State of California

Board of Equalization
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Memorandum

To: Mr. Ramon J. Hirsig
Executive Director

Date: January 5, 2010

From: Kristine Cazadd, Chief Counsel
Legal Department

David Gau, Deputy Director
Property and Special Taxes Department

Subject: Rule 100 Changes to Specified Special Tax and Fee Regulations
Chief Counsel's Rulemaking Calendar
Board Meeting—January 26, 2010

We request your approval to place proposed Rule 100 changes to eleven Special Tax and Fee regulations on the Chief Counsel's Rulemaking Calendar for the January 26, 2010, Board meeting in order to request the Board's authorization to complete the changes. These proposed changes amend regulations pertaining to the Energy Resources Surcharge Law, the Fee Collection Procedures Law; the Emergency Telephone Users Surcharge Law; the Cigarette and Tobacco Products Tax Law; the Cigarette and Tobacco Products Licensing Act, and the general administration of special taxes; and add a new regulation pertaining to the Fee Collection Procedures Law.

Each of the attached Statements of Explanation includes a detailed description of the proposed changes to each regulation and strikeout and underlined versions of each regulation. These changes are appropriate for processing under Rule 100 without the normal notice and public hearing process because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. These changes correct grammatical errors and cross references; correct and update references to statutes and other regulations; clarify the application of the regulations to certain tax and fee laws; correct a subdivision heading; and update or add citations to the reference notes for these regulations.

In addition, these changes are proposed to bring two regulations into conformity with statutory provisions that have been amended and to bring three regulations into conformity with the Rules for Tax Appeals that have been adopted since the regulations were last amended. A copy of the Rules of Practice that were repealed effective February 6, 2008, is available at http://www.boe.ca.gov/meetings/pdf/ROP_Complete.pdf.

If you have any questions regarding this request, please let me know or contact Ms. Carolee Johnstone at 323-7713.

Recommendation by:

Kristine Cazadd, Chief Counsel

Approved:

Ramon J. Hirsig, Executive Director

Approved:

David Gau, Deputy Director
Property and Special Taxes Department

BOARD APPROVED
At the _____ Board Meeting

Diane Olson, Chief
Board Proceedings Division

Attachments

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100
Statements of Explanation

Title 18. Public Revenue	Regulation 2300, *Collection of Surcharge*
Title 18. Public Revenue	Regulation 2401, *Definitions*
Title 18. Public Revenue	Regulation 3500, *Application of the Fee Collection Procedures Law*
	Regulation 3502, *Relief from Liability*
Title 18. Public Revenue	Regulation 4041, *Common Carrier Delivery Reports*
Title 18. Public Revenue	Regulation 4500, *Definitions*
Title 18. Public Revenue	Regulation 4508, *Appeal – Denial of License*
	Regulation 4701, *Appeal – Appeals Division*
	Regulation 4702, *Appeal – Board Hearing*
Title 18. Public Revenue	Regulation 4703, *Seizures and Forfeitures*
Title 18. Public Revenue	Regulation 4901, *Records*

cc (with attachments):

Ms. Diane Olson	(MIC: 80)
Mr. Randy Ferris	(MIC: 82)
Mr. Steve Smith	(MIC: 82)
Mr. Bradley Heller	(MIC:82)
Ms. Carolee Johnstone	(MIC: 82)
Mr. Dave McKillip	(MIC: 63)
Ms. Lynn Bartolo	(MIC: 56)
Ms. Julia Findley	(MIC: 48)

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue
Regulation 2300, *Collection of Surcharge*

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 2300 generally provides the criteria and procedures for collection of the energy resources surcharge under the Energy Resources Surcharge Law (part 19 (commencing with section 40001) of division 2 of the Revenue and Taxation Code). The State Board of Equalization (Board) hereby proposes to complete a textual reference to the Energy Resources Surcharge Law and to provide more specific statutory references in the reference note for Regulation 2300 under California Code of Regulations, title 1, section (Rule) 100.

The reference in the first paragraph of Regulation 2300 to the Energy Resources Surcharge Law, "Chapter 3, Part 19 of the Revenue and Taxation Code", is incomplete because it does not contain a reference to division 2. In addition, the reference note for Regulation 2300 cites the entire Energy Resources Surcharge Law, rather than the specific Revenue and Taxation Code sections being implemented, interpreted, or made specific by Regulation 2300. Accordingly, the Board proposes to amend Regulation 2300 to correct the citation in the text of the regulation and to provide more specific references for the regulation.

B. Proposed Amendment

Rule 100 Changes to Regulation 2300, *Collection of Surcharge*

Rule 100 changes are proposed to Regulation 2300 to: amend "Chapter 3, Part 19" in the first paragraph to read "Chapter 3 of Part 19 of Division 2"; and replace sections "40001-40191" with sections "40019, 40019.1, 40020, and 40045" in the reference note.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to provide a complete citation to the Energy Resources Surcharge Law in the text of Regulation 2300 and provide citations to the Revenue and Taxation Code sections being implemented, interpreted, or made specific in the reference note for Regulation 2300.

PROPOSED AMENDMENT

Amend Regulation 2300 (Collection of Surcharge) to read as follows:

Regulation 2300. Collection of Surcharge.

Every electric utility making sales of electrical energy to consumers in this state shall collect the surcharge from each consumer other than a consumer that is an electric utility or is exempt under Chapter 3~~,~~ of Part 19 of Division 2 of the Revenue and Taxation Code, at the time it collects its billing from the consumer for the electrical energy sold. A consumer is any person receiving electrical energy furnished by an electric utility and includes a person receiving electrical energy for redistribution for the use of his tenants.

An electric utility may collect the surcharge on sales of electrical energy to another electric utility if the purchasing utility certifies in writing to the selling utility that all purchased electrical energy will be consumed by it in such a manner as to be subject to the surcharge, that all self-generated electrical energy will be sold to other electrical utilities without collection of the surcharge, and that purchased electrical energy will not be pooled with self-generated electrical energy.

For the purpose of the proper administration of this part, it shall be presumed that electrical energy sold by an electric utility in this state to other than an electric utility is consumed by the purchaser in this state until the contrary is established.

Whenever the rate of the surcharge is increased or decreased, the duty to collect the surcharge from a consumer at such new rate shall commence with the first regular billing period applicable to that consumer which begins on or after the effective date of the change of rate.

The surcharge required to be collected by the electric utility from the consumer shall be added to the charges to the consumer for the electrical energy sold. The amount of the surcharge may be stated separately. If the electric utility does not separately state the amount of the surcharge, the electric utility shall print on the billing a notice to the effect that the charges include energy resources surcharge computed at (applicable rate) mill per kilowatt-hour.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections ~~40001-40191~~40019, 40019.1, 40020, and 40045, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue
Regulation 2401, *Definitions*

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 2401 generally provides definitions that apply to chapter 5.5 (commencing with Regulation 2401) of division 2 of title 18 of the California Code of Regulations, which prescribes the application of the Emergency Telephone Users Surcharge Law (part 20 (commencing with section 41001) of division 2 of the Revenue and Taxation Code. The State Board of Equalization (Board) hereby proposes to update certain definitions contained in Regulation 2401 to make them consistent with changes to their statutory definitions, pursuant to California Code of Regulations, title 1, section (Rule) 100.

Statutes 2008, chapter 17 (Sen. Bill No. 1040), effective May 21, 2008, revised several provisions of the Emergency Telephone Users Surcharge Law, including Revenue and Taxation Code sections 41007 and 41016, which define the terms "service supplier" and "toll telephone service," respectively. Accordingly, the Board proposes to amend the definition of "service supplier" and the relevant portion of the definition of "intrastate telephone communication services" in subdivisions (a) and (b) of Regulation 2401 to bring the definitions into conformity with the revised statutory definitions in Revenue and Taxation Code sections 41007 and 41016. The Board also proposes to add citations to Revenue and Taxation Code sections 41015 and 41016 to the reference note for Regulation 2401.

B. Proposed Amendments

Rule 100 Changes to Regulation 2401, *Definitions*

Rule 100 changes are proposed to Regulation 2401, subdivision (a), to

- Renumber the first part of subdivision (a) as subdivision (a)(1);
- Delete "any person supplying intrastate telephone communication services to any service user in this state, provided however:";
- Replace the deleted language with both of the following: (A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1; and (B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1;
- Renumber current subdivision (a)(1) and (2) as subdivision (a)(2)(A) and (B), respectively; and
- Add "Notwithstanding paragraph (1):" to the beginning of subdivision (a)(2).

Rule 100 changes are proposed to Regulation 2401, subdivision (b), to:

- Add "either a" between "includes" and "telephonic";
- Add "for the service" after "a toll charge";
- Replace "which varies in amount with the distance and elapsed transmission time" with "that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time,";
- Replace "as well as" with "or";
- Add a space between "transmission time)," and "to the privilege of"; and
- Add "a predetermined amount of units or dollars of telephonic communications or" after "the privilege of".

In addition, Rule 100 changes are proposed to add citations to Revenue and Taxation Code sections 41015 and 41016 to the reference note for Regulation 2401.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Further, these changes are appropriate for processing under Rule 100 because they bring the regulation into conformity with statutory provisions that have been amended since the regulation was promulgated and the Board has no discretion to adopt definitions that are inconsistent with those provisions. Furthermore, these changes are necessary to correct punctuation and provide accurate citations to the references for Regulation 2401.

PROPOSED AMENDMENTS

Amend Regulation 2401 (Definitions) to read as follows:

Regulation 2401. Definitions.

(a) Service Supplier.

(1) "Service Supplier" means ~~any person supplying intrastate telephone communication services to any service user in this state, provided however~~both of the following:

(A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1; and

(B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1,

(2) Notwithstanding paragraph (1):

(A~~+~~) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the "service supplier" means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(B~~2~~) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(b) Intrastate Telephone Communication Services. "Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes either a telephonic quality communication for which there is a toll charge for the service ~~which varies in amount with the distance and elapsed transmission time~~that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication ~~as well as~~or a service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

(c) Billing Agent. "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

(d) Billing Aggregator. "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to:

(1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;

(2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and

(3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.

A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such time and in such form as the Board requests.

(e) Prepaid Telephone Calling Card. "Prepaid telephone calling card" means any card, or other identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41007, 41011, 41015, 41016, and 41021, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue
Regulation 3500, *Application of the Fee Collection Procedures Law*
Regulation 3502, *Relief from Liability*

A. Factual Basis

Chapter 8.5 of division 2 of title 18 of the California Code of Regulations contains regulations that implement, interpret, or make specific provisions of the Fee Collection Procedures Law (part 30 (commencing with section 55001) of division 2 of the Revenue and Taxation Code). California Code of Regulations, title 18, section (Regulation) 3502 is contained in chapter 8.5. Regulation 3502 generally provides information about and a cross reference to criteria for seeking relief from liability for taxes or fees, interest, and penalties under the Fee Collection Procedures Law.

The second paragraph in Regulation 3502 lists the specific taxes and fees collected under the Fee Collection Procedures Law, but the other regulations in chapter 8.5 (Regulations 3501 and 3503) do not list the specific taxes and fees collected under the Fee Collection Procedures Law. Furthermore, the second paragraph of Regulation 3502 currently lists three taxes and fees that are collected pursuant to the Fee Collection Procedures Law: "the California Tire Fee, the Ballast Water Management Fee, and the Natural Gas Surcharge." However, the list is not up to date because there are presently five taxes and fees that are collected pursuant to the Fee Collection Procedures Law, and the name of one of the fees currently listed – the Ballast Water Management Fee – has been changed to the "Marine Invasive Species Fee." Accordingly, the State Board of Equalization (Board) hereby proposes to add a new regulation at the beginning of chapter 8.5, move the list in the second paragraph of Regulation 3502 into the new regulation, and update the list to reflect the specific taxes and fees currently collected under the Fee Collection Procedures Law under California Code of Regulations, title 1, section (Rule) 100. The new regulation will clarify that all of the regulations in chapter 8.5 (Regulations 3501, 3502, and 3503) apply to all of the taxes and fees collected under the Fee Collection Procedures Law.

B. Proposed Amendments

Rule 100 Changes to Add Regulation 3500 and Amend Regulation 3502, *Relief from Liability*

Rule 100 changes are proposed to:

- Add California Code of Regulations, title 18, section 3500, *Application of the Fee Collection Procedures Law*;
- Move the second paragraph of Regulation 3502, which lists the taxes and fees collected pursuant to the Fee Collection Procedures Law, into Regulation 3500; and
- Update Regulation 3500 so that it lists the California Tire Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge, and

Water Rights Fee, which are the taxes and fees currently collected pursuant to the Fee Collection Procedures Law.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to update the list of taxes and fees collected pursuant to the Fee Collection Procedures Law and clarify that all of the regulations in chapter 8.5 (Regulations 3501, 3502, and 3503) of division 2 of the California Code of Regulations apply to all of the taxes and fees collected under the Fee Collection Procedures Law.

PROPOSED AMENDMENTS

Add Regulation 3500 to read as follows:

Regulation 3500. Application of the Fee Collection Procedures Law.

The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge, and Water Rights Fee.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 42464.2 and 42882, Public Resources Code; Section 893, Public Utilities Code, Section 44003, Revenue and Taxation Code; Section 1537, Water Code.

Amend Regulation 3502 (Relief from Liability) to read as follows:

Regulation 3502. Relief from Liability.

A person may be relieved from the liability for the payment of the taxes or fees required to be collected pursuant to the Fee Collection Procedures Law, Part 30, (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, including any penalties and interest added to the taxes or fees, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on written advice given by the board described in California Code of Regulations, Title 18, Section 4902.

~~The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Ballast Water Management Fee, and Natural Gas Surcharge.~~

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Section 55045, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue
Regulation 4041, *Common Carrier Delivery Reports*

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 4041, pertaining to the Cigarette and Tobacco Products Tax, generally prescribes the reporting requirements for common carriers that deliver cigarettes shipped from outside this state to consignees in this state under the Cigarette and Tobacco Products Tax Law (part 13 (commencing with section 30001) of division 2 of the Revenue and Taxation Code). The State Board of Equalization (Board) hereby proposes to amend Regulation 4041 under California Code of Regulations, title 1, section (Rule) 100 to make the regulation consistent with common carriers' current statutory reporting requirements.

Regulation 4041 was initially adopted in 1958 to prescribe common carriers' reporting requirements under Revenue and Taxation Code section (section) 30454 in the Cigarette Tax Law and the last time it was amended was in 1968. In 1989, the Legislature revised "the Cigarette Tax Law to conform to the adoption of the Tobacco Tax and Health Protection Act of 1988 (Proposition 99), by renaming that law the Cigarette and Tobacco Products Tax Law and by providing that reporting and tax collection requirements applicable to distributors of cigarettes shall also apply to distributors of tobacco products." (Digest for Statutes 1989, chapter 634.) As part of these revisions, section 30454 was amended to allow the Board to require the same reports from common carriers that deliver tobacco products shipped from outside this state to consignees in this state as are required from common carriers that deliver cigarettes. The Board now proposes to amend Regulation 4041 to make it consistent with section 30454.

Further, Revenue and Taxation Code section 30186, pertaining to report of sales by a common carrier, was amended effective January 1, 2003, to add a provision that the report should be "in the form as prescribed by the board, which may include, but not be limited to, electronic media." The Board proposes to add similar language regarding electronic media to the existing language in the last paragraph of Regulation 4041 to make it consistent with section 30186.

In addition, the Board proposes to add authority and reference notes to Regulation 4041 containing citations to Revenue and Taxation Code section 30451, the "authority," and sections 30186 and 30454, the "references," for Regulation 4041.

B. Proposed Amendments

Rule 100 Changes to Regulation 4041, *Common Carrier Delivery Reports*

Rule 100 changes are proposed to Regulation 4041 to:

- Add a comma after "State" and add "or tobacco products" after "delivery of the cigarettes" in the first part of the regulation;
- Add a comma after "cigarettes delivered", delete "and" before "the quantity of cigarettes", and add ", and the quantity of tobacco products delivered," after "contained therein" in subdivision (d) of the regulation; and
- Add "the board, which may include, but not be limited to, electronic media," after "prescribed by" in the last sentence of the regulation.

Rule 100 changes are also proposed to add authority and reference notes containing citations to Revenue and Taxation Code section 30451, the authority, and sections 30186 and 30454, the references, for Regulation 4041.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Further, these changes are appropriate for processing under Rule 100 because they bring the regulation into conformity with statutory provisions that were revised since the regulation was last amended. Furthermore, the changes are necessary to provide current citations to the authority and reference for Regulation 4041.

PROPOSED AMENDMENTS

Amend Regulation 4041 (Common Carrier Delivery Reports) to read as follows:

Regulation 4041. Common Carrier Delivery Reports.

Every common carrier making a delivery of cigarettes to a consignee in this State, the shipment of which originated outside this State, shall report to the board not later than the 25th day of the calendar month following the calendar month in which the delivery of the cigarettes or tobacco products was made, the following information concerning the shipment:

(a) the name of the shipper and the point of origin;

(b) the name of the consignee and the address to which delivered;

(c) the date and number of the waybill covering the shipment;

(d) the number of cases, bales or other containers of cigarettes delivered, ~~and~~ the quantity of cigarettes contained therein, and the quantity of tobacco products delivered, as shown by the shipping documents; and

(e) in the case of rail shipments, the car initials and number; and

(f) in the case of water shipments, the name of the vessel and the number of the steamship bill of lading.

This report shall be made on a form prescribed by the board, which may include, but not be limited to, electronic media, and filed with the board at Sacramento.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30186 and 30454, Revenue and Taxation Code.

CHANGE WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue
Regulation 4500, *Definitions*

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 4500 generally provides the definitions that apply to chapter 9 (commencing with Regulation 4500) of division 2 of title 18 of the California Code of Regulations, which prescribes the application of the Cigarette and Tobacco Products Licensing Act (division 8.6 (commencing with section 22970) of the Business and Professions Code). The State Board of Equalization (Board) hereby proposes to correct a citation in the reference note for Regulation 4500 under California Code of Regulations, title 1, section (Rule) 100.

The term "person" is defined in both Business and Professions Code section 22971, subdivision (n), and Revenue and Taxation Code section 30010. In Regulation 4500, subdivision (s), the definition of "person," refers to Revenue and Taxation Code section 30010, not Business and Professions Code section 22971, subdivision (n). The reference note for Regulation 4500 contains a typographical error that inadvertently combines the citations to the Business and Professions Code and the Revenue and Taxation Code and cites "Section 22971(n), Revenue and Taxation Code."

Accordingly, the Board proposes to amend the reference note for Regulation 4500.

B. Proposed Amendment

Rule 100 Change to Regulation 4500, *Definitions*

A Rule 100 change is proposed to replace the citation to "Section 22971(n), Revenue and Taxation Code" with a citation to "Section 30010, Revenue and Taxation Code" to correct the typographical error in the reference note for Regulation 4500.

The foregoing change is appropriate for processing under Rule 100 because it is a change without regulatory effect and does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the change is necessary to provide the correct citation to one of the statutory references for Regulation 4500.

PROPOSED AMENDMENT

Amend Regulation 4500 (Definitions) to read as follows:

Regulation 4500. Definitions.

In addition to the definitions in Business and Professions Code section 22971, the following definitions shall apply to this chapter:

(a) "Act" means the Cigarette and Tobacco Products Licensing Act of 2003, set forth in division 8.6 of the Business and Professions Code.

(b) "Appeals Division staff" means an employee or employees of the State Board of Equalization assigned to the Appeals Division of the Legal Department.

(c) "Applicant" means a retailer, wholesaler, distributor, importer or manufacturer who has applied for a license pursuant to the Act, and, if the retailer, wholesaler, distributor, importer or manufacturer is not an individual, the term includes any person controlling such entity.

(d) "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction.

(e) "Board" means the Board Members of the State Board of Equalization meeting as a body or the agency created by article XIII, section 9, of the California Constitution, as the context indicates.

(f) "Board Proceedings Division staff" means an employee or employees of the State Board of Equalization assigned to the Board Proceedings Division of the Legal Department.

(g) "Business" means a business operated by a licensee and/or the property upon which or location at which such licensed business is operated.

(h) "Citation" means a civil notice of violation(s) or a criminal misdemeanor notice to appear.

(i) "Control" or "controlling" means control or controlling as defined in Business and Professions Code section 22971, subdivision (p).

(j) "Conviction" means a judgment of guilt of a criminal offense.

(k) "Excise Taxes Division staff" means an employee or employees of the State Board of Equalization assigned to the Excise Taxes Division of the Property and Special Taxes Department.

(l) "Finding" or "Findings" means a determination that a violation of the Act has occurred. This can occur by default if no appeal is made from a Notice of Violation or Warning Notice, or by a final decision made pursuant to Regulations 4700, 4701, or 4702.

(m) "Fine" means any fine imposed by the Board pursuant to the Act.

(n) "Investigations Division staff" means an employee or employees of the State Board of Equalization assigned to the Investigations Division of the Legal Department.

(o) "Licensee" means a licensee as defined in Business and Professions Code section 22971, subdivision (j).

(p) "License subject to a civil or criminal citation" means a license as to which a citation has been issued but no final determination of violation has yet been entered into the licensee's or unlicensed person's permanent record.

(q) "Notice of Violation" means the document sent to a licensee or unlicensed person referring to the citation issued, the charged violation(s), the penalty or penalties to be imposed, and the licensee's or unlicensed person's appeal rights.

(r) "Offense" means a criminal conviction of violations of the Act and/or civil findings of violations of the Act.

(s) "Person" means a person as defined in Revenue and Taxation Code section 30010.

(t) "Regulation" means a section of title 18 of the California Code of Regulations.

(u) "Unlicensed Person" means any person not holding a valid license issued by the Board pursuant to the Act.

(v) "Warning Notice" means the document advising a licensee or unlicensed person that the stated violation(s) of the Act will be entered into the licensee's or unlicensed person's permanent record as a first offense and that future violations will result in civil penalties.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22970, 22971, 22974.5, 22978.7 and 22979.7, Business and Professions Code; and Section ~~22971(n)~~30010, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue

Regulation 4508, *Appeal – Denial of License*
Regulation 4701, *Appeal – Appeals Division*
Regulation 4702, *Appeal – Board Hearing*

A. Factual Basis

California Code of Regulations, title 18, sections (Regulations) 4508, 4701, and 4702 generally provide the rules applicable to appeals of the State Board of Equalization's (Board) actions under the Cigarette and Tobacco Products Licensing Act (division 8.6 (commencing with section 22970) of the Business and Professions Code). These regulations reference rules for appeals that were contained in the Rules of Practice[1] (Cal. Code Regs., tit. 18, § 5010 et seq.), which has since been repealed. The Board hereby proposes to replace the references to the repealed Rules of Practice in Regulations 4508, 4701, and 4702 under California Code of Regulations, title 1, section (Rule) 100.

The Rules of Practice were originally adopted to prescribe the general rules for appeals of Board actions and were repealed effective February 6, 2008. Regulations 4508, 4701, and 4702 were adopted on December 12, 2006, and effective April 21, 2007. As a result, Regulations 4508, 4701, and 4702 refer to Regulations 5023, 5070, 5072 though 5075, 5076, 5077 through 5082, and 5083 through 5087 of the Rules of Practice, which were then in effect. Regulation 5023 prescribed the Board's procedures for conducting appeals conferences and the other regulations referenced prescribed the Board's procedures for conducting Board hearings, including:

- Definitions (Regulation 5070);
- The quorum requirements (Regulation 5072);
- Representation at hearings and powers of attorney (Regulation 5073);
- The consolidation of appeals for hearings or decisions (Regulation 5074);
- The timeliness of documents (Regulation 5074.5);
- The briefing process (Regulation 5075);
- The requirements for scheduling and noticing hearings (Regulation 5076);
- The time allocated for hearings (Regulation 5077);
- The scope of hearings (Regulation 5078);
- The hearing procedures (Regulation 5079);
- The burden of proof (Regulation 5080);
- The decision and voting procedures (Regulation 5081);
- Notice of the Board's decision (Regulation 5081.2);
- The finality of decisions and petition for rehearing procedures (Regulation 5082);
- Filing fees and charges for transcripts (Regulation 5083);

[1] The repealed Rules of Practice are attached for ease of reference.

- Public records of hearings (Regulation 5085);
- The issuance of subpoenas (Regulation 5086); and
- The withdrawal of exhibits (Regulation 5087).

Subsequently, the Board adopted the Rules for Tax Appeals (division 2.1 (commencing with section 5000) of title 18 of the California Code of Regulations), which contain more comprehensive rules for appeals of Board actions, and repealed the prior Rules of Practice, effective February 6, 2008. Accordingly, the Board proposes to replace the references to the repealed Rules of Practice in Regulations 4508, 4701, and 4702 with references to the corresponding provisions in the current Rules for Tax Appeals. The Board also proposes to correct an internal cross reference in subdivision (c) of Regulation 4701.

The Board has determined that the repealed Rules of Practice correspond to the new Rules for Tax Appeals as follows:

Rules of Practice	Rules for Tax Appeals
1. Regulation 5023	Regulations 5260-5268, and 5523.4
2. Regulation 5070	Regulations 5511 and 5512
3. Regulation 5072	Regulation 5550
4. Regulation 5073	Regulations 5523 and 5523.1
5. Regulation 5074	Regulation 5522.4
6. Regulation 5074.5	Regulation 5571
7. Regulation 5075	Regulations 5270 and 5271
8. Regulation 5076	Regulation 5522.6 and 5522.8
9. Regulation 5077	Regulation 5523.5, subdivisions (c) - (e)
10. Regulation 5078	Regulation 5523.5, subdivision (a)
11. Regulation 5079	Regulations 5523.6 and 5523.7
12. Regulation 5080	Regulation 5541
13. Regulation 5081	Regulation 5551
14. Regulation 5081.2	Regulation 5560, subdivision (a)
15. Regulation 5082	Regulations 5560, subdivision (b), 5561, 5562, and 5563
16. Regulation 5083	Regulations 5576
17. Regulation 5085	Regulation 5572
18. Regulation 5086	Regulation 5523.5, subdivision (b)
19. Regulation 5087	No corresponding provision.

B. Proposed Amendments

1. Rule 100 Changes to Regulation 4508, *Appeal—Denial of License*

Rule 100 changes are proposed to Regulation 4508 to:

- Replace the reference to "Regulation 5023" in subdivision (c) with a reference to "article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations";
- Replace the references to "Regulations 5070, 5072 though 5075, 5076, 5077 through 5082, and 5083 through 5087" in subdivision (c) with references to "Regulations

5270, 5271, 5522.4 through 5523.1, 5523.4, through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576"; and

- Replace the reference to Regulation "5082" in subdivision (d) with a reference to Regulation 5560, subdivision (b).

2. Rule 100 Changes to Regulation 4701, *Appeal—Appeals Division*

Rule 100 changes are proposed to Regulation 4701 to:

- Replace the reference to "Regulation 5023" with a reference to "article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations" in subdivision (b); and
- Add "s (e) and" following "set forth in subdivision" in subdivision (c).

3. Rule 100 Changes to Regulation 4702, *Appeal—Board Hearing*

A Rule 100 change is proposed to Regulation 4702, subdivision (b), to replace the references to "Regulations 5070, 5072 though 5075, 5076, 5077 through 5082, and 5083 through 5087" with references to "Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4, through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576."

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes to Regulations 4508, 4701, and 4702 are necessary to replace the references to the repealed Rules of Practice with the corresponding references to the current Rules for Tax Appeals.

PROPOSED AMENDMENT

1. Amend Regulation 4508 (Appeal – Denial of License) to read as follows:

Regulation 4508. Appeal - Denial of License.

(a) If the Excise Taxes Division determines that a new license should not be issued pursuant to Regulation 4503, then it shall notify the applicant of such determination and deny the application for issuance of a new license for the applicant's business. The applicant may petition for a redetermination within 30 days from the date notice of the denial is mailed or personally delivered to the applicant. The denial of the application shall become final if a petition for redetermination is not filed before the expiration of the 30-day period.

(b) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded.

(c) The Board shall reconsider the determination of the Excise Taxes Division pursuant to its administrative appeals process set forth in ~~Regulation 5023~~ article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations and shall grant the applicant an oral hearing if timely requested within 30 days of the date the Decision and Recommendation issued by the Appeals Division is mailed to the applicant. Any Board hearing will be governed by the rules set forth in ~~Regulations 5070, 5072 though 5075, 5076, 5077 through 5082, and 5083 through 5087~~Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4, through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576.

(d) The order or decision of the Board upon a petition for redetermination becomes final 30 days after the date notice thereof is mailed to the applicant, except as provided in Regulation 5560, subdivision (b)~~Regulation 5082~~.

(e) Any notice required by this section shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the applicant's last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, mailbox, sub-post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, notice may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.

2. Amend Regulation 4701 (Appeal – Appeals Division) to read as follows:

Regulation 4701. Appeal - Appeals Division.

(a) Request for Appeals Conference. The Request for Appeals Conference shall state the specific grounds upon which the licensee or unlicensed person is contesting the Warning Notice, Notice of Violation, or Notice of First Decision, and shall be accompanied by any and all documentation and written argument to be considered in the appeal. The Request for Appeals Conference shall be signed by the licensee or unlicensed person or by an authorized representative.

(b) Conference. Upon receipt of a Request for Appeals Conference, a conference will be scheduled and held as set forth in ~~Regulation 5023~~article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations, unless otherwise provided herein. The conference shall allow a licensee or unlicensed person an opportunity to show cause why the Warning Notice, Notice of Violation, or Notice of First Decision, and the penalty or penalties imposed therein, should not be upheld.

(1) The conference will be held by telephone and shall be recorded by the Appeals Division. A licensee or unlicensed person may request a copy or transcript of the recording, at his or her expense.

(2) The Appeals Division may grant a request to reschedule or postpone a conference. If a request is granted, the conference shall be rescheduled or postponed so that it can be held within 15 days of the date the conference was scheduled to be held prior to the granting of the request, unless the Chief Counsel or his or her designee approves of a later date.

(3) During a conference, the Appeals Division may grant a request for additional time to submit additional evidence. If such additional time is granted, the evidence shall be submitted to the Appeals Division no later than 7 days after the conference date.

(c) Decision. The Appeals Division shall issue a Notice of Second Decision following the conference. The Notice of Second Decision will set forth the Appeals Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights, if any, as set forth in subdivisions (e) and (f) below.

(d) No later than 35 days after the Notice of Second Decision is issued, the Appeals Division may, in its sole discretion, issue a Notice of Second Decision - Reconsideration to correct any mistakes of law and/or facts.

(e) A Notice of Second Decision or Notice of Second Decision - Reconsideration that upholds a penalty of revocation and/or a fine of more than $2,500 may be appealed by timely filing a Request for Board Hearing. A Notice of Second Decision or Notice of Second Decision - Reconsideration that upholds a penalty of suspension and/or a fine of $2,500 or less is final and may not be appealed further.

(f) Failure to File. When applicable, a Request for Board Hearing must be filed within 10 days of the date the Notice of Second Decision is mailed or personally delivered to the licensee or unlicensed person. If a Request for a Board Hearing is not filed within the 10-day period, then the licensee or unlicensed person shall be deemed to have waived his or her right to an appeal and the Notice of Second Decision, and the penalty or penalties stated therein, shall become final. If a hearing is not requested or is waived, then official notice of the Board's action on the appeal will be mailed to the licensee or unlicensed person.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

3. Amend Regulation 4702 (Appeal – Board Hearing) to read as follows:

Regulation 4702. Appeal - Board Hearing.

(a) Request for Board Hearing. The Request for Board Hearing shall:

(1) State the specific grounds upon which the licensee or unlicensed person is contesting the Notice of Violation or Notice of Second Decision;

(2) State whether an oral hearing is requested;

(3) Be accompanied by any and all documentation and written argument to be considered in support of the licensee's or unlicensed person's contentions; and

(4) Be signed by the licensee or unlicensed person or by an authorized representative.

(b) When applicable, upon receipt of the Request for Board Hearing, a Board hearing shall be scheduled and conducted in accordance with the procedures as set forth in ~~Regulations 5070, 5072 though 5075, 5076, 5077 through 5082, and 5083 through 5087~~Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4, through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576, to allow the licensee or unlicensed person an opportunity to show cause why the Notice of Violation or Notice of Second Decision, and the penalty or penalties imposed therein, should not be upheld. Following the Board hearing, a Notice of Board Decision will be mailed to the licensee or unlicensed person.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue
Regulation 4703, *Seizures and Forfeitures*

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 4703 generally provides the criteria and procedures for seizures and forfeitures of cigarettes and tobacco products under the Cigarette and Tobacco Products Licensing Act (division 8.6 (commencing with section 22970) of the Business and Professions Code). The State Board of Equalization (Board) hereby proposes to make minor corrections to the text and a subdivision heading in Regulation 4703 under California Code of Regulations, title 1, section (Rule) 100.

Within Regulation 4703, the term "Board" is used 15 times throughout to refer to the State Board of Equalization. The term "Investigations Division" is used one time to refer to the State Board of Equalization, in paragraph (2) of subdivision (b). The term "Investigations Division" is inconsistent with the use of the term "Board" throughout the rest of regulation and should be replaced with the term "Board" to make the subdivision consistent with the rest of the regulation. In subdivision (c), a comma is needed after "paid" and before "when the owner", and, in paragraph (3) of subdivision (c), the "b" in "board" should be capitalized to make it consistent with the 14 other references to the "Board." Lastly, the heading for subdivision (d) needs to be revised to reflect its content. Accordingly, the Board proposes to amend Regulation 4703 to replace the reference to the "Investigations Division," capitalize the first letter in "board," correct two punctuation errors, and to revise the heading of subdivision (d) to be consistent with its content.

B. Proposed Amendments

Rule 100 Changes to Regulation 4703, *Seizures and Forfeitures*

Rule 100 changes are proposed to:

- Replace the term "Investigations Division" in paragraph (2) of subdivision (b) with "Board";
- Insert a comma after "paid" in subdivision (c);
- Replace "board" with "Board" in paragraph (3) of subdivision (c); and
- Replace "Evidence Required for Recovery of Product" with "Evidence Relevant to Recovery of Product" as the heading for subdivision (d) of Regulation 4703.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to correct reference, syntax, and punctuation errors in Regulation 4703.

PROPOSED AMENDMENTS

Amend Regulation 4703 (Seizures and Forfeitures) to read as follows:

Regulation 4703. Seizures and Forfeitures.

(a) Seizures. The seizure of cigarette and tobacco products is authorized under the Cigarette and Tobacco Products Licensing Act Law and the Cigarette and Tobacco Products Tax Law.

(b) Seizure of Untaxed Products.

(1) In the absence of an applicable exemption from tax or other lawful possession of unstamped product under Revenue and Taxation Code (e.g., Revenue and Taxation Code sections 30102 through 30106 or 30431), the Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products that cannot be sold legally in California, including, but not limited to the following:

(A) Cigarette packages without any cigarette tax stamp that are possessed, stored, owned or for sale by a retailer, wholesaler, or any other person except when possessed by a licensed distributor.

(B) Cigarette packages with another state's tax stamp or the stamp of another taxing jurisdiction that are possessed, stored, owned or for sale by a retailer, wholesaler, or any other person except when possessed by a licensed distributor.

(C) Cigarette packages with a California tax stamp affixed and marked "Not for sale in the United States," "For Export Only" or similar wording indicating the manufacturer did not intend the product to be sold in the United States, that are possessed, stored, owned by a retailer, wholesaler, distributor, manufacturer importer, or any other person.

(D) Tobacco products for which the California excise tax is due but has not been paid that are possessed, stored, owned, or for sale by a retailer, wholesaler or any other person except when possessed by a licensed distributor.

(2) Forfeiture. Cigarettes or tobacco products as described in subsection (b) for which the California excise tax has not been paid that are seized by the ~~Investigations Division~~Board or seized and delivered to the Board by a law enforcement agency shall be forfeited to the state.

(3) Petition Procedure. The Board's seizure of such products as described under subsection (b) shall comply with the procedures set forth in Revenue and Taxation Code, Division 2, Part 13, Chapter 7.5, commencing with section 30435.

(A) An owner or any person owning an interest in the seized property may file a petition with the Board to request recovery of the seized property as permitted by Revenue and Taxation Code section 30438.

(B) The petitioner has the burden of proving in the petition that the seized cigarettes and/or tobacco products are legal to possess, store, own or sell and that taxes have been paid to obtain the recovery of the seized product(s).

(c) Seizure of Product From Persons Without a Valid License. The Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products, whether or not the California excise taxes have been paid, when the owner does not have a valid license under the Cigarette and Tobacco Products Licensing Act Law. Seizures shall include, but are not limited to the following:

(1) Unlicensed Persons.

(A) Stamped cigarettes that are possessed, stored, owned or for sale by an unlicensed retailer, distributor, wholesaler, manufacturer, importer, or any other person after notice by the Board or a law enforcement agency.

(B) Tobacco products for which the California excise tax has been paid, that are possessed, stored, owned or for sale by an unlicensed retailer, distributor, wholesaler, or any other person after notice by the Board or a law enforcement agency.

(2) Persons with Suspended or Revoked Licenses.

(A) Stamped or unstamped cigarettes offered for sale at the time of seizure by a retailer, distributor, wholesaler, manufacturer or importer with a suspended or revoked license after notice by the Board of the suspension or revocation.

(B) Tobacco products, regardless of whether the California excise taxes have been paid, that are offered for sale at the time of seizure by a retailer, distributor or wholesaler with a suspended or revoked license after notice by the Board of the suspension or revocation.

(3) Forfeiture. Any cigarettes and tobacco products seized by the ~~board~~Board or a law enforcement agency as described under subsection (c) shall be deemed forfeited to the state.

(4) Petition Procedure. The petitioner may file a petition to contest the citation(s) resulting in the suspension or revocation of the license issued under the Cigarette and Tobacco Products Licensing Act Law pursuant to Article 5 of these regulations.

(d) Evidence ~~Required For~~Relevant to Recovery of Product. Depending on the circumstances, evidence that may be relevant to the issue of whether or not the cigarettes or tobacco products were erroneously or illegally seized, includes, but is not limited to the following:

(1) The cigarette packages had valid California tax stamps affixed and the petitioner held a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(2) The cigarette packages had valid California tax stamps affixed and the petitioner was not operating at the time of seizure with a suspended or revoked license after notice by the Board of the suspension or revocation.

(3) The cigarette packages without California tax stamps affixed were in the possession of a cigarette distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(4) Cigarette packages that bear another state's tax stamp or the stamp of another taxing jurisdiction were in the possession of a cigarette distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(5) Cigarette packages without a California tax stamp affixed and marked "Not for sale in the United States" or similar wording indicating that the manufacturer did not intend the product to be sold in the United States were in the possession of a distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law and intended for sale outside of California at the time of seizure.

(6) The petitioner held a valid license under the Cigarette and Tobacco Products Licensing Act Law and the tax was paid for the seized tobacco products at the time of seizure.

(7) The petitioner was not operating with a suspended or revoked license after notice by the Board of the suspension or revocation and the tax was paid for the seized tobacco products at the time of seizure.

(8) The untaxed tobacco products were in the possession of a tobacco products distributor with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(e) Counterfeit Products. Counterfeit cigarette and tobacco products are defined as those with false manufacturing labels or false or fraudulent stamps, or both false labels and false stamps.

(1) The Board shall be authorized to seize counterfeit cigarette and tobacco products that are possessed, stored, owned or for sale by a retailer, distributor, wholesaler, manufacturer, importer, or any other person.

(2) The Board is not authorized to return seized counterfeit cigarettes and tobacco products as defined in this part as such products are illegal under California law.

(f) Additional grounds for seizure. The California Cigarette and Tobacco Products Tax Law at Revenue and Taxation Code section 30436 sets forth additional circumstances under which cigarettes or tobacco products may be seized by the Board and forfeited to the state.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22971(l) and (m), 22974.3(a) and (b), 22978.2(a) and (b) and 22980.2(c), Business and Professions Code; and Sections 30102, 30102.5, 30103, 30103.5, 30104, 30105, 30105.5, 30106, 30109, 30163, 30431, 30435, 30436, 30438, 30473 and 30474.1, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenue
Regulation 4901, *Records*

A. Factual Basis

Chapter 9.9, Special Taxes Administration – Miscellaneous, of division 2 of title 18 of the California Code of Regulations contains regulations that implement, interpret, or make specific provisions of the Revenue and Taxation Code that are common to a number of Board administered special taxes and fees. California Code of Regulations, title 18, section (Regulation) 4901 is contained in chapter 9.9. Regulation 4901 generally prescribes the records taxpayers and feepayers must maintain and make available to the State Board of Equalization (Board) for inspection under provisions of specified special taxes and fees, which the regulation refers to as "Applicable Tax Laws."

Regulation 4901, subdivision (a)(1), contains the definition of "Applicable Tax Laws," and lists the specific special taxes and fees that are included in the definition. Regulation 4901, subparagraphs (a)(1)(C), (D), and (M) refer to the Ballast Water Management Fee, California Tire Fee, Natural Gas Surcharge as applicable tax laws, respectively. This is because:

- The Board administers all three of the fees under the Fee Collection Procedures Law (Rev. & Tax. Code, § 55001 et seq.);
- Revenue and Taxation Code section 55301 authorizes the Board to prescribe, adopt, and enforce rules and regulations that implement, interpret, and make specific the provisions of the Fee Collection Procedures Law;
- Revenue and Taxation Code section 55302 authorizes the Board to examine feepayers' books and records as necessary to carryout the provisions of the Fee Collection Procedures Law; and
- Regulation 4901 prescribes the records feepayers must maintain and make available to the Board for inspection under Revenue and Taxation Code section 55302.

Since Regulation 4901 was adopted in 2003, two new special fees have been enacted – the Water Rights Fee (Wat. Code, § 1525 et seq.), effective January 1, 2004, and the Covered Electronic Waste Recycling Fee (Pub. Resources Code, § 42464 et seq.), effective January 1, 2004. The Board administers both of these fees under the provisions of the Fee Collection Procedures Law, including Revenue and Taxation Code section 55302. Accordingly, the Board hereby proposes to add the Water Rights Fee and the Covered Electronic Waste Recycling Fee to the list of "Applicable Tax Laws" in Regulation 4901, subdivision (a)(1), to clarify that Regulation 4901 also applies to these two special fees.

In addition, the Ballast Water Management Fee was renamed the Marine Invasive Species Fee effective January 1, 2004. Therefore, the Board also proposes to replace "Ballast Water

Management Fee" with "Marine Invasive Species Fee" in Regulation 4901, subdivision (a)(1)(C).

B. Proposed Amendments

Rule 100 Changes to Amend Regulation 4901, *Records*

Rule 100 changes are proposed to add Water Rights Fee and Covered Electronic Waste Recycling Fee to Regulation 4901, subdivision (a)(1), and to replace "Ballast Water Management Fee" with "Marine Invasive Species Fee" in Regulation 4901, subdivision (a)(1)(C) so that the list of special taxes and fees to which Regulation 4901 applies is current.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to update the list of taxes and fees to which Regulation 4901 applies.

PROPOSED AMENDMENTS

Amend Regulation 4901 (Records) to read as follows:

Regulation 4901. Records.

(a) Definitions.

(1) "Applicable Tax Laws" means any of the following:

(A) Aircraft Jet Fuel Tax, Revenue and Taxation Code Sections 7385-7398, 7486-8406;

(B) Alcoholic Beverage Tax, Revenue and Taxation Code Sections 32001-32557;

(C) ~~Ballast Water Management Fee~~Marine Invasive Species Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;

(D) California Tire Fee, Public Resources Code Sections 42860-42895; Revenue and Taxation Code Sections 55001-55381;

(E) Childhood Lead Poisoning Prevention Fee, Health and Safety Code Section 105310; Revenue and Taxation Code Sections 43001-43651;

(F) Cigarette and Tobacco Products Tax, Revenue and Taxation Code Sections 30001-30481;

(G) Diesel Fuel Tax, Revenue and Taxation Code Sections 60001-60709;

(H) Emergency Telephone Users Surcharge, Revenue and Taxation Code Sections 41001-41176;

(I) Energy Resources Surcharge, Revenue and Taxation Code Sections 40001-40216;

(J) Hazardous Substances Tax, Health and Safety Code Sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7; Revenue and Taxation Code Sections 43001-43651;

(K) Integrated Waste Management Fee, Public Resources Code Sections 40000-48008; Revenue and Taxation Code Sections 45001-45984;

(L) Motor Vehicle Fuel Tax, Revenue and Taxation Code Sections 7301-8526;

(M) Natural Gas Surcharge, Public Utilities Code Sections 890-900; Revenue and Taxation Code Sections 55001-55381;

(N) Occupational Lead Poisoning Prevention Fee, Health and Safety Code Section 105190; Revenue and Taxation Code Sections 43001-43651;

(O) Oil Spill Response, Prevention, and Administration Fees, Revenue and Taxation Code Sections 46001-46751;

(P) Underground Storage Tank Maintenance Fee, Revenue and Taxation Code Sections 50101-50162;

(Q) Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355;

(R) Covered Electronic Waste Recycling Fee, Health and Safety Code Sections 25214.9-25214.10.2; Public Resources Code Sections 42460-42486; Revenue and Taxation Code Sections 55001-55381;

(S) Water Rights Fee, Water Code Sections 1525-1552, 13050, 13160.1; Revenue and Taxation Code Sections 55001-55381.

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged.)

(6) . . . (unchanged).

(7) . . . (unchanged).

(b) General. . . . (unchanged).

(c) Machine-Sensible Records. . . . (unchanged).

(d) Machine-Sensible Records Maintenance Requirements. . . . (unchanged).

(e) Access to Machine-Sensible Records. . . . (unchanged).

(f) Taxpayer Responsibility and Discretionary Authority. . . . (unchanged).

(g) Hardcopy Records. . . . (unchanged).

(h) Alternative Storage Media. . . . (unchanged).

(i) Record Retention – Time Period. . . . (unchanged).

(j) Record Retention Limitation Agreements. . . . (unchanged).

(k) Failure to Maintain Records. . . . (unchanged).

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. References: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605 and 60606, Revenue and Taxation Code.