

Memorandum

To: Honorable John Chiang, Chair
Honorable Claude Parrish, Vice Chairman
Ms. Betty T. Yee, Acting Board Member
Honorable Bill Leonard
Honorable Steve Westly

Date: October 6, 2005

From: Kristine Cazadd
Chief Counsel



Subject: Regulation 1584
Membership Fees

Chief Counsel Matters – Tuesday, October 25, 2005

Regulation 1584 came on for consideration at the Chief Counsel Matters Calendar on September 20, 2005. The regulation provides that membership fees related to the anticipated sale of tangible personal property are subject to tax when the retailer sells its products only to members and the membership fee exceeds a nominal amount. The regulation was proposed to be amended to increase the nominal amount from \$45 to \$50.

On motion of Board Member Claude Parrish, the Board requested that the staff come back with two separate versions of the regulation: the proposed language for submission to the Office of Administrative Law (OAL) for approval under OAL Rule 100 to increase the nominal amount to \$50; and a revised version of the regulation capping the nontaxable nominal amount of membership fees at \$45. Attached hereto as Exhibit A is the current language increasing the nominal amount of membership fees to \$50, which, if approved by the Board, could be submitted under OAL Rule 100. Attached hereto as Exhibit B is the revised version capping the nominal amount of membership fees at \$45 (i.e., the current amount), which, if approved by the Board, could serve as a basis for initiating the full rulemaking process under the provisions of the Administrative Procedures Act (Gov. Code, § 11346 et seq.).

Staff is available to provide additional information and to render whatever assistance the Board may require in making its decision. If you have any questions on these matters, please contact Acting Assistant Chief Counsel, Selvi Stanislaus at (916) 324-2579.

KC:ef
Attachments: Exhibits A & B

Board Members

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cc: Mr. Ramon Hirsig, MIC:73
Ms. Randie L. Henry, MIC:43
Mr. Jeff McGuire, MIC:92
Mr. Todd Gilman, MIC:70
Ms. Selvi Stanislaus, MIC:82
Mr. John L. Waid, MIC:82

Exhibit A

Regulation 1584. MEMBERSHIP FEES.

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

(a) APPLICATION OF TAX

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

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

or

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

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

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

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

(b) NOMINAL AMOUNT.

(1) For purposes of this regulation, beginning January 1, 2006, the term "nominal amount" means an amount totaling \$450 or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2001 through December 31, 2005, the term "nominal amount" for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term "nominal amount" for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2006~~2011 adjustment computation, the CCPI index on June 30, ~~2005~~2010, will be compared with the CCPI index on June 30, ~~2000~~2005. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2010~~2015 with the CCPI index on June 30, ~~2000~~2005.

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

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

Exhibit B

State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1584. MEMBERSHIP FEES.

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

(a) APPLICATION OF TAX

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

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

or

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

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

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

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

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

~~(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, 2006 adjustment computation, the CCPI index on June 30, 2005, will be compared with the CCPI index on June 30, 2000. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, 2010 with the CCPI index on June 30, 2000.~~

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

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