



STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA, 95814
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CAROLE MIGDEN
First District, San Francisco
Chairwoman

CLAUDE PARRISH
Third District, Long Beach
Vice Chairman

BILL LEONARD
Second District, Ontario

JOHN CHIANG
Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

**STATE BOARD OF EQUALIZATION MEETING
450 N Street, Room 121, Sacramento
DECEMBER 14-15, 2004
NOTICE AND AGENDA**

RAMON J. HIRSIG
Executive Director

Tuesday, December 14, 2004

Agenda items occur sequentially. When circumstances warrant, the Chairwoman may modify the order of the items on the agenda.

BOARD COMMITTEE MEETINGS* (convene at 9:30 a.m.)

LEGISLATIVE COMMITTEEMs. Migden, Chairwoman

Suggestions for Property Taxes and Business Taxes (General, Sales and Use Taxes, and Special Taxes) legislation to be sponsored by the Board in the first year of the 2005-06 Legislative Session. Additional suggestions will be included on the agenda for January 2005.

➤ **2005 Legislative Proposals—Property Taxes**

- Amend Revenue and Taxation Code Sections 69, 69.3, 170, 171, 172, and 194 to replace references to a Governor declared “disaster” with “emergency.” (Housekeeping)
- Amend Revenue and Taxation Code Sections 63.1 and 69.5 to expressly provide that claim forms for the Parent-Child Exclusion and Elderly and Disabled Base Year Value Transfers are confidential in order to protect disclosure of a taxpayer’s social security number. (Housekeeping)
- Amend Revenue and Taxation Code Sections 214 and 214.8 to make corrective changes to the welfare exemption regarding eligible occasional users of tax exempt properties and limited liability companies. (Housekeeping)
- Amend Revenue and Taxation Code Section 480.4 to authorize the Board to prescribe the content and form of the preliminary change of ownership report, after consultation with the California Assessors’ Association. (Housekeeping)
- Amend Revenue and Taxation Code Sections 755 and 756 to add a needed reference to Section 100.9, related to allocation of tax. (Technical)
- Amend Revenue and Taxation Code Sections 11316 and 11336 to delete an obsolete reference to “declaration of intent” language. (Technical)
- Repeal Sections 38203.5 and 38907 of the Revenue and Taxation Code to delete obsolete date specific laws. (Technical)

- **2005 Legislative Proposals—Business Taxes (Sales and Use Taxes)**
 - Amend Section 16302.1 of the Government Code to increase the overpayment amount from “\$10.00 or less” to “\$20.00 or less” on amounts which can be applied to other amounts owed by the taxpayer or deposited to the appropriate fund in the State Treasury. (Housekeeping)

- **2005 Legislative Proposals—Business Taxes (Special Taxes)**
 - Amend Sections 9405, 9407, 9411, 9420 and 9432 of the Revenue and Taxation Code to properly reference the International Fuel Tax Agreement. (Housekeeping)
 - Amend Section 60603 of the Diesel Fuel Tax Law to allow the state to designate an inspection site for diesel fuel. (Housekeeping)
 - Amend Section 60043 of the Diesel Fuel Tax Law to eliminate the licensing and reporting requirements for government entities that use only tax-paid diesel fuel on the highway and have no tax liability. (Housekeeping)
 - Amend Section 30180 of the Cigarette and Tobacco Products Tax Law to allow for relief of penalty. (Housekeeping)

**CUSTOMER SERVICES AND.....Mr. Leonard, Chairman
ADMINISTRATIVE EFFICIENCY COMMITTEE**

Tax Amnesty Status Report

BUSINESS TAXES COMMITTEE.....Mr. Chiang, Chairman

Proposed regulation regarding requirements for Electronic Funds Transfer reporting, (Regulation 4905, Electronic Funds Transfer), and proposed regulations to cross refer tax and fee payers to proposed Regulation 4905 for information on payments by Electronic Funds Transfer (Regulations 1160, 1331.2, 4031.1, 2520, 2333, 2425, 3005, 3303, 2232.1, 1214, 3203, 3503, and 1425, Payment by Electronic Funds Transfer)

PROPERTY TAX COMMITTEE..... Mr. Parrish, Chairman

Petition to Amend Property Tax Rule 138, Exemption for Aircraft Being Repaired, Overhauled, Modified or Serviced

BOARD MEETING (convenes upon adjournment of the Board Committee Meetings)****ORGANIZATION OF THE BOARD****ORAL HEARINGS****A. CORPORATE FRANCHISE AND PERSONAL INCOME TAX HEARINGS**

- A1 Joseph and Sally Fernandez, 243530
For Appellant: Bill Shine, Accountant
Joseph Fernandez, Taxpayer
For Franchise Tax Board: Jeanne Sibert, Tax Counsel
- A2 Richard and Lori Randall, 260104
For Appellant: Broderick L. Jew, CPA
For Franchise Tax Board: Jeanne Sibert, Attorney
- A3 Paul W. Van Etten and Peng N. Van Etten, 257679
For Appellant: Paul W. Van Etten, Taxpayer
For Franchise Tax Board: Michael Smalley, Tax Counsel
- A4 Stanley A. Posey and Cherine L. Ang, 251556
For Appellant: Stanley A. Posey, Taxpayer
For Franchise Tax Board: Suzanne Small, Tax Counsel
- A5 Peoplesoft, Inc., 259799
For Appellant: Cathy Fleming, Representative
Karen Kenney, Representative
Patrick J. Carney, CPA
For Franchise Tax Board: Brian Miller, Tax Counsel
- A6 Rick Spain, 206124, 237220
For Appellant: Rick Spain, Taxpayer
For Franchise Tax Board: Mark McEvilly, Tax Counsel

B. SALES AND USE TAX APPEALS HEARINGS

- B1 Accubid Systems, Inc., 242469
For Petitioner: Mark Feigenbaum, CPA
Michael Bazzi, Attorney
For Department: Chris Schutz, Tax Counsel

- B2 La Mesa Blueprint, 157302
For Petitioner: Glenn Bystrom, CPA
Mark Legg, Taxpayer
Mohan Chandramohan, Taxpayer
For Department: Randy Ferris, Tax Counsel
- B3 Advanced Component Labs, Inc., 221384
For Petitioner: Michael Oswald, Taxpayer
For Department: Randy Ferris, Tax Counsel
- B4 Kathleen Lovell Lemons, 258455
For Claimant: Douglas Murken, Attorney
Kathleen L. Lemons, Taxpayer
For Department: Jeff Graybill, Tax Counsel

E. PROPERTY TAX APPEAL HEARINGS

- E1 Alpine PCS, Inc. (2746), 269687 – “CF”
For Petitioner: Michael Gendelman
For Department: Reed Schreiter, Tax Counsel
- E2a Delta Energy Center, LLC (1128), 270165 – “CF”
E2b Sutter Energy Center, aka Calpine Construction Finance, (1132), 270168 – “CF”
For Petitioner: Cliff Clement, Representative
Stephen Davis, Attorney
Fred Vance, Representative
For Department: Tim Treichelt, Tax Counsel
- E3 Elk Hills Power, LLC (1126), 270180 – “CF”
For Petitioner: Peter W. Michaels, Attorney
For Department: Tim Treichelt, Tax Counsel
- E4 High Desert Power Trust 2000-A (1127), 267687 – “CF”
For Petitioner: Charles J. Moll III, Attorney
Dannie A. Tobias, Representative
For Department: Tim Treichelt, Tax Counsel
- E5a Metcalf Energy Center LLC (1133), 270166 – “CF”
E5b Otay Mesa Energy Center (1134), 270164 – “CF”
For Petitioner: Cliff Clement, Representative
Stephen Davis, Attorney
Fred Vance, Representative
For Department: Tim Treichelt, Tax Counsel

- E6a Mirant Potrero, LLC (1108), 270432 – “CF”
 E6b Mirant Delta, LLC (1109), 270433 – “CF”
 For Petitioner: Randy Burns, Representative
 Del Kolke, Representative
 Kevin Smith, Representative
 For Department: Tim Treichelt, Tax Counsel
- E7 Pastoria Energy Center, LLC (1131), 270167 – “CF”
 For Petitioner: Cliff Clement, Representative
 Stephen Davis, Attorney
 Fred Vance, Representative
 For Department: Tim Treichelt, Tax Counsel
- E8 Pacific Bell Telephone Company (279), 268430 – “CF”
 For Petitioner: Eric Miethke, Attorney
 Carl Forbis, Representative
 For Department: Reed Schreiter, Tax Counsel
- E9 Covad Communications Company (7706), 269509 – “CF”
 For Petitioner: Amy Frees, Representative
 Peter Hladek, representative
 Ernie Dronenburg, Representative
 For Department: Shirley Johnson, Tax Counsel

F. PUBLIC HEARINGS

F1 **Proposed Amendments to Property Tax Rule 305.3, Application for Equalization under Revenue and Taxation Code section 469Ms. Cazadd**

Proposed amendments modify the definitions of property subject to escape assessment and the result of an audit.

F2 **Proposed Amendments to Property Tax Rule 1045, Annual Racehorse TaxMs. Cazadd**

Proposed amendments to increase tax liability amount for mandatory audits, make technical changes and delete provisions unrelated to an assessor's functions.

F3 **Proposed Amendments to Rules of Practice Regulations 5041, 5073, 5076, 5082.2Ms. Cazadd**

The amendments set forth more clearly the requirements for filing a valid petition for reassessment by state assessees and private railroad companies.

F4 Proposed Amendments to the State Board of Equalization's Conflict of Interest Code, Regulation 6001, General Provisions.....Ms. Ograd

Minor revisions are being made to Regulation 6001. Proposed changes to Appendix A reflect classification and organizational changes. Proposed changes to Appendix B add new programs administered by the Board.

F5 Timber Yield Tax Rate Mr. Hayes

The Revenue and Taxation Code requires that the Board adjust the timber yield tax rate in December of each year to the nearest one-tenth of one percent for the next calendar year. The adjustment is to be in the same proportion as the change from the previous tax year to the present one of the average general property tax rate in the rate adjustment counties.

F6 Timber Harvest ValuesMs. Stuckey

On or before December 31, the Board, after consultation with the Timber Advisory Committee and after public hearings held pursuant to the Administrative Procedure Act, shall designate areas containing timber having similar growing, harvesting and marketing conditions to be used as timber value areas for the preparation and application of immediate harvest values. (Revenue and Taxation Code section 38204.)

H. TAX PROGRAM NONAPPEARANCE MATTERS – ADJUDICATORY

H8 Property Tax Matters..... Mr. Gau

- Petitions for Reassessment of Unitary Value
 1. San Diego Gas & Electric Company (141), 270216 – “CF”
 2. Southern California Gas Company (149), 270311 – “CF”
 3. Verizon California, Inc., (201), 270170 – “CF”
 4. Citizens Telecommunications Company of California (284), 270169 – “CF”
 5. All American Pipeline, L.P., (465), 268361 – “CF”
 6. Duke Energy Moss Landing, (1103), 270191 – “CF”
 7. Duke Energy Morro Bay, LLC, (1104), 270193 – “CF”
 8. Cabrillo Power I, LLC, (1106), 270227 – “CF”
 9. Cabrillo Power II, LLC, (1107), 270724 – “CF”
 10. El Segundo Power LLC, (1110), 270302 – “CF”
 11. Long Beach Generation, LLC, (1111), 270305 – “CF”
 12. Allegiance Telecom of California, Inc. (7742), 269748 – “CF”
 13. Looking Glass Networks, Inc., (7861), 269855 – “CF”

- Petition for Reassessment of Private Railroad Car Tax
 - 14. Cryo-Trans, Inc. (5946), 283813 – “CF”
- Petition for Reassessment of Nonunitary Value
 - 15. Union Pacific Railroad Company (843), 283205 – “CF”

I. TAX PROGRAM NONAPPEARANCE MATTERS - NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

- I1 Property Taxes Matters Mr. Gau**
- Unitary Escaped Assessment
 - 1. New World Telecom International, Inc. (7967) – “CF”
 - 2. Utility Telephone, Inc. (7994) - “CF”

CHIEF COUNSEL MATTERS

J. Rulemaking

- Sales and Use Tax Ms. Thurston**

Section 100 Change to Regulations

- J1 Request for authorization to amend Sales and Use Tax Regulation 1525.2, Manufacturing Equipment
- J2 Request for authorization to amend Sales and Use Tax Regulation 1525.3, Manufacturing Equipment-Leases of Tangible Personal Property
- J3 Request for authorization to amend Sales and Use Tax Regulation 1566, Automobile Dealers and Salesmen
- J4 Request for authorization to amend Sales and Use Tax Regulation 1610, Vehicles, Vessels, and Aircraft
- J5 Request for authorization to amend Sales and Use Tax Regulation 1620, Interstate and Foreign Commerce
- J6 Request for authorization to amend Sales and Use Tax Regulation 1802, Place of Sales and Use for Purposes of Bradley Burns Uniform Local Sales and Use Taxes

- Special Tax Mr. Boyer**

- J7 *Emergency Regulation 4056.1, Expiration of Heat-Applied Decal Tax Stamps*

L. Property Tax.....Ms. Cazadd

- Board Consideration of Findings and Decisions
 - L1 Duke Energy Oakland LLC (1105), 270197
 - L2 Duke Energy South Bay, LLC (1118), 270198

ADMINISTRATIVE SESSION**N. Consent Agenda..... Ms. Pellegrini****N1 Approval of Board Employee Retirement Resolutions**

- Stephen E. Brown
- Theresa (Terri) Call
- Myra Davis
- Gail Finch
- Michael Fontana
- Charles Gentry
- Remona A. Giordano
- Kathleen P. Hodge
- Octavio Lee
- Joseph J. Nanut
- Lorna Perrigo
- Pedro Salas
- Robert Solomon

N2 Approval of Board Resolutions

- Gay Carlson
- Laura SooHoo

N3 Approval of Board Meeting Minutes

- September 21-22, 2004
- October 19, 2004

O. Board Committee Reports

- O1 Legislative Committee
- O2 Customer Services and Administrative Efficiency Committee
- O3 Business Taxes Committee
- O4 Property Tax Committee

P. Other Administrative Matters**P1 Executive Director's Report.....Mr. Hirsig**

Executive Director's opportunity to report on matters of interest to the Board.

1. AB 986 Legislative Analysts' Office Report to the Legislature
2. Fiscal Year 2005-06 Baseline Budget

P2 Offers-in-Compromise Recommendations.....Ms. Ograd

1. Michael and Christina Upton
2. Steve B. Spangle
3. Munir S. Haddad

ANNOUNCEMENT OF CLOSED SESSION..... Ms. Pellegrini**Q. Closed Session**

- Q1 Discussion and approval of staff recommendations regarding settlement cases (R&T Code Section 6901, 7093.5, 30459.1 and 50156.11)
- Q2 Pending litigation: *Consolidated Electrical, Inc. v. State Board of Equalization*, Los Angeles County Superior Court Case Nos. BC298450 & BC 310852 (Government Code Section 11126(e))
- Q3 Pending litigation: *Calpine Corporation v. State Board of Equalization, et al.*, Proposed Settlement Offer, San Diego Superior Court No. GIC 828751 (Government Code Section 11126(e))
- Q4 Discussion and action on personnel matters (Government Code Section 11126(a))

OPEN SESSION**ADJOURN**

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Deborah Pellegrini, Chief
Board Proceedings Division

* Public comment on any committee agenda item will be accepted at the beginning of the committee meeting.

** Public comment on any agenda item, other than a Closed Session item or an item which has already been considered by a Board Committee, will be accepted at that meeting.

"CF" Constitutional Function – The Deputy State Controller may not participate in this matter under Government Code section 7.9.

If substantial revisions to the published text of the regulations are approved at the hearing, the regulations will be re-published for a new hearing date. If only revisions sufficiently related to the published text of the regulations are approved, a notice containing these revisions will be mailed to those persons who commented orally or in

writing or who asked to be informed of such revisions. The notice will be mailed at least 15 days prior to the scheduled Board adoption of the regulations to allow time for additional comments.

Agenda items occur sequentially. When circumstances warrant, the Chairwoman may modify the order of items as they appear on the agenda. The hearing location is accessible to the disabled. If you require special assistance, please contact Gary Evans at (916) 445-4394, or e-mail Gary.Evans@boe.ca.gov , to make special arrangements.



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450 N Street, Room 121, Sacramento
DECEMBER 14-15, 2004
NOTICE AND AGENDA**

RAMON J. HIRSIG
Executive Director

Wednesday, December 15, 2004

Agenda items occur sequentially. When circumstances warrant, the Chairwoman may modify the order of the items on the agenda.

BOARD MEETING (convenes at 9:30 a.m.)**

B. SALES AND USE TAX APPEALS HEARINGS

- B1 Lightwave Electronics Corporation, 223053
For Claimant: Jon A. Sperring, Representative
Derick Brannan, Representative
For Department: Brad Heller, Tax Counsel
- B2 Grundfos US Holding Corporation, 209694
For Claimant: Ernest J. Dronenburg, Representative
David D. Goss, Attorney
Harvey M. Tatsumura, CPA
For Department: Brad Heller, Tax Counsel
- B3 Conextant Systems, Inc., 196556
For Claimant: Jon A. Sperring, Representative
Derick Brannan, Representative
For Department: Brad Heller, Tax Counsel

G. TAX PROGRAM NON-APPEARANCE MATTERS – CONSENT

- G1 Legal Appeals MattersMr. Levine**
 - Petition for Rehearing
 - 1. Kathreen Leann Writesman, 214649
 - Hearing Notice Sent – No Response
 - 2. Margaret Ann Barker-Early, 210206, -07, -09, -11, -12, -13, -15, -17, -19, -21, -23, 233919
 - 3. Caffe Verona, Inc., 240870

- Petitions for Release of Seized Property
 4. Bachint Singh Rathor and Neelam Kaur Rathor, 281364
 5. Ali M. Alawdi, 281363
 6. Judy Taing and Williams Seng Tain, 283261

G2 Franchise and Income Tax Matters..... Ms. Stanislaus

- Decisions
 1. Gordon Anderson, 249655
 2. Henry E. and Claudie L. Barnes, 260008
 3. Richard Beal, 254206
 4. Ronald Brekke, 224269
 5. David W. Carstetter, 263738
 6. Hong Chen, 251870
 7. Michael S. Cianciola, 258740
 8. Clayinvest, Inc., 249945
 9. Kyle and Kimberly Cooper, 267648
 10. John J. Deveno, Jr., 241050
 11. Clarence D. and Elaine Edwards, 258766
 12. Pete Fetting, 254014
 13. Frank E. Fish, 251228
 14. Brian J. Flynn, 253988
 15. Perseveranda M. Goins, 263184
 16. William Gomez, 246311
 17. Maxine Hall, 220767
 18. Sherrie D. Haney, 246253
 19. Bruce R. Harris, 251237
 20. Servando Hurtado, 251236
 21. Scott R. and Judith E. Martin, 253561
 22. Keyvan Masoudi, 259716
 23. Medsearch, Inc., 253647
 24. Jeffrey M. Michaels, 242563
Sandra L. Michaels, 242606
 25. Hung Ngo, 254210
 26. John and Dorothy Perez, 260702
 27. Greg A. Presco, 258167
 28. Phyllis A. Purcell, 261168
 29. Abraham G. Ramirez, 261929
 30. Gilbert A. Rodriguez, 253660
 31. Tommy Romanio and Deborah Romanio (Deceased), 252108
 32. Ahmed and Siham Saleem, 264057
 33. Roger D. Salera, 251023
 34. Thomas R. Schroeder, 250421
 35. Larry M. Sena, 253199
 36. Esteban Serrano, 249291
 37. Kenneth Shaw, 260959
 38. James P. Simpson, 250415
 39. Peter Skikos, 264062

40. Kenneth H. Strauss, 238362
41. John Thomas, 257710
42. Darrel Alan Travis, 254306
43. Mfon F. Udoisa, 254307
44. Michael Kenji Wakamiya, 250414
45. Graham Walker, 259422
46. Michael F. Walsh, 249341
47. Connie Watkins, 258567
48. Terry W. and Dawn W. Williamson, 241485
49. Antoine A. Zeigler, 257712
- Petitions for Rehearing
50. Estate of Jane L. Andrews, 224316
51. James and Jean A. Bagley, 217274
52. Burris and Glaus, Inc., 237016
53. Fakhradin and Laura Mirian, 198390
54. Kirk C. Odegaard, 203278
55. Wendell and Gerry Simmons, 241900
56. Lloyd and Joan Takasugi, 239341
57. Gwendolyn and Sam Wade, 237223
58. David C. Walker, 241996
59. William R. Walsh, 217872
60. Robert B. and Marjorie R. Whitman, 215139

G3 Homeowner and Renter Property Tax Assistance Matters Ms. Stanislaus

- Decisions
1. Alex Aflaki, 254519
2. Seda Ambartsumyan, 262237
3. Carol Ave-Lallemant, 252042
4. Jasper Bailey, 251837
5. Jessie Bair, 259431
6. Geraldine Ballo, 254529
7. Jeanne Beyer, 259433
8. Ebony Blake, 259869
9. Kenneth Borrás, 251834
10. Deborah Chandler, 250064
11. Tyler Chilcott-Marquez, 253860
12. Chris Colon, 257709
13. Araksi Dzheyranian, 254021
14. N. B. Guzman, 251433
15. Timothy Hampton, 257687
16. Barbara A. King, 259394
17. Martin McLain, 253624
18. Lorna Rae Moore, 252866
19. James J. Myers, 258861
20. Tan Thanh Nguyen, 264378
21. Sandra Ann Williams Parker, 253627
22. Valentina Y. Povazkova, 255908

23. Ermelinda Sanchez, 253658
24. Nancy M. Seeley, 257931
25. Jerry E. Sexton, 251754
26. Earnest Shortridge, 257926
27. Mark Sigal, 257927
28. Boris Slobodnyuk, et al., 255024
29. Sedrak Stepanpour, 257944
30. Anita Story, 256311
31. Samuel L. Toles, 260695
32. Tsangki Tsoi, 252180
33. Rebekah Viselli, 252607
Rachel Viselli, 252608
34. Latrice Walker, 253885
35. Paris Lee Wallace, 252923
Tyshon L. Harris, 252982
Passion L. Harris, 253248
36. Hsiu-Lin Wang, 257977
37. Aaron Weiss, 257981
38. Lawrence West, 252671
39. Julia Whitfield, 264525
40. Julie K. Williams, 252678
41. Pun Loi Wong, 262990
42. Wen Ying Yang, 258004
- Petitions for Rehearing
43. George W. Jordan, 244433
44. Earle L. Penn, 244182

G4 Sales and Use Taxes MattersMr. Young

- Redeterminations
 1. Compaq Computer Corporation, 172352
 2. Konica Quality Photo West, Inc., 187849
 3. Cosine Communications, Inc., 201822
 4. Pall Corporation, 258412
 5. El Dorado Stone LLC, 267046
- Relief of Penalty
 6. Lion Motors, Inc., 283471
 7. Golden State Supply Inc., 283319
 8. Banana Republic, LLC, 284755
 9. Old Navy LLC, 286451
- Denials of Claims for Refund
 10. American Express Travel Related Services Company, 285978
 11. Stein, Inc., 284243
 12. Car Rental Direct.Com, Inc., 205337
 13. Arman Vakili, 91283
 14. TA Operating Corporation, 285741
 15. Foundation Health Warehouse Company, 94057

G5 Sales and Use Taxes Matters – Credits, Cancellations, and Refunds.....Mr. Young

- Credits and Cancellations
 1. Hilton Supply Management, Inc., 283756
 2. Rialto Concrete Products, Inc., 283990
 3. Conexant Systems, Inc., 282281
 4. Tumi, Inc., 283734
 5. GTE Communication Systems Corporation, 285811
- Refunds
 6. Farmers Group Inc., 217684
 7. Deluxe Laboratories, Inc., 283464
 8. Pepperdine University, 207126
 9. Hydro-Aire Company, 223150
 10. Silver Star A.G., Ltd., 281278
 11. Mark Controls Corporation, 223148
 12. Chevron U.S.A., Inc., 265245
 13. Impac Medical Systems, Inc., 268736
 14. Scientific Technology Inc., 270611
 15. Import Motors Inc., 272102
 16. Freedom Acquisitions Inc. & et al, 266400
 17. LSI Logic Corporation, 221302
 18. Solano Imports Inc., 281357
 19. The Golden 1 Credit Union, 282338
 20. Monschein Industries, Inc., 282906
 21. Exxon Mobil Corporation, 253253
 22. Business Incentives, Inc., 284452
 23. Medline Industries, Inc., 168453
 24. American Express Travel Related Service Company, 187607
 25. Cerner Corporation, 253648
 26. Lanier Worldwide Inc., 285873
 27. Stein Inc., 139877
 28. Alcatel Networks, Inc., 283155
 29. Michael Sun, 267107
 30. Telfer Oil Company, 263628
 31. Siemens Subscriber Networks Inc., 145231
 32. Abbott Laboratories Inc., 237227
 33. Old Navy (California) LLC, 282901
 34. California National Bank, 186986
 35. Securitylink, Inc., 265405
 36. Gary M. Reynolds & Associates Inc., 238406
 37. Intermec Tech Corporation Norand Division, 282279
 38. Ciber, Inc., 217482
 39. Fibre Innovations LLC, 281729
 40. DaimlerChrysler Services North America LLC, 201774
 41. Kalypsys, Inc., 259001
 42. Dearden's, 282913
 43. Philip Morris USA Inc., 214190

44. H. J. Heinz Company, 283812
45. Mitsubishi Motors Credit America Inc., 201893
46. MDL Information Systems, Inc., 283214
47. Sacramento Credit Union, 266551
48. TA Operating Corporation, 257798
49. Bombardier Capital, Inc., 281766
50. Sun Microsystems Inc., 242273
51. Riverside County Federal Credit Union, 252026
52. Extreme Networks, 282219
53. Lobel Financial Corporation, 282339
54. Time Finance Company, 271447
55. Norton Community Credit Union, 261004
56. Water & Power Community Credit Union, 268386
57. Triton Acceptance Corporation, 268387
58. Heritage Community Credit Union, 268734

G6 Special Taxes Mr. Gau

- Denial of Claim for Refund
 1. NASA Oil Corporation, 238828
- Relief of Penalty
 2. Miller Brewing Company, 284077 – “CF”

G7 Special Taxes Matters – Credits, Cancellations, and Refunds Mr. Gau

- Credits and Cancellations
 1. Less Hassle, Inc., 241645
 2. Less Hassle, Inc., 284240
- Refunds
 3. Atlantic Richfield Company, 206946
 4. Ultramar Inc., 251975 – “CF”
 5. Exxonmobil Oil Corporation, 261813
 6. M V Transportation, 245295
 7. Sistema Internacional De Transportente De Auto, 286716
 8. Thrifty Payless, Inc., 284421
 9. Thrifty Payless, Inc., 284422
 10. Schieffelin Partner Inc., 287116 – “CF”

H. TAX PROGRAM NONAPPEARANCE MATTERS – ADJUDICATORY

H1 Legal Appeals Matters Mr. Levine

- Hearing Notice Sent – Appearance Waived
 1. Leslie Morrison, 193559, 193561
 2. Thomas W. Dolph, 239895
- Case Heard But Not Decided
 3. Von V. and Esther H. Riddle, 190913

H2 Franchise and Income Tax Matters Ms. Stanislaus

- Decisions
 1. Jason Barajas, 252223
 2. Rosemarie Williams, 217726
- Petition for Rehearing
 3. Shirley I. Niles, 221130

H4 Sales and Use Taxes MattersMr. Young

- Redetermination
 1. Conseco Finance Vendor Service Corporation, 198986
- Relief of Penalty
 2. Scholastic Book Clubs, Inc., 282261
 3. Sears-Roebuck and Company, 253144
 4. Oracle Corporation, 222767
 5. The Good Guys – California, Inc., 264813
- Denials of Relief of Penalty
 6. VW Credit Leasing Ltd., 249458
 7. Cannon Power Corporation, 264771

H5 Sales and Use Taxes Matters – Credits, Cancellations, and Refunds.....Mr. Young

- Credit and Cancellation
 1. Philip O. Hamilton, 252241
- Refunds
 2. Toyota Motor Sales, U.S.A. Inc., 132785
 3. Nissan North America, Inc., 269028
 4. Summit Medical Center, 268231
 5. American Suzuki Motor Corporation, 89000479330
 6. Western Container Corporation, 206150
 7. Piper Marbury Rudnick & Wolfe LLP, 250890

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* Public comment on any committee agenda item will be accepted at the beginning of the committee meeting.

** Public comment on any agenda item, other than a Closed Session item or an item which has already been considered by a Board Committee, will be accepted at that meeting.

"CF" Constitutional Function – The Deputy State Controller may not participate in this matter under Government Code section 7.9.

If substantial revisions to the published text of the regulations are approved at the hearing, the regulations will be re-published for a new hearing date. If only revisions sufficiently related to the published text of the regulations are approved, a notice containing these revisions will be mailed to those persons who commented orally or in writing or who asked to be informed of such revisions. The notice will be mailed at least 15 days prior to the scheduled Board adoption of the regulations to allow time for additional comments.

Agenda items occur sequentially. When circumstances warrant, the Chairwoman may modify the order of items as they appear on the agenda. The hearing location is accessible to the disabled. If you require special assistance, please contact Gary Evans at (916) 445-4394, or e-mail Gary.Evans@boe.ca.gov, to make special arrangements.

Memorandum

To : Mr. Timothy Boyer
Interim Executive Director – MIC: 73

Date: January 26, 2004

From : Ramon J. Hirsig, Deputy Director
Sales and Use Tax Department – MIC: 43

Subject : Regulation 1525.2, *Manufacturing Equipment*
Chief Counsel's Rulemaking Calendar -
February 18, 2004

I am requesting your approval to place proposed amendments to Regulation 1525.2, *Manufacturing Equipment*, on the Chief Counsel's Rulemaking Calendar for Board approval.

The reason for the revision is as follows: Revenue and Taxation Code section 6377 provided that the partial tax exemption would cease to be operative if the total employment in this state, as determined by the Employment Development Department (EDD), on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. According to EDD, non-aerospace manufacturing jobs fell below the 100,000 threshold on January 1, 2003. As a result, effective January 1, 2004, the partial exemption provided under this regulation expired. In addition, a non-substantive revision to Appendix B, *Section 6377 Manufacturer's Use Tax Declaration*, of the regulation is recommended for a technical correction. For legal and auditing purposes this regulation will remain in the Business Taxes Law Guide for a period of five years.

Attached are proposed amendments to the regulation, which reflect the above changes.

We request your approval to place the matter on the Chief Counsel's Rulemaking Calendar on February 18, 2004, for Board authorization to amend the regulation in accordance with Title 1, California Code of Regulations, section 100. Legal Department staff has advised us that these changes are without regulatory effect and are not subject to the normal public hearing process.

If you have any questions regarding this request, please let me know or contact Ms. Mariflor Jimenez at (916) 324-2952.

Attachment

Recommendation by:

/s/ Ramon J. Hirsig

Ramon J. Hirsig, Deputy Director

Approved:

Meeting

/s/ Jean Ogrod

Acting Chief Counsel
Legal Department

Approved:

/s/ Timothy Boyer

Timothy Boyer, Interim Executive Director

BOARD APPROVED

At the Board

Deborah Pellegrini, Chief
Board Proceedings Division

cc (all with attachment):
Acting Chief Counsel (MIC 83)
Ms. Deborah Pellegrini (MIC 81)
Ms. Janice Thurston (MIC 82)
Mr. John Waid (MIC 82)
Ms. Trecia Nieno (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Larry Bergkamp (MIC 44)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Lauren Simpson (MIC 50)
Ms. Cecilia Watkins (MIC 50)
Ms. Mariflor Jimenez (MIC 50)

Proposed Regulation 1525.2 MANUFACTURING EQUIPMENT

(a) PARTIAL EXEMPTION FOR PROPERTY PURCHASED FOR USE IN THE MANUFACTURING PROCESS.

Section 6377 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for certain properties described in this regulation.

For the period commencing on January 1, 1994, and ending on December 31, 1994, the partial exemption applies to the taxes imposed by the state (6%), but does not apply to the taxes imposed by counties, cities, and districts pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code §§ 7200, et seq.) or the Transactions and Use Tax Law (Rev. & Tax. Code §§ 7251, et seq.).

For the period commencing on January 1, 1995, and ending on December 31, 2000, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on December 31, 2003, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

Pursuant to the provisions of the Revenue and Taxation Code section 6377(g), the partial exemption from tax on the sale and use of property used in manufacturing and related activities as described in this regulation expired on December 31, 2003.

Subject to the limitations set forth above, this partial exemption applies to gross receipts from the sale, storage, use, or other consumption in this state of the following items:

(1) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point that raw materials are received by the qualified person and introduced into the process and ending at the point at which the property has been altered to its completed form, including packaging, if required. For purposes of this regulation:

(A) Raw materials will be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person's manufacturing activities are conducted. Raw materials that are stored on premises other than where the qualified person's manufacturing activities are conducted, however, will not be considered to have been introduced into the process for purposes of this regulation.

(B) For purposes of this regulation, the term "packaging" includes only that packaging necessary to prepare the goods for delivery to and placement in the qualified person's finished goods inventory, or to prepare the goods so that they are suitable for delivery to and placement in finished goods inventory. Any additional packaging, such as that packaging necessary to consolidate the goods prior to shipping or to protect them during transportation, shall not be considered to be "packaging" for purposes of this regulation.

(2) Tangible personal property purchased for use by a qualified person to be used primarily in research and development as defined in subdivision (c)(8).

(3) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in subdivision (a)(1) or (a)(2).

(4) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an

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

Proposed Amendments to Regulation 1525.2 (Continued)

integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process.

(b) PROPERTY USED PRIMARILY IN ADMINISTRATION, GENERAL MANAGEMENT, OR MARKETING.

Notwithstanding any other provision of this regulation, this partial exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing. For purposes of this subdivision:

(1) Tangible personal property is used primarily in administration, general management, or marketing when it is used 50 percent or more of the time in one or more of those activities.

(2) Tangible personal property used primarily to clean and maintain the factory floor of a manufacturing facility is used primarily in a stage of the manufacturing of property and is not used primarily in administration, general management, or marketing.

(3) Fire safety equipment that is tangible personal property and that is used primarily at and in connection with the factory floor of a manufacturing facility is used primarily in a stage of the manufacturing of property and is not used primarily in administration, general management, or marketing.

(c) DEFINITIONS. For purposes of this regulation:

(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property. For purposes of this regulation, "greater functionality" means that the tangible personal property has been improved so that it can perform new or different functions than the original property. Manufacturing includes logging, that is, the felling of timber, but does not include tree farming. Manufacturing does not include crop harvesting. Provided that the activity constitutes a "sale" as that term is used in subdivision (b) of section 6006 of the Revenue and Taxation Code, the tangible personal property need not be owned by the qualified person in order for the activity to qualify as manufacturing for purposes of this regulation.

(3) "Primarily" means that the tangible personal property is used 50 percent or more of the time in the designated activity or activities.

(4) "Process" means the period beginning at the point at which any raw materials are received by the qualified person and are introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person has altered tangible personal property to its completed form including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified person's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(5) "Processing" means the physical application of materials and labor to modify or change the characteristics of property.

(6) "Qualified person" means any person that satisfies the requirements of both subdivisions (c)(6)(A) and (c)(6)(B) below with regard to the trade or business in which the property will be placed into service in the use qualifying the property for this partial exemption:

(A) A "qualified person" must have first commenced trade or business activities in a new trade or business in this state on or after January 1, 1994. For purposes of this subdivision, the term "activities" means trade or business activities. In determining whether or not a person is qualified within the meaning of this subdivision, the following rules apply:

1. The term "trade or business activities" does not mean the mere formation or organization of a corporation or other business entity that is intended to conduct a trade or business. Instead, a corporation or business entity first conducts activities when it first starts or commences the trade or business for which it was

Proposed Amendments to Regulation 1525.2 (Continued)

organized. The acquisition of operating assets that are necessary to the type of business contemplated, however, will constitute commencing activities. The term "operating assets" as used in this subdivision means assets that are in a state of readiness to be placed in service within a reasonable time period following their acquisition.

2. Notwithstanding any other provision of this subdivision, a person will not be considered to have first commenced activities in a new trade or business in this state on or after January 1, 1994, if, at any time within the 36 months preceding that date, that person, or any related person, was required to have secured a seller's permit under section 6066 of the Revenue and Taxation Code for that trade or business, or any other trade or business classified under the same division of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (the "Manual"). For purposes of this regulation, the term "division" means a division as that term is used in the Manual.

3. A trade or business is not a new trade or business in this state if, within the 36 months preceding the date that activities were first commenced in that trade or business in this state, either the person claiming the partial exemption, or any related person, had conducted any activities in this state in any trade or business classified under the same division of the Manual as that trade or business.

4. Where a person, or any related person, is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (a "prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new trade or business if the additional trade or business activity is classified under a different division of the Manual than are any of the person's (or any related person's) current or prior trade or business activities in this state within the preceding 36 months.

5. Where a person, including all related persons, is engaged in trade or business activities wholly outside of this state and that person first commences doing business in this state (within the meaning of section 23101 of the Revenue and Taxation Code) after December 31, 1993 (other than by purchase or other acquisition described in subdivision (c)(6)(A)6.), the newly commenced trade or business activity in this state shall be treated as a new trade or business for purposes of this subdivision.

6. On or after January 1, 1995, notwithstanding anything else set forth in this subdivision, in any case where a person purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of the entity) that is doing business in this state (within the meaning of section 23101 of the Revenue and Taxation Code), the trade or business thereafter conducted by that person (or any related person) shall not be treated as a new trade or business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by that person (or any related person) in the conduct of his or her trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the person (or any related person) being used in the same trade or business both within and without this state. For purposes of this subdivision only:

a. The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the month following the quarterly period in which the person (or any related person) first uses any of the acquired trade or business assets in his or her business activity.

b. Any acquired assets that constitute property described in section 1221(a)(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in section 1221(a)(1) of the Internal Revenue Code in the hands of the acquiring person (or any related person).

c. The trade or business conducted in this state by the acquiring person after the asset acquisition date shall be considered to be the same as an out-of-state trade or business conducted or previously conducted by the acquiring person (or any related person) only if the trade or business activities of both companies are or would be classified in the same division of the Manual.

d. An acquired trade or business will not be considered to have been acquired as an existing trade or business for purposes of this subdivision if it is acquired either: (1) from a liquidation sale of assets pursuant to a bankruptcy filed under Chapter 7 of the United States Bankruptcy Code; or (2) pursuant to a creditor's execution or foreclosure sale of a secured interest in the assets of the trade or business.

Proposed Amendments to Regulation 1525.2 (Continued)

e. Example No. 1: Corporation X is doing business wholly outside of this state in the trade or business of manufacturing automobiles. The total fair market value of the total assets of this trade or business is \$100,000,000. Then, on or after January 1, 1994, Corporation X acquires all of the assets of an automobile manufacturing business in this state with a fair market value of \$5,000,000 and immediately uses the acquired assets in its automobile manufacturing trade or business. Thereafter, between the date of acquisition and the last day of the month following the quarterly period during which the acquisition occurred, Corporation X acquires another \$1,000,000 in assets for use in the automobile manufacturing business in this state. Under these assumed facts, the conditions set forth in this subparagraph will not serve to disqualify Corporation X from the partial exemption since the fair market value of the acquired assets does not exceed 20 percent ($\$5,000,000/\$106,000,000$) of the aggregate fair market value of the total assets of the trade or business being conducted by Corporation X; and neither Corporation X nor any related person had conducted any trade or business activities in this state within the preceding 36 months.

f. Example No. 2: Assume the same facts as in Example No. 1 above, but in this case, prior to acquiring the assets of the automobile manufacturing business in this state, Corporation X was solely and exclusively in the trade or business of providing data processing services. After the acquisition of the assets by Corporation X, however, the acquired assets will continue to be used in the automobile manufacturing business in this state. Assume further that no additional purchases are made after the date of acquisition. Under these assumed facts, since data processing services and automobile manufacturing are classified in different divisions of the Manual, the partial exemption will not be available to Corporation X because the fair market value of the acquired assets exceeds 20 percent ($\$5,000,000/\$5,000,000$) of the aggregate fair market value of the total assets held by Corporation X in the same trade or business.

7. In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the person as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business. For purposes of this subdivision only:

a. Example No. 1: Corporation X is doing business in this state. One of its trade or business activities in this state is manufacturing automobiles. After January 1, 1994, for consideration, Corporation X transfers all of the assets used in the trade or business of manufacturing automobiles to a newly-formed, wholly-owned subsidiary known as Corporation Y. For purposes of applying this regulation, this transaction shall be treated as an acquisition of an existing trade or business by Corporation Y.

b. Example No. 2: Partnership A is a manufacturer doing business in this state. After January 1, 1994, for consideration, Partnership A transfers all of its assets to a newly-formed corporation known as Corporation B. Corporation B is owned by the partners of Partnership A in the same proportionate ownership interests as their respective ownership interests in the partnership. For purposes of applying this regulation, this transaction shall be treated as an acquisition of an existing trade or business by Corporation B.

8. For purposes of this subdivision, a person is a "related person" if that person is or previously was related to the qualified person within the meaning of either section 267 or 318 of the Internal Revenue Code.

9. The term "acquire" shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(B) A qualified person must be engaged in those manufacturing lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition. For purposes of this subdivision:

1. For purposes of classifying a line or lines of business, the economic unit shall be the "establishment" and the classification of the line or lines of business will be based on the establishment's single most predominant activity based upon value of production. The term "establishment" means an economic unit, generally at a single physical location, where business is conducted or where services or manufacturing or other industrial operations are performed. The following will generally constitute an "establishment": a factory, mill, store, hotel, movie theater, mine, farm, ranch, bank, railroad depot, airline terminal, sales office, warehouse, or central administrative office.

2. For purposes of determining the "establishment" or "establishments" of a trade or business:

Proposed Amendments to Regulation 1525.2 (Continued)

a. Where distinct and separate economic activities are performed at a single physical location, such as construction activities operated out of the same physical location as a lumber yard, each activity should be treated as a separate establishment where: (i) no one industry description in the classification includes such combined activities; (ii) the employment in each such economic activity is significant; and (iii) separate reports are prepared on the number of employees, their wages and salaries, sales or receipts, property and equipment, and other types of financial data, such as financial statements, job costing, and profit center accounting. For purposes of this paragraph, whether or not employment in an economic activity is significant shall be based upon all of the facts and circumstances. Nevertheless, employment in an economic activity will be considered to be "significant" for purposes of this paragraph whenever more than 25 percent of the taxpayer's total number of employees at a single physical location, or more than 25 percent of the taxpayer's total dollar value of payroll at a single physical location, is attributable to the economic activity being tested for separate establishment status.

b. An establishment is not necessarily identical with the enterprise or company which may consist of one or more establishments. Also, an establishment is to be distinguished from subunits of the establishment such as departments.

c. Where a person conducts business at more than one establishment within the meaning of this subdivision, then that person shall be considered to be a "qualified person" for purposes of this regulation only as to those purchases that are intended to be used and are actually used in those lines of business that are described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(7) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(8) "Research and development" means those activities that are described in section 174 of the Internal Revenue Code or in any regulations thereunder.

(9) "Tangible personal property" does not include any of the following:

(A) Real property, including tangible personal property to be incorporated into an improvement to real property, except for "special purpose buildings and foundations" as defined in subdivision (c)(10)(D) and conveyance systems and assembly lines as provided in subdivision (c)(10)(A).

(B) Consumables with a normal useful life of less than one year, except as provided in subdivision (c)(10)(E). For purposes of this regulation, it shall be presumed tangible personal property that the qualified person treats as having a normal useful life of less than one year for state income or franchise tax purposes is tangible personal property with a normal useful life of less than one year. This presumption may be rebutted by evidence satisfactory to the Board.

(C) Furniture, inventory, equipment used in the extraction process, equipment used to store raw materials that have not yet entered or commenced the manufacturing process, or equipment used to store finished products that have completed the manufacturing process. The extraction process includes such severance activities as mining, oil and gas extraction.

(D) Any property for which a credit is claimed under either section 17053.49 or 23649 of the Revenue and Taxation Code.

(10) "Tangible personal property" includes but is not limited to the following:

(A) Machinery and equipment within the meaning of subdivision (a)(6) of Regulation 1521 of the Sales and Use Tax Regulations, including component parts and contrivances such as belts, shafts, moving parts, and operating structures. The term also includes conveyance systems and assembly lines without regard to the manner of affixation to real property.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, including both operating programs and application programs, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party. Any repair and replacement parts that the qualified person treats as having a useful life of less than one year for state income or franchise tax purposes

Proposed Amendments to Regulation 1525.2 (Continued)

shall be presumed to have a useful life of less than one year for purposes of this regulation. This presumption may be rebutted by evidence satisfactory to the Board.

(C) Property used in pollution control that meets or exceeds standards established by this state or any local or regional governmental agency within this state.

(D) Special purpose buildings and foundations that (i) are used as an integral part of the manufacturing, processing, refining, or fabricating process, or (ii) constitute a research facility used during the manufacturing process as an integral part of a manufacturing, processing, refining, or fabricating activity, or (iii) constitute a storage facility used during the manufacturing process as an integral part of a manufacturing, processing, refining, or fabricating activity. For purposes of this subdivision:

1. For purposes of this subdivision, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subdivision (a)(1) of this regulation (the qualified purpose).

2. A building is specifically designed and constructed or modified for a qualified purpose if it is not economic to design and construct the building for the intended purpose and then use the structure for a different purpose.

3. A building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. A use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualifying purpose.

4. In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subdivision.

5. Buildings and foundations that do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to, buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process.

6. For purposes of this subdivision, the term "integral part" means that the special purpose building or foundation (i) is used directly in the activity qualifying for the partial exemption from sales and use tax and (ii) is essential to the completeness of that activity. In determining whether property is used as an integral part of manufacturing, all properties used by the qualified person in processing the raw materials into the final product are properties used as an integral part of manufacturing.

(E) Fuels used or consumed in the manufacturing process.

(F) Property used in recycling.

(11) "Standard Industrial Classification" means a Standard Industrial Classification in the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(d) THREE-YEAR LIMITATION. Notwithstanding any other provision of this regulation, once a person has conducted business activities in a new trade or business for three or more years, that person will no longer be considered to be in a "new trade or business," nor "qualified" for this partial exemption.

(e) TAXES AS TO WHICH THE PARTIAL EXEMPTION DOES NOT APPLY. This partial exemption does not apply to any tax levied by a county, city, or district pursuant to, or in accordance with, either the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code §§ 7200 et seq.) or the Transactions and Use Tax Law (Rev. & Tax Code §§ 7251 et seq.).

On or after January 1, 1995, this partial exemption shall not apply to any tax levied pursuant to section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to section 35 of article XIII of the California Constitution.

Proposed Amendments to Regulation 1525.2 (Continued)

(f) EXEMPTION CERTIFICATES. Except as otherwise set forth in subdivision (f)(3), to claim the partial exemption provided by this regulation, a person must be both pre-qualified by the Board and either registered to hold a seller's permit or maintain a consumer use tax account. Exemption certificates issued to qualified persons will contain a control number and expiration date for verifying a person's status as a qualified person. An exemption certificate is not valid if it has not been issued by the Board or if it is accepted after the expiration date on the certificate. Qualified persons who have been pre-qualified may reproduce the issued certificates as needed for their qualifying purchases.

The exemption certificates issued by the Board will be in substantially the same form as they appear in Appendices A and B of this regulation. Qualified persons who purchase or lease tangible personal property from an in-state retailer or an out-of-state retailer obligated to collect the use tax must provide the retailer with a manufacturer's exemption certificate in order to claim the partial exemption. The manufacturer's use tax declaration must be completed by a qualified person to claim a partial exemption from use tax on purchases of tangible personal property from an out-of-state retailer not obligated to collect the use tax.

Solely for the purposes of this regulation, it is presumed that a seller accepts a manufacturer's exemption certificate from a prequalified purchaser in good faith in the absence of evidence to the contrary. A retailer's direct knowledge that the purchaser is not purchasing tangible personal property for use in a manufacturing activity, that the purchaser intends the tangible personal property for his or her own use, or that the tangible personal property does not have a normal useful life of one year or more constitutes evidence to the contrary. A purchaser providing a manufacturer's exemption certificate accepted in good faith by the seller for tangible personal property that does not qualify for this exemption is liable for the payment of tax as set forth in subdivision (h).

(1) MANUFACTURER'S EXEMPTION CERTIFICATES.

(A) In General. Except as otherwise provided in subdivisions (f)(1)(B) or (f)(3) of this regulation, or in section 6902.2 of the Revenue and Taxation Code, a partial exemption from sales or use tax shall not be allowed unless:

1. The qualified person furnishes the retailer with a manufacturer's exemption certificate no later than 60 days after the date of the purchase; and
2. The retailer timely files a sales and use tax return claiming the partial exemption and, together with that timely return, provides the Board with a copy of the manufacturer's exemption certificate.

(B) Exclusions. Except as provided in subdivision (f)(1)(C) below, retailers claiming the partial exemption in timely filed returns will not be required to furnish the Board with copies of manufacturer's exemption certificates for sales or leases of tangible personal property made by a retailer at any single physical location to a single qualified purchaser that do not exceed an aggregate total of \$25,000 during a single calendar quarter. Regardless of the total quarterly sales per purchaser, however, when necessary for the efficient administration of the sales and use tax law, the Board may, on 30 days' written notice, require a retailer to commence furnishing the Board with copies of all certificates on a quarterly basis pursuant to subdivision (f)(1)(A)2.

(C) Retention and Availability of Certificates. A retailer must retain each manufacturer's exemption certificate received from a qualified person for a period of four years from the date on which the retailer claims a partial exemption based on the exemption certificate.

Within 45 days of the Board's request, retailers must furnish to the Board any and all manufacturer's exemption certificates, or copies thereof, received from qualified persons, including exemption certificates for aggregate sales or leases of \$25,000 or less to a single qualified person made at any single physical location of the retailer during a single calendar quarter.

(2) MANUFACTURER'S USE TAX DECLARATION. Except as provided in section 6902.2 of the Revenue and Taxation Code, a partial exemption from the use tax shall not be allowed unless the qualified person:

(A) Timely files a sales and use tax return or consumer use tax return for the period in which the purchase occurs and timely pays any applicable tax in full that is excluded from this partial exemption as provided in subdivision (e) of this regulation; and

(B) Attaches a completed manufacturer's use tax declaration to the sales and use tax return or consumer use tax return that is timely filed with the Board.

(3) REFUND OF PARTIAL EXEMPTION.

Proposed Amendments to Regulation 1525.2 (Continued)

(A) For the period commencing on January 1, 1994, and ending on December 31, 1994, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a manufacturer's exemption certificate on or before March 31, 1995. The retailer must refund the tax directly to the purchaser or, at the purchaser's sole option, the purchaser may be credited with such amount. In the event that the retailer has already reported and paid the tax to the Board, the retailer must file a written claim for refund on or before April 30, 1995.

(B) A person who paid sales tax on a qualified sale or paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for such a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.

(4) CONSTRUCTION CONTRACTORS. In the case of a contractor who purchases property as an agent of a qualified person or for subsequent resale to a qualified person, the qualified person is deemed to be the purchaser for purposes of this subdivision.

(g) CONVERSION OF PROPERTY TO A USE NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), this partial exemption shall not apply to any sale of, or the storage, use, or other consumption in this state of property that, within one year from the later of the date of purchase of the property or the date that the property was first placed into service by the purchaser in an exempt use, is: (i) removed from this state, (ii) converted from an exempt use under this regulation to some other use not qualifying for the partial exemption, or (iii) used in a manner not qualifying for the partial exemption under this regulation. For purposes of this subdivision, property is converted to a use not qualifying for the partial exemption if, without limitation, the property, or any interest in the property, or possession or control of the property, is either directly or indirectly sold, transferred, leased, or assigned to a person who is not a qualified person on the date the property is sold, transferred, leased, or assigned to such nonqualified person. In the case of a corporation that, as a qualified person, purchases tangible personal property under this partial exemption and then, within one year from the later of the date of purchase of the property or the date that the property was first placed into service by that corporation in an exempt use, either directly or indirectly transfers that property to its parent corporation that is not a qualified person on the date of the transfer of property to the parent corporation, that property has been converted to a use not qualifying for the partial exemption.

(h) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX. If a purchaser submits a copy of a manufacturer's exemption certificate to the seller, and then within one year from the later of the date of purchase of the property or the date that the property was first placed into service by the purchaser in an exempt use, the purchaser either (i) removes that property from this state, (ii) converts that property from an exempt use under this regulation to some other use not qualifying for the partial exemption, or (iii) uses that property in a manner not qualifying for the partial exemption under this regulation, then, in that event, the purchaser shall be liable for payment of sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used; and the sales price of the property to the purchaser shall be deemed to be the gross receipts from that retail sale. For purposes of this subdivision, property is converted to a use not qualifying for the partial exemption if, without limitation, the property, or any interest in the property, or possession or control of the property, is either directly or indirectly sold, transferred, leased, or assigned to a person who is not a qualified person on the date the property is sold, transferred, leased, or assigned to such nonqualified person.

(i) LEASES TO QUALIFYING PERSONS.

(1) LEASES--IN GENERAL. Subject to all the limitations and conditions set forth in this regulation and regulation 1525.3, this partial exemption may apply to rental receipts paid by a qualified person with respect to a lease of tangible personal property to the qualified person, which tangible personal property is used as set forth in subdivisions (a)(1), (a)(2), (a)(3), or (a)(4) of this regulation.

(2) LEASES--ACQUISITION SALE AND LEASEBACK. A person will be regarded as having paid sales tax reimbursement or use tax with respect to that person's purchase of property, within the meaning of those words as

Proposed Amendments to Regulation 1525.2 (Continued)

they are used in section 6010.65 of the Revenue and Taxation Code, if the person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(3) **SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION.** If a person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rental receipts.

(j) OPERATIVE DATE. Except as expressly set forth otherwise in subdivisions (c)(6)(A)6. and (e) of this regulation, this regulation is operative as of January 1, 1994. All provisions of this regulation cease to be operative as of January 1, 2004, as provided by Revenue and Taxation Code section 6377(g). Retailers and qualified persons may not accept or claim any Section 6377 Manufacturer's Exemption Certificates for a sale or a use made after December 31, 2003.

Authority Cited: Section 7051, Revenue and Taxation Code.

Reference: Section 6377, Revenue and Taxation Code.

SECTION 6377 MANUFACTURER'S EXEMPTION CERTIFICATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

PLEASE NOTE

This is a partial exemption from sales and use taxes at the rate of 5% effective January 1, 2002, 4.75% from January 1, 2001 to December 31, 2001, and 5% from January 1, 1995 to December 31, 2000. You are not relieved from your obligations for the local and district taxes on this transaction. The exemption is specific to this transaction only and may not be construed to exempt other transactions. Generally, the partial exemption will not be allowed unless this certificate is issued within 60 days after the date of purchase and the retailer claims the exemption on a timely filed return. Void after expiration date. Retailers and qualified persons may not accept or claim any Section 6377 Manufacturer's Exemption Certificates for sales made after December 31, 2003. **Questions regarding this certificate should be directed to: [insert contact information]**

Valid Period Begins:
Valid Period Expires:
(*See below for leases)

I hereby certify that the tangible personal property described below and purchased or leased from:
(enter seller's/lessor's name and address)

SELLER'S NAME

SELLER'S ADDRESS (Street, City, State, Zip Code)

and will be used by me primarily (please check one)

- 1. for manufacturing, processing, refining, fabricating, or recycling, or
- 2. for research and development activities as described in Internal Revenue Code Section 174, or
- 3. to maintain, repair, measure, or test any property being used for (1) or (2) above, at my facility located
at (enter facility's address):

(Street, City, State, Zip Code)

SALES INVOICE NUMBER	SALES INVOICE DATE	DESCRIPTION OF QUALIFIED PROPERTY PURCHASED OR LEASED*	SALES PRICE/ RENTALS PAYABLE

I understand that if such property is, within one year from the date of purchase or lease, removed from California or converted for use or otherwise used in a manner not qualifying for the partial exemption that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. Taxable rentals payable from the lease of certain tangible personal property to a qualified person are subject to the partial exemption for a period of six years from the date of inception of the lease. The lease must commence during the time in which this Certificate is valid. *Attach a copy of the lease agreement.

PRINT NAME OF PURCHASER OR PURCHASER'S AUTHORIZED REPRESENTATIVE	TITLE
SIGNATURE	DATE PERMIT NUMBER

****NOT VALID UNLESS COMPLETED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION**

The following business has been registered as a "qualified person" who has certified that this purchase/lease of tangible personal property will be used

BUSINESS NAME	SIC CODE
BUSINESS ADDRESS (Street, City, State, Zip Code)	PERMIT NUMBER

****AUTHORIZED BY: (Must be signed by two Board representatives)**

REVIEWED BY	DATE
APPROVED BY	DATE

** WHEN COMPLETED AND SIGNED, THIS FORM MAY BE REPRODUCED FOR USE BY THE QUALIFIED PERSON LISTED ABOVE

Appendix A

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

SECTION 6377 MANUFACTURER'S USE TAX DECLARATION

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

PLEASE NOTE

This exemption being declared applies only to the state use tax which is at the rate of 5% effective January 1, 2002, 4.75% from January 1, 2001 to December 31, 2001, and 5% from January 1, 1995 to December 31, 2000, and is specific to this transaction only and may not be construed to exempt other transactions. As the purchaser, you remain liable for the applicable local and district taxes. To claim the exemption, this declaration must accompany a timely filed sales and use tax return for the period of purchase. Void after expiration date. Retailers and qualified persons may not accept or claim any Section 6377 Manufacturer's Exemption Certificates for a sale or a use made after December 31, 2003. **Questions regarding this certificate should be directed to: [insert contact information]**

Certificate No: Valid Period Begins: Valid Period Expires: (*See below for leases)
--

I hereby certify that the tangible personal property described below that is subject to use tax was purchased or is being leased from:
(enter seller's/lessor's name and address)

SELLER'S NAME _____

SELLER'S ADDRESS (Street, City, State, Zip Code) _____

and will be used by me primarily (please check one)

- 1. for manufacturing, processing, refining, fabricating, or recycling, or
- 2. for research and development activities as described in Internal Revenue Code Section 174, or
- 3. to maintain, repair, measure, or test any property being used for (1) or (2) above, at my facility located at (enter facility's address):

(Street, City, State, Zip Code)

SALES INVOICE NUMBER	SALES INVOICE DATE	DESCRIPTION OF PROPERTY PURCHASED OR LEASED*	SALES PRICE/ RENTALS PAYABLE

I understand that if such property is, within one year from the date of purchase or lease, removed from California or converted for use or otherwise used in a manner not qualifying for the partial exemption that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. Taxable rentals payable from the lease of certain tangible personal property to a qualified person are subject to the partial exemption for a period of six years from the date of inception of the lease. The lease must commence during the time in which this Certificate is valid. *Attach a copy of the lease agreement.

PRINT NAME OF PURCHASER OR PURCHASER'S AUTHORIZED REPRESENTATIVE	TITLE
SIGNATURE	DATE
	PERMIT NUMBER

**** NOT VALID UNLESS COMPLETED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION**

The following business has been registered as a "qualified person" who has certified that this purchase/lease of tangible personal property will be used in a manner entitling them to the exemption provided in Section 6377 of the Revenue and Taxation Code.

BUSINESS NAME	SIC CODE
BUSINESS ADDRESS (Street, City, State, Zip Code)	PERMIT NUMBER

****AUTHORIZED BY: (Must be signed by two Board representatives)**

REVIEWED BY	DATE
APPROVED BY	DATE

** WHEN COMPLETED AND SIGNED, THIS FORM MAY BE REPRODUCED FOR USE BY THE QUALIFIED PERSON LISTED ABOVE

Appendix B
