OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of:

YORICK, INC.;
G. DECKEY AND G. DECKEY;
D. JESSEN AND H. JESSEN;
J. JESSEN; AND
M. JESSEN AND K. JESSEN

OTA Case Nos. 21078238, 21078249, 21088316, 21088317, & 21088318

OPINION

Representing the Parties:

For Appellants: Christopher A. Karachale, Attorney
Trent Tanzi, Attorney

For Respondent: Hanna Cho, Attorney
Delinda Tamagni, Assistant Chief Counsel

For Office of Tax Appeals: Grant S. Thompson, Attorney

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, the above-referenced appellants appeal actions by respondent Franchise Tax Board (FTB) proposing additional tax and interest. For appellant Yorick, Inc. (Yorick), FTB proposed additional tax of $224,229, $39,607, and $41,261, plus applicable interest, for the 2013, 2014, and 2015 tax years, respectively. For appellants G. Deckey and G. Deckey, FTB proposed additional tax of $60,391 and $72,704, plus applicable interest, for the 2014 and 2015 tax years, respectively. For appellants D. Jessen and H. Jessen, FTB proposed additional tax of $82,695 and $86,826, plus applicable interest, for the 2014 and 2015 tax years, respectively. For appellant J. Jessen, FTB proposed additional tax of $60,042 and $73,294, plus applicable interest, for the 2014 and 2015 tax years, respectively. For appellants M. Jessen and K. Jessen, FTB proposed additional tax of $17,868 and $74,015, plus applicable interest, for the 2014 and 2015 tax years, respectively.

Office of Tax Appeals (OTA) Panel Members Cheryl L. Akin, Josh Lambert, and Kenneth Gast held an oral hearing for this matter in Sacramento, California on April 21, 2026. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, (Regulation) section 30209(b).

ISSUE

Whether Yorick derived more than 50 percent of its gross business receipts from an "agricultural business activity," as defined in R&TC section 25128(d)(2), such that it shall apportion its business income to California using the equally-weighted, three-factor formula provided in R&TC section 25128(b).

FACTUAL FINDINGS

Yorick's Background Information and Business Activities

1. Yorick, which was previously known as Gowan Company, is a family-owned company based in Yuma, Arizona. Yorick operated as a C corporation for the 2013 tax year and an S corporation for the 2014 and 2015 tax years.[1] Yorick conducted its business through Gowan Company, LLC, a wholly-owned subsidiary, which in turn operated other wholly-owned subsidiaries, such as: Gowan Agro Canada; Desert Depot, LLC; Exigent, LLC; Gowan USA, LLC; and Pajaros, LLC (these companies and Yorick are collectively referred to herein as Yorick).
2. Yorick's website as of May 2013 provided the following descriptions of the company:
   - "We are providers of quality crop protection solutions for specialty crops and niche markets of agriculture. Our products include insecticides/miticides, fungicides, and herbicides. Our critical competences are field sales and development, pesticide registration, formulation and efficient market delivery."
   - "We are easily distinguishable from other chemical companies, [and] beginning as a crop consultancy in 1963, our foundation was formed by walking the rows and orchards in lockstep with our customers."
   - "We are a family owned company based in Yuma, Arizona, whose growth is fueled entirely by a passion for agriculture and an unwavering commitment to serving growers."
   - "Our model is to understand local cultural practices and the needs of the ultimate market, then work with users to find our products' fit. Along the way, we've honed our field development, sales and marketing, and regulatory science."
   - "We welcome your ideas on opportunities. We'll put our heads to developing these and then to working with local or national partners to bring them to life."

[1] Yorick elected to be taxed as an S corporation effective January 1, 2014.

- "Not all of these projects pay off, but as they do we reinvest our earnings into other projects. We've tried our hand with reviving old compounds, bringing forward new molecules, and developing biologically occurring solutions . . . . We invite you to collaborate and help us find and improve niches in plant protection."

3. A Yorick brochure stated that "[w]e've had our boots in the mud for more than 50 years[,] and [w]e'll keep our boots muddy and our ears tuned to the thorny challenges of agriculture." The brochure provided a timeline of the following significant events in Yorick's history:
   - 1962 – Yorick's founder first began a "crop consultancy company focusing on integrated pest management";
   - 1965 – "Began to sell pesticides";
   - 1966 – "Began local formulations";
   - 1970 – "Entered Mexican market";
   - 1971 – "First Federal Label";
   - 1974 – "Gowan Company is founded in Yuma, Arizona";
   - 1995 – "First Japanese product represented in the US";
   - 1997 – "Gowan Seed formed to market vegetable seeds in the US"; and
   - 1998 – "US post office built in 1933 in old town Yuma becomes international headquarters."
4. In a September 2020 Field Report (Field Report), one of Yorick's Field Representatives described preparing for and reporting on product trials. The Field Report states that "[o]ur folks are one of the only companies who growers and PCAs [pest control advisors] see out there."
5. A January 2021 weekly report email (Weekly Report) from Yorick's CEO indicated that Texas growers were suffering big losses due to a hard freeze. The Weekly Report stated that Yorick employees found plants in Florida to help Texas growers and, although roads were closed, Yorick employees were still "getting out to see what [could] be salvaged of their field trials and customers' crops."
6. The Consolidated Financial Statements for Gowan Company, LLC for the tax years at issue (Financial Statements) describe its business activities as follows:

> Gowan [Company, LLC] sells agricultural chemical products to wholesalers throughout the United States and to a company through common ownership in Mexico. Gowan [Agro] Canada markets Gowan proprietary products to customers in Canada. Gowan USA, [LLC] markets Gowan products to customers in the United States of America.

> Desert Depot, [LLC] warehouses agricultural chemicals and provides logistical support and consulting services to Gowan and other unrelated third parties. Exigent, [LLC] provides labeling support to Gowan and its subsidiaries as well as to a company affiliated through common ownership in Mexico. Pajaros, [LLC] owns and leases an aircraft to Gowan.

7. The Financial Statements indicate that Yorick generated revenue from four different revenue streams for the tax years at issue: (1) product sales; (2) warehousing income; (3) consulting fees; and (4) registration services. Total revenue from each of these revenue streams was as follows:

	2013	2014	2015
Product sales[2]	$142,204,734	$153,298,375	$174,937,772
Warehousing Income	$2,284,052	$2,298,253	$2,302,926
Consulting Fees	$726,163	$718,970	$882,560
Registration Services	$428,500	$761,623	$71,131
Total Revenue	$145,643,449	$157,077,221	$178,194,389

8. An example of one of Yorick's products is Onager Opetek Miticide. Its stated key features include: enhanced leaf coverage creating increased exposure to target mites; quicker reaction on immatures; breaks the mite life cycle through extended residual control; improved plant safety on sensitive crops or varieties and soft on beneficials; and favorable pre-harvest intervals and applications method. It is registered in all 50 states and labeled for use on more than 80 crops, such as blueberries, corn, nuts, stone fruit, and wheat.

Tax Reporting

9. For the 2013 tax year, Yorick timely filed a Form 100, California Corporation Franchise or Income Tax Return. For the 2014 and 2015 tax years, Yorick timely filed Forms 100S, California S Corporation Franchise or Income Tax Returns. Each of these returns used the equally-weighted, three-factor (property, payroll, and sales) formula applicable to agricultural businesses to apportion Yorick's business income to California.

[2] Product sales represented 97.6, 97.6 and 98.2 percent of Yorick's total revenue for the 2013, 2014, and 2015 tax years, respectively. FTB asserts in its briefs that approximately 90 percent of Yorick's product sale revenues were from sales of "propriety" products (i.e., products developed exclusively by Yorick). Evidence substantiating this assertion is not in the record; however, appellants do not appear to contest or disagree with this assertion by FTB.

10. For each of the tax years at issue, Yorick reported its principal business activity code as 424600, Chemical and Allied Products, its business activity as "Wholesale sales," and its product or services as "Ag chemicals."

Audit, Protest, and Appeal

11. FTB audited Yorick's tax returns and determined that Yorick was not entitled to use the equally-weighted, three-factor formula to apportion its business income to California and must instead use the standard single-sales factor formula applicable to most businesses.
12. FTB issued Notices of Proposed Assessment (NPAs) to Yorick for the 2013, 2014, and 2015 tax years, and to Yorick's individual nonresident shareholders for the 2014 and 2015 tax years.[3]
13. Following protest proceedings, FTB issued Notices of Action revising the additional tax to the amounts reflected above.
14. Yorick and the nonresident shareholders timely appealed to OTA and the appeals were consolidated.

Declarations Provided at Appeal

15. A declaration dated July 20, 2021, from Yorick's former Global Tax Manager states in relevant part:
    - "Yorick is integrally involved in the development of crops, including the development of chemical products and provision of support and advisory services to farmers."
    - He believes Yorick's principal business activity code as originally listed on its 2013 to 2015 returns, "424600, the Wholesale of Chemical and Allied Products," is incorrect and the correct business activity code is "325300, Pesticide, Fertilizer & Other Agricultural Chemical Manufacturing" and/or "115111, Support Services for Crop Production," with a focus on "Soil Preparation, Planting, and Cultivating."
    - He also believes the statement in Yorick's financial statements for 2013, 2014, and 2015 that Yorick "sells agricultural chemical products to wholesalers" provides "an incomplete characterization of Yorick's business activities."

---

[3] As Yorick was a C corporation for the 2013 tax year, FTB only issued an NPA to Yorick for that year. Because Yorick was an S corporation for the 2014 and 2015 tax years, FTB issued NPAs to the individual nonresident shareholders in Yorick for their distributive shares of Yorick's additional proposed income for these tax years and NPAs to Yorick because S corporations are subject to an entity-level income tax at a rate of 1.5 percent in California.

- "Yorick is not simply a seller of chemicals. Yorick's entire business model requires it to be deeply involved with farmers as they grow their crops. Yorick employees are involved at every step of the way as farmer[s] grow their crops with Yorick's assistance."
- "Yorick participates to a significant degree in activities relating to cultivating the soil. Yorick engages in every step of the development of the chemicals. Further, Yorick employees work closely with the company's customers after the sale of the chemical products. Yorick employees assist farmers/customers in developing and maintaining their crops."
- "Yorick's success as a company depends solely on whether our crop products and subsequent interaction with our farmer/customers are successful."
- "Yorick invests significant funds in the development of agricultural chemical products as well as [customer outreach]." Yorick has a substantial risk of reputational and financial loss if its "chemical products fail to be effective," or its customer outreach is not "timely and successful."

16. A declaration dated April 3, 2026, from Yorick's California and Arizona Regional Sales Manager (Sales Manager) states in relevant part:
    - Yorick "produces over 30 different chemical-based products including pesticides, herbicides, and fungicides," which California growers rely upon to raise their crops.
    - In addition to chemical-based products, Yorick also develops and produces biologicals which "function as a chemical-based insecticide or fungicide" but are created using "organic plant matter."
    - Yorick employs Field Representatives across California. Their duties include "work[ing] directly with growers across California." They often "meet with growers directly, walk the field, and make product recommendations." They also "conduct pre-commercial and commercial development trials on the effect of [Yorick's] products on California crops." They also "regularly work with in-house pest control advisors across California to educate them on [Yorick's] products."
    - Every commercial California grower (including organic growers) uses agricultural chemicals similar to those produced by Yorick.
    - The four largest agricultural chemical providers in California are BASF Agricultural Solutions, Bayer, Syngenta, and Corteva. Yorick is one of the largest outside of these top four.

- In “multiple instances,” Yorick’s agricultural chemicals “have allowed farmers to grow certain crops in California that they would not have otherwise been able to profitably grow,” and “in some cases, California farmers would not have been able to harvest certain crops without [Yorick’s] products.”
- For instance, California farmers were having difficulty growing citrus fruits because of citrus thrips. Over time, California’s citrus crops developed a resistance to citrus thrip insecticides. Yorick produces a pesticide called Carzol “that is effective against citrus thrips, even when used on resistant crops,” and it is “an important tool to help grow citrus crops today.”
- In another instance, herbicide-resistant weeds threatened California’s rice crops. In response, Yorick developed and registered “a novel herbicide mode of action called Benzobicyclon,” which Yorick uses as “the key active ingredient in its new BUTTE and Cliffhanger rice herbicide brands, which are effective against the resistant weeds.” Yorick “developed both herbicides for use in California conditions,” and “worked with the California Rice Commission and the California Rice Research Board” to develop these products. Without these products, “the resistant weeds would have dramatically decreased rice yields, leaving a portion of California’s rice acres unfarmable.”
- “Several of the [Yorick] herbicides that growers use must be incorporated into the soil through either mechanical incorporation or irrigation. These herbicide products specifically require growers to cultivate the soil using certain methods. Otherwise, those herbicides will not be effective.”
- “[Yorick] is directly involved in raising agricultural commodities in California. [Yorick] manufactures and supplies several crop protection tools and provides technical expertise to crop advisors and growers. Both organic and non-organic growers across the state rely upon [Yorick’s] products to raise crops. Without [Yorick’s] products, it would be more difficult for California farmers to profitably and consistently grow crops like citrus and rice, which are two of California’s biggest agricultural exports.”
- “[Yorick] plays a critical role in California’s agricultural production process by providing important crop protection tools that are an important ‘link’ in the chain of raising crops.”
- “[A] significant number of California growers directly rely on [Yorick’s] products to produce marketable crops.”

- "California's farmers would not be able to grow marketable crops without using agricultural chemicals."

DISCUSSION

I. Introduction

When a business, such as Yorick, earns income in multiple states, apportionment is necessary to avoid tax duplication or other inequity. (*The Gillette Co. v. Franchise Tax Bd.* (2015) 62 Cal.4th 468, 473 (*Gillette*).) Under the Uniform Division of Income for Tax Purposes Act (UDITPA), adopted by California pursuant to R&TC section 25120 et seq.,[4] a unitary enterprise's "business income" is apportioned among the tax jurisdictions according to a formula. (See *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750, 755-756.) UDITPA was first adopted by the California Legislature in 1966, and the standard apportionment formula adopted at that time was based on three equally-weighted factors (equally-weighted, three-factor formula): (1) property in California versus property everywhere; (2) payroll in California versus payroll everywhere; and (3) sales in California versus sales everywhere. (*Gillette*, *supra*, 62 Cal.4th at p. 473; see also R&TC, § 25120 et. seq. (1966).)

In 1993, the California Legislature modified the UDITPA standard apportionment formula by doubling the weight given to the sales factor (four-factor double-weighted sales formula). (Stats.1993, ch. 946 (S.B. 1176), § 1, eff. Oct. 8, 1993; *Gillette*, *supra*, 62 Cal. 4th at p. 476.) While the Legislature modified the standard apportionment formula by enacting the four-factor double-weighted sales formula in 1993, the Legislature also created an exception for certain qualified business activities, such as agricultural and extractive business activities, which would continue to be subject to the equally-weighted, three-factor formula. (Stats. 1993, ch. 946 (S.B. 1176), § 1, eff. Oct. 8, 1993; R&TC, § 25128(b), (c) (1993).)

Subsequently, in 2012 and effective for tax years beginning on or after January 1, 2013, the standard apportionment formula was again changed in California.[5] The standard apportionment formula was changed from the four-factor double-weighted sales formula to a formula using only the sales factor to apportion business income to California (single-sales factor formula). (See R&TC, § 25128.7; see also former R&TC, § 25128.5 [for the 2011 and 2012 tax years, taxpayers, other than certain businesses, such as agricultural and extractive businesses, were allowed to elect to apportion business income using only the sales factor].)

---

[4] Unless otherwise indicated, all references to the R&TC in this Opinion refer to the version in effect for the tax years at issue.

[5] This change was made as a result of California voters passing Proposition 39 in 2012.

The exception for agricultural and extractive businesses was not modified as a result of the change to the single-sales factor formula in 2012, and California continues to require that such businesses use the equally-weighted, three-factor formula.[6] (See R&TC, § 25128(b), (c).) For the tax years at issue, and as relevant to this appeal, this exception applies if an apportioning trade or business derives more than 50 percent of its "gross business receipts" from one or more qualified business activities, which includes "agricultural business activity." (R&TC, § 25128(b), (c)(1).)

On appeal, the parties dispute whether Yorick qualifies for the equally-weighted, three factor formula required for businesses that derive more than 50 percent of their gross business receipts from an "agricultural business activity" under R&TC section 25128(b) and (c)(1). Appellants contend that Yorick's business activities meet the definition of an "agricultural business activity," as provided in R&TC section 25128(d)(2), and that Yorick's business activities also meet the requirements set forth in Regulation section 25128-2. To the extent OTA were to find that Yorick does not meet Regulation section 25128-2, appellants contend that Regulation section 25128-2 is overbroad and improperly restricts the scope of "agricultural business activity" as defined in R&TC section 25128(d)(2). As a result, appellants contend that Regulation section 25128-2 cannot be used to interpret the scope of R&TC section 25128(d)(2), and OTA must decline to apply Regulation 25128-2 to Yorick in this appeal because it is inconsistent with the statute, R&TC section 25128(d)(2).

FTB contends that Yorick's business activities fail to meet the definition of an "agricultural business activity," as provided in both R&TC section 25128(d)(2) and Regulation section 25128-2. FTB further contends that because the California Legislature granted it substantial rulemaking power in R&TC section 19503(a), Regulation section 25128-2 must be "accorded the same dignity" as a statute and that Regulation section 25128-2 is consistent with R&TC section 25128(d)(2). Before evaluating the parties' arguments regarding the regulation, OTA first considers and evaluates the language of the statute to determine if Yorick's business

[6] In 1994, R&TC section 25128(b)-(d) was modified to add "savings and loan" and "banking or financial business" activities to the exception such that these businesses were also required to use the equally-weighted, three-factor formula to apportion their income to California. (Stats. 1994, ch. 861 (S.B. 1880), § 15, eff. Sept. 27, 1994.) However, effective for tax years beginning on or after January 1, 2025, these businesses must now use the standard single-sales factor formula. (Stats. 2025, ch. 17 (S.B. 132), § 22, eff. June 27, 2025.)

activities meet the statutory definition of an "agricultural business activity" as provided in R&TC section 25128(d)(2).

II. Yorick's Business Activities Do Not Qualify as an "Agricultural Business Activity" Pursuant to the Statutory Definition in R&TC section 25128(d)(2)

As with any issue of statutory interpretation, OTA "begin[s] with the words of a statute and give[s] these words their ordinary meaning." (*Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519.) "If the statutory language is clear and unambiguous, then [OTA] need go no further." (*Ibid.*) "If, however, the language is susceptible to more than one reasonable interpretation, then we look to extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*Ibid.*, internal quotations omitted.)

R&TC section 25128(d)(2) defines "agricultural business activity" as follows:

> "Agricultural business activity" means activities relating to any stock, dairy, poultry, fruit, furbearing animal, or truck farm, plantation, ranch, nursery, or range. "Agricultural business activity" also includes activities relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including, but not limited to, the raising, shearing, feeding, caring for, training, or management of animals on a farm as well as the handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

Appellants contend that Yorick's activities meet this statutory definition of "agricultural business activity" under both the first and second sentences of R&TC section 25128(d)(2). Specifically, appellants contend that Yorick's activities *relate to* "any stock, dairy, poultry, fruit, furbearing animal, or truck farm, plantation, ranch, nursery, or range." They further contend that Yorick's activities *relate to* "cultivating the soil or raising or harvesting any agricultural or horticultural commodity." Appellants note that the language "relating to" in R&TC section 25128(d)(2) is to be interpreted broadly, and, for support, they cite to *Prima Paint Corp. v. Flood & Conklin Mfg. Co.* (1965) 388 U.S. 395, *Minh Duc Luu-Le v. INS.* (9th Cir. 2000) 224

F.3d 911 (*Luu-Le*), and *Tachiona v. U.S.* (2nd Cir. 2004) 386 F.3d 205.[7] Appellants contend that Yorick's activities qualify under a broad interpretation of the "relating to" language in R&TC section 25128(d)(2).

OTA agrees with appellants that the language "relating to" in R&TC section 25128(d)(2) is to be read and interpreted broadly. (*Luu-Le*, *supra*, 224 F.3d at p. 915.) The ordinary meaning of "relating to" is "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." (*Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374, 383). While OTA is mindful of the above definition and that "relating to" is to be interpreted broadly, this language "does have some limits." (*Luu-Le*, *supra*, 224 F.3d at p. 916.) The scope of "relating to" will be limited where "to read it broadly would render meaningless other words in the statutory language." (*Ibid*.) Thus, while OTA reads the "relating to" language broadly, OTA will not read it so broadly as to render any other part of R&TC section 25128 meaningless or cause R&TC section 25128(d)(2) to be inconsistent with, or contrary to, the legislative intent in enacting R&TC section 25128. (See, e.g., *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1389-1391 [acknowledging that the language " 'including, but not limited to' is a phrase of enlargement" but declining to adopt the Commission's broad interpretation of that phrase to include punitive damages because the statutorily enumerated remedies were "exclusively corrective and equitable in kind," and limiting the construction would be consistent with both "the remedial purpose of the [Fair Employment & Housing] Act and the ordinary import of the statutory language"].)

As a starting point, OTA notes that R&TC section 25128(d)(2) discusses "*activities* relating to any stock, dairy, poultry, fruit, furbearing animal, or truck farm, plantation, ranch nursery, or range," and "*activities* relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity . . . ." (Italics added.) This language in R&TC section 25128(d)(2) must be read in the context of R&TC section 25128 as a whole. (See *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 733.) As relevant here, R&TC section 25128(a) sets forth the four-factor double-weighted sales formula applicable in California beginning in 1993 (and prior to 2013). R&TC section 25128(b) then provides an exception for businesses which derive more than 50 percent of their gross business receipts from one or more "qualified

[7] Appellants also cite to a recent Statement of Decision in *Smithfield Packaged Meats Corp. v. California Franchise Tax Bd.* (2026) Case No. 21STCV39637, 2026 WL 1326768 (*Smithfield)*, which observes that the phrase "relating to" reflects the Legislature's intent to capture a broad range of activities. The Statement of Decision in *Smithfield* was issued on April 28, 2026, approximately two months before this Opinion was issued. At the time this Opinion was issued, *Smithfield* was not yet final and might be appealed by FTB. While OTA considered appellant's arguments based on *Smithfiled*, OTA does not rely on *Smithfield* as it is both non-final and non-precedential.

business activities." R&TC section 25128(c) identifies those "qualified business activities," which expressly includes an "agricultural business activity." (R&TC, § 25128(c)(1).) Finally, R&TC section 25128(d)(2) then defines "agricultural business activity."

Given this statutory framework, it is clear that the "*activities* relating to" language in both sentences of R&TC section 25128(d)(2) necessarily refers to the *activities of the taxpayer* in question. It would not generally include the activities of third-parties, such as Yorick's customers.[8] This is because the purpose of R&TC section 25128(b) through (d)(2)-(5) is to identify those *activities of the taxpayer* in question which constitute "qualified business activities," such that *the taxpayer* is required to use the equally-weighted, three-factor formula in place of the standard apportionment formula if it derives more than 50 percent of its gross business receipts from those "qualified business activities." Thus, in evaluating whether Yorick engaged in an "agricultural business activity," OTA looks only to those activities performed or engaged in by Yorick, not those performed or engaged in by Yorick's customers or the end use of what Yorick sells.

Appellants contend that all of Yorick's gross receipts from its "product sales" are derived from an "agricultural business activity." These "product sale" receipts represent 97.6 through 98.2 percent of Yorick's total gross receipts for the tax years at issue. However, when looking solely at Yorick's activities in generating these "product sale" receipts, it is clear that the majority of Yorick's *own activities* which generated this income do not "relate to" any "stock, dairy, poultry, fruit, furbearing animal, or truck farm," etc. or "to cultivating the soil or raising or harvesting any agricultural or horticultural commodity."

For example, Yorick's activities relating to the research, design, development, manufacture, production, regulatory approval, patenting, labeling, storing, marketing, selling, and shipping of chemical compounds (or non-chemical biologics) do not "relate to" "cultivating the soil" or any "stock, dairy, poultry, fruit, furbearing animal or truck farm," etc. Rather, these activities "relate to" the development, production, and sale of Yorick's chemical (and non-chemical biological) products. Yorick's core business activity is the development, production, and sale of chemical and biological products. While Yorick's *products* relate to "cultivating the soil" and/or any "stock, dairy, poultry, fruit, furbearing animal or truck farm," etc., as they are used by Yorick's *customers* on such farms and in connection with the *customers'* cultivating the soil or raising or harvesting of agricultural or horticultural commodities, Yorick's *own activities*

---

[8] This is not meant to limit or restrict activities performed on behalf of the relevant taxpayer by third parties, such as other businesses or independent contractors (e.g., where a taxpayer hires independent contractors or another business to harvest its produce, work on its farm, etc.). Instead, OTA uses the term third parties here to refer to third parties that are *not* hired to act on Yorick's behalf.

primarily relate to the development and sale of these products, not cultivating the soil or any farm activity. Appellants largely focus on the nature of Yorick's products and Yorick's customers' use of them, rather than Yorick's own activities in developing, producing, storing, and selling these chemical and biological products.[9] However, the proper analysis focuses on the relevant *taxpayer's (Yorick's) activities*, not the nature, character, or use of the *taxpayer's (Yorick's) products* or the activities of the *taxpayer's (Yorick's) customers*.

Appellants rely heavily on the fact that Yorick's business model requires it to work closely with its farmer customers, noting that Yorick provides "crop protection solutions for specialty crops and markets of agriculture"; "its foundation was formed by walking the rows and orchards in lockstep with [its] customers"; it works closely with its customers to find which of its "products fit"; it collaborates with customers to help it "find and improve niches in plant production"; and its employees keep their "boots in the mud" and "ears tuned to the thorny challenges of agriculture." Appellants note that Yorick's Field Service Representatives meet with growers, walk the field, make product recommendations, and conduct pre-commercial and commercial development trials on the effect of Yorick's products on customers' crops.

Again, appellants improperly focus on the activities of Yorick's customers rather than Yorick's own activities. While Yorick undoubtedly works closely with its farmer customers to design, develop, recommend, and sell niche agricultural products, such as pesticides, herbicides and fungicides, these activities by Yorick's Field Service Representatives are sales and marketing activities – building customer relationships, demonstrating products, making product recommendations, and driving repeat purchases. These activities relate primarily and predominately to the marketing and sale of Yorick's chemical and biological products, rather than "cultivating the soil" or to any "stock, dairy, poultry fruit, furbearing animal, or truck farm," etc.[10] Similarly, the pre-commercial and commercial "development trials" related to the development of Yorick's products, ultimately helping to generate more product sales revenue

[9] When asked at the hearing which of Yorick's activities qualify, appellants answered, "The production of chemicals that are used to cultivate the soil and raise any agricultural or horticultural commodity."

[10] Presumably, these activities by the Field Services Representative resulted in improved products and increased "product sales" revenue from the sale of Yorick's products. As previously noted, product sales revenue represented 97.6 to 98.2 percent of Yorick's total revenues for the tax years at issue. Consulting fees represented less than 0.5 percent of Yorick's total revenues for these tax years. Even if OTA were to find certain activities to be qualified activities, appellants have not established what portion, if any, of Yorick's product sales revenues are attributable to these purported qualifying activities, rather than Yorick's non-qualifying activities. Thus, appellants have not shown that Yorick derived more than 50 percent of its gross business receipts from qualified business activities as required by R&TC section 25128(b).

through improved products. The fact that some of the activities happen to occur in a field or on a farm rather than in a showroom does not transform it into an agricultural business activity.[11] While appellants contend that all of Yorick's "product sales" gross receipts are derived from an "agricultural business activity," these gross receipts were actually derived from the development, production, and sale of chemical (and biological) products. Appellants' characterization of 100 percent of Yorick's "product sales" revenues as "agricultural receipts" because Field Service Representatives walked the customer's field conflates the customer's activities with Yorick's own activities simply because the Field Service Representatives worked closely with those customers. As the statutory framework makes clear that the "*activities* relating to" language in R&TC section 25128(d)(2) refers to the *activities of the taxpayer* in question, OTA finds that Yorick's business activities do not qualify as an agricultural business activity pursuant to the language of the statute (R&TC section 25128(d)(2)).

Nonetheless, to the extent some ambiguity exists as to the scope of the "relating to" language, OTA's analysis is aided by the legislative history and intent of the four-factor double-weighted sales formula and the exception created for agricultural business activities. (*Hoechst Celanese Corp. Franchise Tax Bd.*, *supra*, 25 Cal.4th at p. 519 [where the statutory language is susceptible to more than one reasonable interpretation, then extrinsic aids, including the legislative history, can be consulted].)

III. <u>The Legislative Intent and Purpose of the Four-Factor Double-Weighted Sales Formula Also Support Yorick's Business Activities Do Not Qualify as an Agricultural Business Activity</u>

As noted above, California moved from the equally-weighted, three-factor formula to the four-factor double-weighted sales formula in 1993 pursuant to Senate Bill (SB) 1176. A Bill Analysis of SB 1176 by the Senate Revenue and Taxation Committee (Senate Bill Analysis) noted that this change "would have the effect of reducing the tax for most California-based businesses and increasing the tax on most businesses based in other states."[12] (Sen. Com. on Rev. & Tax, analysis of Sen. Bill No. 1175 (1993-1994 Reg. Sess.), Apr. 21, 1993, pp. 1-2.) Similarly, a Bill Analysis by the Assembly Committee on Revenue and Taxation (Assembly Bill

[11] As an analogy, a pharmaceutical sales representative who visits hospitals and discusses drug protocols with physicians is not engaged in the practice of medicine. Proximity to the customer's activity is not necessarily an adoption of that activity by the taxpayer.

[12] In the Senate Bill Analysis, "California-based businesses" refers to those businesses that have most of their payroll and property in California, but most of their sales outside of California. The bill analysis uses an example of a California manufacturer that does most of its manufacturing in California but sells largely outside of California.

Analysis) noted that proponents of SB 1176 believed the original equally-weighted, three-factor formula created "a disincentive to locate manufacturing and other activity in California" by "placing an emphasis on property and payroll." (Assem. Com. on Rev. & Tax., analysis of Sen. Bill No. 1176 (1993-1994 Reg. Sess.), Aug. 16, 1994, p. 3.)

The Senate Bill Analysis further noted that the purpose of the bill was to "shift a portion of the tax burden to those businesses which have a large amount of sales in California relative to their productive capacity, and away from those businesses producing relatively more in California than they sell (and employing California workers and capital in the process)." (Sen. Com. on Rev. & Tax, analysis of Sen. Bill No. 1175 (1993-1994 Reg. Sess.), Apr. 21, 1993. p. 2.) The Assembly Bill Analysis noted that SB 1176 was "intended to improve California's business climate by shifting the corporate tax balance against those 'who simply sell into [California's] huge consumer market without putting manufacturing jobs here.' " (Assem. Com. on Rev. & Tax., analysis of Sen. Bill No. 1176 (1993-1994 Reg. Sess.), Aug. 16, 1994, p. 2.)

Regarding the exception for "extractive and agricultural industries," the Senate Bill Analysis critically noted that SB 1176 provided an exception for these industries "to prevent penalizing businesses which arguably have no choice as to their 'manufacturing' location." (Sen. Com. on Rev. & Tax, analysis of Sen. Bill No. 1175 (1993-1994 Reg. Sess.), Apr. 21, 1993, p. 4.) In a letter to the then-Governor of California dated September 10, 1993, the author of the bill, Senator Quentin L. Kopp, noted that agricultural and extractive industries were excluded from the new four-factor double-weighted sales formula "because of their innate California character." Similarly, in a letter to the Assembly dated July 9, 1993, Brad Sherman, Chairman of the Board of Equalization, stated the following in his opposition to amending SB 1176 to also exclude pharmaceutical companies from using the new four-factor double-weighted sales formula:

> SB 1176 already contains an exemption for agricultural and the extractive industries. This is because the purpose of the bill is to encourage those businesses, which can choose to locate in any state, to locate in California. In particular, the bill is aimed at securing for [California] manufacturing and research jobs. Companies engaged in agricultural production and extractive industries cannot be lured from one state to another on the basis of moderate differences in state income tax law. Agriculture, mining and oil drilling will be conducted where good farmland, ore and petroleum reserves are located.
>
> We cannot attract banana plantations and bauxite mines to California by changing our tax laws. We can, however, attract a greater share of pharmaceutical and bio-technology jobs to California by passing SB 1176 in its present form.

Appellants contend that application of the equally-weighted, three-factor apportionment formula to Yorick would be consistent with the purpose and legislative intent of R&TC section 25128, including the exception for agricultural business activities in R&TC section 25128(b) and (c)(1). As support, appellants point to a statement by Senator Tom Campbell made on the Senate Floor in relation to SB 1880 wherein he stated:

> The objective of double-weighting sales was to give an advantage to California-based businesses which manufacture primarily in California, but sell primarily outside of California – the effect is to shift taxable profits where the sales take place; to give a tax break to businesses which produce value here and sell it elsewhere. The exclusion for extractive and agricultural industries was explained as a *point of fairness based on the inability of those industries to shift their sales out of California.*

(Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 1880 (1993-1994 Reg. Sess.) May 31, 1994, p. 1; italics added.)

Relying on the italicized language from the above statement, appellants contend that the exception for agricultural businesses in R&TC section 25128 was intended to not only benefit those businesses which have no choice as to their "manufacturing" location, but also benefit those businesses that are unable to "shift their sales out of California." OTA disagrees. The italicized language relied upon by appellants must be read in context of the entire statement made by Senator Campbell, and the legislative history and intent of both SB 1176 and SB 1880.

Reading Senator Campbell's statement as a whole, it is clear that Senator Campbell is discussing "California-based businesses," which "manufacture primarily in California," rather than businesses based in other states, which primarily manufacture outside of California (such as Yorick). Thus, when Senator Campell discusses fairness for extractive and agricultural businesses that cannot shift their sales out of California, OTA concludes that he is referring to California-based extractive and agricultural businesses, which could not shift their sales out of California (presumably because they largely sell to local customers).

Additionally, this statement by Senator Campbell was made in the context of SB 1880, which added savings and loan businesses and bank and financial businesses to those exempted from using the four-factor double-weighted sales formula, rather than SB 1176, which initially created the exception for agricultural and extractive businesses. The purpose of SB 1880 was "to provide financial relief to the savings and loan industry by reversing a tax increase imposed on this group by last year's SB 1176." (Assem. Com. on Rev. & Tax., analysis of Sen. Bill No. 1880 (1993-1994 Reg. Sess.), June 20, 1994, p. 2.) SB 1176 inadvertently resulted in a tax increase for "California-based savings and loans that operate on a multistate basis," because "under the regulations which determine how a financial corporation determines its sales factor, sales are based primarily on interest income from loan payments" which are "assigned to the corporation's home state." (*Ibid*.) As a result, a "California-based savings and loan will have a sales factor which is relatively high, and thus, double-weighting that factor will tend to result in more income being apportioned to California." As such, SB 1880 was intended to reverse the tax increase imposed on California-based savings and loan businesses as a result of SB 1176, as these California-based savings and loan businesses "were not the intended victims of SB 1176." (*Ibid*.)

Thus, the legislative history does not support appellants' contention that the exception for agricultural business activities provided in R&TC section 25128 was intended to benefit *out-of-state* businesses which "cannot shift their sales out of California," such as Yorick. To the contrary, the legislative history for SB 1176 makes clear that the purpose of California's move to the four-factor double-weighted sales formula was to "reduc[e] the tax for most *California-based* businesses and increas[e] the tax on most businesses based in other states." (Sen. Com. on Rev. & Tax, analysis of Sen. Bill No. 1175 (1993-1994 Reg. Sess.), Apr. 21, 1993, pp. 1-2, italics added.) Stated another way, the express purpose of this change was to "shift[] the corporate tax balance against those 'who simply sell into [California's] huge consumer market without putting manufacturing jobs here.' " (*Ibid*.) Similarly, the exception created for agriculture and extractive businesses was intended "to prevent penalizing businesses which arguably have no choice as to their 'manufacturing' location." (*Ibid*.) And, finally, the intent of SB 1880 (which added savings and loan and bank and financial businesses to those exempted from using the four-factor double-weighted sales formula) was to avoid inadvertently increasing tax on California-based saving and loan (and bank and financial) businesses, which were required to assign certain sales to their home state of California.

IV. <u>Conclusion – Yorick's Business Activities Fail to Qualify Under the Statute and Are Inconsistent with the Legislative Intent</u>

With the above legislative history and intent in mind, OTA returns to appellants' arguments that Yorick's operations and activities qualify as agricultural business activities under a broad reading of the "relating to" language in R&TC section 25128(d)(2). Here, Yorick has not shown that it did not have any choice as to its manufacturing (and other operational) locations. In fact, there is no evidence in the record establishing where precisely Yorick designed, developed, produced, and manufactured its agricultural chemical and biological products. While Yorick's headquarters and desert depot were in Arizona, appellants do not provide OTA with any additional information about where Yorick's operations and facilities were located. Nor do appellants present any evidence or argument relating to why its manufacturing (or other operational) activities needed to be done in the particular location selected, or why its manufacturing (or other operational) facilities could not be moved elsewhere. Yorick largely developed and produced its chemical (and biological) products outside of California.[13] It is precisely the type of business that was intended to use the four-factor double-weighted sales apportionment formula enacted by the Legislature in 1993 as a business that "sell[s] into [California's] huge consumer market without putting manufacturing jobs here." (*Ibid*.)

Finally, appellants also rely heavily on the fact that Yorick specifically designed, developed, and manufactured products which were customized for California farmers and growers. Examples include Benzobicyclon, a key ingredient in Yorick's BUTTE and Cliffhanger rice herbicide brands which were specifically developed "for use in California conditions" and via a collaboration with the California Rice Commission and the California Rice Research Institute; and a pesticide called Carzol, which is "effective against citrus thrips," even when used on California's citrus crops which had "developed a resistance to citrus thrip insecticides." Appellants credibly note that without Yorick's products, it would be more difficult for California farmers to profitably and consistently grow crops like citrus and rice, which are two of California's biggest agricultural exports. Appellants further note that a significant number of California growers directly rely on Yorick's products to produce marketable crops and would not be able to grow marketable crops without agricultural chemicals. Thus, appellants contend Yorick plays a "critical role in California's agricultural production process by providing important crop protection tools that are an important 'link' in the chain of raising crops." Appellants further note that Yorick cannot shift its sales out of California given: (1) that some of its products are specifically designed for California growers and producers; and (2) California is the number one agricultural state in the United States, producing $44.7 billion total value from its farming agricultural activity in 2012.

While OTA does not doubt the importance of Yorick's products to farmers, growers, and producers, this simply is not the relevant test. As noted above, this improperly focuses on the nature or character of Yorick's products, and the use of those products by Yorick's customers, rather than Yorick's *own business activities*. If OTA were to accept appellants' argument that Yorick's activities qualify under a broad reading of the "relating to" language in R&TC

---

[13] Presumably, the manufacturing or other production activities occurred in a location outside of California as Yorick's Schedules R-1, Apportionment Formula, for the 2013 through 2015 tax years reported a California property factor of 3.5953 percent, 6.3137 percent, and 7.8151 percent for each of these years, with 78 to 99.9 percent of Yorick's California property comprised of inventory in California. Its California payroll factor ranged between 8.1639 and 11.4420 percent for the tax years at issue.

section 25128(d)(2), then any manufacturer whose products are ultimately used in farming, from tractor and equipment manufacturers to fertilizer-spreaders and irrigation-system producers, would likewise qualify, even though none of these businesses operate a farm, plantation, nursery or range or raise or harvest any agricultural or horticultural product. This creates an absurd result that is inconsistent with the purpose and intent of the exception for agricultural businesses. "[I]t is presumed the Legislature intended reasonable results consistent with its expressed purpose, not absurd consequences." (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1165-1166; see also *Dyna-Med, Inc. v. Fair Employment & Housing Com.*, *supra* [limiting broad statutory language to be consistent with other statutory language and legislative intent].)

This outcome is not changed by the fact that Yorick specifically designed certain products for *California* growers/farmers and crops. Accepting as true that Yorick cannot shift its sales out of California because some of its products are designed specifically for California growers and producers and the size of California's agricultural industries, OTA notes, again, the purpose of the exception for "agricultural business activity" in R&TC section 25128(c)(1) is to prevent penalizing businesses which arguably have no choice as to their "manufacturing" location. (Sen. Com. on Rev. & Tax, analysis of Sen. Bill No. 1175 (1993-1994 Reg. Sess.), Apr. 21, 1993, p. 4.) As discussed above, OTA disagrees with appellants' assertion that this exception was also intended to benefit out-of-state businesses like Yorick which are unable "shift their sales out of California."[14] Because OTA finds that Yorick does not qualify under the statutory definition set forth in R&TC section 25128(d)(2), OTA need not address the parties' contentions regarding whether Regulation section 25128-2 is consistent with R&TC section 25128(d)(2).[15]

[14] OTA is not saying that out-of-state businesses cannot qualify as an agricultural business activity pursuant to R&TC section 25128(d)(2) – only that Yorick, a company that manufactures and sells agricultural chemical products, does not engage in an agricultural business activity and is not the type of business the Legislature intended to benefit when it enacted the exception for extractive and agricultural businesses.

[15] To the extent appellants have raised arguments which OTA has not directly addressed in this Opinion, OTA has considered them and found them to be without merit.

HOLDING

Yorick did not derive more than 50 percent of its gross business receipts from an "agricultural business activity," as defined in R&TC section 25128(d)(2), and therefore is not permitted to apportion its business income to California using the equally-weighted, three-factor formula provided in R&TC section 25128(b).

DISPOSITION

FTB's actions are sustained.

DocuSigned by:
Cheryl L. Akin
1A8C8F38740B4D5

Cheryl L. Akin
Administrative Law Judge

We concur:

Signed by:
Josh Lambert
CB1F7DA37831416...

Josh Lambert
Administrative Law Judge

DocuSigned by:
Kenneth Gast
3AF5C32BB93B456...

Kenneth Gast
Administrative Law Judge

Date Issued: 7/14/2026