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Cl. Richard Bennion  
Randy Ferris

**State of California  
Office of Administrative Law**

**In re:**  
**Board of Equalization**

**Regulatory Action:**

**Title 18, California Code of Regulations**

**Adopt sections:**

**Amend sections: 1705.1, 4903, 5240, 5241,  
5242**

**Repeal sections:**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2015-1001-01**

**OAL Matter Type: Regular (S)**

This rulemaking by the State Board of Equalization (Board) amends sections in Title 18 of the California Code of Regulations regarding the process for consideration of taxpayer requests for innocent spouse and other equitable relief. The process for requesting such relief is modified to allow Board staff and the Board to consider whether a taxpayer qualifies for innocent spouse and other equitable forms of relief concurrently, rather than the existing process, which potentially requires multiple requests for relief by the taxpayer and multiple level of review by Board staff and the Board. The amendments do not change the substantive requirements for granting or denying innocent spouse and other equitable relief.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2016.

Date: November 5, 2015

  
Beverly J. Johnson  
Deputy Director

For: DEBRA M. CORNEZ  
Director

Original: Cynthia Bridges  
Copy: Richard Bennion

**OFFICE OF ADMINISTRATIVE LAW**

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Sacramento, CA 95814  
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DEBRA M. CORNEZ  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk  
DATE: November 6, 2015  
RE: Return of Rulemaking Materials  
OAL Matter Number 2015-1001-01  
OAL Matter Type Regular (S)

OAL hereby returns the rulemaking record your agency submitted for review regarding “Innocent Spouse or Registered Domestic Partner Relief from Liability.”

If this is an approved matter, it contains a copy of the regulation(s) stamped “ENDORSED APPROVED” by the Office of Administrative Law and “ENDORSED FILED” by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5).

**Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped “ENDORSED FILED” by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation’s effective date. Additionally, the effective date of the regulation will be noted on OAL’s web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

**Please note this new requirement:** Unless an exemption applies, Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency’s regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at [postedregslink@oal.ca.gov](mailto:postedregslink@oal.ca.gov).

**NOTE ABOUT EXEMPTIONS.** Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve 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 State 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

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

**REGULAR**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2015-0702-03</b>	REGULATORY ACTION NUMBER <b>2015-1001-01S</b>	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2015 OCT -1 P 3:00  
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED  
in the office of the Secretary of State  
of the State of California

NOV 05 2015  
2:04 PM

NOTICE	REGULATIONS
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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 <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER <b>2015, 292</b>	PUBLICATION DATE <b>7/12/2015</b>

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

1a. SUBJECT OF REGULATION(S) Innocent Spouse or Registered Domestic Partner Relief from Liability	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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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 1705.1, 4903, 5240, 5241, 5242
REPEAL
TITLE(S) 18

3. TYPE OF FILING
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> 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. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> 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)
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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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 <i>Joann Richmond</i>	DATE October 1, 2015
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 05 2015

Office of Administrative Law

**1705.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a) In General. A spouse ~~claiming~~ may request innocent spouse relief from liability for any sales or use tax, interest, penalties, and other amounts. A requesting spouse shall be relieved from such liability where all of the following requirements are met:

- (1) A liability is incurred under the Sales and Use Tax Law;
- (2) The liability is attributable to the non-requesting~~nonclaiming~~ spouse;
- (3) The spouse ~~claiming~~ requesting relief establishes that he or she did not know of, and that a reasonably prudent person in the requesting~~claiming~~ spouse's circumstances would not have had reason to know of, the liability; and
- (4) It would be inequitable to hold the requesting~~claiming~~ spouse liable for the liability, taking into account whether the requesting~~claiming~~ spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(b) "Benefited." Whether a requesting~~claiming~~ spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The requesting~~claiming~~ spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the requesting~~claiming~~ spouse, or lavish or luxury purchases made by either spouse may be evidence that the requesting~~claiming~~ spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a requesting~~claiming~~ spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the requesting~~claiming~~ spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the requesting~~claiming~~ spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A ~~claim~~ request for innocent spouse relief may be filed if, at the time relief is requested, the requesting~~claiming~~ spouse is no longer married to or is legally separated from the non-requesting~~nonclaiming~~ spouse, or the requesting~~claiming~~ spouse is no longer a member of the same household as the non-requesting~~nonclaiming~~ spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a retailer of taxable items related to the liability. If neither spouse rendered substantial services as a retailer, then the attribution of the liability shall be

treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under subdivision (a) these provisions, a requesting spouse must file ~~may submit~~ a written request for innocent spouse relief setting forth the seller's permit number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse has filed a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(ge) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar quarters for requests filed ~~claims made~~ no later than one year after the Board's ~~board's~~ first contact with the spouse making the ~~request~~ claim. ~~Requests filed~~ Claims made after one year from the Board's ~~board's~~ first contact with the spouse making the ~~request~~ claim shall not apply to any calendar quarter that is ~~more than~~

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the ~~Board-issued~~ board-issued determination,

whichever is later.

No calendar quarters shall be eligible for relief under this regulation that have been closed by res judicata.

(hf) Refunds. A refund of any amounts under ~~this regulation~~ these provisions shall be subject to the requirements as set forth in Revenue and Taxation Code sections 6901 through 6908, inclusive.

(ig) This regulation shall apply retroactively to liabilities arising prior to January 1, 1994.

(h) ~~Effective January 1, 2001, a spouse may be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent~~

spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the Board.

(1) ~~Criteria for Equitable Relief.~~

(A) ~~Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.~~
- ~~2. The claiming spouse would suffer economic hardship if relief is not granted.~~
- ~~3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~
- ~~4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~
- ~~5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)~~
- ~~6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.~~

(B) ~~Factors that may be considered for purposes of denying equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse will not suffer economic hardship if relief is not granted.~~
- ~~2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.~~
- ~~3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.~~
- ~~4. The claiming spouse has not made a good faith effort to comply with the Board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.~~

~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~

~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions 1705.1(e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2001, including liabilities incurred prior to January 1, 1994, as provided in subdivision (g).~~

~~(j)~~ The Board shall send notification by mail of the request~~claim~~ for innocent spouse relief from liability and the basis for that request~~claim~~ to the non-requesting~~nonclaiming~~ spouse.

~~(k)~~ Registered Domestic Partners. Pursuant to Family Code section 297.5, on and after January 1, 2005, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, on and after January 1, 2005, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6066, 6067, 6456 and 6901-6908, Revenue and Taxation Code; and Sections 297 and 297.5, Family Code.

**4903. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a)(1) In General.

(1) A spouse ~~requesting innocent spouse~~~~claiming~~ relief from liability for any tax, fee, or surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(A) A liability is 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, or Use Fuel Tax Law;

(B) The liability is attributable to the ~~non-requesting~~~~nonclaiming~~ spouse;

(C) The spouse ~~requesting~~~~claiming~~ relief establishes that he or she did not know of, and that a reasonably prudent person in the ~~requesting~~~~claiming~~ spouse's circumstances would not have had reason to know of, the liability; and

(D) It would be inequitable to hold the ~~requesting~~~~claiming~~ spouse liable for the liability, taking into account whether the ~~requesting~~~~claiming~~ spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(2) For purposes of this section, the word "tax" shall mean "tax, fee, or surcharge."

(b) Benefited. Whether a ~~requesting~~~~claiming~~ spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The ~~requesting~~~~claiming~~ spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the ~~requesting~~~~claiming~~ spouse, or lavish or luxury purchases made by either spouse may be evidence that the ~~requesting~~~~claiming~~ spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a ~~requesting~~~~claiming~~ spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the ~~requesting~~~~claiming~~ spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the ~~requesting~~~~claiming~~ spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A ~~claim~~request for innocent spouse relief may be filed if, at the time relief is requested, the ~~requesting~~claiming spouse is no longer married to or is legally separated from the ~~non-requesting~~nonclaiming spouse, or the ~~requesting~~claiming spouse is no longer a member of the same household as the ~~non-requesting~~nonclaiming spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer engaged in an activity or transaction that is subject to a tax administered under the laws specified in paragraph (1) of subdivision (a) and related to the liability. If neither spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under subdivision (a)~~these provisions~~, a ~~requesting~~claiming spouse ~~must file~~may submit a written request for innocent spouse relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse files a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(ge) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar months, quarters, or years for requests filed ~~claims made~~ no later than one year after the Board's first contact with the spouse making the request ~~claim~~.

Requests filed ~~Claims made~~ after one year from the Board's first contact with the spouse making the request ~~claim~~ shall not apply to any calendar month, quarter, or year that is

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the Board-issued determination or similar billing document for collection of a tax or fee,

whichever is later.

No calendar months, quarters, or years shall be eligible for relief under this regulation that have been closed by res judicata.

(hf) Refunds. A refund of any amounts under ~~this regulation~~ these provisions shall be subject to the requirements as set forth in the refund provisions of the applicable tax, fee, and surcharge law, as specified in paragraph (1) of subdivision (a).

(ig) This regulation shall apply retroactively to liabilities arising prior to January 1, 2008.

~~(h) A spouse may be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the board.~~

(1) Criteria for Equitable Relief.

~~(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.~~
- ~~2. The claiming spouse would suffer economic hardship if relief is not granted.~~
- ~~3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~
- ~~4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~
- ~~5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)~~
- ~~6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.~~

~~(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:~~

~~1. The claiming spouse will not suffer economic hardship if relief is not granted.~~

~~2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.~~

~~3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.~~

~~4. The claiming spouse has not made a good faith effort to comply with the board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.~~

~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~

~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions (e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2008, as provided in subdivision (g).~~

~~(j) The Board shall send notification by mail of the request ~~claim~~ for innocent spouse relief from liability and the basis for that request ~~claim~~ to the non-requesting ~~nonclaiming~~ spouse.~~

~~(k) Registered Domestic Partners. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.~~

Note: Authority cited: Sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5 and 60501-60512, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

**5240. Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief.**

(a) Who May Request Relief. A divorced or separated individual may file a request for innocent spouse relief with the Board regarding taxes and fees imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law.

(b) Request Requirements. A request for innocent spouse relief must be:

- (1) In writing.
- (2) Signed and dated by the individual requesting relief.
- (3) Specifically request innocent spouse relief.
- (4) Identify the tax or fee from which relief is sought.
- (5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the liability at issue.

(c) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A satisfies the requirements of subdivision (b).

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the applicable time periods provided in California Code of Regulations, title 18, section 1705.1; ~~subdivision (e)~~, or section 4903, ~~subdivision (e)~~.

(e) Filing Requests. A request for innocent spouse relief or related document may be filed electronically under this section if a copy of the document is transmitted to the Offer in Compromise Section in accordance with instructions provided on the Board's website at [www.boe.ca.gov](http://www.boe.ca.gov). Requests for innocent spouse relief may be mailed to the Offer in Compromise Section at the following address:

OFFER IN COMPROMISE SECTION, MIC 52  
STATE BOARD OF EQUALIZATION  
P.O. BOX 942879  
SACRAMENTO, CA 94279-0052

A request for innocent spouse relief and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or submitted to a collector that is already assigned to the account at issue.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, ~~and 55301~~ and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, ~~and 55045.1~~ and 60210.5, Revenue and Taxation Code.

**5241. Acknowledgement and Review of Requests for Innocent Spouse Relief.**

(a) ~~Acknowledgment~~Review. When the Offer in Compromise Section receives a request for innocent spouse relief, it will:

- (1) Send the individual requesting relief an acknowledgement letter containing the contact information for the Offer in Compromise Section, and include a questionnaire and financial statement for the individual requesting relief to complete and return.
- (2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.
- (3) ~~Evaluate the merits of the request.~~
- (4) ~~Request additional documentation from the individual requesting relief, if necessary.~~

(b) Review. The Offer in Compromise Section will review a request for innocent spouse relief to determine whether the individual requesting relief is eligible for innocent spouse relief or other equitable relief from all the liabilities included in his or her request, as provided in California Code of Regulations, title 18, section 1705.1 or section 4903. The Offer in Compromise Section may request additional information from the individual requesting relief if necessary to complete such review, including requesting additional information in the acknowledgement letter.

(c) Written Findings. Once its review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying innocent spouse relief and other equitable relief, and explaining why such relief was granted or denied. If the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the letter shall include instructions about how to request reconsideration.

(b) ~~Granted Request for Innocent Spouse Relief~~. If the Offer in Compromise Section approves a request for innocent spouse relief, it will prepare and send the individual who requested relief a letter explaining the relief that was granted.

(c) ~~Denied Request for Innocent Spouse Relief~~. If the Offer in Compromise Section denies a request for innocent spouse relief, it will:

- (1) ~~Prepare and send the individual requesting relief a letter explaining why the request was denied; and~~
- (2) ~~If it appears that the individual requesting relief might be eligible for other equitable relief as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h), the Offer in Compromise Section will include a questionnaire and financial statement for the individual requesting relief to complete and return.~~

~~(d) Requests for Other Equitable Relief. If the individual requesting relief returns a completed questionnaire and financial statement, the Offer in Compromise Section will review the documents to see if other equitable relief is warranted using the factors provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h). Once this review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying equitable relief and explaining why such relief was granted or denied.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, ~~and 55301~~ and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, ~~and 55045.1~~ and 60210.5, Revenue and Taxation Code.

Final Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5242

**5242. Requests for Reconsideration by the Board.**

(a) If the Offer in Compromise Section denies both innocent spouse relief and a request for other equitable relief as to any liability included in a request for innocent spouse relief is denied, the individual requesting relief may request that the denials be reconsidered by the Board at a Board hearing as provided in California Code of Regulations, title 18, section 1705.1, ~~subdivision (h)~~, or section 4903, ~~subdivision (h)~~. A request for a Board hearing may be denied on a request for reconsideration ~~other equitable relief~~, however, requests will be liberally granted.

(b) A Board hearing may be requested by following the instructions contained in the ~~denial~~ letter described in section 5241, subdivision (c~~d~~).

(c) If a request for a Board hearing is granted, the individual requesting relief may be required to participate in an appeals conference with the Appeals Division prior to the Board hearing.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, ~~and 55301~~ and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, ~~and 55045.1~~ and 60210.5, Revenue and Taxation Code.

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2015-1001-01  
**BOARD OF EQUALIZATION**  
 Innocent Spouse or Registered Domestic Partner Relief from Liability

This rulemaking by the State Board of Equalization (Board) amends sections in Title 18 of the California Code of Regulations regarding the process for consideration of taxpayer requests for innocent spouse and other equitable relief. The process for requesting such relief is modified to allow Board staff and the Board to consider whether a taxpayer qualifies for innocent spouse and other equitable forms of relief concurrently, rather than the existing process, which potentially requires multiple requests for relief by the taxpayer and multiple level of review by Board staff and the Board. The amendments do not change the substantive requirements for granting or denying innocent spouse and other equitable relief.

Title 18  
 AMEND: 1705.1, 4903, 5240, 5241, 5242  
 Filed 11/05/2015  
 Effective 01/01/2016  
 Agency Contact: Richard Bennion (916)445-2130

File# 2015-1015-01  
**BOARD OF EQUALIZATION**  
 Retention and Revocation of Appraiser Certificate

Summary of Rulemaking — Due to name changes within the Board of Equalization, this action by the Board amends sections 284 and 1027 as a change without regulatory effect to correctly identify the department or unit that is responsible for the action to be taken under the regulation. In section 282, “Property and Special Taxes Department” is changed to “Property Tax Department.” In section 1027, “Timber Tax Division” is changed to “Timber Tax Section.”

Title 18  
 AMEND: 284, 1027  
 Filed 11/10/2015  
 Agency Contact: Richard Bennion (916)445-2130

File# 2015-1029-03  
**CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**  
 QRRP and SPH Evaluation Criteria/TCAC Miscellaneous

The California Debt Limit Allocation Committee submitted this emergency action to adopt three sections, amend 23 sections, and repeal one section under title 4 of the California Code of Regulations, and to amend six incorporated by reference forms. The proposed action updates evaluation criteria for the Qualified Residential Rental Program and the Single Family Housing Program so that the programs are consistent with California Tax Credit Allocation Committee regulations and applicants interested in these programs can take full advantage of them. The proposed action should result in creating more low-income housing developments, providing public benefits to the residents of these projects, and providing single family housing ownership opportunities to low-to-moderate income residents in California.

Title 4  
 ADOPT: 5258, 5271, 5273 AMEND: 5033, 5052, 5100, 5102 (renumbered to 5101), 5103 (renumbered to 5102), 5104 (renumbered to 5103), 5105 (renumbered to 5104), 5106 (renumbered to 5105), 5107 (renumbered to 5106), 5132, 5170, 5190, 5191, 5192, 5200, 5205, 5210, 5230, 5232, 5250, 5255, 5260, 5267 REPEAL: 5101  
 Filed 11/09/2015  
 Effective 11/09/2015  
 Agency Contact: Brian Clark (916)653-8183

File# 2015-1013-05  
**DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
 Administration of Death Penalty — Repeal

In *Sims v. Department of Corrections and Rehabilitation* (2013) 216 Cal.App.4th 1059, 157 Cal.Rptr.3d 409, the court held the regulatory action taken by the Department that amended section 3349 and adopted sections 3349.1.1 through 3349.4.6, inclusive, of title 15, and filed with the Secretary of State on July 30, 2010 (OAL file no. 2010-0706-02SR), was invalid. This current filing by the Department is to remove the regulations, held to be invalid by the court, from the California Code of Regulations as a change without regulatory effect.

Rulemaking File Index

Title 18. Public Revenue

**Sales and Use Tax**

Regulation 1703.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

**Special Tax**

4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

**Rules for Tax Appeals**

5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement And Review Of Requests For Innocent Spouse Relief*, 5242, *Requests For Reconsideration By The Board*

1. [Final Statement of Reasons](#)
2. [Updated informative digest](#)
3. [Chief Counsel Matters, May 27, 2015](#)
  - Chief Counsel memo dated May 6, 2015
  - Attachment A – Proposed Amendments to Regulation 1705.1
  - Attachment B – Proposed Amendments to Regulation 4903
  - Attachment C – Proposed Amendments to Regulation 5240
  - Attachment D – Proposed Amendments to Regulation 5241
  - Attachment E – Proposed Amendments to Regulation 5242
4. [Reporter’s Transcript Item J1, May 27, 2015](#)
5. [Estimate of Cost or Savings, July 8, 2015](#)
6. [Economic and Fiscal Impact Statements, July 2, 2015](#)
7. [Notice of Publications](#)
  - Form 400 and Notice, Publication Date July 17, 2015
  - Email sent to Interested Parties, July 17, 2015
  - CA Regulatory Notice Register 2015, Volume No. 29-Z
8. [Notice to Interested Parties, July 17, 2015](#)

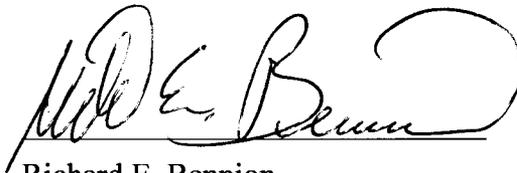
The following items are exhibited:

  - Notice of Hearing
  - Initial Statement of Reasons
  - Proposed Text of Regulation 1705.1, 4903, 5340, 5241, 5242
  - Regulation History
9. [Statement of Compliance](#)
10. [Reporter’s Transcript, Item F2, September 16, 2015](#)
11. [Draft Minutes, December F2, September 16, 2015, and Exhibits](#)
  - Notice of Proposed Regulatory Action
  - Initial Statement of Reasons
  - Proposed Text of Regulation 1705.1, 4903, 5240, 5241, 5242
  - Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on October 1, 2015 and that the attached copy is complete. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

October 1, 2015

A handwritten signature in black ink, appearing to read "Richard E. Bennion", written over a horizontal line.

Richard E. Bennion  
Regulations Coordinator  
State Board of Equalization

**Final Statement of Reasons for the Adoption of the  
Proposed Amendments to California Code of Regulations, Title 18,  
Section 1705.1, *Innocent Spouse or Registered Domestic Partner Relief  
from Liability*,  
Section 4903, *Innocent Spouse or Registered Domestic Partner Relief  
from Liability*,  
Section 5240, *Persons Who May File, Contents of, and Manner of Filing  
Requests for Innocent Spouse Relief*,  
Section 5241, *Acknowledgement and Review of Requests for Innocent  
Spouse Relief*, and  
Section 5242, *Requests for Reconsideration by the Board***

Update of Information in the Initial Statement of Reasons

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, sections (Regulations) 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*, on September 16, 2015. During the public hearing, the Board Members unanimously voted to adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 without making any changes. However, please note that the Board inadvertently underlined the word “claiming,” which was also correctly shown in strikeout format in the text of the proposed amendments to Regulation 1705.1, subdivision (a), and the Board removed the inadvertent underlines from the word “claiming” in the final text of the proposed amendments to Regulation 1705.1, subdivision (a), so that the final text clearly and correctly shows the deletion of the word “claiming.” The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on September 16, 2015, to comment on the proposed regulatory action.

The factual basis, specific purposes, and necessity for, the problems to be addressed by, and the anticipated benefits from the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are the same as provided in the initial statement of reasons. The Board anticipates that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will benefit taxpayers by making it easier for taxpayers to be considered for other equitable relief, and the proposed amendments will benefit taxpayers, Board staff, and the Board by making the Board’s review of requests for innocent spouse relief and other equitable relief more efficient.

The adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 1705.1, 4903, 5240, 5241, and 5242 or the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

In addition, the factual basis has not changed for the Board's initial determination that the proposed regulatory action will not have a significant adverse economic impact on business, the Board's determination that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, and the Board's economic impact assessment, which determined that the Board's proposed regulatory action:

- 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; and
- Will not affect the benefits of Regulations 1705.1, 4903, 5240, 5241, and 5242 to the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 may affect small business.

#### No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 does not impose a mandate on local agencies or school districts.

#### No Public Comments

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on September 16, 2015, to comment on the proposed regulatory action.

#### Determinations Regarding Alternatives

By its motion on September 16, 2015, the Board determined that no alternative to the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 would be more effective in carrying out the purpose for which the amendments are proposed, would be as effective and less burdensome to affected private persons than the adopted

amendments, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Board did not reject any reasonable alternatives to the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 that would lessen any adverse impact the proposed amendments may have on small business.

No reasonable alternatives have been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

**Updated Informative Digest for the State Board of Equalization’s  
Adoption of Proposed Amendments to California Code of Regulations,  
Title 18, Section 1705.1, *Innocent Spouse or Registered Domestic Partner Relief  
from Liability*,  
Section 4903, *Innocent Spouse or Registered Domestic Partner Relief  
from Liability*,  
Section 5240, *Persons Who May File, Contents of, and Manner of Filing  
Requests for Innocent Spouse Relief*,  
Section 5241, *Acknowledgement and Review of Requests for Innocent  
Spouse Relief*, and  
Section 5242, *Requests for Reconsideration by the Board***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, sections (Regulations) 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*, on September 16, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 without making any changes.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on September 16, 2015, to comment on the proposed regulatory action. There have not been any changes to the applicable laws or the effects of, the objectives of, and anticipated benefits from the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

Summary of Existing Laws and Regulations

In 1993, section 6456 was added to the RTC by Assembly Bill No. 1288 (Stats. 1993, ch. 181) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) if:

- The liability is due to an understatement of tax that is attributable to the other spouse;

- The spouse being relieved did not know of and had no reason to know of the understatement; and
- It is inequitable to hold the spouse being relieved liable for the tax attributable to the understatement, taking into account whether the spouse being relieved significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

The Board subsequently adopted Regulation 1705.1 in 1997 to implement, interpret, and make specific RTC section 6456. As relevant here, Regulation 1705.1 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief under section 6456, subdivision (a). Also, Regulation 1705.1 currently refers to a spouse that has filed such a request as a “claiming spouse” and refers to the spouse of an individual requesting innocent spouse relief as the “nonclaiming spouse.”

In 2000, subdivision (f) was added to RTC section 6456 by Assembly Bill No. 2898 (Stats. 2000, ch. 1052) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability for any tax or deficiency for which “innocent spouse relief” is not available under RTC section 6456, subdivision (a). Under RTC section 6456, subdivision (f), such relief may be granted if, after taking into account all the facts and circumstances, the Board determines it is inequitable to hold the spouse liable for the tax or deficiency (or any portion thereof). The Board subsequently added subdivision (h) to Regulation 1705.1 in 2001 to implement RTC section 6456, subdivision (f)’s provisions for other “equitable relief.” As relevant here, Regulation 1705.1, subdivision (h) currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief under RTC section 6456, subdivision (f). In addition, in 2006, the name of Regulation 1705.1 was updated to include “Registered Domestic Partners,” and subdivision (j) was added to Regulation 1705.1 to explain that on and after January 1, 2005, registered domestic partners have the same rights to relief under RTC section 6456 and Regulation 1705.1 as spouses and all further references to “spouses” herein include registered domestic partners, unless otherwise noted.

In 2007, the Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § (Reg.) 5000 et seq.) to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. (Reg. 5000, *Statement of Intent; Title of Division.*) Regulations 5240, 5241, and 5242 were included in the Rules for Tax Appeals to provide specific procedures for the Board’s review of requests for innocent spouse relief and other equitable relief under RTC section 6456.

Regulation 5240 currently provides for the filing of a request for innocent spouse relief with the Board's Offer in Compromise Section. Subdivisions (a) through (c) of Regulation 5241 currently provide for the acknowledgement, review, and grant or denial of a request for innocent spouse relief by the Board's Offer in Compromise Section. If a request for innocent spouse relief is denied and it appears the individual who requested innocent spouse relief may be eligible for other equitable relief, then subdivisions (c) and (d) of Regulation 5241 also currently provide for the Offer in Compromise Section to:

- Send the individual a questionnaire and financial statement to complete and return to request other equitable relief; and
- Review the individual's completed questionnaire and financial statement to determine if other equitable relief is warranted.

Regulation 5242 currently provides that if a request for other equitable relief is denied, then the individual requesting relief may request that the denial be reconsidered by the Board at a Board hearing.

In 2007, the Legislature enacted Assembly Bill No. 1748 (Stats. 2007, ch. 342), which added 15 sections to the RTC to authorize the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5), effective January 1, 2008. The Board adopted Regulation 4903 in 2010 to implement, interpret, and make specific its authority to grant innocent spouse relief and other equitable relief to taxpayers and fee payers (hereafter collectively "taxpayers") under these 14 additional tax and fee laws. Regulation 4903 generally incorporates the same provisions as Regulation 1705.1, including provisions regarding registered domestic partners. As relevant here, Regulation 4903 currently requires a spouse to file a "written request for relief" to be considered for innocent spouse relief, and it refers to a spouse that has filed such a request as a "claiming spouse" and refers to the spouse of an individual who is requesting innocent spouse relief as the "nonclaiming spouse." Regulation 4903 also currently requires a spouse to file a request for equitable relief

within the applicable statute of limitations to be considered for equitable relief.

In addition, the Board added Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it applies to liabilities incurred under all 14 of the special tax and fee laws listed above. Therefore, when the Board adopted Regulation 4903, the Board also adopted Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, which are also entitled *Innocent Spouse or Registered Domestic Partner Relief from Liability*. These cross-referencing regulations are located in other chapters in divisions 1 and 2 of title 18 that correspond with each of the special tax and fee laws listed above, and they currently direct taxpayers to the operative provisions in Regulation 4903.

In 2013, the Board adopted amendments to make Rules for Tax Appeals Regulations 5240, 5241, and 5242 applicable to the filing and review of all the requests for innocent spouse relief and other equitable relief governed by Regulation 4903, except requests filed under the Private Railroad Car Tax Law. This is because Regulations 5240, 5241, and 5242 are contained in chapter 2 of the Rules for Tax Appeals, which does not apply to Private Railroad Car Tax appeals. Also, as relevant here, Regulation 5240, subdivision (a), currently provides for the filing of requests for innocent spouse relief from taxes imposed under the “Diesel Fuel Tax Law” and Regulations 5240, 5241, and 5242 currently contain cross references to specific subdivisions in Regulations 1705.1 and 4903.

#### Effects, Objectives, and Benefits of the Proposed Amendments

In order to receive innocent spouse relief or other equitable relief from a specific tax or fee liability, a spouse must establish that it would be “inequitable” to hold that spouse liable for such amount under the applicable facts and circumstances. As a result, Board staff determined that it would be easier for taxpayers and more efficient for the Board if a taxpayer could file one request for relief in order to be considered for both innocent spouse relief and other equitable relief at the same time. Board staff also determined that there was an administrative issue because Regulations 1705.1, 4903, 5240, 5241, and 5242, collectively, provide for the initial filing and review of a taxpayer’s request for innocent spouse relief, the subsequent filing and review of the taxpayer’s request for other equitable relief only after the taxpayer’s request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. Therefore, Board staff prepared a Chief Counsel Memorandum dated May 6, 2015, which recommended that the Board address the administrative issue by:

- Amending Regulations 1705.1 and 4903 so that they no longer require a spouse to file a separate request for equitable relief;
- Amending Regulations 1705.1, 4903, and 5241 so that they require the Board to consider a spouse who files a request for innocent spouse relief for both innocent spouse relief and other equitable relief;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to send a spouse a “questionnaire and financial statement to complete and return” with the letter acknowledging his or her request for innocent spouse relief so that the Offer in Compromise Section can still obtain the information needed to determine whether other equitable relief is warranted;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to provide a spouse with instructions about how to request reconsideration in the event relief is initially denied; and
- Amending Regulation 5242 so that a spouse can request reconsideration from the Board if the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief.

In addition, spouses file “requests,” not claims, for innocent spouse relief under Regulations 1705.1, 4903, and 5240, and Regulation 5241 currently uses the semantically correct phrase “non-requesting spouse” to refer to the spouse of an individual who is requesting innocent spouse relief. However, Regulations 1705.1 and 4903 generally refer to “requests” as “claims,” a spouse requesting relief as a “claiming spouse,” and the spouse of an individual who is requesting relief as a “nonclaiming spouse.” Therefore, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended addressing these minor inconsistencies by replacing all of Regulations 1705.1’s and 4903’s references to “claims,” “claiming spouse,” and “nonclaiming spouse” with references to “requests,” “requesting spouse,” and “non-requesting spouse,” respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology.

Moreover, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended that the Board make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903. Board staff also recommended that the Board delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivisions have been renumbered and it is not necessary to specifically refer to the subdivisions to understand the meaning of Regulations 5240’s and 5242’s cross-references to Regulations 1705.1 and 4903. Board staff further

recommended that the Board added an inadvertently omitted “s” to the end of Oil Spill Response, Prevention and Administration “Fee” in Regulation 5240, subdivision (a). Board staff additionally recommended revising the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c).

Board staff submitted the May 6, 2015, Chief Counsel Memorandum to the Board for consideration during its May 27, 2015, meeting and, during the meeting, the Board Members unanimously voted to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 recommended by staff, although Chairman Jerome Horton was absent and did not vote. The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objectives of addressing the administrative issue referred to above, ensuring that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology, and clearly and efficiently administering the RTC provisions for innocent spouse relief and other equitable relief, cited above.

Prior to publishing this notice for the proposed amendments the Board authorized on May 27, 2015, Board staff realized that the Board inadvertently omitted references to RTC section 60601, which authorizes the Board to adopt regulations to implement, interpret, and make specific the provisions of the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240’s, 5241’s, and 5242’s authority notes. And, the Board also inadvertently omitted references to RTC section 60210.5, which authorizes the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240’s, 5241’s, and 5242’s reference notes. Therefore, the Board has also included references to RTC sections 60601 and 60210.5 in the proposed amendments to Regulations 5240’s, 5241’s, and 5242’s authority and reference notes, respectively, which were not discussed in the May 6, 2015, Chief Counsel Memorandum, because the Board has determined that these additional amendments are reasonably necessary to have the effect and accomplish the objective of addressing the Board’s prior omissions from the 2013 amendments.

The Board has performed an evaluation of whether the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903, 5240, 5241, and 5242 are the only state regulations that specifically implement, interpret, and make specific the RTC provisions for innocent spouse relief and other equitable relief, cited

above. Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106 primarily cross-reference and direct taxpayers to the operative provisions in Regulation 4903. The proposed amendments will ensure that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology. And, the Board's evaluation of Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903, 5240, 5241, and 5242 did not reveal any inconsistencies between the regulations that are not being addressed in the proposed amendments.

In addition, Internal Revenue Code (IRC) section 6015 (26 U.S.C. § 6015) currently contains some provisions providing relief from joint income tax liabilities that are comparable to the RTC provisions for innocent spouse relief and other equitable relief, cited above. These IRC provisions are implemented, interpreted, and made specific by 26 Code of Federal Regulations parts 1.6015-1 (procedures), 1.6015-2 (innocent spouse relief), 1.6015-4 (equitable relief), 1.6015-5 (filing requests), and 1.6015-7 (Tax Court review), which contain some provisions that are comparable to the provisions in Regulations 1705.1, 4903, 5240, 5241, and 5242 discussed above. However, the Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 do not differ substantially from federal law because part 1.6015-1(a)(2) permits a requesting spouse to submit a single request or claim for both innocent spouse relief under part 1.6015-2 and equitable relief under part 1.6015-4, and requires the Internal Revenue Service to consider whether a person who files such a claim is eligible for relief under both parts. Part 1.6015-7 permits a requesting spouse to petition the Tax Court for the review of the denial of any relief available under the procedures in part 1.6015-1, including innocent spouse relief under part 1.6015-2 and equitable relief under part 1.6015-4. Also, the federal regulations use the terms "requesting spouse" and "nonrequesting spouse."

## Memorandum

To: Honorable Jerome E. Horton, Chairman  
Senator George Runner, Vice Chair  
Honorable Fiona Ma, CPA, Second District  
Honorable Diane L. Harkey, Fourth District  
Honorable Betty T. Yee, State Controller

Date: May 6, 2015

From:   
Randy Ferris  
Chief Counsel

Subject: **Board Meeting, May 28-29, 2015**  
**Chief Counsel Matters - Item J - Rulemaking**  
**Request for Authorization to Publish Proposed Amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 Regarding Innocent Spouse Relief and Other Equitable Relief from Liability**

We recommend and request your authorization to publish proposed amendments to Sales and Use Tax Regulation 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, Special Taxes and Fees Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and Rules for Tax Appeals Regulations 5240, *Persons Who May File. Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*. The proposed amendments provide for the filing of one request for innocent spouse relief, the review of that request to determine if either innocent spouse relief or other equitable relief is warranted, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request.

### **Background Regarding Innocent Spouse Relief and Other Equitable Relief**

In 1993, section 6456 was added to the Revenue and Taxation Code (RTC) by Assembly Bill No. 1288 (Stats. 1993, ch. 181) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) if:

- The liability is due to an understatement of tax that is attributable to the other spouse;
- The spouse being relieved did not know of and had no reason to know of the understatement; and
- It is inequitable to hold the spouse being relieved liable for the tax attributable to the understatement, taking into account whether the spouse being relieved significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

The Board subsequently adopted Sales and Use Tax Regulation 1705.1 in 1997 to implement, interpret, and make specific RTC section 6456. As relevant here, Regulation 1705.1 requires a spouse to file a “written request for relief” to be considered for innocent spouse relief under section 6456, subdivision (a). Also, Regulation 1705.1 refers to a spouse that has filed such a request as a “claiming spouse” and the other spouse as the “nonclaiming spouse.”

In 2000, subdivision (f) was added to RTC section 6456 by Assembly Bill No. 2898 (Stats. 2000, ch. 1052) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability for any tax or deficiency for which “innocent spouse relief” is not available under RTC section 6456, subdivision (a). Under RTC section 6456, subdivision (f), such relief may be granted if, after taking into account all the facts and circumstances, the Board determines it is inequitable to hold the spouse liable for the tax or deficiency (or any portion thereof). The Board subsequently added subdivision (h) to Regulation 1705.1 in 2001 to implement RTC section 6456, subdivision (f)’s provisions for other “equitable relief.” As relevant here, Regulation 1705.1, subdivision (h) requires a spouse to file a written request for equitable relief within the applicable statute of limitations to be considered for equitable relief under RTC section 6456, subdivision (f). In addition, in 2006, the name of Regulation 1705.1 was updated to include “Registered Domestic Partners,” and subdivision (j) was added to Regulation 1705.1 to explain that on and after January 1, 2005, registered domestic partners have the same rights to relief under RTC section 6456 and Regulation 1705.1 as spouses.

In 2007, the Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § (Reg.) 5000 et seq.) to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. (Reg. 5000, *Statement of Intent: Title of Division.*) Regulations 5240 through 5242 were included in the Rules for Tax Appeals to provide procedures for the Board’s review of requests for innocent spouse relief and other equitable relief under RTC section 6456.

Regulation 5240 provides for the filing of a request for innocent spouse relief with the Board’s Offer in Compromise Section. Subdivisions (a) through (c) of Regulation 5241 provide for the acknowledgement, review, and grant or denial of a request for innocent spouse relief by the Offer in Compromise Section. If a request for innocent spouse relief is denied and it appears the individual who requested innocent spouse relief may be eligible for other equitable relief, then subdivisions (c) and (d) of Regulation 5241 also provide for the Offer in Compromise Section to:

- Send the individual a questionnaire and financial statement to complete and return to request other equitable relief; and
- Review the individual’s completed questionnaire and financial statement to determine if other equitable relief is warranted.

Regulation 5242 provides that if a request for other equitable relief is denied, then the individual requesting relief may request that the denial be reconsidered by the Board at a Board hearing.

The Legislature has also authorized the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5). The Board adopted Special Taxes and Fees Regulation 4903 in 2010 to implement, interpret, and make specific its authority to grant innocent spouse relief and other equitable relief under these additional tax and fee laws. Regulation 4903 generally incorporates the same provisions as Sales and Use Tax Regulation 1705.1, including provisions regarding registered domestic partners. As relevant here, Regulation 4903 requires a spouse to file a “written request for relief” to be considered for innocent spouse relief, and it refers to a spouse that has filed such a request as a “claiming spouse” and the other spouse as the “nonclaiming spouse.” Regulation 4903 also requires a spouse to file a written request for equitable relief within the applicable statute of limitations to be considered for equitable relief.

In 2013, the Board adopted amendments to make Rules for Tax Appeals Regulations 5240 through 5242 applicable to the filing and review of requests for innocent spouse relief and other equitable relief governed by Regulation 4903, except requests filed under the Private Railroad Car Tax. This is because Regulations 5240 through 5242 are contained in chapter 2 of the Rules for Tax Appeals, which does not apply to Private Railroad Car Tax appeals. Currently, Regulations 5240 through 5242 contain cross references to specific subdivisions in Regulations 1705.1 and 4903.

### **Staff's Recommended Amendments**

Once a spouse files a request for innocent spouse relief or other equitable relief from a specific tax or fee liability, the Offer in Compromise Section must determine whether it is “inequitable” to hold that spouse liable for such amount under the applicable facts and circumstances. As a result, Board staff has determined that it would be more efficient for taxpayers if they could file one request for relief in order to be considered for both innocent spouse relief and other equitable relief, instead of filing separate requests for innocent spouse relief and other equitable relief. Board staff has also determined that it would be more efficient for the Board if the Offer in Compromise Section could review one request for relief and determine whether the filing spouse is eligible for either innocent spouse relief or other equitable relief at the same time. Therefore, Board staff recommends that the Board:

- Amend Regulations 1705.1 and 4903 so that they no longer require a spouse to file a separate request for equitable relief;
- Amend Regulations 1705.1, 4903, and 5241 so that they require the Board to consider a spouse who files a request for innocent spouse relief for both innocent spouse relief and other equitable relief;

- Amend Regulation 5241 so that it requires the Offer in Compromise Section to send a spouse a “questionnaire and financial statement to complete and return” with the letter acknowledging his or her request for innocent spouse relief so that the Offer in Compromise Section can still obtain the information needed to determine whether other equitable relief is warranted; and
- Amend Regulation 5242 so that a spouse can request reconsideration from the Board if the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief.

In addition, spouses file “requests,” not claims, for innocent spouse relief under Regulations 1705.1, 4903, and 5240, and Regulation 5241 currently uses the semantically correct phrase “non-requesting spouse” to refer to the spouse of an individual who is requesting innocent spouse relief. Therefore, Board staff recommends replacing all of Regulations 1705.1’s and 4903’s references to “claims,” “claiming spouse,” and “nonclaiming spouse” with references to “requests,” “requesting spouse,” and “non-requesting spouse,” respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology.

Moreover, Board staff recommends that the Board make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903. Board staff also recommends that the Board delete the cross-references to specific subdivisions in Regulation 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivisions have been renumbered and it is not necessary to specifically refer to the subdivisions to understand the meaning of Regulations 5240’s and 5242’s cross-references to Regulations 1705.1 and 4903. Board staff further recommends that the Board added an inadvertently omitted “s” to the end of Oil Spill Response, Prevention and Administration “Fee” in Regulation 5240, subdivision (a). Board staff additionally recommends revising the reference to Regulation 5241, subdivision (d) present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c). Finally, Board staff recommends revising Regulation 5241, subdivision (c) to refer to the instructions for reconsideration that will be provided in the event a request is initially denied.

### **Summary**

Board staff has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242, illustrated in Attachments A through E and discussed above, are necessary to efficiently administer the RTC provisions for innocent spouse relief and other equitable relief, cited above, by provided for the filing of one request for innocent spouse relief, the review of that request to determine if either innocent spouse relief or other equitable relief is warranted, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request.

If you need more information or have any questions, please contact Tax Counsel IV Bradley Heller at (916) 323-3091.

Approved:

  
Cynthia Bridges  
Executive Director

RF:bmh:hp

Attachments: Attachment A – Proposed Amendments to Regulation 1705.1  
Attachment B – Proposed Amendments to Regulation 4903  
Attachment C – Proposed Amendments to Regulation 5240  
Attachment D – Proposed Amendments to Regulation 5241  
Attachment E – Proposed Amendments to Regulation 5242

cc: Ms. Cynthia Bridges MIC:73  
Ms. Amy Kelly MIC:82  
Mr. Robert Tucker MIC:82  
Mr. Bradley Heller MIC:82

Attachment A

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1705.1

**1705.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a) In General. A spouse ~~claiming~~ may request innocent spouse relief from liability for any sales or use tax, interest, penalties, and other amounts. A requesting spouse shall be relieved from such liability where all of the following requirements are met:

(1) A liability is incurred under the Sales and Use Tax Law;

(2) The liability is attributable to the non-requesting~~nonclaiming~~ spouse;

(3) The spouse ~~claiming~~requesting relief establishes that he or she did not know of, and that a reasonably prudent person in the requesting~~claiming~~ spouse's circumstances would not have had reason to know of, the liability; and

(4) It would be inequitable to hold the requesting~~claiming~~ spouse liable for the liability, taking into account whether the requesting~~claiming~~ spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(b) "Benefited." Whether a requesting~~claiming~~ spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The requesting~~claiming~~ spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the requesting~~claiming~~ spouse, or lavish or luxury purchases made by either spouse may be evidence that the requesting~~claiming~~ spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a requesting~~claiming~~ spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the requesting~~claiming~~ spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the requesting~~claiming~~ spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A ~~claim~~request for innocent spouse relief may be filed if, at the time relief is requested, the requesting~~claiming~~ spouse is no longer married to or is legally separated from the non-requesting~~nonclaiming~~ spouse, or the requesting~~claiming~~ spouse is no longer a member of the same household as the non-requesting~~nonclaiming~~ spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse

rendered substantial services as a retailer of taxable items related to the liability. If neither spouse rendered substantial services as a retailer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under ~~subdivision (a)~~ ~~these provisions~~, a ~~requesting~~ ~~claiming~~ spouse ~~must file~~ ~~may submit~~ a written request for innocent spouse relief setting forth the seller's permit number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse has filed a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(ge) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar quarters for requests filed ~~claims made~~ no later than one year after the Board's ~~board's~~ first contact with the spouse making the ~~request claim~~. Requests filed ~~Claims made~~ after one year from the Board's ~~board's~~ first contact with the spouse making the ~~request claim~~ shall not apply to any calendar quarter that is ~~more than~~

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the ~~Board-issued~~ board-issued determination,

whichever is later.

No calendar quarters shall be eligible for relief under this regulation that have been closed by res judicata.

(hf) Refunds. A refund of any amounts under ~~this regulation~~ these provisions shall be subject to the requirements as set forth in Revenue and Taxation Code sections 6901 through 6908, inclusive.

(ig) This regulation shall apply retroactively to liabilities arising prior to January 1, 1994.

(h) Effective January 1, 2001, a spouse may be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered

for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the Board.

(1) Criteria for Equitable Relief.

(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:

- ~~1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.~~
- ~~2. The claiming spouse would suffer economic hardship if relief is not granted.~~
- ~~3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~
- ~~4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~
- ~~5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)~~
- ~~6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.~~

(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:

- ~~1. The claiming spouse will not suffer economic hardship if relief is not granted.~~
- ~~2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.~~
- ~~3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.~~
- ~~4. The claiming spouse has not made a good faith effort to comply with the Board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.~~

~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~

~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions 1705.1(e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2001, including liabilities incurred prior to January 1, 1994, as provided in subdivision (g).~~

(j) The Board shall send notification by mail of the requestclaim for innocent spouse relief from liability and the basis for that requestclaim to the non-requestingnonclaiming spouse.

(k) Registered Domestic Partners. Pursuant to Family Code section 297.5, on and after January 1, 2005, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, on and after January 1, 2005, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6066, 6067, 6456 and 6901-6908, Revenue and Taxation Code; and Sections 297 and 297.5, Family Code.

Attachment B

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 4903

**4903. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a)(1) In General.

(1) A spouse ~~requesting innocent spouse~~~~claiming~~ relief from liability for any tax, fee, or surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(A) A liability is 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, or Use Fuel Tax Law;

(B) The liability is attributable to the ~~non-requesting~~~~non~~~~claiming~~ spouse;

(C) The spouse ~~requesting~~~~claiming~~ relief establishes that he or she did not know of, and that a reasonably prudent person in the ~~requesting~~~~claiming~~ spouse's circumstances would not have had reason to know of, the liability; and

(D) It would be inequitable to hold the ~~requesting~~~~claiming~~ spouse liable for the liability, taking into account whether the ~~requesting~~~~claiming~~ spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(2) For purposes of this section, the word "tax" shall mean "tax, fee, or surcharge."

(b) Benefited. Whether a ~~requesting~~~~claiming~~ spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The ~~requesting~~~~claiming~~ spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the ~~requesting~~~~claiming~~ spouse, or lavish or luxury purchases made by either spouse may be evidence that the ~~requesting~~~~claiming~~ spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a ~~requesting~~~~claiming~~ spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the ~~requesting~~~~claiming~~ spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the ~~requesting~~~~claiming~~ spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A ~~claim~~request for innocent spouse relief may be filed if, at the time relief is requested, the ~~requesting~~claiming spouse is no longer married to or is legally separated from the ~~non-requesting~~nonclaiming spouse, or the ~~requesting~~claiming spouse is no longer a member of the same household as the ~~non-requesting~~nonclaiming spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer engaged in an activity or transaction that is subject to a tax administered under the laws specified in paragraph (1) of subdivision (a) and related to the liability. If neither spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under ~~subdivision (a)~~these provisions, a ~~requesting~~claiming spouse ~~must file~~may submit a written request for innocent spouse relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse files a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(ge) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar months, quarters, or years for requests filed ~~claims made~~ no later than one year after the Board's first contact with the spouse making the ~~request~~ ~~claim~~.

Requests filed ~~Claims made~~ after one year from the Board's first contact with the spouse making the ~~request~~ ~~claim~~ shall not apply to any calendar month, quarter, or year that is

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the Board-issued determination or similar billing document for collection of a tax or fee.

whichever is later.

No calendar months, quarters, or years shall be eligible for relief under this regulation that have been closed by res judicata.

(h~~f~~) Refunds. A refund of any amounts under this regulation~~these provisions~~ shall be subject to the requirements as set forth in the refund provisions of the applicable tax, fee, and surcharge law, as specified in paragraph (1) of subdivision (a).

(i~~g~~) This regulation shall apply retroactively to liabilities arising prior to January 1, 2008.

~~(h) A spouse may be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the board.~~

(1) Criteria for Equitable Relief:

~~(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.~~
- ~~2. The claiming spouse would suffer economic hardship if relief is not granted.~~
- ~~3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~
- ~~4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~
- ~~5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)~~
- ~~6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.~~

~~(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse will not suffer economic hardship if relief is not granted.~~
- ~~2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.~~
- ~~3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.~~
- ~~4. The claiming spouse has not made a good faith effort to comply with the board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.~~
- ~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~
- ~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions (e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2008, as provided in subdivision (g).~~

~~(j)~~ (i) The Board shall send notification by mail of the request~~claim~~ for innocent spouse relief from liability and the basis for that request~~claim~~ to the non-requesting~~nonclaiming~~ spouse.

(k) Registered Domestic Partners. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2.

55045.1, 55221-55226, 60210.5 and 60501-60512, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

Attachment C

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5240

**5240. Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief.**

(a) Who May Request Relief. A divorced or separated individual may file a request for innocent spouse relief with the Board regarding taxes and fees imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law.

(b) Request Requirements. A request for innocent spouse relief must be:

- (1) In writing.
- (2) Signed and dated by the individual requesting relief.
- (3) Specifically request innocent spouse relief.
- (4) Identify the tax or fee from which relief is sought.
- (5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the liability at issue.

(c) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A satisfies the requirements of subdivision (b).

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the applicable time periods provided in California Code of Regulations, title 18, section 1705.1, ~~subdivision (e)~~, or section 4903, ~~subdivision (e)~~.

(e) Filing Requests. A request for innocent spouse relief or related document may be filed electronically under this section if a copy of the document is transmitted to the Offer in Compromise Section in accordance with instructions provided on the Board's website at [www.boe.ca.gov](http://www.boe.ca.gov). Requests for innocent spouse relief may be mailed to the Offer in Compromise Section at the following address:

OFFER IN COMPROMISE SECTION, MIC 52  
STATE BOARD OF EQUALIZATION  
P.O. BOX 942879  
SACRAMENTO, CA 94279-0052

A request for innocent spouse relief and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or submitted to a collector that is already assigned to the account at issue.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152 and 55301, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6 and 55045.1, Revenue and Taxation Code.

Attachment D

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5241

**5241. Acknowledgement and Review of Requests for Innocent Spouse Relief.**

(a) ~~Acknowledgment~~Review. When the Offer in Compromise Section receives a request for innocent spouse relief, it will:

(1) Send the individual requesting relief an acknowledgement letter containing the contact information for the Offer in Compromise Section, and include a questionnaire and financial statement for the individual requesting relief to complete and return.

(2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.

~~(3) Evaluate the merits of the request.~~

~~(4) Request additional documentation from the individual requesting relief, if necessary.~~

(b) Review. The Offer in Compromise Section will review a request for innocent spouse relief to determine whether the individual requesting relief is eligible for innocent spouse relief or other equitable relief from all the liabilities included in his or her request, as provided in California Code of Regulations, title 18, section 1705.1 or section 4903. The Offer in Compromise Section may request additional information from the individual requesting relief if necessary to complete such review, including requesting additional information in the acknowledgement letter.

(c) Written Findings. Once its review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying innocent spouse relief and other equitable relief, and explaining why such relief was granted or denied. If the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the letter shall include instructions about how to request reconsideration.

~~(b) Granted Request for Innocent Spouse Relief. If the Offer in Compromise Section approves a request for innocent spouse relief, it will prepare and send the individual who requested relief a letter explaining the relief that was granted.~~

~~(c) Denied Request for Innocent Spouse Relief. If the Offer in Compromise Section denies a request for innocent spouse relief, it will:~~

~~(1) Prepare and send the individual requesting relief a letter explaining why the request was denied; and~~

~~(2) If it appears that the individual requesting relief might be eligible for other equitable relief as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h), the Offer in Compromise Section will include a~~

~~questionnaire and financial statement for the individual requesting relief to complete and return.~~

~~(d) Requests for Other Equitable Relief. If the individual requesting relief returns a completed questionnaire and financial statement, the Offer in Compromise Section will review the documents to see if other equitable relief is warranted using the factors provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h). Once this review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying equitable relief and explaining why such relief was granted or denied.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152 and 55301, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6 and 55045.1, Revenue and Taxation Code.

Attachment E

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5242

**5242. Requests for Reconsideration by the Board.**

(a) ~~If the Offer in Compromise Section denies both innocent spouse relief and a request for other equitable relief as to any liability included in a request for innocent spouse relief is denied.~~ the individual requesting relief may request that the denials be reconsidered by the Board at a Board hearing as provided in California Code of Regulations, title 18, section 1705.1-subdivision (h), or section 4903-subdivision (h). A request for a Board hearing may be denied on a request for reconsideration~~other equitable relief~~, however, requests will be liberally granted.

(b) A Board hearing may be requested by following the instructions contained in the ~~denial~~ letter described in section 5241, subdivision (c).

(c) If a request for a Board hearing is granted, the individual requesting relief may be required to participate in an appeals conference with the Appeals Division prior to the Board hearing.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152 and 55301, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6 and 55045.1, Revenue and Taxation Code.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET  
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MAY 27, 2015

CHIEF COUNSEL MATTERS

J RULEMAKING

J1 PROPOSED AMENDMENTS TO SALES AND USE TAX  
REGULATION 1705.1, SPECIAL TAXES AND FEES  
REGULATION 4903, AND RULES FOR TAX APPEALS  
REGULATIONS 5240, 5241 AND 5242

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board  
of Equalization:

Sen. George Runner (Ret.)  
Vice Chair

Fiona Ma, CPA  
Member

Diane L. Harkey  
Member

Yvette Stowers  
Appearing for Betty T.  
Yee, State Controller  
(per Government Code  
Section 7.9)

Joann Richmond  
Chief  
Board Proceedings  
Division

For Staff:

Bradley Heller  
Tax Counsel IV  
Legal Department

Lei Anderson  
Business Taxes  
Specialist II  
Legal Department

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1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 MAY 27, 2015

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5 MS. RICHMOND: Our next item is Chief  
6 Counsel matters.

7 MR. RUNNER: Okay.

8 MS. RICHMOND: Item J Rulemaking; J1, we  
9 have Proposed Amendments to Sales and Use Tax  
10 Regulation 1705.1, Innocent Spouse or Registered  
11 Domestic Partner Relief from Liability, Special  
12 Taxes and Fees Regulation 4903, Innocent Spouse or  
13 Registered Domestic Partner Relief from Liability,  
14 and Rules for -- Rules for Tax Appeals Regulations  
15 5240, Persons Who May File, Contents of, and Manner  
16 of Filing Requests for Innocent Spouse Relief, 5241,  
17 Acknowledgement and Review of Requests for Innocent  
18 Spouse Relief, and 5242, Requests for  
19 Reconsideration by the Board.

20 MR. RUNNER: Mr. Heller.

21 MR. HELLER: Good afternoon, Vice Chairman  
22 Runner and Members of the Board. I'm Bradley Heller  
23 from the Board's Legal Department, and I'm hear with  
24 Lei Anderson who is also from the Board's Legal  
25 Department.

26 We're here to request that the Board  
27 authorize the publication of proposed amendments to  
28 Sales and Use Tax Regulation 1705.1, Special Taxes

1 and Fees Regulation 4903, and Rules for Tax Appeals  
2 Regulations 15 -- 5240, 5241 and 5242.

3 The proposed amendments streamline the  
4 innocent spouse relief process by providing for the  
5 filing of one request for innocent spouse relief,  
6 the review of that request to determine if either  
7 innocent spouse or other equitable relief is  
8 warranted, and the ability to request  
9 reconsideration from the Board if an individual  
10 requesting relief is not granted either innocent  
11 spouse relief or other equitable relief from all the  
12 liabilities in his or her request.

13 MR. RUNNER: Okay. Thank you very much.

14 We have a motion?

15 MS. HARKEY: I support wholeheartedly. I  
16 support it wholeheartedly, whatever we can do to  
17 make this easier.

18 Motion -- I'll just make a motion.

19 MR. RUNNER: Okay. Motion to approve.

20 MS. STOWERS: Second.

21 MR. RUNNER: Second.

22 Without objection? Okay.

23 MR. HELLER: Thank you.

24 MR. RUNNER: Thank you.

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REPORTER'S CERTIFICATE

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State of California )  
 ) ss  
County of Sacramento )

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on May 27, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: June 2, 2015

*Kathleen Skidgel*



\_\_\_\_\_  
KATHLEEN SKIDGEL  
Hearing Reporter

**ESTIMATE OF COST OR SAVINGS RESULTING  
FROM PROPOSED REGULATORY ACTION**

**Proposed Amendment of Sales and Use Tax Regulation 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, Special Taxes and Fees Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and Rules for Tax Appeals Regulations 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board***

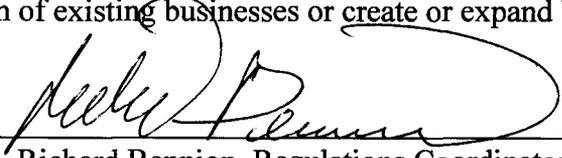
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement Prepared by  Date 7-8-15  
Richard Bennion, Regulations Coordinator

Approved by  Date 7/8/15  
Randy Ferris, Chief Counsel

**If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required**

Approved by \_\_\_\_\_ Date \_\_\_\_\_  
Chief, Financial Management Division

Approved by \_\_\_\_\_ Date \_\_\_\_\_  
Chief, Board Proceedings Division

**NOTE: SAM Section 6615 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.**

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

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT**

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	EMAIL ADDRESS rbennion@boe.ca.gov	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1705.1, 4903, 5240, 5241, 5242, Innocent Spouse or Registered Domestic Partner Relief			NOTICE FILE NUMBER Z

**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 business and/or employees       e. Imposes reporting requirements  
 b. Impacts small businesses                       f. Imposes prescriptive instead of performance  
 c. Impacts jobs or occupations                       g. Impacts individuals  
 d. Impacts California competitiveness               h. None of the above (Explain below):

Please see the attached .

***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.  
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***

2. The \_\_\_\_\_ estimates that the economic impact of this regulation (which includes the fiscal impact) is:

(Agency/Department)

- Below \$10 million  
 Between \$10 and \$25 million  
 Between \$25 and \$50 million  
 Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. 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: \_\_\_\_\_

4. Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

5. Indicate the geographic extent of impacts:  Statewide  
 Local or regional (List areas): \_\_\_\_\_

6. Enter the number of jobs created: \_\_\_\_\_ and eliminated: \_\_\_\_\_

Describe the types of jobs or occupations impacted: \_\_\_\_\_

7. 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: \_\_\_\_\_

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

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT (CONTINUED)**

**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: \$ \_\_\_\_\_

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 of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: \_\_\_\_\_

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? \$ \_\_\_\_\_

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: \_\_\_\_\_

**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: \_\_\_\_\_

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

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT (CONTINUED)**

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.

*California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.*

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million?  YES  NO

*If YES, complete E2. and E3  
If NO, skip to E4*

Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

*(Attach additional pages for other alternatives)*

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

Regulation: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 1: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 2: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES  NO

*If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: \_\_\_\_\_

The incentive for innovation in products, materials or processes: \_\_\_\_\_

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: \_\_\_\_\_

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

STD 399 (REV. 12/2013)

**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 in the current State Fiscal Year which are reimbursable by the State. (Approximate)  
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ \_\_\_\_\_

- a. Funding provided in \_\_\_\_\_

Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

- b. Funding will be requested in the Governor's Budget Act of \_\_\_\_\_

Fiscal Year: \_\_\_\_\_

- 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)  
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ \_\_\_\_\_

*Check reason(s) this regulation is not reimbursable and provide the appropriate information:*

- a. Implements the Federal mandate contained in \_\_\_\_\_

- b. Implements the court mandate set forth by the \_\_\_\_\_ Court.

Case of: \_\_\_\_\_ vs. \_\_\_\_\_

- c. Implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_

Date of Election: \_\_\_\_\_

- d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: \_\_\_\_\_

- e. Will be fully financed from the fees, revenue, etc. from: \_\_\_\_\_

Authorized by Section: \_\_\_\_\_ 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;

- g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

- 3. Annual Savings. (approximate)

\$ \_\_\_\_\_

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

- 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- 6. Other. Explain \_\_\_\_\_

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

STD. 399 (REV. 12/2013)

**FISCAL IMPACT STATEMENT (CONTINUED)**

**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 in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the \_\_\_\_\_ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain \_\_\_\_\_

**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 in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

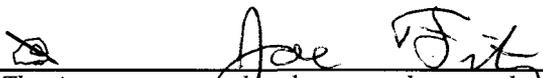
2. Savings in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

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

4. Other. Explain \_\_\_\_\_

FISCAL OFFICER SIGNATURE



DATE

July 2, 2015

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, 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.

AGENCY SECRETARY



DATE

July 2, 2015

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

Exempt under SAM section 6615

DATE

**Attachment to Economic and Fiscal Impact  
Statement (STD. 399 (Rev. 12/2013)) for the Proposed Amendments to  
California Code of Regulations, Title 18,  
Section 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*,  
Section 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*,  
Section 5240, *Persons Who May File, Contents of, and Manner of Filing  
Requests for Innocent Spouse Relief*,  
Section 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and  
Section 5242, *Requests for Reconsideration by the Board***

As explained in more detail in the initial statement of reasons, the State Board of Equalization (Board) adopted Regulations 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*, to implement, interpret, and make specific the Revenue and Taxation Code (RTC) provisions for innocent spouse relief and other equitable relief under the Sales and Use Tax Law (RTC, § 6456), Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5).

Currently, the regulations collectively provide for the initial filing and review of a request for innocent spouse relief by a taxpayer or feepayer (hereafter collectively “taxpayer”), and the subsequent filing and review of the taxpayer’s request for other equitable relief only after the taxpayer’s request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. The proposed amendments make the Board’s administration of the RTC provisions for innocent spouse relief and other equitable relief more efficient by providing for the filing of one request for innocent spouse relief, the review of that request by the Board’s Offer in Compromise Section to determine if either innocent spouse relief or other equitable relief is warranted at the same time, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request. As a result, the proposed amendments change the Board’s procedures by eliminating the requirement that some taxpayers file a separate request for other equitable relief, in addition to their requests for innocent spouse relief, within the applicable statute of limitations. The proposed amendments also change the Board’s procedures so that Board staff and the Board

can consider whether a taxpayer qualifies for innocent spouse relief and other equitable relief at the same time.

However, the proposed amendments do not change the substantive requirements for granting or denying innocent spouse relief and other equitable relief. And, after the proposed amendments, a taxpayer will still need to provide the same information to the Offer in Compromise Section that is currently needed to determine whether the taxpayer qualifies for innocent spouse relief and other equitable relief.

As a result, the Board's Legal Department has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will make it easier for taxpayers to be considered for other equitable relief and make it more efficient for the Board's Offer in Compromise Section and the Board to determine whether taxpayers are entitled to such relief. However, the proposed amendments will not substantially increase or decrease the number of requests for innocent spouse relief currently filed with the Board's Offer in Compromise Section. The proposed amendments will not substantially increase or decrease the amount of innocent spouse relief and other equitable relief currently granted by the Board. And, as a result, the proposed amendments will not have a measurable impact on revenue.

Therefore, the Board anticipates that the proposed amendments will benefit taxpayers by making it easier for taxpayers to be considered for other equitable relief, and the proposed amendments will benefit taxpayers, Board staff, and the Board by making the Board's review of requests for innocent spouse relief and other equitable relief more efficient. However, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. And, the Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Furthermore, based upon the foregoing information and all of the information in the rulemaking file, 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 regulatory action, and the Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242:

- 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;
- 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;
- Will not have a significant effect on housing costs;
- Will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with

section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California; and

- Will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

Finally, Regulations 1705.1, 4903, 5240, 5241, and 5242 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not affect the benefits of Regulations 1705.1, 4903, 5240, 5241, and 5242 to the health and welfare of California residents, worker safety, or the state's environment.

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-2015-0702-03</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

<p><b>RECEIVED FOR FILING PUBLICATION DATE</b></p> <p>JUL 02 '15      JUL 17 '15</p> <p>Office of Administrative Law</p> <p>NOTICE</p>	<p>REGULATIONS</p>
--	--------------------

<b>AGENCY WITH RULEMAKING AUTHORITY</b> State Board of Equalization	AGENCY FILE NUMBER (If any)
--	-----------------------------

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

1. SUBJECT OF NOTICE Innocent Spouse or Registered Domestic Partner		TITLE(S) 18	FIRST SECTION AFFECTED 1705.1	2. REQUESTED PUBLICATION DATE July 17, 2015
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

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

1a. SUBJECT OF REGULATION(S)	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)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> 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.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

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)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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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.**

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
TYPED NAME AND TITLE OF SIGNATORY	

## TITLE 18. BOARD OF EQUALIZATION

**The State Board of Equalization Proposes to Adopt Amendments to  
California Code of Regulations, Title 18,  
Section 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*,  
Section 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*,  
Section 5240, *Persons Who May File, Contents of, and Manner of Filing  
Requests for Innocent Spouse Relief*,  
Section 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*,  
and  
Section 5242, *Requests for Reconsideration by the Board***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*. The proposed amendments make the Board's administration of the RTC provisions for innocent spouse relief and other equitable relief (cited below) more efficient by providing for the filing of one request for innocent spouse relief, the review of that request by the Board's Offer in Compromise Section to determine if either innocent spouse relief or other equitable relief is warranted at the same time, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request.

The proposed amendments also replace all of Regulations 1705.1's and 4903's references to "claims," "claiming spouse," and "nonclaiming spouse" with references to "requests," "requesting spouse," and "non-requesting spouse," respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology. The proposed amendments make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903, delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivision references are not necessary, add an inadvertently omitted "s" to the end of Oil Spill Response, Prevention and Administration "Fee" in Regulation 5240, subdivision (a), and revise the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c). And, the proposed amendments add references to RTC sections 60601 and 60210.5 to Regulations 5240's, 5241's, and 5242's authority and

reference notes, respectively, to address omissions from prior amendments to the regulations.

## PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on September 16-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at *www.boe.ca.gov* at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on September 16-17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242.

## AUTHORITY

Regulation 1705.1:	RTC section 7051
Regulation 4903:	RTC sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601
Regulations 5240-5242:	Government Code section 15606; and RTC sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601

## REFERENCE

Regulation 1705.1:	RTC sections 6066, 6067, 6456 and 6901-6908; and Family Code sections 297 and 297.5
Regulation 4903:	RTC sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5, and 60501-60512; and Family Code sections 297, 297.5, and 308
Regulation 5240-5242:	RTC sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### Summary of Existing Laws and Regulations

In 1993, section 6456 was added to the RTC by Assembly Bill No. 1288 (Stats. 1993, ch. 181) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) if:

- The liability is due to an understatement of tax that is attributable to the other spouse;
- The spouse being relieved did not know of and had no reason to know of the understatement; and
- It is inequitable to hold the spouse being relieved liable for the tax attributable to the understatement, taking into account whether the spouse being relieved significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

The Board subsequently adopted Regulation 1705.1 in 1997 to implement, interpret, and make specific RTC section 6456. As relevant here, Regulation 1705.1 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief under section 6456, subdivision (a). Also, Regulation 1705.1 currently refers to a spouse that has filed such a request as a “claiming spouse” and refers to the spouse of an individual requesting innocent spouse relief as the “nonclaiming spouse.”

In 2000, subdivision (f) was added to RTC section 6456 by Assembly Bill No. 2898 (Stats. 2000, ch. 1052) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability for any tax or deficiency for which “innocent spouse relief” is not available under RTC section 6456, subdivision (a). Under RTC section 6456, subdivision (f), such relief may be granted if, after taking into account all the facts and circumstances, the Board determines it is inequitable to hold the spouse liable for the tax or deficiency (or any portion thereof). The Board subsequently added subdivision (h) to Regulation 1705.1 in 2001 to implement RTC section 6456, subdivision (f)’s provisions for other “equitable relief.” As relevant here, Regulation 1705.1, subdivision (h) currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief under RTC section 6456, subdivision (f). In addition, in 2006, the name of Regulation 1705.1 was updated to include “Registered Domestic Partners,” and subdivision (j) was added to Regulation 1705.1 to explain that on and after January 1, 2005, registered domestic partners have the same rights to relief under RTC section 6456 and Regulation 1705.1 as spouses and all further references to “spouses” herein include registered domestic partners, unless otherwise noted.

In 2007, the Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § (Reg.) 5000 et seq.) to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. (Reg. 5000, *Statement of Intent; Title of Division.*) Regulations 5240, 5241, and 5242 were included

in the Rules for Tax Appeals to provide specific procedures for the Board's review of requests for innocent spouse relief and other equitable relief under RTC section 6456.

Regulation 5240 currently provides for the filing of a request for innocent spouse relief with the Board's Offer in Compromise Section. Subdivisions (a) through (c) of Regulation 5241 currently provide for the acknowledgement, review, and grant or denial of a request for innocent spouse relief by the Board's Offer in Compromise Section. If a request for innocent spouse relief is denied and it appears the individual who requested innocent spouse relief may be eligible for other equitable relief, then subdivisions (c) and (d) of Regulation 5241 also currently provide for the Offer in Compromise Section to:

- Send the individual a questionnaire and financial statement to complete and return to request other equitable relief; and
- Review the individual's completed questionnaire and financial statement to determine if other equitable relief is warranted.

Regulation 5242 currently provides that if a request for other equitable relief is denied, then the individual requesting relief may request that the denial be reconsidered by the Board at a Board hearing.

In 2007, the Legislature enacted Assembly Bill No. 1748 (Stats. 2007, ch. 342), which added 15 sections to the RTC to authorize the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5), effective January 1, 2008. The Board adopted Regulation 4903 in 2010 to implement, interpret, and make specific its authority to grant innocent spouse relief and other equitable relief to taxpayers and feepayers (hereafter collectively "taxpayers") under these 14 additional tax and fee laws. Regulation 4903 generally incorporates the same provisions as Regulation 1705.1, including provisions regarding registered domestic partners. As relevant here, Regulation 4903 currently requires a spouse to file a "written request for relief" to be considered for innocent spouse relief, and it refers to a spouse that has filed such a request as a "claiming spouse" and refers to the spouse of an individual who is requesting innocent spouse relief as the "nonclaiming spouse." Regulation 4903 also currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief.

In addition, the Board added Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of

Regulations because it applies to liabilities incurred under all 14 of the special tax and fee laws listed above. Therefore, when the Board adopted Regulation 4903, the Board also adopted Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, which are also entitled *Innocent Spouse or Registered Domestic Partner Relief from Liability*. These cross-referencing regulations are located in other chapters in divisions 1 and 2 of title 18 that correspond with each of the special tax and fee laws listed above, and they currently direct taxpayers to the operative provisions in Regulation 4903.

In 2013, the Board adopted amendments to make Rules for Tax Appeals Regulations 5240, 5241, and 5242 applicable to the filing and review of all the requests for innocent spouse relief and other equitable relief governed by Regulation 4903, except requests filed under the Private Railroad Car Tax Law. This is because Regulations 5240, 5241, and 5242 are contained in chapter 2 of the Rules for Tax Appeals, which does not apply to Private Railroad Car Tax appeals. Also, as relevant here, Regulation 5240, subdivision (a), currently provides for the filing of requests for innocent spouse relief from taxes imposed under the “Diesel Fuel Tax Law” and Regulations 5240, 5241, and 5242 currently contain cross references to specific subdivisions in Regulations 1705.1 and 4903.

#### Effects, Objectives, and Benefits of the Proposed Amendments

In order to receive innocent spouse relief or other equitable relief from a specific tax or fee liability, a spouse must establish that it would be “inequitable” to hold that spouse liable for such amount under the applicable facts and circumstances. As a result, Board staff determined that it would be easier for taxpayers and more efficient for the Board if a taxpayer could file one request for relief in order to be considered for both innocent spouse relief and other equitable relief at the same time. Board staff also determined that there was an administrative issue because Regulations 1705.1, 4903, 5240, 5241, and 5242, collectively, provide for the initial filing and review of a taxpayer’s request for innocent spouse relief, the subsequent filing and review of the taxpayer’s request for other equitable relief only after the taxpayer’s request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. Therefore, Board staff prepared a Chief Counsel Memorandum dated May 6, 2015, which recommended that the Board address the administrative issue by:

- Amending Regulations 1705.1 and 4903 so that they no longer require a spouse to file a separate request for equitable relief;
- Amending Regulations 1705.1, 4903, and 5241 so that they require the Board to consider a spouse who files a request for innocent spouse relief for both innocent spouse relief and other equitable relief;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to send a spouse a “questionnaire and financial statement to complete and return” with the letter acknowledging his or her request for innocent spouse relief so that the Offer in Compromise Section can still obtain the information needed to determine whether other equitable relief is warranted;

- Amending Regulation 5241 so that it requires the Offer in Compromise Section to provide a spouse with instructions about how to request reconsideration in the event relief is initially denied; and
- Amending Regulation 5242 so that a spouse can request reconsideration from the Board if the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief.

In addition, spouses file “requests,” not claims, for innocent spouse relief under Regulations 1705.1, 4903, and 5240, and Regulation 5241 currently uses the semantically correct phrase “non-requesting spouse” to refer to the spouse of an individual who is requesting innocent spouse relief. However, Regulations 1705.1 and 4903 generally refer to “requests” as “claims,” a spouse requesting relief as a “claiming spouse,” and the spouse of an individual who is requesting relief as a “nonclaiming spouse.” Therefore, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended addressing these minor inconsistencies by replacing all of Regulations 1705.1’s and 4903’s references to “claims,” “claiming spouse,” and “nonclaiming spouse” with references to “requests,” “requesting spouse,” and “non-requesting spouse,” respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology.

Moreover, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended that the Board make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903. Board staff also recommended that the Board delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivisions have been renumbered and it is not necessary to specifically refer to the subdivisions to understand the meaning of Regulations 5240’s and 5242’s cross-references to Regulations 1705.1 and 4903. Board staff further recommended that the Board added an inadvertently omitted “s” to the end of Oil Spill Response, Prevention and Administration “Fee” in Regulation 5240, subdivision (a). Board staff additionally recommended revising the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c).

Board staff submitted the May 6, 2015, Chief Counsel Memorandum to the Board for consideration during its May 27, 2015, meeting and, during the meeting, the Board Members unanimously voted to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 recommended by staff, although Chairman Jerome Horton was absent and did not vote. The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objectives of addressing the administrative issue referred to above, ensuring that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology, and clearly and efficiently administering the RTC provisions for innocent spouse relief and other equitable relief, cited above.

Prior to publishing this notice for the proposed amendments the Board authorized on May 27, 2015, Board staff realized that the Board inadvertently omitted references to RTC section 60601, which authorizes the Board to adopt regulations to implement, interpret, and make specific the provisions of the Diesel Fuel Tax Law, from the 2013 amendments

to Regulations 5240's, 5241's, and 5242's authority notes. And, the Board also inadvertently omitted references to RTC section 60210.5, which authorizes the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's reference notes. Therefore, the Board has also included references to RTC sections 60601 and 60210.5 in the proposed amendments to Regulations 5240's, 5241's, and 5242's authority and reference notes, respectively, which were not discussed in the May 6, 2015, Chief Counsel Memorandum, because the Board has determined that these additional amendments are reasonably necessary to have the effect and accomplish the objective of addressing the Board's prior omissions from the 2013 amendments.

The Board has performed an evaluation of whether the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903, 5240, 5241, and 5242 are the only state regulations that specifically implement, interpret, and make specific the RTC provisions for innocent spouse relief and other equitable relief, cited above. Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106 primarily cross-reference and direct taxpayers to the operative provisions in Regulation 4903. The proposed amendments will ensure that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology. And, the Board's evaluation of Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903, 5240, 5241, and 5242 did not reveal any inconsistencies between the regulations that are not being addressed in the proposed amendments.

In addition, Internal Revenue Code (IRC) section 6015 (26 U.S.C. § 6015) currently contains some provisions providing relief from joint income tax liabilities that are comparable to the RTC provisions for innocent spouse relief and other equitable relief, cited above. These IRC provisions are implemented, interpreted, and made specific by 26 Code of Federal Regulations parts 1.6015-1 (procedures), 1.6015-2 (innocent spouse relief), 1.6015-4 (equitable relief), 1.6015-5 (filing requests), and 1.6015-7 (Tax Court review), which contain some provisions that are comparable to the provisions in Regulations 1705.1, 4903, 5240, 5241, and 5242 discussed above. However, the Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 do not differ substantially from federal law because part 1.6015-1(a)(2) permits a requesting spouse to submit a single request or claim for both innocent spouse relief under part 1.6015-2 and equitable relief under part 1.6015-4, and requires the Internal Revenue Service to consider whether a person who files such a claim is eligible for relief under both parts. Part 1.6015-7 permits a requesting spouse to petition the Tax Court for the review of the denial of any relief available under the procedures in part 1.6015-1, including innocent spouse relief under part 1.6015-2 and equitable relief under part 1.6015-4. Also, the federal regulations use the terms "requesting spouse" and "nonrequesting spouse."

## NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not impose a mandate on local agencies or school districts, including a mandate that is 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 ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

## NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 may affect small business.

## NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 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. Furthermore, the Board has determined that the

adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

#### NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant effect on housing costs.

#### DETERMINATION REGARDING ALTERNATIVES

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

#### CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, 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 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:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

#### WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on September 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 during the September 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242. The Board will only consider written comments received by that time.

## AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored and strikeout versions of the text of Regulations 1705.1, 4903, 5240, 5241, and 5242 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments 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 1705.1, 4903, 5240, 5241, and 5242 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242, 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).

## Bennion, Richard

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**From:** BOE-Board Meeting Material  
**Sent:** Friday, July 17, 2015 7:53 AM  
**To:** Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Armenta, Christopher; Asprey, Kathryn E; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; Block, Susan; BOE-Board Meeting Material; Bridges, Cynthia; Brown, Michele C; Chung, Sophia (Legal); Cruz, Giovan; Davis, Toya P.; Dixon, Camille; Duran, David; Durham, Mark; Epolite, Anthony (Legal); Ferris, Randy (Legal); Folchi, Gino; Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Grant, Micah; Hamilton, Tabitha; Harrison, Michelle; Harvill, Mai; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Hite, Jay; Holmes, Dana; Hughes, Shellie L; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kuhl, James; Lambert, Gary; Lambert, Robert (Legal); Lee, Chris; Levine, David H. (Legal); Lopez, Claudia; Lowery, Russell; Matsumoto, Sid; Matthies, Ted; McElhinney, Andrew; McGuire, Jeff; Miller, Brad; Moon, Richard (Legal); Nienow, Trecia (Legal); Oakes, Clifford; Pielsticker, Michele; Ralston Ratcliff, Natasha; Renati, Lisa; Richmond, Joann; Riley, Denise (Legal); Salazar, Ramon; Sarcos, Eric; Schultz, Glenna; Silva, Monica (Legal); Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vandrick, Tanya; Vena, Emily (Legal); Wallentine, Sean; Whitaker, Lynn; White, Sharon; Wiggins, Brian; Williams, Lee; Zivkovich, Robert; Zumaeta, Jaclyn  
**Subject:** State Board of Equalization - Announcement of Regulatory Change 1705.1, 4903, 5240, 5241, 5242

The State Board of Equalization proposes to adopt amendments to Sales and Use Tax Regulation 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, Special Taxes and Fees Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and Rules for Tax Appeals Regulations 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California on September 16-17, 2015.

The proposed amendments eliminate the requirement that individuals file a separate request to be considered for other equitable relief.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:  
[http://www.boe.ca.gov/regs/reg\\_1705\\_1\\_4903\\_5240\\_5241\\_5242\\_2015.htm](http://www.boe.ca.gov/regs/reg_1705_1_4903_5240_5241_5242_2015.htm).

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), telephone (916) 323-3091, or FAX (916) 323-3387.

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

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Please do not reply to this message.

Board Proceedings Division, MIC:80

Rick Bennion  
Regulations Coordinator  
Phone (916) 445-2130  
Fax (916) 324-3984  
[Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov)

## Bennion, Richard

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**From:** State Board of Equalization - Announcement of Regulatory Change  
<Legal.Regulations@BOE.CA.GOV>  
**Sent:** Friday, July 17, 2015 9:56 AM  
**To:** BOE\_REGULATIONS@LISTSERV.STATE.CA.GOV  
**Subject:** State Board of Equalization - Announcement of Regulatory Change 1705.1, 4903, 5240, 5241, 5242

The State Board of Equalization proposes to adopt amendments to Sales and Use Tax Regulation 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, Special Taxes and Fees Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and Rules for Tax Appeals Regulations 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California on September 16-17, 2015.

The proposed amendments eliminate the requirement that individuals file a separate request to be considered for other equitable relief.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:  
[http://www.boe.ca.gov/regs/reg\\_1705\\_1\\_4903\\_5240\\_5241\\_5242\\_2015.htm](http://www.boe.ca.gov/regs/reg_1705_1_4903_5240_5241_5242_2015.htm).

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), telephone (916) 323-3091, or FAX (916) 323-3387.

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

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**TITLE 18. BOARD OF EQUALIZATION**

**The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, Section 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, Section 5240, *Persons Who May File, Contents of and Manner of Filing Requests for Innocent Spouse Relief*, Section 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and Section 5242, *Requests for Reconsideration by the Board***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*. The proposed amendments make the Board's administration of the RTC provisions for innocent spouse relief and other equitable relief (cited below) more efficient by providing for the filing of one request for innocent spouse relief, the review of that request by the Board's Offer in Compromise Section to determine if either innocent spouse relief or other equitable relief is warranted at the same time, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request.

The proposed amendments also replace all of Regulations 1705.1's and 4903's references to "claims," "claiming spouse," and "nonclaiming spouse" with references to "requests," "requesting spouse," and "non-requesting spouse," respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology. The proposed amendments make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and

4903, delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivision references are not necessary, add an inadvertently omitted "s" to the end of Oil Spill Response, Prevention and Administration "Fee" in Regulation 5240, subdivision (a), and revise the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c). And, the proposed amendments add references to RTC sections 60601 and 60210.5 to Regulations 5240's, 5241's, and 5242's authority and reference notes, respectively, to address omissions from prior amendments to the regulations.

**PUBLIC HEARING**

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on September 16–17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on September 16–17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242.

**AUTHORITY**

- Regulation 1705.1: RTC section 7051
- Regulation 4903: RTC sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601
- Regulations 5240–5242: Government Code section 15606; and RTC sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601

**REFERENCE**

- Regulation 1705.1: RTC sections 6066, 6067, 6456 and 6901–6908; and

	Family Code sections 297 and 297.5
Regulation 4903:	RTC sections 7657.5, 8101–8131, 8880, 9151–9156, 11408.5, 11551–11555, 30285, 30361–30384, 32258, 32401–32407, 38454.5, 38601–38607, 40105, 40111–40117, 41099, 41100–41106, 43159.1, 43159.2, 43451–43456, 45158, 45651–45656, 46159, 46501–46507, 50112.6, 50139–50142.2, 55045.1, 55221–55226, 60210.5, and 60501–60512; and Family Code sections 297, 297.5, and 308
Regulation 5240–5242:	RTC sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

In 1993, section 6456 was added to the RTC by Assembly Bill No. 1288 (Stats. 1993, ch. 181) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) if:

- The liability is due to an understatement of tax that is attributable to the other spouse;
- The spouse being relieved did not know of and had no reason to know of the understatement; and
- It is inequitable to hold the spouse being relieved liable for the tax attributable to the understatement, taking into account whether the spouse being relieved significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

The Board subsequently adopted Regulation 1705.1 in 1997 to implement, interpret, and make specific RTC section 6456. As relevant here, Regulation 1705.1 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief under section 6456, subdivision (a). Also, Regulation 1705.1 currently refers to a spouse that has filed such a request

as a “claiming spouse” and refers to the spouse of an individual requesting innocent spouse relief as the “non-claiming spouse.”

In 2000, subdivision (f) was added to RTC section 6456 by Assembly Bill No. 2898 (Stats. 2000, ch. 1052) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability for any tax or deficiency for which “innocent spouse relief” is not available under RTC section 6456, subdivision (a). Under RTC section 6456, subdivision (f), such relief may be granted if, after taking into account all the facts and circumstances, the Board determines it is inequitable to hold the spouse liable for the tax or deficiency (or any portion thereof). The Board subsequently added subdivision (h) to Regulation 1705.1 in 2001 to implement RTC section 6456, subdivision (f)’s provisions for other “equitable relief.” As relevant here, Regulation 1705.1, subdivision (h) currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief under RTC section 6456, subdivision (f). In addition, in 2006, the name of Regulation 1705.1 was updated to include “Registered Domestic Partners,” and subdivision (j) was added to Regulation 1705.1 to explain that on and after January 1, 2005, registered domestic partners have the same rights to relief under RTC section 6456 and Regulation 1705.1 as spouses and all further references to “spouses” herein include registered domestic partners, unless otherwise noted.

In 2007, the Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § (Reg.) 5000 et seq.) to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. (Reg. 5000, *Statement of Intent; Title of Division.*) Regulations 5240, 5241, and 5242 were included in the Rules for Tax Appeals to provide specific procedures for the Board’s review of requests for innocent spouse relief and other equitable relief under RTC section 6456.

Regulation 5240 currently provides for the filing of a request for innocent spouse relief with the Board’s Offer in Compromise Section. Subdivisions (a) through (c) of Regulation 5241 currently provide for the acknowledgement, review, and grant or denial of a request for innocent spouse relief by the Board’s Offer in Compromise Section. If a request for innocent spouse relief is denied and it appears the individual who requested innocent spouse relief may be eligible for other equitable relief, then subdivisions (c) and (d) of Regulation 5241 also currently provide for the Offer in Compromise Section to:

- Send the individual a questionnaire and financial statement to complete and return to request other equitable relief; and

- Review the individual's completed questionnaire and financial statement to determine if other equitable relief is warranted.

Regulation 5242 currently provides that if a request for other equitable relief is denied, then the individual requesting relief may request that the denial be reconsidered by the Board at a Board hearing.

In 2007, the Legislature enacted Assembly Bill No. 1748 (Stats. 2007, ch. 342), which added 15 sections to the RTC to authorize the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5), effective January 1, 2008. The Board adopted Regulation 4903 in 2010 to implement, interpret, and make specific its authority to grant innocent spouse relief and other equitable relief to taxpayers and feepayers (hereafter collectively "taxpayers") under these 14 additional tax and fee laws. Regulation 4903 generally incorporates the same provisions as Regulation 1705.1, including provisions regarding registered domestic partners. As relevant here, Regulation 4903 currently requires a spouse to file a "written request for relief" to be considered for innocent spouse relief, and it refers to a spouse that has filed such a request as a "claiming spouse" and refers to the spouse of an individual who is requesting innocent spouse relief as the "nonclaiming spouse." Regulation 4903 also currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief.

In addition, the Board added Regulation 4903 to chapter 9.9, Special Taxes Administration—Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it applies to liabilities incurred under all 14 of the special tax and fee laws listed above. Therefore, when the Board adopted Regulation 4903, the Board also adopted Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, which are also entitled *Innocent Spouse or Registered Domestic Partner Relief*

*from Liability*. These cross-referencing regulations are located in other chapters in divisions 1 and 2 of title 18 that correspond with each of the special tax and fee laws listed above, and they currently direct taxpayers to the operative provisions in Regulation 4903.

In 2013, the Board adopted amendments to make Rules for Tax Appeals Regulations 5240, 5241, and 5242 applicable to the filing and review of all the requests for innocent spouse relief and other equitable relief governed by Regulation 4903, except requests filed under the Private Railroad Car Tax Law. This is because Regulations 5240, 5241, and 5242 are contained in chapter 2 of the Rules for Tax Appeals, which does not apply to Private Railroad Car Tax appeals. Also, as relevant here, Regulation 5240, subdivision (a), currently provides for the filing of requests for innocent spouse relief from taxes imposed under the "Diesel Fuel Tax Law" and Regulations 5240, 5241, and 5242 currently contain cross references to specific subdivisions in Regulations 1705.1 and 4903.

#### Effects, Objectives, and Benefits of the Proposed Amendments

In order to receive innocent spouse relief or other equitable relief from a specific tax or fee liability, a spouse must establish that it would be "inequitable" to hold that spouse liable for such amount under the applicable facts and circumstances. As a result, Board staff determined that it would be easier for taxpayers and more efficient for the Board if a taxpayer could file one request for relief in order to be considered for both innocent spouse relief and other equitable relief at the same time. Board staff also determined that there was an administrative issue because Regulations 1705.1, 4903, 5240, 5241, and 5242, collectively, provide for the initial filing and review of a taxpayer's request for innocent spouse relief, the subsequent filing and review of the taxpayer's request for other equitable relief only after the taxpayer's request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. Therefore, Board staff prepared a Chief Counsel Memorandum dated May 6, 2015, which recommended that the Board address the administrative issue by:

- Amending Regulations 1705.1 and 4903 so that they no longer require a spouse to file a separate request for equitable relief;
- Amending Regulations 1705.1, 4903, and 5241 so that they require the Board to consider a spouse who files a request for innocent spouse relief for both innocent spouse relief and other equitable relief;

- Amending Regulation 5241 so that it requires the Offer in Compromise Section to send a spouse a “questionnaire and financial statement to complete and return” with the letter acknowledging his or her request for innocent spouse relief so that the Offer in Compromise Section can still obtain the information needed to determine whether other equitable relief is warranted;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to provide a spouse with instructions about how to request reconsideration in the event relief is initially denied; and
- Amending Regulation 5242 so that a spouse can request reconsideration from the Board if the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief.

In addition, spouses file “requests,” not claims, for innocent spouse relief under Regulations 1705.1, 4903, and 5240, and Regulation 5241 currently uses the semantically correct phrase “non-requesting spouse” to refer to the spouse of an individual who is requesting innocent spouse relief. However, Regulations 1705.1 and 4903 generally refer to “requests” as “claims,” a spouse requesting relief as a “claiming spouse,” and the spouse of an individual who is requesting relief as a “nonclaiming spouse.” Therefore, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended addressing these minor inconsistencies by replacing all of Regulations 1705.1’s and 4903’s references to “claims,” “claiming spouse,” and “nonclaiming spouse” with references to “requests,” “requesting spouse,” and “non-requesting spouse,” respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology.

Moreover, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended that the Board make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903. Board staff also recommended that the Board delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivisions have been renumbered and it is not necessary to specifically refer to the subdivisions to understand the meaning of Regulations 5240’s and 5242’s cross-references to Regulations 1705.1 and 4903. Board staff further recommended that the Board added an inadvertently omitted “s” to the end of Oil Spill Response, Prevention and Administration “Fee” in Regulation 5240, subdivision (a). Board staff additionally recommended revising the ref-

erence to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c).

Board staff submitted the May 6, 2015, Chief Counsel Memorandum to the Board for consideration during its May 27, 2015, meeting and, during the meeting, the Board Members unanimously voted to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 recommended by staff, although Chairman Jerome Horton was absent and did not vote. The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objectives of addressing the administrative issue referred to above, ensuring that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology, and clearly and efficiently administering the RTC provisions for innocent spouse relief and other equitable relief, cited above.

Prior to publishing this notice for the proposed amendments the Board authorized on May 27, 2015, Board staff realized that the Board inadvertently omitted references to RTC section 60601, which authorizes the Board to adopt regulations to implement, interpret, and make specific the provisions of the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240’s, 5241’s, and 5242’s authority notes. And, the Board also inadvertently omitted references to RTC section 60210.5, which authorizes the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240’s, 5241’s, and 5242’s reference notes. Therefore, the Board has also included references to RTC sections 60601 and 60210.5 in the proposed amendments to Regulations 5240’s, 5241’s, and 5242’s authority and reference notes, respectively, which were not discussed in the May 6, 2015, Chief Counsel Memorandum, because the Board has determined that these additional amendments are reasonably necessary to have the effect and accomplish the objective of addressing the Board’s prior omissions from the 2013 amendments.

The Board has performed an evaluation of whether the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903, 5240, 5241, and 5242 are the only state regulations that specifically implement, interpret, and make specific the RTC provisions for innocent spouse relief and other equitable relief, cited above.

Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106 primarily cross-reference and direct taxpayers to the operative provisions in Regulation 4903. The proposed amendments will ensure that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology. And, the Board's evaluation of Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903, 5240, 5241, and 5242 did not reveal any inconsistencies between the regulations that are not being addressed in the proposed amendments.

In addition, Internal Revenue Code (IRC) section 6015 (26 U.S.C. § 6015) currently contains some provisions providing relief from joint income tax liabilities that are comparable to the RTC provisions for innocent spouse relief and other equitable relief, cited above. These IRC provisions are implemented, interpreted, and made specific by 26 Code of Federal Regulations parts 1.6015-1 (procedures), 1.6015-2 (innocent spouse relief), 1.6015-4 (equitable relief), 1.6015-5 (filing requests), and 1.6015-7 (Tax Court review), which contain some provisions that are comparable to the provisions in Regulations 1705.1, 4903, 5240, 5241, and 5242 discussed above. However, the Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 do not differ substantially from federal law because part 1.6015-1(a)(2) permits a requesting spouse to submit a single request or claim for both innocent spouse relief under part 1.6015-2 and equitable relief under part 1.6015-4, and requires the Internal Revenue Service to consider whether a person who files such a claim is eligible for relief under both parts. Part 1.6015-7 permits a requesting spouse to petition the Tax Court for the review of the denial of any relief available under the procedures in part 1.6015-1, including innocent spouse relief under part 1.6015-2 and equitable relief under part 1.6015-4. Also, the federal regulations use the terms "requesting spouse" and "nonrequesting spouse."

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

The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not impose a mandate on local agencies or school districts, including a mandate that is 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 ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

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

The Board has made an initial determination that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 may affect small business.

**NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

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

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

The Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

#### NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant effect on housing costs.

#### DETERMINATION REGARDING ALTERNATIVES

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

#### CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, 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 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:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

#### WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on September 16, 2015, or as soon thereafter as the Board

begins the public hearing regarding the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 during the September 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242. The Board will only consider written comments received by that time.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored and strikeout versions of the text of Regulations 1705.1, 4903, 5240, 5241, and 5242 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rule-making file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments 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 1705.1, 4903, 5240, 5241, and 5242 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on

the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT  
OF REASONS

If the Board adopts the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242, 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).

TITLE MPP. DEPARTMENT OF  
SOCIAL SERVICES

NOTICE OF PROPOSED CHANGES IN  
REGULATIONS OF THE CALIFORNIA  
DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #1 AB 74 CalWORKs Regulations Changes

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held on September 2, 2015, at the following address:

Office Building # 8  
744 P St., Room 103  
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on September 2, 2015.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or

submit written comments during the public comment period and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below:

CONTACT

Office of Regulations Development  
California Department of Social Services  
744 P Street, MS 8-4-192  
Sacramento, California 95814  
TELEPHONE: (916) 657-2586  
FACSIMILE: (916) 654-3286  
E-MAIL: [ord@dss.ca.gov](mailto:ord@dss.ca.gov)

CHAPTERS

CDSS Manual of Policies and Procedures (MPP), Eligibility and Assistance Standards Manual, Chapter 41-400 (Deprivation of Parental Support or Care), Section 41-440 (Unemployed Parent Program); Chapter 42-700 (Welfare-to-Work), Sections 42-711 (Welfare-to-Work Participation Requirements) 42-716 (Welfare-to-Work Activities) and 42-749 (Family Stabilization); and Chapter 44-200 (AU Composition and Need) Section 44-207 (Income Eligibility).

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

Assembly Bill (AB) 74 (Chapter 21, Statutes of 2013) made substantial changes to the California Work Opportunity and Responsibility to Kids (CalWORKs) Welfare-to-Work Program requirements that were effective January 1, 2014. The CalWORKs Welfare-to-Work Program is the employment and training component of CalWORKs which is funded, in part, by the federal Temporary Assistance for Needy Families (TANF) block grant.

Federal welfare reform enacted the TANF Program through the Personal Responsibility and Work Oppor-



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1000 N STREET, SACRAMENTO, CALIFORNIA  
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DIANE L. HARKEY  
Fourth District, Orange County

BETTY T. YEE  
State Controller

CYNTHIA BRIDGES  
Executive Director

July 17, 2015

To Interested Parties:

**Notice of Proposed Regulatory Action**

**The State Board of Equalization Proposes to Adopt Amendments to  
California Code of Regulations, Title 18,**

***Section 1705.1, Innocent Spouse or Registered Domestic Partner Relief from Liability, Section 4903, Innocent Spouse or Registered Domestic Partner Relief from Liability, Section 5240, Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief, Section 5241, Acknowledgement and Review of Requests for Innocent Spouse Relief, and Section 5242, Requests for Reconsideration by the Board***

**NOTICE IS HEREBY GIVEN** that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*. The proposed amendments make the Board's administration of the RTC provisions for innocent spouse relief and other equitable relief (cited below) more efficient by providing for the filing of one request for innocent spouse relief, the review of that request by the Board's Offer in Compromise Section to determine if either innocent spouse relief or other equitable relief is warranted at the same time, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request.

The proposed amendments also replace all of Regulations 1705.1's and 4903's references to "claims," "claiming spouse," and "nonclaiming spouse" with references to "requests," "requesting spouse," and "non-requesting spouse," respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology. The proposed amendments make

minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903, delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivision references are not necessary, add an inadvertently omitted “s” to the end of Oil Spill Response, Prevention and Administration “Fee” in Regulation 5240, subdivision (a), and revise the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c). And, the proposed amendments add references to RTC sections 60601 and 60210.5 to Regulations 5240’s, 5241’s, and 5242’s authority and reference notes, respectively, to address omissions from prior amendments to the regulations.

## **PUBLIC HEARING**

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on September 16-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on September 16-17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242.

## **AUTHORITY**

Regulation 1705.1:	RTC section 7051
Regulation 4903:	RTC sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601
Regulations 5240-5242:	Government Code section 15606; and RTC sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601

## **REFERENCE**

Regulation 1705.1:	RTC sections 6066, 6067, 6456 and 6901-6908; and Family Code sections 297 and 297.5
Regulation 4903:	RTC sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5, and 60501-60512; and Family Code sections 297, 297.5, and 308

Regulation 5240-5242: RTC sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5

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

### Summary of Existing Laws and Regulations

In 1993, section 6456 was added to the RTC by Assembly Bill No. 1288 (Stats. 1993, ch. 181) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) if:

- The liability is due to an understatement of tax that is attributable to the other spouse;
- The spouse being relieved did not know of and had no reason to know of the understatement; and
- It is inequitable to hold the spouse being relieved liable for the tax attributable to the understatement, taking into account whether the spouse being relieved significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

The Board subsequently adopted Regulation 1705.1 in 1997 to implement, interpret, and make specific RTC section 6456. As relevant here, Regulation 1705.1 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief under section 6456, subdivision (a). Also, Regulation 1705.1 currently refers to a spouse that has filed such a request as a “claiming spouse” and refers to the spouse of an individual requesting innocent spouse relief as the “nonclaiming spouse.”

In 2000, subdivision (f) was added to RTC section 6456 by Assembly Bill No. 2898 (Stats. 2000, ch. 1052) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability for any tax or deficiency for which “innocent spouse relief” is not available under RTC section 6456, subdivision (a). Under RTC section 6456, subdivision (f), such relief may be granted if, after taking into account all the facts and circumstances, the Board determines it is inequitable to hold the spouse liable for the tax or deficiency (or any portion thereof). The Board subsequently added subdivision (h) to Regulation 1705.1 in 2001 to implement RTC section 6456, subdivision (f)’s provisions for other “equitable relief.” As relevant here, Regulation 1705.1, subdivision (h) currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief under RTC section 6456, subdivision (f). In addition, in 2006, the name of Regulation 1705.1 was updated to include “Registered Domestic Partners,” and subdivision (j) was added to Regulation 1705.1 to explain that on and after January 1, 2005, registered domestic partners have the same rights to relief under RTC section 6456 and Regulation 1705.1 as spouses and all further references to “spouses” herein include registered domestic partners, unless otherwise noted.

In 2007, the Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § (Reg.) 5000 et seq.) to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. (Reg. 5000, *Statement of Intent; Title of Division.*) Regulations 5240, 5241, and 5242 were included in the Rules for Tax Appeals to provide specific procedures for the Board's review of requests for innocent spouse relief and other equitable relief under RTC section 6456.

Regulation 5240 currently provides for the filing of a request for innocent spouse relief with the Board's Offer in Compromise Section. Subdivisions (a) through (c) of Regulation 5241 currently provide for the acknowledgement, review, and grant or denial of a request for innocent spouse relief by the Board's Offer in Compromise Section. If a request for innocent spouse relief is denied and it appears the individual who requested innocent spouse relief may be eligible for other equitable relief, then subdivisions (c) and (d) of Regulation 5241 also currently provide for the Offer in Compromise Section to:

- Send the individual a questionnaire and financial statement to complete and return to request other equitable relief; and
- Review the individual's completed questionnaire and financial statement to determine if other equitable relief is warranted.

Regulation 5242 currently provides that if a request for other equitable relief is denied, then the individual requesting relief may request that the denial be reconsidered by the Board at a Board hearing.

In 2007, the Legislature enacted Assembly Bill No. 1748 (Stats. 2007, ch. 342), which added 15 sections to the RTC to authorize the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5), effective January 1, 2008. The Board adopted Regulation 4903 in 2010 to implement, interpret, and make specific its authority to grant innocent spouse relief and other equitable relief to taxpayers and fee payers (hereafter collectively "taxpayers") under these 14 additional tax and fee laws. Regulation 4903 generally incorporates the same provisions as Regulation 1705.1, including provisions regarding registered domestic partners. As relevant here, Regulation 4903 currently requires a spouse to file a "written request for relief" to be considered for innocent spouse relief, and it refers to a spouse that has filed such a request as a "claiming spouse" and refers to the spouse of an individual who is requesting innocent spouse relief as the "nonclaiming spouse." Regulation 4903 also currently

requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief.

In addition, the Board added Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it applies to liabilities incurred under all 14 of the special tax and fee laws listed above. Therefore, when the Board adopted Regulation 4903, the Board also adopted Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, which are also entitled *Innocent Spouse or Registered Domestic Partner Relief from Liability*. These cross-referencing regulations are located in other chapters in divisions 1 and 2 of title 18 that correspond with each of the special tax and fee laws listed above, and they currently direct taxpayers to the operative provisions in Regulation 4903.

In 2013, the Board adopted amendments to make Rules for Tax Appeals Regulations 5240, 5241, and 5242 applicable to the filing and review of all the requests for innocent spouse relief and other equitable relief governed by Regulation 4903, except requests filed under the Private Railroad Car Tax Law. This is because Regulations 5240, 5241, and 5242 are contained in chapter 2 of the Rules for Tax Appeals, which does not apply to Private Railroad Car Tax appeals. Also, as relevant here, Regulation 5240, subdivision (a), currently provides for the filing of requests for innocent spouse relief from taxes imposed under the “Diesel Fuel Tax Law” and Regulations 5240, 5241, and 5242 currently contain cross references to specific subdivisions in Regulations 1705.1 and 4903.

### **Effects, Objectives, and Benefits of the Proposed Amendments**

In order to receive innocent spouse relief or other equitable relief from a specific tax or fee liability, a spouse must establish that it would be “inequitable” to hold that spouse liable for such amount under the applicable facts and circumstances. As a result, Board staff determined that it would be easier for taxpayers and more efficient for the Board if a taxpayer could file one request for relief in order to be considered for both innocent spouse relief and other equitable relief at the same time. Board staff also determined that there was an administrative issue because Regulations 1705.1, 4903, 5240, 5241, and 5242, collectively, provide for the initial filing and review of a taxpayer’s request for innocent spouse relief, the subsequent filing and review of the taxpayer’s request for other equitable relief only after the taxpayer’s request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. Therefore, Board staff prepared a Chief Counsel Memorandum dated May 6, 2015, which recommended that the Board address the administrative issue by:

- Amending Regulations 1705.1 and 4903 so that they no longer require a spouse to file a separate request for equitable relief;
- Amending Regulations 1705.1, 4903, and 5241 so that they require the Board to consider a spouse who files a request for innocent spouse relief for both innocent spouse relief and other equitable relief;

- Amending Regulation 5241 so that it requires the Offer in Compromise Section to send a spouse a “questionnaire and financial statement to complete and return” with the letter acknowledging his or her request for innocent spouse relief so that the Offer in Compromise Section can still obtain the information needed to determine whether other equitable relief is warranted;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to provide a spouse with instructions about how to request reconsideration in the event relief is initially denied; and
- Amending Regulation 5242 so that a spouse can request reconsideration from the Board if the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief.

In addition, spouses file “requests,” not claims, for innocent spouse relief under Regulations 1705.1, 4903, and 5240, and Regulation 5241 currently uses the semantically correct phrase “non-requesting spouse” to refer to the spouse of an individual who is requesting innocent spouse relief. However, Regulations 1705.1 and 4903 generally refer to “requests” as “claims,” a spouse requesting relief as a “claiming spouse,” and the spouse of an individual who is requesting relief as a “nonclaiming spouse.” Therefore, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended addressing these minor inconsistencies by replacing all of Regulations 1705.1’s and 4903’s references to “claims,” “claiming spouse,” and “nonclaiming spouse” with references to “requests,” “requesting spouse,” and “non-requesting spouse,” respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology.

Moreover, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended that the Board make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903. Board staff also recommended that the Board delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivisions have been renumbered and it is not necessary to specifically refer to the subdivisions to understand the meaning of Regulations 5240’s and 5242’s cross-references to Regulations 1705.1 and 4903. Board staff further recommended that the Board added an inadvertently omitted “s” to the end of Oil Spill Response, Prevention and Administration “Fee” in Regulation 5240, subdivision (a). Board staff additionally recommended revising the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c).

Board staff submitted the May 6, 2015, Chief Counsel Memorandum to the Board for consideration during its May 27, 2015, meeting **and, during the meeting, the Board Members unanimously voted to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 recommended by staff, although** Chairman Jerome Horton was absent and did not vote. **The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objectives of** addressing the administrative issue referred to above, ensuring that Regulations 1705.1, 4903, and 5241 use consistent and accurate

terminology, and clearly and efficiently administering the RTC provisions for innocent spouse relief and other equitable relief, cited above.

Prior to publishing this notice for the proposed amendments the Board authorized on May 27, 2015, Board staff realized that the Board inadvertently omitted references to RTC section 60601, which authorizes the Board to adopt regulations to implement, interpret, and make specific the provisions of the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's authority notes. And, the Board also inadvertently omitted references to RTC section 60210.5, which authorizes the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's reference notes. Therefore, the Board has also included references to RTC sections 60601 and 60210.5 in the proposed amendments to Regulations 5240's, 5241's, and 5242's authority and reference notes, respectively, which were not discussed in the May 6, 2015, Chief Counsel Memorandum, because the Board has determined that these additional amendments are reasonably necessary to have the effect and accomplish the objective of addressing the Board's prior omissions from the 2013 amendments.

The Board has performed an evaluation of whether the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903, 5240, 5241, and 5242 are the only state regulations that specifically implement, interpret, and make specific the RTC provisions for innocent spouse relief and other equitable relief, cited above. Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106 primarily cross-reference and direct taxpayers to the operative provisions in Regulation 4903. The proposed amendments will ensure that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology. And, the Board's evaluation of Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903, 5240, 5241, and 5242 did not reveal any inconsistencies between the regulations that are not being addressed in the proposed amendments.

**In addition,** Internal Revenue Code (IRC) section 6015 (26 U.S.C. § 6015) currently contains some provisions providing relief from joint income tax liabilities that are comparable to the RTC provisions for innocent spouse relief and other equitable relief, cited above. These IRC provisions are implemented, interpreted, and made specific by 26 Code of Federal Regulations parts 1.6015-1 (procedures), 1.6015-2 (innocent spouse relief), 1.6015-4 (equitable relief), 1.6015-5 (filing requests), and 1.6015-7 (Tax Court review), which contain some provisions that are comparable to the provisions in Regulations 1705.1, 4903, 5240, 5241, and 5242 discussed above. However, the Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 do not differ substantially from federal law because part 1.6015-1(a)(2) permits a requesting spouse to submit a single request or claim for both innocent spouse relief under part 1.6015-2 and equitable relief under part 1.6015-4, and requires the

Internal Revenue Service to consider whether a person who files such a claim is eligible for relief under both parts. Part 1.6015-7 permits a requesting spouse to petition the Tax Court for the review of the denial of any relief available under the procedures in part 1.6015-1, including innocent spouse relief under part 1.6015-2 and equitable relief under part 1.6015-4. Also, the federal regulations use the terms “requesting spouse” and “nonrequesting spouse.”

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

The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not impose a mandate on local agencies or school districts, including a mandate that is 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 ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

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

The Board has made an initial determination that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 may affect small business.

#### **NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

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

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

The Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are not a major regulation, as defined in Government Code section 11342.548

and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

### **NO SIGNIFICANT EFFECT ON HOUSING COSTS**

The adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant effect on housing costs.

### **DETERMINATION REGARDING ALTERNATIVES**

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

### **CONTACT PERSONS**

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, 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 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:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

### **WRITTEN COMMENT PERIOD**

The written comment period ends at 9:30 a.m. on September 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 during the September 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242. The Board will only consider written comments received by that time.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared underscored and strikeout versions of the text of Regulations 1705.1, 4903, 5240, 5241, and 5242 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments 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**

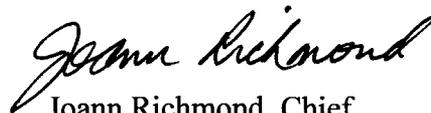
The Board may adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

July 17, 2015

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242, 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).

Sincerely,

  
Joann Richmond, Chief  
Board Proceedings Division

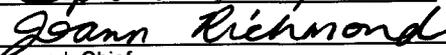
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**STATE BOARD OF EQUALIZATION**



BOARD APPROVED

At the September 16, 2015 Board Meeting

  
\_\_\_\_\_  
Joann Richmond, Chief  
Board Proceedings Division

**Initial Statement of Reasons for  
Proposed Amendments to California Code of Regulations, Title 18,  
Section 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*,  
Section 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*,  
Section 5240, *Persons Who May File, Contents of, and Manner of Filing  
Requests for Innocent Spouse Relief*,  
Section 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*,  
and  
Section 5242, *Requests for Reconsideration by the Board***

SPECIFIC PURPOSE AND NECESSITY

Current Law

In 1993, section 6456 was added to the Revenue and Taxation Code (RTC) by Assembly Bill No. 1288 (Stats. 1993, ch. 181) to authorize the State Board of Equalization (Board) to prescribe regulations under which a spouse may be relieved of a liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) if:

- The liability is due to an understatement of tax that is attributable to the other spouse;
- The spouse being relieved did not know of and had no reason to know of the understatement; and
- It is inequitable to hold the spouse being relieved liable for the tax attributable to the understatement, taking into account whether the spouse being relieved significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

The Board subsequently adopted California Code of Regulations, title 18, section (Regulation) 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, in 1997 to implement, interpret, and make specific RTC section 6456. As relevant here, Regulation 1705.1 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief under section 6456, subdivision (a). Also, Regulation 1705.1 currently refers to a spouse that has filed such a request as a “claiming spouse” and refers to the spouse of an individual requesting innocent spouse relief as the “nonclaiming spouse.”

In 2000, subdivision (f) was added to RTC section 6456 by Assembly Bill No. 2898 (Stats. 2000, ch. 1052) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability for any tax or deficiency for which “innocent spouse relief” is not available under RTC section 6456, subdivision (a). Under RTC section 6456, subdivision (f), such relief may be granted if, after taking into account all the facts and circumstances,

the Board determines it is inequitable to hold the spouse liable for the tax or deficiency (or any portion thereof). The Board subsequently added subdivision (h) to Regulation 1705.1 in 2001 to implement RTC section 6456, subdivision (f)'s provisions for other "equitable relief." As relevant here, Regulation 1705.1, subdivision (h) currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief under RTC section 6456, subdivision (f). In addition, in 2006, the name of Regulation 1705.1 was updated to include "Registered Domestic Partners," and subdivision (j) was added to Regulation 1705.1 to explain that on and after January 1, 2005, registered domestic partners have the same rights to relief under RTC section 6456 and Regulation 1705.1 as spouses and all further references to "spouses" herein include registered domestic partners, unless otherwise noted.

In 2007, the Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § (Reg.) 5000 et seq.) to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. (Reg. 5000, *Statement of Intent; Title of Division.*) Regulations 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*, were included in the Rules for Tax Appeals to provide specific procedures for the Board's review of requests for innocent spouse relief and other equitable relief under RTC section 6456.

Regulation 5240 currently provides for the filing of a request for innocent spouse relief with the Board's Offer in Compromise Section. Subdivisions (a) through (c) of Regulation 5241 currently provide for the acknowledgement, review, and grant or denial of a request for innocent spouse relief by the Board's Offer in Compromise Section. If a request for innocent spouse relief is denied and it appears the individual who requested innocent spouse relief may be eligible for other equitable relief, then subdivisions (c) and (d) of Regulation 5241 also currently provide for the Offer in Compromise Section to:

- Send the individual a questionnaire and financial statement to complete and return to request other equitable relief; and
- Review the individual's completed questionnaire and financial statement to determine if other equitable relief is warranted.

Regulation 5242 currently provides that if a request for other equitable relief is denied, then the individual requesting relief may request that the denial be reconsidered by the Board at a Board hearing.

In 2007, the Legislature enacted Assembly Bill No. 1748 (Stats. 2007, ch. 342), which added 15 sections to the RTC to authorize the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency

Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5), effective January 1, 2008. The Board adopted Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, in 2010 to implement, interpret, and make specific its authority to grant innocent spouse relief and other equitable relief to taxpayers and feepayers (hereafter collectively “taxpayers”) under these 14 additional tax and fee laws. Regulation 4903 generally incorporates the same provisions as Regulation 1705.1, including provisions regarding registered domestic partners. As relevant here, Regulation 4903 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief, and it refers to a spouse that has filed such a request as a “claiming spouse” and refers to the spouse of an individual who is requesting innocent spouse relief as the “nonclaiming spouse.” Regulation 4903 also currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief.

In addition, the Board added Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it applies to liabilities incurred under all 14 of the special tax and fee laws listed above. Therefore, when the Board adopted Regulation 4903, the Board also adopted Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, which are also entitled *Innocent Spouse or Registered Domestic Partner Relief from Liability*. These cross-referencing regulations are located in other chapters in divisions 1 and 2 of title 18 that correspond with each of the special tax and fee laws listed above, and they currently direct taxpayers to the operative provisions in Regulation 4903.

In 2013, the Board adopted amendments to make Rules for Tax Appeals Regulations 5240, 5241, and 5242 applicable to the filing and review of all the requests for innocent spouse relief and other equitable relief governed by Regulation 4903, except requests filed under the Private Railroad Car Tax Law. This is because Regulations 5240, 5241, and 5242 are contained in chapter 2 of the Rules for Tax Appeals, which does not apply to Private Railroad Car Tax appeals. Also, as relevant here, Regulation 5240, subdivision (a), currently provides for the filing of requests for innocent spouse relief from taxes imposed under the “Diesel Fuel Tax Law” and Regulations 5240, 5241, and 5242 currently contain cross references to specific subdivisions in Regulations 1705.1 and 4903.

#### Specific Purposes, Necessity, and Benefits of the Proposed Amendments

In order to receive innocent spouse relief or other equitable relief from a specific tax or fee liability, a spouse must establish that it would be “inequitable” to hold that spouse liable for such amount under the applicable facts and circumstances. As a result, Board staff determined that it would be easier for taxpayers and more efficient for the Board if a taxpayer could file one request for relief in order to be considered for both innocent spouse

relief and other equitable relief at the same time. Board staff also determined that there was an administrative issue (or problem within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)) because Regulations 1705.1, 4903, 5240, 5241, and 5242, collectively, provide for the initial filing and review of a taxpayer's request for innocent spouse relief, the subsequent filing and review of the taxpayer's request for other equitable relief only after the taxpayer's request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. Therefore, Board staff prepared a Chief Counsel Memorandum dated May 6, 2015, which recommended that the Board address the administrative issue by:

- Amending Regulations 1705.1 and 4903 so that they no longer require a spouse to file a separate request for equitable relief;
- Amending Regulations 1705.1, 4903, and 5241 so that they require the Board to consider a spouse who files a request for innocent spouse relief for both innocent spouse relief and other equitable relief;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to send a spouse a "questionnaire and financial statement to complete and return" with the letter acknowledging his or her request for innocent spouse relief so that the Offer in Compromise Section can still obtain the information needed to determine whether other equitable relief is warranted;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to provide a spouse with instructions about how to request reconsideration in the event relief is initially denied; and
- Amending Regulation 5242 so that a spouse can request reconsideration from the Board if the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief.

In addition, spouses file "requests," not claims, for innocent spouse relief under Regulations 1705.1, 4903, and 5240, and Regulation 5241 currently uses the semantically correct phrase "non-requesting spouse" to refer to the spouse of an individual who is requesting innocent spouse relief. However, Regulations 1705.1 and 4903 generally refer to "requests" as "claims," a spouse requesting relief as a "claiming spouse," and the spouse of an individual who is requesting relief as a "nonclaiming spouse." Therefore, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended addressing these minor inconsistencies by replacing all of Regulations 1705.1's and 4903's references to "claims," "claiming spouse," and "nonclaiming spouse" with references to "requests," "requesting spouse," and "non-requesting spouse," respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology.

Moreover, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended that the Board make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903. Board staff also recommended that the Board delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivisions have been

renumbered and it is not necessary to specifically refer to the subdivisions to understand the meaning of Regulations 5240's and 5242's cross-references to Regulations 1705.1 and 4903. Board staff further recommended that the Board added an inadvertently omitted "s" to the end of Oil Spill Response, Prevention and Administration "Fee" in Regulation 5240, subdivision (a). Board staff additionally recommended revising the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c).

Board staff submitted the May 6, 2015, Chief Counsel Memorandum to the Board for consideration during its May 27, 2015, meeting and, during the meeting, the Board Members unanimously voted to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 recommended by staff, although Chairman Jerome Horton was absent and did not vote. The Board determined that the proposed amendments are reasonably necessary for the specific purposes of addressing the administrative issue referred to above, ensuring that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology, and clearly and efficiently administering the RTC provisions for innocent spouse relief and other equitable relief, cited above.

Prior to publishing this notice for the proposed amendments the Board authorized on May 27, 2015, Board staff realized that the Board inadvertently omitted references to RTC section 60601, which authorizes the Board to adopt regulations to implement, interpret, and make specific the provisions of the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's authority notes. And, the Board also inadvertently omitted references to RTC section 60210.5, which authorizes the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's reference notes. Therefore, the Board has also included references to RTC sections 60601 and 60210.5 in the proposed amendments to Regulations 5240's, 5241's, and 5242's authority and reference notes, respectively, which were not discussed in the May 6, 2015, Chief Counsel Memorandum, because the Board has determined that these additional amendments are reasonably necessary for the specific purpose of addressing the Board's prior omissions from the 2013 amendments.

The Board anticipates that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will benefit taxpayers by making it easier for taxpayers to be considered for other equitable relief, and the proposed amendments will benefit taxpayers, Board staff, and the Board by making the Board's review of requests for innocent spouse relief and other equitable relief more efficient. The proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 1705.1, 4903, 5240, 5241, and 5242 or the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242.

#### DOCUMENTS RELIED UPON

The Board relied upon the May 6, 2015, Chief Counsel Memorandum, the exhibits to the memorandum, and the comments made during the Board's discussion of the memorandum during its May 27, 2015, meeting in deciding to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 described above.

#### ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

#### INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

As previously explained, the Board adopted Regulations 1705.1, 4903, 5240, 5241, and 5242 to implement, interpret, and make specific the RTC provisions for innocent spouse relief and other equitable relief, cited above. Currently, the regulations collectively provide for the initial filing and review of a taxpayer's request for innocent spouse relief, and the subsequent filing and review of the taxpayer's request for other equitable relief only after the taxpayer's request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. The proposed amendments make the Board's administration of the RTC provisions for innocent spouse relief and other equitable relief more efficient by providing for the filing of one request for innocent spouse relief, the review of that request by the Board's Offer in Compromise Section to determine if either innocent spouse relief or other equitable relief is warranted at the same time, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request. As a result, the proposed amendments change the Board's procedures by eliminating the requirement that some taxpayers file a separate request for other equitable relief, in addition to their requests for innocent spouse relief, within the applicable statute

of limitations. The proposed amendments also change the Board's procedures so that Board staff and the Board can consider whether a taxpayer qualifies for innocent spouse relief and other equitable relief at the same time.

However, the proposed amendments do not change the substantive requirements for granting or denying innocent spouse relief and other equitable relief. And, after the proposed amendments, a taxpayer will still need to provide the same information to the Offer in Compromise Section that is currently needed to determine whether the taxpayer qualifies for innocent spouse relief and other equitable relief.

As a result, the Board's Legal Department has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will make it easier for taxpayers to be considered for other equitable relief and make it more efficient for the Offer in Compromise Section and the Board to determine whether taxpayers are entitled to such relief. However, the proposed amendments will not substantially increase or decrease the number of requests for innocent spouse relief currently filed with the Offer in Compromise Section. The proposed amendments will not substantially increase or decrease the amount of innocent spouse relief and other equitable relief currently granted by the Board. And, as a result, the proposed amendments will not have a measurable impact on revenue.

Therefore, the Board anticipates that the proposed amendments will benefit taxpayers by making it easier for taxpayers to be considered for other equitable relief, and the proposed amendments will benefit taxpayers, Board staff, and the Board by making the Board's review of requests for innocent spouse relief and other equitable relief more efficient. However, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. And, the Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 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.

Furthermore, Regulations 1705.1, 4903, 5240, 5241, and 5242 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not affect the benefits of Regulations 1705.1, 4903, 5240, 5241, and 5242 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant adverse economic impact on business.

The proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 may affect small businesses.

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1705.1

**1705.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a) In General. A spouse ~~claiming~~ may request innocent spouse relief from liability for any sales or use tax, interest, penalties, and other amounts. A requesting spouse shall be relieved from such liability where all of the following requirements are met:

- (1) A liability is incurred under the Sales and Use Tax Law;
- (2) The liability is attributable to the ~~non-requesting~~~~nonclaiming~~ spouse;
- (3) The spouse ~~claiming~~ requesting relief establishes that he or she did not know of, and that a reasonably prudent person in the ~~requesting~~~~claiming~~ spouse's circumstances would not have had reason to know of, the liability; and
- (4) It would be inequitable to hold the ~~requesting~~~~claiming~~ spouse liable for the liability, taking into account whether the ~~requesting~~~~claiming~~ spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(b) "Benefited." Whether a ~~requesting~~~~claiming~~ spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The ~~requesting~~~~claiming~~ spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the ~~requesting~~~~claiming~~ spouse, or lavish or luxury purchases made by either spouse may be evidence that the ~~requesting~~~~claiming~~ spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a ~~requesting~~~~claiming~~ spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the ~~requesting~~~~claiming~~ spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the ~~requesting~~~~claiming~~ spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A ~~claim~~ request for innocent spouse relief may be filed if, at the time relief is requested, the ~~requesting~~~~claiming~~ spouse is no longer married to or is legally separated from the ~~non-requesting~~~~nonclaiming~~ spouse, or the ~~requesting~~~~claiming~~ spouse is no longer a member of the same household as the ~~non-requesting~~~~nonclaiming~~ spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a retailer of taxable items related to the liability. If neither spouse rendered substantial services as a retailer, then the attribution of the liability shall be

treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under subdivision (a) these provisions, a requesting spouse must file a written request for innocent spouse relief setting forth the seller's permit number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse has filed a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(ge) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar quarters for requests filed ~~claims made~~ no later than one year after the Board's ~~board's~~ first contact with the spouse making the ~~request~~ claim. ~~Requests filed~~ Claims made after one year from the ~~Board's~~ board's first contact with the spouse making the ~~request~~ claim shall not apply to any calendar quarter that is ~~more than~~

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the ~~Board-issued~~ board-issued determination,

whichever is later.

No calendar quarters shall be eligible for relief under this regulation that have been closed by res judicata.

(hf) Refunds. A refund of any amounts under ~~this regulation~~ these provisions shall be subject to the requirements as set forth in Revenue and Taxation Code sections 6901 through 6908, inclusive.

(ig) This regulation shall apply retroactively to liabilities arising prior to January 1, 1994.

(h) ~~Effective January 1, 2001, a spouse may be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent~~

spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the Board.

(1) Criteria for Equitable Relief:

(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:

1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.
2. The claiming spouse would suffer economic hardship if relief is not granted.
3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.
4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.
5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)
6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.

(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:

1. The claiming spouse will not suffer economic hardship if relief is not granted.
2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.
3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.
4. The claiming spouse has not made a good faith effort to comply with the Board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.

~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~

~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions 1705.1(e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2001, including liabilities incurred prior to January 1, 1994, as provided in subdivision (g).~~

(j) The Board shall send notification by mail of the requestclaim for innocent spouse relief from liability and the basis for that requestclaim to the non-requestingnonclaiming spouse.

(k) Registered Domestic Partners. Pursuant to Family Code section 297.5, on and after January 1, 2005, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, on and after January 1, 2005, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6066, 6067, 6456 and 6901-6908, Revenue and Taxation Code; and Sections 297 and 297.5, Family Code.

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 4903

**4903. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a)(1) In General.

(1) A spouse ~~requesting innocent spouse~~~~claiming~~ relief from liability for any tax, fee, or surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(A) A liability is 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, or Use Fuel Tax Law;

(B) The liability is attributable to the ~~non-requesting~~~~nonclaiming~~ spouse;

(C) The spouse ~~requesting~~~~claiming~~ relief establishes that he or she did not know of, and that a reasonably prudent person in the ~~requesting~~~~claiming~~ spouse's circumstances would not have had reason to know of, the liability; and

(D) It would be inequitable to hold the ~~requesting~~~~claiming~~ spouse liable for the liability, taking into account whether the ~~requesting~~~~claiming~~ spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(2) For purposes of this section, the word "tax" shall mean "tax, fee, or surcharge."

(b) Benefited. Whether a ~~requesting~~~~claiming~~ spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The ~~requesting~~~~claiming~~ spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the ~~requesting~~~~claiming~~ spouse, or lavish or luxury purchases made by either spouse may be evidence that the ~~requesting~~~~claiming~~ spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a ~~requesting~~~~claiming~~ spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the ~~requesting~~~~claiming~~ spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the ~~requesting~~~~claiming~~ spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A ~~claim~~request for innocent spouse relief may be filed if, at the time relief is requested, the ~~requesting~~claiming spouse is no longer married to or is legally separated from the ~~non-requesting~~nonclaiming spouse, or the ~~requesting~~claiming spouse is no longer a member of the same household as the ~~non-requesting~~nonclaiming spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer engaged in an activity or transaction that is subject to a tax administered under the laws specified in paragraph (1) of subdivision (a) and related to the liability. If neither spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under ~~subdivision (a)~~these provisions, a ~~requesting~~claiming spouse ~~must file~~may submit a written request for innocent spouse relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse files a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(ge) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar months, quarters, or years for requests filed ~~claims made~~ no later than one year after the Board's first contact with the spouse making the ~~request~~ ~~claim~~.

Requests filed ~~Claims made~~ after one year from the Board's first contact with the spouse making the ~~request~~ ~~claim~~ shall not apply to any calendar month, quarter, or year that is

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the Board-issued determination or similar billing document for collection of a tax or fee,

whichever is later.

No calendar months, quarters, or years shall be eligible for relief under this regulation that have been closed by res judicata.

~~(hf)~~ Refunds. A refund of any amounts under this regulation~~these provisions~~ shall be subject to the requirements as set forth in the refund provisions of the applicable tax, fee, and surcharge law, as specified in paragraph (1) of subdivision (a).

~~(ig)~~ This regulation shall apply retroactively to liabilities arising prior to January 1, 2008.

~~(h)~~ A spouse may be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the board.

~~(1) Criteria for Equitable Relief:~~

~~(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.~~
- ~~2. The claiming spouse would suffer economic hardship if relief is not granted.~~
- ~~3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~
- ~~4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~
- ~~5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)~~
- ~~6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.~~

~~(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse will not suffer economic hardship if relief is not granted.~~
- ~~2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.~~
- ~~3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.~~
- ~~4. The claiming spouse has not made a good faith effort to comply with the board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.~~
- ~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~
- ~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions (e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2008, as provided in subdivision (g).~~

~~(j)~~ The Board shall send notification by mail of the request ~~claim~~ for innocent spouse relief from liability and the basis for that request ~~claim~~ to the non-requesting ~~non-claiming~~ spouse.

~~(k)~~ Registered Domestic Partners. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5 and 60501-60512, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5240

**5240. Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief.**

(a) Who May Request Relief. A divorced or separated individual may file a request for innocent spouse relief with the Board regarding taxes and fees imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law.

(b) Request Requirements. A request for innocent spouse relief must be:

- (1) In writing.
- (2) Signed and dated by the individual requesting relief.
- (3) Specifically request innocent spouse relief.
- (4) Identify the tax or fee from which relief is sought.
- (5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the liability at issue.

(c) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A satisfies the requirements of subdivision (b).

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the applicable time periods provided in California Code of Regulations, title 18, section 1705.1; ~~subdivision (e)~~; or section 4903, ~~subdivision (e)~~.

(e) Filing Requests. A request for innocent spouse relief or related document may be filed electronically under this section if a copy of the document is transmitted to the Offer in Compromise Section in accordance with instructions provided on the Board's website at [www.boe.ca.gov](http://www.boe.ca.gov). Requests for innocent spouse relief may be mailed to the Offer in Compromise Section at the following address:

OFFER IN COMPROMISE SECTION, MIC 52  
STATE BOARD OF EQUALIZATION  
P.O. BOX 942879  
SACRAMENTO, CA 94279-0052

A request for innocent spouse relief and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or submitted to a collector that is already assigned to the account at issue.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, ~~and 55301~~ and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, ~~and 55045.1~~ and 60210.5, Revenue and Taxation Code.

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5241

**5241. Acknowledgement and Review of Requests for Innocent Spouse Relief.**

(a) ~~Acknowledgment~~Review. When the Offer in Compromise Section receives a request for innocent spouse relief, it will:

- (1) Send the individual requesting relief an acknowledgement letter containing the contact information for the Offer in Compromise Section, and include a questionnaire and financial statement for the individual requesting relief to complete and return.
- (2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.
- ~~(3) Evaluate the merits of the request.~~
- ~~(4) Request additional documentation from the individual requesting relief, if necessary.~~

(b) Review. The Offer in Compromise Section will review a request for innocent spouse relief to determine whether the individual requesting relief is eligible for innocent spouse relief or other equitable relief from all the liabilities included in his or her request, as provided in California Code of Regulations, title 18, section 1705.1 or section 4903. The Offer in Compromise Section may request additional information from the individual requesting relief if necessary to complete such review, including requesting additional information in the acknowledgement letter.

(c) Written Findings. Once its review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying innocent spouse relief and other equitable relief, and explaining why such relief was granted or denied. If the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the letter shall include instructions about how to request reconsideration.

~~(b) Granted Request for Innocent Spouse Relief. If the Offer in Compromise Section approves a request for innocent spouse relief, it will prepare and send the individual who requested relief a letter explaining the relief that was granted.~~

~~(c) Denied Request for Innocent Spouse Relief. If the Offer in Compromise Section denies a request for innocent spouse relief, it will:~~

- ~~(1) Prepare and send the individual requesting relief a letter explaining why the request was denied; and~~
- ~~(2) If it appears that the individual requesting relief might be eligible for other equitable relief as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h), the Offer in Compromise Section will include a questionnaire and financial statement for the individual requesting relief to complete and return.~~

~~(d) Requests for Other Equitable Relief. If the individual requesting relief returns a completed questionnaire and financial statement, the Offer in Compromise Section will review the documents to see if other equitable relief is warranted using the factors provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h). Once this review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying equitable relief and explaining why such relief was granted or denied.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, ~~and 55301 and 60601~~, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, ~~and 55045.1 and 60210.5~~, Revenue and Taxation Code.

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5242

**5242. Requests for Reconsideration by the Board.**

(a) If the Offer in Compromise Section denies both innocent spouse relief and a request for other equitable relief as to any liability included in a request for innocent spouse relief is denied, the individual requesting relief may request that the denials be reconsidered by the Board at a Board hearing as provided in California Code of Regulations, title 18, section 1705.1, ~~subdivision (h)~~, or section 4903, ~~subdivision (h)~~. A request for a Board hearing may be denied on a request for reconsideration~~other equitable relief~~, however, requests will be liberally granted.

(b) A Board hearing may be requested by following the instructions contained in the ~~denial~~ letter described in section 5241, subdivision (cd).

(c) If a request for a Board hearing is granted, the individual requesting relief may be required to participate in an appeals conference with the Appeals Division prior to the Board hearing.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, ~~and~~ 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, ~~and~~ 55045.1 and 60210.5, Revenue and Taxation Code.

## Regulation History

**Types of Regulations:** Sales and Use Tax, Special Taxes and Fees, Rules  
for Tax Appeals

**Regulations:** 1705.1, 4903, 5240, 5241, 5242

**Title:** 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*  
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*,  
5240, *Persons Who May File, Contents of, and Manner of Filing*  
*Requests for Innocent Spouse Relief*,  
5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*  
5242, *Requests for Reconsideration by the Board*

**Preparation:** Bradley M. Heller  
**Legal Contact:** Bradley M. Heller

The State Board of Equalization proposes to adopt amendments to eliminate the requirement that individuals file a separate request to be considered for other equitable relief.

### History of Proposed Regulation:

September 16-17, 2015	Public Hearing
July 17, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
July 2, 2015	Notice to OAL
May 27, 2015	Business Tax Committee, Board Authorized Publication (Vote 4-0)

**Sponsor:** NA  
**Support:** NA  
**Oppose:** NA

## Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Taxes Regulation 1703.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, Special Tax Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, Rules for Tax Appeals Regulations 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement And Review Of Requests For Innocent Spouse Relief*, 5242, *Requests For Reconsideration By The Board* did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on July 17, 2015, 61 days prior to the public hearing.

September 14, 2015

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion  
Regulations Coordinator  
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

SEPTEMBER 16, 2015

ITEM F

PUBLIC HEARINGS

F2 PROPOSED AMENDMENTS TO

SALES AND USE TAX REGULATION 1705.1,  
SPECIAL TAXES AND FEES REGULATION 4903,  
RULES FOR TAX APPEALS REGULATIONS 5240,  
5241 and 5242

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board  
of Equalization:

Jerome E. Horton  
Chairman

Sen. George Runner (Ret.)  
Vice Chair

Fiona Ma, CPA  
Member

Diane L. Harkey  
Member

Yvette Stowers  
Appearing for Betty T.  
Yee, State Controller  
(per Government Code  
Section 7.9)

Joann Richmond  
Chief  
Board Proceedings  
Division

For Staff:

Bradley Heller  
Legal Department

Matthew Giannini  
Legal Department

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1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 SEPTEMBER 16, 2015

4 ---oOo---

5 MS. RICHMOND: Our next public hearing is  
6 Item F2.

7 We have Proposed Amendments to Sales and  
8 Use Tax Regulation 1705.1, Innocent Spouse or  
9 Registered Domestic Partner Relief from Liability;  
10 Special Taxes and Fees Regulation 4903, Innocent  
11 Spouse or Registered Domestic Partner Relief from  
12 Liability; and Rules for Tax Appeals Regulations  
13 5240, Persons Who May File, Contents of, and Manner  
14 of Filing Requests for Innocent Spouse Relief; 5241,  
15 Acknowledgement and Review of Request for Innocent  
16 Spouse Relief; and 5242, Request for Reconsideration  
17 by the Board.

18 MR. HORTON: Thank you.

19 Mr. Heller and your associate, would you  
20 please introduce yourself for the record, please.

21 MR. HELLER: Good afternoon, Chairman  
22 Horton. I'm Bradley Heller from the Board's Legal  
23 Department, and I'm here with Matthew Giannini, also  
24 from the Board's Legal Department. And we're here  
25 to request that the Board vote to adopt the proposed  
26 amendments to Regulation 1705.1, 4903, 5240, 5241  
27 and 5242.

28 The proposed amendments streamline the

1 innocent spouse appeal process by providing for the  
2 filing of one request for innocent spouse relief,  
3 the review of that one request to determine if  
4 either innocent spouse relief or other equitable  
5 relief is warranted, and the ability to request  
6 reconsideration from the Board if an individual  
7 requesting relief is not -- is not granted either  
8 innocent spouse or other equitable relief from all  
9 the liabilities in his or her request.

10 MR. HORTON: Thank you very much.

11 Discussion, Members?

12 Hearing none, is there a motion?

13 MS. HARKEY: So moved.

14 MR. HORTON: Member Harkey moves to adopt  
15 staff recommendation. Second by Member Ma.

16 Without objection, Members, such will be  
17 the order.

18 Thank you very much for your presentation.

19 MR. HELLER: Thank you.

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REPORTER'S CERTIFICATE

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State of California )  
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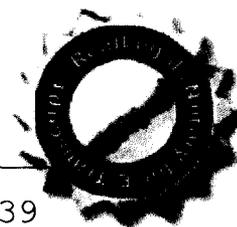
I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on September 16, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: September 22, 2015

*Kathleen Skidgel*

KATHLEEN SKIDGEL, CSR #9039

Hearing Reporter



**2015 MINUTES OF THE STATE BOARD OF EQUALIZATION**

**Wednesday, September 16, 2015**

**[B] CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

**B3 John Nafeh and Ursula G. Burger Nafeh, 785086**

2007, \$58,481.00 Assessment

For Appellants:

John Nafeh, Taxpayer

Ursula Burger Nafeh, Taxpayer

David B. Porter, Attorney

For Franchise Tax Board:

Judy Hirano, Tax Counsel

Ciro Immordino, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown that their corporation was a “qualified trade or business” under Revenue and Taxation Code (R&TC) section 18152.5, subdivision (e)(3).

Appellant’s Exhibit: Miscellaneous Documents (Exhibit 9.4)

Action: Upon motion of Ms. Stowers, seconded by Mr. Runner and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board submitted the appeal for decision.

**PUBLIC HEARINGS**

**F1 Proposed Amendments to Sales and Use Tax Regulation 1505, *Morticians***

Monica Silva, Tax Counsel, Tax & Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to update the name of Regulation 1505 and update the information, tax rates and examples in Regulation 1505 (Exhibit 9.5).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board adopted the amendments to Regulations 1505 as published.

**F2 Proposed Amendments to Sales and Use Tax Regulation 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability, Special Taxes and Fees Regulation 4903, Innocent Spouse or Registered Domestic Partner Relief from Liability*, and Rules for Tax Appeals Regulations 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board***

Bradley Heller, Tax Counsel, Tax & Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to eliminate the requirement of individuals having to file a separate request to be considered for other equitable relief (Exhibit 9.6).

**Note: These minutes are not final until Board approved.**

**2015 MINUTES OF THE STATE BOARD OF EQUALIZATION****Wednesday, September 16, 2015**

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board adopted the amendments to Regulations 1705.1, 4903, 5240, 5241 and 5242 as published.

**[C] SALES AND USE TAX APPEALS HEARING**

C2 Alan Levitz, 718640 (KH)

04/01/08 to 04/10/09, \$42,406.72 Claim for Refund

For Claimant:

Alan Levitz, Taxpayer

Jesse W. McClellan, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether claimant is personally liable as a responsible person for the unpaid liabilities of Room Source pursuant to Revenue and Taxation Code section 6829.

Whether claimant has established reasonable cause sufficient for relieving the late-payment and late prepayment penalties originally assessed against Room Source.

Whether claimant has established reasonable cause for relief from the collection cost recovery fee.

Action: Upon motion of Ms. Stowers, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 4:42 p.m. and reconvened at 4:54 p.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

**[G1] LEGAL APPEALS MATTERS, CONSENT**

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9 in *G1.10 Peerless Insurance Company, 250594 (STF)*, the Board made the following orders:

G1.1 Timothy Harold Hart, 742523 (DF)

04/01/09 to 12/31/09, \$16,820.40 Tax, \$1,317.40 Failure-to-File Penalty, \$1,303.14 Finality Penalty, \$378.90 Late Payment of Return Penalty

Action: Redetermine as recommended by the Appeals Division.



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)  
First District, Lancaster

FIONA MA, CPA  
Second District, San Francisco

JEROME E. HORTON  
Third District, Los Angeles County

DIANE L. HARKEY  
Fourth District, Orange County

BETTY T. YEE  
State Controller

CYNTHIA BRIDGES  
Executive Director

July 17, 2015

To Interested Parties:

**Notice of Proposed Regulatory Action**

**The State Board of Equalization Proposes to Adopt Amendments to  
California Code of Regulations, Title 18,**

***Section 1705.1, Innocent Spouse or Registered Domestic Partner Relief from Liability, Section 4903, Innocent Spouse or Registered Domestic Partner Relief from Liability, Section 5240, Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief, Section 5241, Acknowledgement and Review of Requests for Innocent Spouse Relief, and Section 5242, Requests for Reconsideration by the Board***

**NOTICE IS HEREBY GIVEN** that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*. The proposed amendments make the Board's administration of the RTC provisions for innocent spouse relief and other equitable relief (cited below) more efficient by providing for the filing of one request for innocent spouse relief, the review of that request by the Board's Offer in Compromise Section to determine if either innocent spouse relief or other equitable relief is warranted at the same time, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request.

The proposed amendments also replace all of Regulations 1705.1's and 4903's references to "claims," "claiming spouse," and "nonclaiming spouse" with references to "requests," "requesting spouse," and "non-requesting spouse," respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology. The proposed amendments make

minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903, delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivision references are not necessary, add an inadvertently omitted “s” to the end of Oil Spill Response, Prevention and Administration “Fee” in Regulation 5240, subdivision (a), and revise the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c). And, the proposed amendments add references to RTC sections 60601 and 60210.5 to Regulations 5240’s, 5241’s, and 5242’s authority and reference notes, respectively, to address omissions from prior amendments to the regulations.

## **PUBLIC HEARING**

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on September 16-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on September 16-17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242.

## **AUTHORITY**

Regulation 1705.1:	RTC section 7051
Regulation 4903:	RTC sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601
Regulations 5240-5242:	Government Code section 15606; and RTC sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601

## **REFERENCE**

Regulation 1705.1:	RTC sections 6066, 6067, 6456 and 6901-6908; and Family Code sections 297 and 297.5
Regulation 4903:	RTC sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5, and 60501-60512; and Family Code sections 297, 297.5, and 308

Regulation 5240-5242: RTC sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5

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

### Summary of Existing Laws and Regulations

In 1993, section 6456 was added to the RTC by Assembly Bill No. 1288 (Stats. 1993, ch. 181) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) if:

- The liability is due to an understatement of tax that is attributable to the other spouse;
- The spouse being relieved did not know of and had no reason to know of the understatement; and
- It is inequitable to hold the spouse being relieved liable for the tax attributable to the understatement, taking into account whether the spouse being relieved significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

The Board subsequently adopted Regulation 1705.1 in 1997 to implement, interpret, and make specific RTC section 6456. As relevant here, Regulation 1705.1 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief under section 6456, subdivision (a). Also, Regulation 1705.1 currently refers to a spouse that has filed such a request as a “claiming spouse” and refers to the spouse of an individual requesting innocent spouse relief as the “nonclaiming spouse.”

In 2000, subdivision (f) was added to RTC section 6456 by Assembly Bill No. 2898 (Stats. 2000, ch. 1052) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability for any tax or deficiency for which “innocent spouse relief” is not available under RTC section 6456, subdivision (a). Under RTC section 6456, subdivision (f), such relief may be granted if, after taking into account all the facts and circumstances, the Board determines it is inequitable to hold the spouse liable for the tax or deficiency (or any portion thereof). The Board subsequently added subdivision (h) to Regulation 1705.1 in 2001 to implement RTC section 6456, subdivision (f)’s provisions for other “equitable relief.” As relevant here, Regulation 1705.1, subdivision (h) currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief under RTC section 6456, subdivision (f). In addition, in 2006, the name of Regulation 1705.1 was updated to include “Registered Domestic Partners,” and subdivision (j) was added to Regulation 1705.1 to explain that on and after January 1, 2005, registered domestic partners have the same rights to relief under RTC section 6456 and Regulation 1705.1 as spouses and all further references to “spouses” herein include registered domestic partners, unless otherwise noted.

In 2007, the Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § (Reg.) 5000 et seq.) to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. (Reg. 5000, *Statement of Intent; Title of Division*.) Regulations 5240, 5241, and 5242 were included in the Rules for Tax Appeals to provide specific procedures for the Board's review of requests for innocent spouse relief and other equitable relief under RTC section 6456.

Regulation 5240 currently provides for the filing of a request for innocent spouse relief with the Board's Offer in Compromise Section. Subdivisions (a) through (c) of Regulation 5241 currently provide for the acknowledgement, review, and grant or denial of a request for innocent spouse relief by the Board's Offer in Compromise Section. If a request for innocent spouse relief is denied and it appears the individual who requested innocent spouse relief may be eligible for other equitable relief, then subdivisions (c) and (d) of Regulation 5241 also currently provide for the Offer in Compromise Section to:

- Send the individual a questionnaire and financial statement to complete and return to request other equitable relief; and
- Review the individual's completed questionnaire and financial statement to determine if other equitable relief is warranted.

Regulation 5242 currently provides that if a request for other equitable relief is denied, then the individual requesting relief may request that the denial be reconsidered by the Board at a Board hearing.

In 2007, the Legislature enacted Assembly Bill No. 1748 (Stats. 2007, ch. 342), which added 15 sections to the RTC to authorize the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5), effective January 1, 2008. The Board adopted Regulation 4903 in 2010 to implement, interpret, and make specific its authority to grant innocent spouse relief and other equitable relief to taxpayers and fee payers (hereafter collectively "taxpayers") under these 14 additional tax and fee laws. Regulation 4903 generally incorporates the same provisions as Regulation 1705.1, including provisions regarding registered domestic partners. As relevant here, Regulation 4903 currently requires a spouse to file a "written request for relief" to be considered for innocent spouse relief, and it refers to a spouse that has filed such a request as a "claiming spouse" and refers to the spouse of an individual who is requesting innocent spouse relief as the "nonclaiming spouse." Regulation 4903 also currently

requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief.

In addition, the Board added Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it applies to liabilities incurred under all 14 of the special tax and fee laws listed above. Therefore, when the Board adopted Regulation 4903, the Board also adopted Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, which are also entitled *Innocent Spouse or Registered Domestic Partner Relief from Liability*. These cross-referencing regulations are located in other chapters in divisions 1 and 2 of title 18 that correspond with each of the special tax and fee laws listed above, and they currently direct taxpayers to the operative provisions in Regulation 4903.

In 2013, the Board adopted amendments to make Rules for Tax Appeals Regulations 5240, 5241, and 5242 applicable to the filing and review of all the requests for innocent spouse relief and other equitable relief governed by Regulation 4903, except requests filed under the Private Railroad Car Tax Law. This is because Regulations 5240, 5241, and 5242 are contained in chapter 2 of the Rules for Tax Appeals, which does not apply to Private Railroad Car Tax appeals. Also, as relevant here, Regulation 5240, subdivision (a), currently provides for the filing of requests for innocent spouse relief from taxes imposed under the “Diesel Fuel Tax Law” and Regulations 5240, 5241, and 5242 currently contain cross references to specific subdivisions in Regulations 1705.1 and 4903.

### **Effects, Objectives, and Benefits of the Proposed Amendments**

In order to receive innocent spouse relief or other equitable relief from a specific tax or fee liability, a spouse must establish that it would be “inequitable” to hold that spouse liable for such amount under the applicable facts and circumstances. As a result, Board staff determined that it would be easier for taxpayers and more efficient for the Board if a taxpayer could file one request for relief in order to be considered for both innocent spouse relief and other equitable relief at the same time. Board staff also determined that there was an administrative issue because Regulations 1705.1, 4903, 5240, 5241, and 5242, collectively, provide for the initial filing and review of a taxpayer’s request for innocent spouse relief, the subsequent filing and review of the taxpayer’s request for other equitable relief only after the taxpayer’s request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. Therefore, Board staff prepared a Chief Counsel Memorandum dated May 6, 2015, which recommended that the Board address the administrative issue by:

- Amending Regulations 1705.1 and 4903 so that they no longer require a spouse to file a separate request for equitable relief;
- Amending Regulations 1705.1, 4903, and 5241 so that they require the Board to consider a spouse who files a request for innocent spouse relief for both innocent spouse relief and other equitable relief;

- Amending Regulation 5241 so that it requires the Offer in Compromise Section to send a spouse a “questionnaire and financial statement to complete and return” with the letter acknowledging his or her request for innocent spouse relief so that the Offer in Compromise Section can still obtain the information needed to determine whether other equitable relief is warranted;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to provide a spouse with instructions about how to request reconsideration in the event relief is initially denied; and
- Amending Regulation 5242 so that a spouse can request reconsideration from the Board if the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief.

In addition, spouses file “requests,” not claims, for innocent spouse relief under Regulations 1705.1, 4903, and 5240, and Regulation 5241 currently uses the semantically correct phrase “non-requesting spouse” to refer to the spouse of an individual who is requesting innocent spouse relief. However, Regulations 1705.1 and 4903 generally refer to “requests” as “claims,” a spouse requesting relief as a “claiming spouse,” and the spouse of an individual who is requesting relief as a “nonclaiming spouse.” Therefore, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended addressing these minor inconsistencies by replacing all of Regulations 1705.1’s and 4903’s references to “claims,” “claiming spouse,” and “nonclaiming spouse” with references to “requests,” “requesting spouse,” and “non-requesting spouse,” respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology.

Moreover, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended that the Board make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903. Board staff also recommended that the Board delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivisions have been renumbered and it is not necessary to specifically refer to the subdivisions to understand the meaning of Regulations 5240’s and 5242’s cross-references to Regulations 1705.1 and 4903. Board staff further recommended that the Board added an inadvertently omitted “s” to the end of Oil Spill Response, Prevention and Administration “Fee” in Regulation 5240, subdivision (a). Board staff additionally recommended revising the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c).

Board staff submitted the May 6, 2015, Chief Counsel Memorandum to the Board for consideration during its May 27, 2015, meeting **and, during the meeting, the Board Members unanimously voted to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 recommended by staff, although** Chairman Jerome Horton was absent and did not vote. **The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objectives of** addressing the administrative issue referred to above, ensuring that Regulations 1705.1, 4903, and 5241 use consistent and accurate

terminology, and clearly and efficiently administering the RTC provisions for innocent spouse relief and other equitable relief, cited above.

Prior to publishing this notice for the proposed amendments the Board authorized on May 27, 2015, Board staff realized that the Board inadvertently omitted references to RTC section 60601, which authorizes the Board to adopt regulations to implement, interpret, and make specific the provisions of the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's authority notes. And, the Board also inadvertently omitted references to RTC section 60210.5, which authorizes the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's reference notes. Therefore, the Board has also included references to RTC sections 60601 and 60210.5 in the proposed amendments to Regulations 5240's, 5241's, and 5242's authority and reference notes, respectively, which were not discussed in the May 6, 2015, Chief Counsel Memorandum, because the Board has determined that these additional amendments are reasonably necessary to have the effect and accomplish the objective of addressing the Board's prior omissions from the 2013 amendments.

The Board has performed an evaluation of whether the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903, 5240, 5241, and 5242 are the only state regulations that specifically implement, interpret, and make specific the RTC provisions for innocent spouse relief and other equitable relief, cited above. Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106 primarily cross-reference and direct taxpayers to the operative provisions in Regulation 4903. The proposed amendments will ensure that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology. And, the Board's evaluation of Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903, 5240, 5241, and 5242 did not reveal any inconsistencies between the regulations that are not being addressed in the proposed amendments.

**In addition,** Internal Revenue Code (IRC) section 6015 (26 U.S.C. § 6015) currently contains some provisions providing relief from joint income tax liabilities that are comparable to the RTC provisions for innocent spouse relief and other equitable relief, cited above. These IRC provisions are implemented, interpreted, and made specific by 26 Code of Federal Regulations parts 1.6015-1 (procedures), 1.6015-2 (innocent spouse relief), 1.6015-4 (equitable relief), 1.6015-5 (filing requests), and 1.6015-7 (Tax Court review), which contain some provisions that are comparable to the provisions in Regulations 1705.1, 4903, 5240, 5241, and 5242 discussed above. However, the Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 do not differ substantially from federal law because part 1.6015-1(a)(2) permits a requesting spouse to submit a single request or claim for both innocent spouse relief under part 1.6015-2 and equitable relief under part 1.6015-4, and requires the

Internal Revenue Service to consider whether a person who files such a claim is eligible for relief under both parts. Part 1.6015-7 permits a requesting spouse to petition the Tax Court for the review of the denial of any relief available under the procedures in part 1.6015-1, including innocent spouse relief under part 1.6015-2 and equitable relief under part 1.6015-4. Also, the federal regulations use the terms “requesting spouse” and “nonrequesting spouse.”

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

The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not impose a mandate on local agencies or school districts, including a mandate that is 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 ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

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

The Board has made an initial determination that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 may affect small business.

#### **NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

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

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

The Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are not a major regulation, as defined in Government Code section 11342.548

and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

### **NO SIGNIFICANT EFFECT ON HOUSING COSTS**

The adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant effect on housing costs.

### **DETERMINATION REGARDING ALTERNATIVES**

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

### **CONTACT PERSONS**

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, 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 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:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

### **WRITTEN COMMENT PERIOD**

The written comment period ends at 9:30 a.m. on September 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 during the September 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242. The Board will only consider written comments received by that time.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared underscored and strikeout versions of the text of Regulations 1705.1, 4903, 5240, 5241, and 5242 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments 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**

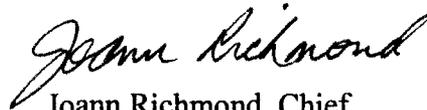
The Board may adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

July 17, 2015

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242, 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).

Sincerely,



Joann Richmond, Chief  
Board Proceedings Division

JR:reb

**Initial Statement of Reasons for  
Proposed Amendments to California Code of Regulations, Title 18,  
Section 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*,  
Section 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*,  
Section 5240, *Persons Who May File, Contents of, and Manner of Filing  
Requests for Innocent Spouse Relief*,  
Section 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*,  
and  
Section 5242, *Requests for Reconsideration by the Board***

SPECIFIC PURPOSE AND NECESSITY

Current Law

In 1993, section 6456 was added to the Revenue and Taxation Code (RTC) by Assembly Bill No. 1288 (Stats. 1993, ch. 181) to authorize the State Board of Equalization (Board) to prescribe regulations under which a spouse may be relieved of a liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) if:

- The liability is due to an understatement of tax that is attributable to the other spouse;
- The spouse being relieved did not know of and had no reason to know of the understatement; and
- It is inequitable to hold the spouse being relieved liable for the tax attributable to the understatement, taking into account whether the spouse being relieved significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

The Board subsequently adopted California Code of Regulations, title 18, section (Regulation) 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, in 1997 to implement, interpret, and make specific RTC section 6456. As relevant here, Regulation 1705.1 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief under section 6456, subdivision (a). Also, Regulation 1705.1 currently refers to a spouse that has filed such a request as a “claiming spouse” and refers to the spouse of an individual requesting innocent spouse relief as the “nonclaiming spouse.”

In 2000, subdivision (f) was added to RTC section 6456 by Assembly Bill No. 2898 (Stats. 2000, ch. 1052) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability for any tax or deficiency for which “innocent spouse relief” is not available under RTC section 6456, subdivision (a). Under RTC section 6456, subdivision (f), such relief may be granted if, after taking into account all the facts and circumstances,

the Board determines it is inequitable to hold the spouse liable for the tax or deficiency (or any portion thereof). The Board subsequently added subdivision (h) to Regulation 1705.1 in 2001 to implement RTC section 6456, subdivision (f)'s provisions for other "equitable relief." As relevant here, Regulation 1705.1, subdivision (h) currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief under RTC section 6456, subdivision (f). In addition, in 2006, the name of Regulation 1705.1 was updated to include "Registered Domestic Partners," and subdivision (j) was added to Regulation 1705.1 to explain that on and after January 1, 2005, registered domestic partners have the same rights to relief under RTC section 6456 and Regulation 1705.1 as spouses and all further references to "spouses" herein include registered domestic partners, unless otherwise noted.

In 2007, the Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § (Reg.) 5000 et seq.) to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. (Reg. 5000, *Statement of Intent; Title of Division.*) Regulations 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*, were included in the Rules for Tax Appeals to provide specific procedures for the Board's review of requests for innocent spouse relief and other equitable relief under RTC section 6456.

Regulation 5240 currently provides for the filing of a request for innocent spouse relief with the Board's Offer in Compromise Section. Subdivisions (a) through (c) of Regulation 5241 currently provide for the acknowledgement, review, and grant or denial of a request for innocent spouse relief by the Board's Offer in Compromise Section. If a request for innocent spouse relief is denied and it appears the individual who requested innocent spouse relief may be eligible for other equitable relief, then subdivisions (c) and (d) of Regulation 5241 also currently provide for the Offer in Compromise Section to:

- Send the individual a questionnaire and financial statement to complete and return to request other equitable relief; and
- Review the individual's completed questionnaire and financial statement to determine if other equitable relief is warranted.

Regulation 5242 currently provides that if a request for other equitable relief is denied, then the individual requesting relief may request that the denial be reconsidered by the Board at a Board hearing.

In 2007, the Legislature enacted Assembly Bill No. 1748 (Stats. 2007, ch. 342), which added 15 sections to the RTC to authorize the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency

Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5), effective January 1, 2008. The Board adopted Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, in 2010 to implement, interpret, and make specific its authority to grant innocent spouse relief and other equitable relief to taxpayers and fee payers (hereafter collectively “taxpayers”) under these 14 additional tax and fee laws. Regulation 4903 generally incorporates the same provisions as Regulation 1705.1, including provisions regarding registered domestic partners. As relevant here, Regulation 4903 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief, and it refers to a spouse that has filed such a request as a “claiming spouse” and refers to the spouse of an individual who is requesting innocent spouse relief as the “nonclaiming spouse.” Regulation 4903 also currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief.

In addition, the Board added Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it applies to liabilities incurred under all 14 of the special tax and fee laws listed above. Therefore, when the Board adopted Regulation 4903, the Board also adopted Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, which are also entitled *Innocent Spouse or Registered Domestic Partner Relief from Liability*. These cross-referencing regulations are located in other chapters in divisions 1 and 2 of title 18 that correspond with each of the special tax and fee laws listed above, and they currently direct taxpayers to the operative provisions in Regulation 4903.

In 2013, the Board adopted amendments to make Rules for Tax Appeals Regulations 5240, 5241, and 5242 applicable to the filing and review of all the requests for innocent spouse relief and other equitable relief governed by Regulation 4903, except requests filed under the Private Railroad Car Tax Law. This is because Regulations 5240, 5241, and 5242 are contained in chapter 2 of the Rules for Tax Appeals, which does not apply to Private Railroad Car Tax appeals. Also, as relevant here, Regulation 5240, subdivision (a), currently provides for the filing of requests for innocent spouse relief from taxes imposed under the “Diesel Fuel Tax Law” and Regulations 5240, 5241, and 5242 currently contain cross references to specific subdivisions in Regulations 1705.1 and 4903.

### Specific Purposes, Necessity, and Benefits of the Proposed Amendments

In order to receive innocent spouse relief or other equitable relief from a specific tax or fee liability, a spouse must establish that it would be “inequitable” to hold that spouse liable for such amount under the applicable facts and circumstances. As a result, Board staff determined that it would be easier for taxpayers and more efficient for the Board if a taxpayer could file one request for relief in order to be considered for both innocent spouse

relief and other equitable relief at the same time. Board staff also determined that there was an administrative issue (or problem within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)) because Regulations 1705.1, 4903, 5240, 5241, and 5242, collectively, provide for the initial filing and review of a taxpayer's request for innocent spouse relief, the subsequent filing and review of the taxpayer's request for other equitable relief only after the taxpayer's request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. Therefore, Board staff prepared a Chief Counsel Memorandum dated May 6, 2015, which recommended that the Board address the administrative issue by:

- Amending Regulations 1705.1 and 4903 so that they no longer require a spouse to file a separate request for equitable relief;
- Amending Regulations 1705.1, 4903, and 5241 so that they require the Board to consider a spouse who files a request for innocent spouse relief for both innocent spouse relief and other equitable relief;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to send a spouse a "questionnaire and financial statement to complete and return" with the letter acknowledging his or her request for innocent spouse relief so that the Offer in Compromise Section can still obtain the information needed to determine whether other equitable relief is warranted;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to provide a spouse with instructions about how to request reconsideration in the event relief is initially denied; and
- Amending Regulation 5242 so that a spouse can request reconsideration from the Board if the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief.

In addition, spouses file "requests," not claims, for innocent spouse relief under Regulations 1705.1, 4903, and 5240, and Regulation 5241 currently uses the semantically correct phrase "non-requesting spouse" to refer to the spouse of an individual who is requesting innocent spouse relief. However, Regulations 1705.1 and 4903 generally refer to "requests" as "claims," a spouse requesting relief as a "claiming spouse," and the spouse of an individual who is requesting relief as a "nonclaiming spouse." Therefore, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended addressing these minor inconsistencies by replacing all of Regulations 1705.1's and 4903's references to "claims," "claiming spouse," and "nonclaiming spouse" with references to "requests," "requesting spouse," and "non-requesting spouse," respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology.

Moreover, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended that the Board make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903. Board staff also recommended that the Board delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivisions have been

renumbered and it is not necessary to specifically refer to the subdivisions to understand the meaning of Regulations 5240's and 5242's cross-references to Regulations 1705.1 and 4903. Board staff further recommended that the Board added an inadvertently omitted "s" to the end of Oil Spill Response, Prevention and Administration "Fee" in Regulation 5240, subdivision (a). Board staff additionally recommended revising the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c).

Board staff submitted the May 6, 2015, Chief Counsel Memorandum to the Board for consideration during its May 27, 2015, meeting and, during the meeting, the Board Members unanimously voted to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 recommended by staff, although Chairman Jerome Horton was absent and did not vote. The Board determined that the proposed amendments are reasonably necessary for the specific purposes of addressing the administrative issue referred to above, ensuring that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology, and clearly and efficiently administering the RTC provisions for innocent spouse relief and other equitable relief, cited above.

Prior to publishing this notice for the proposed amendments the Board authorized on May 27, 2015, Board staff realized that the Board inadvertently omitted references to RTC section 60601, which authorizes the Board to adopt regulations to implement, interpret, and make specific the provisions of the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's authority notes. And, the Board also inadvertently omitted references to RTC section 60210.5, which authorizes the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's reference notes. Therefore, the Board has also included references to RTC sections 60601 and 60210.5 in the proposed amendments to Regulations 5240's, 5241's, and 5242's authority and reference notes, respectively, which were not discussed in the May 6, 2015, Chief Counsel Memorandum, because the Board has determined that these additional amendments are reasonably necessary for the specific purpose of addressing the Board's prior omissions from the 2013 amendments.

The Board anticipates that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will benefit taxpayers by making it easier for taxpayers to be considered for other equitable relief, and the proposed amendments will benefit taxpayers, Board staff, and the Board by making the Board's review of requests for innocent spouse relief and other equitable relief more efficient. The proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 1705.1, 4903, 5240, 5241, and 5242 or the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242.

DOCUMENTS RELIED UPON

The Board relied upon the May 6, 2015, Chief Counsel Memorandum, the exhibits to the memorandum, and the comments made during the Board's discussion of the memorandum during its May 27, 2015, meeting in deciding to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 described above.

#### ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

#### INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

As previously explained, the Board adopted Regulations 1705.1, 4903, 5240, 5241, and 5242 to implement, interpret, and make specific the RTC provisions for innocent spouse relief and other equitable relief, cited above. Currently, the regulations collectively provide for the initial filing and review of a taxpayer's request for innocent spouse relief, and the subsequent filing and review of the taxpayer's request for other equitable relief only after the taxpayer's request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. The proposed amendments make the Board's administration of the RTC provisions for innocent spouse relief and other equitable relief more efficient by providing for the filing of one request for innocent spouse relief, the review of that request by the Board's Offer in Compromise Section to determine if either innocent spouse relief or other equitable relief is warranted at the same time, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request. As a result, the proposed amendments change the Board's procedures by eliminating the requirement that some taxpayers file a separate request for other equitable relief, in addition to their requests for innocent spouse relief, within the applicable statute

of limitations. The proposed amendments also change the Board's procedures so that Board staff and the Board can consider whether a taxpayer qualifies for innocent spouse relief and other equitable relief at the same time.

However, the proposed amendments do not change the substantive requirements for granting or denying innocent spouse relief and other equitable relief. And, after the proposed amendments, a taxpayer will still need to provide the same information to the Offer in Compromise Section that is currently needed to determine whether the taxpayer qualifies for innocent spouse relief and other equitable relief.

As a result, the Board's Legal Department has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will make it easier for taxpayers to be considered for other equitable relief and make it more efficient for the Offer in Compromise Section and the Board to determine whether taxpayers are entitled to such relief. However, the proposed amendments will not substantially increase or decrease the number of requests for innocent spouse relief currently filed with the Offer in Compromise Section. The proposed amendments will not substantially increase or decrease the amount of innocent spouse relief and other equitable relief currently granted by the Board. And, as a result, the proposed amendments will not have a measurable impact on revenue.

Therefore, the Board anticipates that the proposed amendments will benefit taxpayers by making it easier for taxpayers to be considered for other equitable relief, and the proposed amendments will benefit taxpayers, Board staff, and the Board by making the Board's review of requests for innocent spouse relief and other equitable relief more efficient. However, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. And, the Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 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.

Furthermore, Regulations 1705.1, 4903, 5240, 5241, and 5242 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not affect the benefits of Regulations 1705.1, 4903, 5240, 5241, and 5242 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant adverse economic impact on business.

The proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 may affect small businesses.

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1705.1

**1705.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a) In General. A spouse ~~claiming~~may request innocent spouse relief from liability for any sales or use tax, interest, penalties, and other amounts. A requesting spouse shall be relieved from such liability where all of the following requirements are met:

- (1) A liability is incurred under the Sales and Use Tax Law;
- (2) The liability is attributable to the non-requesting~~nonclaiming~~ spouse;
- (3) The spouse ~~claiming~~requesting relief establishes that he or she did not know of, and that a reasonably prudent person in the requesting~~claiming~~ spouse's circumstances would not have had reason to know of, the liability; and
- (4) It would be inequitable to hold the requesting~~claiming~~ spouse liable for the liability, taking into account whether the requesting~~claiming~~ spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(b) "Benefited." Whether a requesting~~claiming~~ spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The requesting~~claiming~~ spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the requesting~~claiming~~ spouse, or lavish or luxury purchases made by either spouse may be evidence that the requesting~~claiming~~ spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a requesting~~claiming~~ spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the requesting~~claiming~~ spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the requesting~~claiming~~ spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

- (1) A ~~claim~~request for innocent spouse relief may be filed if, at the time relief is requested, the requesting~~claiming~~ spouse is no longer married to or is legally separated from the non-requesting~~nonclaiming~~ spouse, or the requesting~~claiming~~ spouse is no longer a member of the same household as the non-requesting~~nonclaiming~~ spouse.
- (2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a retailer of taxable items related to the liability. If neither spouse rendered substantial services as a retailer, then the attribution of the liability shall be

treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under subdivision (a) ~~these provisions~~, a requesting spouse must file ~~may submit~~ a written request for innocent spouse relief setting forth the seller's permit number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse has filed a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(ge) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar quarters for requests filed ~~claims made~~ no later than one year after the Board's ~~board's~~ first contact with the spouse making the ~~request~~ claim. Requests filed ~~Claims made~~ after one year from the Board's ~~board's~~ first contact with the spouse making the ~~request~~ claim shall not apply to any calendar quarter that is ~~more than~~

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the ~~Board-issued~~ board-issued determination,

whichever is later.

No calendar quarters shall be eligible for relief under this regulation that have been closed by res judicata.

(hf) Refunds. A refund of any amounts under this regulation ~~these provisions~~ shall be subject to the requirements as set forth in Revenue and Taxation Code sections 6901 through 6908, inclusive.

(ig) This regulation shall apply retroactively to liabilities arising prior to January 1, 1994.

(h) Effective January 1, 2001, a spouse may be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent

~~spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the Board.~~

~~(1) Criteria for Equitable Relief:~~

~~(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.~~
- ~~2. The claiming spouse would suffer economic hardship if relief is not granted.~~
- ~~3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~
- ~~4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~
- ~~5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)~~
- ~~6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.~~

~~(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse will not suffer economic hardship if relief is not granted.~~
- ~~2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.~~
- ~~3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.~~
- ~~4. The claiming spouse has not made a good faith effort to comply with the Board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.~~

~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~

~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions 1705.1(e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2001, including liabilities incurred prior to January 1, 1994, as provided in subdivision (g).~~

(j) The Board shall send notification by mail of the request~~claim~~ for innocent spouse relief from liability and the basis for that request~~claim~~ to the non-requesting~~nonclaiming~~ spouse.

(k) Registered Domestic Partners. Pursuant to Family Code section 297.5, on and after January 1, 2005, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, on and after January 1, 2005, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6066, 6067, 6456 and 6901-6908, Revenue and Taxation Code; and Sections 297 and 297.5, Family Code.

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 4903

**4903. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a)(1) In General.

(1) A spouse ~~requesting innocent spouse~~claiming relief from liability for any tax, fee, or surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(A) A liability is 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, or Use Fuel Tax Law;

(B) The liability is attributable to the ~~non-requesting~~nonclaiming spouse;

(C) The spouse ~~requesting~~claiming relief establishes that he or she did not know of, and that a reasonably prudent person in the ~~requesting~~claiming spouse's circumstances would not have had reason to know of, the liability; and

(D) It would be inequitable to hold the ~~requesting~~claiming spouse liable for the liability, taking into account whether the ~~requesting~~claiming spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(2) For purposes of this section, the word "tax" shall mean "tax, fee, or surcharge."

(b) Benefited. Whether a ~~requesting~~claiming spouse has benefited directly or indirectly from the liability will be determined by a review by the ~~B~~board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The ~~requesting~~claiming spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the ~~requesting~~claiming spouse, or lavish or luxury purchases made by either spouse may be evidence that the ~~requesting~~claiming spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a ~~requesting~~claiming spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the ~~requesting~~claiming spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the ~~requesting~~claiming spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A ~~claim~~request for innocent spouse relief may be filed if, at the time relief is requested, the ~~requesting~~claiming spouse is no longer married to or is legally separated from the ~~non-requesting~~nonclaiming spouse, or the ~~requesting~~claiming spouse is no longer a member of the same household as the ~~non-requesting~~nonclaiming spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer engaged in an activity or transaction that is subject to a tax administered under the laws specified in paragraph (1) of subdivision (a) and related to the liability. If neither spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under ~~subdivision (a)~~these provisions, a ~~requesting~~claiming spouse ~~must file~~may submit a written request for innocent spouse relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse files a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(g) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar months, quarters, or years for requests filed ~~claims made~~ no later than one year after the Board's first contact with the spouse making the ~~request~~ claim.

Requests filed ~~Claims made~~ after one year from the Board's first contact with the spouse making the ~~request~~ claim shall not apply to any calendar month, quarter, or year that is

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the Board-issued determination or similar billing document for collection of a tax or fee,

whichever is later.

No calendar months, quarters, or years shall be eligible for relief under this regulation that have been closed by res judicata.

(hf) Refunds. A refund of any amounts under ~~this regulation~~ these provisions shall be subject to the requirements as set forth in the refund provisions of the applicable tax, fee, and surcharge law, as specified in paragraph (1) of subdivision (a).

(ig) This regulation shall apply retroactively to liabilities arising prior to January 1, 2008.

~~(h) A spouse may be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the board.~~

~~(1) Criteria for Equitable Relief.~~

~~(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.~~
- ~~2. The claiming spouse would suffer economic hardship if relief is not granted.~~
- ~~3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~
- ~~4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~
- ~~5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)~~
- ~~6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.~~

~~(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse will not suffer economic hardship if relief is not granted.~~
- ~~2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.~~
- ~~3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.~~
- ~~4. The claiming spouse has not made a good faith effort to comply with the board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.~~
- ~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~
- ~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions (e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2008, as provided in subdivision (g).~~

~~(j) The Board shall send notification by mail of the requestclaim for innocent spouse relief from liability and the basis for that requestclaim to the non-requestingnonclaiming spouse.~~

~~(k) Registered Domestic Partners. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.~~

Note: Authority cited: Sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5 and 60501-60512, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5240

**5240. Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief.**

(a) Who May Request Relief. A divorced or separated individual may file a request for innocent spouse relief with the Board regarding taxes and fees imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law.

(b) Request Requirements. A request for innocent spouse relief must be:

- (1) In writing.
- (2) Signed and dated by the individual requesting relief.
- (3) Specifically request innocent spouse relief.
- (4) Identify the tax or fee from which relief is sought.
- (5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the liability at issue.

(c) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A satisfies the requirements of subdivision (b).

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the applicable time periods provided in California Code of Regulations, title 18, section 1705.1; ~~subdivision (e)~~, or section 4903; ~~subdivision (e)~~.

(e) Filing Requests. A request for innocent spouse relief or related document may be filed electronically under this section if a copy of the document is transmitted to the Offer in Compromise Section in accordance with instructions provided on the Board's website at [www.boe.ca.gov](http://www.boe.ca.gov). Requests for innocent spouse relief may be mailed to the Offer in Compromise Section at the following address:

OFFER IN COMPROMISE SECTION, MIC 52  
STATE BOARD OF EQUALIZATION  
P.O. BOX 942879  
SACRAMENTO, CA 94279-0052

A request for innocent spouse relief and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or submitted to a collector that is already assigned to the account at issue.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, ~~and 55301~~ and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, ~~and 55045.1~~ and 60210.5, Revenue and Taxation Code.

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5241

**5241. Acknowledgement and Review of Requests for Innocent Spouse Relief.**

(a) Acknowledgment Review. When the Offer in Compromise Section receives a request for innocent spouse relief, it will:

(1) Send the individual requesting relief an acknowledgement letter containing the contact information for the Offer in Compromise Section, and include a questionnaire and financial statement for the individual requesting relief to complete and return.

(2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.

~~(3) Evaluate the merits of the request.~~

~~(4) Request additional documentation from the individual requesting relief, if necessary.~~

(b) Review. The Offer in Compromise Section will review a request for innocent spouse relief to determine whether the individual requesting relief is eligible for innocent spouse relief or other equitable relief from all the liabilities included in his or her request, as provided in California Code of Regulations, title 18, section 1705.1 or section 4903. The Offer in Compromise Section may request additional information from the individual requesting relief if necessary to complete such review, including requesting additional information in the acknowledgement letter.

(c) Written Findings. Once its review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying innocent spouse relief and other equitable relief, and explaining why such relief was granted or denied. If the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the letter shall include instructions about how to request reconsideration.

~~(b) Granted Request for Innocent Spouse Relief~~. If the Offer in Compromise Section approves a request for innocent spouse relief, it will prepare and send the individual who requested relief a letter explaining the relief that was granted.

~~(c) Denied Request for Innocent Spouse Relief~~. If the Offer in Compromise Section denies a request for innocent spouse relief, it will:

~~(1) Prepare and send the individual requesting relief a letter explaining why the request was denied; and~~

~~(2) If it appears that the individual requesting relief might be eligible for other equitable relief as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h), the Offer in Compromise Section will include a questionnaire and financial statement for the individual requesting relief to complete and return.~~

~~(d) Requests for Other Equitable Relief. If the individual requesting relief returns a completed questionnaire and financial statement, the Offer in Compromise Section will review the documents to see if other equitable relief is warranted using the factors provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h). Once this review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying equitable relief and explaining why such relief was granted or denied.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, ~~and 55301~~ and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, ~~and 55045.1~~ and 60210.5, Revenue and Taxation Code.

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5242

**5242. Requests for Reconsideration by the Board.**

(a) If the Offer in Compromise Section denies both innocent spouse relief and a request for other equitable relief as to any liability included in a request for innocent spouse relief is denied, the individual requesting relief may request that the denials be reconsidered by the Board at a Board hearing as provided in California Code of Regulations, title 18, section 1705.1, ~~subdivision (h)~~, or section 4903, ~~subdivision (h)~~. A request for a Board hearing may be denied on a request for reconsideration~~other equitable relief~~, however, requests will be liberally granted.

(b) A Board hearing may be requested by following the instructions contained in the ~~denial~~ letter described in section 5241, subdivision (c).

(c) If a request for a Board hearing is granted, the individual requesting relief may be required to participate in an appeals conference with the Appeals Division prior to the Board hearing.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, ~~and 55301~~ and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, ~~and 55045.1~~ and 60210.5, Revenue and Taxation Code.

## Regulation History

**Types of Regulations:** Sales and Use Tax, Special Taxes and Fees, Rules  
for Tax Appeals

**Regulations:** 1705.1, 4903, 5240, 5241, 5242

**Title:** 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*  
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*,  
5240, *Persons Who May File, Contents of, and Manner of Filing*  
*Requests for Innocent Spouse Relief*,  
5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*  
5242, *Requests for Reconsideration by the Board*

**Preparation:** Bradley M. Heller  
**Legal Contact:** Bradley M. Heller

The State Board of Equalization proposes to adopt amendments to eliminate the requirement that individuals file a separate request to be considered for other equitable relief.

### History of Proposed Regulation:

September 16-17, 2015	Public Hearing
July 17, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
July 2, 2015	Notice to OAL
May 27, 2015	Business Tax Committee, Board Authorized Publication (Vote 4-0)

**Sponsor:** NA  
**Support:** NA  
**Oppose:** NA