

Initial Statement of Reasons

Proposed Adoption of California Code of Regulations, Title 18, Sections

1004, Innocent Spouse or Registered Domestic Partner Relief from Liability
1032, Innocent Spouse or Registered Domestic Partner Relief from Liability
1124.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
1249, Innocent Spouse or Registered Domestic Partner Relief from Liability
1336, Innocent Spouse or Registered Domestic Partner Relief from Liability
1422.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
2251, Innocent Spouse or Registered Domestic Partner Relief from Liability
2303.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
2433, Innocent Spouse or Registered Domestic Partner Relief from Liability
2571, Innocent Spouse or Registered Domestic Partner Relief from Liability
3022, Innocent Spouse or Registered Domestic Partner Relief from Liability
3302.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
3502.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
4106, Innocent Spouse or Registered Domestic Partner Relief from Liability
4903, Innocent Spouse or Registered Domestic Partner Relief from Liability

SPECIFIC PURPOSE AND NECESSITY

Current Law

In 1993, Revenue and Taxation Code section (section) 6456 was enacted to authorize the Board to grant innocent spouse and other equitable relief from sales and use tax liabilities to qualified spouses, under regulations prescribed by the Board. (Stats. 1993, ch. 181.) In 1997, the Board adopted California Code of Regulations, title 18, section (Regulation) 1705.1¹ to implement, interpret, and make specific section 6456 with respect to sales and use tax liabilities. Then, in January 2007, the Board added subdivision (j) to Regulation 1705.1 to recognize that on and after January 1, 2005, registered domestic partners have the same rights, protections, and benefits under the law as are granted to and imposed upon spouses, including the ability to qualify for relief under section 6456. (Fam. Code, §§ 297 and 297.5.)

Sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 (for ease of expression, hereafter, collectively “new relief statutes”), which are comparable to section 6456, were enacted in March 2007 (Stats. 2007, ch. 342) to authorize the Board to grant innocent spouse and other equitable relief from liabilities imposed under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous

¹ Regulation 1705.1 is available at www.boe.ca.gov/pdf/reg1705-1.pdf.

Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, and Use Fuel Tax Law (for ease of expression, hereafter, collectively, “applicable special tax and fee laws”) to qualified spouses and registered domestic partners, under regulations prescribed by the Board, effective January 1, 2008. However, the Board has not adopted regulations to implement, interpret, and make specific the provisions of the new relief statutes.

Proposed Regulations

The Board proposes to adopt Regulation 4903, which is comparable to Regulation 1705.1, to prescribe the procedures and criteria for relieving an innocent spouse or registered domestic partner from liability under the applicable special tax and fee laws. Regulation 4903, subdivision (a), lists the general requirements that a spouse or registered domestic partner claiming relief must meet in order to be relieved from liability for the applicable special taxes and fees. Specifically, the claimant must establish that:

- The liability is attributable to the nonclaiming spouse or registered domestic partner;
- The claimant did not know of, and a reasonably prudent person in the claimant’s circumstances would not have had reason to know of, the liability; and
- It would be inequitable to hold the claimant liable for the liability, taking into account whether the claimant significantly benefitted directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 4903, subdivision (b), defines the term “benefitted,” as it is used in the phrase “benefitted directly or indirectly.” Regulation 4903, subdivision (c), defines the term “attribution,” as it is used in the phrase “attributable to the nonclaiming spouse.”

Regulation 4903, subdivision (d), provides that, if a spouse or registered domestic partner chooses to claim relief under the regulation, the request must be in writing and set forth the tax or fee account number, the period for which relief is requested, and the specific grounds on which the request for relief is based.

Regulation 4903, subdivision (e), clarifies the statute of limitations that applies to claims for relief from liability under the regulation, and subdivision (f) explains that refunds of taxes and fees are subject to the more specific statutory requirements provided by the relevant provisions in the applicable tax and fee laws. Regulation 4903, subdivision (g), clarifies that Regulation 4903 is retroactive to liabilities arising prior to January 1, 2008.

Regulation 4903, subdivision (h), explains that the Board may still relieve a claimant from liability if, taking into account all the facts and circumstances, it would be inequitable to hold the claimant liable for an amount attributable to an item for which relief is not available under subdivisions (a) through (d), described above. Subdivision (h) also sets forth the criteria for equitable relief and lists the non-exclusive factors the Board may consider in deciding whether to grant or deny equitable relief.

Regulation 4903, subdivision (i), provides that the Board must notify a nonclaiming spouse or registered domestic partner by mail when his or her spouse or registered domestic partner files a claim for relief from liability and include the basis for the claim.

Regulation 4903, subdivision (j), clarifies that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties, as are granted to and imposed upon spouses and thereby makes all of the provisions applicable to spouses applicable to registered domestic partners.

The specific purpose of proposed Regulation 4903 is to specify the requirements for claiming and granting innocent spouse and other equitable relief from liabilities incurred under the applicable special tax and fee laws. Proposed Regulation 4903 is necessary to prescribe the requirements for claiming and granting innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under all the applicable special tax and fee laws. Therefore, the Board also proposes to adopt cross-referencing Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, “cross-referencing regulations”), which will be located in other chapters in title 18 that specifically apply to each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. The Board proposes to adopt the cross-referencing regulations pursuant to the following statutory authorities in order to implement, interpret, and make specific the following statutes, in addition to Family Code sections 297, 297.5, and 308:

Regulation	Authority	Reference
Regulation 1004	Section 11651	Sections 11408.5 and 11551-11555
Regulation 1032	Section 38701	Sections 38454.5 and 38601-38607
Regulation 1124.1	Section 8251	Sections 7657.5 and 8101-8131

Regulation 1249	Section 50152	Sections 50112.6 and 50139-50142.2
Regulation 1336	Section 9251	Sections 8880 and 9151-9156
Regulation 1422.1	Section 60601	Sections 60210.5 and 60501-60512
Regulation 2251	Section 46601	Sections 46159 and 46501-46507
Regulation 2303.1	Section 40171	Sections 40105 and 40111-40117
Regulation 2433	Section 41128	Sections 41099 and 41100-41106
Regulation 2571	Section 32451	Sections 32258 and 32401-32407
Regulation 3022	Section 43501	Sections 43159.1, 43159.2, and 43451- 43456
Regulation 3302.1	Section 45851	Sections 45158 and 45651-45656
Regulation 3502.1	Section 55301	Sections 55045.1 and 55221-55226
Regulation 4106	Section 30451	Sections 30285 and 30361-30384

The specific purpose of the proposed cross-referencing regulations is to refer taxpayers to the operative provisions in Regulation 4903; and these cross-referencing regulations are necessary to ensure that taxpayers can easily locate Regulation 4903 in chapter 9.9, Special Taxes Administration-Miscellaneous.²

DOCUMENTS RELIED UPON

The Board relied upon a staff memorandum dated November 20, 2009, requesting Board authorization to begin the formal rulemaking process to add Regulation 4903 and the cross-referencing regulations to title 18 of the California Code of Regulations (November 20, 2009) and on comments from Board staff made during the Board's December 16, 2009, meeting in deciding to propose the adoption of Regulation 4903 and the cross-referencing regulations. The memorandum is available on the Board's Web site at www.boe.ca.gov/meetings/pdf/Item_J2__121509.pdf. The audio and video from the Board's December 16, 2009, meeting are available on the Board's Website at www.visualwebcaster.com/event.asp?id=53991.

ALTERNATIVES CONSIDERED

The Board considered whether it would be more appropriate to take no action as an alternative to adopting proposed Regulation 4903 and the cross-referencing regulations, during the Board's December 16, 2009, meeting. The Board decided to propose the adoption of Regulation 4903 and the cross-referencing regulations because the Board is required to do so by the new relief statutes added to the applicable special tax and fee laws effective January 1, 2008, and

² The Board followed a consistent approach when it adopted Regulation 4902, *Relief from Liability*, and Regulations 1124, 1248, 1335, 1422, 2250, 2303, 2432, 2570, 3021, 3302, 3502, and 4105, *Relief from Liability*, which cross-reference Regulation 4902.

the regulations are necessary to implement, interpret, and make specific those statutes.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The new relief statutes are comparable to section 6456. Proposed Regulation 4903 is consistent with the new relief statutes and Regulation 1705.1, which implements, interprets, and makes specific section 6456. Furthermore, the proposed cross-referencing regulations provide cross-references to Regulation 4903. Therefore, the Board has made an initial determination that proposed Regulation 4903 and the proposed cross-referencing regulations will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.