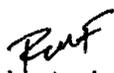


Memorandum

To : Ms. Kristine Cazadd
Interim Executive Director, MIC: 73

Date: October 29, 2010

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

Subject : **Board Meeting, November 16-18, 2010**
Item J
Chief Counsel's Rulemaking Calendar
Regulation 1584, Membership Fees

Sales and Use Tax Regulation 1584, *Membership Fees*, was originally adopted in 1996. Regulation 1584, subdivision (a)(1)(A) provides that “[m]embership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when . . . the retailer sells its products only to members and the membership fee exceeds a nominal amount.” And, Regulation 1584, subdivision (b) defines the term “nominal amount.”

When Regulation 1584 was first adopted, subdivision (b) defined the term “nominal amount” to mean “an amount totaling \$40 or less per year.” However, subdivision (b) also provided that “during September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount.” Therefore, the Board subsequently amended the definition for the term “nominal amount” in 2000 and 2005 to provide that a nominal amount means an “amount totaling \$45 or less,” effective January 1, 2001, and a nominal amount means an “amount totaling \$50 or less,” effective January 1, 2006, respectively, due to increases in the CCPI.

The CCPI changed from 201.3 in June 2005 to 227.1 in June 2010. Board staff has determined that this change resulted in a 12.82 percent increase in the CCPI,¹ and that, as a result of the increase of more than 5 percent, the definition for “nominal amount” in Regulation 1584 needs to be amended. Furthermore, Board staff has determined that a 12.82 percent increase in the CCPI requires a \$5 increase in the current “\$50 or less” nominal

¹ Note that 227.1 CCPI minus 201.3 CCPI equals 25.8 CCPI and 25.8 CCPI is 12.82 percent of 201.3 CCPI.

amount so that nominal amount means an "amount totaling \$55 or less per year," effective January 1, 2011.²

Therefore, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1584 on the Chief Counsel's Rulemaking Calendar for the November 16-18, 2010, Board meeting in order to request the Board's authorization to amend the regulation under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The Rule 100 changes revise existing subdivision (b)(1) to include the new nominal amount of "\$55 or less," effective January 1, 2011, and clarify that the current nominal amount of "\$50 or less" is effective for the period January 1, 2006, through December 31, 2010. The Rule 100 changes also update the dates in the last two sentences in subdivision (b)(2) in order provide guidance to the public and Board staff regarding the January 1, 2016, and January 1, 2021 "nominal amount" adjustment computations. The changes are appropriate for processing under Rule 100 because they update the regulation in accordance with its existing provisions and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

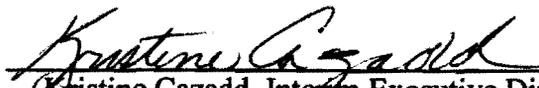
Attached is a ~~strikeout~~ and underlined version of the regulation illustrating the proposed revisions.

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

Recommendation by:

Approved:


Randy Ferris, Acting Chief Counsel


Kristine Cazadd, Interim Executive Director

Approved:

BOARD APPROVED
At the 11-16-10 Board Meeting


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


Diane Olson, Chief
Board Proceedings Division

Attachments

² Note that \$50 multiplied by 12.82 percent equals \$6.41, and that \$6.41 must be rounded down to \$5 per the formula in Regulation 1584, subdivision (b).

cc: Mr. Jeffrey L. McGuire (MIC 43)
Ms. Diane Olson (MIC 80)
Ms. Christine Bisauta (MIC 82)
Mr. Bradley M. Heller (MIC 82)
Ms. Susanne Buehler (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Hellmuth (MIC 50)
Mr. Bradley Miller (MIC 50)

Regulation 1584. MEMBERSHIP FEES.

Reference: Sections 6011.1, 6012, and 6012.1 Revenue and Taxation Code.

(a) APPLICATION OF TAX

(1) **IN GENERAL.** Membership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when either

(A) the retailer sells its products only to members and the membership fee exceeds a nominal amount,

or

(B) regardless of the amount of the membership fee, the retailer sells its products for a lower price to a person who has paid the membership fee than to a person who has not paid the fee.

(2) The membership fees described in subdivision (a)(1)(A) or (a)(1)(B) are part of the gross receipts of the person selling tangible personal property to a member. It is immaterial that the person who sold the membership is not the person who sells the tangible personal property to a member. Any sale of a membership described in subdivision (a)(1)(A) or (a)(1)(B) is regarded as related to the retail sale by the retailer selling tangible personal property to a member, not by the person selling the membership, measured by the amounts received by the person selling the membership.

(3) **INCIDENTAL SALES.** Charges for memberships not related to anticipated retail transactions are not subject to tax. For example, when a country club or similar organization charges fees (dues) to members and provides substantial service benefits, e.g., the use of golfing, tennis and swimming facilities, the membership fees are not related to sales even though the organization may establish minimum meal and drink purchase requirements for its members.

(4) **CONSUMER COOPERATIVES.** Initial or periodic membership fees received by consumer cooperatives, as defined in sections 6011.1 and 6012.1 of the Revenue and Taxation Code, are not subject to tax.

(b) NOMINAL AMOUNT.

(1) For purposes of this regulation, beginning January 1, ~~2011~~²⁰⁰⁶, the term "nominal amount" means an amount totaling ~~\$55~~^{\$50} or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2006 through December 31, 2010, the term "nominal amount" for purposes of this regulation means an amount totaling \$50 or less per year. For periods from January 1, 2001 through December 31, 2005, the term "nominal amount" for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term "nominal amount" for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2016~~²⁰¹¹ adjustment computation, the CCPI index on June 30, ~~2015~~²⁰¹⁰, will be compared with the CCPI index on June 30, ~~2010~~²⁰⁰⁵. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2020~~²⁰¹⁵ with the CCPI index on June 30, ~~2010~~²⁰⁰⁵.

**Regulation 1584
Nominal Amount Calculation**

	A	B	C	D	E
	(1)	(2)	(3)	(4)	(5)
Year	CCPI Index	CCPI % Change	Current Threshold	Adjusted Threshold	Adjusted Threshold (rounded to nearest \$5)
1995	154.2			40.00	\$40.00
2000	174.0	12.840%	40.00	45.14	\$45.00
2005	201.3	15.690%	45.00	52.06	\$50.00
2010	227.1	12.817%	50.00	56.41	\$55.00
2015			55.00	55.00	
2020			0.00	0.00	
2025			0.00	0.00	
2030			0.00	0.00	
2035			0.00	0.00	
2040			0.00	0.00	
2045			0.00	0.00	
2050			0.00	0.00	
2055			0.00	0.00	
2060			0.00	0.00	
2065			0.00	0.00	
2070			0.00	0.00	

(1) The factor used is the California Consumer Price Index as determined by the FTB pursuant to RTC section 17041. The CCPI is available at the Department of Industrial Relations website at www.dir.ca.gov.

(2) $\frac{\text{Current Year (A)} - \text{Prior Year (A)}}{\text{Prior Year (A)}}$

(3) Prior Year (E)
The base nominal amount in 1995 was \$40.

(4) $((B+1) * C)$

(5) Adjusted Threshold (D) rounded to nearest \$5.

Notes

** In September every five years, beginning in 2000, the Sales and Use Tax Department Regulations Coordinator computes the nominal amount adjustment for Regulation 1584.