



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION  
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State Controller

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Executive Director

January 22, 2010

To Interested Parties:

### Notice of Proposed Regulatory Action

#### The State Board of Equalization Proposes to Adopt California Code of Regulations, Title 18, Sections

**1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**1336, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**1422.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**2251, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**2303.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**2433, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**2571, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**3022, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**3302.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
**4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability***

#### NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code sections (sections) 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt California Code of Regulations, title 18, section (Regulation) 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*. The proposed regulation will implement, interpret, and make specific Revenue and Taxation Code sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 (for ease of expression, hereafter,

collectively “new relief statutes”), which authorize the Board to relieve an innocent spouse, including a registered domestic partner, from liability for the particular taxes or fees to which the statutes pertain and provide the criteria upon which such relief may be based. Further, the proposed regulation implements, interprets, and makes specific sections 8101-8131, 9151-9156, 11551-11555, 30361-30384, 32401-32407, 38601-38607, 40111-40117, 41100-41106, 43451-43456, 45651-45656, 46501-46507, 50139-50142.2, 55221-55226, and 60501-60512 by clarifying that they apply to refunds that might be claimed under proposed Regulation 4903. The proposed regulation also implements, interprets, and makes specific Family Code sections 297, 297.5, and 308 defining registered domestic partners, the rights of registered domestic partners, and the recognition of marriages contracted outside of California, respectively.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, and Use Fuel Tax Law (for ease of expression, hereafter, collectively, “applicable special tax and fee laws”). Therefore, the Board also proposes, to adopt cross-referencing Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, “cross-referencing regulations”). These cross-referencing regulations will be located in other chapters in title 18 that correspond with each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. The Board proposes to adopt the cross-referencing regulations pursuant to the following statutory authorities in order to implement, interpret, and make specific the following statutes, in addition to Family Code sections 297, 297.5, and 308:

<b>Regulation</b>	<b>Authority</b>	<b>Reference</b>
Regulation 1004	Section 11651	Sections 11408.5 and 11551-11555
Regulation 1032	Section 38701	Sections 38454.5 and 38601-38607
Regulation 1124.1	Section 8251	Sections 7657.5 and 8101-8131
Regulation 1249	Section 50152	Sections 50112.6 and 50139-50142.2
Regulation 1336	Section 9251	Sections 8880 and 9151-9156
Regulation 1422.1	Section 60601	Sections 60210.5 and 60501-60512
Regulation 2251	Section 46601	Sections 46159 and 46501-46507
Regulation 2303.1	Section 40171	Sections 40105 and 40111-40117

Regulation 2433	Section 41128	Sections 41099 and 41100-41106
Regulation 2571	Section 32451	Sections 32258 and 32401-32407
Regulation 3022	Section 43501	Sections 43159.1, 43159.2, and 43451-43456
Regulation 3302.1	Section 45851	Sections 45158 and 45651-45656
Regulation 3502.1	Section 55301	Sections 55045.1 and 55221-55226
Regulation 4106	Section 30451	Sections 30285 and 30361-30384

A public hearing on the proposed adoption of Regulation 4903 and the cross-referencing regulations will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed regulations. In addition, if the Board receives written comments prior to the hearing on March 23, 2010, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed regulations.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **Current Law**

In 1993, section 6456 was enacted to authorize the Board to grant innocent spouse and other equitable relief from sales and use tax liabilities to qualified spouses, under regulations prescribed by the Board. (Stats. 1993, ch. 181.) In 1997, the Board adopted Regulation 1705.1<sup>1</sup> to implement, interpret, and make specific section 6456 with respect to sales and use tax liabilities. Then, in January 2007, the Board added subdivision (j) to Regulation 1705.1 to recognize that on and after January 1, 2005, registered domestic partners have the same rights, protections and benefits under the law as are granted to and imposed upon spouses, including the ability to qualify for relief under section 6456. (Fam. Code, §§ 297 and 297.5.)

The new relief statutes are comparable to section 6456. They were enacted in March 2007 (Stats. 2007, ch. 342) to authorize the Board to grant innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws to qualified spouses and registered domestic partners, under regulations prescribed by the Board, effective January 1, 2008. However, the Board has not adopted regulations to implement, interpret, and make specific the provisions of the new relief statutes.

### **Proposed Regulations**

The Board proposes to adopt Regulation 4903, which is comparable to Regulation 1705.1, to prescribe the procedures and criteria for relieving an innocent spouse or

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<sup>1</sup> Regulation 1705.1 is available at [www.boe.ca.gov/pdf/reg1705-1.pdf](http://www.boe.ca.gov/pdf/reg1705-1.pdf).

registered domestic partner from liability under the applicable special tax and fee laws. Regulation 4903, subdivision (a), lists the general requirements that a spouse or registered domestic partner claiming relief must meet in order to be relieved from liability for the applicable special taxes and fees. Specifically, the claimant must establish that:

- The liability is attributable to the nonclaiming spouse or registered domestic partner;
- The claimant did not know of, and a reasonably prudent person in the claimant's circumstances would not have had reason to know of, the liability; and
- It would be inequitable to hold the claimant liable for the liability, taking into account whether the claimant significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 4903, subdivision (b), defines the term "benefitted," as it is used in the phrase "benefitted directly or indirectly." Regulation 4903, subdivision (c), defines the term "attribution," as it is used in the phrase "attributable to the nonclaiming spouse."

Regulation 4903, subdivision (d), provides that, if a spouse or registered domestic partner chooses to claim relief under the regulation, the request must be in writing and set forth the tax or fee account number, the period for which relief is requested, and the specific grounds on which the request for relief is based.

Regulation 4903, subdivision (e), clarifies the statute of limitations that applies to claims for relief from liability under the regulation, and subdivision (f) explains that refunds of taxes and fees are subject to the more specific statutory requirements provided by the relevant provisions in the applicable tax and fee laws. Regulation 4903, subdivision (g), clarifies that Regulation 4903 is retroactive to liabilities arising prior to January 1, 2008.

Regulation 4903, subdivision (h), explains that the Board may still relieve a claimant from liability if, taking into account all the facts and circumstances, it would be inequitable to hold the claimant liable for an amount attributable to an item for which relief is not available under subdivisions (a) through (d), described above. Subdivision (h) also sets forth the criteria for equitable relief and lists the non-exclusive factors the Board may consider in deciding whether to grant or deny equitable relief.

Regulation 4903, subdivision (i), provides that the Board must notify a nonclaiming spouse or registered domestic partner by mail when his or her spouse or registered domestic partner files a claim for relief from liability and include the basis for the claim.

Regulation 4903, subdivision (j), clarifies that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties, as are granted to and imposed upon spouses and thereby

makes all of the provisions applicable to spouses applicable to registered domestic partners.

The specific purpose of proposed Regulation 4903 is to specify the requirements for claiming and granting innocent spouse and other equitable relief from liabilities incurred under the applicable special tax and fee laws. Proposed Regulation 4903 is necessary to prescribe the requirements for claiming and granting innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under all the applicable special tax and fee laws. Therefore, the Board also proposes to adopt the cross-referencing regulations, which will be located in other chapters in title 18 that specifically apply to each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. Therefore, the specific purpose of the proposed cross-referencing regulations is to refer taxpayers to the operative provisions in Regulation 4903; and these cross-referencing regulations are necessary to ensure that taxpayers can easily locate Regulation 4903 in chapter 9.9, Special Taxes Administration-Miscellaneous.<sup>2</sup>

## COMPARABLE FEDERAL REGULATIONS AND STATUTES

Portions of the new relief statutes are comparable to portions of section 6015 of title 26 of the United State Code (Internal Revenue Code) and portions of proposed Regulation 4903 are comparable to portions of sections 1.6015-1 through 1.6015-8 of title 26 (Internal Revenue) of the Code of Federal Regulations pertaining to innocent spouse relief and equitable relief. The comparable provisions in Regulation 4903 and the federal regulations do not differ significantly, however, Regulation 4903, subdivision (e), pertaining to the statute of limitations for submitting claims, is slightly more favorable to the claimant than the comparable federal provision. (See 26 U.S.C.S. § 6015(b)(1)(E); and 26 C.F.R. § 1.6015.5(b)(1).) The proposed cross-referencing regulations do not have comparable federal regulations.

The significant differences between the new relief statutes and Internal Revenue Code section 6015 and significant differences between Regulation 4903 and the relevant federal regulations are due to differences in California and federal law that are not related to innocent spouse relief and equitable relief. For example, federal law does not allow registered domestic partners to file joint federal returns and therefore registered domestic partners cannot receive federal innocent spouse or equitable relief; and California law provides its own procedures for appealing liabilities imposed under the applicable special tax and fee laws.

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<sup>2</sup> The Board followed a consistent approach when it adopted Regulation 4902, *Relief from Liability*, and Regulations 1124, 1248, 1335, 1422, 2250, 2303, 2432, 2570, 3021, 3302, 3502, and 4105, *Relief from Liability*, which cross-reference Regulation 4902.

### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that proposed Regulation 4903 and the proposed cross-referencing regulations do not impose a mandate on local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

The Board has determined that proposed Regulation 4903 and the proposed cross-referencing regulations will result in no direct or indirect cost or savings to any state agency, no costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or any other non-discretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

### **NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The new relief statutes are comparable to section 6456. Proposed Regulation 4903 is consistent with the new relief statutes and Regulation 1705.1, which implements, interprets, and makes specific section 6456. Furthermore, the proposed cross-referencing regulations provide cross-references to Regulation 4903. Therefore, the Board has made an initial determination that proposed Regulation 4903 and the proposed cross-referencing regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

### **NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This is because the proposed regulations do not impose any fees.

### **RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has determined that the adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

## **NO SIGNIFICANT EFFECT ON HOUSING COSTS**

Adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will not have a significant effect on housing costs.

## **DETERMINATION REGARDING ALTERNATIVES**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

## **CONTACT PERSONS**

Questions regarding the substance of the proposed amendments should be directed to Ms. Carolee D. Johnstone, Tax, Counsel III (Specialist), by telephone at (916) 323-7713, by e-mail at *Carolee.Johnstone@boe.ca.gov*, or by mail at State Board of Equalization, Attn: Carolee D. Johnstone, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Acting Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at *Richard.Bennion@boe.ca.gov*, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared an Initial Statement of Reasons and an underscored version of proposed Regulation 4903 and the proposed cross-referencing regulations showing their express terms. These documents and all information on which the proposed regulations are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the Initial Statement of Reasons are also available on the Board's Website at *www.boe.ca.gov*.

## **SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8**

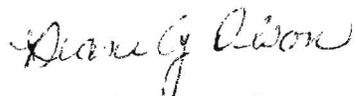
The Board may adopt proposed Regulation 4903 and the proposed cross-referencing regulations with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on

notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made to a proposed regulation, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

#### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts proposed Regulation 4903 and the proposed cross-referencing regulations, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

Sincerely,



Diane G. Olson, Chief  
Board Proceedings Division

DGO:reb

Enclosures

## Initial Statement of Reasons

### Proposed Adoption of California Code of Regulations, Title 18, Sections

*1004, Innocent Spouse or Registered Domestic Partner Relief from Liability*  
*1032, Innocent Spouse or Registered Domestic Partner Relief from Liability*  
*1124.1, Innocent Spouse or Registered Domestic Partner Relief from Liability*  
*1249, Innocent Spouse or Registered Domestic Partner Relief from Liability*  
*1336, Innocent Spouse or Registered Domestic Partner Relief from Liability*  
*1422.1, Innocent Spouse or Registered Domestic Partner Relief from Liability*  
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*3502.1, Innocent Spouse or Registered Domestic Partner Relief from Liability*  
*4106, Innocent Spouse or Registered Domestic Partner Relief from Liability*  
*4903, Innocent Spouse or Registered Domestic Partner Relief from Liability*

#### SPECIFIC PURPOSE AND NECESSITY

##### Current Law

In 1993, Revenue and Taxation Code section (section) 6456 was enacted to authorize the Board to grant innocent spouse and other equitable relief from sales and use tax liabilities to qualified spouses, under regulations prescribed by the Board. (Stats. 1993, ch. 181.) In 1997, the Board adopted California Code of Regulations, title 18, section (Regulation) 1705.1<sup>1</sup> to implement, interpret, and make specific section 6456 with respect to sales and use tax liabilities. Then, in January 2007, the Board added subdivision (j) to Regulation 1705.1 to recognize that on and after January 1, 2005, registered domestic partners have the same rights, protections, and benefits under the law as are granted to and imposed upon spouses, including the ability to qualify for relief under section 6456. (Fam. Code, §§ 297 and 297.5.)

Sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 (for ease of expression, hereafter, collectively “new relief statutes”), which are comparable to section 6456, were enacted in March 2007 (Stats. 2007, ch. 342) to authorize the Board to grant innocent spouse and other equitable relief from liabilities imposed under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous

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<sup>1</sup> Regulation 1705.1 is available at [www.boe.ca.gov/pdf/reg1705-1.pdf](http://www.boe.ca.gov/pdf/reg1705-1.pdf).

Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, and Use Fuel Tax Law (for ease of expression, hereafter, collectively, “applicable special tax and fee laws”) to qualified spouses and registered domestic partners, under regulations prescribed by the Board, effective January 1, 2008. However, the Board has not adopted regulations to implement, interpret, and make specific the provisions of the new relief statutes.

## **Proposed Regulations**

The Board proposes to adopt Regulation 4903, which is comparable to Regulation 1705.1, to prescribe the procedures and criteria for relieving an innocent spouse or registered domestic partner from liability under the applicable special tax and fee laws. Regulation 4903, subdivision (a), lists the general requirements that a spouse or registered domestic partner claiming relief must meet in order to be relieved from liability for the applicable special taxes and fees. Specifically, the claimant must establish that:

- The liability is attributable to the nonclaiming spouse or registered domestic partner;
- The claimant did not know of, and a reasonably prudent person in the claimant’s circumstances would not have had reason to know of, the liability; and
- It would be inequitable to hold the claimant liable for the liability, taking into account whether the claimant significantly benefitted directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 4903, subdivision (b), defines the term “benefitted,” as it is used in the phrase “benefitted directly or indirectly.” Regulation 4903, subdivision (c), defines the term “attribution,” as it is used in the phrase “attributable to the nonclaiming spouse.”

Regulation 4903, subdivision (d), provides that, if a spouse or registered domestic partner chooses to claim relief under the regulation, the request must be in writing and set forth the tax or fee account number, the period for which relief is requested, and the specific grounds on which the request for relief is based.

Regulation 4903, subdivision (e), clarifies the statute of limitations that applies to claims for relief from liability under the regulation, and subdivision (f) explains that refunds of taxes and fees are subject to the more specific statutory requirements provided by the relevant provisions in the applicable tax and fee laws. Regulation 4903, subdivision (g), clarifies that Regulation 4903 is retroactive to liabilities arising prior to January 1, 2008.

Regulation 4903, subdivision (h), explains that the Board may still relieve a claimant from liability if, taking into account all the facts and circumstances, it would be inequitable to hold the claimant liable for an amount attributable to an item for which relief is not available under subdivisions (a) through (d), described above. Subdivision (h) also sets forth the criteria for equitable relief and lists the non-exclusive factors the Board may consider in deciding whether to grant or deny equitable relief.

Regulation 4903, subdivision (i), provides that the Board must notify a nonclaiming spouse or registered domestic partner by mail when his or her spouse or registered domestic partner files a claim for relief from liability and include the basis for the claim.

Regulation 4903, subdivision (j), clarifies that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties, as are granted to and imposed upon spouses and thereby makes all of the provisions applicable to spouses applicable to registered domestic partners.

The specific purpose of proposed Regulation 4903 is to specify the requirements for claiming and granting innocent spouse and other equitable relief from liabilities incurred under the applicable special tax and fee laws. Proposed Regulation 4903 is necessary to prescribe the requirements for claiming and granting innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under all the applicable special tax and fee laws. Therefore, the Board also proposes to adopt cross-referencing Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, “cross-referencing regulations”), which will be located in other chapters in title 18 that specifically apply to each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. The Board proposes to adopt the cross-referencing regulations pursuant to the following statutory authorities in order to implement, interpret, and make specific the following statutes, in addition to Family Code sections 297, 297.5, and 308:

<b>Regulation</b>	<b>Authority</b>	<b>Reference</b>
Regulation 1004	Section 11651	Sections 11408.5 and 11551-11555
Regulation 1032	Section 38701	Sections 38454.5 and 38601-38607
Regulation 1124.1	Section 8251	Sections 7657.5 and 8101-8131

Regulation 1249	Section 50152	Sections 50112.6 and 50139-50142.2
Regulation 1336	Section 9251	Sections 8880 and 9151-9156
Regulation 1422.1	Section 60601	Sections 60210.5 and 60501-60512
Regulation 2251	Section 46601	Sections 46159 and 46501-46507
Regulation 2303.1	Section 40171	Sections 40105 and 40111-40117
Regulation 2433	Section 41128	Sections 41099 and 41100-41106
Regulation 2571	Section 32451	Sections 32258 and 32401-32407
Regulation 3022	Section 43501	Sections 43159.1, 43159.2, and 43451- 43456
Regulation 3302.1	Section 45851	Sections 45158 and 45651-45656
Regulation 3502.1	Section 55301	Sections 55045.1 and 55221-55226
Regulation 4106	Section 30451	Sections 30285 and 30361-30384

The specific purpose of the proposed cross-referencing regulations is to refer taxpayers to the operative provisions in Regulation 4903; and these cross-referencing regulations are necessary to ensure that taxpayers can easily locate Regulation 4903 in chapter 9.9, Special Taxes Administration-Miscellaneous.<sup>2</sup>

## DOCUMENTS RELIED UPON

The Board relied upon a staff memorandum dated November 20, 2009, requesting Board authorization to begin the formal rulemaking process to add Regulation 4903 and the cross-referencing regulations to title 18 of the California Code of Regulations (November 20, 2009) and on comments from Board staff made during the Board's December 16, 2009, meeting in deciding to propose the adoption of Regulation 4903 and the cross-referencing regulations. The memorandum is available on the Board's Web site at [www.boe.ca.gov/meetings/pdf/Item\\_J2\\_\\_121509.pdf](http://www.boe.ca.gov/meetings/pdf/Item_J2__121509.pdf). The audio and video from the Board's December 16, 2009, meeting are available on the Board's Website at [www.visualwebcaster.com/event.asp?id=53991](http://www.visualwebcaster.com/event.asp?id=53991).

## ALTERNATIVES CONSIDERED

The Board considered whether it would be more appropriate to take no action as an alternative to adopting proposed Regulation 4903 and the cross-referencing regulations, during the Board's December 16, 2009, meeting. The Board decided to propose the adoption of Regulation 4903 and the cross-referencing regulations because the Board is required to do so by the new relief statutes added to the applicable special tax and fee laws effective January 1, 2008, and

<sup>2</sup> The Board followed a consistent approach when it adopted Regulation 4902, *Relief from Liability*, and Regulations 1124, 1248, 1335, 1422, 2250, 2303, 2432, 2570, 3021, 3302, 3502, and 4105, *Relief from Liability*, which cross-reference Regulation 4902.

the regulations are necessary to implement, interpret, and make specific those statutes.

### **NO ADVERSE ECONOMIC IMPACT ON BUSINESS**

The new relief statutes are comparable to section 6456. Proposed Regulation 4903 is consistent with the new relief statutes and Regulation 1705.1, which implements, interprets, and makes specific section 6456. Furthermore, the proposed cross-referencing regulations provide cross-references to Regulation 4903. Therefore, the Board has made an initial determination that proposed Regulation 4903 and the proposed cross-referencing regulations will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

**Proposed Text of California Code of Regulations,  
Title 18, Sections**

**1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability***  
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**1004. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the private railroad car tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 11651, Revenue and Taxation Code. Reference: Sections 11408.5 and 11551-11555, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

**1032. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the timber yield tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 38701, Revenue and Taxation Code. Reference: Sections 38454.5 and 38601-38607, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

**1124.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the motor vehicle fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7657.5 and 8101-8131, Revenue and Taxation Code; Sections 297, 297.5 and 308, Family Code.

**1249. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the underground storage tank maintenance fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50112.6 and 50139-50142.2, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

**1336. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the use fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 9251, Revenue and Taxation Code. Reference: Sections 8880 and 9151-9156, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

**1422.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the diesel fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60210.5 and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

**2251. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the oil spill response, prevention, and administration fees, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 46601, Revenue and Taxation Code. Reference: Sections 46159 and 46501-46507, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

**2303.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the energy resources surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections 40105 and 40111-40117, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

**2433. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the emergency telephone users surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41099 and 41100-41106, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

**2571. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the alcoholic beverage tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 32451, Revenue and Taxation Code. Reference: Sections 32258 and 32401-32407, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

### **3022. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the hazardous substances tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Sections 43159.1, 43159.2, and 43451-43456, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

### **3302.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the integrated waste management fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Sections 45158 and 45651-45656, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

### **3502.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for tax, fees, or surcharge under the fee collection procedures law, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 55045.1 and 55221-55226, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

### **4106. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

A spouse or registered domestic partner claiming relief from liability for the cigarette and tobacco products tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30285 and 30361-30384, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

**4903. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a)(1) IN GENERAL. A spouse claiming relief from liability for any tax, fee, or surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(A) A liability is incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, or Use Fuel Tax Law;

(B) The liability is attributable to the nonclaiming spouse;

(C) The spouse claiming relief establishes that he or she did not know of, and that a reasonably prudent person in the claiming spouse's circumstances would not have had reason to know of, the liability; and

(D) It would be inequitable to hold the claiming spouse liable for the liability, taking into account whether the claiming spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(2) For purposes of this section, the word "tax" shall mean "tax, fee, or surcharge."

(b) BENEFITED. Whether a claiming spouse has benefited directly or indirectly from the liability will be determined by a review by the board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The claiming spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the claiming spouse, or lavish or luxury purchases made by either spouse may be evidence that the claiming spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a claiming spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the claiming spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the claiming spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) CONTRIBUTION. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A claim may be filed if, at the time relief is requested, the claiming spouse is no longer married to or is legally separated from the nonclaiming spouse, or the claiming spouse is no longer a member of the same household as the nonclaiming spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer engaged in an activity or transaction that is subject to a tax administered under the laws specified in paragraph (1) of subdivision (a) and related to the liability. If neither spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) WRITTEN REQUEST FOR RELIEF. To seek relief under these provisions, a claiming spouse may submit a written request for relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) STATUTE OF LIMITATIONS. These provisions shall apply to all calendar months, quarters, or years for claims made no later than one year after the board's first contact with the spouse making the claim.

Claims made after one year from the board's first contact with the spouse making the claim shall not apply to any calendar month, quarter, or year that is

more than five years from the return due date for nonpayment on a return, or more than five years from the finality date on the board-issued determination or similar billing document for collection of a tax or fee,

whichever is later.

No calendar months, quarters, or years shall be eligible for relief under this regulation that have been closed by res judicata.

(f) REFUNDS. A refund of any amounts under these provisions shall be subject to the requirements as set forth in the refund provisions of the applicable tax, fee, and surcharge law, as specified in paragraph (1) of subdivision (a).

(g) This regulation shall apply retroactively to liabilities arising prior to January 1, 2008.

(h) A spouse may be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the board.

(1) Criteria for Equitable Relief.

(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:

1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.
2. The claiming spouse would suffer economic hardship if relief is not granted.
3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.
4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.
5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)
6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.

(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:

1. The claiming spouse will not suffer economic hardship if relief is not granted.
2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.
3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.
4. The claiming spouse has not made a good faith effort to comply with the board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.
5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.
6. The tax for which relief is being requested is attributable to the claiming spouse.

(2) Conditions for Relief. The following conditions apply to claims for equitable relief:

(A) The statutes of limitations provided for innocent spouse claims in subdivisions (e) and (f) also apply to requests for equitable relief.

(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2008, as provided in subdivision (g).

(i) The board shall send notification by mail of the claim for relief from liability and the basis for that claim to the nonclaiming spouse.

(j) REGISTERED DOMESTIC PARTNERS. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code. Reference: Sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5, and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

## Regulation History

**Type of Regulation:** Sales and Use Tax

Regulation: 4903

Title: **1004, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**1032, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**1124.1, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**1249, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**1336, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**1422.1, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**2251, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**2303.1, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**2433, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**2571, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**3022, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**3302.1, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**3502.1, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**4106, Innocent Spouse or Registered Domestic Partner Relief from Liability**  
**4903, Innocent Spouse or Registered Domestic Partner Relief from Liability**

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The regulatory action is necessary to specify the application of the applicable special tax and fee laws to claims for innocent spouse and other equitable relief and is a clarification of existing law

### History of Proposed Regulation:

March 23, 2010 Public hearing  
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Sponsor: NA

Support: NA

Oppose: NA