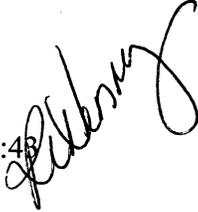


M e m o r a n d u m

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

Date: June 10, 2005

From : Randie L. Henry, Deputy Director
Sales and Use Tax Department, MIC:48



Subject : **Request for Authorization to Publish New Regulation 1823.4,
Place of Delivery of Tangible Personal Property Generally,
Board Meeting—June 30, 2005**

I am requesting your approval to place proposed Regulation 1823.4, *Place of Delivery of Tangible Personal Property Generally*, on the Chief Counsel Rulemaking Calendar on June 30, 2005, for Board authorization to publish. The proposed new regulation would explain the exclusion from district use tax when tangible personal property is delivered to a purchaser for use outside of a district. Proposed Regulation 1823.4 would provide a sample certificate of exclusion from district use tax (Declaration) on purchases of tangible personal property delivered outside of a district for use outside of the district.

A. District Taxes.

1. Generally.

In California, there is a statewide tax rate of 7.25%. This rate is made up from the California Sales and Use Tax (§§ 6051 et. seq. & 6201 et. seq.) and the Bradley-Burns Uniform Local Sales and Use Tax (§§ 7200-7212).

In 1969, the Legislature enacted the Transactions and Use (“District”) Tax Law. (§ 7251 et. seq.) Under enabling statutes in various codes, local jurisdictions may impose transactions (sales) and use taxes at varying rates of the gross receipts from the sales within the jurisdiction of tangible personal property sold at retail or of the sales price of property whose use, storage, or consumption within the jurisdiction is otherwise subject to tax. (§§ 7261(a) & 7262(a). Although counties and cities may also impose such taxes, all entities imposing such taxes are called “districts.” (§§ 7211 & 7252.) No matter where the enabling authority is found, all district taxes are administered by the Board under the District Tax Law.

2. “Out-of-District” Exclusion.

There are some exclusions from the District Tax. Regulation 1823(b)(2)(A) provides that district use tax does not apply to purchases of tangible personal property for use solely outside any district.

3. Retailer's Duty to Collect District Use Tax.

A retailer not located in a district (or located in a different district than the purchaser) but engaged in business in the purchaser's district (that is, has a sales office or sales agents or collects rental payments from property located in the district) is obligated to collect district use tax from the purchaser. In addition, retailers not engaged in business in the districts of their purchasers frequently collect district use tax on a voluntary basis as a convenience to their customers.

B. Problems of Purchasers Living Outside a District.

The impetus for the new regulation is the difficulties experienced by some consumers located outside of a district in demonstrating to retailers that their purchases of tangible personal property delivered to them are not subject to the district use tax of a particular district. This difficulty tends to arise due to the fact that, when retailers collect district use tax, they often use software programs that locate jurisdictions based on zip codes. Like city and county boundaries, district boundaries do not coincide with zip code boundaries. As a result, the purchaser's zip code may indicate to the out-of-district or out-of-state retailer that the purchaser lives in the district. Regulation 1827(b)(2) presumes that if property is delivered outside a district to a person known to the retailer to be a resident of a district, the retailer must collect the use tax if engaged in business in the district. Consequently, retailers in such cases are understandably reluctant to accept purchasers' unsubstantiated statements that they do not live in a district when the purchasers' zip codes are within a district for fear of being assessed deficiencies in the event of an audit.

With the proliferation of city-wide districts, the difficulty in demonstrating exclusion from district use tax is becoming more common. Up until the November 2004 election, most districts were coterminous with county boundaries. Prior to this fiscal year, there were 41 district taxes, about a third of them city-wide taxes. Twenty-four new district taxes took effect this fiscal year, many in smaller-sized cities, and several more are already slated for voter approval at the next election.

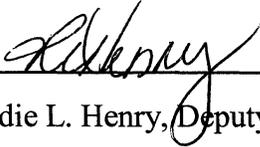
Proposed Regulation 1823.4 does not change the fact that when a retailer collects district use tax from a consumer in error, the consumer may file a claim for refund. If a certificate of exclusion from district use tax (Declaration) is not provided to or accepted by a retailer, a consumer still may file a claim for refund. The certificate provided by this new regulation is intended to be a more convenient method for demonstrating that district use tax is not applicable to a purchase so as to reduce the burden on retailers, consumers, and the Board by preventing the tax from being collected in the first place.

The language of the proposed regulation is derived from Regulation 1823.5, *Place of Delivery of Certain Vehicles, Aircraft and Undocumented Vessels*, and states that when the property is delivered to a purchaser living outside a district, the transaction is not subject to the use tax of the district, unless the property is principally stored, used, or otherwise consumed in the district. The regulation also explains the records the retailer must keep to

demonstrate to an auditor that the transaction was not subject to district use tax. The sample certificate of exclusion from district use tax (Declaration) is intended to assist consumers that are located near a district tax boundary to certify to retailers that district use tax does not apply to tangible personal property delivered to that location.

A regulation is necessary in this situation to provide retailers collecting district use tax instructions on how to apply the out-of-district exclusion. Staff notes that a retailer cannot be required to accept the certificate. A regulation has, however, the force and effect of law. For that reason, staff is of the opinion that retailers in this situation will be more likely to understand that they are relieved of the obligation to collect district use tax by accepting a certificate if the sample certificate is provided in a regulation.

Recommendation by:



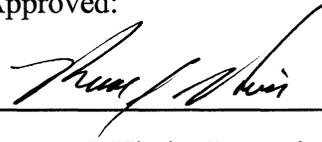
Randie L. Henry, Deputy Director

Approved:



Kristine Cazadd, Chief Counsel
Legal Department

Approved:



Ramon J. Hirsig, Executive Director

BOARD APPROVED

At the _____ Board Meeting

Deborah Pellegrini, Chief
Board Proceedings Division

cc (all with attachment):
Ms. Kristine Cazadd (MIC 83)
Ms. Deborah Pellegrini (MIC 81)
Ms. Selvi Stanislaus (MIC 82)
Mr. Randy Ferris (MIC 82)
Mr. John Waid (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Larry Micheli (MIC 27)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Khabbaz (MIC 50)
Ms. Lisa Andrews (MIC 50)

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Proposed New Regulation

Regulation 1823.4. Place of Delivery of Tangible Personal Property Generally.

Reference: Sections 7261 and 7262, Revenue and Taxation Code.

(a) **In General.** A retailer engaged in business in a district (except retailers of certain vehicles, aircraft and vessels) is not required to collect use tax from the purchaser of tangible personal property unless the retailer ships or delivers the property into the district or participates within the district in making the sale of the property. The purpose of this regulation is to provide a sample declaration to be signed by a purchaser that retailers may use to support shipment or delivery of tangible personal property (other than vehicles, aircraft and vessels) to a purchaser outside of a district in order to be relieved of the obligation to collect the use tax imposed by that district. This regulation does not apply to the transactions (sales) tax. Under this regulation, the purchaser will be liable for and pay the use tax if the property is principally stored, used or otherwise consumed within a district.

(b) **Delivery Outside District.** For the purposes of the use tax, when a retailer ships or delivers tangible personal property to a purchaser's principal residence address or principal business address outside of a district, the retailer is relieved of the obligation to collect the use tax imposed by that district by accepting in good faith a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, the buyer's principal place of residence or principal place of business; that the buyer's principal place of residence or principal place of business is located outside the boundaries of the district; and that the property was purchased for use at a designated point or points outside of a district imposing a district use tax.

(c) **Records.** Any seller claiming exemption under this regulation must retain in its records the declaration executed in compliance with subdivision (d).

(d) **FORM OF DECLARATION.** The declaration shall be in substantially the following form:

Proposed New Regulation

DECLARATION

I HEREBY CERTIFY THAT:

- (1) The *(here insert description of tangible personal property purchased)* purchased from *(insert name of seller)* was delivered to the following address:

- (2) The above address is located outside the *(name of district)* District.
- (3) The above address is my principal place of residence or principal place of business.
- (4) The tangible personal property listed above is purchased for use at the following location(s), which is outside the *(name of district)* District.

Street, City, State, Zip Code: _____

I understand that this declaration is for the purpose of allowing the above named seller to treat the sale of the above-described tangible personal property as exempt from the use tax imposed by the *(name of district)* District. If the property is principally stored, used or otherwise consumed in that district, the purchaser shall be liable for and pay the use tax.

I have personal knowledge of the statements of fact contained in this declaration. I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing statements are true and correct.

Name of Purchaser

Name and Title of Authorized Agent (if applicable)

Signature of Purchaser or Authorized Agent

Date