
From: Steve Wynn
Sent: Monday, January 5, 2015 4:39 PM
To: Sheldon H. Laskin
Subject: Hedging definitions

Sheldon, in looking at my notes, I realized that I had not followed upon of something that I was going to do after the last teleconference. Following the new definition of receipts are a few places where I have encountered a definition of “hedging.” Some are far more detailed than others.

Sec. 1 Model Definition of “Receipts” Regulations

This project was approved by the Executive Committee at its meeting on July 31, 2014. The Uniformity Committee subsequently met to discuss the project and consider the scope as well as the make-up of a working group. The working group will draft model regulations to implement changes to the definition of “receipts” under Article IV, Section 1 (g) of the Multistate Tax Compact [UDITPA] that were adopted by the Commission in July 2014. The statutory language is as follows:

“(g) “Receipts” means all gross receipts of the taxpayer that are not allocated under paragraphs of this article, and that are received from transactions and activity in the regular course of the taxpayer’s trade or business; except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan or other disposition of cash or securities, shall be excluded.”

California R&TC sec. 25120 - Definitions

(L) Amounts received from hedging transactions involving intangible assets. A "hedging transaction" means a transaction related to the taxpayer’s trading function involving futures and options transactions for the purpose of hedging price risk of the products or commodities consumed, produced, or sold by the taxpayer. <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=rtc&group=25001-26000&file=25120-25141>

General Mills California Court Case

“Hedging” means (1) taking a position in the futures market opposite to a position held in the cash market to minimize the risk of financial loss from an adverse price change’; or (2) purchasing or selling commodities on the futures market as a temporary substitute for a cash transaction that will occur later.

(General Mills, Inc. v. Franchise Tax Bd. (2012) 208 Cal.App.4th 1290, 1297; 1540 Cal.Rptr.3d.475, 481.)

Commodity and Securities Exchanges

Title 17, Part 1, Sec. 1.3 Definitions; Subsection (z) at http://www.ecfr.gov/cgi-bin/text-idx?SID=457c4e2bbf3b2499d5b3c0b7d796dec1&node=se17.1.1_13&rgn=div8.

Internal Revenue Code sec. 1221(b)(2)

Title 26, 1221(b)(2) at <http://uscode.house.gov/search/criteria.shtml>

Sincerely,

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