State of California **Board of Equalization**

Memorandum

To : Ms. Cynthia Bridges
Executive Director, MIC: 73

Date: February 21, 2013

From : Randy Ferris, Chief Counsel
Legal Department, MIC: 83

Subject : **Board Meeting, March 12-14, 2013**
Item J - Chief Counsel's Rulemaking Calendar
Regulation 1532, *Teleproduction or Other Postproduction Service Equipment*
Regulation 1533.1, *Farm Equipment and Machinery*
Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*
Regulation 1534, *Timber Harvesting Equipment and Machinery*
Regulation 1535, *Racehorse Breeding Stock*
Regulation 1598, *Motor Vehicle and Aircraft Fuels*

We request your approval to place proposed changes to the above referenced sales and use tax regulations on the Chief Counsel's Rulemaking Calendar for the March 12-14, 2013, Board meeting. The changes incorporate amendments to the California Constitution into all of the regulations and the changes also make Regulation 1598, *Motor Vehicle and Aircraft Fuels*, consistent with the expiration of the one percent sales and use tax imposed by Revenue and Taxation Code (RTC) sections 6051.7 and 6201.7.

As part of the November 6, 2012, General Election, California voters approved Proposition 30, which added section 36 to article XIII of the California Constitution. Section 36, subdivision (f)(1) temporarily increases the state sales and use tax rate by one quarter of one percent for a four-year period from January 1, 2013, to December 31, 2016. The regulations referenced above all describe or explain partial exemptions from tax provided by RTC sections 6356.5, 6356.6, 6357.1, 6357.7, 6358.5, or 6378, which apply to the temporary tax imposed by section 36. Therefore, the proposed changes to all of the regulations referenced above incorporate one quarter of one percent increases in the relevant partial exemption rates, as of January 1, 2013.

In addition, the partial exemption provided by RTC section 6357.7 applied to the one percent sales and use tax imposed by RTC sections 6051.7 and 6201.7, until the tax expired on July 1, 2011, but Regulation 1598 has not been updated to reflect a one percent decrease in the rate of the partial exemption provided by RTC section 6357.7 due to the expiration of the tax. Therefore, the proposed amendments to Regulation 1598 also specify that the rate of the partial exemption provided by RTC section 6357.7 was decreased from six percent to five percent from July 1, 2011, through December 31, 2012, before it was increased to five and one quarter percent beginning January 1, 2013.

Staff will request the Board's authorization to make the changes to the regulations under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The changes are appropriate for processing under Rule 100 because they make the regulations consistent with the addition of section 36 to article XIII of the California Constitution, they make Regulation 1598 consistent with the expiration of the one percent tax imposed by RTC sections 6051.7 and 6201.7, and the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached are strikeout and underlined versions of the regulations illustrating the proposed revisions.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-323-3091.

Recommendation by:

Randy Ferris, Chief Counsel

Approved:

Cynthia Bridges, Executive Director

Approved:

Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

BOARD APPROVED
At the 3/13/13 Board Meeting

Joann Richmond, Chief
Board Proceedings Division

Attachments

cc: Mr. Jeffrey L. McGuire MIC: 43
Ms. Joann Richmond MIC: 80
Mr. Robert Tucker MIC: 82
Ms. Susanne Buehler MIC: 92
Mr. Bradley M. Heller MIC: 82
Ms. Kirsten Stark MIC: 50
Ms. Kim Rios MIC: 50

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1532. TELEPRODUCTION OR OTHER POSTPRODUCTION SERVICE EQUIPMENT.

(a) PARTIAL EXEMPTION FOR PROPERTY PURCHASED FOR USE IN TELEPRODUCTION OR OTHER POSTPRODUCTION SERVICES. Commencing on January 1, 1999, section 6378 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for certain properties described in this regulation.

For the period commencing on January 1, 1999, and ending on December 31, 2000, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, <u>and ending on December 31, 2012,</u> the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

<u>For the period commencing on January 1, 2013, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.50%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.</u>

Subject to the limitations set forth above, this partial exemption applies to sales or use taxes imposed on the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following items:

(1) Tangible personal property as defined in subdivision (c)(5) purchased for use by a qualified person to be used primarily in teleproduction or other postproduction services.

(2) Tangible personal property as defined in subdivision (c)(5) purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in subdivision (a)(1).

Text of Proposed Changes to

Title 18. Public Revenue

(b) PROPERTY USED PRIMARILY IN ADMINISTRATION, GENERAL MANAGEMENT, OR MARKETING. Notwithstanding any other provision of this regulation, this partial exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing. For purposes of this subdivision, tangible personal property is used primarily in administration, general management, or marketing when it is used 50 percent or more of the time in one or more of those activities for the one year period following the date of purchase of the property.

(c) DEFINITIONS. For purposes of this regulation:

(1) "Primarily" means tangible personal property as defined in subdivision (c)(5) of this regulation used 50 percent or more of the time in an activity described in subdivision (a) for the one-year period following the date of purchase of the property. Tangible personal property shall not be considered used in such activities for any period of time that the property is located outside the state, regardless of how the property is used while outside the state.

(2) "Qualified person" means any person whose line of business is primarily engaged in teleproduction or other postproduction activities, including postproduction audio services for film, television, and video productions, described in Code 512191 of the North American Industry Classification System (NAICS) Manual published by the United States Office of Management and Budget, 1997 edition, and as further defined in (c)(4) of this regulation. The term "qualified person" does not include persons whose line of business is primarily engaged in portrait studios providing still, video, or digital portrait photography services (NAICS Code 541921, incorporated herein by reference), or commercial photography services (NAICS Code 541922, incorporated herein by reference). For the purposes of this subdivision:

(A) "Primarily engaged" means 50 percent or more of gross revenues, including intra-company charges, are derived from teleproduction or other postproduction activities for the financial year of the purchaser preceding the purchase of the property. In cases where the purchaser was not primarily engaged in "teleproduction or other postproduction services" for the financial year preceding the purchase of the property, the one year period following the date of purchase of the property will be used. In the case of a nonprofit teleproduction or other postproduction establishment, "primarily engaged" means 50 percent or more of the funds allocated to the establishment are attributable to teleproduction or other postproduction services.

(B) For purposes of classifying a line of business, the economic unit shall be the "establishment" and the classification of the line or lines of business will be based on the establishment's primary activity based upon gross revenues.

(C) "Establishment" is defined as the smallest operating unit for which records provide information on the revenues and cost of operations incurred to perform the teleproduction or postproduction services.

1. The services may be provided to other divisions within the same entity or to related parties with or without direct compensation.

2. Establishments may include, but are not limited to, departments, divisions, subdivisions and product lines.

(3) "Sale" includes the producing, fabricating or processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating or processing. When performed outside this state or when the customer issues a resale certificate, a "purchase" includes the producing, fabricating or processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating or processing. If such producing, fabricating or processing is performed on property described in subdivision (a)(1) or (a)(2) of this regulation for a qualified person and the other requirements for the partial exemption in this regulation are met, the partial exemption applies to the gross receipts or sales price for such producing, fabricating, or processing.

(4) "Teleproduction or other postproduction services" means services for film, video, or digital multimedia formats (audio or visual) that include editing, film and video transfers, transcoding, dubbing, subtitling, credits, close captioning, audio production, special effects (visual or sound), graphics, or animation. For the purposes of this regulation, "teleproduction or other postproduction services" includes postproduction services and does not include production services or activities. "Teleproduction or other postproduction services" include the duplicating of film for

postproduction purposes. However, the duplication of film to make release prints does not qualify as a "teleproduction or other postproduction service."

The term "teleproduction or other postproduction services" also includes, but is not limited to:

(A) Services performed to transform, manipulate, assemble, and duplicate visual moving images and synchronous sound previously captured on film, video, or digital formats (audio or visual) or as data during principal photography.

(B) Services to create digital images, models, miniatures or sounds that may be, but are not required to be combined with live action images. Teleproduction or other postproduction services does not include the recording of music except music recorded with synchronous visual images.

(C) Film processing; film to tape transfers; tape to tape transfers; DVD or digital audiovisual multimedia format authoring and encoding; color correction; digitizing; on-line and off-line editing; negative cutting; assembling; animation, creating 2d images, creating 3d images (CGI), visual effects; compositing; digital video image manipulation; dirt fixes; motion control visual effects capture; scanning and recording to or from film, video or data; transform; standards or format conversion; transcoding; duplication (except as provided); titles; subtitling; credits; closed captioning; creating graphics; audio scoring; automated dialogue replacement; foley; audio mixing; audio editing; audio laybacks; audio laydowns; audio special effects; management of visual or audio assets and related files stored as data; film, video or audio (dialogue, music and effects) restoration and preservation; archiving, format transfer utilizing compression standards; film cleaning; quality control processes performed in conjunction with any other postproduction process; and creation of data files related to a service defined above.

Definitions of the terms used in this subdivision are provided in Appendix C.

(D) The providing of postproduction facilities, such as personnel and scoring stages or equipment where the provider is deemed to be providing a qualified teleproduction or other postproduction service, is not a lease of tangible personal property.

The providing of special configured equipment to be used in (A) through (D) above with 24 hour a day, 7-day a week available on site technical support where the provider is deemed to be providing a qualified teleproduction or other postproduction service, is not a lease of tangible personal property.

(5) "Tangible personal property" includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts. Machinery and equipment includes, but is not limited to, duplication equipment used for postproduction purposes and any property used to provide teleproduction or other postproduction services that is mounted or installed in a vehicle.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, audio and visual monitoring equipment, scopes, computers, data processing equipment, electronic data storage equipment, including both internal and external devices, consoles which are custom built, which have open compartments in which tangible personal property described in subdivisions (a)(1) and (a)(2) is placed and which are not suitable for use for other purposes, equipment racks and computer software, including both operating programs and application programs. This also includes all repair and replacement parts with a useful life of one or more years whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party. Repair and replacement parts that are treated as a depreciable asset for financial purposes will be treated as having a useful life of more than one year for the purposes of this regulation, even when such items are expensed for income tax purposes under the special provisions of Internal Revenue Code Section 179.

(C) Materials (as defined in Regulation 1521), only when purchased by a qualified person as tangible personal property and not pursuant to a construction contract, unless the construction contractor is the retailer of materials under Regulation 1521(b)(2)(A)(2); fixtures; or other tangible personal property used to operate, control, regulate, or maintain the property described in subdivisions (a)(1) and (a)(2) which may subsequently be incorporated into real property, including but not limited to items such as air conditioning units dedicated to cooling equipment, electrical UPS (uninterrupted power source) units, sub-flooring, specialized lighting, sound insulation, hydraulics,

cabling, routers, patch bays, hubs, robotic storage and retrieval equipment, switchers, satellite and/or other telecommunications equipment used to facilitate the distribution or movement of elements (in either video or data form) between all the various parties collaborating in the completion of a film or video project as part of the postproduction process.

(6) "Tangible personal property" does not include any of the following:

(A) Furniture, inventory, meals, vehicles (including those in or on which qualifying property is mounted or installed,) or equipment used to store products. The term "furniture" includes, but is not limited to, tables, chairs, desks or consoles other than those described in subdivision (c)(5)(B).

(B) Real property.

(d) TAXES AS TO WHICH THE PARTIAL EXEMPTION DOES NOT APPLY. This partial exemption does not apply to any tax levied by a county, city, or district pursuant to, or in accordance with, either the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code §§ 7200 et seq.) or the Transactions and Use Tax Law (Rev. & Tax Code §§ 7251 et seq.).

This partial exemption also does not apply to any tax levied pursuant to section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to section 35 of article XIII of the California Constitution.

(e) SECTION 6378 EXEMPTION CERTIFICATE.

(1) Qualified persons who purchase or lease tangible personal property from an in-state seller, or an out-of-state seller obligated to collect use tax, must provide the seller with a section 6378 exemption certificate in order for the seller to claim the partial exemption. If the seller takes a complete section 6378 exemption certificate timely and in good faith, the certificate relieves the seller from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A certificate will be considered timely if it is taken any time before the seller bills the purchaser for the property, any time within the seller's normal billing or payment cycle, or any time at or prior to delivery of the property to the purchaser.

A section 6378 exemption certificate which is not taken timely will not relieve the seller of the liability for tax excluded by the partial exemption unless the seller presents satisfactory evidence to the Board that the specific property was sold to a qualified person and primarily used in a qualifying manner.

The exemption certificate form set forth in Appendix A may be used as an exemption certificate.

(2) BLANKET CERTIFICATES. In lieu of requiring an exemption certificate for each transaction, a qualified person may issue a blanket exemption certificate. The blanket exemption certificate form set forth in Appendix B may be used as an exemption certificate. Qualified persons claiming the partial exemption through a blanket exemption certificate must make a clear reference to the blanket exemption certificate in documents such as their written purchase orders, sales agreements, leases, or contracts. Qualified persons claiming the partial exemption must also include in the document referencing the blanket exemption certificate a description of the property.

(3) FORM OF CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as an exemption certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser or an agent or employee of the purchaser.

(B) The name and address of the purchaser

(C) The seller's permit number held by the purchaser, or a notation to the effect that the purchaser is not required to hold a permit.

(D) A statement that the property acquired is to be used primarily in teleproduction or other postproduction services or to be used primarily to maintain, repair, measure, or test any such property.

(E) A statement that the purchaser is a qualified person primarily engaged in teleproduction or other postproduction services as described in Regulation 1532.

(F) Description of property purchased, including sales price or rentals payable.

(G) Date executed.

(4) RETENTION AND AVAILABILITY OF CERTIFICATES. A seller must retain each exemption certificate, including a blanket exemption certificate, received from a qualified person for a period of not less than four years from the date on which the seller claims a partial exemption based on the exemption certificate. If a qualified person issues a blanket exemption certificate, the seller must also retain all documents, such as purchase orders, sales agreements, lease agreements, or contracts referencing the blanket exemption certificate and all invoices containing the sales price of the property that the qualified person claims is partially exempt by reference to the blanket exemption certificate. Such documents shall be retained for a period of not less than four years from the date on which the seller claims a partial exemption based on the reference to the blanket exemption certificate.

While the Board will not normally require the filing of the section 6378 exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a seller to commence filing with its sales and use tax returns copies of all certificates. The Board may also require that, within 45 days of the Board's request, sellers furnish to the Board any and all exemption certificates, or copies thereof, accepted for the purpose of supporting the partial exemption.

(5) If a purchaser who issues a section 6378 exemption certificate pursuant to subdivision (e)(1), (2), or (3) subsequently does not meet the requirements of a qualified person as set forth in subdivision (c)(2) or does not use the property in a manner or for the purpose which entitles the purchaser to the partial exemption, or if a purchaser issues a ~~S~~section 6378 exemption certificate pursuant to subdivision (e)(1), (2), or (3) for property that does not qualify for the partial exemption, the purchaser shall be liable for payment of the sales tax excluded by the partial exemption, with applicable interest, to the same extent as if the purchaser were a seller making a retail sale of the property at the time of conversion. The sales price of the property to the purchaser shall be deemed to be the gross receipts from that retail sale.

(f) USE TAX. With respect to tangible personal property the use of which is subject to use tax, any purchaser claiming the partial exemption pursuant to section 6378 of the Revenue and Taxation Code must file a sales and use tax return or consumer use tax return for the period in which the property is first stored, used, or consumed in California unless the seller holds a valid California seller's permit or a certificate of registration – use tax and collects the use tax. The purchaser will not be relieved of his or her liability to pay any applicable use tax that is excluded from the partial exemption as provided in subdivision (d) of this regulation until such tax is remitted either to a vendor who issues a receipt which meets the requirements of Regulation 1686 or directly to the Board.

(g) CONVERSION OF PROPERTY TO A USE NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Property that, within one year from the date of purchase, is removed from California, converted from an exempt use under this regulation to some other use not qualifying for the partial exemption, or used in a manner not qualifying for the partial exemption under this regulation, such as a lease to a non-qualified person, is used in a non-qualifying manner. If, as a result of the total non-qualifying use, the property is not primarily used, as defined in subdivision (c)(1), in a qualifying activity, the partial exemption shall not apply. In determining the non-qualifying use, two or more non-qualifying uses that occur at the same time shall be counted as one. For example, a lease to a non-qualified person of property that is removed from California shall be considered as one non-qualifying use for the period it was removed from California and leased to a non-qualified person.

The property shall not, however, be regarded as converted to a use not qualifying for the partial exemption if the qualified person sells or leases the property to a qualified person for qualified use in California.

For purposes of this subdivision, tangible personal property shall not be regarded as being converted to a non-qualifying use if such property is used for teleproduction or other postproduction services in this state for more than one half of the one year period from the date of purchase of the property.

(h) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX. If a purchaser submits a section 6378 exemption certificate to the seller, and then within one year of the date of purchase of the property converts that property as described in subdivision (g) from an exempt use pursuant to this regulation to some other use not qualifying for the partial exemption, the purchaser shall be liable for payment of sales tax excluded by the partial

exemption, with applicable interest, to the same extent as if the purchaser were a seller making a retail sale of the property at the time the property was so removed, converted, or used; and the sales price of the property to the purchaser shall be deemed to be the gross receipts from that retail sale. In the case of a non-qualifying lease, the payment of sales tax by a purchaser when included on the return for the period covering the date of conversion shall be deemed to be a timely election to pay tax based on the purchase price.

(i) LEASES.

(1) LEASES - IN GENERAL. Leases of tangible personal property which are classified as "continuing sales" and "continuing purchases" of tangible personal property, in accordance with Regulation 1660, "Leases of Tangible Personal Property - In General," may qualify for the partial exemption subject to all the limitations and conditions set forth in this regulation. This partial exemption may apply to rental receipts paid by a qualified person with respect to a lease of tangible personal property to the qualified person, which tangible personal property is used as set forth in subdivisions (a)(1) and (a)(2) of this regulation, notwithstanding the fact that the lease was entered into prior to the operative date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption. A lessee is a qualified person if the lessee is "primarily engaged" in teleproduction or other postproduction activities and meets the requirements of a qualified person set forth in subdivision (c)(2).

(2) LEASES OF TAX-PAID PROPERTY. The partial exemption does not apply to the sale of property to, or the storage, use, or other consumption of property by, a person who is not a qualified person even if that person subsequently leases the property to a qualified person.

(3) LEASE OF PROPERTY BY A QUALIFIED PERSON. If a qualified person has acquired property subject to the partial exemption provided by this regulation, the subsequent lease of that property will not be subject to tax measured by rental receipts. A lease of property to a qualified person for use in a qualified manner constitutes a qualifying use of the property by the lessor. If, however, the property is used in a manner not qualifying for the exemption, such as being leased to a non-qualified person in the aggregate for more than one half of the one year period following the date of purchase by the qualified person, such property is not considered to be primarily used in "teleproduction or other postproduction services." Therefore, the lessor will be liable for tax in accordance with subdivision (e)(5).

For example, if a qualified person purchases property under the partial exemption, and then leases the property to a non-qualified person, the lease receipts will not be subject to tax as the purchaser has elected to pay tax on their cost. However, if the qualified person who purchases the property leases the property to a non-qualified person for more than one half of the one year period following the date of purchase, the lessor is not using the property in a qualifying manner and is responsible for the tax excluded by the partial exemption based upon the purchase price of the property.

(4) LEASES–RECHARACTERIZATION. With respect to transactions which the parties denominate as a "lease," but which are recharacterized for sales and use tax purposes either as sales at their inception, pursuant to Regulation 1641, "Credit Sales and Repossessions," subdivision (b), or as sales under a security agreement, Regulation 1660, "Leases of Tangible Personal Property - In General," subdivision (a)(2), the transactions may qualify for the partial exemption, in accordance with this regulation.

(5) LEASES–ACQUISITION SALE AND LEASEBACK. A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that person's purchase of property, within the meaning of those words as they are used in Section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(j) RECORDS. Adequate and complete records must be maintained by the purchaser to support that the property purchased was used primarily in the performance of teleproduction or other postproduction services for a period of no less than one year prior to conversion of the property to a non-qualifying use or use by a non qualifying party.

Text of Proposed Changes to

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(k) OPERATIVE DATE. This regulation is operative as of January 1, 1999. The partial exemption under section 6378 of the Revenue and Taxation Code only applies to qualifying tangible personal property that is sold or first stored, used, or consumed in California on or after the operative date.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6378, Revenue and Taxation Code.

Text of Proposed Changes to

Title 18. Public Revenue

Section 6378 Exemption Certificate

Please Note: This is a partial exemption from sales and use tax at the rate of 5.50% effective January 1, 2013, 5.25% from ~~effective~~ July 1, 2011 to December 31, 2012, 6.25% from April 1, 2009 to June 30, 2011, 5.25% from July 1, 2004 to March 31, 2009, 5% from January 1, 2002 to June 30, 2004, 4.75% from January 1, 2001 to December 31, 2001, and 5% from January 1, 1999 to December 31, 2000. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to section 35 of article XIII of the California Constitution. The exemption is specific to these transactions only and may not be construed to exempt other transactions. This exemption also applies to lease payments made on or after January 1, 1999, notwithstanding the fact that the lease agreement was entered into prior to January 1, 1999. This certificate may *not* be used to purchase certain property such as, furniture, inventory, meals, vehicles, equipment used to store products or real property.

Seller's Name
Seller's Address
(Street, City, State, Zip Code)

PURCHASE ORDER NUMBER	DATE OF PURCHASE ORDER	DESCRIPTION OF PROPERTY PURCHASED OR LEASED*	SALES PRICE/ RENTALS PAYABLE

I hereby certify that I am a qualified person primarily engaged in teleproduction or other postproduction services as described in Regulation 1532 and that the property listed above will be used primarily in teleproduction or other postproduction services or to maintain, repair, measure or test any such property. I understand that if such property is used outside the State of California or leased to a non-qualified person in the aggregate for more than one half of the one year period following the date of purchase or lease, or if such property is converted for use in a manner not qualifying for the exemption, that I am required by the Revenue and Taxation Code to report and pay the state sales/use tax measured by the sales price of the property to/by me.

PRINT NAME	TITLE	COMPANY NAME
SIGNATURE	DATE	PERMIT NUMBER (if applicable)*
ADDRESS	CITY	STATE, ZIP

Seller must retain a copy of this exemption certificate to support a deduction taken on their return.

* A seller's permit is required to be held by any person engaged in the business of selling tangible personal property in California. Certain lessors must also hold a seller's permit. If you are not required to hold a seller's permit because you make no sales or leases of tangible personal property in California, please enter "Not Applicable".

Appendix A

Text of Proposed Changes to

Title 18. Public Revenue

Section 6378 Blanket Exemption Certificate

Please Note: This is a partial exemption from sales and use tax at the rate of 5.50% effective January 1, 2013, 5.25% from ~~effective~~ July 1, 2011 to December 31, 2012, 6.25% from April 1, 2009 to June 30, 2011, 5.25% from July 1, 2004 to March 31, 2009, 5% from January 1, 2002 to June 30, 2004, 4.75% from January 1, 2001 to December 31, 2001, and 5% from January 1, 1999 to December 31, 2000. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to section 35 of article XIII of the California Constitution. This exemption also applies to lease payments made on or after January 1, 1999, notwithstanding the fact that the lease agreement was entered into prior to January 1, 1999. This certificate may ***not*** be used to purchase certain property such as furniture, inventory, meals, vehicles, equipment used to store products or real property.

Seller's Name
Seller's Address
(Street, City, State, Zip Code)

I hereby certify that I am a qualified person primarily engaged in teleproduction or other postproduction services as described in Regulation 1532 and that the property purchased or leased will be used primarily in teleproduction or other postproduction services or to maintain, repair, measure or test any such property. I understand that if such property is used outside the State of California or leased to a non qualified person in the aggregate for more than one half of the one year period following the date of purchase or lease, or if such property is converted for use in a manner not qualifying for the exemption, that I am required by the Revenue and Taxation Code to report and pay the state sales/use tax measured by the sales price of the property to/by me.

PRINT NAME	TITLE	COMPANY NAME
SIGNATURE	DATE	PERMIT NUMBER (if applicable)*
ADDRESS	CITY	STATE, ZIP

Seller must retain a copy of this exemption certificate to support a deduction taken on their return.

* A seller's permit is required to be held by any person engaged in the business of selling tangible personal property in California. Certain lessors must also hold a seller's permit. If you are not required to hold a seller's permit because you make no sales or leases of tangible personal property in California, please enter "Not Applicable."

Appendix B

Text of Proposed Changes to

Title 18. Public Revenue

Technical Definitions

DVD (Digital Video Disk) - is a medium for recording compressed audio, visual images and other related data.

Digitizing – Process of converting video containing audio, visual images and other related data into digital format.

Assembly – Combining audio, visual images and other related data into proper sequence and recording to a new edited master videotape pursuant to instructions provided by editor.

Creating 2D Images – Process of enhancing original elements captured through principal photography by creating or manipulating two dimensional images.

Creating 3D Images (CGI) – Process of creating three-dimensional images that will ultimately be recorded on film, video or other multimedia format.

Dirt Fixes – Process to electronically "clean up" or "remove" undesirable elements such as dirt and film scratches from visual images.

Digital Video Image Manipulation – This process includes: compositing multiple layers of visual images, changing aspect ratio or scale, flip, defocus, rotate, resize, reposition, crop, color correction, apply special effects such as warping the image, create transitional effects between scenes or shots.

Motion Control Visual Effects Capture – Recording flat art such as pictures and logos and applying movement to the visual image such as pan, scan, zoom. Motion Control Capture could also create tracking points through recording movement of a live subject that will be applied to a computer generated image.

Transcoding – Converting video and audio formats.

Duplication – Process of making film or videotape copies excluding film processing to produce release prints as defined in Regulation 1529 or duplication of video tapes intended for non-broadcast consumer sale or rental.

Automated Dialogue Replacement (ADR) – Recording new dialogue or re-recording dialogue where the production sound is unusable or obscured.

Foley – Process of adding to or replacing sound elements that enhance ambient sounds such as footsteps, doors closing, breathing, rustling of clothes, keys jangling in pockets and punches.

Audio Laybacks – Recording the completed audio back to a videotape or film master.

Audio Laydowns – Recording sound from an audio source or video element to another audio element.

Quality Control (QC) – Process by which a film print or videotape is evaluated to make sure it meets technical requirements.

Archiving – Processes involved in preparing and storing film, videotape or other multimedia elements for future use.

Format Transfer Utilizing Compression Standards – To transfer video or audio format utilizing a compression standard to allow for more efficient file size management or file format changes.

Management of Visual or Audio Assets and Related Files Stored as Data – Process of creating database with specified reference points to allow for timely search and retrieval of elements by multiple users through central file servers.

Creation of Data Files Related to a Teleproduction or other Postproduction Service – Data files contain information that is related to the visual and audio information stored on film, video or other multimedia format such as timecode, keycode/flex files, edit decision lists.

Appendix C

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1533.1. FARM EQUIPMENT AND MACHINERY

(a) GENERAL. Commencing on and after September 1, 2001, ~~S~~section 6356.5 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of farm equipment and machinery, and parts of farm equipment and machinery purchased for use by a qualified person to be used primarily in producing and harvesting agricultural products. The terms "farm equipment and machinery," "parts of farm equipment and machinery," "qualified person," and "producing and harvesting agricultural products" are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by ~~S~~sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to ~~S~~sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or ~~S~~section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by ~~S~~sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to ~~S~~sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or ~~S~~section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by ~~S~~sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to ~~S~~sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or ~~S~~section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, and ending on December 31, 2012, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2013, the partial exemption applies to the taxes imposed by section 36 of article XIII of the California Constitution and sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.50%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(b) DEFINITIONS. For purposes of this regulation:

(1) "Farm equipment and machinery" means implements of husbandry, which include:

(A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, fuel storage equipment, wind machines, handling and packing equipment and conveyors, ginning equipment, feeding, watering and waste disposal systems for livestock, incubators and equipment used for egg and poultry production, harvesting trays and bins, farm tools such as rakes and hoes, plant support equipment such as trellis systems, irrigation systems, fencing systems, milking systems, agricultural operating structures, squeeze chutes, portable panels, corrals, loading chutes, veterinary instruments, free stalls, cages and tack items such as saddles and rope.

Farm equipment and machinery also includes any equipment or device used or required to operate, control, or regulate machinery not limited to computers, data processing equipment, and computer software, including both operating programs and application programs. Farm equipment and machinery may be attached to realty.

Agricultural operating structures include single purpose agricultural or horticultural structures as defined in Treasury Regulation 1.48-10 (26 CFR 1.48-10). Such structures must be specifically designed and constructed for the permitted purposes of housing, raising and feeding of livestock or the commercial production of plants. A structure is specifically designed and constructed if it is not economic to design and construct the structure for the intended qualifying purpose and then use the structure for a different purpose. A structure qualifies as single purpose agricultural or horticultural structure only if it is used exclusively for a permitted purpose. The structure may not be used for any nonpermissible purposes such as processing, marketing, or more than incidental use for storing feed and equipment. A single purpose agricultural structure also houses equipment necessary to house, raise and feed livestock including, but not limited to, equipment necessary to contain livestock, to provide them with feed or water, and to control the temperature, lighting, and humidity of the interior structure. Examples of structures that qualify as a single purpose agricultural or horticultural structure include, but are not limited to, a farrowing barn, greenhouse, free stall barn, milking parlor, and egg production or poultry brooding facility. Single purpose agricultural or horticultural structures do not include general purpose farm buildings.

Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation, a supply item not used in producing or harvesting agricultural products such as shop towels, cleaning agents, hand cleaners, chemicals, and articles of clothing, except clothing designed primarily to protect a commodity or to apply agricultural chemicals as described in 3 CCR 6738.

(B) Any new or used vehicle, as defined in Chapter 1, Division 16 of the Vehicle Code, which is used exclusively in the conduct of agricultural operations such as a farm tractor, but not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, unless such vehicle is otherwise specified as an implement of husbandry in some other provision of the Vehicle Code.

A list of typical vehicles regarded as farm equipment and machinery is set forth in Appendix A.

(2) "Parts of farm equipment and machinery" means:

(A) All component parts and contrivances such as belts, shafts, pipes, hoses and moving parts, that are parts of farm equipment and machinery as defined in subdivision (b)(1) which can be separated from the farm equipment and machinery and replaced. Parts of farm equipment and machinery do not include items that are consumed (e.g., burned, evaporate, dissolve, dissipate) through the regular use of the farm equipment and machinery (e.g., gasoline, cleaning agents, solutions, chemicals) which are ordinarily supplies; however, engine oil not consumed (i.e., not consumed as part of fuel for a two-stroke engine) is regarded as a component part.

(B) All repair and replacement parts for farm equipment and machinery as defined in subdivision (b)(1), which replace previous parts and can include parts that are identical to the parts they replace as well as parts that are different from the ones they replace, such as replacement parts added for the purpose of improving or modifying the farm equipment and machinery, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by a qualified person, a person that assists a qualified person, or another person.

(3) "Person that assists a qualified person" means a person employed by a qualified person, or engaged on a contract or fee basis to perform activities described in Major Group 07 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual) which include soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services, that uses farm equipment and machinery in assisting a person engaged in a line of business described in subdivision (b)(6) below. A person that assists a qualified person may perform a construction contract only if the person performing the contract is engaged in farm management services as described in Code 0762 of the SIC Manual and the construction is integral to the producing and harvesting of an agricultural product as defined in (b)(5). A person that assists a qualified person must provide physical aid or assistance in the actual producing and harvesting of agricultural products owned by the qualified person and not

merely provide aid in administrative, managerial, or marketing activities. A person that assists a qualified person does not include persons performing services such as an attorney, accountant, consultant, or other similar activity. Except as otherwise provided above, a person that assists a qualified person also does not include persons who perform construction contracts or who perform repairs to farm equipment and machinery, or a person that assists such persons.

(4) "Primarily" means used 50 percent or more of the time in producing and harvesting agricultural products as defined in subdivision (b)(5).

(5) "Producing and harvesting agricultural products" means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops, plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and integral activities thereto described in Code 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20 – Food and Kindred Products of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)(6) or a person who assists a qualified person as defined in (b)(3).

For example, a person engaged in a SIC Code 0172 establishment that performs activities such as producing grapes on a grape farm or vineyard, who uses crop drying equipment primarily to remove moisture from the grapes to prevent mold, will qualify for the partial exemption if the grapes are owned by a qualified person engaged in an establishment described in SIC Code 0111 to 0291. However, a person who is exclusively engaged in a SIC Code 2034 establishment that sun dries or artificially dehydrates fruits and vegetables such as dates, prunes or raisins, that purchases grapes from a grape farm, and uses crop drying equipment primarily to change the character of the commodity from a grape to a raisin, will not qualify for the partial exemption since he or she is not engaged in a qualified SIC Code activity. A person engaged in a qualified SIC Code that performs a harvest activity will qualify for the partial exemption to the extent the qualified property is used primarily in such qualified activity despite the fact that the property may otherwise be used less than 50% of the time in post-harvest activities by a person undertaking activities described in SIC Code 2034.

(6) "Qualified person" means a person engaged in a line of business described in Codes 0111 to 0291 of the SIC Manual or performs activities described in Codes 0711 to 0783 in addition to being engaged in a line of business described in Codes 0111 to 0291, which includes cash grains, field crops, vegetables and melons, fruits and tree nuts, horticultural specialties, livestock, dairy, poultry and eggs, and animal specialties and who sells such commodities to others. A qualified person also includes any person conducting activities, as defined in (b)(3) above, that uses qualified property to assist a person engaged in a line of business described herein in producing and harvesting agricultural products owned by the qualified person. A qualified person is not required to be engaged 50 percent or more of the time in a line of business described in Codes 0111 to 0291. A qualified person does not include a person operating a garden plot, orchard, or farm for the purpose of growing produce or animals for that person's own use.

(7) "Qualified property" means farm equipment and machinery, and the parts thereof, as defined in subdivision (b)(1)-(2) used primarily in producing and harvesting agricultural products.

Text of Proposed Changes to

Title 18. Public Revenue

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. Qualified persons who purchase or lease qualified property from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified person, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified property, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the qualified property to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the specific property to a qualified person and the property was primarily used in a qualifying manner. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix B may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a qualified person may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix B may be used as a blanket partial exemption certificate. Appendix B may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. Qualified persons must include in the partial exemption certificate a description of the qualified property. If purchasing tangible personal property not qualifying for the partial exemption, the qualified person must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property purchased is to be used primarily, or exclusively as to qualifying vehicles, in producing and harvesting agricultural products.

(E) A statement that the purchaser is a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual or is a person that assists such classified person by performing an agricultural service described in Codes 0711 to 0783 of the SIC Manual.

(F) Description of property purchased.

(G) Date of execution of document.

(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption

certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where a qualified person states that he or she is engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual or in which a person that assists a qualified person states that he or she performs an agricultural service described in Codes 0711 to 0783 of the SIC Manual and states that the property purchased is to be used primarily, or exclusively as to qualifying vehicles, in producing and harvesting agricultural products. If the qualified person or person that assists a qualified person is buying property of a kind not normally used in producing and harvesting agricultural products, the seller should require a statement as to how the specific property purchased will be used. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the property is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a qualified person to claim a partial exemption from use tax on purchases of qualified property from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix B may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a qualified purchaser of qualified property or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a qualified person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION.

(1) PROPERTY USED IN A MANNER NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property that is used in a manner not qualifying for the partial exemption under this regulation.

(2) PURCHASES BY NON-QUALIFIED PERSONS. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property if a purchaser is not a qualified person.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses that tangible personal property in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for tangible personal property that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.

(h) LEASES TO QUALIFYING PERSONS.

(1) LEASES—IN GENERAL. Leases of tangible personal property which are classified as "continuing sales" and "continuing purchases" of tangible personal property, in accordance with Regulation 1660, "Leases of Tangible Personal Property – In General," may qualify for the partial exemption subject to all the limitations and conditions set forth in this regulation. This partial exemption may apply to rentals payable paid by a qualified person on or after September 1, 2001 with respect to a lease of qualified property to the qualified person, which qualified property is used in producing and harvesting agricultural products, notwithstanding the fact that the lease was entered into prior to the effective date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption.

(2) LEASES—ACQUISITION SALE AND LEASEBACK. A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that qualified person's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(3) SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION. If a qualified person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rentals payable.

(i) RECORDS. Adequate and complete records must be maintained by the qualified person as evidence that the qualified property purchased was used by the qualified person primarily in producing and harvesting agricultural products.

(j) OPERATIVE DATE. This regulation is operative as of September 1, 2001.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6356.5, Revenue and Taxation Code.

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Appendix A. The following is a list of typical vehicles regarded as farm equipment and machinery:

1. A lift carrier or other vehicle designed and used exclusively for the lifting and carrying of implements of husbandry or tools used exclusively for the production or harvesting of agricultural products, when operated or moved upon a highway.

2. A trailer of the tip-bed type when used exclusively in the transportation of other implements of husbandry or tools used exclusively for the production or harvesting of agricultural products.

3. A trailer or semi-trailer having no bed, and designed and used solely for transporting a hay loader or swather.

4. A spray or fertilizer applicator rig used exclusively for spraying or fertilizing in the conduct of agricultural operations, except anhydrous ammonia fertilizer applicator rigs which have a transportation capacity in excess of 500 gallons.

5. A trailer or semi-trailer which has a maximum transportation capacity in excess of 500 gallons, but not more than 1,000 gallons, used exclusively for the transportation and application of anhydrous ammonia, if the vehicle is either equipped with operating brakes or is towed upon a highway by a motor truck that is assigned a manufacturer's gross vehicle weight rating of 3/4 ton or more.

6. A nurse rig or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of an applicator rig or an airplane used for the dusting, spraying, fertilizing, or seeding of crops.

7. A row duster.

8. A wagon or van used exclusively for carrying products of farming from one part of a farm to another part thereof, or from one farm to another farm, and used solely for agricultural purposes, including any van used in harvesting alfalfa or cotton, which is only incidentally operated or moved on a highway as a trailer.

9. A wagon or portable house on wheels used solely by shepherds as a permanent residence in connection with sheep raising operations and moved from one part of a ranch to another part thereof or from one ranch to another ranch, which is only incidentally operated or moved on a highway as a trailer.

10. A trap wagon, as defined in Vehicle Code Section 36016, moved from one part of a ranch to another part of the same ranch or from one ranch to another, which is only operated or moved on a highway incidental to agricultural operations. The fuel tank or tanks of the trap wagon shall not exceed 1,000 gallons total capacity.

11. Any vehicle which is operated upon a highway only for the purpose of transporting agricultural products and is in no event operated along a highway for a total distance greater than one mile from the point of origin of the trip.

12. A portable honey-extracting trailer or semi-trailer.

13. A fertilizer nurse tank or trailer that is not self-propelled and which is moved unladen on the highway and auxiliary to the use of a spray or fertilizer applicator rig.

14. Any cotton trailer when used on the highways for the exclusive purpose of transporting cotton from a farm to a cotton gin, and returning the empty trailer to such farm.

15. A truck tractor or truck tractor and semi-trailer combination which is owned by a farmer and operated on the highways, (1) only incidental to a farming operation, (2) not for compensation, and (3) for a distance of not more than two miles (on the highway) each way. This subdivision applies only to truck tractors with a manufacturer's gross vehicle weight rating over 10,000 pounds that are equipped with all-wheel drive and off-highway traction tires on all wheels, and only to semi-trailers used in combination with such a truck tractor and exclusively in production or harvesting of tomatoes. The vehicles specified in this subdivision shall not be operated in excess of 25 miles per hour on the highways.

16. Any farm tractor used upon a highway to draw a farm trailer carrying farm produce, or to draw any trailer or semi-trailer carrying other implements of husbandry, between farms, or from a farm to a processing or handling point and returning with or without the trailer.

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Appendix B.

PARTIAL EXEMPTION CERTIFICATE **STATE BOARD OF EQUALIZATION**

Qualified Sales and Purchases of Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

I, as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.[1]

Type of Farm Equipment and Machinery (or parts[2] thereof)*

_____

_____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (If applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		PERMIT NUMBER (If applicable)[3]
TITLE		TELEPHONE NUMBER
ADDRESS	CITY	STATE, ZIP

1 Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.

2 If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.

3 If you are not required to hold a seller's permit, please enter "Not Applicable."

Text of Proposed Changes

Title 18. Public Revenue

Regulation 1533.2. DIESEL FUEL USED IN FARMING ACTIVITIES OR FOOD PROCESSING.

(a) GENERAL. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms "farming activities" and "food processing" are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, and ending on December 31, 2012, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code, but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2013, the partial exemption applies to the taxes imposed by section 36 of article XIII of the California Constitution and sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code, but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution. Given the varying rates of the taxes imposed by sections 6051.8 and 6201.8, the partial exemption applies to the following cumulative sales and use tax rates:

(1) 7.12 percent for the period July 1, 2011, through June 30, 2012;
(2) 7.42 percent for the period July 1, 2012, through December 31, ~~2012June 30, 2013~~;
(3) 7.67 percent for the period January 1, 2013 through June 30, 2013;
(4) 7.44~~19~~ percent for the period July 1, 2013, through June 30, 2014; and
(5~~4~~) 7.25~~00~~ percent on or after July 1, 2014.

(b) DEFINITIONS. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training,

and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the

marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the

transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

Text of Proposed Changes

Title 18. Public Revenue

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) RECORDS. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) OPERATIVE DATE. This regulation is operative as of September 1, 2001.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6357.1, Revenue and Taxation Code.

Text of Proposed Changes

Title 18. Public Revenue

Appendix A

PARTIAL EXEMPTION CERTIFICATE STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Diesel and Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

Diesel Fuel Used in Farming Activities or Food Processing* - I as the undersigned purchaser, hereby certify that of the diesel purchased, _____ % will be used in qualified farming activities or food processing in accordance with Revenue and Taxation Code Section 6357.1.

Farm Equipment and Machinery (or parts[1] thereof)* - I as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.[2]

Type of Farm Equipment and Machinery (or parts thereof) _____

_____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		TELEPHONE NUMBER
TITLE		PERMIT NUMBER (If applicable)[3]
ADDRESS	CITY	STATE, ZIP

1 If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.

2 Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.

3 If you are not required to hold a seller's permit, please enter "Not Applicable."

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1534. TIMBER HARVESTING EQUIPMENT AND MACHINERY

(a) GENERAL. Commencing on and after September 1, 2001, section 6356.6 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of off-road commercial timber harvesting equipment and machinery, and parts of off-road commercial timber harvesting equipment and machinery, that are purchased by a qualified person for use primarily in timber harvesting. The terms "off-road commercial timber harvesting equipment and machinery," "parts of off-road commercial timber harvesting equipment and machinery," "qualified person," and "commercial timber harvesting operations" are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, <u>and ending on December 31, 2012,</u> the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

<u>For the period commencing on January 1, 2013, the partial exemption applies to the taxes imposed by section 36 of article XIII of the California Constitution and sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.50%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.</u>

(b) DEFINITIONS. For purposes of this regulation:

(1) "Commercial timber harvesting operations" means the cutting or removal or both of timber or other solid wood forest products, from timberlands for commercial purposes, together with all the work incidental thereto, including but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for the falling of trees, fire hazard abatement, reforestation, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities. Such activities include, but are not limited to, bucking, bunching, chipping, debarking, delimbing, felling, forwarding, loading, piling, skidding, slashing, topping and yarding operations performed on timber. Commercial timber harvesting operations do not include the use of timber in processing activities or other activities resulting in the creation of other commercial wood products for sale to others, including, without limitation, milling, planing, carving, paper manufacturing, the treating of

wood with creosote or other preservatives to prevent decay or protect against fire, or the packaging of wood chips for use in preparing food.

(2) "Off-road commercial timber harvesting equipment and machinery" means any new or used device, that may be powered by an internal combustion engine, electric motor, or otherwise, that is necessary in complying with any operational requirements of federal, state, or local government laws and regulations and is designed primarily for use off the highways, to propel, move, draw or cut timber in commercial timber harvesting operations. Such items include, but are not limited to, chainsaws, slashers, debarkers, harvesters, forwarders, feller-bunchers, cable yarding equipment, yarders, loading helicopters, chippers, bulldozers; loading equipment used to lift and move the equipment; graders; water trucks and similar logging road building and maintenance equipment; fuel storage equipment, site preparation equipment; all-terrain vehicles; fire fighting and safety equipment; timber harvest preparation equipment; reforestation tools and equipment; loaders; carriages; skidders; mobile metal spars; delimbers; chokers; steel cables; grapples; front-end loaders, and tractors or rubber tire skidders and other equipment used to fell, delimb, cross-cut, measure, sort, bunch, move and load timber for transport to roadside.

Off-road commercial timber harvesting equipment and machinery does not include junction boxes, switches, conduit and wiring, valves, pipes, tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of equipment and machinery. Off-road commercial timber harvesting equipment and machinery also does not include supplies such as articles of clothing, fuels, real property, materials or fixtures within the meaning of subdivisions (a)(4) and (a)(5), respectively, of Regulation 1521, Construction Contractors, including such items set forth in Appendix A and B of Regulation 1521.

(3) "Parts of off-road commercial timber harvesting equipment and machinery" means:

(A) All component parts and contrivances include, but are not limited to, belts, shafts, pipes, hoses and moving parts, that are parts of off-road commercial timber harvesting equipment and machinery as defined in subdivision (b)(2) that can be separated from the off-road commercial timber harvesting equipment and machinery and replaced. Parts of off-road commercial timber harvesting equipment and machinery do not include items that are consumed (e.g., burned, evaporate, dissolve, dissipate) through the regular use of the off-road commercial timber harvesting equipment and machinery (e.g., gasoline, cleaning agents, solutions, chemicals) which are ordinarily supplies; however, lubricants and fluids not consumed (e.g., engine oil not consumed as part of fuel for a two-stroke engine) is regarded as a component part.

(B) All repair and replacement parts for off-road commercial timber harvesting equipment and machinery as defined in subdivision (b)(2) which replace previous parts and can include parts that are identical to the parts they replace as well as parts that are different from the ones they replace, such as replacement parts added for the purpose of improving or modifying the off-road commercial timber harvesting equipment and machinery, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by a qualified person or another person. Parts of off-road commercial timber harvesting equipment and machinery do not include tangible personal property used in effectuating the repair of any timber harvesting equipment and machinery such as a wrench used to replace a spark plug, except tools used for repair that are designed exclusively for specific off-road commercial timber harvesting equipment and machinery.

(C) All equipment or devices used or required to operate, control, regulate, or maintain the machinery including, without limitation, computers, data processing equipment, and computer software, including both operating programs and application programs. Parts of off-road commercial timber harvesting equipment and machinery do not include tangible personal property used primarily in the administration, management, or marketing of timber harvesting operations.

(4) "Primarily" means used 50 percent or more of the time. As used herein, the qualified property has to be designed for use 50 percent or more of the time off-road in commercial timber harvesting operations and be used 50 percent or more of the time in timber harvesting.

(5) "Qualified person" means a person engaged in commercial timber harvesting operations. A qualified person is not required to be engaged 50 percent or more of the time in commercial timber harvesting operations.

(6) "Qualified property" means off-road commercial timber harvesting equipment and machinery, and the parts thereof, as defined in subdivisions (b)(2) and (b)(3) used primarily in timber harvesting.

(7) "Timber" means trees of any species maintained for eventual harvest for forest products or other forest purposes, whether planted or of natural growth, standing or down, including Christmas trees, on privately or publicly owned land, but does not mean nursery stock.

(8) "Timberland" means privately or publicly owned land which is devoted to and used for growing or timber harvesting, or for growing and timber harvesting and compatible uses, and which is capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre.

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. Qualified persons who purchase or lease qualified property from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified person, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified property, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the qualified property to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate that is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the specific property to a qualified person and the property was primarily used in a qualifying manner. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a qualified person may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. Qualified persons must include in the partial exemption certificate a description of the qualified property. If purchasing tangible personal property not qualifying for the partial exemption, the qualified person must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the purchaser is engaged in commercial timber harvesting operations, and that the property purchased is primarily designed for off-road use in commercial timber harvesting operations and will be used primarily in timber harvesting.

(E) Description of property purchased.

(F) Date of execution of document.

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(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where a qualified person states that he or she is engaged in commercial timber harvesting operations and states that the property purchased is primarily designed for off-road use in commercial timber harvesting operations and will be used primarily in timber harvesting. If the qualified person is buying property of a kind not normally used in timber harvesting, the seller should require a statement as to how the specific property purchased will be used. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the property is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a qualified person to claim a partial exemption from use tax on purchases of qualified property from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on June 30, 2002, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before September 30, 2002. The retailer must refund the tax or tax reimbursement directly to the purchaser or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a qualified person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION.

(1) PROPERTY USED IN A MANNER NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property that is used in a manner not qualifying for the partial exemption under this regulation.

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(2) PURCHASES BY NON-QUALIFIED PERSONS. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property if a purchaser is not a qualified person.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses that tangible personal property in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for tangible personal property that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.

(h) LEASES TO QUALIFYING PERSONS.

(1) LEASES—IN GENERAL. Leases of tangible personal property which are classified as "continuing sales" and "continuing purchases" of tangible personal property, in accordance with Regulation 1660, "Leases of Tangible Personal Property – In General," may qualify for the partial exemption subject to all the limitations and conditions set forth in this regulation. This partial exemption may apply to rentals payable paid by a qualified person on or after September 1, 2001 with respect to a lease of qualified property to the qualified person, which qualified property is used primarily in timber harvesting, notwithstanding the fact that the lease was entered into prior to the effective date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption.

(2) LEASES—ACQUISITION SALE AND LEASEBACK. A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that qualified person's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(3) SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION. If a qualified person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rentals payable.

(i) RECORDS. Adequate and complete records must be maintained by the qualified person as evidence that the qualified property purchased was primarily designed for off-road use in commercial timber harvesting operations and was used by the qualified person primarily in timber harvesting.

(j) OPERATIVE DATE. This regulation is operative as of September 1, 2001.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6356.6, Revenue and Taxation Code.

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APPENDIX A

PARTIAL EXEMPTION CERTIFICATE **STATE BOARD OF EQUALIZATION**

Qualified Sales and Purchases of Timber Harvesting Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

I, as the undersigned purchaser, hereby certify I am engaged in commercial timber harvesting operations. The property purchased or leased is primarily designed for off-road use in commercial timber harvesting operations and will be used primarily in timber harvesting in accordance with Revenue & Taxation Code section 6356.6.

Type of Timber Harvesting Equipment and Machinery (and the parts[1] thereof)*

_____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		PERMIT NUMBER (if applicable)[2]
TITLE		TELEPHONE NUMBER
ADDRESS	CITY	STATE, ZIP

Reference: Section 6356.6, Revenue and Taxation Code.

[1] If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in timber harvesting equipment and machinery performing qualified timber harvesting activities.
[2] If you are not required to hold a seller's permit, please enter "Not Applicable."

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Regulation 1535. RACEHORSE BREEDING STOCK.

(a) GENERAL. Commencing on and after September 1, 2001, section 6358.5 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of racehorse breeding stock purchased for use by a qualified person. The terms "racehorse breeding stock" and "qualified person" are defined below.

For the period commencing on September 1, 2001 and ending December 31, 2001, the partial exemption applies to the taxes imposed by sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, <u>and ending on December 31, 2012,</u> the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

<u>For the period commencing on January 1, 2013, the partial exemption applies to the taxes imposed by section 36 of article XIII of the California Constitution and sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.50%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.</u>

(b) DEFINITIONS. For purposes of this regulation:

(1) "Qualified person" means a person who purchases racehorse breeding stock solely with the intent and purpose of breeding.

(2) "Qualified property" means racehorse breeding stock, as defined in subdivision (b)(3).

(3) "Racehorse breeding stock" means a live horse that meets all of the following criteria:

(A) Is or will be eligible to participate in a horseracing contest in California wherein pari-mutuel wagering is permitted under rules and regulations prescribed by the California Horse Racing Board.

(B) Is capable of producing foals which will be eligible to participate in a horseracing contest in California wherein pari-mutuel wagering is permitted under rules and regulations prescribed by the California Horse Racing Board.

(C) Is or was registered with an agency recognized by the California Horse Racing Board and such registering agency does not register the horse as ineligible for breeding stock. Agencies currently recognized are

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The Jockey Club, The American Quarter Horse Association, The United States Trotting Association, The Appaloosa Horse Club, The Arabian Horse Registry of America, and the American Paint Horse Association.

Racehorse breeding stock does not include any horse over four years old, or five years old in the case of an Arabian horse, that has neither participated in or trained for a horserace contest on which pari-mutuel wagering is permitted, nor been used for breeding purposes in order to produce racehorses.

(4) "Solely" means 100 percent or "only."

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. Qualified persons who purchase or lease qualified property from an in-state retailer, or an out-of-state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified person, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified property, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the qualified property to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the specific property to a qualified person and the property was used in a qualifying manner. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a qualified person may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number of the property being purchased. Qualified persons must include in the partial exemption certificate a description of the qualified property. If purchasing tangible personal property not qualifying for the partial exemption, the qualified person must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property purchased is capable of reproduction.

(E) A statement that the purchaser will use the property solely for the purpose of breeding.

(F) A description of the property purchased.

(G) Date of execution of the document.

(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require that, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where a qualified person states that he or she is purchasing the qualified property solely with the intent and purpose of breeding. If the qualified person is buying a horse of a kind not normally used to breed racehorses, the seller should require a statement as to how the specific property purchased will be used. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the property is not subject to the partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a qualified person to claim a partial exemption from use tax on purchases of qualified property from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on December 31, 2002, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before March 31, 2003. The retailer must refund the tax or tax reimbursement directly to the qualified purchaser of qualified property or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a qualified person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION.

(1) PROPERTY USED IN A MANNER NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, or the storage, use, or other consumption in this state of tangible personal property that is used in a manner not qualifying for the partial exemption under this regulation.

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(2) PURCHASES BY NON-QUALIFIED PERSONS. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property if a purchaser is not a qualified person.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses that tangible personal property in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for tangible personal property that does not qualify for the partial exemption is liable for payment of the tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.

(h) LEASES TO QUALIFYING PERSONS.

(1) LEASES—IN GENERAL. Leases of tangible personal property which are classified as "continuing sales" and "continuing purchases" of tangible personal property, in accordance with Regulation 1660, "Leases of Tangible Personal Property – In General," may qualify for the partial exemption subject to all the limitations and conditions set forth in this regulation. This partial exemption may apply to rentals payable paid by a qualified person on or after September 1, 2001 with respect to a lease of qualified property to the qualified person, which qualified property is used for breeding purposes, notwithstanding the fact that the lease was entered into prior to the effective date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption.

(2) LEASES—ACQUISITION SALE AND LEASEBACK. A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that qualified person's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(3) SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION. If a qualified person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rentals payable.

(i) RECORDS. Adequate and complete records must be maintained by the qualified person as evidence that the qualified property was capable of reproduction and purchased by the qualified person solely for breeding purposes.

(j) OPERATIVE DATE. This regulation is operative as of September 1, 2001.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6358.5, Revenue and Taxation Code.

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Appendix A

PARTIAL EXEMPTION CERTIFICATE STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Racehorse Breeding Stock

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME

SELLER'S/LESSOR'S ADDRESS *(street, city, state, zip code)*

I, as the undersigned purchaser, hereby certify that I have confirmed the racehorse is capable of reproduction and that I intend to use the racehorse solely for breeding purposes in accordance with Revenue & Taxation Code section 6358.5.

If you also want this certificate to be used as a blanket certificate for future purchases, ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number, below:

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME *(if applicable)*	DATE
SIGNATURE *(signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)*	PERMIT NUMBER *(if applicable)*[1]
TITLE	TELEPHONE NUMBER
ADDRESS *(street, city, state, zip code)*	

[1] If you are not required to hold a seller's permit, please enter "Not applicable."

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REGULATION 1598. MOTOR VEHICLE AND AIRCRAFT FUELS.

(a) IN GENERAL. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) EXCEPTIONS.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel.(See subdivision (h) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) MEASURE OF TAX.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.
4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.
5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.
2. Jet fuel used as a fuel in noncommercial aircraft.
3. Diesel fuel.
4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (j) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Sections 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

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(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (k).

(d) PARTIAL EXEMPTION FOR MOTOR VEHICLE FUEL. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

For the period commencing on July 1, 2010, and ending on June 30, 2011, t~~T~~he partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, and ending on December 31, 2012, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2013, the partial exemption applies to the taxes imposed by section 36 of article XIII of the California Constitution and sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) ADDITIONAL TAX ON SALE OF DIESEL FUEL.

(1) Operative July 1, 2011, an additional state sales and use tax is imposed on the sale and the storage, use, or other consumption of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) The additional state sales and use tax is imposed at the following rates:

(A) 1.87 percent for the period July 1, 2011, through June 30, 2012;

(B) 2.17 percent for the period July 1, 2012, through June 30, 2013;

(C) 1.94 percent for the period July 1, 2013, through June 30, 2014; and

(D) 1.75 percent on or after July 1, 2014.

(3) Exemptions and Exemption Certificates.

(A) An exemption from the additional state sales and use tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional state sales and use tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

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Certificate for Exemption from the Additional State Sales and Use Tax Imposed Under Sections 6051.8 and 6201.8

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional state sales and use tax imposed on sales and purchases of diesel fuel under sections 6051.8 and 6201.8 of the Revenue and Taxation Code.

I HEREBY CERTIFY: That the purchase of diesel from

[ ] is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional state sales and use tax because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108.

OR

[ ] is purchased by an exempt bus operator.

The purchase is not subject to the additional state sales and use tax because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the diesel fuel is not used in a manner which entitles me to an exemption from the additional state sales and use tax, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional sales tax imposed by Revenue and Taxation Code section 6051.8 on the sales price of the diesel fuel to me, with applicable interest, as if I were a retailer making a retail sale of the diesel fuel at the time the fuel is so used. This certificate is valid until revoked in writing by the purchaser.

Purchaser:

(Company Name)

Address:

Phone Number:

Signature:

(Signature of Authorized Agent)

Date:

Title:

(Owner, Partner, Purchasing Agent, etc.)

License/permit No. (if any):

(Exempt bus operator, train operator, fuel registration)

(f) SALES OF MOTOR VEHICLE FUEL ON SALES TAX-INCLUDED BASIS. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

"The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill."

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Following are examples of prices computed on a tax-included basis:

(A)

Sales price per gallon of gasoline net of all taxes	$2.435
Federal excise tax *	.184
State excise tax *	.353
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

(B)

Sales price per gallon of diesel fuel net of all taxes	$2.355
Federal excise tax *	.244
[redacted]	[redacted]
[redacted]	[redacted]
State excise tax *	.13
[redacted]	[redacted]

* The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(g) APPLICATION OF SALES OR USE TAX TO FUEL FURNISHED WITH LEASED VEHICLES OR AIRCRAFT. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called "wet rentals"). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value" does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(h) REFUNDS OF EXCISE TAX.

(1) FEDERAL EXCISE TAXES. The refund of the federal excise tax on gasoline, diesel or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

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(2) SALES OR USE TAX REFUNDS. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(i) SUPPORTING DATA FOR AIRCRAFT FUEL EXEMPTIONS. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (i)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from _____ , will be used in propelling aircraft; and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser:

(Company Name)

Address:

Phone Number:

Signature:

(Signature of Authorized Agent)

Date:

Title:

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any):

Identification Numbers of Aircraft Owned or Operated

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(j) CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (j)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from _____.

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser:

(Company Name)

Address:

Phone Number:

Signature:

(Signature of Authorized Agent)

Date:

Title:

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any):

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (j)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars ($500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(k) ALTERNATE CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (k)(1) may issue a certificate in substantially the form set forth in subdivision (k)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the

certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (k) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.

2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.

3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period in which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

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Purchaser:

(Company Name)

Address:

Phone Number:

Signature:

(Signature of Authorized Agent)

Date:

Title:

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any):

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3, 6357.5, 6357.7, and 6423, Revenue and Taxation Code.