

## Notice of Proposed Regulatory Action

### The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Sections:

**5237, Board Approval Required for Refunds Over \$50,000; and  
5266, Appeals Staff Recommendations; Requests for Reconsideration;  
Requests for Oral Hearings**

#### NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 proposes to amend California Code of Regulations, title 18, section (Regulation) 5237, *Board Approval Required for Refunds Over \$50,000*. The proposed amendments to Regulation 5237 will implement, interpret, and make specific Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, which authorize the Board to grant refunds of specified taxes and fees.

The Board, pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 also proposes to amend California Code of Regulations, title 18, section (Regulation) 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*. The proposed amendments to Regulation 5266 will implement, interpret, and make specific Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332,

60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. These Revenue and Taxation Code sections authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

A public hearing on the proposed amendments 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 August 31, 2009. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed amendments. In addition, if the Board receives written comments prior to the hearing on August 31, 2009, 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 amendments to Regulations 5237 and 5266.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **Current Law**

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212,

60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

The Board previously delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceeded \$50,000. The Board previously delegated authority to the Executive Director to grant refunds of duplicate or erroneous electronic funds transfers in excess of \$50,000, which are authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. The Board also previously delegated authority to staff in the Appeals Division of the Board's Legal Department to grant or deny petitions, refunds, and requests for relief (collectively "appeals"), and cancel previously assessed taxes and fees, unless the amounts at issue exceeded \$50,000.

Regulation 5237 prescribes the limits of the Board's prior delegations of authority to the Executive Director and Board staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. Regulation 5237, subdivisions (a) and (f), explain that Sales and Use Tax Department and Property and Special Taxes Department staff's decisions to grant or deny refunds in excess of \$50,000 must be submitted to the Board Members for approval. Regulation 5237, subdivision (d), explains that the Executive Director must approve refunds of duplicate or erroneous electronic funds transfers that exceed \$50,000.

Regulation 5266, subdivision (f), prescribes the limits of the Board's prior delegation of authority to Appeals Division staff to grant or deny appeals and cancel previously assessed taxes and fees when authorized by Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502,

46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. Regulation 5266, subdivision (f), explains that Appeals Division staff's decisions to grant or deny appeals must be submitted to the Board Members for approval if the amount granted exceeds \$50,000.

## **Proposed Amendments**

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The Board also directed Board staff to amend the Board's regulations to incorporate the new delegation.<sup>1</sup>

The Board expanded the authority delegated to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 because the \$50,000 limit on the Board's prior delegation of authority to Board staff had not been revised to reflect inflation occurring over the last 20 years since the limit was first imposed. The Board also expanded the authority delegated to Board staff so that the Board can process refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 more quickly and efficiently, and reduce the credit interest paid on such refunds.

The purpose of the proposed amendments to Regulation 5237, subdivisions (a), (d), and (f), is to clarify that the Board has delegated authority to staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, that do not exceed \$100,000, including refunds of duplicate or erroneous electronic funds transfers, without further approval from the Board Members. The purpose of the proposed amendments to Regulation 5266, subdivision (f), is to clarify that the Board has also delegated authority to Appeals Division staff to grant or deny appeals, and cancel previously assessed taxes, where the amount granted does not exceed \$100,000. The proposed amendments to Regulation 5237 and 5266 are necessary to make the

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<sup>1</sup> The Board also voted to delegate authority to Board staff to grant or deny refunds of the Private Railroad Car Tax authorized by Revenue and Taxation Code section 11551, unless the refunds exceed \$100,000. However, Regulations 5237 and 5266 are not being amended as a result of the delegation of authority to grant or deny refunds of Private Railroad Car Tax because neither regulation applies to such refunds.

regulations consistent with the Board's current delegation of authority to Board staff to grant or deny refunds, decide appeals, and cancel prior assessments.

There are no comparable federal regulations or statutes to Regulation 5237 or 5266 or the proposed amendments to the regulations.

### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments to Regulations 5237 and 5266 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 Regulations 5237 and 5266 and the proposed amendments will result in no direct or indirect cost or savings to any state agency, any 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 other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

### **NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The proposed amendments make Regulations 5237 and 5266 consistent with the Board's May 27, 2009, delegation of authority to Board staff to grant or deny specified refunds of taxes and fees. Therefore, the Board has made an initial determination that the proposed amendments to Regulations 5237 and 5266 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.

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

The Board has determined that the adoption of the proposed amendments to Regulations 5237 and 5266 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 the proposed amendments to Regulations 5237 and 5266 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 Bradley M. Heller, Tax, Counsel III (Specialist), by telephone at (916) 322-5989, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, 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](mailto: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 underscore and strikeout versions of Regulations 5237 and 5266 showing the express terms of the proposed amendments. These documents and all 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 regulations and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

## **SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8**

The Board may adopt the proposed amendments to Regulations 5237 and 5266 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original 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 resulting amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

## **AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulation 5237 and 5266, 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](http://www.boe.ca.gov).