

Regulations 1597

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1597

Index

1. *Form 400 and Proposed Regulation 1597*
2. *Addendum to Statement of Explanation*
3. *Statement of Explanation*
4. *Assembly Bill No. 1486*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 01/05/10*
- B. *Approved Minutes, 01/27/10*
- C. *BOE "Section 100 Change" Recommendation*
- D. *Reporters Transcript, 01/27/10*

NOTICE PUBLICATION/REGULATION

COMMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

NO SUBSTANTIVE

NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-0201-CIN	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		
2010 FEB -1 AM 11:07 OFFICE OF ADMINISTRATIVE LAW		
NOTICE	REGULATIONS	

ENDORSED FILED
IN THE OFFICE OF

2010 MAR 16 PM 1:34

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	AGENCY FILE NUMBER (if any)
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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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE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) Property Transferred or Sold by Certain Nonprofit Organizations	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)				
<table border="1"> <tr> <td rowspan="3">SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</td> <td>ADOPT</td> </tr> <tr> <td>AMEND 1597</td> </tr> <tr> <td>REPEAL</td> </tr> </table>	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	AMEND 1597	REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT		
		AMEND 1597		
	REPEAL			
TITLE(S) 18				

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <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) _____

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 Rick 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>Diane G. Olson</i>	DATE February 1, 2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 16 2010

Office of Administrative Law

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1597. Property Transferred or Sold by Certain Nonprofit Organizations.

(a) In General. Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370 of the Revenue and Taxation Code provide that certain organizations are consumers and not retailers of specified kinds of tangible personal property under certain conditions. The subsections which follow describe the organizations and the kind of tangible personal property involved.

(b) Flags Sold by Nonprofit Veterans' Organizations. . . . (unchanged).

(c) Prisoners of War Bracelets Transferred by Charitable Organizations. . . . (unchanged).

(d) Handcrafted or Artistic Tangible Personal Property Sold by Certain Qualified Organizations. . . . (unchanged).

(e) Food Products, Nonalcoholic Beverages and Other Tangible Personal Property Sold by Nonprofit Youth Organizations. . . . (unchanged).

(f) Tangible Personal Property Sold by Certain Nonprofit Organizations. . . . (unchanged).

(g) Resale Certificates: Obligations of Persons Who Sell to Consumers. . . . (unchanged).

(h) Taxable Sales of Tangible Personal Property by or Through Nonprofit Organizations. . . . (unchanged).

(i) Transfer of Tangible Personal Property to Members. From April 1, 2010, until January 1, 2015, an organization described under Section 501(c) of the Internal Revenue Code (26 U.S.C.A.) is the consumer of tangible personal property transferred to its members, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

(4) The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370, Revenue and Taxation Code; and Scholastic Book Clubs, Inc. v. State Board of Equalization (1989) 207 Cal. App. 3d 734.

RECEIVED

MAR 17 2010

State of California
Office of Administrative Law

Board Proceedings

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1597

Repeal sections:

NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT

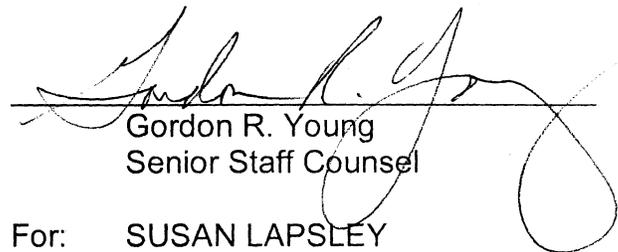
California Code of Regulations, Title 1,
Section 100

OAL File No. 2010-0201-01 N

This Section 100 Change Without Regulatory Effect codifies in a new subsection (i) the provisions of Revenue and Taxation Code section 6018.9 (A.B. 1486 (Chap. 538, Stats. 2009)). The statutory provisions codified in regulation here "provide that a membership organization, as described in Section 501(c) of the Internal Revenue Code, is the consumer, and not a retailer, of tangible personal property meeting certain requirements that it provides to its members, so that the retail sale subject to tax is the sale of tangible personal property to the membership organization", until January 1, 2015.

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

Date: 3/16/2010



Gordon R. Young
Senior Staff Counsel

For: SUSAN LAPSLEY
Director

Original: Ramon Hirsig
Copy: Richard Bennion

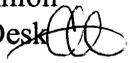
OFFICE OF ADMINISTRATIVE LAW

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



SUSAN LAPSLEY
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk 
DATE: 3/17/2010
RE: Return of Approved Rulemaking Materials
OAL File No. 2010-0201-01N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2010-0201-01N regarding Property Transferred or Sold by Certain Nonprofit Organizations).

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 file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

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 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

CALIFORNIA REGULATORY NOTICE REGISTER 2010, VOLUME NO. 13-Z

stantive clarifying amendments for seller's permits, technical amendments, and addition of several reference citations.

Title 18
California Code of Regulations
AMEND: 1699
Filed 03/17/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0201-01
BOARD OF EQUALIZATION
Property Transferred or Sold by Certain Nonprofit Organizations

This Section 100 Change Without Regulatory Effect codifies in a new subsection (i) the provisions of Revenue and Taxation Code section 6018.9 (A.B. 1486 (Chap. 538, Stats. 2009)). The statutory provisions codified in regulation here "provide that a membership organization, as described in Section 501(c) of the Internal Revenue Code, is the consumer, and not a retailer, of tangible personal property meeting certain requirements that it provides to its members, so that the retail sale subject to tax is the sale of tangible personal property to the membership organization" until January 1, 2015.

Title 18
California Code of Regulations
AMEND: 1597
Filed 03/16/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0129-01
CALIFORNIA GAMBLING CONTROL
COMMISSION

Assistance to Bingo Players with Disabilities

This is the certification of compliance for regulations first adopted as emergency regulations on May 18, 2009, to oblige operators of bingo games to provide specified kinds of assistance to players with disabilities.

Title 4
California Code of Regulations
ADOPT: 12482
Filed 03/15/2010
Agency Contact: James Allen (916) 263-4024

File# 2010-0311-01
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This regulatory action expands the quarantine area for the Light Brown Apple Moth (LBAM) (*Epiphyas postvittana*) in the following counties: Marin, Sonoma

and San Luis Obispo. This regulatory action adds a new quarantine area in the Stockton area of San Joaquin County and a new area in the Woodland area of Yolo County.

Title 3
California Code of Regulations
AMEND: 3434(b)
Filed 03/15/2010
Effective 03/15/2010
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2010-0301-02
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This regulatory action expands the quarantine area for the Light Brown Apple Moth (LBAM) (*Epiphyas postvittana*) in the following counties: Contra Costa, Marin, Monterey, Napa, Solano, Sonoma, Los Angeles, and San Luis Obispo. It also establishes a new quarantine area of approximately 25 square miles in the Kenwood area of Sonoma county.

Title 3
California Code of Regulations
AMEND: 3434(b)
Filed 03/10/2010
Effective 03/10/2010
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2010-0218-04
DEPARTMENT OF FOOD AND AGRICULTURE
Oriental Fruit Fly Interior Quarantine

This regulatory action establishes approximately 84 square miles in the La Verne area of Los Angeles County as a quarantine area for the Oriental fruit fly ("*Bactrocera dorsalis*").

Title 3
California Code of Regulations
AMEND: 3423(b)
Filed 03/17/2010
Effective 03/17/2010
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2010-0126-02
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Eradication Area

Department of Food and Agriculture filed this timely certificate of compliance action to make permanent the amendment to title 3, California Code of Regulations, sec. 3591.20(a) adopted as an emergency in OAL File Nos. 2009-0617-05 E and 2009-1214-02EE. The amendment added San Joaquin County as an additional

Regulation 1597

Section 100

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3. *Statement of Explanation*
4. *Assembly Bill No. 1486*

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

NONSUBSTANTIVE

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-0201-01N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		2010 FEB -1 AM 11:07	
OFFICE OF ADMINISTRATIVE LAW			
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) Property Transferred or Sold by Certain Nonprofit Organizations		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S)		AMEND	
18		1597	
		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 30th day after filing with Secretary of State	<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) _____
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 Rick 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>Diane G. Olson</i>	DATE February 1, 2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1597. Property Transferred or Sold by Certain Nonprofit Organizations.

(a) In General. Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370 of the Revenue and Taxation Code provide that certain organizations are consumers and not retailers of specified kinds of tangible personal property under certain conditions. The subsections which follow describe the organizations and the kind of tangible personal property involved.

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(c) Prisoners of War Bracelets Transferred by Charitable Organizations. . . . (unchanged).

(d) Handcrafted or Artistic Tangible Personal Property Sold by Certain Qualified Organizations. . . . (unchanged).

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(f) Tangible Personal Property Sold by Certain Nonprofit Organizations. . . . (unchanged).

(g) Resale Certificates: Obligations of Persons Who Sell to Consumers. . . . (unchanged).

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(i) Transfer of Tangible Personal Property to Members. From April 1, 2010, until January 1, 2015, an organization described under Section 501(c) of the Internal Revenue Code (26 U.S.C.A.) is the consumer of tangible personal property transferred to its members, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

(4) The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370, Revenue and Taxation Code; and Scholastic Book Clubs, Inc. v. State Board of Equalization (1989) 207 Cal. App. 3d 734.

Addendum to
Statement of Explanation for
Changes to Title 18. Public Revenue

Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*

I. April 1, 2010, Operative Date

Statutes 2009, chapter 538 (Assem. Bill No. 1486 (2009-10 Reg. Sess.)), was approved by the Governor and filed with the Secretary of State on October 11, 2009. Chapter 538, section 1, added Revenue and Taxation Code section (section) 6018.9 to “provide that a membership organization, as described in Section 501(c) of the Internal Revenue Code, is the consumer, and not a retailer, of tangible personal property meeting certain requirements that it provides to its members, so that the retail sale subject to tax is the sale of tangible personal property to the membership organization,” until January 1, 2015. (Legislative Counsel Digest.) Chapter 538, section 3, states that “This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.” Therefore, the provisions of section 6018.9 went into effect on October 11, 2009, however, the provisions of section 6018.9 will not become operative until April 1, 2010, the beginning of the first calendar quarter commencing more than 90 days after section 6018.9’s effective date.¹ As such, chapter 538 required the State Board of Equalization (Board) to include the April 1, 2010, operative date in the text of the proposed Rule 100 (Cal. Code Regs., tit. 1, § 100) changes to Regulation 1597, which incorporated the provisions of section 6018.9.

II. Meaning of Reasonable Steps

The Administrative Procedure Act (APA) requires the Board to draft regulations “in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style.” (Gov. Code, § 11346.2.) In addition, the APA requires that Board regulations be written with sufficient “clarity” so that “the meaning of regulations will be easily understood by those persons directly affected by them.” (Gov. Code, §§ 11349 and 11349.1.)

Section 6018.9, subdivision (a), provides that:

(a) An organization described in Section 501(c) of the Internal Revenue Code is a consumer of, and shall not be considered a retailer within the provisions of this part for purposes of any transfer of, tangible personal property to its members, as defined in Section 5056 of the Corporations Code, if the following requirements are met:

¹ The first day of the first calendar quarter commencing after section 6018.9’s effective date was January 1, 2010, however, January 1, 2010, was less than 90 days after section 6018.9’s October 11, 2009, effective date.

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) *Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.*

(4) *The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.* (Emphasis added.)

Therefore, the Board incorporated all of the statutory requirements for a 501(c) organization to be considered the consumer for purposes of a transfer of tangible personal property to its members into the text of the proposed Rule 100 changes to Regulation 1597, including the requirement that a 501(c) organization take “reasonable steps . . . to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.”

The Board has determined that the use of the phrase “reasonable steps” in the proposed Rule 100 changes is consistent with the Legislature’s use of the phrase in section 6018.9 and is sufficiently clear so that the meaning of the proposed changes will be easily understood by those persons directly affected by them, namely 501(c) organizations and their members. This is because the word “reasonable” has been commonly defined as “using or showing reason, or sound judgment; sensible” and this well accepted common meaning is sufficient for purposes of understanding the meaning of section 6018.9 and Regulation 1597. (*Webster’s New World College Dictionary* (3rd Ed. 1996), p. 1118.) This is because the term “reasonable” is used in several Board adopted sales and use tax regulations without further clarification and its use has not led to unnecessary confusion. For example, Regulation 1507 refers to “reasonable charges” and “reasonable fair market value”; Regulations 1521 and 1525.3 refer to a “reasonable profit”; Regulation 1525.2 refers to a “reasonable time period”; Regulation 1540 refers to a “reasonable” price and a “reasonable mark-up”; Regulation 1603 refers to a “reasonable” segregation of taxable and nontaxable charges and “reasonable charges”; Regulation 1628 refers to “reasonable charges”; Regulation 1655 refers to a “reasonable number of attempts” to repair a vehicle; Regulation 1703 refers to an “unreasonable error or delay”; and Regulation 1705 refers to “reasonable reliance.” This is also because the United States Supreme Court discussed the phrase “reasonable steps” in *Jones v. Flowers* (2006) 547 U.S. 220, 225-227, and concluded that the meaning of the phrase depended upon the specific facts and circumstances of each case.

III. Meaning of Organized Political Campaigning or Issue Advocacy

As previously indicated, the Board incorporated all of the statutory requirements for a 501(c) organization to be considered the consumer for purposes of a transfer of tangible personal property to its members into the text of the proposed Rule 100 changes to Regulation 1597. This also included the requirement that the “tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.” The Board has determined that the phrase “organized political campaigning or issue advocacy” in the proposed Rule 100 changes is consistent with the Legislature’s use of the phrase in section 6018.9. The Board has also determined that the phrase is sufficiently clear so that the meaning of the proposed changes will be understood by those persons directly affected by them, namely 501(c) organizations and their members, because the operative terms can be defined by reference to California case law and California statutes regulating political campaigns.

In *Governor Gray Davis Committee v. American Taxpayers Alliance* (2002) 102 Cal. App. 4th 449, 466, the California Court of Appeal interpreted the phrase “issue advocacy” to refer to actions that advocate for the support or opposition of specific identified issues, as opposed to advocating for or against the election of a specific candidate, in part by reference to two earlier cases, *McCauley v. Howard Jarvis Taxpayers Association* (1998) 68 Cal. App. 4th 1255, and *Buckley v. Valeo* (1976) 424 U.S. 1. Furthermore, California law defines and regulates organized political campaigns under the Government Code and California Election Code and both codes use the term “campaign” to refer to regulated activities that advocate for or against a particular candidate for elected office, a ballot measure, or a local agency formation proposal. (See e.g., Elec. Code, § 304 defining “campaign advertising or communication” and the provisions of the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.) requiring the filing of campaign statements.) Therefore, the Board believes that the meaning of the phrase “organized political campaigning or issue advocacy” is sufficiently clear so that the meaning of the proposed changes will be easily understood by those persons directly affected by them, namely 501(c) organizations and their members.

Furthermore, the Board believes that it must determine whether “tangible personal property is distributed for purposes of organized political campaigning or issue advocacy” on a case-by-case basis because the determination depends upon the facts and circumstances of each case. Therefore, the Board does not believe there is a need to limit the statutory terms at this time and feels that it must implement the statute, apply the statutory test to numerous factual situations, and then see if there is in fact any need for further clarification.

IV. Necessity and Authority for Rule 100 Changes

The Board is proposing to change Regulation 1597 pursuant to Rule 100 because the Board has determined that it is necessary to bring Regulation 1597 into conformity with the current provisions of section 6018.9 before the provisions of section 6018.9 become operative on April 1, 2010. The Board has also determined that time is of the essence and that it cannot delay bringing Regulation 1597 into conformity with the current provisions of section 6018.9 because section 6018.9's provisions are scheduled to sunset in less than five years.

In addition, even if the Board believed that the phrase "reasonable steps" and/or the phrase "organized political campaigning or issue advocacy" needed further clarification, which it currently does not, it would be prohibited from including such clarification in the proposed Rule 100 changes because the additional provisions would likely have some regulatory effect. Furthermore, section 6018.9 is not operative yet. So, even if we assumed that the phrase "reasonable steps" and/or the phrase "organized political campaigning or issue advocacy" needed further clarification before they could be incorporated into the California Code of Regulations, which the Board does not believe, it would be difficult for the Board to provide such clarification at this time. Therefore, the Board would probably have to postpone bringing Regulation 1597 into conformity with section 6018.9 until:

- The Board and 501(c) organizations apply section 6018.9's provisions to a sufficient universe of steps that might be taken to ensure that none of the organizations' members are allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person so that the Board could classify that universe of steps as reasonable or unreasonable under the circumstances; and/or
- The Board can study the ways that 501(c) organizations can distribute tangible personal property for purposes of "organized political campaigning or issue advocacy" in order to draft additional regulatory language clarifying the types of distributions that are prohibited by section 6018.9, subdivision (a)(4).

As a result, the Board has determined that it is necessary to complete the proposed Rule 100 changes at this time. However, the Board will monitor the situation and will take appropriate remedial actions, including commencing a separate rulemaking action to further define the phrases "reasonable steps" and/or "organized political campaigning or issue advocacy," if necessary to resolve actual² confusion that arises in the future.

² The Board discussed and authorized Board staff to complete the proposed Rule 100 changes to Regulation 1597 during the discussion of item J4 at the Board's January 27, 2010, public meeting. The proposed Rule 100 changes were made available to the public at least 10 days in advance of the meeting, as part of the Board's Public Agenda Notice available at http://www.boe.ca.gov/meetings/pdf/012610_PAN_January_Sacramento.pdf, and the Board's Public Agenda Notice advised interested persons that they could attend the meeting and comment on item J4. However, no interested persons submitted written comments or asked to make oral comments during the discussion of item J4. Therefore, the public has not asked the Board to clarify any of the provisions included in the proposed Rule 100 changes to Regulation 1597.

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

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*

A. Factual Basis

Statutes 2009, chapter 538 (Assem. Bill No. 1486 (2009-10 Reg. Sess.)), section 1, added Revenue and Taxation Code section 6018.9, to “provide that a membership organization, as described in Section 501(c) of the Internal Revenue Code, is the consumer, and not a retailer, of tangible personal property meeting certain requirements that it provides to its members, so that the retail sale subject to tax is the sale of tangible personal property to the membership organization,” until January 1, 2015. (Legislative Counsel Digest.) Section 6018.9 expressly provides that:

6018.9.

(a) An organization described in Section 501(c) of the Internal Revenue Code is a consumer of, and shall not be considered a retailer within the provisions of this part for purposes of any transfer of, tangible personal property to its members, as defined in Section 5056 of the Corporations Code, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

(4) The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.

(b) This section shall remain in effect only until January 1, 2015, and as of that date is repealed.

Therefore, the State Board of Equalization (Board) proposes to add subdivision (i) to California Code of Regulation, title 18, section (Regulation) 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*, to read as follows pursuant to California Code of Regulations, title 1, section (Rule) 100, to conform to the current provisions of Revenue and Taxation Code section 6018.9. In addition, the Board proposes to add citations to Revenue and Taxation Code section 6018.9 to Regulation 1597, subdivision (a), and Regulation 1597's reference note.

The changes to Regulation 1597 are appropriate for processing under Rule 100 because the changes are without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to bring Regulation 1597 into conformity with the current provisions of Revenue and Taxation Code section 6018.9.

B. Proposed Amendments

The Board proposes to amend Regulation 1597 to read as follows:

Regulation 1597. Property Transferred or Sold by Certain Nonprofit Organizations.

(a) In General. Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370 of the Revenue and Taxation Code provide that certain organizations are consumers and not retailers of specified kinds of tangible personal property under certain conditions. The subsections which follow describe the organizations and the kind of tangible personal property involved.

(b) Flags Sold by Nonprofit Veterans' Organizations. . . . (unchanged).

(c) Prisoners of War Bracelets Transferred by Charitable Organizations. . . . (unchanged).

(d) Handcrafted or Artistic Tangible Personal Property Sold by Certain Qualified Organizations. . . . (unchanged).

(e) Food Products, Nonalcoholic Beverages and Other Tangible Personal Property Sold by Nonprofit Youth Organizations. . . . (unchanged).

(f) Tangible Personal Property Sold by Certain Nonprofit Organizations. . . . (unchanged).

(g) Resale Certificates: Obligations of Persons Who Sell to Consumers. . . . (unchanged).

(h) Taxable Sales of Tangible Personal Property by or Through Nonprofit Organizations. . . . (unchanged).

(i) Transfer of Tangible Personal Property to Members. From April 1, 2010, until January 1, 2015, an organization described under Section 501(c) of the Internal Revenue Code (26 U.S.C.A.) is the consumer of tangible personal property transferred to its members, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

(4) The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370, Revenue and Taxation Code; and Scholastic Book Clubs, Inc. v. State Board of Equalization (1989) 207 Cal. App. 3d 734.

Assembly Bill No. 1486

CHAPTER 538

An act to add and repeal Section 6018.9 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1486, Furutani. Sales and use taxes: consumer: nonprofit membership organizations.

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, with certain exceptions, defines a retailer as a seller who makes any retail sale of tangible personal property and as a person who makes more than 2 retail sales of tangible personal property during any 12-month period, and defines a retail sale as a sale of tangible personal property for any purpose other than resale in the regular course of business.

This bill would, until January 1, 2015, provide that a membership organization, as described in Section 501(c) of the Internal Revenue Code, is the consumer, and not a retailer, of tangible personal property meeting certain requirements that it provides to its members, so that the retail sale subject to tax is the sale of tangible personal property to the membership organization.

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 the Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these taxes. 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 local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

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

SECTION 1. Section 6018.9 is added to the Revenue and Taxation Code, to read:

6018.9. (a) An organization described in Section 501(c) of the Internal Revenue Code is a consumer of, and shall not be considered a retailer within the provisions of this part for purposes of any transfer of, tangible personal property to its members, as defined in Section 5056 of the Corporations Code, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

(4) The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.

(b) This section shall remain in effect only until January 1, 2015, and as of that date is repealed.

SEC. 2. 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. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

Memorandum

To : Mr. Ramon J. Hirsig
Executive Director, MIC:73

Date: January 7, 2010

From : Kristine Cazadd, Chief Counsel,
Legal Department, MIC:83



Subject : Regulation 1597, *Property Transferred or Sold by Certain
Nonprofit Organizations*
Chief Counsel's Rulemaking Calendar
Board Meeting—January 27, 2010

Statutes 2009, chapter 538 (Assem. Bill No. 1486 (2009-10 Reg. Sess.)), section 1, added Revenue and Taxation Code section 6018.9 to provide that, until January 1, 2015, an organization described in Section 501(c) of the Internal Revenue Code is a consumer, and not a retailer, of tangible personal property transferred to its members, as defined, if certain conditions are met. To incorporate the new statutory provisions, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1597 on the Chief Counsel's Rulemaking Calendar for January 27, 2010, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. The revisions add new subdivision (i) to Regulation 1597 and add citations to Revenue and Taxation Code section 6018.9 to Regulation 1597, subdivision (a), and Regulation 1597's reference note. The changes are appropriate for processing under Rule 100 because they make the regulation consistent with a statutory change.

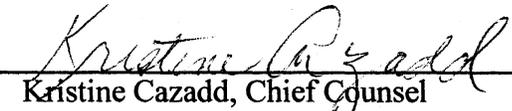
Attached is the Statement of Explanation, which includes a detailed description of the proposed changes to Regulation 1597 and a strikeout and underlined version of the regulation.

Item J
1/27/10

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 324-2657.

Recommendation by:

Approved:



Kristine Cazadd, Chief Counsel
Director



Ramon J. Hirsig, Executive

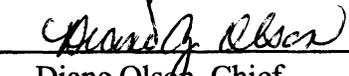
Approved:

BOARD APPROVED

At the 1/27/10 Board Meeting



Randie L. Henry, Deputy Director
Sales and Use Tax Department



Diane Olson, Chief
Board Proceedings Division

Attachments

- cc: Ms. Randie L. Henry (MIC 43)
- Ms. Diane Olson (MIC 80)
- Mr. Randy Ferris (MIC 82)
- Mr. Bradley M. Heller (MIC 82)
- Mr. Jeffrey L. McGuire (MIC 92)
- Mr. Geoffrey E. Lyle (MIC 50)
- Ms. Leila Hellmuth (MIC 50)
- Ms. Cecilia Watkins (MIC 50)

Regulation 1597. PROPERTY TRANSFERRED OR SOLD BY CERTAIN NONPROFIT ORGANIZATIONS

Reference: Sections 6018.9, 6359.3, 6360, 6361, 6361.1, and 6370, Revenue and Taxation Code.

(a) IN GENERAL. Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370 of the Revenue and Taxation Code provide that certain organizations are consumers and not retailers of specified kinds of tangible personal property under certain conditions. The subsections which follow describe the organizations and the kind of tangible personal property involved.

(b) FLAGS SOLD BY NONPROFIT VETERANS' ORGANIZATIONS. Any nonprofit veterans' organization is a consumer of and shall not be considered a retailer of flags of the United States which it sells where the profits are used solely and exclusively in furtherance of the purpose of the organization.

(c) PRISONERS OF WAR BRACELETS TRANSFERRED BY CHARITABLE ORGANIZATIONS. Any charitable organization qualifying for the welfare exemption from property taxation under Section 214 of the Revenue and Taxation Code is the consumer of bracelets designed to commemorate American prisoners of war, which it distributes, whether or not a contribution is made to such organization, where the profits are used solely and exclusively in furtherance of the purposes of such organization.

(d) HANDCRAFTED OR ARTISTIC TANGIBLE PERSONAL PROPERTY SOLD BY CERTAIN QUALIFIED ORGANIZATIONS. Any organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C.A.); which, as its primary purpose, provides services to individuals with developmental disabilities or, effective August 3, 1995, to children with severe emotional disturbances, and which does not discriminate on the basis of race, sex, nationality, or religion is the consumer and not the retailer of any tangible personal property sold by them if all of the following conditions are met:

(1) The tangible personal property is of a handcrafted or artistic nature and is designed, created, or made by individuals with developmental disabilities or, effective August 3, 1995, by children with severe emotional disturbances, who are members of, or receive services from, the qualified organization.

(2) The price of each item of tangible personal property sold does not exceed twenty dollars (\$20), or ten dollars (\$10) if sold prior to August 3, 1995.

(3) The qualified organization's sales are made on an irregular or intermittent basis.

(4) The qualified organization's profits from the sales are used exclusively in furtherance of the purposes of the organization.

(e) FOOD PRODUCTS, NONALCOHOLIC BEVERAGES AND OTHER TANGIBLE PERSONAL PROPERTY SOLD BY NONPROFIT YOUTH ORGANIZATIONS.

(1) A qualified youth organization is the consumer and not the retailer of food products, nonalcoholic beverages, and tangible personal property created by members of the organization which are sold on an irregular or intermittent basis provided the profits from such sales are used solely and exclusively in the furtherance of the purpose of the organization.

(A) "Qualified youth organization" means and includes:

1. any nonprofit organization which qualifies for tax-exempt status under Section 501(c) of the Internal Revenue Code (26 U. S. C. A.); which provides a supervised program of competitive sports for youth or promotes good citizenship in youth as its primary purpose; and which does not discriminate on the basis of race, sex, nationality, or religion, or

2. any youth group or club sponsored by or affiliated with a qualified educational institution, including but not limited to any student activity group, e.g., debating team, swimming team, band, or choir.

(B) "Qualified educational institution" means and includes:

1. any public elementary, secondary, or vocation-technical school which provides education for either kindergarten; grades 1 through 12, inclusive; or college or university undergraduate programs, or any part thereof, or

2. any nonprofit private school which provides education programs for either kindergarten; grades 1 through 12, inclusive; or college or university undergraduate programs, or any part thereof. Nonprofit private school educational programs must meet the requirements of the State Department of Education and must satisfy the requirements of state and local laws governing private educational institutions in effect on January 1, 1990. The term does not include a nonprofit private school which otherwise qualifies but which discriminates on the basis of race, sex, nationality, or religion. For example, a youth group sponsored by a private school which has enrollment open only to females is not a "qualified youth organization."

(C) "Irregular or intermittent" is defined to mean sales made at particular events, such as fairs, galas, parades, scout-a-ramas, games, and similar activities, which are not conducted on a regularly scheduled basis. Sales made at refreshment stands or booths at scheduled events of organized youth sports leagues are considered made on an "irregular or intermittent" basis; however, sales made in storefront or mobile retail outlets which ordinarily require local business licenses do not qualify.

(2) The following organizations are "qualified youth organizations" and are consumers, not retailers, of tangible personal property under the circumstances described in paragraph (e)(1):

Little League, Bobby Sox, Boy Scouts, Cub Scouts, Girl Scouts, Campfire, Inc., formerly Campfire Girls, Young Men's Christian Association, Young Women's Christian Association, Future Farmers of America, Future Homemakers of America, 4-H Clubs, Distributive Education Clubs of America, Future Business Leaders of America, Vocational Industrial Clubs of America, Collegiate Young Farmers, Boys' Clubs, Girls' Clubs, Special Olympics, Inc., American Youth Soccer Organization, California Youth Soccer Association, North, California Youth Soccer Association, South, and Pop Warner Football.

(f) TANGIBLE PERSONAL PROPERTY SOLD BY CERTAIN NONPROFIT ORGANIZATIONS. The following organizations are consumers and not retailers of any tangible personal property sold by them if the profits from such sales are used exclusively in the furtherance of the purposes of the organization:

(1) Nonprofit parent-teacher associations chartered by the California Congress of Parents, Teachers, and Students, Incorporated, and equivalent organizations performing the same type of service for public or private schools and authorized to operate within the school by the governing authority of the school.

(2) Nonprofit associations commonly called Friends of the Library, and equivalent organizations performing auxiliary services to any library district, municipal library, or county library in the state, which are authorized to operate within the library by the governing authority of the library.

(3) Nonprofit parent cooperative nursery schools.

(g) RESALE CERTIFICATES: OBLIGATIONS OF PERSONS WHO SELL TO CONSUMERS. An organization classed as a consumer under this regulation may not give a resale certificate with respect to the property it transfers.

All persons, other than organizations classed as consumers, who make sales of tangible personal property not otherwise exempt, should report tax on their sales unless the purchasers furnish resale certificates which can be accepted in good faith.

It will be presumed that all sales of tangible personal property not otherwise exempt, by organizations not classed as consumers, for delivery in this state to purchasers who do not furnish resale certificates which the seller accepts in good faith are subject to sales tax or that the seller is obligated to collect use tax from the purchasers.

(h) TAXABLE SALES OF TANGIBLE PERSONAL PROPERTY BY OR THROUGH NONPROFIT ORGANIZATIONS. A nonprofit organization is treated as a consumer of tangible personal property it may sell under circumstances described in subdivisions (d), (e) and (f) of this regulation. In other cases, a nonprofit organization is

regarded as a retailer of property it sells to consumers, or it is regarded as an agent of the companies which furnish the property to it for delivery to consumers.

When a nonprofit organization solicits orders, collects payments, and distributes tangible personal property for a supplier, it is considered to be the agent of that supplier. Accordingly, the supplier, not the organization, is the retailer of the merchandise sold. This is true unless documentation establishes that the nonprofit organization is buying and selling for its own account. The nonprofit organization is presumed to be buying and selling on its own account if all of the following factors are present: 1) the organization solicits the orders from the public in its own name; 2) the organization collects the sale price from the customer in its own name; 3) the organization is responsible for and pays the supplier for the merchandise; and 4) the contract between the organization and the supplier clearly identifies the fact the organization will purchase and resell the products to its customers. If it is selling for its own account, the nonprofit organization will be required to obtain a permit and will be considered the retailer, unless the supplier has been classified by the Board as a retailer under Revenue and Taxation Code Section 6015 or the nonprofit organization is classified under subdivisions (d), (e) and (f) of this regulation.

If the supplier is a 6015 retailer, the supplier must pay the tax and the organization does not need a seller's permit. The measure of tax is the amount charged to the consumer. When this price is unknown by the supplier, tax will apply to the suggested retail selling price. If the nonprofit organization is classified as a consumer under subdivisions (d), (e) and (f) of this regulation, the supplier will calculate tax measured by the selling price to the nonprofit organization.

(i) TRANSFER OF TANGIBLE PERSONAL PROPERTY TO MEMBERS. From April 1, 2010, until January 1, 2015, an organization described under Section 501(c) of the Internal Revenue Code (26 U.S.C.A.) is the consumer of tangible personal property transferred to its members, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

(4) The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.

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

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*

A. Factual Basis

Statutes 2009, chapter 538 (Assem. Bill No. 1486 (2009-10 Reg. Sess.)), section 1, added Revenue and Taxation Code section 6018.9, to “provide that a membership organization, as described in Section 501(c) of the Internal Revenue Code, is the consumer, and not a retailer, of tangible personal property meeting certain requirements that it provides to its members, so that the retail sale subject to tax is the sale of tangible personal property to the membership organization,” until January 1, 2015. (Legislative Counsel Digest.) Section 6018.9 expressly provides that:

6018.9.

(a) An organization described in Section 501(c) of the Internal Revenue Code is a consumer of, and shall not be considered a retailer within the provisions of this part for purposes of any transfer of, tangible personal property to its members, as defined in Section 5056 of the Corporations Code, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

(4) The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.

(b) This section shall remain in effect only until January 1, 2015, and as of that date is repealed.

Therefore, the State Board of Equalization (Board) proposes to add subdivision (i) to California Code of Regulation, title 18, section (Regulation) 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*, to read as follows pursuant to California Code of Regulations, title 1, section (Rule) 100, to conform to the current provisions of Revenue and Taxation Code section

6018.9. In addition, the Board proposes to add citations to Revenue and Taxation Code section 6018.9 to Regulation 1597, subdivision (a), and Regulation 1597's reference note.

The changes to Regulation 1597 are appropriate for processing under Rule 100 because the changes are without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to bring Regulation 1597 into conformity with the current provisions of Revenue and Taxation Code section 6018.9.

B. Proposed Amendments

The Board proposes to amend Regulation 1597 to read as follows:

Regulation 1597. Property Transferred or Sold by Certain Nonprofit Organizations.

(a) In General. Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370 of the Revenue and Taxation Code provide that certain organizations are consumers and not retailers of specified kinds of tangible personal property under certain conditions. The subsections which follow describe the organizations and the kind of tangible personal property involved.

(b) Flags Sold by Nonprofit Veterans' Organizations. . . . (unchanged).

(c) Prisoners of War Bracelets Transferred by Charitable Organizations. . . . (unchanged).

(d) Handcrafted or Artistic Tangible Personal Property Sold by Certain Qualified Organizations. . . . (unchanged).

(e) Food Products, Nonalcoholic Beverages and Other Tangible Personal Property Sold by Nonprofit Youth Organizations. . . . (unchanged).

(f) Tangible Personal Property Sold by Certain Nonprofit Organizations. . . . (unchanged).

(g) Resale Certificates: Obligations of Persons Who Sell to Consumers. . . . (unchanged).

(h) Taxable Sales of Tangible Personal Property by or Through Nonprofit Organizations. . . . (unchanged).

(i) Transfer of Tangible Personal Property to Members. From April 1, 2010, through January 1, 2015, an organization described under Section 501(c) of the Internal Revenue Code (26 U.S.C.A.) is the consumer of tangible personal property transferred to its members, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

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Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370, Revenue and Taxation Code; and Scholastic Book Clubs, Inc. v. State Board of Equalization (1989) 207 Cal. App. 3d 734.

Wednesday January 27, 2010

Property Tax Rule 312, *Hearings Record*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete a Rule 100 change to Property Tax Rule 312 to update a reference to the Code of Civil Procedure. (Exhibit 1.4.)

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Property Tax Rule 312, *Hearings Record*, as recommended by staff.

Sales and Use Tax Regulation 1699, *Permits*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to Regulation 1699 to incorporate the provisions of newly enacted Revenue and Taxation Code section 6225 regarding the registration of qualified purchasers. (Exhibit 1.5.)

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Sales and Use Tax Regulation 1699, *Permits*, as recommended by staff.

Sales and Use Tax Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to Regulation 1597 to incorporate the provisions of newly enacted Revenue and Taxation Code section 6018.9 pertaining to the requirements for 501(c) organizations to be consumers of property transferred to their members. (Exhibit 1.6.)

Mr. Heller reported that in the description of this item, the Public Agenda Notice erroneously referenced "501(c)(3)" and should have referenced "501(c)" instead.

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Sales and Use Tax Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*, as recommended by staff.

BOARD OF EQUALIZATION
REGULATORY ACTION IN ACCORDANCE
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 1597

REASON FOR CHANGE (check those applicable)

- renumbering, reordering, or relocating regulatory provision
- deleting regulatory provision for which all statutory or constitutional authority has been repealed
- deleting regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a US District Court located in the State of California, the US Court of Appeals for the Ninth Circuit, or the US Supreme Court
- revising structure, syntax, cross-reference, grammar, or punctuation
- changing an "authority" or "reference" citation
- making consistent with changed California statute if (A) provision is inconsistent with and superseded by changed statute; and (B) Board has no discretion to adopt a change which differs in substance from this proposal

Therefore, I recommend that these amendments be submitted to OAL as a change without regulatory effect and without public hearing.

Prepared by L. Hellmuth for C. Watkins Date 1/4/2010

Approvals
Division Chief [Signature] Date 1/4/2010

Deputy Director [Signature] Date 1-5-2010

Assistant Chief Counsel [Signature] Date 1/5/10

Chief Counsel [Signature] Date 1/6/10

Chief, Board Proceedings [Signature] Date 1/7/10

INSTRUCTIONS:
After approval, forward to next on list. In the event of disapproval, return to preparer.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

JANUARY 27, 2010

ITEM J4

CHIEF COUNSEL MATTERS

RULEMAKING

SECTION 100 CHANGES

Reported by: Beverly D. Toms

CSR # 1662

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P R E S E N T

For the Board
of Equalization:

Betty Yee
Chair

Jerome E. Horton
Vice-Chair

Bill Leonard
Member

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Diane Olson
Chief, Board
Proceedings Division

Board of Equalization
Staff:

Bradley Heller
Legal Department

---oOo---

1 Sacramento, California

2 January 27, 2010 .

3 ---oOO---

4 MS. OLSON: And our next item is J4, Sales and
5 Use Tax Regulation 1597, Property Transferred or Sold by
6 Certain Nonprofit Organizations.

7 MR. HELLER: And again staff is here to request
8 authorization to complete Rule 100 changes -- excuse me,
9 to complete Rule 100 changes to Regulation 1597, to
10 incorporate newly enacted Revenue and Taxation Code
11 6018.9. And that is a provision allowing nonprofit
12 organizations to be the consumers of tangible personal
13 property transferred to their members under certain
14 specified conditions.

15 And I wanted to point out that there is a -- a
16 typo in the -- in the public agenda notice, and it
17 should just refer to the requirements for a 501(c)
18 organization. The typo added the "3", which is a -- is
19 specifically certain types of charitable organizations.

20 But the statutory authorization and the Rule
21 100 amendments are broader and they apply to all 501(c)
22 organizations.

23 MS. YEE: Okay. Very well.

24 MR. HORTON: So moved.

25 MR. LEONARD: So you weren't trying to narrow
26 the new law then?

27 MR. HELLER: I was not. I think -- I don't
28 know. Somehow we just added a 3, I think.

1 MS. YEE: Okay. Motion by Mr. Horton to
2 authorize the Rule 100 change.

3 Is there a second?

4 MS. MANDEL: Second.

5 MR. HORTON: Second.

6 MS. YEE: Second by Ms. Mandel.

7 Without objection that motion carries.

8 Thank you.

9 ---oOo---

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REPORTER'S CERTIFICATE.

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2
3 State of California)
4) ss
5 County of Sacramento)
6

7 I, BEVERLY D. TOMS, Hearing Reporter for the
8 California State Board of Equalization certify that on
9 January 27, 2010 I recorded verbatim, in shorthand, to
10 the best of my ability, the proceedings in the
11 above-entitled hearing; that I transcribed the shorthand
12 writing into typewriting; and that the preceding 4
13 pages constitute a complete and accurate transcription
14 of the shorthand writing.
15

16 Dated: February 4, 2010.
17
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19
20

21 _____
22 BEVERLY D. TOMS
23 Hearing Reporter
24
25
26
27
28