

Memorandum

To: Honorable Jerome E. Horton, Chairman
Senator George Runner, Vice Chair
Honorable Fiona Ma, CPA, Second District
Honorable Diane L. Harkey, Fourth District
Honorable Betty T. Yee, State Controller

Date: June 29, 2015

From: 
Randy Ferris
Chief Counsel

Subject: Board Meeting, July 28-29, 2015
Chief Counsel Report - Item M2
Delegation of Authority to Deputy Director, Special Taxes and Fees Department – Relief from Liability – Tax or Fee, Interest, and Penalties

Recommendation

Staff recommends that the Board delegate to the Deputy Director of the Special Taxes and Fees Department or his/her functional successor, and his/her designee, the authority to relieve a person of any special tax or fee, including any penalties and interest added thereto, imposed pursuant to a special tax or fee program administered by the Board, as authorized under Revenue and Taxation Code (RTC) sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, or 60210, as applicable.

The proposed delegation of authority is attached.

Background

A delegation¹ currently exists for the Deputy Director, Sale and Use Tax Department, and his/her designee, to relieve a taxpayer of any tax, including any penalties and interest added thereto, under RTC section 6596. It has come to staff's attention that this same authority has not been delegated to the Deputy Director of the Special Taxes and Fees Department, and his/her designee. This delegation would therefore make the delegations for relief of tax or fee, interest, and penalty based on reasonable reliance on written advice consistent for all relevant programs administered by the Board.

¹ Concurrently with the filing of this request, staff also filed a request recommending that the Board confirm and update the delegation to the Deputy Director of the Sales and Use Tax Department or his/her functional successor, and his/her designee, to account for the amendments that were made to California Code of Regulations, title 18, section (Regulation) 1705, *Relief from Liability* in 2014.

The Board administers special taxes and fees under the Motor Vehicle Fuel Tax Law (RTC, § 7301 et seq.), the Use Fuel Tax Law (RTC, § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC, § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC, § 32001 et seq.), the Energy Resources Surcharge Law (RTC, § 40001 et seq.), the Emergency Telephone Users Surcharge Act (RTC, § 41001 et seq.), the Hazardous Substances Tax Law (RTC, § 43001 et seq.), the Integrated Waste Management Fee Law (RTC, § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC, § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC, § 50101 et seq.), the Fee Collection Procedures Law (RTC, § 55001 et seq.), and the Diesel Fuel Tax Law (RTC, § 60001 et seq.). Those special tax and fee laws contain RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, or 60210 (hereafter collectively referred to as the authorizing statutes), which provide the Board with the authority to grant a person relief of any special tax or fee, including any penalties and interest added thereto, imposed under those special tax and fee laws, under certain circumstances.

Under subdivision (a) of the authorizing statutes the Board has the authority to relieve a person of special taxes or fees, and any penalty or interest added thereto, if the Board finds that the person's failure to make a timely return or payment is because of the person's reasonable reliance on written advice from the Board. Under subdivision (d) of the authorizing statutes, only the person making the written request is entitled to rely on the Board's written advice to that person.

Under subdivision (b) of the authorizing statutes, a person's failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that all of these conditions have been satisfied:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to a special tax or fee and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to the special tax or fee, or stated the conditions under which the activity or transaction is subject to the special tax or fee; and
- The special tax or fee liability due to the failure to make a timely return or payment applied to a particular activity or transaction that occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

California Code of Regulations, title 18, section (Regulation) 4902, *Relief from Liability*, implements, interprets, and makes specific the authorizing statutes. On February 5, 2003, the Board adopted Regulation 4902 to provide a single, detailed regulation with relief guidelines for all of the special tax and fee programs administered by the Board's Special Taxes and Fees Department under the special tax and fee laws. Regulation 4902 was specifically developed to mirror the relief provisions in Regulation 1705, *Relief from Liability*, which implements, interprets, and makes specific RTC section 6596. RTC section 6596 is substantially similar to the authorizing statutes, and Regulation 4902 incorporates all of Regulation 1705's previous amendments. In fact, like Regulation 1705, subdivisions (a) and (c) of Regulation 4902 were amended in 2014 to: (1) clarify that the presentation of a person's books and records for examination by an auditor shall be deemed to be a written request for the audit report "by the audited person and any person with shared accounting and common ownership with audited person"; and (2) clearly prescribe the circumstances under which a person has "shared accounting and common ownership with an audited person" and require that a person have shared accounting and common ownership with an

audited person during the periods that the person is entitled to rely on the audited person's audit report for relief pursuant to the authorizing statutes.

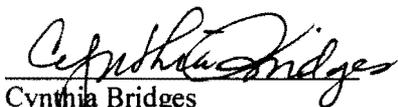
Thus, although Regulation 4902 was adopted and amended to conform to Regulation 1705, no delegation of authority has been issued to the Deputy Director of the Special Taxes and Fees Department to relieve a person of any special tax or fee, including any penalties and interest added thereto, imposed pursuant to a special tax or fee program administered by the Board and the authorizing statutes. This request would therefore make the delegations for relief of tax/fee, interest, and penalty based on written advice consistent for all relevant programs administered by the Board.

Therefore, in order to make the delegations for relief of tax/fee, interest, and penalty based on written advice consistent for all relevant programs administered by the Board, and to more efficiently facilitate administration of the Board's duties with respect to relieving a taxpayer or feepayer of any tax/fee, including any penalties and interest added thereto, pursuant to the authorizing statutes, we are seeking the delegation of authority to the Deputy Director of the Special Taxes and Fees Department or his/her functional successor, and his/her designee.

Recommended by:


Randy Ferris
Chief Counsel

Approved by:


Cynthia Bridges
Executive Director

BOARD APPROVED

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the July 28, 2015 Board Meeting


Joann Richmond, Chief
Board Proceedings Division

RMF:KDW:hp

Attachment: Delegation of Authority – Relief from Liability – Tax or Fee, Interest, and Penalties

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|-----|---------------------------|---------|
| cc: | Ms. Cynthia Bridges | MIC: 73 |
| | Ms. Amy Kelly | MIC: 82 |
| | Ms. Deborah Cooke Jackson | MIC: 82 |
| | Ms. Kimberly D. Willy | MIC: 82 |

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DELEGATION OF AUTHORITY – RELIEF FROM LIABILITY – TAX OR FEE, INTEREST, AND PENALTIES

The Board hereby delegates to the Deputy Director of the Special Taxes and Fees Department or his/her functional successor, and his/her designee, authority to relieve a taxpayer or feepayer of any tax or fee, including any penalties and interest added thereto, imposed pursuant to a special tax or fee program administered by the Board, as provided under California Code of Regulations, title 18, section 4902.

In any other cases, claims of relief based on reasonable reliance on written advice from the Board must be ruled upon by the Board Members.