

FRANCHISE TAX BOARD: CALIFORNIA'S SOVEREIGNTY EXTENDS 62 MILES ABOVE STATE, FTB ASSERTS

According to the Franchise Tax Board, state sovereignty extends 62 miles up in the air. This conclusion is part of a proposed regulation for the apportionment of income derived from activities performed in outer space (Regulation 25137-15).

The regulation would apportion such income based on a formula comprised of launches and time in state. At its July 12 meeting, the three-member FTB (State Controller Betty Yee, State Board of Equalization Chair Fiona Ma, and Eraina Ortega, chief deputy of the California Department of Finance, representing Director of Finance Michael Cohen) voted unanimously to place the proposed regulation in the formal regulatory process.

Representatives of the aerospace company Space X said the regulation will provide guidance and certainty.

The apportionment formula is patterned after, but slightly different than, the one for commercial aircraft that was adopted in the 1960s following a study and recommendation by the Assembly Revenue and Taxation Committee. A 75 percent time-in-state factor and a 25 percent factor for takeoffs and landings is used for commercial aircraft, while the proposed regulation for space activities has an 80 percent time-in-state factor and 20 percent launch factors.

Time in state will be determined by using the 62-mile air boundary for the state. There is no international agreement on the extent of national sovereignty in space.

Other developments from the FTB's July 12 meeting in Sacramento:

Utilization of Earned Income Tax Credit Is 50 Percent Less Than Projected. The highly touted state earned income tax credit (EITC), passed as part of the 2015-16 state budget, provided less than 50 percent of the tax relief that was advertised.

Last year, budget documents estimated that the credit would provide \$380 million to low-income working individuals. As a refundable tax credit, the EITC is available to many people who do not owe income tax, but those who are eligible must file a tax return to claim the credit.

Jennifer Roussel, assistant director of the FTB's Filing Compliance Bureau, told the board that despite the agency's Herculean effort to promote the new tax credit, only \$189 million was given out under the EITC. She also stated that FTB staff stopped \$15 million in bogus claims.

Large Increase in Attempted Identity Theft. Ms. Roussel said that during this year's filing season, FTB staff identified 21,000 attempts at identity theft. There has been a 700 percent increase in attempted identity theft over the past five years, she said.