

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

HONORABLE CLAUDE PARRISH, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: DECEMBER 18, 2002, TIME: 1:30 PM

Action Items & Status Report Items**Agenda Item No: 1****Title: Proposed Regulation Regarding Requirements for Electronic Funds Transfer Reporting (Regulation 1707, Electronic Funds Transfer)****Issue/Topic:**

Should the Board adopt proposed new Regulation 1707, *Electronic Funds Transfer*, to implement the provisions of Revenue and Taxation Code sections 6479.3 and 6479.5?

Committee Discussion:Action 1, Consent Items

Staff noted non-substantive changes to the proposed regulation provided in the revised agenda. There was no further discussion on this item.

Action 2, Authorization to Publish

There was no discussion on this item.

Committee Action/Recommendation/Direction:Action 1, Consent Items

The committee approved all consent items.

Action 2, Authorization to Publish

The Committee recommended that the Board authorize publication of the new regulation as adopted in the above action. 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 new regulation is attached.

Approved: /s/ Claude Parrish
 Honorable Claude Parrish, Committee Chair

 /s/ James E. Speed
 James E. Speed, Executive Director

BOARD APPROVED
at the December 19, 2002 Board Meeting

 /s/ Deborah Pellegrini
 Deborah Pellegrini, Chief
 Board Proceedings Division

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Regulation 1707. ELECTRONIC FUNDS TRANSFER

Reference: Sections 6479.3 and 6479.5, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer.

(2) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(3) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount due. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(4) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(5) "Federal Reserve Wire Transfer" means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Revenue and Taxation Code section 6479.3 may be made by Federal Reserve Wire Transfer only if payment cannot, for good cause, be made according to subdivision (a), and the use of Federal Reserve Wire Transfer is preapproved by the Board. Banking costs incurred for the Federal Reserve Wire Transfer transaction charged to the person and to the state shall be paid by the person originating the transaction.

(b) PARTICIPATION.

(1) MANDATORY PARTICIPATION. Persons with an estimated monthly tax liability of twenty thousand dollars (\$20,000) or more are required to remit amounts due by electronic funds transfer under procedures prescribed by the Board. To identify mandatory participants, the Board shall conduct an annual review of all persons with sales and use tax permits. The review is performed by calculating an average monthly tax liability for a twelve-month period. Persons whose average monthly tax liability equals or exceeds twenty thousand dollars will be required to remit payments by electronic funds transfer. If a person did not begin making sales until after the beginning of the designated twelve-month review period, then the monthly tax liability will be calculated based upon the number of months in which sales were made (for example, in a calendar year review period, if the person obtains a seller's permit and begins making sales in May, the total tax liability would be divided by eight to determine the average monthly tax liability since there are eight months remaining in the evaluation period). Persons registering to report and pay sales or use tax for the first time, except certain successors, will not be required to participate in the electronic funds transfer program until an annual review is conducted.

A successor will be regarded as having an estimated tax liability in excess of twenty thousand dollars (\$20,000) per month when the monthly tax liability of the predecessor exceeded twenty thousand dollars per month or the predecessor was a mandatory participant in the electronic funds transfer program. If the successor purchases a portion of a business that is required to participate in the mandatory electronic funds transfer program (e.g. a multiple outlet business that only sells some, but not all, of its locations), the average monthly tax liability of the purchased locations will be computed to determine if the successor meets the threshold to be identified as a mandatory participant in the electronic funds transfer program.

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

After an annual review, if a person drops below the threshold for mandatory participation, the Board shall provide notification, in writing, that the status has been changed from mandatory participation to voluntary participation in the electronic funds transfer program. If, at that time, a person wishes to discontinue making electronic funds transfer payments, a written request must be made to the Board. Payments must continue to be remitted by electronic funds transfer until the taxpayer is notified by the Board, in writing, of an effective date of withdrawal from the program. Any person who fails to comply with the mandatory participation requirements under this article shall be liable for penalty as provided under Revenue and Taxation Code section 6479.3.

(2) VOLUNTARY PARTICIPATION. Any person not meeting the criteria for mandatory participation set forth in subdivision (b)(1) may participate in the program on a voluntary basis. A person must register with the Board prior to participation and must remain in the program for a minimum of one year. After that time, if a person wishes to discontinue making electronic funds transfer payments, a written request must be made to the Board. Payments must continue to be remitted by electronic funds transfer until notified by the Board, in writing, of an effective date of withdrawal from the program.

(c) DATE OF PAYMENT. Payment is deemed complete on the date the electronic funds transfer is initiated, if the settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If the settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) FILING OF RETURNS. In addition to a tax payment made by electronic funds transfer, a return must be filed on or before the due date. Any person who fails to comply with this provision shall be subject to penalty charges as provided under Revenue and Taxation Code section 6479.3.

(e) FAILURE TO PAY BY ELECTRONIC FUNDS TRANSFER. Any person required to pay taxes by electronic funds transfer must continue to do so until the Board advises that person otherwise in writing. Any person required to pay taxes by electronic funds transfer, as set forth in subdivision (b)(1), who does not pay through electronic funds transfer but uses another means (e.g., pay by check), will be assessed a penalty as provided by Revenue and Taxation Code section 6479.3.

(f) REPORTING PREPAYMENTS. Any person required to make prepayments will not receive and is not required to file prepayment forms (BOE-1150 or BOE-1150-B); however, a payment must still be made by electronic funds transfer.

(g) ZERO AMOUNT DUE. When no tax is due for a given period, a zero dollar transaction must be made by electronic funds transfer or the Board must receive written notification stating that no tax is due for that period.

(h) EMERGENCIES. In emergency situations, a Federal Reserve Wire Transfer transaction may be used to transmit a payment. A Federal Reserve Wire Transfer is an electronic payment system used by federal reserve banks to transfer funds instantaneously. Generally, this method of payment is not approved for recurring transactions. Authorization must be received from the Board prior to making a payment by Federal Reserve Wire Transfer. The person who originates the transfer shall be responsible for any fees incurred by the Federal Reserve Wire Transfer transaction.
