



**BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: DECEMBER 14, 2011, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

Title: Proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

Issue/Topic:

Request approval and authorization to publish proposed amendments to update the methodology by which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and make such amounts available to the Franchise Tax Board in the form of a use tax table for calendar year 2012 and subsequent years.

Committee Discussion:

None.

Committee Action:

Upon motion by Mr. Horton, seconded by Ms. Yee, the Committee approved and authorized for publication the proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed amendments to Regulation 1685.5 is attached.

The vote was as follows:

MEMBER	Yee	Steel	Horton	Mandel
VOTE	Yes	No	Yes	Yes

Honorable Betty T. Yee, Committee Chair

Kristine Cazadd, Executive Director

BOARD APPROVED

at the December 15, 2011 Board Meeting

Diane Olson, Chief
Board Proceedings Division

Regulation 1685.5. Calculation of Estimated Use Tax – Use Tax Table

Reference: Section 6452.1, Revenue and Taxation Code.

(a) IN GENERAL.

(1) ESTIMATED USE TAX AND USE TAX TABLE. The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

(2) WHO IS ELIGIBLE TO USE BOE USE TAX TABLES.

(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.

(3) SAFE HARBOR. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

(b) DEFINITIONS AND DATA SOURCES.

(1) AGI RANGES. The use tax table shall be separated into fifteen (15)~~eight (8)~~ AGI ranges as follows:

- (A) AGI less than \$20,000;
- (B) AGI of \$20,000 to \$39,999;
- (C) AGI of \$40,000 to \$59,999;
- (D) AGI of \$60,000 to \$79,999;
- (E) AGI of \$80,000 to \$99,999;
- (F) AGI of \$100,000 to \$149,999;
- (G) AGI of \$150,000 to \$199,999;

~~(H) AGI more than \$199,999.~~

(A) AGI less than \$10,000;

(B) AGI of \$10,000 to \$19,999;

(C) AGI of \$20,000 to \$29,999;

(D) AGI of \$30,000 to \$39,999;

(E) AGI of \$40,000 to \$49,999;

(F) AGI of \$50,000 to \$59,999;

(G) AGI of \$60,000 to \$69,999;

(H) AGI of \$70,000 to \$79,999;

(I) AGI of \$80,000 to \$89,999;

(J) AGI of \$90,000 to \$99,999;

(K) AGI of \$100,000 to \$124,999;

(L) AGI of \$125,000 to \$149,999;

(M) AGI of \$150,000 to \$174,999;

(N) AGI of \$175,000 to \$199,999;

(O) AGI more than \$199,999

(2) USE TAX LIABILITY FACTOR OR USE TAX TABLE PERCENTAGE. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On ~~June~~^{May} 1, 2012, and each ~~June~~^{May} 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on ~~taxable electronic and mail order~~ purchases for the ~~preceding~~^{preceeding} calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) TOTAL PERSONAL INCOME. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) TOTAL SPENDING AT ELECTRONIC SHOPPING AND MAIL ORDER HOUSES. Total spending at electronic shopping and mail order houses shall be determined by reference to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) TOTAL SPENDING ON TAXABLE PURCHASES. Total spending on taxable purchases shall be determined by:

(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following

categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:

- (i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;
- (ii) Prescriptions;
- (iii) Video Content Downloads;
- (iv) Audio Content Downloads;
- (v) Prepackaged computer software, including software downloads; and
- (vi) All nonmerchandise receipts.

(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

~~(6)(5) PERCENTAGE OF INCOME SPENT ON TAXABLE ELECTRONIC AND MAIL ORDER PURCHASES.~~ The percentage of income spent on ~~taxable electronic and mail order purchases~~ during a calendar year shall be calculated by dividing the total spending on taxable purchases at electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

~~(7)(6) AVERAGE STATE, LOCAL, AND DISTRICT SALES AND USE TAX RATE.~~ The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

(c) CALCULATION OF THE ESTIMATED USE TAX LIABILITY.

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying ~~\$5,000~~\$10,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through ~~(N)(G)~~ shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(~~OH~~) shall be determined by multiplying each range members actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(d) USE TAX TABLE FORMAT.

(1) The use tax table for calendar year 2011 shall provide as follows:

Adjusted Gross Income (AGI) Range	Use Tax Liability
Less Than \$20,000	\$7
\$20,000 to \$39,999	\$21
\$40,000 to \$59,999	\$35
\$60,000 to \$79,999	\$49
\$80,000 to \$99,999	\$63
\$100,000 to \$149,999	\$88
\$150,000 to \$199,999	\$123
More than \$199,999 -Multiply AGI by 0.070% (.0007)	

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as follows:~~the use tax table for calendar year 2011.~~

<u>Adjusted Gross Income</u>		<u>Use Tax Liability</u>
<u>(AGI) Range</u>		
Less Than \$10,000		\$
<u>\$10,000</u>	to <u>\$19,999</u>	\$
<u>\$20,000</u>	to <u>\$29,999</u>	\$
<u>\$30,000</u>	to <u>\$39,999</u>	\$
<u>\$40,000</u>	to <u>\$49,999</u>	\$
<u>\$50,000</u>	to <u>\$59,999</u>	\$
<u>\$60,000</u>	to <u>\$69,999</u>	\$
<u>\$70,000</u>	to <u>\$79,999</u>	\$
<u>\$80,000</u>	to <u>\$89,999</u>	\$
<u>\$90,000</u>	to <u>\$99,999</u>	\$
<u>\$100,000</u>	to <u>\$124,999</u>	\$
<u>\$125,000</u>	to <u>\$149,999</u>	\$
<u>\$150,000</u>	to <u>\$174,999</u>	\$
<u>\$175,000</u>	to <u>\$199,999</u>	\$
More than \$199,999 -Multiply AGI by <u> % (.000)</u>		