# Regulations 1702.5
## *Responsible Person Liability*
## Section 100

Complete Rule Making File

*OAL Approval with Approved Text Regulation 1702.5*

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1. *Form 400 and Form 400 and Proposed Text Regulation 1702.5*
2. *Statement of Explanation*
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Other Documents Relied upon

A. *Chief Counsel Memo Dated August 28, 2008*

B. *Approved Minutes September 17, 2008*

C. *BOE "Section 100 Change" Recommendation Dated August 25, 2008*

D. *Reporter's Transcript September 17, 2008*

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by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

# State of California
# Office of Administrative Law

| | |
|---|---|
| **In re:** | **NOTICE OF APPROVAL OF CHANGES WITHOUT REGULATORY EFFECT** |
| **Board of Equalization** | |
| **Regulatory Action:** | **California Code of Regulations, Title 1, Section 100** |
| **Title 18, California Code of Regulations** | |
| **Adopt sections:**<br>**Amend sections: 1702.5**<br>**Repeal sections:** | **OAL File No. 2008-1120-02 N** |

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This non-substantive rulemaking changes Title 18, section 1702.5 to reflect amendments to the applicable statute (Revenue and Taxation Code section 6829). Conforms with statutory change adding "limited partnership," "partnership" and "limited liability partnership" to the list of business types for which responsible persons may incur personal liability. The term "domestic or foreign" is deleted since it was removed from the statute. Also adds a specific statute of limitations for issuing deficiency determinations. SBE capitalizes the use of the term "board." All non-substantive changes.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

Date: 1/2/2009

Peggy J. Gibson
Staff Counsel

For: SUSAN LAPSLEY
Director

Original: Ramon Hirsig
Copy: Richard Bennion

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Board Proceedings

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

**OFFICE OF ADMINISTRATIVE LAW**
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826

**SUSAN LAPSLEY**
**Director**

# MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 1/9/2009
RE: RETURN OF Approved RULEMAKING MATERIALS
OAL File No. 2008-1120-02N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2008-1120-02N regarding Responsible Person Liability).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, please retain this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "....no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

# NOTICE PUBLICATION/REGULATION SUBMISSION

NONSUBSTANTIVE

STD. 400 (REV. 01-08)

For use by Secretary of State only

| OAL FILE NUMBERS | NOTICE FILE NUMBER | REGULATORY ACTION NUMBER | EMERGENCY NUMBER |
|---|---|---|---|
| | Z- | 2008-1120-02N | |

For use by Office of Administrative Law (OAL) only

NOTICE | REGULATIONS

**AGENCY WITH RULEMAKING AUTHORITY**
State Board of Equalization

AGENCY FILE NUMBER (If any)

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| 1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
|---|---|---|---|
| | | | |

| 3. NOTICE TYPE | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) |
|---|---|---|---|
| ☐ Notice re Proposed Regulatory Action ☐ Other | Rick Bennion | (916) 445-2130 | (916) 324-3984 |

| OAL USE ONLY | ACTION ON PROPOSED NOTICE | NOTICE REGISTER NUMBER | PUBLICATION DATE |
|---|---|---|---|
| | ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn | | |

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Responsible Person Liability

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) **(Including title 26, if toxics related)**

**SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)**

ADOPT

AMEND
1702.5

REPEAL

TITLE(S)
18

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☐ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify) _____
- ☒ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

* ☐ Effective 30th day after filing with Secretary of State ☐ Effective on filing with Secretary of State ☒ §100 Changes Without Regulatory Effect ☐ Effective other (Specify) _____ _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399) (SAM §6660) ☐ Fair Political Practices Commission ☐ State Fire Marshal

☐ Other (Specify) _____

| 7. CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) |
|---|---|---|---|
| * Rick Bennion | 916-445-2130 | | |

8.

* **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Diane G. Olson

DATE
November 20, 2008

TYPED NAME AND TITLE OF SIGNATORY
Chief, Board Proceedings Division, Diane G. Olson

* Corrections made pursuant to agency authorization (telephone) 12/31/08 PH

**Regulation 1702.5. Responsible Person Liability.**

(a) General. Any responsible person who willfully fails to pay or to cause to be paid, under circumstances set forth below, any taxes due from a ~~domestic or foreign~~ corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to Part 1, Division 2, of the Revenue and Taxation Code shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination, dissolution, or abandonment of the ~~corporate or limited liability company~~ business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

Personal liability shall apply if the ~~b~~Board establishes that while the person was a responsible person, the corporation, partnership, limited partnership, limited liability partnership, or limited liability company:

1. sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due; or

2. consumed tangible personal property and failed to pay the applicable tax to the seller or the ~~b~~Board; or

3. issued a receipt for use tax and failed to report and pay the tax.

(b) Definition of Terms.

(1) Responsible Person. As used herein, the term "responsible person" means any officer, member, manager, employee, director, shareholder, partner, or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of tax or who has a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any provision of the Sales and Use Tax Law. The term "responsible person" does not include any person who would otherwise qualify but is serving in that capacity as an unpaid volunteer for a non-profit organization.

(2) Willful. As used herein, the term "willful" means voluntary, conscious and intentional. A failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or evil motive.

(3) Termination. As used herein, "termination" of the ~~a domestic or foreign corporate or limited liability company~~ business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company includes discontinuance or cessation of business activities.

(c) Collection.

(1) The ~~b~~Board may issue a Notice of Determination, in the manner provided in Chapter 5 of the Sales and Use Tax Law, for the amount of the personal liability of the responsible person, and penalties and interest shall be added to the amount due as applicable. The ~~b~~Board may collect the amounts due from the responsible person in the manner provided by Chapter 6 of the Sales and Use Tax Law for the collection of sales and use taxes.

(2) On or after January 1, 2009, a Notice of Determination shall be mailed within whichever of the following periods expires earlier:

(A) Three years after the last day of the calendar month following the quarterly period in which the Board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company; or

(B) Eight years after the last day of the calendar month following the quarterly period in which the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was terminated, dissolved, or abandoned.

(3) If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the Board, this filing shall not constitute actual knowledge by the Board under this regulation.

NOTE: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6829, Revenue and Taxation Code.

# Regulations 1702.5
## *Responsible Person Liability*
## Section 100

Index


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STATE OF CALIFORNIA–OFFICE OF ADMINISTRATIVE LAW

# NOTICE PUBLICATION/REGULATIONS SUBMISSION

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See instructions on reverse

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|---|---|---|---|
| * Rick Bennion | 916-445-2130 | | |

8.

**I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

*

| SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE |
|---|---|
| Diane G. Olson | November 20, 2008 |

TYPED NAME AND TITLE OF SIGNATORY
Chief, Board Proceedings Division, Diane G. Olson

* corrections made pursuant to agency authorization (telephone). 12/31/08 P.

**Regulation 1702.5. Responsible Person Liability.**

(a) General. Any responsible person who willfully fails to pay or to cause to be paid, under circumstances set forth below, any taxes due from a ~~domestic or foreign~~ corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to Part 1, Division 2, of the Revenue and Taxation Code shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination, dissolution, or abandonment of the ~~corporate or limited liability company~~ business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

Personal liability shall apply if the ~~b~~Board establishes that while the person was a responsible person, the corporation, partnership, limited partnership, limited liability partnership, or limited liability company:

1. sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due; or

2. consumed tangible personal property and failed to pay the applicable tax to the seller or the ~~b~~Board; or

3. issued a receipt for use tax and failed to report and pay the tax.

(b) Definition of Terms.

(1) Responsible Person. As used herein, the term "responsible person" means any officer, member, manager, employee, director, shareholder, partner, or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of tax or who has a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any provision of the Sales and Use Tax Law. The term "responsible person" does not include any person who would otherwise qualify but is serving in that capacity as an unpaid volunteer for a non-profit organization.

(2) Willful. As used herein, the term "willful" means voluntary, conscious and intentional. A failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or evil motive.

(3) Termination. As used herein, "termination" of the ~~a domestic or foreign corporate or limited liability company~~ business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company includes discontinuance or cessation of business activities.

(c) Collection.

(1) The ~~b~~Board may issue a Notice of Determination, in the manner provided in Chapter 5 of the Sales and Use Tax Law, for the amount of the personal liability of the responsible person, and penalties and interest shall be added to the amount due as applicable. The ~~b~~Board may collect the amounts due from the responsible person in the manner provided by Chapter 6 of the Sales and Use Tax Law for the collection of sales and use taxes.

(2) On or after January 1, 2009, a Notice of Determination shall be mailed within whichever of the following periods expires earlier:

(A) Three years after the last day of the calendar month following the quarterly period in which the Board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company; or

(B) Eight years after the last day of the calendar month following the quarterly period in which the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was terminated, dissolved, or abandoned.

(3) If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the Board, this filing shall not constitute actual knowledge by the Board under this regulation.

NOTE: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6829, Revenue and Taxation Code.

AMENDMENT UNDER OAL RULE 100

Statement of Explanation

Title 18. Public Revenue
Regulation 1702.5, *Responsible Person Liability*

## A. Factual Basis

Regulation 1702.5 generally addresses when a corporate officer or other responsible person who willfully fails to pay sales or use taxes due from the corporation or other entity may be held personally liable for the unpaid liability upon termination of the business of the corporation or other entity. The State Board of Equalization hereby proposes to amend this regulation under OAL Rule 100.

Assembly Bill (AB) 1895 (Ch. 24, Stat. of 2008) amended Revenue and Taxation Code (RTC) section 6829 to provide a specific statute of limitations for issuing deficiency determinations to corporate officers or other responsible persons. Proposed revisions to Regulation 1702.5 incorporate the specific statute of limitations.

AB 1895 also added "limited partnerships" to the list of business types for which responsible persons may incur personal liability. "Limited liability partnerships" were added to RTC section 6829 in 1995 (Ch. 679, Stat. of 1995), and "partnerships" were added in 1996 (Ch. 1003, Stat. of 1996). In addition to incorporating the specific statute of limitations provided by AB 1895, proposed revisions to Regulation 1702.5 incorporate limited partnerships, limited liability partnerships, and partnerships as business types for which responsible persons may incur personal liability.

Other technical and non-substantive changes to RTC section 6829 from AB 1895 also are included in the proposed revisions to the regulation. In addition, proposed revisions include changing the word "board" to "Board" for consistency with the other Sales and Use Tax Regulations.

## Proposed Amendments

Subdivisions (a), (b)(1), and (b)(3) – "Partnership, limited partnership, and limited liability partnership" are incorporated for conformity with changes to the statute.

Subdivisions (a) and (b)(3) – The words "domestic or foreign" are deleted for conformity with amendments to the statute in AB 1895.

Subdivisions (a) and (b)(3) – "Corporate or limited liability business" is changed to "business of the corporation…or limited liability company" for conformity with amendments to the statute in AB 1895.

Subdivisions (a) and (c)(1) – "Board" replaces "board" for consistency with other regulations.

Subdivision (b)(1) – "Partner" is added for conformity with the statute.

Subdivision (c) – New subdivision (c)(1) is created with the language from the former subdivision (c). New subdivision (c)(2) incorporates statutory language regarding the specific statute of limitations for issuing deficiency determinations to corporate officers or other responsible persons. New subdivision (c)(3) incorporates statutory language regarding knowledge by the Board of the termination, dissolution, or abandonment of a business, as it relates to the statute of limitations.

The foregoing changes are appropriate for processing under Section 100 because they make the regulation consistent with statutory changes, or merely capitalize a letter to make this regulation consistent with other regulations.

# STATE BOARD OF EQUALIZATION
# STAFF LEGISLATIVE BILL ANALYSIS

| | | | |
|---|---|---|---|
| Date Introduced: | **02/07/08** | Bill No: | **AB 1895** |
| Tax: | **Sales and Use** | Author: | **Silva** |
| Related Bills: | | Position: | **Support as Sponsor** |

## BILL SUMMARY

This Board-sponsored bill would incorporate a specific statute of limitations for issuing a deficiency determination against corporate officers and other responsible persons.

## ANALYSIS

### CURRENT LAW

Under existing law, Section 6829 of the Sales and Use Tax Law provides that upon termination, dissolution, or abandonment of a business entity (i.e., corporation, partnership, limited liability partnership, or limited liability company), any officer, member, manager, partner, or other person who is under a duty to act for the entity in complying with any sales or use tax requirements (including the supervision or control over a person with such duty), shall be personally liable for any unpaid sales or use taxes, as specified, and interest and penalties if that person willfully fails to pay or to cause to be paid any taxes due from that entity. A person liable under Section 6829 (the "responsible person") becomes liable as of the date the entity terminates, dissolves, or becomes abandoned.

To collect the amount due from the responsible person, existing law specifies that a determination may be issued in accordance with the general laws applicable to the collection of sales and use tax. Accordingly, in the absence of fraud, the limitations period for issuing a notice of determination under Section 6829 is three years if the responsible person filed his or her own return for the period during which the entity terminated and eight years if the responsible person did not file such a return. That is, since Section 6829 liability is the liability of the responsible person, it is the responsible person's filing of a sales and use tax return (or not) that is relevant, not the filing of returns by the entity. Since the responsible person generally does not file a return in his or her own name, the applicable limitations period for issuing determinations under Section 6829 is typically eight years from the last day of the month following the reporting period in which the entity terminated, dissolved, or became abandoned.

### PROPOSED LAW

This bill would amend Section 6829 of the Sales and Use Tax Law to make clarifying changes and to incorporate a specific limitations period with respect to issuing a deficiency determination against corporate officers and other responsible persons.

Specifically, the bill would require that such a determination be mailed within the earlier of:

- three years after the last day of the calendar month following the quarterly period in which the Board obtains actual knowledge, through its audit or compliance activities, of the termination, dissolution, or abandonment of the entity,

***This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.***

- three years after the last day of the calendar month following the quarterly period in which the Board obtains written communication by the business or its representative of the termination, dissolution, or abandonment of the entity, or
- eight years after the last day of the calendar month following the quarterly period in which the entity was terminated, dissolved, or abandoned.

The bill would specify that if the business or representative of the business files a notice of termination, dissolution, or abandonment of the entity with a state or local agency other than the Board, this filing shall not constitute actual knowledge by the Board under this section.

The bill would take effect on January 1, 2009.

**COMMENTS**

1. **Sponsor and purpose.** This bill is sponsored by the Board of Equalization in order to incorporate a limitations period applicable to issuing determinations against corporate officers and other responsible persons that is more appropriate than the general limitations period currently applicable.
2. **A separate limitations period for this statute makes sense.** Having a limitations period based on when a corporate officer or other responsible person filed a tax return for most cases of liability under Section 6829 does not appear to be intended, but rather is the result of using the general Sales and Use Tax Law limitations period. The general limitations period is designed for the usual direct liability of the actual taxpayer, who is required to file returns for specific periods known to both the taxpayer and the Board. A limitations period should be adopted that is specifically designed for liability under Section 6829, and should be based on the date the Board becomes aware that the triggering event for such liability has occurred: the termination of the entity.

**COST ESTIMATE**

This bill would not have any material effect on the Board's administrative costs.

**REVENUE ESTIMATE**

Enactment of this measure would not impact state or local revenues.


| | | | |
|---|---|---|---|
| Analysis prepared by: | Sheila T. Waters | (916) 445-6579 | 03/03/08 |
| Contact: | Margaret S. Shedd | (916) 322-2376 | |


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*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

## Assembly Bill No. 1895

CHAPTER 24

An act to amend Section 6829 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor June 6, 2008. Filed with Secretary of State June 6, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1895, Silva. Sales and use taxes: administration.

The Sales and Use Tax Law imposes personal liability for unpaid taxes, interest, and penalties on an officer or other person who willfully failed to pay these amounts, upon the termination, dissolution, or abandonment of business of the corporation or other business entity, with the sum due to be collected by deficiency determination and collection in the manner provided under this law.

This bill would specify the time in which a notice of deficiency determination must be mailed pursuant to these provisions, and would make additional technical, nonsubstantive changes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6829 of the Revenue and Taxation Code is amended to read:

6829. (a) Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this part, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to this part.

(b) The officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had included tax reimbursement in the selling price of, or added tax reimbursement to the selling price of, tangible personal property sold in the conduct of its business, or when it can be established that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company consumed tangible personal property and failed to pay the tax to the seller or has included use tax on the billing and collected the use tax or has issued a receipt for the use tax and failed to report and pay use tax.

(d) For purposes of this section "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(e) Except as provided in subdivision (f), the sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 5 (commencing with Section 6451) and Chapter 6 (commencing with Section 6701).

(f) A notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company business was terminated, dissolved, or abandoned, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the board, this filing shall not constitute actual knowledge by the board under this section.

O

STATE OF CALIFORNIA

# ECONOMIC AND FISCAL IMPACT STATEMENT
***(REGULATIONS AND ORDERS)***

STD. 399 (Rev. 2-98)

*See SAM Sections 6600 - 6680 for Instructions and Code Citations*

| DEPARTMENT NAME | CONTACT PERSON | TELEPHONE NUMBER |
|---|---|---|
| State Board of Equalization | Rick Bennion | 916-445-2130 |
| DESCRIPTIVE TITLE FROM *NOTICE REGISTER* OR FORM 400 | | NOTICE FILE NUMBER |
| Title 18, Section 1702.5, Responsible Person Liability | | Z |

## ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *(Include calculations and assumptions in the rulemaking record.)*

1. Check the appropriate box(es) below to indicate whether this regulation:

- ☐ a. Impacts businesses and/or employees
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance standards
- ☐ g. Impacts individuals
- ☑ h. None of the above *(Explain below. Complete the Fiscal Impact Statement as appropriate.)*

h. *(cont.)* No significant adverse economic impact on business or employees,small business,jobs or occupations.

*(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)*

2. Enter the total number of businesses impacted:_____ Describe the types of businesses *(Include nonprofits)*:_____

Enter the number or percentage of total businesses impacted that are small businesses:_____

3. Enter the number of businesses that will be created: _____ eliminated: _____

Explain:_____

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional *(list areas)*: _____

5. Enter the number of jobs created:_____ or eliminated:_____ Describe the types of jobs or occupations impacted:_____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly:_____

B. ESTIMATED COSTS *(Include calculations and assumptions in the rulemaking record.)*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $_____

a. Initial costs for a small business: $_____ Annual ongoing costs: $_____ Years: _____

b. Initial costs for a typical business: $_____ Annual ongoing costs: $_____ Years: _____

c. Initial costs for an individual: $_____ Annual ongoing costs: $_____ Years: _____

d. Describe other economic costs that may occur:_____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* $_____

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: $_____ and the number of units: _____

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $_____

C. ESTIMATED BENEFITS *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? $_____

D. ALTERNATIVES TO THE REGULATION *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

| | | |
|---|---|---|
| Regulation: | Benefit: $_____ | Cost: $_____ |
| Alternative 1: | Benefit: $_____ | Cost: $_____ |
| Alternative 2: | Benefit: $_____ | Cost: $_____ |

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No

Explain: _____

E. MAJOR REGULATIONS *(Include calculations and assumptions in the rulemaking record.)*
*Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.*

1. Will the estimated costs of this regulation to California business enterprises exceed $10 million ? ☐ Yes No *(If No, skip the rest of this section)*

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

   Alternative 1:_____

   Alternative 2:_____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

| | | |
|---|---|---|
| Regulation: | $ _____ | Cost-effectiveness ratio: _____ |
| Alternative 1: | $ _____ | Cost-effectiveness ratio: _____ |
| Alternative 2: | $ _____ | Cost-effectiveness ratio: _____ |

## FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *(Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)*

☐ 1. Additional expenditures of approximately $_____in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in (Item_____,Budget Act of_____) or (Chapter_____,Statutes of_____

☐ b. will be requested in the_____Governor's Budget for appropriation in Budget Act of _____.
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately $_____in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in_____

☐ b. implements the court mandate set forth by the_____

court in the case of_____vs._____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No._____at the_____ election;
(DATE)

☐ d. is issued only in response to a specific request from the _____

_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____authorized by Section
(FEES, REVENUE, ETC.)

_____of the_____Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

☐ 3. Savings of approximately $_____annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

## ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

☑ 5. No fiscal impact exists because this regulation does not affect any local entity or program.

☐ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

☐ 1. Additional expenditures of approximately $_____ in the current State Fiscal Year. It is anticipated that State agencies will:

☐ a. be able to absorb these additional costs within their existing budgets and resources.

☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.

☐ 2. Savings of approximately $_____ in the current State Fiscal Year.

☑ 3. No fiscal impact exists because this regulation does not affect any State agency or program.

☐ 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

☐ 1. Additional expenditures of approximately $_____ in the current State Fiscal Year.

☐ 2. Savings of approximately $_____ in the current State Fiscal Year.

☑ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

☐ 4. Other.

| SIGNATURE | | TITLE |
|---|---|---|
| ✍ | | Regulations Coordinator |
| AGENCY SECRETARY [1] APPROVAL/CONCURRENCE | ✍ Diane Gilleson | DATE 11/20/08 |
| DEPARTMENT OF FINANCE [2] APPROVAL/CONCURRENCE | PROGRAM BUDGET MANAGER ✍ Exempt under SAM section 6660 | DATE |

1. *The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

2. *Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.*

State of California

Board of Equalization

# Memorandum

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

**Date:** August 28, 2008

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

**Subject** : Regulation 1702.5, *Responsible Person Liability*
Chief Counsel's Rulemaking Calendar
Board Meeting—September 16-17, 2008

We request your approval to place proposed revisions to Sales and Use Tax Regulation 1702.5 on the Chief Counsel's Rulemaking Calendar on September 16-17, 2008, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. The proposed revisions are appropriate for processing under Rule 100 because they make the regulation consistent with changes in a California statute.

Assembly Bill (AB) 1895 (Ch. 24, Stat. of 2008) amended Revenue and Taxation Code (RTC) section 6829 to provide a specific statute of limitations for issuing deficiency determinations to corporate officers or other responsible persons. Proposed revisions to Regulation 1702.5 incorporate the specific statute of limitations.

AB 1895 also added "limited partnerships" to the list of business types for which responsible persons may incur personal liability. "Limited liability partnerships" were added to section 6829 in 1995 (Ch. 679, Stat. of 1995), and "partnerships" were added in 1996 (Ch. 1003, Stat. of 1996). In addition to incorporating the specific statute of limitations provided by AB 1895, proposed revisions to Regulation 1702.5 incorporate limited partnerships, limited liability partnerships, and partnerships as business types for which responsible persons may incur personal liability.

Attached is the strikeout and underlined version of the regulation.

If you have any questions regarding this request, please let me know or contact Ms. Lisa Andrews at 322-5989.



A

Recommendation by:

Kristine Cazadd, Chief Counsel

Approved:

Ramon J. Hirsig, Executive Director

Approved:

Randie L. Henry, Deputy Director
Sales and Use Tax Department

BOARD APPROVED
At the 9/17/08 Board Meeting

Diane Olson, Chief
Board Proceedings Division

Attachments

cc (all with attachments):
Ms. Randie L. Henry (MIC 43)
Mr. Randy Ferris (MIC 85)
Ms. Diane Olson (MIC 80)
Mr. Robert Tucker (MIC 82)
Mr. Tim Treichelt (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Hellmuth (MIC 50)
Ms. Lisa Andrews (MIC 50)

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**Proposed Amendments to Regulation 1702.5**

## Regulation 1702.5. RESPONSIBLE PERSON LIABILITY.

*Reference:* Section 6829, Revenue and Taxation Code.

**(a) GENERAL.** Any responsible person who willfully fails to pay or to cause to be paid, under circumstances set forth below, any taxes due from a ~~domestic or foreign~~ corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to Part 1, Division 2, of the Revenue and Taxation Code shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination, dissolution, or abandonment of the ~~corporate or limited liability company~~ business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

Personal liability shall apply if the ~~b~~Board establishes that while the person was a responsible person, the corporation, partnership, limited partnership, limited liability partnership, or limited liability company:

1. sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due; or

2. consumed tangible personal property and failed to pay the applicable tax to the seller or the board; or

3. issued a receipt for use tax and failed to report and pay the tax.

**(b) DEFINITION OF TERMS.**

(1) RESPONSIBLE PERSON. As used herein, the term "responsible person" means any officer, member, manager, employee, director, shareholder, partner, or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of tax or who has a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any provision of the Sales and Use Tax Law. The term "responsible person" does not include any person who would otherwise qualify but is serving in that capacity as an unpaid volunteer for a non-profit organization.

(2) WILLFUL. As used herein, the term "willful" means voluntary, conscious and intentional. A failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or evil motive.

(3) TERMINATION. As used herein, "termination" of the ~~a domestic or foreign corporate or limited liability company~~ business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company includes discontinuance or cessation of business activities.

**(c) COLLECTION.**

(1) The ~~b~~Board may issue a Notice of Determination, in the manner provided in Chapter 5 of the Sales and Use Tax Law, for the amount of the personal liability of the responsible person, and penalties and interest shall be added to the amount due as applicable. The ~~b~~Board may collect the amounts due from the responsible person in the manner provided by Chapter 6 of the Sales and Use Tax Law for the collection of sales and use taxes.

(2) On or after January 1, 2009, a Notice of Determination shall be mailed within whichever of the following periods expires earlier:

**(A)** Three years after the last day of the calendar month following the quarterly period in which the Board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company; or

**(B)** Eight years after the last day of the calendar month following the quarterly period in which the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was terminated, dissolved, or abandoned.

(3) If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the Board, this filing shall not constitute actual knowledge by the Board under this regulation.

**********

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

**Wednesday, September 17, 2008**

## CHIEF COUNSEL MATTERS

### RULEMAKING

### Proposed Amendments to Sales and Use Tax Regulation 1702.5, *Responsible Person Liability*

Tim Treichelt, Tax Counsel, Settlement Division, Legal Department, made introductory remarks regarding the section 100 changes to Sales and Use Tax Regulation 1702.5, *Responsible Person Liability.* Approval of the proposed amendments incorporate the provisions of AB 1895 (Ch. 24, Stat. of 2008) regarding the statute of limitations for issuing deficiency determinations to corporate officers or other responsible persons. (Exhibit 9.3.)

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes as recommended by staff.

## ADMINISTRATIVE SESSION

### ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California. (Exhibit 9.4.)

LouVena Alexander, Information Systems Technician Supervisor II, Technology Services Division, Headquarters
Paul Bacchi, Data Processing Manager II, Technology Services Division, Headquarters
Linda Dwyer, Secretary, Investigations Division, Headquarters
Bonnie Jeanene Geller, Tax Technician III, West Covina District Office
Bonnie Peach, Data Processing Manager III, Technology Services Division, Headquarters
Joyce Vincenty, Senior Information Systems Analyst Specialist, Technology Services Division, Headquarters

Action: Approve the Board Meeting Minutes of August 5-7, 2008.

Action: Approve the 2009 diesel fuel tax rate for interstate users. (Exhibit 9.5.)

Action: Approve the 2009 Hazardous Substances Program Fees and Occupational Lead Poisoning Prevention Fee. (Exhibit 9.6.)

BOARD OF EQUALIZATION
REGULATORY ACTION IN ACCORDANCE
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 1702.5

REASON FOR CHANGE (check those applicable)

renumbering, reordering, or relocating regulatory provision

deleting regulatory provision for which all statutory or constitutional authority has been repealed

deleting regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a US District Court located in the State of California, the US Court of Appeals for the Ninth Circuit, or the US Supreme Court

[x] revising structure, syntax, cross-reference, grammar, or punctuation

changing an "authority" or "reference" citation

[x] making consistent with changed California statute if (A) provision is inconsistent with and superseded by changed statute; and (B) Board has no discretion to adopt a change which differs in substance from this proposal

**Therefore, I recommend that these amendments be submitted to OAL as a change without regulatory effect and without public hearing.**

Prepared by Lisa Andrews Date 8/15/08

Approvals
Division Chief [redacted] Date 8/15/08

Deputy Director [illegible] Date 8-20-08

Assistant Chief Counsel Randy M. Ferris Date 8/25/08

Chief Counsel Kristine Cazadd Date 8/25/08

Chief, Board Proceedings Diane G. Olson Date 8/25/08

INSTRUCTIONS:
After approval, forward to next on list. In the event of disapproval, return to preparer.

Board Proceedings Division
4/30/98

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

SEPTEMBER 17, 2008

CHIEF COUNSEL MATTERS

ITEM J RULEMAKING

SECTION 100 CHANGES TO REGULATION

J1 PROPOSED AMENDMENTS TO SALES AND USE TAX

REBULATION 1702.5 RESPONSIBLE PERSON LIABILITY

Reported by: Juli Price Jackson

No. CSR 5214

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2 P R E S E N T

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4 For the Board of Equalization: Judy Chu
Chair

5

6 Betty T. Yee
Vice-Chair

7

Bill Leonard
8 Member

9 Michelle Steel
Member

10

Marcy Jo Mandel
11 Appearing for John Chiang, State Controller
12 (per Government Code Section 7.9)

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Diane G. Olson
14 Chief, Board Proceedings Division

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 SEPTEMBER 17, 2008
4 ---oOo---
5 DR. CHU: Then that brings us to the next item,
6 J, rulemaking, which is J1, proposed amendments of Sales
7 and Use Tax Regulation 1702.5, responsible person
8 liability.
9 MR. TREICHELT: Madam Chair, Members, Tim
10 Treichelt, with the Legal Department.
11 And before you today is an OAL Rule 100 change
12 to Regulation 1702.5, responsible person liability.
13 The proposed changes are appropriate for
14 processing as changes without regulatory effect because
15 they make the regulation consistent with the new law and
16 capitalize a letter to make this regulation consistent
17 with other regulations.
18 Thank you.
19 MS. YEE: I'll move approval of the change.
20 MR. LEONARD: Second.
21 DR. CHU: Okay, motion by Ms. Yee, second by
22 Mr. Leonard to approve these proposed amendments of J1.
23 And without objection, they are adopted.
24 MR. TREICHELT: Thank you.
25 ---oOo---
26
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1 REPORTER'SCERTIFICATE

2

3 State of California )

4 ) ss

5 County of Sacramento )

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7 I, JULI PRICE JACKSON Hearing Reporter for the

8 California State Board of Equalization certify that on

9 SEPTEMBER 17, 2008 I recorded verbatim, in shorthand, to

10 the best of my ability, the proceedings in the

11 above-entitled hearing; that I transcribed the shorthand

12 writing into typewriting; and that the preceding pages 1

13 through 3, constitute a complete and accurate

14 transcription of the shorthand writing.

15

16 Dated: October 17, 2008

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19 _____

20 JULI PRICE JACKSON

21 Hearing Reporter

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