TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1590, *Newspapers and Periodicals*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1590, *Newspapers and Periodicals*. The proposed amendments define the term "mixed newspaper subscription" to mean "a subscription for a tangible newspaper combined with a subscription for the right to access digital content." The proposed amendments clarify in subdivision (b)(3) that in "the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content in not subject to tax." The proposed amendments establish that, on and after October 1, 2016, it is presumed that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provide that the presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate (as proposed to be defined) divided by the sum of the print-only subscription rate (as proposed to be defined) and the digital-only subscription rate is greater than fifty-three (53) percent.

In addition, the proposed amendments make changes to subdivision (b)(5) so that it more clearly follows the language of RTC section 6362.8. The proposed amendments delete outdated references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from subdivision (b), and delete the outdated reference to RTC section 6362.3 from the regulation's reference note. Furthermore, the proposed amendments make minor grammatical and formatting changes to Exemption Certificates A through D set forth in the regulation and add language to Exemption Certificates C and D to make them consistent with the requirements of RTC section 6362.8.

PUBLIC HEARING

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on June 14-15, 2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at *www.boe.ca.gov* at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:00 a.m. or as soon thereafter as the matter may be heard on June 14 or 15, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1590.

AUTHORITY

RTC section 7051

REFERENCE

RTC sections 6005, 6006, 6007, 6010, 6015, 6361.5, 6362.7, and 6362.8.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (RTC, § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) The term "gross receipts" means the total amount of the sale price without any deduction for the cost of materials used, labor or service costs, interest paid, losses, or any other expense. (RTC, § 6012, subd. (a)(2).) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Reg. 1700.) It is presumed that all gross receipts are subject to the sales tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a resale certificate. (RTC, § 6091.)

When sales tax does not apply, use tax is imposed on the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) Unless an exemption or exclusion applies, the use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the property is liable for the tax. (RTC, §§ 6201, 6202.) However, every retailer "engaged in business" in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the Board, and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, §§ 6203, 6204; Reg. 1684.) For purposes of the use tax, it is presumed that tangible personal property sold by any person for delivery in California is sold for storage, use, or other consumption in this state until the contrary is established and the burden of proving the contrary is upon the person who makes the sale, unless he takes from the purchaser a resale certificate. (RTC, § 6241.)

"Tangible personal property" means "personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses." Whereas tax is only imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges entirely for the provision of services. (RTC, §§ 6051, 6201; Reg. 1501.) Further, a transaction is not subject to tax if the true object of the transaction is to obtain the provision of services, even though some tangible personal

property is transferred incidental to the provision of the services. (Reg. 1501) On the other hand, a transaction is entirely subject to tax when the true object of the transaction is to obtain tangible personal property and services are part of the sale of tangible personal property. (RTC, § 6012, subd. (b)(1); Reg. 1501; see Reg. 1524, subd. (a).)

A "mixed transaction," in contrast, is a transaction in which "the goods and services . . . are distinct (not intertwined) and each is a significant object of the transaction (not one incidental to the other)." (*Dell, Inc. v. Superior Court* (*Dell*) (2008) 159 Cal.App.4th 911, 925.) If a transaction is a "mixed transaction," each element of the transaction is analyzed as a separate transaction, and tax is applied to the tangible personal property portion and the service portion is not taxed. (*Ibid.*) The Board and the Board's Legal Department have previously concluded that the Sales and Use Tax Law (RTC, § 6001 et seq.) generally requires taxpayers to make a "reasonable" and "fair" allocation of a lump-sum charge based upon the value of the taxable and nontaxable portions of a mixed transaction. (See, e.g., Reg. 1603, subd. (a)(2)(A) [reasonable allocation to nontaxable rooms and taxable meals]; Sales and Use Tax Annotations 120.0104 (1/24/90) [fair and reasonable allocation to nontaxable database access and taxable software], 295.0035.200 (4/28/86) [reasonable allocation to nontaxable theatrical performance and taxable balloons], 515.0002.900 (4/23/86) [reasonable allocation to nontaxable color consulting services and taxable color book], 550.0343 (7/19/85) [reasonable allocation between nontaxable theatrical performance and taxable meals].) (Annotations are summaries of the conclusions reached in selected opinions of attorneys of the Board's Legal Department and are intended to provide guidance regarding the interpretation of statutes and Board regulations as applied by staff to specific factual situations. See Reg. 5700.) In the case where the lump-sum price of both elements together is less than their combined individual prices, the Board's Legal Department has previously opined that it is appropriate to allocate to the taxable tangible personal property and to the nontaxable service proportionally, relative to the value of the tangible personal property and non-taxable service.

Also, as relevant here, RTC section 6362.3 exempts from tax the sale or use of newspapers or periodicals, during the term of a prepaid subscription entered into and paid for prior to July 15, 1991. RTC section 6362.7 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, that are distributed without charge and issued at average intervals not exceeding three months, and the sale or use of periodicals, and the components thereof, regularly issued at average intervals not exceeding three months and sold by subscription. RTC section 6362.7 contains a definition of "periodical" which includes the requirement that a periodical appear at stated intervals at least four times per year, but not more than 60 times per year. RTC section 6362.8 exempts from tax the sale or use of newspapers and periodicals, and the components thereof, issued at average intervals not exceeding three months that are published by specified tax-exempt organizations or non-profit organizations when certain other statutory conditions are satisfied.

In addition, Regulation 1590 implements, interprets, and makes specific the RTC sections that pertain to the application of tax to newspapers and periodicals. It provides that a

"newspaper" is a publication that is "commonly understood to be a newspaper" and is "printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest." (Reg. 1590, subd. (a)(1).) It explains that, since July 15, 1991, the sale of newspapers and periodicals is subject to tax unless otherwise exempt. (Reg. 1590, subd. (b)(1).) It provides notice regarding the exemption for subscriptions ordered and paid for prior to July 15, 1991. (Reg. 1590, subd. (b)(3), (8).) It also provides that the exemption for newspapers and periodicals distributed without charge was first effective October 2, 1991. (Reg. 1590, subd. (b)(2).)

Further, Regulation 1590 explains that each delivery of a newspaper or periodical pursuant to a subscription is a separate sale transaction. It also provides that the exemption for periodicals sold by subscription was effective for transactions on or after November 1, 1992, and it provides that sales tax reimbursement collected on the sale of a periodical subscription prior to November 1, 1992, but for the sale of issues delivered on or after November 1, 1992, constitutes excess sales tax reimbursement and must either be refunded to the customer or paid to the Board. (Reg. 1590, subd. (b)(3).)

Furthermore, Regulation 1590 provides that the exemption for newspapers and periodicals published by specified tax-exempt organizations was first effective November 1, 1991, and that the requirement that such newspapers and periodicals be regularly issued at average intervals not exceeding three months was added to the exemption effective November 1, 1992. (Reg. 1590, subd. (b)(5)(A).) It also explains that the exemption for newspapers and periodicals published by nonprofit organizations was first effective November 1, 1991, and it incorporates the statutory requirements for the exemption, but it omits the statutory requirement that newspapers and periodicals be regularly issued at average intervals not exceeding three months. (Reg. 1590, subd. (b)(5)(B).)

Effects, Objective, and Benefit of the Proposed Amendments to Regulation 1591

When Regulation 1590 was last amended in 1994, newspaper publishers generally sold printed newspapers. However, since then, technology and reader preferences have evolved, and newspaper publishers regularly sell digital services over the Internet, including access to digital content, such as online editions of the newspapers they sell. Often, the access to the digital content includes material that is not otherwise provided with a printed publication alone, such as expanded articles, additional photographs, and mobile applications. Also, access to the digital content may be sold as a stand-alone service (e.g., daily access to digital content only) for a separately stated price or sold in combination with a subscription for printed newspaper delivery for a lump-sum price with each being a significant object of the transaction. The access to digital content and frequency of delivery of the printed newspapers may vary in the subscription packages (e.g., daily print and daily access to digital content or weekend print and daily access to digital content). And, as an incentive, the lump-sum price a publisher charges for access to digital content sold in combination with a subscription for printed newspaper delivery is generally lower than the sum of the prices at which the publisher would separately sell the access to the digital content or the subscription for printed newspaper delivery.

Charges for printed newspapers that appear more than 60 times a year are subject to tax under Regulation 1590. However, no portion of a charge for access to digital content via the Internet (digital only subscription) is subject to tax if the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. (See, e.g., Reg. 1502, subd. (f)(1)(D)). Also, under *Dell*, *supra*, only a portion of a lump-sum charge for both digital services provided over the Internet without the transfer of tangible personal property and a subscription for taxable printed newspaper delivery is subject to tax because both the digital services and the printed newspapers are significant objects of the contract. Publishers are required to make a reasonable and fair allocation of such a lump-sum charge based upon the value of the taxable and nontaxable portions of the mixed transaction. And, guidance has previously been requested about how to make an acceptable allocation. Therefore, the Board's Business Taxes Committee (BTC) staff determined that there is an issue because Regulation 1590 does not provide guidance to newspaper retailers about how to make an acceptable allocation of a lump-sum charge for a subscription for printed newspaper delivery and access to digital content.

Initially, BTC staff prepared draft amendments to Regulation 1590 to address the issue discussed above. The draft amendments proposed to add a new subdivision (a)(8) to define a "mixed newspaper subscription" as a subscription for a tangible newspaper combined with a subscription for the right to access digital content, and amend subdivision (b)(3) to set thirty-eight (38) percent as the portion of all lump-sum charges for mixed newspaper subscriptions that are for access to digital content and therefore not subject to tax, on a prospective basis. BTC staff recommended this approach because it would provide clarity and certainty to retailers, consumers, and Board staff and BTC staff arrived at the figure of 38 percent based solely on data previously provided by a retailer that requested an opinion from the Board's Legal Department with regard to its mixed newspaper subscription transactions. BTC staff recommended that the amendments pertaining to the application of tax to mixed newspaper subscriptions have a prospective application so that retailers of such subscriptions are notified well in advance of the date the amendments are operative.

In addition, the draft amendments to Regulation 1590 proposed changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The draft amendments also proposed to delete the references to 1990's effective dates and obsolete guidance regarding early 1990's transactions (discussed above) from subdivision (b) because the references and guidance are no longer relevant.

BTC staff subsequently provided its draft amendments to interested parties and conducted an interested parties meeting on August 5, 2015. During the August 2015 meeting, the interested parties were supportive of the approach of allowing a retailer to use a single percentage to determine the nontaxable portions of the lump-sum charges for all mixed newspaper subscriptions (of varying frequency of delivery). However, the interested parties did not agree with the nontaxable percentage in the draft amendments

and recommended that the draft amendments be revised to provide a rebuttable presumption that the nontaxable percentage applies so that retailers can rebut the presumption when there are unique facts and circumstances. Therefore, BTC staff requested additional input from the interested parties regarding other alternative nontaxable percentages with backup data to support the alternate suggestions, and asked the interested parties to provide examples of documentation they could provide to establish that there are unique facts and circumstances related to a mixed newspaper subscription and thereby rebut a presumption that the nontaxable percentage applies.

Following the interested parties meeting, BTC staff received comments from Mr. James Ewert on behalf of the California Newspaper Publishers Association (CNPA), in a letter dated August 17, 2015. The CNPA expressed support in concept of BTC staff's proposed amendments and acknowledged that the proposed amendments recognize the growing use of mixed subscriptions within the newspaper industry. The CNPA further asserted that BTC staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription may not reflect the circulation practices of the entire newspaper industry. The CNPA stated that it was in the process of examining various methodologies and obtaining information to support the assertion. The CNPA also reiterated comments made at the interested parties meeting that the proposed amendments should only establish a rebuttable presumption that the proposed nontaxable percentage applies with the idea being that a seller of mixed newspaper subscriptions could apply an alternate nontaxable percentage when supported by unique facts and circumstances.

Following the interested parties meeting, BTC staff reviewed the websites of several major California newspapers and used the available information to calculate an average ratio of the price of a subscription for access to digital content only to a subscription that includes both daily print delivery and access to digital content, which supported staff's initial nontaxable percentage. However, there was insufficient information available to establish similar ratios for the same newspapers' mixed newspaper subscriptions that include less than daily print delivery, such as weekend print delivery subscriptions. Based on this initial research, BTC staff, in the Second Discussion Paper, proposed to amend Regulation 1590, subdivision (b)(3), to include two different nontaxable percentages. BTC staff suggested adding subdivision (b)(3)(B)(1) to specify the taxable and nontaxable percentages applicable to mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week and further proposed adding subdivision (b)(3)(B)(2) to specify the taxable and nontaxable percentages applicable to newspaper subscriptions in which delivery of printed material occurs three days or less per week. Based on the initial research, BTC staff proposed setting thirty-eight (38) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week. Based upon limited data and some assumptions, staff provided sample language establishing forty-eight (48) percent as the nontaxable portion of lump-sum charges for mixed newspaper subscriptions in which delivery of printed material occurs three days or less per week for purposes of further discussion. However, staff also requested more data from industry to determine an appropriate percentage for subscriptions in which printed delivery occurs less than four days per week. In addition, BTC staff stated that it would

consider adding a "safe harbor" provision to the regulation, so that there is a rebuttable presumption that the stated nontaxable percentages apply, which could be overcome by evidence establishing a different percentage, but staff reiterated that such provision should explain the types of evidence or documentation that a retailer would retain to rebut the presumption.

On September 29, 2015, BTC staff again met with the interested parties to discuss the draft amendments. The interested parties did not support using two different percentages. Following the interested parties meeting, staff received comments from Mr. Ewert on behalf of the CNPA, in a letter dated November 3, 2015. The CNPA explained that two rates would be considerably burdensome and unnecessarily complicated for the newspapers to calculate with little, if any, benefit to the newspapers or the Board and that they did not support this approach. The CNPA presented a list of twenty-seven (27) newspapers they surveyed with nontaxable percentages ranging from forty-four (44) percent to sixty-three (63) percent, and an overall unweighted average nontaxable percentage of fifty-three (53) percent for all twenty-seven newspapers combined. The CNPA provided staff with a copy of their confidential data and calculations, which also showed that to compute the nontaxable percentages, the CNPA divided each newspaper's digital-only subscription rate by the sums of the newspaper's print-only subscription rates (i.e., 6 or 7 day a week rate, weekend rate, and Sunday only rate) and the digital-only subscription rate. They then averaged these percentages together for each newspaper publisher to arrive at each newspaper's nontaxable percentage and then averaged all twenty-seven (27) newspapers' nontaxable percentages together. (Attachment A to the initial statement of reasons contains the redacted data and calculations.) The CNPA also asserted that many newspapers were decreasing the frequency of their print products and relying more on digital content and that the overall unweighted average nontaxable percentage of fifty-three (53) percent (referred to above) does not accurately reflect rapidly changing developments in the industry. For these reasons, the CNPA proposed that "sixty (60) percent is a more accurate percentage for purposes of establishing a rebuttable presumption that reflects the non-taxable digital portion of a Mixed Newspaper Subscription." In addition, the CNPA proposed language to be added to subdivision (b)(3) to establish a rebuttable presumption.

Following this submission, BTC staff informally met with interested parties to discuss these issues. BTC staff also reviewed the data provided by the CNPA, determined the number of subscribers for each newspaper using data obtained from the Gale Directory of Publications and Broadcast Media (151st edition), and calculated a weighted average nontaxable percentage of approximately fifty (50) percent for all twenty-seven newspapers combined, so as not to give disproportionate weight to smaller publishers' average nontaxable percentages. (Attachment B to the initial statement of reasons contains BTC staff's calculation of the weighted average nontaxable percentage.) Based on the industry data, the CNPA's and BTC staff's calculations, and interested parties' presentation of evidence during their discussions that the nontaxable percentage is trending upwards, BTC staff concluded that the unweighted average nontaxable percentage of fifty-three (53) percent, as calculated by the CNPA, will accurately reflect

the average nontaxable percentage of newspaper retailers' lump-sum charges for mixed newspaper subscription by the time the amendments are effective.

BTC staff also determined that because of the great variance within the newspaper industry with respect to pricing models and product offerings, the fact that there is an upward trend in the nontaxable percentages of lump-sum charges for mixed newspaper subscriptions, and the need to ensure that all newspaper retailers' lump-sum charges for mixed newspaper subscriptions continue to be fairly and reasonably allocated between the taxable and nontaxable components of the subscriptions, it is necessary to add a rebuttable presumption to the regulation that allows a newspaper retailer to document a higher nontaxable percentage than fifty-three (53) percent based on the specific facts of that retailer's business. Therefore, BTC staff revised its proposed amendments adding subdivision (b)(3), so that new subdivision (b)(3)(B)1 establishes a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper subscription is nontaxable, on or after October 1, 2016; and new subdivision (b)(3)(B)2 explains that retailers may rebut the presumption by providing evidence demonstrating to the satisfaction of the Board that the price of the digital-only subscription rate divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater that fifty-three (53) percent. (The same methodology the CNPA used to make the calculations in Attachment A to the initial statement of reasons.) The revised language also required that records be maintained to support any nontaxable percentage greater than fifty-three (53) percent. In addition, BTC staff proposed adding new subdivisions (a)(9) and (10) to the regulation to define "digital-only subscription" and "print-only subscription" for purposes of applying the formula proposed to be added to subdivision (b)(3)(B)2.

Subsequently, BTC staff prepared Formal Issue Paper 15-012 and distributed it to the Board Members for consideration at the Board's January 26, 2016, BTC meeting. Formal Issue Paper 15-012 recommended that the Board propose to adopt BTC staff's amendments to Regulation 1590 discussed above to address the issue discussed above by providing guidance to newspaper retailers about how to make a reasonable and fair allocation of a lump-sum charge for a mixed newspaper subscription based upon the value of the taxable and nontaxable portions of the mixed transaction.

Specifically, BTC staff's proposed amendments added definitions for the terms "mixed newspaper subscription," "digital-only subscription rate," and "print-only subscription rate" to subdivision (a). The proposed amendments clarified in subdivision (b)(3) that in "the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax." The proposed amendments established in new subdivision (b)(3)(B) that on and after October 1, 2016, it is presumed that fifty-three (53) percent of the charge for a mixed newspaper subscription is for the nontaxable sale of the right to access digital content. The proposed amendments also provided in new subdivision (b)(3)(B) that the "presumption may be overcome by evidence demonstrating to the satisfaction of the Board that the digital-only subscription rate

divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent."

Furthermore, as discussed above, BTC staff's proposed amendments made changes to make the provisions of subdivision (b)(5) regarding the exemptions for newspapers and periodicals published by tax-exempt organizations and nonprofit organizations more clearly follow the language of RTC section 6362.8 requiring that newspapers and periodicals be regularly issued at average intervals not exceeding three months. The proposed amendments also deleted the references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from subdivision (b) because the references and guidance are no longer relevant, and deleted the reference to RTC section 6362.3 from the regulation's reference note because the statute's provisions are only applicable to early 1990's transactions.

In addition, BTC staff's proposed amendments made minor formatting changes to replace the boxes that are required to be initialed in Exemption Certificates A through D set forth in Regulation 1590 and replace the boxes that are required to be checked on Exemption Certificate C with lines that can be initialed and checked, respectively. Staff's proposed amendments deleted the outdated references to "19" from the exemption certificates' date lines because the exemption certificates will no longer be signed with dates in the 1900s. Staff's proposed amendments deleted the word "the" from the phrase "measured by the purchase price of *the* such property" (italics added) in Exemption Certificate B to make the phrase grammatically correct. Staff's proposed amendments inserted the word "seller's" before the word "permit" in the text following the second line that can be initialed on Exemption Certificate C to clarify that the current text refers to a seller's permit, as opposed to some other type of permit. Staff's proposed amendments inserted "the" before "business" in the phrase "engaged in business of selling or publishing" in Exemption Certificate D to make the phrase grammatically correct. Staff's proposed amendments also added language to Exemption Certificates C and D to require that purchasers certify that they are engaged in the business of selling or publishing a newspaper or periodical "which is regularly issued at average intervals not exceeding three months" to comply with the requirements of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations.

The Board discussed Formal Issue Paper 15-012 during its January 26, 2016, BTC meeting. Mr. Ewert appeared on behalf of the CNPA and expressed the CNPA's support for staff's proposed amendments. At the conclusion of the discussion, the Board Members unanimously voted to propose to adopt the amendments to Regulation 1590 recommended by staff.

The Board determined that the proposed amendments to Regulation 1590 are reasonably necessary to have the effect and accomplish the objective of addressing the issue with Regulation 1590, discussed above, by providing guidance regarding the application of tax to mixed newspaper subscriptions, establishing, beginning October 1, 2016, a rebuttable presumption that fifty-three (53) percent of the lump-sum charge for a mixed newspaper

subscription is for the nontaxable sale of the right to access digital content, and establishing the means by which newspaper retailers may rebut the presumption. The Board also determined that the proposed amendments are reasonably necessary to have the effects and accomplish the objectives of ensuring that the provisions of Regulation 1590, including the provisions of Exemption Certificates C and D, clearly follow and are consistent with the current provisions of RTC section 6362.8 regarding the exemption for newspapers and periodicals published by tax-exempt and nonprofit organizations, and deleting the outdated references to 1990's effective dates and obsolete guidance regarding early 1990's transactions from the regulation.

The Board anticipates that the proposed amendments to Regulation 1590 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of tax to lump-sum charges for mixed newspaper subscriptions, particularly because of the increasing focus on digital content in the newspaper industry.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1590 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because there are no other sales and use tax regulations that specifically prescribe the application of the sales and use tax to sales and purchases of newspapers and periodicals. In addition**,** the Board has determined that there are no comparable federal regulations or statutes to Regulation 1590 or the proposed amendments to Regulation 1590.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1590 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulation 1590 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1590 will not have a significant, statewide adverse economic

impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1590 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed amendments to Regulation 1590 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1590 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create new businesses or expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1590 will not affect the benefits of Regulation 1590 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1590 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Scott Claremon, Tax Counsel III, by telephone at (916) 323-3184, by e-mail at Scott.Claremon@boe.ca.gov, or by mail at State Board of Equalization, Attn: Scott Claremon, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Claremon.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:00 a.m. on June 14, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1590 during the June 14-15, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1590. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 1590 illustrating the express terms of the proposed amendments. The Board has prepared a separate document illustrating the format of amended Exemption Certificates A through D after the proposed formatting changes are made to provide additional clarity. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1590, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments, the document illustrating the format of amended Exemption Certificates A through D, and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1590 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change

clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1590, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.