

Regulation 1621

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1621

Index

1. *Form 400 and Proposed Regulation 1621*
2. *Statement of Explanation*
3. *SB 1243*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 02/05/15*
- B. *Minutes, 02/24/15*
- C. *Reporters Transcript, 02/24/15*

RECEIVED

MAY 1 - 2015

Board Proceedings

**State of California
Office of Administrative Law**

In re:
Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1621

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**

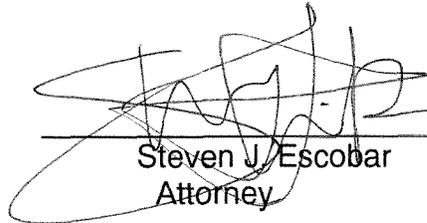
OAL Matter Number: 2015-0323-02

OAL Matter Type: Nonsubstantive (N)

These changes without regulatory effect by the Board of Equalization ("BOE") amend section 1621 in title 18 of the California Code of Regulations. Revenue and Taxation Code section 6385 was amended by Senate Bill No. 1243 (2011-2012 Reg. Sess.) to, inter alia, (1) replace the term "bunkered" with the term "transferred" in the definition of "first out-of-state destination" and (2) extend the sunset date of the statute from January 1, 2014, to January 1, 2024. Section 1621 is being amended to align subdivision (b)(3)(C) with these amendments to Revenue and Taxation Code section 6385. BOE is also moving the Authority and Reference citations so that they appear before the exemption certificates at the end of Section 1621. Lastly, Section 1621 provides five different exemption certificates, which subdivision (c) refers to as "appearing in the appendix" of the regulation. The certificates are currently formatted as part of the body of Section 1621. Therefore, an "Appendix" heading is being added to the beginning of the exemption certificates portion of Section 1621.

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

Date: April 30, 2015



Steven J. Escobar
Attorney

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk *jo*
DATE: 5/4/2015
RE: Return of Approved Rulemaking Materials
OAL File No. 2015-0323-02N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2015-0323-02N regarding Sales to Common Carriers).

If this is an approved file, 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 applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain 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 once OAL posts the Internet Web site link to the full text of the regulation that is received from the state 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.

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; and 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

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

NON SUBSTANTIVE

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2015-0323-02N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2015 MAR 23 AM 10:26

OFFICE OF ADMINISTRATIVE LAW

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

APR 30 2015

2:16 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
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Sales to Common Carriers	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 1621
TITLE(S) 18	REPEAL

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 checked="" 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 checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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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 March 19, 2015
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 30 2015

Office of Administrative Law

Text of Rule 100 Changes to
California Code of Regulations, Title 18, Section 1621

1621. Sales to Common Carriers.

(a) Definitions.

(1) Common Carrier. . . . (unchanged).”

(2) Foreign Air Carrier. . . . (unchanged).

(b) Application of Tax.

(1) Common Carriers. . . . (unchanged):

(A) . . . (unchanged), and

(B) . . . (unchanged), and

(C) . . . (unchanged), and

(D) . . . (unchanged).

(2) Foreign Air Carriers. . . . (unchanged):

(A) . . . (unchanged), and

(B) . . . (unchanged), and

(C) . . . (unchanged).

(3) Fuel and Petroleum Products.

(A) . . . (unchanged).

(B) . . . (unchanged):

1. . . . (unchanged),

2. . . . (unchanged), and

3. . . . (unchanged).

(C) For the period January 1, 1993 through December 31, 2002, and for the period April 1, 2004 through December 31, ~~2023~~²⁰¹³, the sale of fuel and petroleum products is exempt from sales tax pursuant to section 6385(c) of the Revenue and Taxation Code when such property is:

1. Sold to a water common carrier who holds a valid seller's permit or who has timely obtained a fuel exemption registration number,
2. For immediate shipment outside this state,
3. Consumed by the water carrier in the conduct of its business as a common carrier after the first out-of-state destination.

The sales tax applies with respect to sales of fuel and petroleum products which will be consumed in a voyage from the California point where the fuel is taken on to the first destination outside of California.

For purposes of this subdivision (b)(3)(C), the term "first destination outside of California" means the first point reached outside this state by a water common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is ~~transferred~~bunkered, or docking fees are charged. The term also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

To qualify for the exemption, the "sale" of the fuel (or other petroleum product) must be for "immediate shipment". A "sale" occurs when the purchaser takes either title to or possession of the fuel. An "immediate shipment" occurs when the delivery of fuel by the seller is directly to a vessel for transportation outside this state and not for storage.

Fuel is sold for storage and not for immediate shipment, if title to the fuel passes to the purchaser while the fuel remains in storage facilities owned or leased by the seller.

Fuel is sold for storage, and not for immediate shipment, if the fuel is transferred by the seller into a storage facility controlled by or leased to the purchaser or to any third party who takes delivery for the purchaser. Tax applies notwithstanding the contract of sale provides that the seller shall retain title to the fuel until the fuel is loaded onto the vessel. In such cases, any attempt by the seller to retain title is limited in effect to the reservation of a security interest.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller into storage facilities maintained by a third party, the seller has contracted with the third party to store the fuel, and title does not pass to the purchaser until the fuel is loaded onto the vessel.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller to storage facilities maintained by a third party, even though the purchaser may have contracted with the third party to store the fuel, if the sale occurs when the fuel is loaded onto the vessel and the seller has the legal obligation to deliver the fuel to the purchaser's vessel. If the obligation of the seller to deliver the fuel is complete upon transfer of the fuel to the third party, then any retention or reservation of title to the fuel

after such transfer is limited in effect to a reservation of a security interest, and the fuel will be regarded as having been delivered to the purchaser for storage and not for immediate shipment outside this state. A mere recital in the contract of sale that the delivery will occur at the vessel, or that the seller will retain title to the fuel until delivery at the vessel, is insufficient of itself to establish that delivery of the fuel by the seller is directly into the vessel.

In determining whether the delivery occurs at the vessel, and not upon transfer of the fuel to the third party, the board shall consider the following factors: whether the losses during storage are for the account of the seller; whether the seller has the right to remove the fuel from the storage facilities; whether the seller has the duty to remove the fuel from the storage facilities at the seller's expense should the seller's deliveries into the storage facilities exceed specified quantities, and whether the contract between the seller and purchaser is a requirements contract. The presence or absence of one or more factors is not conclusive.

A sale of fuel, otherwise qualifying as a sale for immediate shipment under the above rules, will qualify for the exemption even though the fuel is delivered to a fuel truck or barge from which the fuel is delivered directly into the vessel.

(c) Proof of Exemption.

- (1) Common Carrier. . . . (unchanged).
- (2) Foreign Air Carrier. . . . (unchanged).
- (3) Fuel and Petroleum Products. . . . (unchanged).
 - (A) . . . (unchanged).
 - (B) . . . (unchanged).

(d) Effect of Exemption Documents.

- (1) Common Carriers. . . . (unchanged).
- (2) Foreign Air Carriers. . . . (unchanged).
- (3) Fuel and Petroleum Products. . . . (unchanged).

(e) Liability of Purchaser. . . . (unchanged).

Note: Authority: Section 7051, Revenue and Taxation Code. Reference: Sections 6357.5 and 6385, Revenue and Taxation Code.

Appendix

CERTIFICATE A
(Unchanged)

CERTIFICATE B
(Unchanged)

CERTIFICATE C
(Unchanged)

CERTIFICATE D
(Unchanged)

CERTIFICATE E
(Unchanged)

~~Note: Authority: Section 7051, Revenue and Taxation Code. Reference: Sections 6357.5 and 6385, Revenue and Taxation Code.~~

hereby designated as the close of the written comment period. It is requested, but not required, that written statements or arguments be submitted in triplicate.

CONTACT

Inquiries concerning the action described in this notice may be directed to Mr. Hector Garcia, PHHSBG Coordinator, at (916) 445-7729 or Hector.Garcia@cdph.ca.gov or the Chronic Disease Control Branch at (916) 552-9900 or mail to: CDCB@cdph.ca.gov. In any such inquiries, please identify the action by using the Department Control letters "PHHSBG" in the Subject Line.

AVAILABILITY OF INFORMATION FOR REVIEW

The Agenda and the FFY 2015 State Plan will be available for review in the CDPH lobby located at 1616 Capitol Avenue, Sacramento, California from 8:00 a.m. to 5:00 p.m., May 20, 2015 through June 4, 2015.

The documents will also be available on the following website: [http://www.cdph.ca.gov/programs/cdcb/Pages/CaliforniaPreventiveHealthandHealthServicesBlockGrant\(PHHSBG\).aspx](http://www.cdph.ca.gov/programs/cdcb/Pages/CaliforniaPreventiveHealthandHealthServicesBlockGrant(PHHSBG).aspx) from 8:00 a.m. to 5:00 p.m., May 20, 2015 through June 4, 2015.

In addition, the notice will be made available in appropriate alternative formats, upon request by any person with a disability as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the applicable federal rules and regulations. Any request for such information must be received by the CDPH 7 days prior to June 4, 2015.

<p>SUMMARY OF REGULATORY ACTIONS</p>

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# 2015-0323-02
BOARD OF EQUALIZATION
 Sales to Common Carriers

These changes without regulatory effect by the Board of Equalization ("BOE") amend section 1621 in title 18 of the California Code of Regulations. Revenue and Taxation Code section 6385 was amended by Senate Bill No. 1243 (2011-2012 Reg. Sess.) to, inter alia, (1) replace the term "bunkered" with the term "transferred" in the definition of "first out-of-state destination" and (2) extend the sunset date of the statute from January 1, 2014, to January 1, 2024. Section 1621 is being amended to align subdivision (b)(3)(C) with these amendments to Revenue and Taxation Code section 6385. BOE is also moving the Authority and Reference citations so that they appear before the exemption certificates at the end of Section 1621. Lastly, Section 1621 provides five different exemption certificates, which subdivision (c) refers to as "appearing in the appendix" of the regulation. The certificates are currently formatted as part of the body of Section 1621. Therefore, an "Appendix" heading is being added to the beginning of the exemption certificates portion of Section 1621.

Title 18
 California Code of Regulations
 AMEND: 1621
 Filed 04/30/2015
 Agency Contact:
 Richard E. Bennion (916) 445-2130

File# 2015-0324-05
BOARD OF EQUALIZATION
 Diesel Fuel Used in Farming Activities or Food Processing

In this regulatory action, the Board is amending section 1533.2 of title 18 of the California Code of Regulations to update the definition of diesel fuel.

Title 18
 California Code of Regulations
 AMEND: 1533.2
 Filed 05/06/2015
 Effective 07/01/2015
 Agency Contact:
 Richard E. Bennion (916) 445-2130

File# 2015-0324-04
BOARD OF EQUALIZATION
 Diesel Fuel Prepayment Exemption

This action amends (1) the regulatory definition of diesel fuel to conform to amended statute; and (2) provisions clarifying the calculation of applicable diesel fuel sales and use taxes.

Regulation 1621

Section 100

Index

1. *Form 400 and Proposed Regulation 1621*
2. *Statement of Explanation*
3. **SB 1243**

NONSUBSTANTIVE

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2015-0323-02N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		2015 MAR 23 AM 10:24	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization			AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	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) Sales to Common Carriers	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 1621
TITLE(S) 18	REPEAL

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 checked="" 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 checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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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
---	------------------------------------	---	--

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 March 19, 2015
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

Text of Proposed Rule 100 Changes to
California Code of Regulations, Title 18, Section 1621

1621. Sales to Common Carriers.

(a) Definitions. . . . (unchanged).

(1) Common Carrier. . . . (unchanged).

(2) Foreign Air Carrier. . . . (unchanged).

(b) Application of Tax. . . . (unchanged).

(1) Common Carriers. . . . (unchanged):

(A) . . . (unchanged), and

(B) . . . (unchanged), and

(C) . . . (unchanged), and

(D) . . . (unchanged).

(2) Foreign Air Carriers. . . . (unchanged):

(A) . . . (unchanged), and

(B) . . . (unchanged), and

(C) . . . (unchanged).

(3) Fuel and Petroleum Products. . . . (unchanged)

(A) . . . (unchanged).

(B) . . . (unchanged):

1. . . . (unchanged),

2. . . . (unchanged), and

3. . . . (unchanged).

(C) For the period January 1, 1993 through December 31, 2002, and for the period April 1, 2004 through December 31, ~~2023~~²⁰¹³, the sale of fuel and petroleum products is exempt from sales tax pursuant to section 6385(c) of the Revenue and Taxation Code when such property is:

1. Sold to a water common carrier who holds a valid seller's permit or who has timely obtained a fuel exemption registration number,
2. For immediate shipment outside this state,
3. Consumed by the water carrier in the conduct of its business as a common carrier after the first out-of-state destination.

The sales tax applies with respect to sales of fuel and petroleum products which will be consumed in a voyage from the California point where the fuel is taken on to the first destination outside of California.

For purposes of this subdivision (b)(3)(C), the term "first destination outside of California" means the first point reached outside this state by a water common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is ~~transferred~~bunkered, or docking fees are charged. The term also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

To qualify for the exemption, the "sale" of the fuel (or other petroleum product) must be for "immediate shipment". A "sale" occurs when the purchaser takes either title to or possession of the fuel. An "immediate shipment" occurs when the delivery of fuel by the seller is directly to a vessel for transportation outside this state and not for storage.

Fuel is sold for storage and not for immediate shipment, if title to the fuel passes to the purchaser while the fuel remains in storage facilities owned or leased by the seller.

Fuel is sold for storage, and not for immediate shipment, if the fuel is transferred by the seller into a storage facility controlled by or leased to the purchaser or to any third party who takes delivery for the purchaser. Tax applies notwithstanding the contract of sale provides that the seller shall retain title to the fuel until the fuel is loaded onto the vessel. In such cases, any attempt by the seller to retain title is limited in effect to the reservation of a security interest.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller into storage facilities maintained by a third party, the seller has contracted with the third party to store the fuel, and title does not pass to the purchaser until the fuel is loaded onto the vessel.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller to storage facilities maintained by a third party, even though the purchaser may have contracted with the third party to store the fuel, if the sale occurs when the fuel is loaded onto the vessel and the seller has the legal obligation to deliver the fuel to the purchaser's vessel. If the obligation of the seller to deliver the fuel is complete upon transfer of the fuel to the third party, then any retention or reservation of title to the fuel

after such transfer is limited in effect to a reservation of a security interest, and the fuel will be regarded as having been delivered to the purchaser for storage and not for immediate shipment outside this state. A mere recital in the contract of sale that the delivery will occur at the vessel, or that the seller will retain title to the fuel until delivery at the vessel, is insufficient of itself to establish that delivery of the fuel by the seller is directly into the vessel.

In determining whether the delivery occurs at the vessel, and not upon transfer of the fuel to the third party, the board shall consider the following factors: whether the losses during storage are for the account of the seller; whether the seller has the right to remove the fuel from the storage facilities; whether the seller has the duty to remove the fuel from the storage facilities at the seller's expense should the seller's deliveries into the storage facilities exceed specified quantities, and whether the contract between the seller and purchaser is a requirements contract. The presence or absence of one or more factors is not conclusive.

A sale of fuel, otherwise qualifying as a sale for immediate shipment under the above rules, will qualify for the exemption even though the fuel is delivered to a fuel truck or barge from which the fuel is delivered directly into the vessel.

(c) Proof of Exemption. . . . (unchanged).

(1) Common Carrier. . . . (unchanged).

(2) Foreign Air Carrier. . . . (unchanged).

(3) Fuel and Petroleum Products. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(d) Effect of Exemption Documents. . . . (unchanged).

(1) Common Carriers. . . . (unchanged).

(2) Foreign Air Carriers. . . . (unchanged).

(3) Fuel and Petroleum Products. . . . (unchanged).

(e) Liability of Purchaser. . . . (unchanged).

Note: Authority: Section 7051, Revenue and Taxation Code. Reference: Sections 6357.5 and 6385, Revenue and Taxation Code.

Appendix

CERTIFICATE A . . . (unchanged).

CERTIFICATE B . . . (unchanged).

CERTIFICATE C . . . (unchanged).

CERTIFICATE D . . . (unchanged).

CERTIFICATE E . . . (unchanged).

~~Note: Authority: Section 7051, Revenue and Taxation Code. Reference: Sections 6357.5 and 6385, Revenue and Taxation Code.~~

CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 1621. *Sales to Common Carriers.*

A. Factual Basis

Subdivision (b)(3)(C) of California Code of Regulations, title 18, section (Regulation) 1621, *Sales to Common Carriers*, implements, interprets, and makes specific Revenue and Taxation Code section 6385, subdivision (c), which provides an exemption from sales tax for sales of fuel and petroleum products to a water common carrier, for immediate shipment outside this state for use in the conduct of its business as a common carrier after the first out-of-state destination. The exemption is intended to only impose sales tax on the sale of the fuel needed to get the water common carrier from California to its first out-of-state destination.

Prior to the enactment of Senate Bill No. (SB) 1243 (Stats. 2012, ch. 293), effective September 11, 2012, RTC section 6385, subdivision (d), defined “first out-of-state destination” as “the first point reached outside this state by a common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is bunkered, or docking fees are charged” and this definition is incorporated into Regulation 1621, subdivision (b)(3)(C). Also, prior to the 2012 enactment of SB 1243, RTC section 6385, subdivision (m), provided that section 6385 “shall remain in effect until January 1, 2014, and as of that date is repealed,” and Regulation 1621, subdivision (b)(3)(C), incorporates that statutory sunset date by providing that the exemption provided by RTC section 6385, subdivision (c), applies “through December 31, 2013.”

Section 1 of SB 1243 replaced the outdated term “bunkered” with the more current term “transferred” in the definition of “first out-of-state destination” in RTC section 6385, subdivision (d). Section 1 of SB 1243 also deleted subdivision (l) from RTC section 6385, renumbered subdivision (m) as new subdivision (l), and amended new subdivision (l) to extend the sunset date of the current statute from January 1, 2014, to January 1, 2024, and thereby extend the existing sales tax exemption for fuel and petroleum products sold to water common carriers through December 31, 2023. Therefore, the Board proposes to replace “2013” with “2023” and replace “bunkered” with “transferred” in Regulation 1621, subdivision (b)(3)(C), to make the regulation consistent with the amendments to RTC section 6385 made by SB 1243.

In addition, Regulation 1621 provides five different Board-prescribed exemption certificates, which subdivision (c) refers to as “appearing in the appendix” of the regulation. However, the certificates are currently formatted as part of the body of the regulation. Therefore, the Board proposes to reformat Regulation 1621 so that the certificates are contained in an appendix following the regulation’s authority and reference note and are separate from the body of the regulation by moving the regulation’s authority and reference note so that it appears before the regulation’s exemption certificates and adding the heading “Appendix” before the regulation’s exemption certificates.

The Board has determined that the proposed changes to Regulation 1621, subdivision (b)(3)(C), are appropriate for processing under California Code of Regulations, title 1, section (Rule) 100, subdivision (a)(6). This is because the changes update the regulation to make the regulation consistent with amendments made to RTC section 6385 by SB 1243, the Board has no discretion to adopt changes that differ in substance from the proposed changes, and the proposed changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. The Board has also determined that the changes needed to reformat Regulation 1621 so that its exemption certificates are contained in an appendix following the regulation’s authority and reference note are appropriate for processing under Rule 100, subdivision (a)(1). This is because the proposed changes relocate existing regulatory provisions and add the heading “Appendix” to the regulation’s appendix, and the proposed changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes

The following Rule 100 changes are proposed to Regulation 1621:

TEXT OF PROPOSED CHANGES

1621. Sales to Common Carriers.

(a) Definitions. . . . (unchanged).

(1) Common Carrier. . . . (unchanged).

(2) Foreign Air Carrier. . . . (unchanged).

(b) Application of Tax. . . . (unchanged).

(1) Common Carriers. . . . (unchanged):

(A) . . . (unchanged), and

(B) . . . (unchanged), and

(C) . . . (unchanged), and

(D) . . . (unchanged).

(2) Foreign Air Carriers. . . . (unchanged):

(A) . . . (unchanged), and

(B) . . . (unchanged), and

(C) . . . (unchanged).

(3) Fuel and Petroleum Products. . . . (unchanged)

(A) . . . (unchanged).

(B) . . . (unchanged):

1. . . . (unchanged),

2. . . . (unchanged), and

3. . . . (unchanged).

(C) For the period January 1, 1993 through December 31, 2002, and for the period April 1, 2004 through December 31, ~~2013~~²⁰¹⁴, the sale of fuel and petroleum products is exempt from sales tax pursuant to section 6385(c) of the Revenue and Taxation Code when such property is:

1. Sold to a water common carrier who holds a valid seller's permit or who has timely obtained a fuel exemption registration number,

2. For immediate shipment outside this state,

3. Consumed by the water carrier in the conduct of its business as a common carrier after the first out-of-state destination.

The sales tax applies with respect to sales of fuel and petroleum products which will be consumed in a voyage from the California point where the fuel is taken on to the first destination outside of California.

For purposes of this subdivision (b)(3)(C), the term “first destination outside of California” means the first point reached outside this state by a water common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is ~~transferred~~~~bunkered~~, or docking fees are charged. The term also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

To qualify for the exemption, the “sale” of the fuel (or other petroleum product) must be for “immediate shipment”. A “sale” occurs when the purchaser takes either title to or possession of the fuel. An “immediate shipment” occurs when the delivery of fuel by the seller is directly to a vessel for transportation outside this state and not for storage.

Fuel is sold for storage and not for immediate shipment, if title to the fuel passes to the purchaser while the fuel remains in storage facilities owned or leased by the seller.

Fuel is sold for storage, and not for immediate shipment, if the fuel is transferred by the seller into a storage facility controlled by or leased to the purchaser or to any third party who takes delivery for the purchaser. Tax applies notwithstanding the contract of sale provides that the seller shall retain title to the fuel until the fuel is loaded onto the vessel. In such cases, any attempt by the seller to retain title is limited in effect to the reservation of a security interest.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller into storage facilities maintained by a third party, the seller has contracted with the third party to store the fuel, and title does not pass to the purchaser until the fuel is loaded onto the vessel.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller to storage facilities maintained by a third party, even though the purchaser may have contracted with the third party to store the fuel, if the sale occurs when the fuel is loaded onto the vessel and the seller has the legal obligation to deliver the fuel to the purchaser’s vessel. If the obligation of the seller to deliver the fuel is complete upon transfer of the fuel to the third party, then any retention or reservation of title to the fuel after such transfer is limited in effect to a reservation of a security interest, and the fuel will be regarded as having been delivered to the purchaser for storage and not for immediate shipment outside this state. A mere recital in the contract of sale that the delivery will occur at the vessel, or that the seller will retain title to the fuel until delivery at the vessel, is insufficient of itself to establish that delivery of the fuel by the seller is directly into the vessel.

In determining whether the delivery occurs at the vessel, and not upon transfer of the fuel to the third party, the board shall consider the following factors: whether the losses during storage are for the account of the seller; whether the seller has the right to remove the fuel from the storage facilities; whether the seller has the duty to remove the fuel from the storage facilities at the seller's expense should the seller's deliveries into the storage facilities exceed specified quantities, and whether the contract between the seller and purchaser is a requirements contract. The presence or absence of one or more factors is not conclusive.

A sale of fuel, otherwise qualifying as a sale for immediate shipment under the above rules, will qualify for the exemption even though the fuel is delivered to a fuel truck or barge from which the fuel is delivered directly into the vessel.

(c) Proof of Exemption. . . . (unchanged).

(1) Common Carrier. . . . (unchanged).

(2) Foreign Air Carrier. . . . (unchanged).

(3) Fuel and Petroleum Products. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(d) Effect of Exemption Documents. . . . (unchanged).

(1) Common Carriers. . . . (unchanged).

(2) Foreign Air Carriers. . . . (unchanged).

(3) Fuel and Petroleum Products. . . . (unchanged).

(e) Liability of Purchaser. . . . (unchanged).

Note: Authority: Section 7051, Revenue and Taxation Code. Reference: Sections 6357.5 and 6385, Revenue and Taxation Code.

Appendix

CERTIFICATE A . . . (unchanged).

CERTIFICATE B . . . (unchanged).

CERTIFICATE C . . . (unchanged).

CERTIFICATE D . . . (unchanged).

CERTIFICATE E . . . (unchanged).

~~Note: Authority: Section 7051, Revenue and Taxation Code. Reference: Sections 6357.5 and 6385, Revenue and Taxation Code.~~

Senate Bill No. 1243

CHAPTER 293

An act to amend Section 6385 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 11, 2012. Filed with Secretary of State September 11, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1243, Lowenthal. Sales and use taxes: exemptions: marine or maritime fuel.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law exempts, until January 1, 2014, the gross receipts from the sale of fuel and petroleum products to a water common carrier for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination, as defined, if specified conditions are met.

This bill would revise the definition of "first out-of-state destination" and would extend the application of that exemption until January 1, 2024.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws. Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse counties and cities for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

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

SECTION 1. Section 6385 of the Revenue and Taxation Code, as added by Section 3 of Chapter 712 of the Statutes of 2003, is amended to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, an air waybill, or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of fuel and petroleum products to a water common carrier, for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination. To qualify for the exemption the common carrier shall furnish to the seller an exemption certificate in writing stating the quantity of fuel and petroleum products claimed as exempt which is to be consumed after reaching the first out-of-state destination. That certificate shall bear the purchaser's valid seller's permit number or valid fuel exemption registration number and shall be substantially in the form prescribed by the board. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax.

(d) "First out-of-state destination," as used in this section, means the first point reached outside this state by a common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is transferred, or docking fees are charged. "First out-of-state destination," as used in this section, also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

(e) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for

compensation, in transporting persons or property in interstate or foreign commerce.

(f) “Foreign air carrier,” as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(g) “Immediate shipment,” as used in this section, means that the delivery of the fuel and petroleum products by the seller is directly into a ship for transportation outside this state and not for storage by the purchaser or any third party.

(h) Any common carrier claiming exemption under subdivision (c) who is not required to hold a valid seller’s permit shall be required to register with the board and obtain a fuel exemption registration number and shall be required to file returns as the board may prescribe if either the board notifies the carrier that returns must be filed or the carrier is liable for taxes based upon consumption of fuel erroneously claimed as exempt under this section. A common carrier required to hold a fuel exemption registration number shall be subject to all applicable provisions of this part, Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251).

(i) A common carrier claiming an exemption under subdivision (c), upon request, shall make available to the board records, including, but not limited to, a copy of a log abstract or a cargo manifest, documenting its transportation of the fuel or petroleum product to an out-of-state destination and the amount claimed as exempt. If the carrier fails to provide these records upon request, the board may revoke the carrier’s fuel exemption registration number.

(j) The board may require any carrier claiming an exemption under this section and required to obtain a fuel exemption registration number to place with it that security as the board may determine pursuant to Section 6701.

(k) Pursuant to subdivisions (a), (b), and (c), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to the first out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to the first out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(l) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 2. Section 6385 of the Revenue and Taxation Code, as added by Section 4 of Chapter 712 of the Statutes of 2003, is amended to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier’s facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the

out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, an air waybill, or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(d) "Foreign air carrier," as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(e) Pursuant to subdivisions (a) and (b), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to an out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to an out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(f) This section shall become operative on January 1, 2024.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

M e m o r a n d u m

To : Ms. Cynthia Bridges
Executive Director (MIC 73)

Date: February 5, 2015

From :  Randy Ferris, Chief Counsel
Legal Department (MIC 83)

Subject : **Board Meeting, February 24 - 26, 2015**
Item J - Chief Counsel's Rulemaking Calendar
Regulation 1621, *Sales to Common Carriers*

We request your approval to place proposed changes to Sales and Use Tax Regulation 1621, *Sales to Common Carriers*, on the Chief Counsel's Rulemaking Calendar for the February 24-26, 2015, Board meeting. The proposed changes make the regulation consistent with revisions to section 6385 of the Revenue and Taxation Code (RTC) made by Senate Bill No. (SB) 1243 (Stats. 2012, ch. 293), effective September 11, 2012.

Under RTC section 6385, subdivision (c), sales of fuel and petroleum products to water common carriers, for immediate shipment outside this state, are exempt from sales tax when the fuel or petroleum products are used in the conduct of the common carrier's activities after the first out-of-state destination. The exemption requires a water common carrier to only pay tax on the fuel needed to get from California to its first out-of-state destination. Prior to the 2012 amendments made by SB 1243, RTC section 6385, subdivision (d) defined "first out-of-state destination" as "the first point reached outside this state by a common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is bunkered, or docking fees are charged," and this definition is incorporated into Regulation 1621, subdivision (b)(3)(C). Also, prior to the 2012 amendments made by SB 1243, RTC section 6385, subdivision (m) provided that section 6385 "shall remain in effect until January 1, 2014, and as of that date is repealed," and Regulation 1621, subdivision (b)(3)(C) currently provides that the exemption provided by RTC section 6385, subdivision (c) applies "through December 31, 2013."

SB 1243 amended RTC section 6385 to extend the sunset date of the current statute from January 1, 2014, to January 1, 2024, and thereby extend the existing sales and use tax exemption for fuel and petroleum products sold to water common carriers through December 31, 2023. The bill also replaced the outdated term "bunkered" with the more current term "transferred" in the definition of "first out-of-state destination." Therefore, Board staff proposes to replace "2013" with "2023," and replace "bunkered" with "transferred" in Regulation 1621, subdivision (b)(3)(C), to make the regulation consistent with the amendments to RTC section 6385.

In addition, Regulation 1621 provides five different Board-prescribed exemption certificates, which subdivision (c) refers to as "appearing in the appendix" of the regulation. However, the certificates are currently formatted as part of the body of the regulation. Therefore, staff proposes to reformat Regulation 1621 so that the certificates are contained in an appendix following the regulation's authority and reference note, and are separate from the body of the regulation.

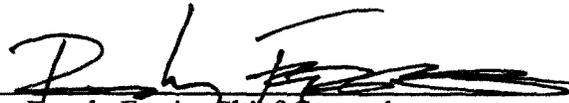
We will request the Board's authorization to make the changes to Sales and Use Tax Regulation 1621 to make the regulation consistent with the amendments to RTC section 6385 and reformat the regulation's certificates under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The changes are appropriate for processing under Rule 100 because they make the regulation consistent with the statutory changes to the RTC made by SB 1243, move the Board-prescribed exemption certificates into an appendix to the regulation, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

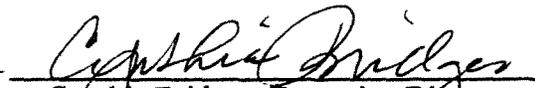
Attached is a strikeout and underlined version of the regulation illustrating the proposed changes.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-323-3091.

Recommendation by:

Approved:

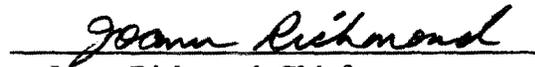

Randy Ferris, Chief Counsel


Cynthia Bridges, Executive Director

Approved:

BOARD APPROVED
At the 2/24/15 Board Meeting


Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department


Joann Richmond, Chief
Board Proceedings Division

Attachments

cc: Mr. Jeffrey L. McGuire (MIC 43)
Ms. Joann Richmond (MIC 80)
Mr. Robert Tucker (MIC 82)
Ms. Susanne Buehler (MIC 92)
Mr. Bradley M. Heller (MIC 82)
Ms. Kirsten Stark (MIC 50)
Mr. Clifford Oakes (MIC 50)
Ms. Kim Rios (MIC 50)

Text of Proposed Rule 100 Changes to
California Code of Regulations, Title 18, Section 1621

1621. Sales to Common Carriers.

(a) Definitions.

(1) Common Carrier. As used herein the term “common carrier” means any person who engages in the business of transporting persons or property for hire or compensation and who offers these services indiscriminately to the public or to some portion of the public. With respect to water transportation the term includes any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce. This includes those vessels commonly called “ocean tramps,” “trampers,” or “tramp vessels.”

(2) Foreign Air Carrier. As used herein, the term “foreign air carrier” means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(b) Application of Tax.

(1) Common Carriers. The sale of tangible personal property, other than fuel and petroleum products, to common carriers, including foreign air carriers, is exempt from sales tax pursuant to section 6385(a) of the Revenue and Taxation Code when such property is:

(A) Shipped by the seller via the facilities of the purchasing carrier under a bill of lading, to an out-of-state point, and

(B) Actually transported by the common carrier to the out-of-state destination, pursuant to the bill of lading, over a route the California portion of which the purchasing carrier is authorized to transport cargo under common carrier rights, and

(C) Not put to use until after the transportation by the purchasing carrier to the out-of-state destination, and

(D) Used by the carrier in the conduct of its business as a common carrier.

(2) Foreign Air Carriers. The sale of tangible personal property, other than aircraft fuel and petroleum products, to foreign air carriers is exempt from sales tax pursuant to section 6385(b) of the Revenue and Taxation Code when such property is:

(A) Transported by the foreign air carrier to a foreign destination, and

(B) Not put to use until after the transportation by the purchasing foreign air carrier to the foreign destination, and

(C) Used by the foreign air carrier in the conduct of its business as a common carrier by air of persons or property.

(3) Fuel and Petroleum Products.

(A) Operative July 15, 1991, sales of fuel and petroleum products delivered to the purchasing carriers in California are subject to sales tax except as provided in paragraph (b)(3)(B) and (b)(3)(C) of this regulation. Sales tax applies notwithstanding the fact that the purchaser may issue a bill of lading to the seller and notwithstanding the fact that the seller may purport to reserve a title to the property until the property arrives at an out-of-state destination.

(B) Operative January 1, 1989, the sale, storage, use, or other consumption of, fuel or petroleum products is exempt from sales and use tax pursuant to section 6357.5 of the Revenue and Taxation Code when such property is:

1. sold to an air common carrier which holds a valid seller's permit or which has timely obtained a fuel exemption registration number,
2. for immediate consumption or shipment, and
3. shipped or consumed by the carrier in the conduct of its business as an air common carrier on a flight whose first destination is a foreign destination. Effective January 1, 1993, a flight which has an intermediate stop within the United States will qualify for the exemption if the final destination of that flight is a foreign destination.

For the period January 1, 1989 through December 31, 1992, the tax will not apply to the sale or use of fuel or petroleum products which are shipped or consumed on a flight to a foreign destination even though there is an intermediate stop at a point within the United States, provided no cargo, including mail, or passengers are loaded or discharged at such intermediate stop. The tax will not apply if crew members are loaded or discharged at such intermediate stop; however, the tax will apply if other airline personnel flying without charge (deadhead) are loaded or discharged. The tax also will not apply to fuel used on flights which are aborted for emergency purposes if such flights otherwise would have qualified for the exemption.

To qualify for the exemption, the sale of the fuel or other petroleum products must be for "immediate consumption or shipment."

A "sale" occurs when the purchaser takes either title to or possession of the fuel. "Immediate consumption or shipment" occurs when the delivery of fuel by the seller is directly to an aircraft for consumption in propulsion to a foreign destination or for transportation to a foreign destination and not for storage. Fuel is sold for storage, and not for immediate consumption or shipment, if title to the fuel passes to the purchaser while the fuel remains in storage facilities owned or leased by the seller. Fuel is sold for storage, and not for immediate consumption or shipment, if the fuel is transferred by the seller into a storage facility controlled by or leased to the purchaser or to any third party who takes delivery for the purchaser. Tax applies notwithstanding the contract of sale providing that the seller shall retain title to the fuel until the fuel is loaded onto the

aircraft. In such cases, any attempt by the seller to retain title is limited in effect to the reservation of a security interest.

To qualify for the exemption, a common carrier which is not otherwise required to hold a valid seller's permit shall be required to register with the Board and obtain a fuel exemption registration number. The fuel exemption registration number will be considered obtained timely if the purchasing carrier receives such registration number from the Board no later than 45 days after taking the fuel on board.

In the event that the federal exemption provided in Section 1309 of Title 19 of the United States Code, relating to supplies for certain vessels and aircraft, is repealed, this exemption also is repealed as of that date.

(C) For the period January 1, 1993 through December 31, 2002, and for the period April 1, 2004 through December 31, ~~2023~~2013, the sale of fuel and petroleum products is exempt from sales tax pursuant to section 6385(c) of the Revenue and Taxation Code when such property is:

1. Sold to a water common carrier who holds a valid seller's permit or who has timely obtained a fuel exemption registration number,
2. For immediate shipment outside this state,
3. Consumed by the water carrier in the conduct of its business as a common carrier after the first out-of-state destination.

The sales tax applies with respect to sales of fuel and petroleum products which will be consumed in a voyage from the California point where the fuel is taken on to the first destination outside of California.

For purposes of this subdivision (b)(3)(C), the term "first destination outside of California" means the first point reached outside this state by a water common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is ~~transferred~~bunkered, or docking fees are charged. The term also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

To qualify for the exemption, the "sale" of the fuel (or other petroleum product) must be for "immediate shipment". A "sale" occurs when the purchaser takes either title to or possession of the fuel. An "immediate shipment" occurs when the delivery of fuel by the seller is directly to a vessel for transportation outside this state and not for storage.

Fuel is sold for storage and not for immediate shipment, if title to the fuel passes to the purchaser while the fuel remains in storage facilities owned or leased by the seller.

Fuel is sold for storage, and not for immediate shipment, if the fuel is transferred by the seller into a storage facility controlled by or leased to the purchaser or to any third party who takes delivery for the purchaser. Tax applies notwithstanding the contract of sale provides that the seller shall retain title to the fuel until the fuel is loaded onto the vessel. In such cases, any attempt by the seller to retain title is limited in effect to the reservation of a security interest.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller into storage facilities maintained by a third party, the seller has contracted with the third party to store the fuel, and title does not pass to the purchaser until the fuel is loaded onto the vessel.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller to storage facilities maintained by a third party, even though the purchaser may have contracted with the third party to store the fuel, if the sale occurs when the fuel is loaded onto the vessel and the seller has the legal obligation to deliver the fuel to the purchaser's vessel. If the obligation of the seller to deliver the fuel is complete upon transfer of the fuel to the third party, then any retention or reservation of title to the fuel after such transfer is limited in effect to a reservation of a security interest, and the fuel will be regarded as having been delivered to the purchaser for storage and not for immediate shipment outside this state. A mere recital in the contract of sale that the delivery will occur at the vessel, or that the seller will retain title to the fuel until delivery at the vessel, is insufficient of itself to establish that delivery of the fuel by the seller is directly into the vessel.

In determining whether the delivery occurs at the vessel, and not upon transfer of the fuel to the third party, the board shall consider the following factors: whether the losses during storage are for the account of the seller; whether the seller has the right to remove the fuel from the storage facilities; whether the seller has the duty to remove the fuel from the storage facilities at the seller's expense should the seller's deliveries into the storage facilities exceed specified quantities, and whether the contract between the seller and purchaser is a requirements contract. The presence or absence of one or more factors is not conclusive.

A sale of fuel, otherwise qualifying as a sale for immediate shipment under the above rules, will qualify for the exemption even though the fuel is delivered to a fuel truck or barge from which the fuel is delivered directly into the vessel.

(c) Proof of Exemption.

(1) Common Carrier. Any seller claiming a transaction as exempt from sales tax under section 6385(a) must receive at the time of the transaction, and retain, a properly executed bill of lading, or copy thereof, pursuant to which the goods are shipped. The bill of lading must show the seller as consignor. It must indicate that the described goods are consigned to the common carrier at a specified destination outside this state. Where the form of the transaction is "freight collect," no specific freight charge need be shown on the bill of lading,

inasmuch as such charges are not ordinarily shown thereon in “freight collect” transactions. Furthermore, the carrier need not actually collect freight charges from itself. The form and language of the bill of lading should be similar to the form and language normally used where the purchaser and carrier are not the same. A bill of lading will be considered obtained at the time of the transaction if it is received either before the seller bills the purchaser for the property, within the seller’s normal billing and payment cycle, or upon delivery of the property to the purchaser.

In addition to a bill of lading, the seller must obtain from the purchaser prior to or at the time of the transaction, and retain, a certificate in writing that the property shall be transported and used in the manner described in subdivision (b)(1) of this regulation. The certificate shall be in substantially the same form as Certificate A or B, appearing in the appendix of this regulation. Certificate B may be used when multiple transactions claimed as exempt are made between a seller and a carrier and may be included as part of a transaction by reference to the certificate on the purchase order or other appropriate documentation for each transaction.

(2) Foreign Air Carrier. Any seller claiming a transaction as exempt from sales tax pursuant to section 6385(b) of the Revenue and Taxation Code must receive from the purchaser a certificate in writing that the property shall be transported and used in the manner described in section (b)(2) of this regulation. The certificate shall be in substantially the same form as Certificate C, appearing in the appendix to this regulation. Effective January 1, 1990, if a seller does not have a certificate on hand at the time the board requests it be made available for verification of a transaction claimed to be exempt from sales tax, the seller will have 45 calendar days from the date of the board’s written request to obtain the certificate from the purchasing foreign air carrier. A “blanket” certificate, i.e., one issued to cover future transactions, may be issued by a foreign air carrier and included as part of a transaction by reference to the certificate on the purchase order or other appropriate documentation for each transaction.

The provisions of (c)(3) and (d)(3) of this regulation shall apply with respect to sales of aircraft fuel and petroleum products to foreign air carriers.

(3) Fuel and Petroleum Products. Any seller claiming a transaction as exempt from sales tax pursuant to Section 6357.5 or 6385(c) of the Revenue and Taxation Code should timely obtain an exemption certificate in writing from the purchasing common carrier. The exemption certificate will be considered timely if obtained by the seller within the seller’s normal billing and payment cycle or within 45 days from the date of delivery, whichever is later. The exemption certificate must show either the purchaser’s seller’s permit number, or if the purchaser is not required to hold a seller’s permit, the purchaser’s fuel exemption registration number. The exemption certificate must conform in substance with one of the following, appearing in the appendix to this regulation.

(A) Certificate D is to be used for purchases of fuel or petroleum products within Section 6357.5 by air common carriers (including foreign air carriers) operating under authority from the Federal Aviation Administration. One certificate may be provided for each

regularly scheduled flight number which has a foreign destination as its final destination. Such certificate will remain valid until revoked in writing.

(B) Certificate E is to be used for purchases of fuel or petroleum products within Section 6385(c) by a steamship company which is a common carrier. This includes any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(d) Effect of Exemption Documents.

(1) Common Carriers. Copies of the bill of lading and supporting certificate described in (c)(1) of this regulation, accepted in good faith, constitute prima facie evidence of the facts entitling the seller to the exemption provided under section 6385(a) of the Revenue and Taxation Code.

Unless both of these documents are received and retained, the seller is liable for sales tax on the transaction.

(2) Foreign Air Carriers. A copy of the exemption certificate described in (c)(2) of this regulation, accepted in good faith, relieves the seller from liability for the sales tax.

(3) Fuel and Petroleum Products. A copy of the exemption certificate described in subdivision (c)(3) of this regulation, accepted timely in good faith, shall relieve the seller from liability for the sales tax on fuel and petroleum products delivered by the seller directly into a ship or an aircraft. If the seller does not obtain an exemption certificate, or does not obtain an exemption certificate within the time specified by paragraph (c)(3) of this regulation, the seller will be relieved of liability for the tax only if the seller presents satisfactory evidence that the sale met the requirements of Sections 6357.5 or 6385(c) of the Revenue and Taxation Code, including the requirement that the purchaser held a valid seller's permit at the time of the sale or a fuel exemption number with the Board at the time of sale or within 45 days after taking the fuel on board.

(e) Liability of Purchaser. A purchasing common carrier or foreign air carrier who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempted from sales tax under section 6357.5 or 6385 of the Revenue and Taxation Code, but uses the property in some other manner or for some other purpose, or fails to document the transportation of the property to the first out of state destination, is liable for sales tax under section 6357.5(h) or 6385(k) of the Revenue and Taxation Code.

A common carrier or foreign air carrier who gives a certification of exemption which entitles the seller to regard the gross receipts from the sale as exempt from sales tax under section 6357.5 of the Revenue and Taxation Code shall make available to the Board, upon request, records, including, but not limited to, a copy of a log abstract, an air waybill, or a cargo manifest, documenting its consumption or transportation of the fuel or petroleum product to a foreign destination and the amount claimed as exempt.

A foreign air carrier, who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempt from tax under section 6385(b) of the Revenue and Taxation Code must maintain records in this state, such as a copy of a bill of lading, an airway bill or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination and the amount claimed as exempt.

A common carrier who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempt from sales tax under Section 6385(c) of the Revenue and Taxation Code shall make available to the Board, upon request, records, including, but not limited to, a copy of a log abstract or a cargo manifest, documenting its transportation of the fuel or petroleum product to an out-of-state destination and the amount claimed as exempt.

A purchaser liable for tax under this paragraph (e) must report and pay the sales tax as if the purchaser were a retailer making a retail sale of the property at the time of the use or failure to provide supporting documentation. If the purchaser does not report and pay tax, the purchaser will be subject to a deficiency determination which will include applicable penalties and interest.

Note: Authority: Section 7051, Revenue and Taxation Code. Reference: Sections 6357.5 and 6385, Revenue and Taxation Code.

Appendix

CERTIFICATE A

CALIFORNIA SALES TAX EXEMPTION CERTIFICATE
SUPPORTING BILL OF LADING

Sales of tangible personal property free from sales tax under Section 6385(a) of the California Revenue and Taxation Code.

This is to certify, that the XYZ Company, the purchaser of the tangible personal property described herein, is a common carrier lawfully authorized and permitted to operate as such under the laws of the United States, having been issued (here insert permit or certificate number) by the (here insert name of agency issuing certificate or permit), that the personal property purchased exempt from sales tax reimbursement is to be shipped by the seller via the purchasing carrier's facilities under a bill of lading from (here insert point of origin) to (here insert point of destination), the out-of-state destination, for use by the XYZ Company in the conduct of its business as a common carrier, and that the XYZ Company is legally authorized to transport cargo under the aforementioned common carrier rights over the routes in or through this state by which it will transport the personal property.

This is also to certify that the property purchased will not be used to carry a payload or for any other purpose prior to its delivery at the destination point.

Description of property to be purchased:

Purchaser _____

By _____

Address _____

Date _____

CERTIFICATE B

CALIFORNIA BLANKET SALES TAX EXEMPTION
CERTIFICATE SUPPORTING BILL OF LADING

Sales of tangible personal property free from sales tax under Section 6385(a) of the California Revenue and Taxation Code.

(Name of Purchaser)

(Address of Purchaser)

This is to certify that the above named company is a common carrier lawfully authorized and permitted to operate as such under the laws of the United States; that the personal property for use in the conduct of our business as a common carrier to be purchased from _____

(Name of Vendor)

is to be shipped by the seller via our facilities under a bill of lading to an out-of-state destination using routes in or through the State of California over which we are legally authorized to transport cargo; that any property purchased from you for which a bill of lading is issued showing _____

(Name of Vendor)

as shipper and showing an out-of-state destination will not be used to carry a payload or for any other purpose prior to its delivery at the destination point shown on the bill of lading.

In the event any of the property purchased is used for any purpose prior to its delivery at the out-of-state destination, it is understood that the purchaser is required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property.

Description of property to be purchased:

Purchaser _____

By _____

Title _____

Date _____

CERTIFICATE C

CALIFORNIA SALES TAX EXEMPTION CERTIFICATE

Sales of tangible personal property to a foreign air carrier free from sales tax under Section 6385(b) of the California Revenue and Taxation Code.

This is to certify that the purchaser of tangible personal property described herein is a foreign air carrier as that term was defined in Section 1301 of Title 49 of the United States Code on January 1, 1980, and that the sale of tangible personal property to the purchaser is exempt from California state and local sales tax. The tangible personal property shall be or has been transported by the purchaser's facilities to a foreign destination for use by the purchaser in the conduct of its business as a common carrier by air of persons or property.

In the event any of such property is used for any purpose other than that specified in the certificate, it is understood that the purchaser is required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property.

Description of property to be purchased:

Purchaser _____

By _____

Address _____

Date _____

CERTIFICATE D

CALIFORNIA BLANKET SALES TAX EXEMPTION CERTIFICATE
SUPPORTING EXEMPT PURCHASES UNDER
SECTION 6357.5 - AIR COMMON CARRIERS

Sales of aviation fuel or petroleum products to an air common carrier (including a foreign air carrier) free of sales tax under Section 6357.5 of the California Revenue and Taxation Code.

1. Purchasing Common Carrier: _____
2. Fuel Exemption Registration No.
or Seller's Permit No. of Purchaser: _____
3. Flight No.: _____
4. Final Destination: _____
5. Airport Where Loaded: _____
6. Description of Property Purchased: _____

7. Retailer: _____

The undersigned certifies that the purchaser of the tangible personal property described above is an air common carrier or foreign air carrier lawfully operating as such, and that the aviation fuel or other petroleum product described above which is purchased exempt from sales tax is to be consumed on a flight to a foreign destination or shipped to a foreign destination for use by said Company in the conduct of its business as an air common carrier, and that the undersigned purchasing carrier is lawfully engaged in transporting persons or cargo as an air common carrier or foreign air carrier operating under authority of the Federal Aviation Administration.

In the event any of such property is used for any purpose other than that specified in this certificate, it is understood that the purchaser is required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. To qualify for the exemption a common carrier who is not otherwise required to hold a valid seller's permit must register with the Board and obtain a fuel exemption number no later than 45 days after taking the fuel on board.

This certificate will remain valid and in effect until revoked by the purchaser in writing. However, this certificate will not be valid for sales of fuel or other petroleum products loaded onto flights of which the seller is aware the final destination is not a foreign destination.

Purchaser: _____
(Company Name)

Signed By: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

CERTIFICATE E

EXEMPTION CERTIFICATE
SUPPORTING EXEMPT FUEL PURCHASES
UNDER SECTION 6385(c) - WATER CARRIERS

Sales of petroleum products free of sales tax under Section 6385(c) of the California Revenue and Taxation Code.

1. Purchasing Common Carrier: _____
2. Fuel Exemption Registration No.
or Seller's Permit No. of Purchaser: _____
3. Vessel Name: _____
4. Voyage No.: _____
5. Port of Loading: _____
6. Delivery Date: _____
7. First Out-of-State Destination: _____
8. Retailer of the Petroleum Product: _____
9. *Invoice No. of Purchase: _____
(*To be completed by retailer.)

ANALYSIS

	Fuel Oil Bunker C/ MDO/ HFO MGO (Metric Tons)	Other Petroleum Products (Gallons)
10. Quantity consumed to first out-of-state destination.	_____	_____
11. Quantity used while in port	_____	_____
12. Total of Lines 10 and 11 above.	_____	_____
13. Quantity on board on arrival at port.	_____	_____
14. Quantity subject to sales tax [Line 12 less Line 13. If Line 13 is more than Line 12, show zero (0).]	_____	_____
15. Quantity loaded this loading.	_____	_____
16. Quantity shown on Line 14 above.	_____	_____
17. Quantity exempt from sales tax (Line 15 less Line 16.)		

The undersigned certifies that it is a common carrier lawfully operating as such, and that the fuel oil or other petroleum products purchased exempt from sales tax reimbursement are to be shipped to an out-of-state destination for use by said Company in the conduct of its business as a common carrier, and that the undersigned purchasing carrier is lawfully engaged in transporting cargo as a common carrier over the route in this state by which it will transport the fuel oil or other petroleum products. In the event any of such property is used for any purpose other than that specified in the certificate, it is understood that the purchaser is required by the Sales and

Use Tax Law to report and pay tax, measured by the purchase price of such property. To qualify for the exemption, a common carrier who is not otherwise required to hold a valid seller's permit must register with the Board of Equalization and obtain a fuel exemption number no later than 45 days after taking the fuel on board.

Purchaser: _____
(Company Name)

Signed By: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

~~Note: Authority: Section 7051, Revenue and Taxation Code. Reference: Sections 6357.5 and 6385, Revenue and Taxation Code.~~

Tuesday, February 24, 2015

Action: Upon motion of Mr. Runner, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Capitola Mall Associates, LP, 681023

1998, \$5,297.07 Claim for Refund

Considered by the Board: May 22, 2014

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: (Motion Expunged)

Upon motion of Ms. Ma, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board ordered that its previous motion to sustain the action of the Franchise Tax Board be expunged.

Upon motion of Ms. Stowers, seconded by Ms. Ma and duly carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Ms. Harkey voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

OFFER-IN-COMPROMISE RECOMMENDATIONS

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 approved the Offer in Compromise Recommendations of *Nasira Begum* and *Syed Imitiaz Nawab*; *Susan Alice Bakewell*; *Barbara L. Brown*; *Sokwon Choe*; *Farmacia Remedios, Inc.*; *James Louis Lombardi*; *Lillian Lien Nguyen*; *Hilford Lloyd Phillips*; *Jose Alberto Rodriguez*; *Roxana Valdivia*; *Chin Long Robert Wang*; and, *In Ja Yoon*; as recommended by staff.

CHIEF COUNSEL MATTERS

RULEMAKING

Section 100 Changes

Sales and Use Tax Regulation 1621, *Sales to Common Carriers*

Robert Tucker, Tax Counsel, Tax and Fee's Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to Regulation 1621, *Sales to Common Carriers*, to make it consistent with revisions to section 6385 of the Revenue and Taxation Code effective September 11, 2012 (Exhibit 2.14).

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 approved authorization to make Rule 100 changes to Regulation 1621, *Sales to Common Carriers* as recommended by staff.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

5901 GREEN VALLEY CIRCLE

CULVER CITY, CALIFORNIA

REPORTER'S TRANSCRIPT

FEBRUARY 24, 2015

CHIEF COUNSEL MATTERS

J RULEMAKING SECTION 100 CHANGES

J1 SALES AND USE TAX REGULATION 1621

SALES TO COMMON CARRIERS

Reported by: Juli Price Jackson

No. CSR 5214

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-Chairman

Fiona Ma, CPA
Member

Diane L. Harkey
Member

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

Joann Richmond
Chief, Board
Proceedings Division

---oOo---

For Staff:

Robert Tucker
CEA
Legal Department

---oOo---

1 5901 GREEN VALLEY CIRCLE
2 CULVER CITY, CALIFORNIA
3 FEBRUARY 24, 2015

4 ---oOo---

5 MR. HORTON: Ms. Richmond.

6 MS. RICHMOND: Our next item is a Chief
7 Counsel matter, item J, Rulemaking, there's a
8 Section 100 change, item J1, Sales and Use Tax
9 Regulation 1621, Sales to Common Carriers.

10 MR. HORTON: Welcome to the Board.
11 Mr. Tucker, is this your first time before the
12 Board?

13 Just kidding.

14 MR. TUCKER: Maybe, first time today.
15 Good evening, Chairman and veterans.

16 MR. HORTON: Seasoned veteran. Thank you,
17 sir.

18 MR. TUCKER: I'm Bob Tucker from the
19 Board's Legal Department.

20 And I'm here to request the Board vote to
21 authorized staff to complete the Section 100 change
22 to the Sales and Use Tax Regulation 1621, sales of
23 common carriers.

24 The change --

25 MR. HORTON: Go ahead.

26 MR. TUCKER: -- the change makes the
27 regulation consistent with the 2012 amendments to
28 Revenue and Taxation Code 6385 made by Senate

1 Bill 1243, which extended the sunset date from
2 January 1st, 2014 to January 1st, 2024.

3 It also updated the definition of first
4 out-of-state definition and made reformatting
5 changes to the exemption certificates.

6 MR. HORTON: It also reflects the items in
7 Senate Bill 805?

8 MR. TUCKER: I'm -- I don't believe -- I
9 would have to check. I'm not aware that it does.

10 I believe it --

11 MR. HORTON: 805, I believe, extended the
12 sunset. Well, let's just say extended the sunset.

13 MR. TUCKER: -- it extended the sunset,
14 yes.

15 MR. HORTON: We've already phrased that,
16 we'll accept that.

17 And is there a motion, Members?

18 MS. STOWERS: So moved.

19 MR. HORTON: Moved by Member Stowers to
20 adopt staff recommendation.

21 Second by Member Harkey.

22 Without objection, Members, such will be
23 the order.

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, JULI PRICE JACKSON, Hearing Reporter for
the California State Board of Equalization certify
that on FEBRUARY 24, 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: March 3, 2015

Juli Price Jackson

JULI PRICE JACKSON
Hearing Reporter

