

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt 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*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code sections (sections) 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt California Code of Regulations, title 18, section (Regulation) 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*. The proposed regulation will implement, interpret, and make specific Revenue and Taxation Code 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 authorize the Board to relieve an innocent spouse, including a registered domestic partner, from liability for the particular taxes or fees to which the statutes pertain and provide the criteria upon which such relief may be based. Further, the proposed regulation implements, interprets, and makes specific sections 8101-8131, 9151-9156, 11551-11555, 30361-30384, 32401-32407, 38601-38607, 40111-40117, 41100-41106, 43451-43456, 45651-45656, 46501-46507, 50139-50142.2, 55221-55226, and 60501-60512 by clarifying that they apply to refunds that might be claimed under proposed Regulation 4903. The proposed regulation also implements, interprets, and makes specific Family Code sections 297, 297.5, and 308 defining registered domestic partners, the rights of registered domestic partners, and the recognition of marriages contracted outside of California, respectively.

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 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 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”). 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”). These cross-referencing regulations will be located in other chapters in title 18 that correspond with 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

A public hearing on the proposed adoption of Regulation 4903 and the cross-referencing regulations will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed regulations. In addition, if the Board receives written comments prior to the hearing on March 23, 2010, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

In 1993, 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 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.)

The new relief statutes are comparable to section 6456. They 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 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;

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

- 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 benefited 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 the 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. Therefore, 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

COMPARABLE FEDERAL REGULATIONS AND STATUTES

Portions of the new relief statutes are comparable to portions of section 6015 of title 26 of the United State Code (Internal Revenue Code) and portions of proposed Regulation 4903 are comparable to portions of sections 1.6015-1 through 1.6015-8 of title 26 (Internal Revenue) of the Code of Federal Regulations pertaining to innocent spouse relief and equitable relief. The comparable provisions in Regulation 4903 and the federal regulations do not differ significantly, however, Regulation 4903, subdivision (e), pertaining to the statute of limitations for submitting claims, is slightly more favorable to the claimant than the comparable federal provision. (See 26 U.S.C.S. § 6015(b)(1)(E); and 26 C.F.R. § 1.6015.5(b)(1).) The proposed cross-referencing regulations do not have comparable federal regulations.

The significant differences between the new relief statutes and Internal Revenue Code section 6015 and significant differences between Regulation 4903 and the relevant federal regulations are due to differences in California and federal law that are not related to innocent spouse relief and equitable relief. For example, federal law does not allow registered domestic partners to file joint federal returns and therefore registered domestic partners cannot receive federal innocent spouse or equitable relief; and California law provides its own procedures for appealing liabilities imposed under the applicable special tax and fee laws.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

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 Board has determined that proposed Regulation 4903 and the proposed cross-referencing regulations do not impose a mandate on local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that proposed Regulation 4903 and the proposed cross-referencing regulations will result in no direct or indirect cost or savings to any state agency, no costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or any other non-discretionary costs 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 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, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation 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. This is because the proposed regulations do not impose any fees.

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

The Board has determined that the adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of proposed Regulation 4903 and the proposed cross-referencing regulations 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 this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Ms. Carolee D. Johnstone, Tax, Counsel III (Specialist), by telephone at (916) 323-7713, by e-mail at Carolee.Johnstone@boe.ca.gov, or by mail at State Board of Equalization, Attn: Carolee D. Johnstone, 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, Acting 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:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an Initial Statement of Reasons and an underscored version of proposed Regulation 4903 and the proposed cross-referencing regulations showing their express terms. These documents and all information on which the proposed regulations 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 regulation 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 proposed Regulation 4903 and the proposed cross-referencing regulations 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 to a proposed regulation, 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 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 proposed Regulation 4903 and the proposed cross-referencing regulations, 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.