

**Memorandum**

**To** : Mr. Ramon J. Hirsig  
Executive Director, MIC:73

**Date:** March 4, 2010

**From** : Kristine Cazadd, Chief Counsel  
Legal Department, MIC:83

**Subject** : Board Meeting — March 25, 2010  
Item J  
Chief Counsel's Rulemaking Calendar  
Regulation 1584, *Membership Fees*

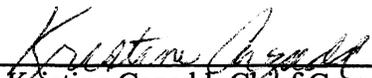
Sales and Use Tax Regulation 1584, *Membership Fees*, became effective on August 2, 1996, but the Board specified that the regulation was operative as of January 1, 1996, in subdivision (c). However, subdivision (c) is now obsolete and should be deleted because periods that began prior to January 1, 1996, are closed for purposes of both assessments and refunds. Therefore, we request your approval to place the proposed deletion of subdivision (c) on the Chief Counsel's Rulemaking Calendar for March 25, 2010, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. The change is appropriate for processing under Rule 100 because it deletes obsolete information from the regulation.

Attached is a strikeout and underline version of Regulation 1584 showing the deletion of subdivision (c).

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 324-2657.

Recommendation by:

Approved:

  
\_\_\_\_\_  
Kristine Cazadd, Chief Counsel

  
\_\_\_\_\_  
Ramon J. Hirsig, Executive Director

Approved:

BOARD APPROVED  
At the 3/25/10 Board Meeting

  
\_\_\_\_\_  
Randie L. Henry, Deputy Director  
Sales and Use Tax Department

  
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Diane Olson, Chief  
Board Proceedings Division

Attachments

cc (all with attachments):

Ms. Randie L. Henry (MIC 43)

Ms. Diane Olson (MIC 80)

Mr. Randy Ferris (MIC 82)

Mr. Bradley Heller (MIC 82)

Mr. Jeffrey L. McGuire (MIC 92)

Mr. Geoffrey E. Lyle (MIC 50)

Ms. Leila Hellmuth (MIC 50)

Ms. Lynn Whitaker (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, 2006, the term "nominal amount" means an amount totaling \$50 or less per year subject to increase as provided in subdivision (b)(2). 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, 2011 adjustment computation, the CCPI index on June 30, 2010, will be compared with the CCPI index on June 30, 2005. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, 2015 with the CCPI index on June 30, 2005.

~~(c) OPERATIVE DATE. The provisions of this regulation are operative January 1, 1996.~~