

## **This Week in State Tax (TWIST) – November 2, 2009**

### **California: Proposed Amendments to Sourcing Regulation Would Adopt MTC Changes**

The California Franchise Tax Board has proposed to amend a regulation addressing the sourcing rules for sales of other than tangible personal property. Under California law, receipts from sales of other than tangible personal property are sourced to the state if the income-producing activities that gave rise to the receipts are performed in California or a greater proportion of the income-producing activities are performed in California, based on costs of performance. If adopted, Cal. Code Regs. tit. 18, § 25136 would be revised to conform to changes made in 2006 to the Multistate Tax Commission's model rule for sourcing sales of other than tangible personal property. As such, activities performed by an agent or independent contractor on behalf of a taxpayer would be treated similarly to activities performed directly by the taxpayer and would be included in determining the income producing activity and costs of performance. Currently, the income producing activity test takes into account only activities directly engaged in by the taxpayer in the regular course of its trade or business and does not include transactions and activities performed on behalf of a taxpayer, such as those performed by an independent contractor. Please stay tuned to TWIST for future updates on the proposed regulation, which will be discussed at an interested parties meeting held on January 13, 2010.

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