



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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JAMES E. SPEED
Executive Director

January 24, 2003

Dear Interested Party :

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the February 5, 2003, Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1592, *Eyeglasses and Other Ophthalmic Materials*.

Action 1 on the Agenda consists of items on which we believe industry and staff are in full agreement. If you wish to have any consent items (Action 1) discussed fully at the Committee meeting, you must contact a Board Member prior to Thursday, January 30, 2003, to request removal of the item from the Consent Agenda. In addition, please notify Ms. Charlotte Paliani, Program Planning Manager, after you contact a Board Member's Office. Ms. Paliani may be reached at (916) 324-1825.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Board Meetings and Committee Information" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/meetings.htm#two>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m.** on **February 5, 2003**, in Room 121 at the address shown above.

Sincerely,

Ramon J. Hirsig
Deputy Director
Sales and Use Tax Department

RJH: tm

Enclosures

cc: (all with enclosures)

Honorable Carole Migden, Member, First District
Honorable Bill Leonard, Member, Second District (MIC 78)
Honorable Claude Parrish, Member, Third District
Honorable John Chiang, Member, Fourth District
Honorable Steve Westly, State Controller
Ms. Jean Alexander, Board Member's Office, First District
Ms. Rita Perry, Board Member's Office, First District (MIC 71)
Ms. Mai Harvill, Board Member's Office, Second District (MIC 78)
Mr. Lee Williams, Board Member's Office, Second District (via e-mail)
Mr. Neil Shah, Board Member's Office, Third District
Mr. Romeo Vinzon, Board Member's Office, Third District
Mr. Matthew Zylowski, Board Member's Office, Third District
Mr. John Thiella, Board Member's Office, Fourth District (MIC 72)
Mr. Steven Kamp, Board Member's Office, Fourth District (MIC 72)
Ms. Marcy Jo Mandel, State Controller's Office
Mr. James E. Speed (MIC 73)
Mr. Timothy Boyer (MIC 83)
Ms. Janice Thurston (MIC 82)
Mr. Warren Astleford (MIC 82)
Mr. Randy Ferris (MIC 82)
Ms. Trecia Nienow (MIC 82)
Ms. Jean Ogrod (via e-mail)
Mr. Jeff Vest (via e-mail)
Mr. David Levine (MIC 85)
Mr. Steve Ryan (via e-mail)
Mr. Rey Obligacion (via e-mail)
Ms. Jennifer Willis (MIC 70)
Mr. Dan Tokutomi (via e-mail)
Mr. Dave Hayes (MIC 67)
Ms. Charlotte Paliani (MIC 92)
Mr. Joseph Young (via e-mail)
Mr. Jerry Cornelius (via e-mail)
Mr. Jeffrey L. McGuire (via e-mail)
Mr. Vic Anderson (MIC 40 and via e-mail)
Mr. Larry Bergkamp (via e-mail)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Laureen Simpson (MIC 50)
Mr. Todd MacMurray (MIC 50)
Ms. Laura Jonoubei (MIC 50)

AGENDA —February 5, 2003 Business Taxes Committee Meeting
Proposed Regulatory Changes Regarding the Application of Tax to Sales of Clip-on Sunglasses

<p>Action 1 — Consent Items</p> <p>Agenda, page 2.</p> <p>Agenda, pages 2-3</p>	<p>Adopt staff's proposed amendments to Regulation 1592, as follows:</p> <ul style="list-style-type: none"> • Amend subdivisions (a)(4) and (b)(3) to clarify when physicians and surgeons, optometrists, and dispensing opticians make taxable retail sales of clip-on sunglasses. • Make non-substantive changes to correct typographical errors in subdivisions (a), (b) and (d) of the regulation.
<p>Action 2 – Authorization to Publish</p>	<p>Recommend the publication of amendments to Regulation 1592 as adopted in the above action.</p> <p>Operative Date: None Implementation: 30 days following OAL approval</p>

AGENDA —February 5, 2003 Business Taxes Committee Meeting
Proposed Regulatory Changes Regarding the Application of Tax to Sales of Clip-on Sunglasses

<p>Action 1 — Consent Items</p>	<p>Regulation 1592. Eyeglasses and Other Ophthalmic Materials.</p> <p><i>Reference: Sections 6006 and 6018, Revenue and Taxation Code.</i></p> <p>(a) Physicians and Surgeons and Optometrists.</p> <p>(1) In General. A physician and surgeon or optometrist is the consumer of ophthalmic materials including eyeglasses, frames, and lenses used or furnished in the performance of his/her professional services in the diagnosis, treatment or correction of conditions of the human eye. Tax applies with respect to the sale of such materials to physicians and surgeons and optometrists.</p> <p>(2) Filling Prescription of Another Physician and Surgeon or Optometrist. When an optometrist fills a prescription prepared by another optometrist or by a physician and surgeon, the optometrist who fills the prescription is the consumer of the glasses, frames, and other materials and tax applies with respect to the sale of such materials to him/her.</p> <p>(3) Replacement Lenses and Frames. A physician and surgeon or optometrist is also the consumer of lenses and frames furnished to patients as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed for the patient pursuant to an eye examination, and tax applies to the sale thereof to him/her.</p> <p>(4) Plano Lenses or Sunglasses (Without Correction). When plano lenses and frames or plano sunglasses, <u>including clip-on sunglasses</u>, are furnished by a physician and surgeon or optometrist pursuant to a prescription for a particular class of plano or for the treatment or correction of conditions of the human eye following, and as a result of, a diagnosis made by him/her in an examination and refraction he/she is the consumer of the plano lenses and frames or sunglasses, and tax applies with respect to the sale thereof to him/her. In all other instances the physician and surgeon or optometrist is the retailer of such lenses and frames or sunglasses, and tax applies to his<u>the</u> gross receipts from such a retail sale.</p> <p>(b) Dispensing Opticians.</p> <p>(1) In General. A registered dispensing optician is the consumer of ophthalmic materials including eyeglasses, frames, and lenses dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist. Tax applies with respect to the sale of such materials to the dispensing optician.</p> <p>(2) Replacement Lenses and Frames. A dispensing optician is also the consumer of lenses and frames furnished as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed by a physician and surgeon or optometrist.</p> <p>(3) Plano Lenses or Sunglasses (Without Correction). When plano lenses and frames or plano sunglasses, <u>including clip-on sunglasses</u>, are dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist for a particular class of plano, the dispensing optician is the consumer of the lenses</p>
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AGENDA —February 5, 2003 Business Taxes Committee Meeting
Proposed Regulatory Changes Regarding the Application of Tax to Sales of Clip-on Sunglasses

	<p>and frames or sunglasses, and tax applies to the sale thereof to him/her. In all other instances the dispensing optician is the retailer of such lenses and frames or sunglasses, and tax applies to the gross receipts from such a retail sale.</p> <p>(c) Pharmacists.</p> <p>(1) In General. Operative January 1, 1998, a licensed pharmacist is the consumer of replacement contact lenses dispensed pursuant to a prescription prepared by a physician or optometrist. Tax applies with respect to the sale of such contact lenses to the pharmacist.</p> <p>(2) Replacement Contact Lenses. For purposes of this subdivision, “replacement contact lenses” means soft contact lenses that require no fitting or adjustment, and that are dispensed as packaged and sealed by the manufacturer.</p> <p>(d) Definition of Prescription. For the purposes of this regulation a “prescription” means a written formula for ophthalmic lenses or contact lenses prepared by a physician and surgeon or optometrist.</p> <p>With respect to plano lenses and frames or sunglasses without correction, prescription means a written order for a distinctive type or class of plano identified by numbers or symbols descriptive of a specific tint, color or characteristic.</p> <p>The prescription shall bear the name and address of the prescriber, the name and address of the patient, and the date of issue.</p> <p>Pursuant to section 4124 of the Business and Professions Code, with respect to replacement contact lenses dispensed under subdivision (c) above, in addition to the above requirements, operative January 1, 1998, a prescription must:</p> <ol style="list-style-type: none">(1) <u>I</u>nclude the state license number of the prescribing practitioner,(2) <u>E</u>xplicitly state an expiration date of not more than one year from the date of the last prescribing examination, and(3) <u>E</u>xplicitly state that the prescription is for contact lenses and include the lens brand name, type, and tint, including all specifications necessary for the ordering of lenses.
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Issue Paper Number 02 - 027



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

**Proposed Regulatory Changes Regarding the Application
of Tax to Sales of Clip-on Sunglasses
Regulation 1592, *Eyeglasses and Other Ophthalmic
Materials***

I. Issue

Should Regulation 1592, *Eyeglasses and Other Ophthalmic Materials*, be amended to clarify how tax applies to sales of clip-on sunglasses?

II. Staff Recommendation

Staff recommends amending subdivisions (a)(4) and (b)(3) to clarify when physicians and surgeons, optometrists, and dispensing opticians make taxable retail sales of clip-on sunglasses. See Issue Paper (IP) pages 2-4 and agenda item 1.

In addition, staff proposes to make non-substantive changes to correct typographical errors in subdivisions (a), (b) and (d) of the regulation. See IP page 2 and agenda item 1.

A copy of staff's proposed amendments is illustrated in Exhibit 2.

III. Other Alternative Considered

Make no changes to Regulation 1592, *Eyeglasses and Other Ophthalmic Materials*. See IP pages 4 and 5.

Issue Paper Number: **02 - 027**

IV. Background

Regulation 1592 was amended in 1971 to clarify that a physician and surgeon or optometrist who furnishes plano lenses¹ and frames or plano sunglasses pursuant to certain prescriptions, and as a result of a diagnosis made by him/her in an examination and refraction, is a consumer rather than a retailer of such plano lenses and frames or sunglasses.

In 1998, the regulation was amended to conform to a statutory change as a result of SB 13 (Statutes 1997, Chapter 184) which made, under defined conditions, licensed pharmacists the consumers of replacement contact lenses that they sell pursuant to Business and Professions Code section 4124. Also in 1998, language was added setting forth the requirements prescribed in Business and Professions Code section 4124 with respect to the conditions under which a licensed pharmacist may sell replacement contact lenses.

Despite the foregoing amendments, it appears that confusion exists as to when physicians and surgeons, optometrists, and dispensing opticians make taxable retail sales of clip-on sunglasses. Some dispensing opticians incorrectly regard their sales as taxable whether or not their clip-on sunglasses are provided pursuant to a prescription. In addition, some physicians and surgeons or optometrists are failing to report tax as retailers on certain retail sales of clip-on sunglasses. In that regard, staff has proposed amendments clarifying the application of tax to sales of clip-on sunglasses.

Interested parties meetings were held on October 15, 2002, and December 10, 2002. Ernst and Young (EY) submitted a written proposal suggesting that the regulation be amended to clarify that cases, cleaning solutions and towelettes fall in the general category of “ophthalmic materials.” A representative of the California Optometric Association responded to the proposal at the December 10, 2002, interested parties meeting, stating that, in her opinion, the amendment was not needed. EY subsequently withdrew their proposal.

V. Staff Recommendation

A. Description of the Staff Recommendation

As illustrated in Exhibit 2, staff proposes the following:

- Amend subdivisions (a)(4) and (b)(3) of the regulation by adding the phrase “including clip-on sunglasses,” to clarify that clip-on sunglasses are treated in the same manner as eyeglasses, frames, and lenses.
- Make non-substantive changes to correct typographical errors in subdivisions (a), (b) and (d) of the regulation.

Regulation 1592 states that, when the requisite conditions are met, physicians and surgeons, optometrists, and registered dispensing opticians are the consumers of, and shall not be considered the retailers of, ophthalmic materials used or furnished pursuant to a prescription for the treatment or

¹ A plano lens has the same curvature on both the front and back of the lens (i.e., a lens with no corrective power).

Issue Paper Number: **02 - 027**

correction of conditions of the human eye. That is, tax applies to the sale of such materials to physicians and surgeons, optometrists, and dispensing opticians. In all other instances, the physicians and surgeons, optometrists, and dispensing opticians are the retailers of the ophthalmic materials, and tax applies to their retail sales.

As set forth in the regulation, ophthalmic materials include eyeglasses, frames, lenses, contact lenses, replacement lenses and frames, plano lenses and frames, and plano sunglasses. However, staff believes further regulatory guidance is needed to clarify when physicians and surgeons, optometrists, and dispensing opticians make taxable retail sales of clip-on sunglasses. Staff recommends adding “clip-on sunglasses” to the following subdivisions:

(a)(4) Plano Lenses or Sunglasses (Without Correction). When plano lenses and frames or plano sunglasses, including clip-on sunglasses, are furnished by a physician and surgeon or optometrist pursuant to a prescription for a particular class of plano or for the treatment or correction of conditions of the human eye following, and as a result of, a diagnosis made by him/her in an examination and refraction he/she is the consumer of the plano lenses and frames or sunglasses, and tax applies with respect to the sale thereof to him/her. In all other instances the physician and surgeon or optometrist is the retailer of such lenses and frames or sunglasses, and tax applies to ~~his~~ the gross receipts from such a retail sale.

(b)(3) Plano Lenses or Sunglasses (Without Correction). When plano lenses and frames or plano sunglasses, including clip-on sunglasses, are dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist for a particular class of plano, the dispensing optician is the consumer of the lenses and frames or sunglasses, and tax applies to the sale thereof to him/her. In all other instances the dispensing optician is the retailer of such lenses and frames or sunglasses, and tax applies to the gross receipts from such a retail sale.

B. Pros of the Staff Recommendation

Clarifies the application of tax to sales of clip-on sunglasses.

C. Cons of the Staff Recommendation

Requires regulatory amendment.

D. Statutory or Regulatory Change

No statutory change is required. However, staff’s recommendation does require an amendment to Regulation 1592.

E. Administrative Impact

Staff will notify taxpayers of the amendments to the regulation through an article in the Tax Information Bulletin (TIB) and update and distribute the amended regulation.

Issue Paper Number: 02 - 027

F. Fiscal Impact

1. Cost Impact

There will be no additional costs. Staff will notify taxpayers of the new regulation through a TIB article. Staff estimates that workload associated with the publishing and distribution of the TIB will be absorbed by existing staff and will not require any additional budget augmentation.

2. Revenue Impact

None. The proposed amendments clarify existing policy. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Will enhance taxpayer/customer understanding of the application of tax to sales of clip-on sunglasses.

H. Critical Time Frames

The proposed amendments represent an interpretation of existing statutes and, therefore, have no operative date. Implementation will take place 30 days following approval of the regulation by the State Office of Administrative Law.

VI. Alternative 1

A. Description of the Alternative

Make no changes to Regulation 1592.

B. Pros of the Alternative

No regulatory change is required.

C. Cons of the Alternative

Does not clarify application of tax to sales of clip-on sunglasses.

D. Statutory or Regulatory Change

None.

E. Administrative Impact

None.

Issue Paper Number: **02 - 027**

F. Fiscal Impact

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Taxpayers/customers will not receive clarification regarding the application of tax to sales of clip-on sunglasses, which may result in incorrect tax reporting.

H. Critical Time Frames

None.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of: January 15, 2003

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



**Proposed Regulatory Changes Regarding the
Application of Tax to Sales of Clip-on
Sunglasses
Regulation 1592, *Eyeglasses and Other
Ophthalmic Materials***

Recommendation and Alternatives

Staff Recommendation:

Staff recommends amending subdivisions (a)(4) and (b)(3) to clarify when physicians and surgeons, optometrists, and dispensing opticians make taxable retail sales of clip-on sunglasses. See Issue Paper (IP) pages 2-4 and agenda item 1.

In addition, staff proposes to make non-substantive changes to correct typographical errors in subdivisions (a), (b) and (d) of the regulation. See IP page 2 and agenda item 1.

Alternative 1:

Make no changes to Regulation 1592, *Eyeglasses and Other Ophthalmic Materials*. See IP pages 4 and 5.

Background, Methodology, and Assumptions

Staff Recommendation:

There is nothing in the proposed Regulation 1592 that would impact revenues.

Revenue Estimate

Alternative 1:

Alternative 1 has no revenue effect.

Revenue Summary

The staff recommendation has no revenue effect.

The alternative proposal has no revenue effect.

Preparation

This revenue estimate was prepared by Bill Benson, Jr., Research and Statistics Section, Legislative Division. This revenue estimate was reviewed by Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department, and by Mr. Dave Hayes, Research and Statistics Section Chief, Legislative Division. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of January 15, 2003

State of California
STATE BOARD OF EQUALIZATION

SALES AND USE TAX REGULATION

Regulation 1592. Eyeglasses and Other Ophthalmic Materials.

Reference: Sections 6006 and 6018, Revenue and Taxation Code.

(a) Physicians and Surgeons and Optometrists.

(1) In General. A physician and surgeon or optometrist is the consumer of ophthalmic materials including eyeglasses, frames, and lenses used or furnished in the performance of his/her professional services in the diagnosis, treatment or correction of conditions of the human eye. Tax applies with respect to the sale of such materials to physicians and surgeons and optometrists.

(2) Filling Prescription of Another Physician and Surgeon or Optometrist. When an optometrist fills a prescription prepared by another optometrist or by a physician and surgeon, the optometrist who fills the prescription is the consumer of the glasses, frames, and other materials and tax applies with respect to the sale of such materials to him/her.

(3) Replacement Lenses and Frames. A physician and surgeon or optometrist is also the consumer of lenses and frames furnished to patients as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed for the patient pursuant to an eye examination, and tax applies to the sale thereof to him/her.

(4) Plano Lenses or Sunglasses (Without Correction). When plano lenses and frames or plano sunglasses, including clip-on sunglasses, are furnished by a physician and surgeon or optometrist pursuant to a prescription for a particular class of plano or for the treatment or correction of conditions of the human eye following, and as a result of, a diagnosis made by him/her in an examination and refraction he/she is the consumer of the plano lenses and frames or sunglasses, and tax applies with respect to the sale thereof to him/her. In all other instances the physician and surgeon or optometrist is the retailer of such lenses and frames or sunglasses, and tax applies to ~~his~~ the gross receipts from such a retail sale.

(b) Dispensing Opticians.

(1) In General. A registered dispensing optician is the consumer of ophthalmic materials including eyeglasses, frames, and lenses dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist. Tax applies with respect to the sale of such materials to the dispensing optician.

(2) Replacement Lenses and Frames. A dispensing optician is also the consumer of lenses and frames furnished as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed by a physician and surgeon or optometrist.

(3) Plano Lenses or Sunglasses (Without Correction). When plano lenses and frames or plano sunglasses, including clip-on sunglasses, are dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist for a particular class of plano, the dispensing optician is the consumer of the lenses and frames or sunglasses, and tax applies to the sale thereof to him/her. In all other instances the dispensing optician is the retailer of such lenses and frames or sunglasses, and tax applies to the gross receipts from such a retail sale.

(c) Pharmacists.

(1) In General. Operative January 1, 1998, a licensed pharmacist is the consumer of replacement contact lenses dispensed pursuant to a prescription prepared by a physician or optometrist. Tax applies with respect to the sale of such contact lenses to the pharmacist.

(2) Replacement Contact Lenses. For purposes of this subdivision, "replacement contact lenses" means soft contact lenses that require no fitting or adjustment, and that are dispensed as packaged and sealed by the manufacturer.

(d) Definition of Prescription. For the purposes of this regulation a "prescription" means a written formula for ophthalmic lenses or contact lenses prepared by a physician and surgeon or optometrist.

With respect to plano lenses and frames or sunglasses without correction, prescription means a written order for a distinctive type or class of plano identified by numbers or symbols descriptive of a specific tint, color or characteristic.

The prescription shall bear the name and address of the prescriber, the name and address of the patient, and the date of issue.

Pursuant to section 4124 of the Business and Professions Code, with respect to replacement contact lenses dispensed under subdivision (c) above, in addition to the above requirements, operative January 1, 1998, a prescription must:

- (1) Include the state license number of the prescribing practitioner,
- (2) Explicitly state an expiration date of not more than one year from the date of the last prescribing examination, and
- (3) Explicitly state that the prescription is for contact lenses and include the lens brand name, type, and tint, including all specifications necessary for the ordering of lenses.

History: Section (a)(1) effective September 19, 1947.

Section (b) effective August 1, 1933.

Adopted as of January 1, 1945 as a restatement of previous rulings.

Amended and renumbered March 24, 1970, effective April 29, 1970.

Amended May 4, 1971, effective July 1, 1971.

Amended March 25, 1998, effective April 24, 1998. Added new subdivision (c) and amended renumbered subdivision (d) to incorporate the provisions of Chapter 184, Statutes of 1997.

Draft