Commission invite the business community to attend all sessions of the Commission, serve on Commission Committees, and assist the Multistate Tax Commission in promoting good relations with said business community; and

MAY IT FURTHER BE RESOLVED that the Multistate Tax Commission extend its thanks and appreciation to the business community for its assistance given to the Commission in all its endeavors to this date.

Upon motion made and seconded, the resolution was unanimously approved.

RESOLUTION No. 3
(Amending By-law 4(a))

WHEREAS, notice of a proposed change in By-law 4(a) was duly given in accordance with the provisions of By-law 12 at the Bismarck meeting on June 9, 1972;

NOW, THEREFORE, BE IT RESOLVED that said By-law be, and it is hereby, amended to read as follows:

4(a) The annual meeting of the Commission shall be the regular meeting of the Commission in each calendar year next preceding the fiscal year period. All regular meetings of the Commission shall be held on dates and at places to be fixed by the Executive Committee unless otherwise ordered by the Commission.

Upon motion made and seconded, the resolution was unanimously approved.

RESOLUTION No. 4

WHEREAS, paragraph (d) of By-law 7 provides that notice of the public hearings of the Commission shall be given by "publication in at least three metropolitan daily newspapers having substantial nationwide or regional circulation and in at least one tax journal or publication"; and

WHEREAS, the Commission believes that the publicity given to such hearings through the extensive mailing list of the Commission and through the major tax service publications is sufficient for the purposes of all parties interested in or affected by the Commission's hearings; and

WHEREAS, the Commission desires to eliminate the requirement for publication in the metropolitan daily newspapers;

NOW, THEREFORE, BE IT RESOLVED that paragraph (d) of By-law 7 be, and it hereby is, amended to read as follows:

"(d) All hearings shall be open to the public and, in addition to any other notice required, shall be announced no less than 30 days in advance of such hearing, (by publication in at least three metropolitan daily newspapers having substantial nationwide or regional circulation and in at least one tax journal or publication.) <u>in a mailing to the names on the mailing list maintained by the office of the Multistate Tax Commission, and in such other manner as the Executive Director shall deem appropriate</u>.

Mr. Corrigan noted that this resolution would amend By-law 7(d) and that notice of such a proposed by-law change is required to be given at the meeting previous to the meeting at which the vote on such a change is taken. Accordingly, he requested that Mr. Fulmer's reading of the resolution constitute such notice so that the vote on it could be taken at the next meeting of the Commission. The request was unanimously approved.

RESOLUTION No. 5

WHEREAS, notice of a proposed change in By-law 10 was duly given, in accordance with the provisions of By-law 12, at the Bismarck meeting, on June 9, 1972;

NOW, THEREFORE, BE IT RESOLVED that said By-law be, and it is hereby, amended to read as follows:

10. The order of business at regular meetings of the Commission shall be:

1. Roll call of the states.
2. Communications.
3. Approval of the minutes of the last regular meeting and of any special meetings held since the last regular meeting.
4. Report of Treasurer.
5. Report of Executive Director.
6. Report of Standing Committees.
7. Unfinished business.
8. New business.
9. Report of Resolutions Committee.
10. Report of Nominating Committee (at Annual Meeting).
11. Election of officers and Executive Committee (at Annual Meeting).
12. Report of Chairman.
13. Comments by Chairman-elect (at Annual Meeting).
14. Adjournment.

The Commission may order any matter placed on the agenda for any meeting as special business, or in his discretion, the Chairman may place upon the agenda any matter which he deems of sufficient or pressing importance.

Upon motion made and seconded, the resolution was unanimously approved.

RESOLUTION No. 6

WHEREAS, notice of a proposed change in By-law 3(g) was duly given in accordance with the provisions of By-law 12, at the Bismarck meeting on June 9, 1972;

NOW, THEREFORE, BE IT RESOLVED that said By-law be, and it is hereby, amended to read as follows:

3(g) The Executive Director shall be selected by the Chairman with the approval of the Executive Committee, and shall serve at the pleasure of the Chairman and the Executive Committee. The Executive Director shall be in general administrative charge of the affairs of the Commission. Subject to any directions given by the Commission and within its policies, he shall hire, promote, supervise, discharge and fix the duties of members of the Commission staff. He shall prepare the annual report required by Article VI, 1(1) of the Compact, in time to be submitted to the members on or before October 31 and transmitted to the governors and legislatures of the party states prior to the first day of January next following. In addition, the Executive Director shall have such other duties as are conferred upon him elsewhere in these bylaws and by action of the Commission During any time when the Commission does not have an Executive Director, the Chairman may act as such on a temporary basis or may select an Acting Executive Director.

At Mr. Corrigan's request, Mr. Fulmer then offered an amendment to change the proposed date included in the resolution from October 31 to November 30. Upon motion made and seconded, this proposed amendment to the resolution was unanimously approved. Upon motion made and seconded, the resolution, as so amended, was also unanimously approved.

RESOLUTION No. 7

WHEREAS, Section III of the current Multistate Tax Commission Travel Regulations provides that authorized air transportation shall be of the "economy" type; and

WHEREAS, it is the desire of the Commission to substitute the words "tourist or coach" therefor; and

WHEREAS, said Section III of the current regulations requires that the Executive Director retain in his custody all credit cards and issue them to individual travellers only as required; and

WHEREAS, said limitation is not practical in view of the travel needs of the Audit Coordinator and in view of the travel needs of the audit personnel in the New York and Chicago audit offices; and

WHEREAS, the Commission desires to authorize the Executive Director to issue travel cards to members in "accordance with his judgment as to the travel needs of the Commission";

NOW, THEREFORE, BE IT RESOLVED that Section III of the Multistate Tax Commission Travel Regulations be, and they are herewith, changed to read as follows:

III. Authorized Reimbursement:

a) Transportation: Commercial air tourist or coach class is normally to be utilized. However, rail or bus transportation may be substituted therefor when in the best interest of the Commission. Travel by a personal automobile may be utilized. If such automotive travel is, in the opinion of the Executive Director, in the best interest of the Multistate Tax Commission, a mileage allowance of 10 cents per mile is authorized. Taxi fares, limousine fares, toll charges, parking fees and rental car expenses will be authorized in addition to other transportation expenses. Tickets for commercial travel for employees will normally be procured by the Multistate Tax Commission Account-Clerk without personal expense to the traveler. The Executive Director is authorized to procure credit cards and to issue them to employees in accordance with his judgment as to the travel needs of the Commission. Authorized travel of other than Commission employees will be reimburseable by the Commission upon submission of approved claims.

Upon motion made and seconded, the resolution was unanimously approved.

Mr. Fulmer then thanked Jene Bell of Montana, Sydney Goodman of Michigan, and Nolan Humphrey of Arkansas, for their work with him on the Resolutions Committee.

Treasurer's Report

Chairman Dorgan noted that he had, two weeks previously, sent to each member of the Commission a detailed statement of the

Commission's financial affairs. In the absence of the Treasurer from this meeting, Chairman Dorgan requested that that financial statement be considered to be the Treasurer's Report, and that it be approved as such. On motion made and seconded, his proposal was unanimously approved.

Chairman's Report

Mr. Dorgan then noted that two weeks earlier he had sent to all regular members a report "detailing plans for procuring new members, outlining some thoughts on the joint audit program and other matters." At his request, on motion made and seconded, that report was unanimously accepted as the Chairman's Report.

COMMITTEE REPORTS

Sales and Use Tax Committee, Fred O'Cheskey, Chairman

Mr. Corrigan reported for Mr. O'Cheskey that the Committee had discussed priorities as to which of several suggested activities were most attractive. He said that the Committee addressed itself primarily to areas in which uniformity appeared to be possible; and that significant progress had already been made toward a uniform sales and use tax exemption certificate. He said that Gates Rubber Company had been largely responsible for the progress which had already been made in this area. He said that their cooperation with theCommission was indicative of the type which can be beneficial to both the business community and the states.

Income Tax Committee, William Peters, Chairman

Mr. Peters reported that his committee had proceeded in much the same manner as had the Sales and Use Tax Committee. It aimed at discussing and getting reactions from both business and state representatives concerning in which areas uniformity is most desirable. Statutes of limitation constituted one such area of discussion. Mr. Peters said that subcommittees would soon be appointed to attack the various problems. He invited volunteers for those subcommittees.

Rules and Regulations Committee, Theodore de Looze, Chairman

Mr. de Looze reported that his committee had met with a large group of business and state representatives on November 29. It had at that time reviewed at length the proposed revision of the Commission's corporate income tax regulations. As a result of that meeting and of subsequent executive sessions of the committee, it was unanimously agreed to recommend to the Commission that public hearings on the proposal be conducted in accordance with the Multistate Tax Compact and the by-laws of the Multistate Tax Commission in order that, if the hearing officer's recommendations were issued promptly, the Commission might consider the proposal and the hearing officer's report with respect thereto at the February meeting of the Commission in Washington, D. C.

Joint Audit Committee, Robert Kessel, Chairman

Mr. Dorgan noted that Mr. Kessel had reported his committee's activities to the Executive Committee on a prior day. He said that he would consider that report to be incorporated into this meeting by reference.

Mr. Kessel had reported that his committee had been active in 1) creating an audit resources list consisting of corporations which the states had assigned to the Commission for audit; 2) composing a Regional Information Sharing Agreement for execution by the various states; and 3) preparing a seminar on jurisdiction. (The first presentation of this seminar was conducted at Springfield, Illinois, the following week.)

Mr. Dorgan then noted that he had appointed a Long Range Planning Committee to consider areas of activity to which the Commission should expect to devote major portions of its attention during coming years. He has appointed John Heckers as Chairman of that committee.

Mr. Dorgan then noted that the Reciprocal Information Sharing Agreement, to which Mr. Kessel had referred, had been examined by the members and that several states had already executed it. He emphasized the importance of its being executed by as many states as possible, stating that in his consideration it represents a significant milestone in furthering cooperation among the states in sharing tax information. (See attached copy.)

Mr. Norman Nowak, of the Institute for Tax Administration of the University of Southern California, then addressed the meeting. He referred to the Commission's efforts to obtain federal funding of a training program under the Intergovernmental Personnel Act. He said that the rejection of the application for the funds resulted primarily from lack of supporting materials from among the states. He noted that the Commission had sought to obtain the needed material by distributing a questionnaire (see attachment), but that only sixteen states had responded to it thus far. He urged all states to complete the questionnaire as soon as possible. He also urged all tax administrators to seek additional training funds this year from their legislatures in order to be able to take advantage of training programs which are being made increasingly available through the Multistate Tax Commission and the University of Southern California.

Mr. Dorgan then noted that, while the December 7-8 seminar in Springfield had originally been planned for a group of 18-20 people, eighty people were now expected to attend. (Eighty five did attend and gave the seminar high grades.) He said that this was just an indication of the success of the Commission as the member states became more and more appreciative of its benefits and increased their participation in its activities.

He then adjourned the meeting.

Official
FLORIDA STATUTES
1969

Prepared by

STATUTORY REVISION SERVICE of the LEGISLATIVE SERVICE BUREAU

Supervised by

Legislative Printing Committee

Published by the

STATE OF FLORIDA

TALLAHASSEE

chapters 203, 207, 208, 209, and 212 shall hereafter mean the department of revenue. The words secretary of state as they relate to the collection of the capital stock tax as used in chapter 608, shall hereafter mean the department of revenue. The statutory revision service is authorized and directed to substitute the term department of revenue or the director of the department of revenue or his duly authorized agents for the term comptroller, state comptroller or the secretary of state wherever appropriate in the chapters listed above.

History.—§7, ch. 63-253; §5, ch. 65-371; §2, ch. 65-420; §§29, 30, ch. 69-53; §§21, 35, ch. 69-106.

213.071 Certification under seal of certain records by executive director.—The executive director of the department of revenue may certify under appropriate seal, copies of any records, papers or documents placed in his custody, keeping and care by law. Such certified copies shall have the same force and effect as evidence as would the original records, papers or documents.

History.—§1, ch. 65-41; §§21, 35, ch. 69-106.

213.10 Deposit of tax moneys collected.—Any and all tax moneys collected by the department of revenue shall be deposited in the appropriate fund as provided by law.

History.—§10, ch. 63-253; §§21, 35, ch. 69-106.

PART II

MULTISTATE TAX COMPACT

213.15 Multistate tax compact.—The "multistate tax compact" is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

MULTISTATE TAX COMPACT

ARTICLE I

PURPOSES.—The purposes of this compact are to:

(1) Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

(2) Promote uniformity or compatibility in significant components of tax systems.

(3) Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

(4) Avoid duplicative taxation.

ARTICLE II

DEFINITIONS.—As used in this compact:

(1) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(2) "Subdivision" means any governmental unit or special district of a state.

(3) "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.

(4) "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

(5) "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

(6) "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

(7) "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

(8) "Use tax" means a nonrecurring tax, other than a sales tax, which:

(a) Is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property; and

(b) Is complementary to a sales tax.

(9) "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III

ELEMENTS OF INCOME TAX LAWS.—Taxpayer option, state and local taxes.—

(1) Any taxpayer subject to an income tax whose income is subject to apportionment and

allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer option, short form.—

(2) Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the one hundred thousand dollar figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand dollar figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.—

(3) Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV

DIVISION OF INCOME.—

(1) As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity:

1. Which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and

2. Whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

(3) For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if:

(a) In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or

(b) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to

the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs (5) through (8) of this Article.

(5) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

1. If and to the extent that the property is utilized in this state, or

2. In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

1. The property had a situs in this state at the time of the sale, or

2. The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

1. If and to the extent that the patent or copyright is utilized by the payer in this state, or

2. If and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this state if:

(a) The individual's service is performed entirely within the state;

(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) Some of the service is performed in the state and

1. The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

2. The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(15) The sales factor is a fraction, the numerator of which is the total sales of the tax-

payer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and

1. The purchaser is the United States government; or

2. The taxpayer is not taxable in the state of the purchaser.

(17) Sales, other than sales of tangible personal property, are in this state if:

(a) The income-producing activity is performed in this state; or

(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one or more of the factors;

(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V

ELEMENTS OF SALES AND USE TAX LAWS.—Tax credit.—

(1) Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption certificates, vendors may rely.—

(2) Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI

THE COMMISSION.—Organization and management.—

(1)(a) The multistate tax commission is hereby established. It shall be composed of one member from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph (1)(e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings, shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.—

(2)(a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice-chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.—

(3) In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.—

(4)(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: One tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph (1)(i) of this Article; provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph (1)(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII

UNIFORM REGULATIONS AND FORMS.—

(1) Whenever any two or more party

states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

(2) Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely requests of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

(3) The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII

INTERSTATE AUDITS.—

(1) This Article shall be in force only in those party states that specifically provide therefor by statute.

(2) Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

(3) The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident; provided that such state has adopted this Article.

(4) The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.

(5) The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

(6) Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

(7) Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.

(8) In no event shall the commission make any charge against a taxpayer for an audit.

(9) As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX

ARBITRATION.—

(1) Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

(2) The commission shall select and maintain an arbitration panel composed of officers

and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

(3) Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

(4) The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party state to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

(5) The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

(6) The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

(7) The board shall have power to administer oaths, take a testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

(8) Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

(9) The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

(10) The board shall file with the commission and with each tax agency represented in the proceeding: The determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

(11) The commission shall publish the determinations of boards together with the statements of the reasons therefor.

(12) The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

(13) Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

ARTICLE X

ENTRY INTO FORCE AND WITHDRAWAL.—

(1) This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever this [there] is a new enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(3) No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be

discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI

EFFECT ON OTHER LAWS AND JURISDICTION.—Nothing in this compact shall be construed to:

(1) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III(2) of this compact.

(2) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII(9) may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI (3) may apply.

(3) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(4) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII

CONSTRUCTION AND SEVERABILITY.—This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History.—§1, ch. 67-598.

213.16 Multistate tax commission; member, alternate.—

(1) The executive director of the department of revenue shall represent this state on the multistate tax commission.

(2) The executive director of the department of revenue may designate a principal deputy or assistant to serve as his alternate on the multistate tax commission.

History.—§2, ch. 67-598; §§21, 35, ch. 69-106.

213.17 Multistate tax compact advisory committee; membership; duties.—There is hereby established the multistate tax compact advisory committee to be composed of the member of the multistate tax commission representing this state, any alternate designated by him, the attorney general or his designee, two members of the state senate, appointed by the president of the senate, and two members of the state house of representatives, appointed by the speaker thereof. The chairman shall be the member of the commission representing this state. The committee shall meet on the call of its chairman or at the request of a majority of its members, but in no event shall it meet less than three times in each year. The committee may consider any and all matters relating to recommendations of the multistate tax commission and the activities of the members in representing this state thereon.

History.—§3, ch. 67-598.

213.18 Interaudits.—Article VIII of the multistate tax compact, relating to interaudits, shall be in force in and with respect to this state on and after July 1, 1969.

History.—§4, ch. 67-598.

General Acts of Special Application and SPECIAL ACTS

ADOPTED BY THE

SECOND LEGISLATURE OF FLORIDA UNDER THE CONSTITUTION AS REVISED IN 1968

At Its First Regular Session
April 6 to June 4, 1971
and Special Session
June 9 to June 24, 1971

Volume II

Published by Authority of Law
Under the Direction of
FLORIDA LEGISLATIVE PRINTING COMMITTEE
TALLAHASSEE
1971

~~a fee of ten dollars.~~ Photographs or microphotographs of any records made in compliance with section 608.36, *Florida Statutes,* shall be acceptable and have the same force and effect as the originals thereof. Restoration shall be effective from the date of dissolution or cancellation of permit.

(3) Should the name of the dissolved ~~corporation~~ *entity* have been lawfully appropriated by another ~~corporation~~ *entity* the applicants shall be permitted to amend the application by adopting another name and thereafter the ~~corporation~~ *entity* shall continue under the name so adopted~~.~~*, provided however, the name of the dissolved entity shall not be available for use by another entity until after the passage of one (1) year from the date of the final dissolution.*

(4) Restored ~~corporations~~ *entities* shall be subject to the ~~capital stock~~ *privilege* tax from the effective date of restoration.

Section 7. Chapter 608, Florida Statutes, is amended by adding a new section to read:

In such cases where the department of state has caused to be made copies of any records maintained by it by miniature photographic microfilming or other processes as authorized by section 15.16, Florida Statutes, the department of state may destroy the original of said documents, pursuant to law.

Section 8. This act shall take effect immediately upon becoming law.

Approved by the Governor December 16, 1971.

Filed in Office Secretary of State December 17, 1971.

CHAPTER 71-980

House Bill No. 30-D

AN ACT relating to taxation and finance; repealing Articles III and IV of the Multistate Tax Compact, section 213.15, Florida Statutes; repealing subparagraph 214.71(3)(a)(2), Florida Statutes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Articles III and IV of section 213.15, Florida Statutes, are hereby repealed.

Section 2. Paragraph 214.71(3)(a), Florida Statutes, is amended to read:

214.71 Apportionment; general method.—Except as otherwise provided in sections 214.72 and 214.73, the base upon which any tax made applicable to this chapter shall be apportioned shall be determined by multiplying same by a fraction, the numerator of which is the sum of the property factor, the payroll factor and the sales factor, and the denominator of which is three (3). In the event any of the factors described in subsections (1), (2) or (3) has a denominator which is zero or is determined by the department to be insignificant, the denominator of the apportionment fraction shall be reduced by the number of such factors.

(3) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year or period and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period.

(a) Sales of tangible personal property are in this state if~~:~~ ~~(1)~~ the property is delivered or shipped to a purchaser within this state, regardless of the f.o.b. point or other conditions of the sale~~; or.~~

~~(2) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state, and either the purchaser is the United States government or the taxpayer is not subject to a comparable tax on the sale in the state of the purchaser.~~

Section 3. This act shall take effect on January 1, 1972.

Approved by the Governor December 16, 1971.

Filed in Office Secretary of State December 17, 1971.

California

Package X

1993 Tax Forms Catalogue

Tax Practitioners:

If you computer prepare your clients' returns, see FTB Pub. 1095D, Tax Practitioners Guidelines for Computer Prepared Returns on page 9.

INCOME YEAR

FORM

1993 California Corporation Franchise or Income Tax Return 100

	MONTH	DAY	YEAR		MONTH	DAY	YEAR
For income year beginning			1993	, and ending			

Affix Preaddressed Label

California corporation number | Federal employer identification number

Corporation name

Address

City | State | ZIP code

A Final return? ☐ Dissolved ☐ Surrendered (Withdrawn) ☐ Merged/Reorganized ☐ IRC Section 338 sale If a box is checked, enter date ____

B Is income included in a combined report of a unitary group? . . . . • ☐ Yes ☐ No
If yes, indicate: ☐ wholly within California (R&TC 25101.15) ☐ within and outside of California

C Is this corporation to be treated as a credit union? . . . . • ☐ Yes ☐ No

D Is this corporation to be treated as a Real Estate Mortgage Investment Conduit (REMIC) for California purposes? . . . . • ☐ Yes ☐ No

E Did this bank or corporation determine its income pursuant to a water's-edge election? (If yes, attach Form 100-WE and Form 100-FEE). • ☐ Yes ☐ No
If yes, indicate the date the contract begins ________ ends ________

F Does this corporation or bank and its related entities have either 1) property, payroll or sales in foreign countries that exceeds $10,000,000; or 2) total assets everywhere that exceed $250,000,000? . . . . • ☐ Yes ☐ No

G Did this corporation or its subsidiary(ies) have a change in control or ownership, or acquire ownership or control of any other legal entity this year? (Do not leave blank) . . . . • ☐ Yes ☐ No

H Principal business activity code (Do not leave blank) . . . • ________

I Is this corporation claiming enterprise zone, program area or Los Angeles Revitalization Zone (LARZ) tax benefits? . . . . • ☐ Yes ☐ No

J Check here if claiming technological property contribution tax benefits: • ☐

K Date incorporated: ________ • Where: ________

Questions continued on Side 2

State Adjustments	1	Net income (loss) before state adjustments. See instructions			1	
	2	Amount deducted for foreign or domestic tax based on income or profits			2	
	3	Amount deducted for tax under the provisions of the Bank and Corporation Tax Law			3	
	4	Interest on government obligations			4	
	5	Net capital gain from Schedule D, line 11			5	
	6	Depreciation and amortization in excess of amount allowed under California law. Attach form FTB 3885			6	
	7	Other additions. Attach schedule(s)			7	
	8	Total. Add lines 1 through 7			8	
	9	Intercompany dividends (Schedule H)	9			
	10	Other dividends (Schedule H)	10			
	11	Water's-edge dividend deduction. Attach form FTB 2411	11			
	12	Capital gain from federal Form 1120 or Form 1120A, line 8	12			
	13	Contributions	13			
	14	Net interest deduction for enterprise zone, program area or LARZ investment	14			
	15	Other deductions. Attach schedule(s)	15			
	16	Total. Add lines 9 through 15			16	
	17	Net income (loss) after state adjustments. Subtract line 16 from line 8			17	

If all income is derived from California sources, transfer the amount from line 17 to line 18. If income is derived from sources both within and outside of California, complete Schedule R and transfer the amount from Schedule R, line 24 to line 18 below.

Calif. Net Income	18	Net income (loss) for state purposes. If net loss, see instructions •			18	
	19	Net operating loss (NOL) carryover deduction. See instructions •	19			
	20	Disaster loss carryover deduction. See instructions •	20			
	21	Net income for tax purposes. Combine lines 19 and 20, then subtract from line 18 •			21	
Taxes	22	Tax. ______% x line 21 (not less than minimum franchise tax, if applicable) ■			22	
	23	Tax credits. See instructions ■	23			
	24	**Balance.** Subtract line 23 from line 22 (not less than minimum franchise tax, if applicable)			24	
	25	Alternative minimum tax. Attach Schedule P (100). See General Information I ■			25	
	26	**Total tax.** Add line 24 and line 25 ■			26	
Payments	27 a	Overpayment from prior year allowed as a credit	27a			
	b	1993 estimated tax payments	27b			
	c	Amount paid with extension of time to file return	27c			
	d	Dissolving/Withdrawing (not applicable if formed after 1971). See Gen. Info. N	27d		27	
Amount Due or Refund	28	**Tax due.** If line 26 is more than line 27, subtract line 27 from line 26. Go to line 32 ■			28	
	29	**Overpayment.** If line 27 is more than line 26, subtract line 26 from line 27 ■			29	
	30	Amount of line 29 to be credited to 1994 estimated tax ■	30			
	31	Amount of line 29 to be refunded ■			31	
	32	Penalties and interest. See General Information L and M	32			
		☐ Check box if estimate penalty was computed using Exception B or Exception C and attach form FTB 5806.				
	33	**Total amount due.** Add line 28 and line 32. Pay this amount with this return			33	

Schedule A Taxes Deducted Use additional sheet(s) if necessary.

(a) Nature of tax	(b) Taxing authority	(c) Total amount	(d) Nondeductible amount
Total. Enter total of column (c) on Schedule F, line 17, and amounts in column (d) on Side 1, line 2 or line 3 . .			

Schedule D California Capital Gains and Losses

Part I Short-Term Capital Gains and Losses — Assets Held One Year or Less Use additional sheet(s) if necessary.

(a) Kind of property and description (Example, 100 shares of Z Co.)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Cost or other basis plus expense of sale	(f) Gain (loss) ((d) less (e))
1					

2 Short-term capital gain from installment sales from form FTB 3805E, line 26 or line 37	2	
3 Unused capital loss carryover from 1992	3	
4 Net short-term capital gain (loss). Combine lines 1 through 3	4	

Part II Long-Term Capital Gains and Losses — Assets Held More Than One Year Use additional sheet(s) if necessary.

5					

6 Enter gain from Schedule D-1, line 7 or line 9	6	
7 Long-term capital gain from installment sales from form FTB 3805E, line 26 or line 37	7	
8 Net long-term capital gain (loss). Combine lines 5 through 7	8	
9 Enter excess of net short-term capital gain (line 4) over net long-term capital loss (line 8)	9	
10 Net capital gain. Enter excess of net long-term capital gain (line 8) over net short-term capital loss (line 4)	10	
11 Total line 9 and line 10. Enter here and on Form 100, Side 1, line 5. **Note:** If losses exceed gains, carry forward losses to 1994	11	

Schedule J Add-On Taxes or Recapture of Tax Credits. See instructions.

1) LIFO recapture due to S corporation election (IRC Sec. 1363(d) deferral: $ ______)	1	
2) Interest computed under the look-back method for completed long-term contracts (Attach form FTB 3834)	2	
3) Interest on tax attributable to installment:		
a) Sales of certain timeshares and residential lots	3a	
b) Method for nondealer installment obligations	3b	
4) Credit recapture name: ______	4	
5) Combine lines 1 through 4. Revise the amount on Side 1, line 28 or line 29, whichever applies, by this amount. Write "Schedule J" to the left of line 28 or line 29	5	

Questions (continued from Side 1)

L Date business began in California or date income was first derived from California sources ______

M Accounting method used ______

N Location of principal accounting records ______

O Has the IRS redetermined the corporation's income tax liability for any prior year(s) which has not previously been reported to California? ☐ Yes ☐ No
If yes, furnish a copy of the Revenue Agent's Report under separate cover.

P First return? Check appropriate box(es).
☐ New business or successor to previously existing business operated as a:
☐ sole proprietorship ☐ partnership ☐ joint venture ☐ corporation ☐ other
(attach statement showing name, address and FEIN of previous business)

Q "Doing business as" name: ______

R Was the corporation's income included in a consolidated federal return? ☐ Yes ☐ No

S Is this corporation a regulated investment company for California purposes? ☐ Yes ☐ No

T At any time during the income year, was more than 50% of the voting stock:
a of the corporation owned by any single interest? ☐ Yes ☐ No
b of another corporation owned by this corporation? ☐ Yes ☐ No
c of this and one or more other corporations owned or controlled, directly or indirectly, by the same interests? ☐ Yes ☐ No
If **a**, **b** or **c** is "yes," furnish a statement of ownership indicating pertinent names, addresses, and percentages of stock owned. If the owner(s) is an individual, provide the social security number.

U Have all required information returns (e.g. federal Forms 1099) been filed with the Franchise Tax Board? ☐ N/A ☐ Yes ☐ No

V Corporation headquarters are: ☐ Within California
☐ Outside of California, within the U.S. ☐ Outside of the U.S.

W Corporation is: ☐ Apportioning U.S. income to California
☐ Apportioning worldwide income to California ☐ Not apportioning income
☐ Electing to file on a water's-edge basis and is affiliated with a bank or corporation which is not electing to file on a water's-edge basis

X How many affiliates are claiming immunity under Public Law 86-272? ______

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer ▶	Title	Date	Telephone ( )

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed ▶ ☐	Preparer's SSN/FEIN
Firm's name (or yours, if self-employed) and address ▶			FEIN ▶
			Telephone ▶ ( )

Schedule C **Tax Credits** If the corporation completed Schedule P (100), do not complete this schedule.

1 Jobs credit (FTB 3524)		6 Employer child care contribution credit (FTB 3501)	
2 Enterprise zone hiring/sales and use tax credit (FTB 3805Z)		7 Research credit (FTB 3523)	
3 Program area hiring/sales and use tax credit (FTB 3805Z)		8 Low-income housing credit (FTB 3521)	
4 LARZ hiring/sales and use tax credit (FTB 3806)		9 Other (attach form, schedule or statement)	
5 Employer child care program credit (FTB 3501)		10 Total. Enter here and on Side 1, line 23	

Schedule F **Computation of Net Income** See General Information H.

Income	1 a) Gross receipts or gross sales ______ b) Less returns and allowances ______ Balance ▶				1c	
	2 Cost of goods sold. Attach federal Schedule A (California Schedule V)				2	
	3 Gross profit. Subtract line 2 from line 1c				3	
	4 Dividends. Attach federal Schedule C (California Schedule H)				4	
	5 a Interest on obligations of the United States and U.S. instrumentalities				5a	
	b Other interest. Attach schedule				5b	
	6 Gross rents				6	
	7 Gross royalties				7	
	8 Capital gain net income. Attach federal Schedule D (California Schedule D)				8	
	9 Ordinary gain (loss). Attach federal Form 4797 (California Schedule D-1)				9	
	10 Other income. Attach schedule				10	
	11 **Total income.** Add lines 3 through 10				11	
Deductions	12 Compensation of officers. Attach federal Schedule E or equivalent schedule			12		
	13 Salaries and wages (not deducted elsewhere)			13		
	14 Repairs			14		
	15 Bad debts			15		
	16 Rents			16		
	17 Taxes (California Schedule A)			17		
	18 Interest			18		
	19 Contributions. Attach schedule			19		
	20 Depreciation. Att. fed. Form 4562 (CA FTB 3885)	20				
	21 Less depreciation claimed elsewhere on return	21a		21b		
	22 Depletion. Attach schedule			22		
	23 Advertising			23		
	24 Pension, profit-sharing, etc., plans			24		
	25 Employee benefit plans			25		
	26 Other deductions. Attach schedule			26		
	27 Specific deduction for 23701r or 23701t organizations. See instructions			27		
	28 **Total deductions.** Add lines 12 through 27				28	
	29 Net income before state adjustments. Subtract line 28 from line 11. Enter here and on Side 1, line 1				29	

Schedule H **Dividend Income** Attach additional sheet(s) if necessary. See Schedule H instructions.

(a) Payer	(b) Common or preferred stock	(c) Dividend received	(d) Unitary (Yes/No) If yes, enter Col. (c) amt. in Col. (e)	(e) Allowable intercompany dividend deduction (Side 1, line 9)	(f) Deductible %	(g) Deductible dividend	(h) Limitation %	(i) Allowable other dividend deduction (Side 1, line 10)
Total. Add columns (e) and (i). Enter here and on the applicable line of Side 1								

Schedule V **Cost of Goods Sold**

1 Inventory at beginning of year	1	
2 Purchases	2	
3 Cost of labor	3	
4 a Additional IRC Section 263A costs. Attach schedule	4a	
b Other costs. Attach schedule	4b	
5 Total. Add lines 1 through 4b	5	
6 Inventory at end of year	6	
7 Cost of goods sold. Subtract line 6 from line 5	7	

Method of inventory valuation ▶ ______

Was there any substantial change in the manner of determining quantities, costs or valuations between opening and closing inventory? ☐ Yes ☐ No

If "Yes," attach an explanation. Enter California seller's permit number, if any ▶ ______

Check if the LIFO inventory method was adopted this income year for any goods. If checked, attach federal Form 970 ☐

If the LIFO inventory method was used for this income year, enter the percentage (or amounts) of closing inventory under LIFO ______

Do the rules of IRC Section 263A (with respect to property produced or acquired for resale) apply to the corporation? ☐ Yes ☐ No

Schedule L Balance Sheets	Beginning of income year		End of income year	
Assets	(a)	(b)	(c)	(d)
1 Cash				
2 a Trade notes and accounts receivable				
b Less allowance for bad debts	( )		( )	
3 Inventories				
4 Federal and state government obligations				
5 Other current assets. Attach schedule(s)				
6 Loans to stockholders/officers. Attach schedule				
7 Mortgage and real estate loans				
8 Other investments. Attach schedule(s)				
9 a Buildings and other fixed depreciable assets				
b Less accumulated depreciation	( )		( )	
10 a Depletable assets				
b Less accumulated depletion	( )		( )	
11 Land (net of any amortization)				
12 a Intangible assets (amortizable only)				
b Less accumulated amortization	( )		( )	
13 Other assets. Attach schedule(s)				
14 **Total assets.**				
Liabilities and stockholders' equity				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities. Attach schedule(s)				
18 Loans from stockholders				
19 Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities. Attach schedule(s)				
21 Capital stock: a Preferred stock				
b Common stock				
22 Paid-in or capital surplus. Attach reconciliation				
23 Retained earnings — Appropriated. Attach schedule				
24 Retained earnings — Unappropriated				
25 Less cost of treasury stock		( )		( )
26 **Total liabilities and stockholders' equity**				

Schedule M-1 **Reconciliation of income (loss) per books with income (loss) per return**

This schedule does not have to be completed if the amount on Schedule L, line 14, column (d), is less than $25,000.

1 Net income per books		7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax		a Tax-exempt interest $______	
3 Excess of capital losses over capital gains			
4 Taxable income not recorded on books this year (itemize)______		8 Deductions in this return not charged against book income this year (itemize)	
5 Expenses recorded on books this year not deducted in this return (itemize)		a Depreciation . . . $______	
a Depreciation . . . $______		b State tax refunds $______	
b State taxes . . . $______			
c Travel and entertainment $______		9 Total. Add line 7 and line 8	
6 Total. Add lines 1 through 5		10 Net income per return. Subtract line 9 from line 6.	

Schedule M-2 **Analysis of unappropriated retained earnings per books** (Schedule L, line 24)

This schedule does not have to be completed if the amount on Schedule L, line 14, column (d), is less than $25,000.

1 Balance at beginning of year		5 Distributions: a Cash	
2 Net income per books		b Stock	
3 Other increases (itemize)______		c Property	
		6 Other decreases (itemize)______	
		7 Total. Add line 5 and line 6	
4 Total. Add lines 1 through 3		8 Balance at end of year. Subtract line 7 from line 4.	

Instructions for Form 100

Corporation Franchise or Income Tax Return

References in these instructions are to the Internal Revenue Code (IRC) as of January 1, 1993, and to the California Revenue and Taxation Code (R&TC).

Tax Law Changes

Net Operating Loss (NOL)

California legislation reinstated net operating loss (NOL) carryover deductions for income years beginning in 1993.

However, the NOL carryover has been reduced from 15 years to 5 years. NOL carryovers from losses incurred in years beginning before 1991 have been extended for two years and losses incurred in years beginning in 1991, for one year. For corporations involved in bankruptcy proceedings beginning in years before January 1, 1994, a 10 year carryover is allowed.

Apportionment and Allocation of Income

Effective for income years beginning on or after January 1, 1993, apportioning corporations must use a double-weighted sales factor. For more information, get Schedule R, Apportionment and Allocation of Income.

Water's-Edge Reporting

Recently enacted California legislation significantly revised the water's-edge election for income years beginning on or after January 1, 1994. For more information, see General Information S.

Qualified Settlement Fund (Including Designated Settlement Fund)

Although a qualified settlement fund is treated as a corporation for filing and reporting purposes, it should file its California income tax returns using California Form 541. See Form 541 Instructions, for more information.

An income tax return filed prior to December 31, 1993, for a qualified settlement fund, using California Form 100 and accompanied by a federal return and appropriate statements and elections, will not be rejected as an improperly filed return.

General Information

Form 100 is California's tax return for corporations, banks, financial corporations, real estate mortgage investment conduits (REMICs), regulated investment companies (RICs), real estate investment trusts (REITs), Massachusetts or business trusts, publicly traded partnerships (PTPs), homeowners associations (HOAs), political action committees (PACs) and limited liability companies (LLCs) treated as corporations. (REMICs that are partnerships must file Form 565.)

S corporations must file Form 100S, S Corporation Franchise or Income Tax Return.

A Franchise or Income Tax

Form 100 is used to file either a California corporation franchise tax return or a California corporation income tax return. Unless stated otherwise, the term "corporation" as used in these instructions applies to all the entities listed above.

Corporation franchise tax

The corporation franchise tax is imposed on all corporations "doing business," incorporated or qualified in California and is prepaid for the privilege of doing business. It is measured by the income of the preceding year (the income year) for the privilege of doing business in the following year (the taxable year). For purposes of these instructions, the term "income year" means taxable year for corporations that are subject to the corporate income tax under Chapter 3 of the Bank and Corporation Tax Law.

The term "doing business" means actively engaging in any transaction for the purpose of financial gain.

Entities subject to this tax are:

- all corporations incorporated or qualified to do business in California;
- all corporations doing business in California, whether or not incorporated or qualified under California law; and
- banks doing business in California.

Corporation income tax

The corporation income tax is imposed on all corporations that derive income from sources within California but are not doing business in California.

For purposes of the corporation income tax, the term "corporation" does not include banks.

Political organizations that are exempt under R&TC Section 23701r and have political taxable income in excess of $100 also must file a Form 100. Political taxable income is defined as all amounts received during the income year other than:

- contributions of money or property;
- membership fees, dues or assessments; or
- proceeds from the sale of political campaign material that are not received in the ordinary course of any trade or business.

Homeowners' associations that are exempt under R&TC Section 23701t and have nonexempt gross income in excess of $100 also must file Form 100. Nonexempt gross income of a homeowners' association is defined as all income other than amounts received from membership fees, dues or assessments.

Note: An exempt homeowners' association may be required to file Form 199, Exempt Organization Annual Information Statement or Return.

B Tax Rates

The tax rates below apply to corporations subject to either the corporation franchise tax or the corporation income tax.

- Corporations other than banks and financial corporations 9.3%
- Calendar year banks and financial corporations. 11.107%

Fiscal year banks and financial corporations, get form FTB 4149, Notice of Determination of Rate of Tax for Banks and Corporations, for the correct rate.

C Minimum Franchise Tax

All corporations subject to the corporation franchise tax, including banks, financial corporations, and partners of partnerships doing business in California, must file Form 100 and pay at least the minimum franchise tax as required by law. The minimum franchise tax, as indicated below, must be paid whether the corporation is active, inactive, operates at a loss or files a return for a short period.

- Qualified inactive gold or quicksilver mining corporations $25
- All other corporations (see General Information A for definitions) subject to franchise tax $800

There is no minimum franchise tax for credit unions, exempt HOAs, PACS or for corporations that are subject to income tax and that are not incorporated or qualified under the laws of California.

D Accounting Period/Method

The income year of a corporation must not be different from the tax year used for federal purposes, unless initiated or approved by the Franchise Tax Board (FTB) (R&TC Section 24632).

A change in accounting method requires consent from the FTB. However, a corporation that obtains federal approval to change its accounting method, or that is permitted or required by federal law to make a change in its accounting method without prior approval and does so, is deemed to have FTB's approval if: (1) the corporation files Form 100 consistent with the change for the first year the change becomes effective; and (2) the change is consistent with California law. A copy of federal Form 3115, Application for Change in Accounting Method, and a copy of the federal consent to the change must be attached to Form 100. FTB may modify a requested change if the change would distort income for California purposes.

E When to File

File Form 100 by the 15th day of the 3rd month after the close of the income year. Farmer's cooperative associations must file Form 100 by the 15th day of the 9th month after the close of the income year. For final returns, see General Information O.

F Extension of Time to File

If the corporation cannot file its California return by the 15th day of the third month after the close of the income year it may file on or before the 15th day of the tenth month, without filing a written request for an extension unless the corporation is suspended on the original due date. This does not extend the time for payment. Therefore, the full amount of tax must be paid by the original due date of Form 100. If there is an unpaid tax liability send form FTB 3539, Payment Voucher for Automatic Extension for Corporations and Exempt Organizations, with the payment.

G Where to File

For returns with payments make the check or money order payable to the "Franchise Tax Board." Write the California corporation number on the check or money order. Mail the return and payment to:

Franchise Tax Board
P.O. Box 942857
Sacramento, CA 94257-0501

Mail all other returns to:

Franchise Tax Board
P.O. Box 942857
Sacramento, CA 94257-0500

Note: If the corporation must pay its tax liability using electronic fund transfer (EFT), all taxes due must be remitted by EFT to avoid penalties.

H Net Income Computation

The computation of net income, on Form 100, Side 1, generally follows the determination of taxable income as provided in the IRC. However, there are differences that must be taken into account when completing Form 100.

There are two ways to complete Form 100:

1. **Federal reconciliation**
   a. Attach a copy of federal Form 1120 or Form 1120A, Page 1, U.S. Corporation Income Tax Return and all pertinent supporting schedules, or transfer the information from federal Form 1120 or Form 1120A, Page 1, on to Schedule F and attach all pertinent schedules;
   b. Enter the amount of federal taxable income before any NOL, on Form 100, Side 1, line 1; and
   c. Enter state adjustments on lines 2 through 16 to arrive at net income after state adjustments, Side 1, line 17.

See the specific line instructions for more information.

2. **California computation**

   If the corporation has no federal filing requirement, or if the corporation maintains separate records for state purposes, complete Form 100, Schedule F, Computation of Net Income, to determine state income. If net income is computed under California laws, generally no state adjustments are necessary. Transfer the amount from Schedule F, line 29, to Side 1, line 1. Complete Form 100, Side 1, lines 2 through 16, only if applicable.

Substitution of federal schedules. Corporations may substitute federal schedules for California schedules as long as the corporation attaches all supporting federal schedules and reconciles any differences between federal and California figures.

I Alternative Minimum Tax

Corporations that claim certain types of deductions, exclusions and credits may be subject to California's alternative minimum tax (AMT). Generally, corporations that completed federal Form 4626, Alternative Minimum Tax — Corporations, must also complete California Schedule P (100), Alternative Minimum Tax and Credit Limitations — Corporations. For more information, see Schedule P (100) (included in this booklet).

J Estimated Tax

Every bank and corporation, unless exempt by law, must pay estimated tax using Form 100-ES, Corporation Estimated Tax. Estimated tax is generally due and payable in four installments:

- the first payment is due by the 15th day of the 4th month of the income year (note that this payment may not be less than the minimum franchise tax, if applicable); and
- the 2nd, 3rd and 4th installments are due and payable by the 15th day of the 6th, 9th and 12th months respectively, of the income year.

Note for first-time filers: The prepayment of tax made to the Office of the Secretary of State at the time of incorporation or qualification is for the privilege of "doing business" during the corporation's first income year. **Do not** claim this payment as an estimated tax payment or credit against the tax liability shown on the return for any year.

For more information, get the instructions for Form 100-ES.

K Commencing Corporations

The tax measured by the income in the first year of business (first income year) is for the privilege of "doing business" during the second year.

Even if the first income year is for a period of less than 12 months, or if the corporation is inactive during the first income year, the corporation must pay at least the minimum franchise tax by the first estimate installment due date and file Form 100 by the due date.

For more information, get FTB Pub. 1060, Guide for Corporations Starting Business in California.

L Penalties

Failure to file a timely return
Any corporation that fails to file Form 100 on or before the extended due date is assessed a penalty. The penalty is 25% of the tax due, after any timely payments and credits, if Form 100 is not filed by the extended due date.

Failure to pay total tax by the due date
Any corporation that fails to pay the total tax shown on Form 100 by the original due date is assessed a penalty. The penalty is 5% of the unpaid tax, plus 0.5% for each month, or part of the month (not to exceed 40 months), the tax remains unpaid. This penalty may not exceed 25% of the unpaid tax.

Note: If a corporation is subject to both the penalty for failure to file a timely return and the penalty for failure to pay the total tax by the due date, a combination of the two penalties may be assessed, but the total will not exceed 25% of the unpaid tax.

Underpayment of estimated tax
Any corporation that fails to pay, pays late or underpays an installment of estimated tax is assessed a penalty. The penalty is a percentage of the underpayment for the underpayment period.

Get form FTB 5806, Underpayment of Estimated Tax by Corporations, to determine both the amount of underpayment and the amount of penalty.

Note: If the corporation uses Exception B or Exception C for any of the four installments, form FTB 5806 must be attached to Form 100.

Underpayment of estimated election fee
Any corporation that files on a water's-edge basis and fails to pay, pays late or underpays an installment of estimated election fee is assessed a penalty. The penalty is a percentage of the underpayment for the period of underpayment. Get form FTB 5807, Underpayment of Estimated Election Fee, to determine both the amount of underpayment and the amount of penalty.

Information reporting penalty
Certain domestic corporations that are 25% foreign-owned, and foreign corporations engaged in a U.S. trade or business, must include federal Form(s) 5472, Information Return of a Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business, with this return. Attach a copy of Form(s) 5472 to Form 100. The penalty for failing to include Form(s) 5472, as required, is $10,000 per form.

If the corporation does not file the tax return on the due date or extended due date, whichever is later, copies of federal Form(s) 5472 must still be filed on time. Attach a cover letter indicating the taxpayer's name, California corporation number and income year. Mail to the same address used for returns without payments. When the corporation files Form 100, also attach copies of the federal Form(s) 5472.

Secretary of State penalty
The California Corporations Code requires FTB to assess a penalty for failure to file an annual statement of corporate officers with the Office of the Secretary of State.

For more information, contact:

California Secretary of State
P.O. Box 944230
Sacramento, CA 94244-0230
Telephone: (916) 445-2020

Accuracy and fraud related penalties
California conforms to IRC Sections 6662 through 6664 which authorized the imposition of an accuracy-related penalty equal to 20% of the related underpayment, and the imposition of a fraud penalty equal to 75% of the related underpayment.

Other penalties
Other penalties may be imposed for a check returned for insufficient funds, failure to pay by EFT when required, foreign corporations operating while forfeited or without qualifying to do business in California and domestic corporations operating while suspended in California. For more information, see R&TC Sections 25935, 25937, 25940 and 25941.

M Interest

Interest is due and payable on any tax due if not paid by the original due date of Form 100. Interest is also due on some penalties. An extension of time to file Form 100 does not stop interest from accruing.

California follows federal rules for the calculation of interest. For more information, get FTB Pub. 1072, Explanation of Interest.

N Dissolution/Withdrawal

The franchise tax for the period in which the corporation formally dissolves or withdraws is measured by the income of the year in which it ceased doing business in California, unless such income has already been taxed at the rate prescribed for the taxable year of dissolution or withdrawal.

A corporation that commenced doing business in California before 1/1/72 is allowed a credit that may be refunded in the year of dissolution or withdrawal. The amount of the refundable credit is the difference between the minimum franchise tax for the corporation's first full 12 months of doing business and the total tax paid for the same period.

The return for the final taxable period is due on or before the 15th day of the 3rd full month following formal dissolution or withdrawal.

For more information, get FTB Pub. 1038, Guide for Corporations Dissolving, Surrendering (Withdrawing) or Merging.

Samples and/or forms for a dissolution, surrender or merger agreement filing may be obtained by addressing your request to:

California Secretary of State
Attn: Legal Review
1230 J Street
Sacramento, CA 95814
Telephone: (916) 445-0620

O Ceasing Business

Because the corporation franchise tax is a prepaid tax, a special tax computation is necessary when a corporation ceases to do business. The tax for the final year in which the corporation does business in California is:

- the tax measured by the income of the preceding year; PLUS
- the tax measured by the income of the year in which the corporation ceases to do business.

The tax due must be at least the minimum franchise tax. Generally, the corporation will remain subject to the minimum franchise tax for each year it is in existence until it is formally dissolved or withdrawn through the Office of the Secretary of State. For more information, see General Information N and R&TC Section 23332.

P Suspension/Forfeiture

If a corporation fails to file a return and/or fails to pay any tax, penalty or interest due, its powers, rights and privileges may be suspended (in the case of a domestic corporation) or forfeited (in the case of a foreign corporation).

Corporations that operate while suspended or forfeited are subject to a $2,000 penalty, which is in addition to any tax, penalties and interest already accrued. Also, any contracts entered into during suspension or forfeiture are voidable at the request of any party to the contract other than the suspended or forfeited corporation.

Such contracts will remain voidable and unenforceable by the corporation unless the corporation applies for relief from contract voidability and FTB grants the relief. For additional information get form FTB 1139, Contract Voidability.

For more information, see R&TC Sections 23301 through 23334 and 25941.

Q Apportionment of Income

Corporations with business income attributable to sources both within and outside of California are required to apportion such income. To calculate the apportionment percentage, use Schedule R, Apportionment and Allocation of Income.

R Combined Report

If two or more corporations engaged in a unitary business derive income from sources within and outside of California, the members of the group that are subject to California's franchise or income tax are required to apportion the combined unitary income of the entire group in order to compute the measure of the tax.

Members of unitary groups whose income is derived wholly from California sources may file a return on a separate accounting basis or file a return on a combined report basis.

Members of a unitary group may elect to file a group single return by filing Schedule R-7, Election to File a Combined Unitary Group Single Return and List of Affiliated Corporations.

A combined unitary group single return must present the group's data by separate corporation, as well as in combined format. This will prevent the return from being mistaken for a return of only one corporation.

The total combined tax, which must include at least the minimum franchise tax for each corporation subject to the franchise tax, must be shown on Form 100, Side 1, line 22.

For more information, get FTB Pub. 1061, Guidelines for Corporations Filing a Combined Report.

S Water's-Edge Reporting

To make a water's-edge election, each unitary taxpayer must enter into a contract with FTB by filing Form 100-WE, Water's-Edge Contract. For the election to be valid, Form 100-WE must be signed and attached to the original return and a copy of the contract must be attached to all subsequent returns filed during the contract period.

In consideration for being allowed to file on a water's-edge basis, the taxpayer must, among other things, agree to:

- file returns on a water's-edge basis for a period of 60 months;
- pay an election fee as provided for in R&TC Section 25115;
- the business income treatment of dividends received from certain corporations;
- consent to the taking of certain depositions and the acceptance of subpoenas duces tecum requiring the reasonable production of documents; and
- file Form 100-DDS, Domestic Disclosure Spreadsheet, every three years.

For more information, get the Form 100-WE Booklet and Form 100-DDS Booklet.

Recent legislation made significant changes to the water's-edge provisions effective for income years beginning on or after January 1, 1994. Highlights of the changes are:

- all existing water's-edge contracts, entered into prior to January 1, 1994, will be rescinded;
- new contracts must be entered into to continue or to begin filing on a water's-edge basis for an election period of 84 months for income years beginning on or after January 1, 1994;
- elimination of the election fee;
- replacement of the Domestic Disclosure Spreadsheet filing requirement with an information return required to be filed by **all** taxpayers with more than $200 million in total assets;
- elimination of the FTB's ability to disregard a water's-edge election.

For more information regarding these changes, get FTB Notice 93-7.

T Amended Return

To correct or change Form 100 file Form 100X, Amended Corporation Franchise or Income Tax Return. If the IRS examined and changed the corporation's federal return or if the corporation filed an amended federal return, file Form 100X within six months of the final federal determination.

U Information Returns

Every corporation engaged in a trade or business and making or receiving certain payments in the course of the trade or business is required to file information returns to report the amount of such payments.

Payments that must be reported include, but are not limited to, compensation for services not subject to withholding, commissions, fees, prizes and awards, payments to independent contractors, rents, royalties and pensions exceeding $600 annually, interest and dividends exceeding $10 annually and cash payments over $10,000 received in a trade or business. Payments of any amount by a broker or barter exchange must also be reported.

Report payments on federal Form 1099 (series) accompanied by California Form 596, Annual Summary and Transmittal of Information Returns. Reports must be made for the calendar year and generally are due on February 28th of the year following payment. For more information, get Form 596.

V Net Operating Loss (NOL)

California has reinstated the deduction for NOL carryovers for income years beginning in 1993.

R&TC Sections 24416, 24416.1 and 25108 provide for NOL carryovers incurred in the conduct of a trade or business.

R&TC Section 24347.5 provides special treatment for the carryover of disaster losses incurred in an area designated by the President of the United States or the Governor of California as a disaster area.

For more information, see form FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Corporations (included in this booklet), or get form FTB 3805Z, Enterprise Zone and Program Area Business Booklet, and form FTB 3806, Los Angeles Revitalization Zone Booklet. See R&TC Sections 24416, 24416.1, 24416.2 and 24347.5.

Specific Line Instructions

Filing Form 100 without errors will expedite processing. Before mailing Form 100, make sure entries have been made for the:

(1) income year;
(2) California corporation number;
(3) federal employer identification number (FEIN); and
(4) corporation name.

Questions A through K

Answer all applicable questions and attach additional sheets, if necessary. Note the following instructions when answering:

Question D — REMIC

If a corporation is a REMIC for federal purposes, it is deemed to be a REMIC for California purposes. A REMIC is subject to the minimum franchise tax but is not subject to the income or franchise tax. The income of a REMIC is taxable to the holders of the REMIC interests. In order to qualify, substantially all of the assets of the entity must consist of "qualified mortgages" and "permitted investments." California law is the same as federal law, except California does not impose a tax on prohibited transactions, as defined in IRC Section 860F. See the instructions for federal Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, to determine if the corporation qualifies. If the corporation is a REMIC for federal purposes, answer "yes" to Question D, complete Form 100 and attach a copy of federal Form 1066.

Question E — Water's-edge

Answer "yes" only if the corporation has in effect or is making a water's-edge election. Attach Form 100-WE, Water's-Edge Contract, to the original return for the first year of the election. Attach a copy of the contract to all subsequent returns filed during the contract period. Also attach Form 100-FEE, Water's-Edge Election Fee to the face of Form 100. See General Information S.

Question F — Foreign activity and total assets

All corporations must answer Question F.

Related entities. A related entity is a corporation that is a member of a commonly controlled group of which the taxpayer is also a member. Common control is established by ownership or control of more than 50% of the voting stock.

Property, payroll and sales in a foreign country. Property, payroll and sales are in a foreign country if they would be assigned to a location other than one of the states of the United States, the District of Columbia or a possession of the United States. The factors of all related corporations shall be cumulated.

Total assets. Total assets are all tangible and intangible property valued at original cost net of depreciation, amortization or depletion as reflected on a consolidated balance sheet prepared for reporting to shareholders.

Question G — Transfer or acquisition of voting stock

All corporations must answer Question G.
Answer "yes" if:

- the percentage of outstanding voting shares of this corporation or its subsidiary(ies) owned by **one** person or **one** entity cumulatively exceeded 50% during this year; or
- the total of voting shares transferred to one irrevocable trust cumulatively exceeded 50% during this year; or
- one or more irrevocable proxies transferred voting rights to more than 50% of the outstanding shares to **one person** or **one** entity during this year; or
- this corporation's cumulative ownership or control of the stock or other ownership interest in any legal entity exceeded 50% during this year; or
- cumulatively more than 50% of the total outstanding shares of this corporation have transferred, changed ownership or control during this year.

R&TC Section 64(e) requires this information for use by the State Board of Equalization.

Question H — Principal business activity code

Using the list found on page 12, enter the code number for the specific industry group from which the greatest percentage of California "total receipts" is derived. "Total receipts" means gross receipts plus all other income.

If, as its principal business activity, the corporation: (1) purchases raw material; (2) subcontracts out for labor to make a finished product from the raw materials; and (3) retains title to the goods, the corporation is considered to be a manufacturer and must enter one of the codes (2010-3998) under "Manufacturing."

Question I — Enterprise zone, program area or Los Angeles Revitalization Zone (LARZ) tax benefits

Answer "yes" if the corporation claims:

- a net interest deduction for enterprise zone, program area or LARZ investments (claimed on Side 1, line 14);
- an enterprise zone, program area or LARZ business expense deduction (claimed on Side 1, line 15);
- an enterprise zone hiring/sales and use tax credit (claimed on Side 3, Schedule C, line 2, or Schedule P (100), Part II, line 12); or
- a program area hiring/sales and use tax credit (claimed on Side 3, Schedule C, line 3, or Schedule P (100), Part II, line 13).
- a LARZ hiring/sales and use tax credit (claimed on Side 3, Schedule C, line 4, or Schedule P (100), Part II, line 21).

Corporations must also attach form FTB 3805Z or form FTB 3806 to Form 100 to claim these tax benefits. If the proper form is not attached, these tax benefits may be disallowed.

Question J — Technological property contribution tax benefits

Check the box if the corporation claims:

- a deduction under R&TC Section 24357.8 for contributing scientific equipment or apparatus (claimed on Side 1, line 13); or
- a credit carryover for the contributing a computer, scientific equipment or apparatus (claimed on Side 3, Schedule C, line 9, or Schedule P (100), Part II, line 19).

Be sure to answer questions L through X on Side 2.

Line 1 – Net income (loss) before state adjustments

Corporations using federal reconciliation to figure net income (see General Information H) must:

- transfer the amount from federal Form 1120, line 28, or federal Form 1120A, line 24, to line 1 and attach a copy of the federal return and all pertinent supporting schedules; or copy the information from federal Form 1120 or Form 1120A, Page 1, onto Schedule F and transfer the amount from Schedule F, line 29, to line 1.
- then, complete Form 100, Side 1, lines 2 through 16, State Adjustments.

Corporations using the California computation to figure net income (see General Information H) must transfer the amount from Side 3, Schedule F, line 29, to line 1. Complete Form 100, Side 1, lines 2 through 16, only if applicable.

Lines 2 through 16 – State adjustments

To figure net income for California purposes, corporations using federal reconciliation must enter California adjustments to the federal net income on lines 2 through 16. If a specific line for the adjustment is not on Form 100, corporations must enter the adjustment on line 7, Other additions, or line 15, Other deductions, and attach a schedule.

Lines 2 and 3 – Taxes not deductible

California does not permit a deduction of California corporation franchise or income taxes or any other taxes on, according to, or measured by income or profits. Such taxes that are shown on Form 100, Schedule A must be added to income by entering the amount on Side 1, line 2 or line 3 (see Schedule A, column (d) for the amount to be added to income). California does not permit a deduction for environmental taxes imposed by IRC Section 59A.

Line 4 – Interest on government obligations

Corporations subject to California franchise tax must report all interest received on government obligations (such as federal, state or municipal bonds) even though exempt from state or federal income tax. Add such interest that is not reported on the federal return to income by entering the amount on line 4.

Corporations subject to California corporation income tax see instructions for line 15.

Line 5 – Net capital gain

Complete Side 2, Schedule D and enter the California net capital gain from Schedule D, line 11.

Adjust the federal capital gain taxable income out of California taxable income on line 12.

Line 6 – Depreciation and amortization

California law is substantially different from federal law.

Complete form FTB 3885, Corporation Depreciation and Amortization (included in this booklet), to determine the amounts that must be entered on line 6.

Line 7 – Other additions

Any miscellaneous items that must be added to arrive at net income after state adjustments (line 17) should be shown on this line. Attach a schedule to itemize amounts.

California ordinary net gain or loss. Enter any California ordinary net gain or loss from Schedule D-1, Sales of Business Property. Attach Schedule D-1.

Note: Business expense deductions are not allowed with respect to payments to a club that restricts membership or the use of its services or facilities on the basis of age, sex, race, religion, color, ancestry or national origin. "Club" means a club as defined in the Business and Professions Code, Div. 9, Ch. 3, Art. 4, beginning with Section 23425. Add back such deductions on this line.

Lines 9, 10, and 11 – Dividends

See Schedule H instructions.

Line 12 – Federal capital gain net income

Enter the federal capital gain net income. The California net capital gain should have been added on line 5.

Line 13 – Contributions

Generally, corporations must make a contribution adjustment because California law is different from federal law. California law limits the contribution deduction to 5% of California net income, without regard to charitable contributions and special deductions (i.e. the deduction for dividends received). Federal law limits the contribution deduction to 10% of federal taxable income. The definition of California net income differs from federal taxable income for computing the contribution deduction.

On a separate worksheet, using the Form 100 format, complete Form 100, Side 1, through line 17 without regard to line 13, Contributions. Then complete the worksheet that follows to determine the contributions to enter on this line.

1.	Net income after state adjustments from Side 1, line 17. .	________
2.	Deduction for dividends received	________
3.	Net income for contribution calculation purposes. Add line 1 and line 2	________
4.	Contributions. Multiply line 3 by 5% (.05)	________
5.	Enter the amount actually contributed	________
6.	Enter the smaller of line 4 or line 5 here and on Side 1, line 13	________

If any federal contribution deduction was taken in arriving at the amount entered on Side 1, line 1, enter that amount as a positive number on line 7.

Line 14 – Net interest deduction for enterprise zone, program area or LARZ investment

A deduction may be claimed on this line for the amount of net interest on loans made to an individual or company doing business within an enterprise zone, program area or the LARZ. For more information, get form FTB 3805Z and form FTB 3806, for 1993. Be sure to answer "yes" to Question I and attach form FTB 3805Z or form FTB 3806 if any of these benefits are claimed. If the proper form is not attached, these tax benefits may be disallowed.

Line 15 – Other deductions

Include on this line deductions not claimed on any other line. Attach a schedule that clearly shows how each deduction was computed and explain the basis for the deduction.

For corporations subject to income tax (instead of the franchise tax), interest received on obligations of the federal government and on obligations of the State of California and its political subdivisions is exempt from income tax. If such interest is reported on line 4, it must be deducted on line 15.

Federal ordinary net gain or loss. Enter any federal ordinary net gain or loss from federal Form 4797, Sales of Business Property.

Line 18 – Net income (loss) for state purposes

If all corporation income is derived from California sources, transfer the amount on line 17 directly to line 18. If only a portion of income is derived from California sources, complete Schedule R, Apportionment and Allocation of Income, before entering any amount on line 18. Transfer the amount from Schedule R, line 24, to line 18. If this line is a net loss, complete and attach the 1993 form FTB 3805Q, to Form 100.

Line 19 – Net operating loss (NOL) carryover deduction

The NOL carryover deduction is the amount of the NOL carryover from prior years that may be deducted in the current income year.

If line 18 is a positive amount, enter the NOL carryover from the 1993 form FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Corporations, on line 19. Attach to Form 100 a copy of the 1993 form FTB 3805Q.

If the full amount of the NOL carryover may not be deducted this year, complete and attach a 1993 form FTB 3805Q, showing the computation of the NOL carryover to future years.

If line 18 is a negative amount, corporations may not claim an NOL carryover deduction. Enter -0- on line 19. See the 1993 form FTB 3805Q instructions to compute the NOL carryover to future years.

If the corporation terminates its election to be taxed as an S corporation, thus becoming a C corporation, then only that portion of the prior NOL carryover incurred while it had C corporation status may be used to the extent it has not expired.

If the corporation has an enterprise zone, program area or LARZ loss enter the amount from form FTB 3805Z or form FTB 3806.

Line 20 – Disaster loss carryover deduction

If you have a disaster loss carryover deduction enter the amount from line 25, column (b), of the 1993 form FTB 3805Q.

Line 22 – Tax

See General Information B and C.

Line 23 – Tax credits

A variety of tax credits are available to California corporations to reduce tax. However, corporations may not reduce the tax (line 22) below the minimum franchise tax, if applicable.

Also, the amount of the credit that a corporation is allowed to claim may be limited. Generally, if the corporation completed federal Form 4626, Alternative Minimum Tax — Corporations, the corporation may have limited credits. Complete Schedule P (100), Alternative Minimum Tax and Credit Limitations — Corporations, to compute this limitation.

Corporations claiming only

- enterprise zone hiring/sales and use tax credit;
- program area hiring/sales and use tax credit;
- LARZ construction hiring/sales and use tax credit;
- solar energy credit carryover;
- commercial solar energy credit carryover;
- commercial solar electric system credit;
- research credit;
- orphan drug credit carryover; and
- low-income housing credit.

are not subject to this type of limitation.

To figure tax credits, use the appropriate form or schedule. If the corporation claims a credit carryover for an expired credit use form FTB 3540, Credit Carryover Summary, to figure the amount of this credit, unless the corporation is required to complete Schedule P (100). In that case, enter the amount of the credit on Schedule P (100) and complete Schedule P (100). Do not attach form FTB 3540. Transfer the credits from Form 100, Side 3, Schedule C, line 10, or Schedule P (100), Part II, line 43, to Form 100, Side 1, line 23.

Attach the credit form or schedule and Schedule P (100), if applicable, to Form 100.

Jobs credit

A credit is allowed to a corporation that hires employees who have been certified by the Employment Development Department to meet the requirements of the Unemployment Insurance Code Section 328. Get form FTB 3524, Jobs Credit, to figure this credit.

Low-emission vehicles credit

A credit is allowed for the differential cost of purchasing, or the cost of converting a vehicle to a low-emission vehicle. The amount of the credit is 55% of the differential cost of purchasing the vehicle or 55% of the cost of converting the vehicle with certain limitations. Get form FTB 3554, Low-Emission Vehicles Credit, to figure this credit.

Employer ridesharing credits

Employers that sponsor a ridesharing incentive program or provide subsidized public transit passes to their employees may claim these credits. Get form FTB 3518, Employer Ridesharing Credits, to figure the amount of these credits. If Schedule P (100) is not required, get form FTB 3540 to figure this credit carryover from your employees or for operating a private third-party ridesharing program.

Enterprise zone, program area or Los Angeles Revitalization Zone (LARZ) hiring/sales and use tax credit

Corporations operating in enterprise zones, program areas and the LARZ may be eligible for:

- a hiring credit that may be claimed for a portion of wages paid to qualified employees; and
- a sales and use tax credit that may be claimed for the sales or use tax paid to purchase qualified property.

Get form FTB 3805Z or form FTB 3806 to figure this credit, and answer "yes" on Side 1, Question I. If the proper form is not attached, these tax benefits may be disallowed.

Solar pump credit carryover

A carryover is allowed for solar pump credit carryover that exceeded the tax for last year. If Schedule P (100) is not required, get form FTB 3540 to figure this credit carryover.

Energy conservation credit carryover

A carryover is allowed for energy conservation credit carryover that exceeded the tax for last year. If Schedule P (100) is not required, get form FTB 3540 to figure this credit carryover.

Employer child care program credit

Employers may claim a credit (not to exceed $50,000) equal to 30% of the costs for establishing a child care program or constructing a child care facility for use primarily by their employees. The credit is also available to lessors who provide a program or facility for the tenants employees. Get form FTB 3501, Employer Child Care Program/Contribution Credit, to figure this credit.

Employer child care contribution credit

Employers may claim a credit (not to exceed $600) equal to 50% of their contributions to a qualified child care plan made on behalf of any dependent, under age 15, of the employer's California employee. Get form FTB 3501, Employer

Child Care Program/Contribution Credit, to figure this credit.

Technological property contribution credit carryover

A carryover is allowed for technological property contribution credit carryover that exceeded the tax for last year. If Schedule P (100) is not required, get form FTB 3540, to figure this credit carryover.

Contribution of computer software credit carryover

A carryover is allowed for the contribution of computer software credit carryover that exceeded the tax for last year. If Schedule P (100) is not required, get form FTB 3540, to figure this credit carryover.

Recycling equipment credit

Corporations may claim a credit equal to 40% of the cost (not to exceed $625,000 per facility) of purchasing qualified property used by the corporation to manufacture products composed of secondary waste material. Get form FTB 3527, Recycling Equipment Credit, to figure this credit.

Agricultural products credit carryover

A carryover is allowed for agricultural products credit carryover that exceeded the tax for last year. If Schedule P (100) is not required, get form FTB 3540, to figure this credit carryover.

Commercial solar energy and solar energy credit carryovers

A carryover is allowed for commercial solar energy credit and solar energy credit carryovers that exceeded the tax for last year. If Schedule P (100) is not required, get form FTB 3540, to figure this credit carryover.

Commercial solar electric system credit

Corporations may claim a credit of 10% of the costs of a qualified solar electric system installed on commercial premises located in California that the corporation owned during the income year. Get form FTB 3556, Commercial Solar Electric System Credit, to figure this credit.

Research credit

This credit is similar to the federal credit but is limited to costs for increasing research activities incurred in California. Get form FTB 3523, Research Credit, to figure this credit.

Orphan drug credit carryover

A carryover is allowed for testing conducted in California that exceeded the tax for last year. If Schedule P (100) is not required, get form FTB 3540, to figure this credit.

Low-income housing credit

This credit is available to corporations that undertake the development of low-income housing in California. Get form FTB 3521, Low-Income Housing Credit, to figure this credit. Attach a copy of form FTB 3521A, Certificate of Final Award of California Low-Income Housing Tax Credits.

Prison inmate labor credit

This credit is equal to 10% of the wages paid to a prisoner employed in California under an approved joint venture agreement. Get form FTB 3507, Prison Inmate Labor Credit, to figure this credit.

Line 24 – Balance

Subtract line 23 from line 22. Enter the result or the applicable minimum franchise tax, whichever is greater. See General Information C.

Line 25 – Alternative minimum tax

Enter on this line the alternative minimum tax from Schedule P (100), Part I, line 20, or Part II, line 47, whichever is applicable.

Lines 28 and 29 – Tax due or overpayment

Revise the amount of tax due or overpayment, if applicable, by the amount on line 5 of Schedule J, Form 100, Side 2. See Schedule J instructions.

Line 30

Water's-edge filers only: If any portion of the overpayment on line 29 is to be credited to the estimated election fee, complete and attach Form 100-FEE, Water's-Edge Election Fee, to the face of Form 100.

Line 32

Complete and attach form FTB 5806, Underpayment of Estimated Tax by Corporations, only if Exception B or Exception C is used in computing the penalty.

Schedules

Schedule A — Taxes Deducted

Enter the nature of the tax, the taxing authority and the amount of the nondeductible tax on Form 100, Schedule A.

Schedule D — Capital Gain or Loss

California law is the same as federal law, except California does not allow a three-year carryback of capital losses. For more information, refer to the instructions for federal Schedule D (Form 1120).

Enter any unused capital loss carryover from 1992 on line 3.

Schedule F — Computation of Net Income

Line 27 – Specific deduction for 23701r or 23701t organizations

Political organizations

A political organization exempt under R&TC Section 23701r must file Form 100 and report "political taxable income" in excess of $100.

"Political taxable income" means all amounts received during the income year other than:

- contributions of money or other property;
- membership fees, dues, or assessments; and
- proceeds from political fund raising or entertainment events, or proceeds from the sale of political campaign material not received in the ordinary course of any trade or business.

Political organizations are not subject to the minimum franchise tax. The tax is computed under Chapter 3 of the Bank and Corporation Tax Law.

Enter the $100 limit on Schedule F, line 27, as a qualified "specific deduction."

Exempt homeowners' associations

A homeowners' association exempt under R&TC Section 23701t must file Form 100 if it received "homeowners' association taxable income" in excess of $100. Form 100 may be required in addition to Form 199.

"Homeowners' association taxable income" means gross income received during the income year other than amounts received from membership fees, dues, or assessments. Taxable income includes the gross amount of such items as, but not limited to: interest, dividends, rents, royalties, sale of assets and income from nonmembers.

Exempt homeowners' associations are not subject to the minimum franchise tax. The tax is computed under Chapter 3 of the Bank and Corporation Tax Law. Under Chapter 3, estimated tax payments may be required. Form 100 is due within 2 months and 15 days after the close of the income year.

Enter the $100 limit on Schedule F, line 27, as a qualified "specific deduction."

Schedule J — Add-On Taxes or Recapture of Tax Credits

Complete Schedule J, if the corporation has credit amounts to recapture or is required to include installment payments of "add-on" taxes from:

- LIFO recapture resulting from an S corporation election;
- interest computed under the look-back method for completed long-term contracts; or
- interest on tax attributable to installment sales of certain property or use of the installment method for non-dealer installment obligations.

Revise the amount of tax due or overpayment on Form 100, line 28 or line 29, as applicable by the amount from Schedule J, line 5.

Installment payment of tax attributable to LIFO recapture for corporations making an S corporation election. A corporation that uses the LIFO inventory pricing method and makes an S corporation election must include a "LIFO recapture amount" in income for its last year as a C corporation. The corporation's LIFO recapture amount is equal to the excess of the inventory amount using the FIFO method, over the inventory amount using the LIFO method, at the close of the corporation's last income year as a C corporation.

The additional tax resulting from inclusion of the LIFO recapture in income is payable in four equal installments. The first installment is due on the original due date of Form 100 of the electing corporation's last year as a C corporation.

To determine the additional tax due to LIFO recapture, the corporation must complete Form 100, Side 1, through line 26, based on income that does not include the LIFO recapture amount.

On a separate worksheet using the Form 100 format, the corporation must complete the equivalent of Form 100, Side 1, lines 18 through 26, based on taxable income including the LIFO recapture amount. Form 100, Side 1, line 26, must then be compared to line 26 of the worksheet. The difference is the additional tax due to LIFO recapture.

Since Form 100, Side 1, line 26, does not include the additional tax due to LIFO recapture, corporations must include 1/4 of the additional tax on Schedule J, line 1. Attach the worksheet showing the computation.

Note: Corporations must pay the remaining three installments of deferred tax with Form 100S. The payments must be made by the original due date of Form 100S, for each succeeding year.

Long-term contracts. If the corporation must compute interest under the look-back method for completed long-term contracts, complete and attach form FTB 3834, Interest Computation Under the Look-Back Method for Completed Long-Term Contracts. Include the amount of interest the corporation owes or the amount of interest to be credited or refunded to the corporation on Schedule J, line 2. If interest is to be credited or refunded, enter as a negative amount. Attach form FTB 3834 to Form 100.

Interest on tax attributable to payments received on installment sales of certain timeshares and residential lots. If the corporation elected to pay interest on the amount of tax attributable to payments received on installment obligations arising from the disposition of certain timeshares and residential lots under IRC Section 453(l)(3), it must include the interest due on Schedule J, line 3a. For the applicable interest rates, get FTB Pub. 1138, Bank and Corporation Billing Information. Attach a schedule showing the computation.

Interest on tax deferred under the installment method for certain nondealer installment obligations. If an obligation arising from the disposition of property to which IRC Section 453A(c) applies is outstanding at the close of the year, the corporation must include the interest due under IRC Section 453A on Schedule J, line 3b. For the applicable interest rates, get FTB Pub. 1138.

Credit recapture. Complete Schedule J, line 4, if the corporation completed the credit recapture portion of:

- FTB 3501, Employer Child Care Program/Contribution Credit; or
- FTB 3518, Employer Ridesharing Credits; or
- FTB 3805Z, Part VI, Enterprise Zone and Program Areas Recapture Credits; or
- FTB 3806, Part VI, Los Angeles Revitalization Zone Recapture Credits;

Schedule C — Tax Credits

If the corporation is not required to complete Schedule P (100), use this schedule to list those credits claimed on Form 100, line 23.

Schedule G — Bad Debts Reserve Method

Savings and loan associations, banks and financial corporations only: Use the format below to prepare Schedule G. Attach Schedule G to Form 100.

Schedule H — Dividend Income

A corporation may eliminate dividend income when certain requirements are met. There are three different methods to eliminate dividends received from income.

Intercompany

A corporation may deduct dividends received from unitary subsidiaries, but only to the extent that the dividends are paid from income that has been included in a combined report of a unitary business (R&TC Section 25106). Complete Form 100, Schedule H, columns (a) through (e) and enter the total of column (e) on Form 100, Side 1, line 9.

Water's-Edge

A corporation may deduct a percentage of the dividends received that are included in the corporation's water's-edge return (R&TC Section 24411). Dividends received from banks do not qualify for the water's-edge dividend deduction. To calculate the deduction, get form FTB 2411, Water's-Edge Dividend Deduction. Enter the total from form FTB 2411 on Form 100, Side 1, line 11.

Other

Corporations may reduce dividend income for dividends:

- paid by a corporation taxed by California on earnings from which such dividends are paid (R&TC Section 24402); or
- received from a California insurance company subject to tax imposed by Part 7 of the R&TC and not previously deducted under R&TC Sections 24411 or 25106 (to qualify for this deduction, the recipient corporation must be commercially domiciled in California and must own at least 80% of each class of stock of the insurance company).

To determine the deductible percentage of a dividend (Schedule H, column (f)), send a written request showing the complete name of the dividend-paying corporation to:

Special Activities Unit,
Deductible Dividends
Franchise Tax Board
P.O. Box 942857
Sacramento, CA 94257-0540

Or call FTB at the phone numbers on the back page of this booklet. Allow six to eight weeks for a written reply.

To determine the amount of dividends to enter on Form 100, line 10, determine the corporation's percentage of ownership of the dividend paying corporation and enter on Schedule H, column (h):

- 70%, if the dividend paying corporation is less than 20%-owned;
- 80%, if the dividend paying corporation is 20% but not more than 50%-owned; or
- 100% if the dividend paying corporation is more than 50% owned.

Multiply dividend received (column (c)) by the deductible percentage (column (f)) and enter the result in column (g). Multiply the amount in column (g) by the limitation percentage (column (h)) and enter the result in column (i).

Enter the total from Schedule H, column (i) on Form 100, line 10.

Schedule G Bad Debts — Reserve Method Complete only if a savings and loan association, bank or financial corporation.

(a) Income year	(b) Accounts outstanding at the end of the year	Amount added to reserve: (c) Current year's provision	Amount added to reserve: (d) Recoveries	(e) Amount charged against reserve	(f) Reserve for bad debts at end of year
1988					
1989					
1990					
1991					
1992					
1993					

Business Activity Code Chart

Agriculture, Forestry, and Fishing

Code

0400 Agricultural production
0600 Agricultural services (except veterinarians), forestry, fishing, hunting, and trapping

Mining

Metal mining
1010 Iron ores
1070 Copper, lead and zinc, gold and silver ores
1098 Other metal mining
1150 Coal mining

Oil and gas extraction
1330 Crude petroleum, natural gas, and natural gas liquids
1380 Oil and gas field services

Nonmetallic minerals, except fuels
1430 Dimension, crushed and broken stone; sand and gravel
1498 Other nonmetallic minerals, except fuels

Construction

General building contractors and operative builders
1510 General building contractors
1531 Operative builders

1600 Heavy construction contractors

Special trade contractors
1711 Plumbing, heating, and air conditioning
1731 Electrical work
1798 Other special trade contractors

Manufacturing

Food and kindred products
2010 Meat products
2020 Dairy products
2030 Preserved fruits and vegetables
2040 Grain mill products
2050 Bakery products
2060 Sugar and confectionary products
2081 Malt liquors and malt
2088 Alcoholic beverages, except malt liquors and malt
2089 Bottled soft drinks, and flavorings
2096 Other food and kindred products

2100 Tobacco manufacturers

Textile mill products
2228 Weaving mills and textile finishing
2250 Knitting mills
2298 Other textile mill products

Apparel and other textile products
2315 Men's and boys' clothing
2345 Women's and children's clothing
2388 Other apparel and accessories
2390 Miscellaneous fabricated textile products

Lumber and wood products
2415 Logging, sawmills, and planing mills
2430 Millwork, plywood, and related products
2498 Other wood products, including wood buildings and mobile homes

2500 Furniture and fixtures

Paper and allied products
2625 Pulp, paper, and board mills
2699 Other paper products

Printing and publishing
2710 Newspapers
2720 Periodicals
2735 Books, greeting cards, and miscellaneous publishing
2799 Commercial and other printing, and printing trade services

Code

Chemicals and allied products
2815 Industrial chemicals, plastics materials, and synthetics
2830 Drugs
2840 Soap, cleaners, and toilet goods
2850 Paints and allied products
2898 Agricultural and other chemical products

Petroleum refining and related industries (including those integrated with extraction)
2910 Petroleum refining (including integrated)
2998 Other petroleum and coal products

Rubber and misc. plastics products
3050 Rubber products, plastics footwear, hose and belting
3070 Misc. plastics products

Leather and leather products
3140 Footwear, except rubber
3198 Other leather and leather products

Stone, clay, and glass products
3225 Glass products
3240 Cement, hydraulic
3270 Concrete, gypsum, and plaster products
3298 Other nonmetallic mineral products

Primary metal industries
3370 Ferrous metal industries; misc. primary metal products
3380 Nonferrous metal industries

Fabricated metal products
3410 Metal cans and shipping containers
3428 Cutlery, hand tools, and hardware; screw machine products, bolts, and similar products
3430 Plumbing and heating, except electric and warm air
3440 Fabricated structural metal products
3460 Metal forgings and stampings
3470 Coating, engraving, and allied services
3480 Ordnance and accessories, except vehicles and guided missiles
3490 Misc. fabricated metal products

Machinery, except electrical
3520 Farm machinery
3530 Construction and related machinery
3540 Metalworking machinery
3550 Special industry machinery
3560 General industrial machinery
3570 Office, computing, and accounting machines
3598 Other machinery except electrical

Electrical and electronic equipment
3630 Household appliances
3665 Radio, television, and communication equipment
3670 Electronic components and accessories
3698 Other electrical equipment

3710 Motor vehicles and equipment

Transportation equipment, except motor vehicles
3725 Aircraft, guided missiles and parts
3730 Ship and boat building and repairing
3798 Other transportation equipment, except motor vehicles

Instruments and related products
3815 Scientific instruments and measuring devices; watches and clocks
3845 Optical, medical, and ophthalmic goods
3860 Photographic equipment and supplies

3998 Other manufacturing products

Transportation and Public Utilities

Transportation

Code

4000 Railroad transportation
4100 Local and interurban passenger transit
4200 Trucking and warehousing
4400 Water transportation
4500 Transportation by air
4600 Pipe lines, except natural gas
4700 Miscellaneous transportation services

Communication
4825 Telephone, telegraph, and other communication services
4830 Radio and television broadcasting

Electric, gas and sanitary services
4910 Electric services
4920 Gas production and distribution
4930 Combination utility services
4990 Water supply and other sanitary services

Wholesale Trade

Durable
5008 Machinery, equipment, and supplies
5010 Motor vehicles and automotive equipment
5020 Furniture and home furnishings
5030 Lumber and construction materials
5040 Sporting, recreational, photographic, and hobby goods, toys and supplies
5050 Metals and minerals, except petroleum and scrap
5060 Electrical goods
5070 Hardware, plumbing and heating equipment and supplies
5098 Other durable goods

Nondurable
5110 Paper and paper products
5129 Drugs, drug proprietaries, and druggists' sundries
5130 Apparel, piece goods, and notions
5140 Groceries and related products
5150 Farm-product raw materials
5160 Chemicals and allied products
5170 Petroleum and petroleum products
5180 Alcoholic beverages
5190 Misc. nondurable goods

Retail Trade

Building materials, garden supplies, and mobile home dealers
5220 Building materials dealers
5251 Hardware stores
5265 Garden supplies and mobile home dealers

5300 General merchandise stores

Food stores:
5410 Grocery stores
5490 Other food stores

Automotive dealers and service stations
5515 Motor vehicle dealers
5541 Gasoline service stations
5598 Other automotive dealers

5600 Apparel and accessory stores

5700 Furniture and home furnishings stores

5800 Eating and drinking places

Misc. retail stores
5912 Drug stores and proprietary stores
5921 Liquor stores
5995 Other retail stores

Finance, Insurance, and Real Estate

Banking

Code

6030 Mutual savings banks
6060 Bank holding companies
6090 Banks, except mutual savings banks and bank holding companies

Credit agencies other than banks
6120 Savings and loan associations
6140 Personal credit institutions
6150 Business credit institutions
6199 Other credit agencies

Security, commodity brokers and services
6210 Security brokers, dealers and flotation companies
6299 Commodity contracts brokers and dealers; security and commodity exchanges; and allied services

Insurance
6355 Life insurance
6356 Mutual insurance, except life or marine and certain fire or flood insurance companies
6359 Other insurance companies
6411 Insurance agents, brokers, and service

Real estate
6511 Real estate operators and lessors of buildings
6516 Lessors of mining, oil, and similar property
6518 Lessors of railroad property and other real property
6530 Condominium management and cooperative housing associations
6550 Subdividers and developers
6599 Other real estate

Holding and other investment companies, except bank holding companies
6744 Small business investment companies
6749 Other holding and investment companies except bank holding companies

Services

7000 Hotels and other lodging places

7200 Personal services

Business services
7310 Advertising
7389 Business services, except advertising

Auto repair; misc. repair services
7500 Auto repair and services
7600 Misc. repair services

Amusement and recreation services
7812 Motion picture production, distribution, and services
7830 Motion picture theaters
7900 Amusement and recreation services, except motion pictures

Other services
8015 Offices of physicians, including osteopathic physicians
8021 Offices of dentists
8040 Offices of other health practitioners
8050 Nursing and personal care facilities
8060 Hospitals
8071 Medical laboratories
8099 Other medical services
8111 Legal services
8200 Educational services
8300 Social services
8600 Membership organizations
8911 Architectural and engineering services
8930 Accounting, auditing, and bookkeeping
8980 Miscellaneous services (including veterinarians)

California

Package X

1993 Tax Forms Catalogue

Tax Practitioners:

If you computer prepare your clients' returns, see FTB Pub. 1095D, Tax Practitioners Guidelines for Computer Prepared Returns on page 9.

INCOME YEAR | CALIFORNIA SCHEDULE

1993 Apportionment and Allocation of Income R

Attach this schedule to your California tax return.

For income year beginning MONTH ___ DAY ___ YEAR 1993, and ending MONTH ___ DAY ___ YEAR ___

Corporation name | California corporation number

Address

City | State (country) | ZIP code

Water's-Edge Filers Only: If controlled foreign corporations (CFCs) are included in the combined report, attach form FTB 2416, Retained Earnings of Controlled Foreign Corporations.

Be sure to complete Side 1 and all applicable schedules. See instructions for Schedule R.

1 a Net income (loss) after state adjustments from Form 100, Side 1, line 17; or Form 100S, Side 1, line 15		1a	
b Water's-edge foreign investment interest offset. Attach form FTB 2424		1b	
c Total. Combine line 1a and line 1b		1c	
Total Nonbusiness Income (Loss) See Instruction A for definitions and examples.			
2 Dividends included on line 1a and not deducted on Form 100, Side 1, line 9 and line 10; or Form 100S, Side 1, line 9	2		
3 Interest. Attach schedule	3		
4 Net income (loss) from the rental of property from Schedule R-3, line 8, column (c)	4		
5 Royalties. Attach schedule	5		
6 Gain (loss) from the sale of assets from Schedule R-4, line 2, column (e)	6		
7 Partnership income (loss). Attach schedule	7		
8 Miscellaneous income (loss). Attach schedule	8		
9 Total nonbusiness income (loss). Combine lines 2 through 8		9	
10 Balance. Subtract line 9 from line 1c		10	
11 Interest offset from Schedule R-5, line 9 or line 18		11	
12 Business income (loss) from sources both within and outside of California. Add line 10 and line 11		12	
13 a Average apportionment percentage from Schedule R-1, line 5		13a	%
b Business income attributable to California. Multiply line 12 by line 13a		13b	

Nonbusiness Income (Loss) Wholly Attributable to California If no income is wholly attributable to California, do not complete lines 14 through 21. Transfer the amount on line 13b to line 22 and complete line 23 and line 24.

14 Dividends and interest income (if taxpayer's commercial domicile is in California):		
a Dividends included in line 2 above	14a	
b Interest included in line 3 above	14b	
15 Net income (loss) from the rental of property within California from Schedule R-3, line 8, column (b)	15	
16 Royalties. Attach schedule	16	
17 Gain (loss) from the sale of assets within California from Schedule R-4, line 2, total of column (b) and column (d)	17	
18 Partnership income (loss). Attach schedule	18	
19 Miscellaneous income (loss). Attach schedule	19	
20 Total nonbusiness income (loss) wholly attributable to California. Combine lines 13b through 19	20	
21 Interest offset from line 11 allocated to income included on line 14a and line 14b. See Instruction K	21	
22 Net income (loss) for state purposes before contributions adjustment. Subtract line 21 from line 20	22	
23 Contributions adjustment from Schedule R-6, line 14	23	
24 Net income (loss) for state purposes. Combine line 22 and line 23. Enter here and on Form 100, Side 1, line 18; or Form 100S, Side 1, line 16	24	

Schedule R-1 Apportionment Formula

The following information must be submitted by all corporations having income from sources both within and outside California, regardless of the apportionment method used.	(a) Total within and outside California (omit cents)	(b) Total within California (omit cents)	(c) Percent within California ((b) ÷ (a))
1 **Property:** Use the average yearly value of owned real and tangible personal personal property used in the business (at original cost, see Instructions). Exclude property not connected with the business and the value of construction in progress.			
Inventory			
Buildings			
Machinery and equipment (including delivery equipment)			
Furniture and fixtures			
Land			
Other tangible assets. Attach schedule			
Rented property used in the business. See Instruction E			
Total property			
2 **Payroll:** Use employee wages, salaries, commissions, and other compensation related to business income included in the return.			
Total payroll			
3 **Sales:** Use gross receipts, less returns and allowances			
a Sales delivered or shipped to California purchasers:			
(i) Shipped from outside California			
(ii) Shipped from within California			
b Sales shipped from California by any member of the unitary group to:			
(i) The United States Government			
(ii) Purchasers in a state where the corporation and its unitary affiliates are immune under Public law 86-272			
c Other gross receipts (rents, royalties, interest, etc.)			
Total sales			
Multiply column (c) by 2 (except for agricultural and extractive industries, see Instructions)			
4 Total percent. Add the percentages in column (c). See Instruction J			
5 Average apportionment percentage. Divide line 4 by the number of factors and enter here and on Schedule R, Side 1, line 13a. See Instruction I			

Schedule R-2 Sales and General Questionnaire Attach additional sheets if necessary.

1 Describe briefly the nature and location(s) of your California business activities: ______

2 State the exact title and principal business activity of any joint venture or partnership in which the corporation has an interest: ______

3 Does the California sales figure in Schedule R-1 include all sales shipped from California where the purchaser is the U.S. Government? If not, explain.

4 Does the California sales figure on Schedule R-1 include all sales shipped from California to states in which this corporation or any unitary affiliate is immune under Public Law 86-272? If not, explain. ______

5 Are the amounts shown on Schedule R, Side 1, lines 2 through 8 and Schedule R-1, column (a) (or a comparable schedule in a combined report) different from those reported in returns or reports to other states? ______ Has this corporation or any member of its unitary group changed the way income is apportioned or allocated to California from prior year returns? ______ See Instruction I.

6 Does the California sales figure on Schedule R-1 (or comparable schedule in a combined report) include all sales shipped to California purchasers, including those made by any unitary affiliate claiming immunity from taxation in this state under Public Law 86-272? If not, indicate the name of the selling member and the nature of the sale activity believed to be immune. ______

Schedule R-3 Net Income (Loss) From the Rental of Nonbusiness Property

	(a) Total outside California	(b) Total within California	(c) Total outside of and within California ((a) + (b))
1 Income from rents			
2 Taxes			
3 Depreciation			
4 Interest paid to carry indebtedness of income producing property			
5 Maintenance and upkeep			
6 Other expenses. Attach schedule			
7 Total deductions. Add lines 2 through 6			
8 Net income (loss) from rents. Subtract line 7 from line 1. Enter here and enter column (c) on Side 1, line 4 and column (b) on Side 1, line 15			

Schedule R-4 Gain (Loss) From the Sale of Nonbusiness Assets

California sales include transactions involving: (1) real property located in California; (2) tangible personal property if it had a situs in California at the time of sale, or if the corporation is commercially domiciled in California and not taxable in the state where the property had a situs at the time of sale; and (3) intangible personal property if the corporation's commercial domicile is in California.

1 Description of property sold	Situs of property at time of sale	Real estate and other tangible assets		Intangible assets		Total
		(a) Gain (loss) from outside California	(b) Gain (loss) from within California	(c) Gain (loss) from outside California	(d) Gain (loss) from within California	(e) Gain (loss)
2 Total gain (loss)						

Schedule R-5 Computation of Interest Offset

Complete only if there are entries on lines 2 and/or 3 of Schedule R and if Schedule R-1 is required. See Instruction K.

1 Total interest expense deducted	1			
2 Water's-edge foreign investment interest offset from Side 1, line 1b	2			
3 Balance. Subtract line 2 from line 1	3			
4 Nonbusiness interest expense deducted in arriving at the amounts on Side 1, lines 2 through 8	4			
5 Balance of interest expense. Subtract line 4 from line 3			5	
6 Total interest income (Form 100, Side 1, line 4 and Schedule F, line 5a and line 5b; or Form 100S, Side 1, line 3, Schedule F, line 5 and Schedule K, line 4a)*	6			
7 Nonbusiness interest income from Side 1, line 3	7			
8 Business interest income. Subtract line 7 from line 6			8	
9 Balance. Subtract line 8 from line 5. If line 8 exceeds line 5, enter -0- here and on Side 1, line 11, and do not complete the rest of this schedule			9	
10 Total dividend income	10			
11 Deducted dividends from Form 100, Side 1, line 9 and line 10; or Form 100S, Side 1, line 9	11			
12 Net dividend income. Subtract line 11 from line 10			12	
13 Business dividend income	13			
14 Deducted dividends from Form 100, Side 1, line 9 and line 10; or Form 100S, Side 1, line 9 attributable to business dividend income	14			
15 Net business dividend income. Subtract line 14 from line 13			15	
16 Net nonbusiness dividend income. Subtract line 15 from line 12			16	
17 Total nonbusiness interest and dividend income. Add line 7 and line 16			17	
18 Enter the lesser of line 9 or line 17. Enter here and on Side 1, line 11			18	

If interest and/or dividend income is reported on Side 1, line 14a or line 14b, enter the allocable portion of line 18 on Side 1, line 21. See Instruction K. If no interest or dividend income is reported on Side 1, line 14a or line 14b, do not deduct any interest expense on Side 1, line 21.
*If the return is being filed under Chapter 3, include exempt interest deducted on Form 100, line 14 and line 15; or Form 100S, line 12 and line 13.

Schedule R-6 Contributions Adjustment

See Instruction L.

1 Total contributions paid	1	
2 Net income after state adjustments from Side 1, line 1c	2	
3 Portion of dividends deductible under R&TC Sections 24402, 24410 and 24411 from Form 100, Side 1, line 10 and line 11; or Form 100S, Side 1, line 9 and line 10, and other adjustments. See Instruction K	3	
4 Contributions deducted on Form 100, Side 1, line 13; or on Form 100S, Side 1, line 11	4	
5 Total. Add lines 2 through 4	5	
6 Multiply line 5 by 5%	6	
7 Net income (loss) for state purposes before contributions adjustment from Side 1, line 22	7	
8 Amount deductible on line 3 multiplied by the average apportionment percentage from Schedule R-1, line 5	8	
9 Contributions deducted (from line 4 above) multiplied by the average apportionment percentage from Schedule R-1, line 5	9	
10 Total. Add lines 7 through 9	10	
11 Multiply line 10 by 5%	11	
Contributions Adjustment		
12 Enter the amount shown on line 9 above	12	
13 Amount of contributions allowable:		
a If line 1 equals or exceeds line 6, enter the lesser of line 1 or line 11	13a	
b If line 1 is less than line 6, divide line 10 by line 5. Then multiply line 1 by the result and enter here	13b	
14 Contributions adjustment. Subtract line 13a or line 13b from line 12. Enter here and on Side 1, line 23. If the result is a negative amount, enter in brackets	14	

Schedule R-7 Election to File a Unitary Taxpayers' Group Return and List of Affiliated Corporations

This election is an integral part of this return and must be filed annually with the Schedule R. Signing the return is an acknowledgement that you agree to comply with the following terms and conditions:

Election is hereby made to file a unitary taxpayers' group return for each of the affiliated taxpayer corporations listed in Part 1. The unitary taxpayers' group return constitutes the return for each member of the electing group, and satisfies the requirement of each electing member to file its own return. Each corporation that elects to file a group return agrees to be bound by the terms and conditions specified in this schedule and its instructions. The filing of a group return indicates acceptance of all terms and conditions. To be eligible, such corporations must be members of a single unitary group for the entire year and determine their income on the basis of the same accounting period.

The key corporation must file the unitary taxpayers' group return. With the initial return and thereafter, any payment of taxes for the income year shall be made using the key corporation's California corporate number as designated below. The key corporation must be doing business in California and, where applicable, be the parent corporation. The key corporation agrees to act as surety and agent for each member of the group. In addition, all electing members agree that subsequent adjustments to the liability of the members of the group may be assessed, billed or paid to the key corporation on behalf of its members, either in the name of the key corporation or the name of the members. Waiver of a statute of limitations by the key corporation will apply to all electing member corporations. If the key corporation does not fulfill its obligation to pay tax or act in behalf of its members, each member may be independently assessed or billed for its own tax liability. The key corporation must pay at least the minimum franchise tax on behalf of each electing corporation subject to the franchise tax.

The election is binding on all members for all matters for the income year of the election. If some or all of the corporations included in the election to file a unitary taxpayers' group return are later determined not to be members of the unitary group of the key corporation, the key corporation and electing members agree that any subsequent adjustment for any and all members included in the original group return may still be assessed, billed or paid to the key corporation.

The election remains in effect for the payment of estimated tax and tax paid with an extension of time to file for the following year by the key corporation on behalf of the group, unless notice of termination of the election is provided to the Franchise Tax Board on or before the time of payment.

To determine the amount of self assessed tax for each electing taxpayer member of the unitary taxpayers' group return, and the reporting of payments made by each member, see Instruction M.

Part 1

List of Taxpayers Making Election to File a Unitary Taxpayers' Group Return. Attach additional sheets if necessary.

Electing taxpayer corporation	California corporation number	Total self-assesed tax	Amount of estimated tax paid (Form 100-ES)	Amount paid with extension (FTB 3539)	Amount paid with this return	Total payments
(Key corporation)						
Total						

In Part 2 list each nonelecting affiliated corporation of which more than 50% of the voting stock is owned or controlled directly or indirectly by common interests, whether or not unitary with the key corporation. Include the California corporation number for each taxpayer corporation.

Part 2

List of All-Nonelecting Affiliates (whether or not unitary with the key corporation). Attach additional sheets if necessary.

Affiliate corporation's name	California corporation number (if applicable)	Is this corporation unitary with the electing group?		Does this corporation file a California return on a different fiscal year than the electing group?		Was this corporation acquired or disposed of during the year?		
		Yes	No	Yes	No	Acq.	Dis.	Date

Instructions for Schedule R

Apportionment and Allocation of Income

References in these Instructions are to the California Revenue and Taxation Code (R&TC).

Tax Law Change

Recently enacted California legislation revised the apportionment formula for income years beginning on or after January 1, 1993. The sales factor must be double weighted for all corporations unless the corporation derives more than 50% of its gross business receipts from extractive or agricultural business activities. For corporations which are members of a unitary group, the determination whether a double or single weighted sales factor is required is made for the entire unitary group. For corporations subject to the double weighted sales factor, calculate the apportionment percentage by adding the property, payroll and the double weighted sales factor together and divide by four.

General Instructions

This schedule is used by all taxpayers and partnerships whose business income is required to be apportioned. Special instructions apply to individuals and partnerships. See General Instructions B and C.

Unless stated otherwise the term "corporation" as used in these Instructions includes "banks".

A Apportionment and Allocation

APPORTIONMENT – Generally refers to the division of business income among states by the use of an apportionment formula.

ALLOCATION – Generally refers to the assignment of nonbusiness income to a particular state.

When a portion of a corporation's income is from sources outside California, the portion of the corporation's total net income that has its source in California is determined using the allocation and apportionment provisions in the Uniform Division of Income for Tax Purposes Act (R&TC Sections 25120 - 25141 and the applicable regulations). In such cases, the first step is to determine which portion of the corporation's net income is "business income" and which portion is "nonbusiness income."

Nonbusiness income is allocated to specific states as provided in R&TC Sections 25123 - 25127 and the applicable regulations. Business income is apportioned to the states in which the business is conducted, based on the property, payroll, and sales apportionment factors set forth in R&TC Sections 25128 - 25137 and the applicable regulations. The sum (or net) of the business income apportioned to California, plus the nonbusiness income items directly allocated to California, is the corporation's California net income.

BUSINESS INCOME – Is defined by 18 Cal. Code Regs. Section 25120(a) as income arising from transactions and activities in the regular course of the corporation's trade or business. Business income includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the corporation's regular trade or business operations. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activities that are the elements of a particular trade or business. In general, all transactions and activities of the corporation that are dependent on or contribute to the operations of the corporation's economic enterprise as a whole give rise to business income.

Example A – Corporation Y owns 30% of Corporation X. Corporation Y makes substantial purchases from Corporation X for use in its unitary business operations and, except for the ownership percentage, would be considered unitary with Corporation X's business operations. A dividend from Corporation X paid to Corporation Y is business income.

Example B – The corporation operates a multistate chain of men's clothing stores. The corporation purchases a 5-story office building primarily for use in connection with its principal business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. It leases the remaining two floors to others. The rental of the two floors is incidental to the operation of the corporation's business. The rental income is business income.

Example C – The corporation is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business, the corporation obtained patents on some of its products. The corporation licensed the production of the chemicals in foreign countries. In return, the corporation receives royalties. The royalties received by the corporation are business income.

Example D – In conducting its multistate manufacturing business, the corporation systematically sells and replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from those sales constitute business income.

Example E – The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital that it regularly invests in interest bearing securities. The interest income is business income.

NONBUSINESS INCOME – Means all income other than business income.

In accordance with R&TC Sections 25120 - 25141 inclusive, the income of the corporation is business income unless clearly classifiable as nonbusiness income.

Example A – The corporation operates a multistate chain of men's clothing stores. The corporation invests in a 20-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining 18 floors are leased to others. The rental of the 18 floors is not incidental to, but rather is separate from, the operation of the corporation's trade or business. The net rental income is nonbusiness income of the clothing store business.

Example B – The corporation operates a multistate chain of grocery stores. An office building that had been used as the corporate headquarters did not provide adequate space. A new and larger building, located elsewhere, was acquired for use as the new headquarters. The old building was rented to an investment company under a 5-year lease. Upon expiration of the lease, the building was sold at a gain or (loss). The gain or (loss) on the sale is nonbusiness income and the rental income received during the lease period is nonbusiness income.

Note: Special rules apply to gain or loss from the sale of a nonbusiness partnership interest:

- If 50% or less of the value of the partnership's assets at the time of sale consist of intangibles, divide the original cost of partnership tangible property in California owned by the partnership at the time of the sale by the original cost of all tangible personal property owned by the partnership at the time of the sale. Multiply this ratio by the gain or loss to find the California amount; or
- If over 50% of the value of the partnership's assets at the time of sale consist of intangibles, multiply the gain or loss by the sales factor of the partnership for its first full taxable period immediately preceding the taxable period of the partnership during which the partnership interest was sold, to find the California amount.

B Individuals

Nonresidents and resident individuals eligible for the other states tax credit who have income or loss from a trade or business activity conducted within and outside California must apportion their income in accordance with the provisions of R&TC Sections 25120 - 25139 (see 18 Cal. Code of Regs. Section 17951-4). However, items of income or loss that would be treated as nonbusiness income under those sections if earned by a corporation should be sourced using the normal rules that apply to individuals. Individuals complete only Schedule R-1, R-2 and lines 12, 13a, and 13b on Schedule R. Enter on line 12 the total income from the trade or business after any adjustment for federal and state differences (see Schedule CA (540)). Nonresident or part-year resident enter the amount from line 13b on Schedule CA (540NR), line 12, column E. In completing these Schedules replace the term "corporation" with apportioning business activity.

C Partnerships

Partnerships with income or loss from a trade or business conducted within and outside California must apportion business income in accordance with the provisions of R&TC Section 25120 - 25139 (see 18 Cal. Code of Regs Section 17951-4). However, partnership items of income or loss that would be treated as nonbusiness income if earned by a corporation are allocated as if such income or loss were earned by the individual partner. Partnerships complete only Schedules R-1, R-2, R-3 and R-4. For purposes of Schedule R-4, partnershps should not allocate nonbusiness income from intangibles. Complete Schedule R, lines 1 through 13b, of Schedule R except for lines 1b and 11, which apply only to corporations. In completing these schedules replace the term "corporation" with partnership.

If a trade or business conducted by a partner is unitary with the trade or business of the partnership, the partner's distributable share of business income of the partnership is treated as business income of the partner. The partner must add its share of the partnership's property, payroll and sales within and outside California to its own property, payroll and sales within and outside California in order to apportion the combined income. This will be reflected on the partner's individual return. For further information, see 18 Cal. Code of Regs. Section 25137-1.

D Water's-Edge Filers

Corporations filing on a water's-edge basis that own controlled foreign corporations must complete form FTB 2416, Retained Earnings of Controlled Foreign Corporations, and attach it to this schedule. Water's-edge filers who are subject to the foreign dividend interest offset must complete form FTB 2424, Water's-Edge Foreign Investment Interest Offset, and attach it to Form 100 or Form 100S.

Foreign investment interest offset requires the application of foreign interest expense to offset the foreign dividend deduction. In general, the calculation requires the identification of foreign interest using the ratio of unassigned foreign assets over unassigned total assets.

Water's-edge filers who are deducting dividends under R&TC Section 24411 must complete and file form FTB 2411, Water's-Edge Dividend Deduction.

Address any questions regarding water's-edge legislation and other water's-edge issues to:

Franchise Tax Board
P.O. Box 1779
Rancho Cordova, CA 95741-1779

Get the Form 100-WE Booklet for the required water's-edge forms and more information regarding water's-edge.

E Property Factor

The property factor is a fraction, which is determined as follows. The numerator is the value of real and tangible personal property owned or rented and used in California during the income year to produce business income. The denominator is the value of all the corporation's real and tangible personal property owned or rented and used during the income year to produce business income. Property owned by the corporation that is in transit between states is considered to be located at its destination.

Property is included in the factor if it is actually used or is available for use or capable of being used during the income year. It remains in the property factor until its permanent withdrawal is established by an identifiable event such as its sale or conversion to the production of nonbusiness income. Property used in the production of nonbusiness income is excluded from the factor.

Property owned by the corporation is valued at its original cost averaged over the income year. In general, "original cost" is the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the corporation and adjusted by subsequent capital additions or improvements, special deductions and partial disposition because of sale, exchange, abandonment, etc. Depreciation does not reduce original cost.

As a general rule, the average value of property owned by the corporation is computed by averaging the values at the beginning and ending of the income year. However, the Franchise Tax Board may require or allow monthly averaging if this method is required to properly reflect the average value of property for the income year.

Rented property is valued at eight times the net annual rental rate. The net annual rental rate for any item of rented property is the total rents paid for the property, less the aggregate annual subrental rates paid by subtenants. Subrents are not deducted when the subrents constitute business income.

F Payroll Factor

The payroll factor is a fraction, which is determined as follows. The numerator is the compensation paid in California during the income year to produce business income. The denominator is the total compensation paid during the income year to produce business income. Compensation connected with the production of nonbusiness income is excluded from the payroll factor.

The total amount "paid" to employees is determined on the basis of the corporation's accounting method. Under the accrual method, all compensation properly accrued is deemed to have been paid.

Regardless of the corporation's method of accounting, at the election of the corporation, compensation paid to employees may be included in the payroll factor by use of the cash method if the corporation is required to report the compensation under that method for unemployment compensation purposes.

The term "compensation" means wages, salaries, commissions and any other form of remuneration paid directly to employees for personal services. Payments made to an independent contractor, or any other person not properly classifiable as an employee, are excluded.

Compensation is paid in California if any one of the following tests, applied sequentially, are met.

1. The employee's service is performed entirely within California;
2. The employee's service is performed both within and outside of California, but the service performed outside of California is incidental to the employee's service within California ("incidental" means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction);
3. If the employee's service is performed both within and outside of California, the employee's compensation will be attributed to California if:
   - the employee's base of operations is in California, or
   - there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in California, or
   - the base of operations, or the place from which services are directed or controlled is not in any state that some part of the service is performed, but the employee's residence is in California.

"Base of operations" is the place of a permanent nature from which the employee starts work and returns in order to receive instructions or communications from customers or other persons, to replenish stock or other materials, to repair equipment, or to perform any other functions necessary to the exercise of the trade or profession at some other point or points.

Individuals and partners engaged in the practice of a profession may be subject to special rules for determining the payroll factor. Sole proprietors and partners engaged in the practice of law, accounting, medicine, engineering or any other profession involving personal services where capital is not a material income producing factor should refer to 18 Cal. Code Regs. Section 179514 (f) for information regarding computation of the payroll factor.

G Sales Factor

Important: For income years beginning on or after January 1, 1993 the sales factor is a double weighted factor for all corporations except those corporations with more than 50% of gross business receipts derived from extractive or agricultural business activities.

The sales factor is a fraction, which is determined as follows. The numerator is the gross receipts derived during the income year from transactions and activities attributable to California in the regular course of the unitary affiliates' trade or business. The denominator is the total gross receipts derived during the income year from transactions and activities everywhere in the regular course of the corporation's trade or business.

Gross receipts means gross sales less returns and allowances and includes all interest income, service charges, carrying charges or time-price differential charges incidental to these gross receipts. If federal and state excise taxes (including sales taxes) are passed on to the buyer or included in the selling price of the product, they must be included in gross receipts. This definition applies regardless of where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

The following are rules for determining "sales" in various situations.

1. In the case of a corporation engaged in manufacturing and selling goods or products, "sales" includes all gross receipts from the sales of such goods or products held for sale to customers in the ordinary course of its trade or business. Goods or products also include other property of a kind that would properly be included in the inventory if on hand at the close of the income year.
2. In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.
3. In the case of a corporation engaged in providing services, such as the performance of equipment service contracts or research and development contracts, "sales" includes the gross receipts from the performance of such services, including fees, commissions and similar items.
4. In the case of a corporation engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease or licensing the use of the property.
5. In the case of a corporation engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.
6. If a corporation derives receipts from the sale of equipment used in its business, these receipts constitute "sales". For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

There are instances where a corporation must disregard gross receipts for the apportionment formula to work fairly. If insubstantial amounts of gross receipts arise from incidental transactions, they may be excluded from the sales factor unless such exclusion would materially affect the apportionment formula. For example, ordinarily the corporation may exclude from the sales factor gross receipts from transactions such as the sale of office furniture, business automobiles, etc.

Gross receipts from the sales of tangible personal property (except sales to the United States Government) are attributable to California if 1) the property is delivered or shipped to a purchaser within California regardless of the f.o.b. point or other conditions of sale, or 2) the property is shipped from an office, store, warehouse, factory or other place of storage within California by any member of the unitary group and no member of the unitary group is taxable in the state of the purchaser. (See General Instructions H.)

Gross receipts from the sales of tangible personal property to the United States Government are attributable to California if the property is shipped from California. Only sales for which the United States Government makes direct payment to the seller according to the terms of a contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

Sales, other than sales of tangible personal property, are apportioned to California if:

1. The income-producing activity is performed wholly within California, or
2. A portion of the income-producing activity is performed outside of California but a greater portion of this activity is performed within California than in any other state, based on costs of performance.

"Income-producing activity" means the transactions and activity directly engaged in by the corporation in the regular course of its trade or business for the ultimate purpose of earning gains or profits. "Income-producing activity" applies to each separate item of income. "Income-producing activity" does not include transactions and activities performed on behalf of a corporation, such as those conducted by an independent contractor.

"Costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with industry practices in the corporation's trade or business.

Special Rules. The following are special rules for determining when receipts from the income-producing activities are attributable to California.

1. Gross receipts from the rendering of personal services by employees or the use of tangible and intangible property by the corporation in performing a service are attributable to California to the extent that the services are performed within California.

   If a portion of the services, relating to a single item of income, are performed outside of California, the gross receipts for the performance of the services are attributable to California only if, based on costs of performance, a greater portion of the services are performed within California.

   If a portion of the services are performed within California, and the services performed in each state constitute a separate income-producing activity, the gross receipts for the performance of the services attributable to California are measured by the ratio which the time spent in performing the services within California bears to the total time spent in performing the services everywhere.

   Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to the gross receipts. Personal service not directly connected with the performance of the contract or other obligation (for example, time expended in negotiating the contract) is excluded from the computations.
2. Gross receipts from the sale, rental, leasing, licensing or other use of real property are attributable to California if the real property is located within California.
3. Gross receipts from the rental, leasing, licensing or other use of tangible personal property are attributable to California if the property is located within California.

   If tangible personal property is located within and outside of California during the rental, lease or licensing period, gross receipts attributable to California are measured by the ratio which the time the property was physically present or was used within California bears to the total time or use of the property during the period.

If business income from intangible property cannot readily be attributed to any particular income-producing activity of the corporation, that income cannot be assigned to the numerator of the sales factor for any state and it is excluded from the denominator of the sales factor. For example, where business income in the form of dividends on stock, royalties on patents or copyrights, or interest on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest are excluded from the sales factor.

H Taxable in Another State

A corporation is "taxable in another state" if it meets either one of the two following tests:

1. If because of its business activity in another state, the corporation is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

This test applies only if a corporation carries on business activities in another state. However, the corporation is not taxable in another state if the corporation:

- files and pays tax voluntarily, when not required to do so by the laws of that state; or
- pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but does not actually engage in business activities in that state; or
- engages in some activity, not sufficient to be taxed, and the minimum franchise tax bears no relation to the corporation's activities in that state.

2. If another state has jurisdiction to tax net income, regardless of whether or not that state imposes such a tax on the corporation.

This test applies if the corporation's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States.

Jurisdiction to tax is not present if the state is prohibited from imposing the tax because of Public Law 86-272, 15 U.S.C. 381-385.

I Consistency in Reporting

Corporations that changed the way the following items were treated in prior year returns, must disclose the nature and extent of these changes on Schedule R-2, line 5. Disclose any changes to:

- classification of income as business or nonbusiness income;
- valuation of property or inclusion of property in the property factor;
- determination of the amount of compensation paid used in the payroll factor; or
- inclusion of gross receipts in the sales factor.

Disclose only inconsistencies in the denominators of the three factors that materially affect the apportionment percentage. Explain (with references to the laws or regulations of the other state) any inconsistencies in the determination of nonbusiness income and in the denominators of the factors due to a difference in state laws or regulations. Show the amount of inconsistency on a state-by-state basis.

When a corporation sells tangible personal property that is shipped from California and assigned to a state in which the corporation does not file a return or report, the corporation must identify the state to which the property is shipped, report the total amount of sales assigned to that state and furnish the facts that the corporation relied on in establishing jurisdiction to tax by that state.

J Computation of Apportionment Percentage

When computing the average apportionment percentage for Schedule R-1, line 5, divide the total percent in line 4 by the number of factors that have amounts in column (a) and column (b). For most corporations, the denominator is four (property, payroll and twice the sales factor). For agricultural and extractive industries the denominator is three (property, payroll and sales). Those factors with zero balances in the totals of both column (a) and column (b) will not be included in the fraction. For example, if the taxpayer has no payroll then the average apportionment percentage would be computed by entering 1/3 of line 4 instead of the standard 1/4.

K Computation of Interest Offset

If the corporation's income is subject to apportionment by formula, the interest expense deduction is the amount equal to interest income subject to apportionment plus the amount, if any, that the balance of interest expense exceeds nonbusiness interest and nonbusiness dividend income.

Interest expense not deductible under the preceding paragraph is directly offset against nonbusiness interest and nonbusiness dividend income.

In any case in which the tax of a corporation is or has been determined in a combined report with another corporation, all dividends paid by one to another of such corporations are, to the extent dividends are paid out of the income of the unitary business, eliminated from the income of the recipient and are not taken into account for interest offset purposes.

Note: If no dividend or interest income is classified as nonbusiness income on Side 1, line 2 and line 3, it is not necessary to complete Schedule R-5.

Use Schedule R-5 to make the interest expense computation. Enter on Side 1, line 11, the amount of interest offset from Schedule R-5, line 9 or line 18. Enter on Side 1, line 21, the amount of interest expense applicable to California dividend and interest income by:

- dividing the total of Side 1, line 14a and line 14b by the total of Side 1, line 2 and line 3; and
- multiplying the result by the total of Side 1, line 11.

L Contributions Adjustment

As a general rule, California law limits the deductibility of charitable contributions to 5% of the corporation's California net income before deducting the contributions, adjusted for the use of the apportionment formula and any nonbusiness income and losses.

Include the amount of adjustments to income other than those specified on Schedule R-6, line 3. For purposes of the charitable contribution limitation, net income is to be computed without regard to deductions for items included in Art. 2, Ch. 7, of the Bank and Corporation Tax Law (other than organizational expenses). See R&TC Section 24358.

Use Schedule R-6 to compute deductible contributions for state purposes. If the contributions deducted do not exceed the 5% limit, and if no nonbusiness income or loss is classified on Side 1, lines 14 through 20, it is not necessary to complete Schedule R-6.

M Combined Report

A "combined report" is required when two or more corporations are engaged in a unitary business, a portion of which is carried on in California. For detailed information, get FTB Pub. 1061, Form and Instructions for Corporations Filing a Combined Report.

Return Requirement: A tax return for each corporation subject to the Bank and Corporation Tax Law is required, unless an election by a unitary group to file a single return is filed with the Franchise Tax Board. Use Schedule R-7, Election to File a Unitary Taxpayers' Group Return and List of Affiliated Corporations, to make the election. Failure to complete all of the items requested in this election may result in incorrect processing of the return.

Liability of Tax: Show the liability for each electing corporation on Schedule R-7 in the "total self assessed tax" column. The liability of each corporation included in the group return is the same as if each member of the group filed a separate return. Thus, it is necessary to determine each corporation's share of the combined report income apportioned to California, using the factor method prescribed by Legal Ruling 234 and FTB Notice 90-3. Each member then applies its own nonbusiness income or loss and its own net operating loss (if applicable) to that amount to arrive at the corporate taxpayer's net income (loss) for state purposes. In determining the member's tax liability, any tax credit authorized by Chapter 3.5 of the Bank and Corporation Tax Law, the credits may be claimed only the particular member that is eligible for the credit. Clearly show the computation of the tax liability for each member of the group.

Payment of Tax: Any tax required to be paid with the group single return should be paid by the key corporation on behalf of its members, using the key corporation's California corporation number. In addition, if the group has made an election for the preceding income year, estimated taxes and payments with extension of time to file for the income year should be made by the key corporation on behalf of the members, using the key corporation's California corporation number.

Note: If the corporation must pay its' tax liability using electronic funds transfer (EFT), all taxes must be remitted by EFT to avoid penalties.

In the columns "amount of estimated tax paid with Form 100-ES," "amount paid with extension (FTB 3539)," "amount paid with this return" and "total payments" indicate amounts actually paid by each of the members of the group filing the single return. If the key corporation made such payments, enter the amount on the key corporation's line.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: The Gillette Company & Subsidiaries v California Franchise Tax Board
Supreme Court Case No. S206587
Court of Appeal Case No.: A130803
San Francisco Superior Court Case No. CGC10495911

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 17, 2013, I served the attached **RESPONDENT'S REQUEST FOR JUDICIAL NOTICE MOTION, MEMORANDUM AND SUPPORTING PAPERS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Amy L. Silverstein, Esq.
Edwin P. Antolin, Esq.
Silverstein & Pomerantz LLP
55 Hawthorne Street, Suite 440
San Francisco CA 94105

Jeffrey B. Litwak
1608 NE Knott Street
Portland OR 97212

Clerk of the Court
Court of Appeal
First Appellate District
350 McAllister Street
San Francisco CA 94102

Cory Fong, Tax Commissioner
Office of State Tax Commissioner
State of North Dakota
600 E. Boulevard Avenue, Department 127
Bismarck ND 58505-0599

Clerk of the Court
San Francisco Superior Court
400 McAllister Street
San Francisco CA 94102

Lawrence G. Wasden
Attorney General, State of Idaho
State of Idaho Office of the Attorney General
P.O. Box 83720
Boise ID 83720-0010

Ellen F. Rosenblum
Attorney General, State of Oregon
Department of Justice
Justice Building
1162 Court Street NE
Salem OR 97301-4096

R. Bruce Johnson
Commission Chair
Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84134

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 17, 2013, at San Francisco, California.

Joan Randolph	Joan Randolph
Declarant	Signature

SF2010900595
40687723.doc