State of California

Board of Equalization

Memorandum

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

Date: March 4, 2010

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

Subject : Board Meeting—March 25, 2010
Item J
Chief Counsel's Rulemaking Calendar
Regulation 1525.7, *Rural Investment Tax Exemption*

Sales and Use Tax Regulation 1525.7, *Rural Investment Tax Exemption*, implements, interprets, and makes specific the provisions of Revenue and Taxation Code section 6378.1. Section 6378.1 was added by Statutes 2000, chapter 107 (Assem. Bill No. 511 (1999-2000 Reg. Sess.), section 1, and authorized the (partial) Rural Investment Tax Exemption from July 10, 2000, until it was repealed by its own terms, effective January 1, 2006. Therefore, we request your approval to place the proposed repeal of Regulation 1525.7 on the Chief Counsel's Rulemaking Calendar for March 25, 2010, for Board authorization to process under Rule 100, without the normal notice and public hearing process. This change is appropriate for processing under Rule 100 because the statutory basis for the regulation has been repealed.

Attached is a strikeout version of Regulation 1525.7.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 324-2657.

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)
Ms. Diane Olson (MIC 80)
Mr. Randy Ferris (MIC 82)
Mr. Bradley Heller (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Hellmuth (MIC 50)
Ms. Lynn Whitaker (MIC 50)

~~Regulation 1525.7. RURAL INVESTMENT TAX EXEMPTION.~~

~~*Reference:* Section 6378.1, Revenue and Taxation Code.~~

~~**(a) GENERAL.** Commencing on and after January 1, 2001, and before January 1, 2006, section 6378.1 of the Revenue and Taxation Code authorizes the Rural Investment Tax exemption (hereafter "Partial Exemption") which provides a partial exemption from sales or use taxes imposed on the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property as defined in subdivision (b)(6) by an eligible entity as defined in subdivision (b)(3).~~

~~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 June 30, 2004, 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 July 1, 2004, the Partial Exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered 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.~~

~~The California Infrastructure & Economic Development Bank (CIEDB) determines who is eligible to receive this Partial Exemption and monitors eligible entities for compliance with the requirements of the Partial Exemption. As the aggregate amount of this Partial Exemption is limited, the CIEDB Board determines the amount of this Partial Exemption available to each eligible entity.~~

~~**(b) DEFINITIONS.** For purposes of this regulation:~~

~~(1) "Board" refers to the Board of Equalization.~~

~~(2) "CIEDB Board" refers to the California Infrastructure & Economic Development Bank Board.~~

~~(3) "Eligible entity" means any entity that meets all of the following:~~

~~**(A)** The entity is deemed eligible for the Partial Exemption in writing by the CIEDB Board.~~

~~**(B)** The entity has been pre-qualified, and re-qualified as applicable, by the Board and registered to hold a California seller's permit or maintain a consumer use tax account.~~

~~(4) "Primarily" means used 50 percent or more of the time in a qualified county for the one-year period following the date of purchase of the property. Tangible personal property shall not be considered used for any period of time that the property is located outside a qualified county, regardless of how the property is used while outside the qualified county.~~

~~(5) "Qualified county" means a California county with an average annual unemployment rate of five percentage points or more above the statewide average for the most recent calendar year as determined by the State of California, Employment Development Department.~~

~~(6) "Tangible personal property" includes all of the following:~~

~~**(A)** Machinery and equipment within the meaning of subsection (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 terms also include 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. Repair and replacement parts with a useful life of more than one year may qualify for this Partial Exemption even where such items are expensed for income tax purposes under the special provisions of section 179 of the Internal Revenue Code (26 U.S.C. § 179).~~

~~(7) "Tangible personal property" does not include any of the following:~~

~~**(A)** Any tangible personal property that is used primarily in administration, general management, or marketing.~~

~~**(B)** Furniture, inventory, or equipment used to store products.~~

~~**(C)** Any property for which a credit is claimed under either Section 17053.49 or 23649 of the Revenue and Taxation Code.~~

~~**(D)** Materials or fixtures within the meaning of subsections (a)(4) and (a)(5), respectively, of Regulation 1521 of the Sales and Use Tax Regulations, including such items set forth in Appendices A and B of Regulation 1521.~~

~~**(E)** Fuels.~~

~~**(F)** Real property.~~

~~**(c) PARTIAL EXEMPTION CERTIFICATES.**~~

~~(1) OBTAINING AND MAINTAINING THE PARTIAL EXEMPTION CERTIFICATE. To obtain a Partial Exemption certificate, an entity must be pre-qualified by the Board, registered to hold a California seller's permit or maintain a consumer use tax account, and be deemed eligible for the Partial Exemption by the CIEDB Board. An entity shall include in its application a copy of its written notification from the CIEDB Board verifying the entity's eligibility and the amount allocated by the CIEDB Board for use by that eligible entity pursuant to the Partial Exemption. Partial Exemption certificates issued to eligible entities will contain a control number and expiration date for verifying the entity's status as an eligible entity. To maintain a Partial Exemption certificate it may be necessary to re-qualify with the Board periodically in accordance with Revenue and Taxation Code section 6378.1. A Partial 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. Eligible entities that have been pre-qualified or re-qualified, as applicable, may reproduce the issued certificates as needed for their qualifying purchases.~~

~~The Partial Exemption certificates issued by the Board will be in substantially the same format as they appear in Appendices A and B of this regulation. Eligible entities 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 Partial Exemption certificate in order to claim the Partial Exemption. The Partial Exemption Use Tax Declaration must be completed by an eligible entity 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.~~

~~For purposes of this regulation, it is presumed that a seller accepts a Partial Exemption certificate from a purchaser in good faith in the absence of evidence to the contrary.~~

~~(2) CLAIMING THE PARTIAL EXEMPTION.~~

~~**(A) IN GENERAL.** The Partial Exemption from sales or use tax authorized under this part shall not be allowed unless:~~

~~1. The eligible entity furnishes the retailer with a Partial Exemption certificate no later than 60 days after the date of 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 Partial Exemption certificate.~~

~~**(B) EXCLUSIONS.** Except as provided in subdivision (c)(2)(C) below, retailers claiming the Partial Exemption in timely filed returns will not be required to furnish the Board with copies of Partial Exemption certificates for sales or leases of tangible personal property made by a retailer at any single physical location to a single eligible entity 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 (c)(2)(A)2.~~

~~**(C) RETENTION AND AVAILABILITY OF CERTIFICATES.** A retailer must retain each Partial Exemption certificate received from an eligible entity for a period of not less than four years from the date on which the retailer claims a Partial Exemption based on the Partial Exemption certificate.~~

~~Within 45 days of the Board's request, retailers must furnish to the Board any and all Partial Exemption certificates, or copies thereof, received from eligible entities, including Partial Exemption certificates for aggregate sales or leases of $25,000 or less to a single eligible entity made at any single physical location of the retailer during a single calendar quarter.~~

~~(3) PARTIAL EXEMPTION USE TAX DECLARATION. A Partial Exemption from the use tax shall not be allowed unless the eligible entity:~~

~~**(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 subsection (a) of this regulation; and~~

~~**(B)** Attaches a completed Partial Exemption Use Tax Declaration (Appendix B) to the sales and use tax return or consumer use tax return that is timely filed with the Board.~~

~~**(d) REFUND OF PARTIAL EXEMPTION.**~~

~~(1) For the period commencing on January 1, 2001, and ending on June 30, 2002, an eligible entity 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 Partial Exemption certificate on or before September 30, 2002. The retailer must refund the tax or tax reimbursement 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 October 31, 2002.~~

~~(2) An eligible entity 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, an eligible entity 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 an eligible entity at the time of the purchase subject to the refund claimed under this part.~~

~~**(e) IMPROPER USE OF PARTIAL EXEMPTION.**~~

~~(1) 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 a qualified county, (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 regulation, 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 an entity who is not an eligible entity on the date the property is sold, transferred, leased, or assigned to such non-eligible entity. In the case of a corporation that, as an eligible entity, 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 an eligible entity 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.~~

~~Tangible personal property shall not be considered used in a qualifying manner for any period of time that the property is located outside a qualified county, regardless of how the property is used while outside such a county.~~

~~(2) PURCHASES BY INELIGIBLE ENTITIES. Notwithstanding subdivision (a), this Partial Exemption shall not apply if the CIEDB Board subsequently determines that a purchaser is not an eligible entity pursuant to Revenue and Taxation Code section 6378.1.~~

~~(3) PURCHASES EXCEEDING THE PARTIAL EXEMPTION ALLOTMENT. Notwithstanding subdivision (a), this Partial Exemption shall not apply to any sale of, or the storage, use, or other consumption in this state of tangible personal property purchased by an eligible entity that exceeds the amounts allocated by the CIEDB Board for use by that eligible entity pursuant to the partial exemption.~~

~~(f) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.~~

~~(1) If a purchaser timely submits a copy of a Partial Exemption certificate to the seller or Partial Exemption Use Tax Declaration to the Board, 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 a qualified county, (ii) converts the 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 the 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.~~

~~(2) A purchaser providing a Partial Exemption certificate accepted timely and in good faith by the seller or a Partial Exemption Use Tax Declaration to the Board for tangible personal property that does not qualify for the Partial Exemption is liable for payment of the 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 purchased.~~

~~(g) LEASES TO QUALIFYING PERSONS.~~

~~(1) LEASES--IN GENERAL. Subject to all the limitations and conditions set forth in this regulation, this Partial Exemption may apply to rental receipts paid by an eligible entity with respect to a lease of tangible personal property to the eligible entity.~~

~~(2) LEASES--ACQUISITION SALE AND LEASEBACK. An eligible entity will be regarded as having paid sales tax reimbursement or use tax with respect to that eligible entity's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the eligible entity 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 an eligible entity 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.~~

~~(h) RECORDS~~~~. Adequate and complete records must be maintained by the eligible entity as evidence that the property purchased qualifies under the provisions of this regulation and that the property was used by the eligible entity. The eligible entity must also maintain detailed records to show the amount of the tax benefit derived from this Partial Exemption as each eligible entity will have an annual limit established by the CIEDB Board.~~

~~The Board shall, within one year after being notified by the CIEDB Board that an entity has not fulfilled the requirements of Revenue and Taxation Code section 6378.1, examine the books and records of the entity, and issue a determination of any liabilities due.~~

~~(i) **OPERATIVE DATE.** This regulation is operative as of January 1, 2001 and expires December 31, 2005 unless Revenue and Taxation Code section 6378.1 is extended by an act of the Legislature.~~

REVENUE AND TAXATION CODE SECTION 6378.1 — STATE OF CALIFORNIA

RURAL INVESTMENT TAX EXEMPTION CERTIFICATE — BOARD OF EQUALIZATION

PLEASE NOTE

This is a partial exemption from sales and use taxes which is at the rate of 4.75% from January 1, 2001 through December 31, 2001; and 5% effective January 1, 2002 through June 30, 2004; and 5.25% effective July 1, 2004. You are not relieved from your obligations for the local and district taxes on this transaction. The partial 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 partial exemption on a timely filed return. Void after expiration date.

Certificate No:

Expires:

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, County, State, Zip Code)

will be used by me primarily at my facility located at (enter facility's address):

(Street, City, County, 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 a qualified county described in Regulation 1525.7(b)(5), converted from an exempt use under Regulation 1525.7(e) to some other use not qualifying for the partial exemption, 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. *Attach a copy of the lease agreement.

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

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

The following business has been registered as an "eligible entity" who has certified that this purchase/lease of tangible personal property will be used in a manner entitling them to the partial exemption provided in Section 6378.1 of the Revenue and Taxation Code.

BUSINESS NAME	CIEDB Board Authorization Number
BUSINESS ADDRESS (Street, City, County, 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

REVENUE AND TAXATION CODE SECTION 6378.1
RURAL INVESTMENT USE TAX DECLARATION

STATE OF CALIFORIA
BOARD OF EQUALIZATION

Certificate No:

Expires:

PLEASE NOTE

This partial exemption being declared applies only to the state use tax which is at the rate of 4.75% from January 1, 2001 through December 31, 2001; and 5% effective January 1, 2002 through June 30, 2004; and 5.25% effective July 1, 2004; 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 partial exemption, this declaration must accompany a timely filed sales and use tax return for the period of purchase. Void after expiration date.

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, County, State, Zip Code)

will be used by me primarily at my facility located at (enter facility's address):

(Street, City, County, 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 a qualified county described in Regulation 1525.7 (b)(5) or converted from an exempt use under Regulation 1525.7(e) to some other use not qualifying for the partial exemption, 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. *Attach a copy of the lease agreement.

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

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

The following business has been registered as a "eligible entity" who has certified that this purchase/lease of tangible personal property will be used in a manner entitling them to the partial exemption provided in Section 6378.1 of the Revenue and Taxation Code.

BUSINESS NAME	CIEDB Board Authorization Number
BUSINESS ADDRESS (Street, City, County, 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