

**BOARD OF EQUALIZATION  
BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE DIANE L. HARKEY, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: OCTOBER 27, 2015, TIME: 10:00 A.M.

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**ACTION ITEMS & STATUS REPORT ITEMS****Agenda Item No: 1****Title: Proposed revisions to Regulation 1668, *Sales for Resale*****Issue/Topic:**

Whether the Board should amend Regulation 1668, *Sales for Resale*, to state that sales or purchases of counterfeit goods by a convicted seller or purchaser are subject to tax regardless of whether their intentions were to resell them.

**Committee Discussion:**

Staff introduced the issue. There was no discussion of this item.

**Committee Action/Recommendation/Direction:**

Upon motion by Mr. Runner and seconded by Ms. Ma, without objection, the Committee approved and authorized for publication the proposed amendments to Regulation 1668, *Sales for Resale*. A copy of the proposed amendments to Regulation 1668 is attached.

**Agenda Item No.: 2****Title: Proposed Amendments to Regulation 1698, *Records* and Regulation 4901, *Records*****Issue:**

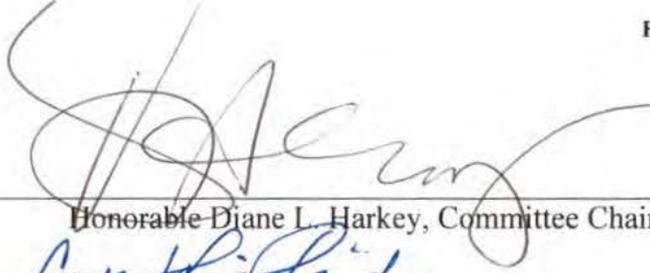
Whether the Board should amend Sales and Use Tax Regulation 1698, *Records*, and Special Taxes and Fees Regulation 4901, *Records*, to include and define electronic cash register, computerized point of sale systems, and electronic records.

**Committee Discussion:**

Staff introduced the issue. There was no discussion of this item.

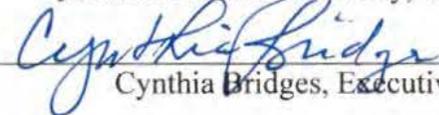
**Committee Action:**

Upon motion by Mr. Horton, seconded by Ms. Stowers, without objection, the Committee approved and authorized for publication the proposed regulatory amendments. A copy of the proposed amendments to Regulation 1698 and Regulation 4901 are attached.



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Honorable Diane L. Harkey, Committee Chair

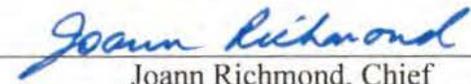


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Cynthia Bridges, Executive Director

BOARD APPROVED

at the October 27, 2015 Board Meeting



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Joann Richmond, Chief  
Board Proceedings Division

**§ 1668. Sales for Resale.**

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

Reference: Sections [6007](#), [6009.2](#), 6012.8, 6012.9, 6072, 6091-6095, 6241-6245, 6484, 6485 and 7153, Revenue and Taxation Code.

(a) Resale Certificate.

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, ~~“Permits~~Permits,” the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. 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 the property to the purchaser. A resale certificate remains in effect until revoked in writing.

(b) Form of Certificate.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale 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, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address 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~~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 described in the document is purchased for resale. The document must contain the phrase “for resale.” The use of phrases such as “nontaxable,” “exempt,” or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

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(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in subdivision (b)(1) is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) Blanket Resale Certificate. If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)-(4) below.

(4) Qualified Resale Certificate. If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the property covered by the order is purchased for resale. The use of the phrases "for resale," "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). However, a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the property is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be presumed that the property covered by that purchase order was not purchased for resale and that sale or purchase is subject to tax. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for raw materials for resale and also for tooling used to process the raw materials should specify that the raw materials are purchased for resale and that the sale of the tooling is subject to tax.

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The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) Good Faith. In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(d) Improper Use of Certificate. Except when a resale certificate is issued in accordance with subdivisions (h), ~~(i)~~ or (j):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor punishable as provided in section 7153 if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for each purchase made for personal gain or to evade the payment of taxes, as provided in sections 6072 and 6094.5.

(3) In addition to the penalty of 10 percent or five hundred dollars (\$500), whichever is greater, if the person fails to report and pay the use tax due on the use of the property purchased improperly with a resale certificate, the person may be liable for the 10 percent penalty for negligence or the 25 percent penalty for fraud, as provided in sections 6484 and 6485.

(e) Other Evidence to Rebut Presumption of Taxability. A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in subdivision (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

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(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(f) Use of XYZ Letters. A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of the person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

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(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ( “tangible personal property”); or tax has been paid measured by the purchase price or fair rental value (~~“mobile transportation equipment”~~);

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;
2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;
3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis; or
4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, ~~verify the information provided in the response to the XYZ letter;~~ including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use ~~for whether tax was paid by the purchaser.~~ When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

(g) Purchaser's Liability for Tax. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as

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purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(h) Mobilehomes. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to ~~Section~~section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to ~~Section~~section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by ~~Sections~~sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, ~~effective September 19, 1985~~, a mobilehome retailer, licensed as a mobilehome dealer under ~~Section~~section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to ~~Section~~section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to ~~Section~~section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

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(i) Mobile Transportation Equipment. Any person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.

(j) Counterfeit Goods. A sale of tangible personal property with a counterfeit mark on, or in connection with, that sale by a convicted seller is included in the definition of “retail sale” per Revenue and Taxation Code section 6007, and therefore taxable. “Storage” and “use” as defined in Revenue and Taxation Code section 6009.2, includes any purchase of tangible personal property with a counterfeit mark on, or in connection with, that purchase by a convicted purchaser and is subject to tax. This is regardless of whether the counterfeit goods were sold for resale or held with the intent to be resold. A “counterfeit mark” is a spurious mark that is used in a manner described in section 2320 of Title 18 of the United States Code.

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**REGULATION 1698. RECORDS.**

*Reference:* Sections 6455, 7053, and 7054, Revenue and Taxation Code.

**(a) DEFINITIONS.**

(1) "Database Management System"—a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Electronic cash register"— a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

~~(23)~~ "Electronic data interchange" or "EDI technology"—the computer to computer exchange of business transactions in a standardized structured electronic format.

~~(3) "Hardcopy"—any document, record, report or other data maintained in a paper format.~~

(4) "~~Machine-sensible~~Electronic records"—a collection of related information in an electronic, machine-sensible format. ~~Machine-sensible~~Electronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, ~~or microfiche,~~ PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.

(5) "Hardcopy"—any document, record, report or other data maintained in a paper format.

~~(56)~~ "Taxpayer"—every seller or retailer of tangible personal property in this state and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer, and every lessor and lessee of tangible personal property for use in this state.

**(b) GENERAL.**

(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax return. Such records include but are not limited to:

**(A)** Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

**(B)** Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

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(C) Schedules or working papers used in connection with the preparation of tax returns.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code sections 7053 and 7054.

(c) ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS.

(1) GENERAL.

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as:

1. vendor name,
2. invoice date,
3. product description,
4. quantity purchased,
5. price,

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- 6. amount of tax,
- 7. indication of tax status (e.g., for resale), and
- 8. shipping detail.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.

**(B)** The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) BUSINESS PROCESS INFORMATION.

**(A)** Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

**(B)** The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

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(C) The following specific documentation is required for ~~machine-sensible~~electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and
4. detailed charts of accounts and account descriptions.

**(d) ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS MAINTENANCE REQUIREMENTS.**

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained electronic~~machine-sensible~~ records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

**(e) ACCESS TO ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS.**

(1) The manner in which the Board is provided access to ~~machine-sensible~~electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

**(A)** The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

**(B)** The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the ~~machine-sensible~~electronic records.

**(C)** The taxpayer may convert the ~~machine-sensible~~electronic records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.

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(D) The taxpayer and the Board may agree on other means of providing access to the ~~machine-sensible~~ electronic records.

**(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.**

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

**(g) HARDCOPY RECORDS.**

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

**(h) ALTERNATIVE STORAGE MEDIA.**

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, ~~or~~ microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include,

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but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, ~~and~~ microfiche, [PDF files, or other media used in electronic imaging](#) systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) **RECORD RETENTION—TIME PERIOD.** All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For reporting periods beginning before January 1, 2003 that are subject to the extended ten-year statute of limitations contained in Revenue and Taxation Code section 7073(d), records required to be retained under this regulation must be preserved for a period of not less than ten years.

[For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that](#)

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would have been overwritten or otherwise removed from the system for the required time periods indicated above.

**(j) RECORD RETENTION LIMITATION AGREEMENTS.**

(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of ~~electronic~~~~machine-sensible~~ records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the Board, which may include, but is not limited to, any one or more of the following issues:
  - a. the conversion of files created on an obsolete computer system;
  - b. restoration of lost or damaged files and the actions to be taken;
  - c. use of taxpayer computer resources, and
2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and
3. authorize variances, if any, from the normal provisions of this regulation.

(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

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(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 7054 of the Revenue and Taxation Code.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

**(k) FAILURE TO MAINTAIN RECORDS.**

Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

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**REGULATION 4901. RECORDS.**

Reference: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605, and 60606, Revenue and Taxation Code.

**(a) DEFINITIONS.**

(1) "Applicable Tax Laws" means any of the following:

(A) Aircraft Jet Fuel Tax, Revenue and Taxation Code ~~S~~sections 7385–7398; and 7486–8406;

(B) Alcoholic Beverage Tax, Revenue and Taxation Code ~~S~~sections 32001–32557;

~~(C) Marine Invasive Species Fee, Public Resources Code Sections 71200–71271; Revenue and Taxation Code Sections 44000–44008, 55001–55381;~~

~~(D) California Tire Fee, Public Resources Code Sections 42860–42895; Revenue and Taxation Code Sections 55001–55381;~~

(~~E~~C) Childhood Lead Poisoning Prevention Fee, Health and Safety Code ~~S~~section 105310; Revenue and Taxation Code ~~S~~sections 43001–43651;

(~~F~~D) Cigarette and Tobacco Products Tax, Revenue and Taxation Code ~~S~~sections 30001–30481;

(~~G~~E) Diesel Fuel Tax, Revenue and Taxation Code ~~S~~sections 60001–60709;

(~~H~~F) Emergency Telephone Users Surcharge, Revenue and Taxation Code ~~S~~sections 41001–41176;

(~~I~~G) Energy Resources Surcharge, Revenue and Taxation Code ~~S~~sections 40001–40216;

(H) Fee Collection Procedures Law, Revenue and Taxation Code sections 55001-55381.

(~~J~~I) Hazardous Substances Tax, Health and Safety Code ~~S~~sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7; Revenue and Taxation Code ~~S~~sections 43001–43651;

(~~K~~J) Integrated Waste Management Fee, Public Resources Code ~~S~~sections 40000–48008; Revenue and Taxation Code ~~S~~sections 45001–45984;

(~~K~~I) Motor Vehicle Fuel Tax, Revenue and Taxation Code ~~S~~sections 7301–8526;

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~~(M) Natural Gas Surcharge, Public Utilities Code Sections 890–900; Revenue and Taxation Code Sections 55001–55381;~~

(NL) Occupational Lead Poisoning Prevention Fee, Health and Safety Code ~~S~~section 105190; Revenue and Taxation Code ~~S~~sections 43001–43651;

(OM) Oil Spill Response, Prevention, and Administration Fees, Revenue and Taxation Code ~~S~~sections 46001–46751;

(PN) Underground Storage Tank Maintenance Fee, Revenue and Taxation Code ~~S~~sections 50101–50162; and

(QO) Use Fuel Tax, Revenue and Taxation Code ~~S~~sections 8601–9355;

~~(R) Covered Electronic Waste Recycling Fee, Health and Safety Code Sections 25214.9–25214.10.2; Public Resources Code Sections 42460–42486; Revenue and Taxation Code Sections 55001–55381;~~

~~(S) Water Rights Fee, Water Code Sections 1525–1552, 13050, 13160.1; Revenue and Taxation Code Sections 55001–55381.~~

(2) "Database Management System"—a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(3) "Electronic cash register"— a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

~~(34)~~ "Electronic data interchange" or "EDI technology"—the computer to computer exchange of business transactions in a standardized structured electronic format.

~~(4) "Hardcopy"—any document, record, report or other data maintained in a paper format.~~

(5) "~~Machine-sensible~~Electronic record"—a collection of related information in an electronic format. ~~Machine-sensible~~Electronic records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm, ~~or microfiche,~~ PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.

(6) "Hardcopy"—any document, record, report or other data maintained in a paper format.

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(67) "Taxpayer" includes "fee payer" and means any person liable for the payment of a tax or a fee specified under any of the applicable tax laws.

(78) "Tax" includes "fee" and means any amount of tax or fee specified under any of the applicable tax laws.

**(b) GENERAL.**

(1) A taxpayer shall maintain and make available for examination on request by the ~~b~~Board or its authorized representative, all records necessary to determine the correct tax liability under the applicable tax laws and all records necessary for the proper completion of the required tax return or report. Such records include but are not limited to:

(A) Books of account or other similar summary information ordinarily maintained by the taxpayer as required by law or practice or otherwise in the possession of the taxpayer or third party at the direction or request of the taxpayer.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns and reports.

(2) ~~Machine-sensible~~Electronic records are considered records under Revenue and Taxation Code ~~S~~sections 8301–8306, 9253, 9254, 30453, 30454, 32551, 32453, 40172–40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, and 60604–60606, ~~Revenue and Taxation Code~~.

**(c) ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS.**

**(1) GENERAL.**

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the ~~b~~Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format which the ~~b~~Board has the technological

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capability to use, such as Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct ~~machine-sensible~~ electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as:

1. vendor name,
2. invoice date,
3. product description,
4. quantity purchased,
5. price,
6. amount of tax,
7. indication of tax status (e.g., exempt), and
8. shipping detail.

Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the ~~b~~Board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code

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description lists, and make them available to the ~~b~~Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) BUSINESS PROCESS INFORMATION.

(A) Upon request of the ~~b~~Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for ~~machine-sensible~~electronic records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and
4. detailed charts of accounts and account descriptions.

(d) ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS MAINTENANCE REQUIREMENTS.

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained ~~machine-sensible~~electronic records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The ~~b~~Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of

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electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

**(e) ACCESS TO ~~MACHINE-SENSIBLE~~ELECTRONIC RECORDS.**

(1) The manner in which the ~~b~~Board is provided access to ~~machine-sensible~~electronic records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the ~~b~~Board with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the ~~machine-sensible~~electronic records.

(C) The taxpayer may convert the ~~machine-sensible~~electronic records to a standard record format specified by the ~~b~~Board, including copies of files, on a magnetic medium that is agreed to by the ~~b~~Board.

(D) The taxpayer and the ~~b~~Board may agree on other means of providing access to the ~~machine-sensible~~electronic records.

**(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.**

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the ~~b~~Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

**(g) HARDCOPY RECORDS.**

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by

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existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

**(h) ALTERNATIVE STORAGE MEDIA.**

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, microfiche, [PDF files](#), or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of subdivision (h) are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, microfiche, [PDF files](#), or other media used in electronic imaging systems shall meet the following requirements.

**(A)** Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

**(B)** Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

**(C)** Upon request by the [bB](#) board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

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(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) **RECORD RETENTION—TIME PERIOD.** All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that would have been overwritten or otherwise removed from the system for the required time periods indicated above.

**(j) RECORD RETENTION LIMITATION AGREEMENTS.**

(1) The ~~b~~Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of ~~machine-sensible~~electronic records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the ~~b~~Board, which may include, but is not limited to, any one or more of the following issues:
  - a. the conversion of files created on an obsolete computer system;
  - b. restoration of lost or damaged files and the actions to be taken;
  - c. use of taxpayer computer resources, and

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2. specifically identify which of the taxpayer's records the ~~b~~Board determines are not necessary for retention and which the taxpayer may discard, and
3. authorize variances, if any, from the normal provisions of this regulation.

(B) The ~~b~~Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The ~~b~~Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the ~~b~~Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The ~~b~~Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under the applicable tax law.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All ~~machine-sensible~~electronic records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the ~~b~~Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All ~~machine-sensible~~electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation

(3) In addition to the record retention evaluation under subdivision (j)(2), the ~~b~~Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of

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EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

**(k) FAILURE TO MAINTAIN RECORDS.** Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

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