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California Reportedly Plans to Withdraw Examples Regarding Look-through Sourcing for Asset Managers

A representative from the California Franchise Tax Board (FTB) has indicated informally that the state plans to withdraw examples in the proposed 25136-2 regulations that indicate that an asset manager should source income from services to a fund to the location of the investors in the fund. The representative confirmed that the state has not changed its position that such a look-through approach is an appropriate method for sourcing income. However, the examples in the proposed regulations have raised many questions and a few concerns from taxpayers. Therefore, the FTB plans to issue a notice before the end of 2015 that will announce the removal of these examples from the regulations and will likely schedule an interested parties meeting to discuss the appropriate sourcing of income by an asset manager. If the FTB issues new examples that are substantively different than the ones being withdrawn, it is our understanding that the state does not plan to make the rules in the new examples retroactive to 2015 and prior years. However, we believe there is a position for taxpayers to take such a position if they choose to do so. It is also our understanding that the remainder of the regulation will be finalized as written. Thus, the standard cascading rules will apply.

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