

2020 Instructions for Form FTB 1117

Request to Terminate Water's-Edge Election

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2015**, and to the California Revenue and Taxation Code (R&TC).

General Information

California Revenue and Taxation Code (R&TC) Section 25113 and Cal. Code Regs., tit. 18, section 25113 provide how and when the water's-edge election is to be made. In addition, these sections provide the manner in which the water's-edge election may be terminated with or without the Franchise Tax Board's (FTB's) consent. The filing of form FTB 1117, Request to Terminate Water's-Edge Election, is required only if the taxpayer requests the FTB's consent to terminate the water's-edge election prior to the end of the 84-month election period, and taxpayers (the taxpayer filing this form and all members of the water's-edge group making the request) meet one of the two requirements provided under R&TC Section 25113(c)(10) and Cal. Code Regs., tit. 18, section 25113(d)(2). The requirements are:

- The taxpayers request to terminate the water's-edge election for good cause. Good cause for this purpose has the same meaning as described in Treas. Reg. Section 1.1502-75(c). (R&TC Section 25113(c)(10)(A).)
- The taxpayers' purpose for requesting termination is to permit the state to contract with an expatriate corporation, or its subsidiary, pursuant to Public Contract Code Section 10286.1(b)(2) and R&TC Section 25113(c)(10)(B).

The FTB's consent is not required if the election is being terminated as a result of an affiliation change as provided in R&TC Section 25113(c)(2).

A Purpose

Use form FTB 1117 to request the FTB's consent to terminate the water's-edge election prior to the end of the 84-month election period as provided in R&TC Section 25113(c)(10).

B Due Date

The taxpayer must file form FTB 1117 with the FTB no later than the 120th day prior to the due date, including extensions, of the tax return for which the termination would be effective.

Do not file form FTB 1117 with the tax return because the request will **not** be timely filed and will be considered invalid.

C Approval and Effective Date

In general, requests for consent to terminate the water's-edge election are effective for the taxable year in which:

- Good cause occurred.
- The expatriate corporation, or its subsidiary, enters into the contract with the state.

The FTB will notify the corporation if its request is approved. The corporation should generally receive a determination on its termination request within 45 days after it has filed form FTB 1117.

Do not change the method of filing until the FTB has approved this request.

If the FTB takes no action or requests no additional information within 90 days, a request for consent to terminate the water's-edge election is deemed **disallowed**. See Cal. Code Regs., tit. 18, section 25113(d) for more information.

D Where to File

A taxpayer must file form FTB 1117 **separately** from any other form. Form FTB 1117 filed with a tax return is **not** valid and will **not** terminate a taxpayer's water's-edge election.

Mail form FTB 1117 to:

FRANCHISE TAX BOARD
PO BOX 1779
RANCHO CORDOVA CA 95741-1779

E Request to Withdraw

The taxpayer may withdraw its request at any time before the FTB takes action.

The request must be in writing and mailed to the address shown in General Information D, Where to File.

F Gains and Losses

A request for consent to terminate an election may be subject to the following:

- Dividends received during the remaining period of the election from affiliated corporations not included in the water's-edge combined report will be considered to have been paid first out of the earnings and profits (E&P) not included in the combined report of a unitary business for purposes of computing any allowable dividend exclusion under R&TC Section 25106. To the extent the dividends exceed such E&P, they may be subject to the exclusion.
- Gains on distribution with respect to stock that is not a dividend or from the sale or other disposition of assets received during the remaining period of the election from affiliated corporations not included in the water's-edge combined report will not be deferred or eliminated. Losses from the sale or worthlessness of stock or from the sale or other disposition of assets of affiliated corporations not included in the water's-edge combined report will be allowed only to the extent of dividend income or other gain recognized as a result of the change in election.

- Gains or losses on the disposition of stock or assets of an affiliated corporation that was included in a combined report prior to the election and that was excluded from the water's-edge combined report will be included in income in the first tax return filed after permission is granted. Losses will be included only to the extent of gain recognized as a result of the change in election.

The books and records with respect to the gains and losses listed in Part IV, E&P of affiliated corporations, the nature of the event giving rise to the request, the consequences of such event, and other relevant matters must be made available upon the FTB's request.

Specific Instructions

Private Mail Box (PMB)

Include the PMB in the address field. Write "PMB" first, then the box number. Example: 111 Main Street PMB 123.

Part II – Basis to Terminate Water's-Edge Election

Provide the explanation for the request for consent to terminate the water's-edge election. The basis for the request must clearly state the reason for the request.

In general, the request for consent to terminate the water's-edge election will be granted only if the taxpayers (the taxpayer filing this form and all members of the water's-edge group making the request) meet **one** of the following:

- If the taxpayers request to terminate the water's-edge election for good cause, taxpayers must demonstrate that they meet the good cause requirement as described in Treas. Reg. Section 1.1502-75(c).
- If the taxpayers request to terminate the water's-edge election so they can meet the requirements of Public Contract Code Section 10286.1(b)(2), taxpayers must provide source documentation to support the request.