

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

HONORABLE JOHN CHIANG, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: DECEMBER 14, 2004, TIME: 9:30 A.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1**

Title: Proposed regulation regarding requirements for Electronic Funds Transfer reporting, (Regulation 4905, *Electronic Funds Transfer*), and proposed Cross-reference Regulations 1160, 1331.2, 4031.1, 2520, 2333, 2425, 3005, 3303, 2232.1, 1214, 3203, 3503, and 1425, *Payment by Electronic Funds Transfer*)

Issue/Topic:

Should the Board adopt Regulation 4905, *Electronic Funds Transfer*, and Regulations 1160, 1331.2, 4031.1, 2520, 2333, 2425, 3005, 3303, 2232.1, 1214, 3203, 3503, and 1425, *Payment by Electronic Funds Transfer*), governing the electronic funds transfer requirements for the following twenty-one tax and fee programs (Special Taxes):

Motor Vehicle Fuel Tax; Aircraft Jet Fuel Tax; Use Fuel Tax; Cigarette Tax, Tobacco Products Tax; Alcoholic Beverage Tax; Energy Resources Surcharge; Emergency Telephone Users Surcharge; Childhood Lead Poisoning Prevention Fee; Hazardous Substances Tax; Occupational Lead Poisoning Prevention Fee; Integrated Waste Management Fee; Oil Spill Response Fee, Oil Spill Prevention and Administration Fees; Underground Storage Tank Maintenance Fee; Marine Invasive Species Fee (Ballast Water Management Fee); California Tire Fee; Natural Gas Surcharge; Water Right Fee, Electronic Waste Recycling Fee; and Diesel Fuel Tax.

Committee Discussion:

Discussion of the agenda was as follows:

Action 1, Consent

A Committee Member directed the Sales and Use Tax Department and the Property and Special Taxes Department staff to review the *Voluntary Participation* provisions of the Electronic Funds Transfer Programs in order to encourage taxpayers' voluntary participation.

Action 1, Authorization to Publish

There was no discussion of this item.

Regulation 4905. ELECTRONIC FUNDS TRANSFER.

Reference: Sections 7659.9, 7659.92, 8760, 8762, 30190, 30192, 32260, 32262, 40067, 40069, 41060, 41062, 43170, 43172, 45160, 45162, 46160, 46162, 50112.7, 50112.9, 55050, 55052, 60250, and 60252 Revenue and Taxation Code.

(a) DEFINITIONS.

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer.

(2) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(3) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(4) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(5) "Federal Reserve Wire Transfer" means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Revenue and Taxation Code sections 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250 may be made by Federal Reserve Wire Transfer only if payment cannot, for good cause, be made according to subdivision (a) (1) of this regulation, and the use of Federal Reserve Wire Transfer is preapproved pursuant to subdivision (g) of this regulation. Banking costs incurred for the Federal Reserve Wire Transfer transaction charged to the person and to the state shall be paid by the person originating the transaction.

(b) PARTICIPATION.

(1) MANDATORY PARTICIPATION. Persons with an estimated monthly tax or fee liability of twenty thousand dollars (\$20,000) or more are required to remit amounts due by electronic funds transfer under procedures set forth in this regulation. To identify mandatory participants, the Board shall conduct a periodic review of all persons with licenses, permits, or other authorization under sections 7659.9, 8760, 30190, 32269, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250. The review is performed by calculating an average monthly tax or fee liability for a twelve-month period. Persons whose average monthly tax or fee liability equals or exceeds twenty thousand dollars will be required to remit payments by electronic funds transfer. If a person did not engage in a covered activity until after the beginning of the designated twelve-month review period, then the monthly tax or fee liability will be calculated based upon the number of months in which covered activities occurred (for example, in a calendar year review period, if the person obtains a permit or license and begins operations for which a tax or fee may be imposed in May, the total tax or fee liability would be divided by eight to determine the average monthly tax or fee liability since there are eight months remaining in the evaluation period). Persons registering to report and pay a tax or fee for the first time, except certain successors, will not be required to participate in the electronic funds transfer program until a review is conducted.

A successor will be regarded as having an estimated tax or fee liability of twenty thousand dollars (\$20,000) or more per month when the monthly tax or fee liability of the predecessor exceeded twenty thousand dollars per month or the predecessor was a mandatory participant in the electronic funds transfer program. If the successor purchases a portion of a business that is required to participate in the mandatory electronic funds transfer program (e.g. a multiple outlet business that only sells some, but not all of its locations), the average monthly tax or fee liability of the purchased business will be computed to determine if the successor meets the threshold to be identified as a mandatory participant in the electronic funds transfer program.

After review, if a person drops below the threshold for mandatory participation, the Board shall provide notification, in writing, that the status has been changed from mandatory participation to voluntary participation in the electronic funds transfer program. If, at that time, a person wishes to discontinue making electronic funds transfer payments, a written request must be made to the Board. Payments must continue to be remitted by electronic funds transfer until the taxpayer or feepayer is notified by the Board, in writing, of an effective date of withdrawal from the program. Any person who fails to comply with the mandatory participation requirements under this article shall be liable for a penalty as provided under the applicable Revenue and Taxation Code sections 7659.9(f), 8760(f), 30190(f), 32260(f), 40067(f), 41060(f), 43170(f), 45160(f), 46160(f), 50112.7(f), 55050(f), and 60250(f).

(2) VOLUNTARY PARTICIPATION. Any person not meeting the criteria for mandatory participation set forth in subdivision (b)(1) of this regulation may participate in the program on a voluntary basis. A person must register with the Board prior to participation and must remain in the program for a minimum of one year. After that time, if a person wishes to discontinue making electronic funds transfer payments, a written request must be made to the Board. Payments must continue to be remitted by electronic funds transfer until notified by the Board, in writing, of an effective date of withdrawal from the program.

(c) DATE OF PAYMENT. Payment is deemed complete on the date the electronic funds transfer is initiated, if the settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If the settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) FILING OF RETURNS. In addition to a tax or fee payment made by electronic funds transfer, a return must be filed on or before the due date. Any person who fails to comply with this provision shall be subject to penalty charges as provided under Revenue and Taxation Code sections 7659.9(d), 8760(d), 30190(d), 32260(d), 40067(d), 41060(d), 43170(d), 45160(d), 46160(d), 50112.7(d), 55050(d), and 60250(d).

(e) FAILURE TO PAY BY ELECTRONIC FUNDS TRANSFER. Any person required to pay tax or fee by electronic funds transfer must continue to do so until the Board advises them otherwise in writing. Any person required to pay taxes or fees by electronic funds transfer, as set forth in subdivision (b)(1), who does not pay through electronic funds transfer but uses another means (e.g., pay by check), will be assessed a penalty as provided by Revenue and Taxation Code sections 7659.9(e), 8760(e), 30190(e), 32260(e), 40067(e), 41060(e), 43170(e), 45160(e), 46160(e), 50112.7(e), 55050(e), and 60250(e).

(f) ZERO AMOUNT DUE. When no tax is due for a given period, a zero dollar transaction must be made by electronic funds transfer or the Board must receive written notification stating that no tax is due for that period.

(g) EMERGENCIES. In emergency situations, a Federal Reserve Wire Transfer transaction may be used to transmit a payment. A Federal Reserve Wire Transfer is an electronic payment system used by federal reserve banks to transfer funds instantaneously. Generally, this method of payment is not approved for recurring transactions. Authorization must be received from the Board prior to making a payment by Federal Reserve Wire Transfer. The person who originates the transfer shall be responsible for any fees incurred in paying by a Federal Reserve Wire Transfer transaction.

Special Taxes Programs Cross-References to Regulation 4905

Motor Vehicle Fuel Tax Aircraft Jet Fuel Tax

Regulation 1160. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

Use Fuel Tax

Regulation 1331.2. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

Cigarette Tax Tobacco Products Tax

Regulation 4031.1. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

Alcoholic Beverage Tax

Regulation 2520. Payment by Electronic Funds Transfer

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

Energy Resources Surcharge

Regulation 2333. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

Emergency Telephone Users Surcharge

Regulation 2425. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

The proposed language contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Special Taxes Programs Cross-References to Regulation 4905

**Childhood Lead Poisoning Prevention Fee
Hazardous Substances Tax
Occupational Lead Poisoning Prevention Fee**

Regulation 3005. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

Integrated Waste Management Fee

Regulation 3303. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

**Oil Spill Response Fee
Oil Spill Prevention and Administration Fees**

Regulation 2232.1. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

Underground Storage Tank Maintenance Fee

Regulation 1214. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

Marine Invasive Species Fee (Ballast Water Management Fee)

Regulation 3203. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

**California Tire Fee
Electronic Waste Recycling Fee
Natural Gas Surcharge
Water Right Fee**

Regulation 3503. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

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Special Taxes Programs Cross-References to Regulation 4905

Diesel Fuel Tax

Regulation 1425. Payment by Electronic Funds Transfer.

Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

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