

M e m o r a n d u m

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

Date: August 28, 2008

From : Kristine Cazadd, Chief Counsel
Legal Department, MIC:83

Subject : Regulation 1702.5, *Responsible Person Liability*
Chief Counsel's Rulemaking Calendar
Board Meeting—September 16-17, 2008

We request your approval to place proposed revisions to Sales and Use Tax Regulation 1702.5 on the Chief Counsel's Rulemaking Calendar on September 16-17, 2008, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. The proposed revisions are appropriate for processing under Rule 100 because they make the regulation consistent with changes in a California statute.

Assembly Bill (AB) 1895 (Ch. 24, Stat. of 2008) amended Revenue and Taxation Code (RTC) section 6829 to provide a specific statute of limitations for issuing deficiency determinations to corporate officers or other responsible persons. Proposed revisions to Regulation 1702.5 incorporate the specific statute of limitations.

AB 1895 also added "limited partnerships" to the list of business types for which responsible persons may incur personal liability. "Limited liability partnerships" were added to section 6829 in 1995 (Ch. 679, Stat. of 1995), and "partnerships" were added in 1996 (Ch. 1003, Stat. of 1996). In addition to incorporating the specific statute of limitations provided by AB 1895, proposed revisions to Regulation 1702.5 incorporate limited partnerships, limited liability partnerships, and partnerships as business types for which responsible persons may incur personal liability.

Attached is the strikeout and underlined version of the regulation.

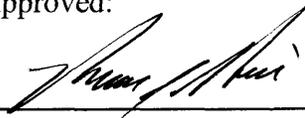
If you have any questions regarding this request, please let me know or contact Ms. Lisa Andrews at 322-5989.

Recommendation by:



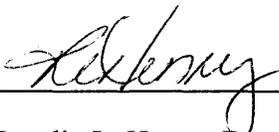
Kristine Cazadd, Chief Counsel

Approved:



Ramon J. Hirsig, Executive Director

Approved:



Randie L. Henry, Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the _____ Board Meeting

Diane Olson, Chief
Board Proceedings Division

Attachments

cc (all with attachments):

- Ms. Randie L. Henry (MIC 43)
- Mr. Randy Ferris (MIC 85)
- Ms. Diane Olson (MIC 80)
- Mr. Robert Tucker (MIC 82)
- Mr. Tim Treichelt (MIC 82)
- Mr. Jeffrey L. McGuire (MIC 92)
- Mr. Geoffrey E. Lyle (MIC 50)
- Ms. Leila Hellmuth (MIC 50)
- Ms. Lisa Andrews (MIC 50)

Proposed Amendments to Regulation 1702.5

Regulation 1702.5. RESPONSIBLE PERSON LIABILITY.

Reference: Section 6829, Revenue and Taxation Code.

(a) **GENERAL.** Any responsible person who willfully fails to pay or to cause to be paid, under circumstances set forth below, any taxes due from a ~~domestic or foreign corporation, partnership, limited partnership, limited liability partnership,~~ or limited liability company pursuant to Part 1, Division 2, of the Revenue and Taxation Code shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination, dissolution, or abandonment of the ~~corporate or limited liability company business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company.~~

Personal liability shall apply if the ~~h~~Board establishes that while the person was a responsible person, the corporation, ~~partnership, limited partnership, limited liability partnership,~~ or limited liability company:

1. sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due; or
2. consumed tangible personal property and failed to pay the applicable tax to the seller or the board; or
3. issued a receipt for use tax and failed to report and pay the tax.

(b) DEFINITION OF TERMS.

(1) **RESPONSIBLE PERSON.** As used herein, the term "responsible person" means any officer, member, manager, employee, director, shareholder, ~~partner,~~ or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of tax or who has a duty to act for the corporation, ~~partnership, limited partnership, limited liability partnership,~~ or limited liability company in complying with any provision of the Sales and Use Tax Law. The term "responsible person" does not include any person who would otherwise qualify but is serving in that capacity as an unpaid volunteer for a non-profit organization.

(2) **WILLFUL.** As used herein, the term "willful" means voluntary, conscious and intentional. A failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or evil motive.

(3) **TERMINATION.** As used herein, "termination" of ~~the a domestic or foreign corporate or limited liability company business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company~~ includes discontinuance or cessation of business activities.

(c) COLLECTION.

(1) The ~~h~~Board may issue a Notice of Determination, in the manner provided in Chapter 5 of the Sales and Use Tax Law, for the amount of the personal liability of the responsible person, and penalties and interest shall be added to the amount due as applicable. The ~~h~~Board may collect the amounts due from the responsible person in the manner provided by Chapter 6 of the Sales and Use Tax Law for the collection of sales and use taxes.

(2) On or after January 1, 2009, a Notice of Determination shall be mailed within whichever of the following periods expires earlier:

(A) Three years after the last day of the calendar month following the quarterly period in which the Board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company; or

(B) Eight years after the last day of the calendar month following the quarterly period in which the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was terminated, dissolved, or abandoned.

(3) If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the Board, this filing shall not constitute actual knowledge by the Board under this regulation.

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