

Rulemaking File Index  
Title 18. Public Revenue  
Sales and Use Tax  
Regulation 1685.5 *Calculation of Estimated Use Tax – Use Tax Table*

*OAL Approval*

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RECEIVED

AUG 18 2011

State of California  
Office of Administrative Law

by EXECUTIVE DIRECTOR'S OFFICE  
STATE BOARD OF EQUALIZATION

In re:  
Board of Equalization

NOTICE OF APPROVAL OF REGULATORY  
ACTION

Regulatory Action:

Government Code Section 11349.3

Title 18, California Code of Regulations

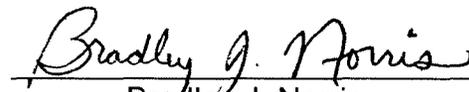
OAL File No. 2011-0729-01 S

Adopt sections: 1685.5  
Amend sections:  
Repeal sections:

In this regulatory action, the Board of Equalization (Board) implements Revenue and Taxation Code section 6452.1, as amended in Senate Bill 86, Statutes of 2011, Chapter 14. Revenue and Taxation Code section 6452.1 requires the Board to annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to the Franchise Tax Board such amounts in the form of a use tax table. The proposed regulation sets forth the use tax table for calendar year 2011, prescribes the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income for calendar year 2012 and subsequent years, and prescribes the format of the use tax tables the Board must make available to the Franchise Tax Board each year.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 9/15/2011.

Date: 8/16/2011



Bradley J. Norris  
Senior Staff Counsel

For: DEBRA M. CORNEZ  
Assistant Chief Counsel/  
Acting Director

Original: Kristine Cazadd  
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**  
Assistant Chief Counsel/Acting Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk   
DATE: 8/17/2011  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2011-0729-01S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2011-0729-01S regarding Calculation of Estimated Use Tax - Use Tax Table).

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 30<sup>th</sup> 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

STD. 400 (REV. 01-09)

OAL FILE NUMBERS <b>Z-</b>	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER <b>2011-0729-015</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED FILED  
IN THE OFFICE OF

2011 AUG 16 PM 2:44

2011 JUL 29 P 2:33  
OFFICE OF  
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER <b>2011, 187</b>	PUBLICATION DATE <b>5/6/2011</b>

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

1a. SUBJECT OF REGULATION(S) Calculation of Estimated Use Tax - Use Tax Table	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 1685.5 AMEND REPEAL
TITLE(S) 18	
3. TYPE OF FILING	
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____	
7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130
FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov

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

DATE

29 July 2011

TYPED NAME AND TITLE OF SIGNATORY

Diane G. Olson, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

AUG 16 2011

Office of Administrative Law

Final Text of  
California Code of Regulations, Title 18, Section 1685.5

**Section 1685.5. Calculation of Estimated Use Tax - Use Tax Table.**

**(a) In General.**

The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

**(b) Definitions and Data Sources.**

(1) AGI Ranges. The use tax table shall be separated into eight (8) AGI ranges as follows:

(A) AGI less than \$20,000;

(B) AGI of \$20,000 to \$39,999;

(C) AGI of \$40,000 to \$59,999;

(D) AGI of \$60,000 to \$79,999;

(E) AGI of \$80,000 to \$99,999;

(F) AGI of \$100,000 to \$149,999;

(G) AGI of \$150,000 to \$199,999;

(H) AGI more than \$199,999.

(2) Use Tax Liability Factor or Use Tax Table Percentage. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On May 1, 2012, and each May 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on electronic and mail order purchases for the preceding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) Total Personal Income. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) Total Spending at Electronic Shopping and Mail Order Houses. Total spending at electronic shopping and mail order houses shall be determined by reference to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) Percentage of Income Spent on Electronic and Mail Order Purchases. The percentage of income spent on electronic and mail order purchases during a calendar year shall be calculated by dividing the total spending at electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(6) Average State, Local, and District Sales and Use Tax Rate. The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

(c) Calculation of the Estimated Use Tax Liability.

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying \$10,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through (G) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(H) shall be determined by multiplying each range member's actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(d) Use Tax Table Format.

(1) The use tax table for calendar year 2011 shall provide as follows:

<u>Adjusted Gross Income (AGI) Range</u>	<u>Use Tax Liability</u>
<u>Less Than \$20,000</u>	<u>\$7</u>
<u>\$20,000 to \$39,999</u>	<u>\$21</u>
<u>\$40,000 to \$59,999</u>	<u>\$35</u>
<u>\$60,000 to \$79,999</u>	<u>\$49</u>
<u>\$80,000 to \$99,999</u>	<u>\$63</u>
<u>\$100,000 to \$149,999</u>	<u>\$88</u>
<u>\$150,000 to \$199,999</u>	<u>\$123</u>
<u>More than \$199,999 -Multiply AGI by 0.070% (.0007)</u>	

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as the use tax table for calendar year 2011.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6452.1, Revenue and Taxation Code.

# Memorandum

To : Brad Norris  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

Date: August 15, 2011

From : Richard Bennion  
Regulations Coordinator  
Board Proceedings Division, MIC: 80

Subject : *OAL File No. 2011-0729-01S*  
*Regulation 1685.5, Calculation of Estimated Use Tax – Use Tax Table*

The Office of Administrative Law (OAL) is authorized to make the following substitutions and corrections in connection with the above-referenced rulemaking file:

1. At the beginning of the file, OAL is authorized to replace page two of the rulemaking file index.

If you have any questions or comments, please notify me at (916) 445-2130 or email at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) .

REB



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0080  
916-445-2130 • FAX 916-324-3984  
www.boe.ca.gov

BETTY T. YEE  
First District, San Francisco

SEN. GEORGE RUNNER (Ret.)  
Second District, Lancaster

MICHELLE STEEL  
Third District, Rolling Hills Estates

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

KRISTINE CAZADD  
Interim Executive Director

July 29, 2011

Debra M. Cornez  
Assistant Chief Counsel/Acting Director  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

Re: Sales and Use Tax Regulation 1685.5, Calculation of Estimated Use Tax – Use Tax Table

The State Board of Equalization (BOE) is submitting the rulemaking file for the adoption of Sales and Use Tax Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, for your review. We are also requesting that the Office of Administrative Law (OAL) expedite its review of the rulemaking file and inform the BOE of its determination by Wednesday, August 31, 2011, approximately seven business days before the statutory deadline.

The BOE's Legal Department gave OAL's Acting Director, Debra Cornez, advance notice of the request on Monday, June 27, 2011. At that time, the BOE's Legal Department explained that the request would be forthcoming because the BOE and the Franchise Tax Board (FTB) need to know if the 2011 use tax table set forth in Regulation 1685.5, subdivision (d)(1), can be included in the instructions to the FTB's 2011 income tax returns, which are scheduled to and need to be sent out for publication and incorporation into electronic return preparation software on Thursday, September 1, 2011.

Thank you for considering the BOE's request. We appreciate any help OAL can provide to the BOE in meeting the FTB's publication deadline and ensuring that the provisions of Revenue and Taxation Code section 6452.1, subd. (d)(2)(A)(i)(II) (enacted March 23, 2011) are fully implemented for calendar year 2011.

Please call me at (916) 322-9569 if you have any questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "Diane G. Olson".

Diane G. Olson, Chief  
Board Proceedings Division

DGO:reb  
cc: file

ing and Cosmetology Act and for violations of specified rules and regulations adopted by the Board, pursuant to Business and Professions Code sections 7406 and 7407.

Title 16  
 California Code of Regulations  
 AMEND: 974  
 Filed 08/17/2011  
 Effective 09/16/2011  
 Agency Contact: Kevin Flanagan (916) 575-7104

File# 2011-0729-01  
**BOARD OF EQUALIZATION**  
 Calculation of Estimated Use Tax — Use Tax Table

In this regulatory action, the Board of Equalization (Board) implements Revenue and Taxation Code section 6452.1, as amended in Senate Bill 86, Statutes of 2011, Chapter 14. Revenue and Taxation Code section 6452.1 requires the Board to annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to the Franchise Tax Board such amounts in the form of a use tax table. The regulation sets forth the use tax table for calendar year 2011, prescribes the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income for calendar year 2012 and subsequent years, and prescribes the format of the use tax tables the Board must make available to the Franchise Tax Board each year.

Title 18  
 California Code of Regulations  
 ADOPT: 1685.5  
 Filed 08/16/2011  
 Effective 09/15/2011  
 Agency Contact:  
 Richard E. Bennion (916) 445-2130

File# 2011-0706-01  
**BOARD OF PILOT COMMISSIONERS**  
 Duties of Port Agents

This action amends one regulation governing the duties of a Port Agent by adding requirements to report suspected pilot misconduct or violations of these regulations or the Harbors and Navigation Code to the existing reporting mandate. It further specifies the required content of the report and the sequence of authorities the Port agent is to report to.

Title 7  
 California Code of Regulations  
 AMEND: 218  
 Filed 08/16/2011  
 Effective 09/15/2011  
 Agency Contact: Terri Toohey (916) 768-5638

File# 2011-0629-02  
**CALIFORNIA ALTERNATIVE ENERGY AND  
 ADVANCED TRANSPORTATION FINANCING  
 AUTHORITY**  
 SB 71 Sales and Use Tax Exclusion Program

The California Alternative Energy and Advanced Transportation Financing Authority adopted a certificate of compliance for emergency regulations sections 10030, 10031, 10032, 10033, 10034, 10035, and 10036 in title 4 of the California Code of Regulations which implement the advanced transportation and alternative source manufacturing sales and use tax exclusion program.

Title 4  
 California Code of Regulations  
 ADOPT: 10030, 10031, 10032, 10033, 10034,  
 10035, 10036, 10037  
 Filed 08/10/2011  
 Effective 09/28/2011  
 Agency Contact: Deana Carrillo (916) 657-5052

File# 2011-0801-02  
**CALIFORNIA HIGHWAY PATROL**  
 Conflict-of-Interest Code

The California Highway Patrol is amending its conflict of interest code found at title 13, section 1800, California Code of Regulations. The amendment was approved for filing by the Fair Political Practices Commission on July 27, 2011.

Title 13  
 California Code of Regulations  
 AMEND: 1800  
 Filed 08/16/2011  
 Effective 09/15/2011  
 Agency Contact:  
 Jonathan S. Rothman (916) 843-3050

File# 2011-0729-03  
**CALIFORNIA POLLUTION CONTROL  
 FINANCING AUTHORITY**  
 Capital Access Program for Small Business

This is a hybrid certification of emergencies and a regular rulemaking due to a lapsed emergency action (OAL File No. 2010-1117-04E). The California Capital Access Loan Program contracts with financial institutions to make loans available to small businesses that fall just outside of most conventional underwriting standards. (Health & Safety Code section 44559.2) These regulatory amendments primarily expand access to the benefits of CalCAP primarily by increasing the Qualified Loan size and Qualified Business size. In addition, the Authority is making the changes to conform the state program to changes in federal guidelines

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Title 18. Public Revenue  
Sales and Use Tax  
Regulation 1685.5 *Calculation of Estimated Use Tax – Use Tax Table*

1. [Final Statement of Reasons](#)
2. [Updated Informative Digest](#)
3. [Business Tax Committee Minutes, April 26, 2011](#)
  - Minutes
  - BTC Agenda
  - Exhibit 1 Text of Proposed regulation
  - Exhibit 2 US Spending at ESMOH
  - Exhibit 3 Personal Income and Its Disposition
  - Exhibit 4 Revenue Estimate
  - Memo dated April 15, 2011
  - Public Comment, Robert Gutierrez, Research Analyst, California Taxpayers Association
4. [Reporter’s Transcript Business Taxes Committee, April 26, 2011](#)
5. [Estimate of Cost or Savings, April 29, 2011](#)
6. [Economic and Fiscal Impact Statements, April 25, 2011](#)
7. [Notice of Publications](#)
  - Form 400 and notice, Publication Date May 6, 2011
  - Notice
  - Proposed Text of Regulation 1685.5
  - Email sent to Interested Parties, May 6, 2011
  - CA Regulatory Notice Register 2011, Volume No. 18-Z
8. [Notice to Interested Parties, May 6, 2011](#)

The following items are exhibited:

  - Notice of Hearing
  - Initial Statement of Reasons
  - Proposed Text of Regulation 1685.5
  - Regulation History
9. [Statement of Compliance](#)
10. [Senate Bill 86](#)
11. [Public Comment Candy Messer, Affordable Bookkeeping and Payroll Services, May 9, 2011](#)
12. [Public Comment Katherine Craig, May 18, 2011](#)
13. [Public Comment Gene Johnson, June 13, 2011](#)

14. [Public Comment: Gina Rodriguez, Vice President of State Tax Policy, California Taxpayers Association, June 20, 2011](#)
15. [Reporter's Transcript, Item F1, June 21, 2011](#)
16. [Alternative Table for ABx1 Memo Dated June 20, 2011](#)
17. [Draft Minutes, June 21, 2011, and Exhibits](#)
  - Notice of Proposed Regulatory Action
  - Initial Statement of Reasons
  - Proposed Text of Regulation 1685.5
  - Regulation History
18. [Notice of Continuation, June 30, 2011](#)
19. [Reporter's Transcript, Item F1, July 26, 2011](#)
20. [Draft Minutes, July 26, 2011, and Exhibits](#)
  - Notice of Continuation, June 30, 2011
  - Notice of Proposed Regulatory Action
  - Initial Statement of Reasons
  - Proposed Text of Regulation 1685.5
  - Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on July 29, 2011 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

July 29, 2011

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

Richard E. Bennion  
Regulations Coordinator  
State Board of Equalization

**Final Statement of Reasons for  
Adoption of California Code of Regulations,  
Title 18, Section 1685.5,  
*Calculation of Estimated Use Tax - Use Tax Table***

Update of Information in the Initial Statement of Reasons

The State Board of Equalization (Board) held a public hearing regarding the proposed adoption of California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*, on June 21, 2011, and continued the public hearing on July 26, 2011. The Board received written comments from Gina Rodriguez, Vice President of Tax Policy for the California Taxpayers Association (CalTax), regarding the adoption of proposed Regulation 1685.5, and Gina Rodriguez also made oral comments regarding the adoption of proposed Regulation 1685.5 during the continued public hearing on July 26, 2011. The Board received written comments and questions regarding the adoption of proposed Regulation 1685.5 from Gene Johnson. The Board also received inquiries from members of the general public, such as Candy Messer and Katherine Craig, via email and telephone, as to whether the Board was seeking to impose a new tax on Californians by adopting proposed Regulation 1685.5. At the conclusion of the continued public hearing on July 26, 2011, the Board voted to adopt Regulation 1685.5, pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, without making any changes. The Board determined that it was necessary to adopt Regulation 1685.5 for the specific purposes of implementing, interpreting, and making specific the provisions of RTC section 6452.1 providing that “the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” and prescribing the use tax table for calendar-year 2011. The Board considered Gina Rodriguez’s and Gene Johnson’s comments prior to the adoption of proposed Regulation 1685.5, and Gina Rodriguez’s comments, Gene Johnson’s comments and questions, and Candy Messer’s and Katherine Craig’s questions are summarized and responded to below.

The factual basis, specific purposes, and necessity for the adoption of proposed Regulation 1685.5 are the same as provided in the Initial Statement of Reasons.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting proposed Regulation 1685.5 that was not identified in the Initial Statement of Reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

The Board did consider an alternative 2011 use tax table that Senator George Runner (Ret.), Board Member for Board of Equalization District 2, asked Board staff to prepare for potential inclusion in subdivision (d)(1) of proposed Regulation 1685.5. However, by

its motion on April 26, 2011, proposing the adoption of Regulation 1685.5 and its motion on July 26, 2011, adopting the proposed regulation without any changes, the Board determined that no alternative to the text of proposed Regulation 1685.5 considered by the Board would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would lessen the adverse economic impact on small businesses. The alternative 2011 use tax table and the Board's reasons for rejecting the alternative 2011 use tax table are summarized below.

Furthermore, the adoption of the proposed regulation will not impose any new taxes, and it will not change any exemptions or exclusions, as explained in the Initial Statement of Reasons. Therefore, the Board has determined that the adoption of proposed Regulation 1685.5 will not have a significant adverse economic impact on business.

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

The Board has determined that the adoption of proposed Regulation 1685.5 does not impose a mandate on local agencies or school districts.

#### Public Comments and Questions

In her June 20, 2011, letter, Gina Rodriguez expressed CalTax's recommendation that the Board reject proposed Regulation 1685.5. In her letter, Gina Rodriguez questioned whether the Board needed to adopt a regulation to implement, interpret, and make specific the use tax table provisions of RTC section 6452.1 and whether the Board needed to include the 2011 use tax table in the regulation. She expressed concern that the Board's rulemaking timeline did not give CalTax adequate time to vet its concerns, and she expressed CalTax's opinion that the 2011 use tax table prescribed by proposed Regulation 1685.5, subdivision (d)(1), overstates a taxpayer's use tax liability. She also said that the 2011 use tax table prescribed by the proposed regulation is inaccurate because it estimates that a person with \$1 of adjusted gross income may have a \$7 use tax liability.

In addition, Gina Rodriguez attached an April 25, 2011, letter from Robert Gutierrez, Research Analyst for CalTax, to Board Chairman Jerome Horton to her June 20, 2011, letter. In the April 25, 2011, letter, Robert Gutierrez expressed his desire that the Board conduct interested parties meetings to further discuss the methodology used to develop proposed Regulation 1685.5. He stated that he thought the Board should use different percentages to estimate the use tax liabilities for consumers in different income ranges, and he thought the Board should do more to take differing local use tax rates into account when estimating use tax liabilities. He also stated that he thought the statewide use tax rate may decline on July 1, 2011, and that he thinks the 2011 use tax table prescribed by Regulation 1685.5 does not take this rate change into account.

During the continued July 26, 2011, public hearing, Gina Rodriguez stated that CalTax now understands why the Board needs to adopt a regulation to implement, interpret, and

make specific the use tax table provisions of RTC section 6452.1, but that CalTax still questions the need to prescribe the specific 2011 use tax table in a regulation. She expressed CalTax's opinions that the 2011 use tax table prescribed by Regulation 1685.5, subdivision (d)(1), should take into account the effect of Assembly Bill No. 28X (2011-2012 1<sup>st</sup>. Ex. Sess.) (ABx1 28), that Regulation 1685.5 should estimate that lower income consumers owe a higher amount of use tax as a percentage of their adjusted gross income than higher income consumers because the sales and use tax is essentially a regressive tax, that the Board's use tax tables should have more adjusted gross income ranges, and that the Board's use tax tables should somehow allow consumers to use varying district use tax rates to determine their estimated use tax liabilities. She expressed some concern that the Board might impose a double tax if a taxpayer reports its estimated use tax using the Board's look-up table. She also asked how the Board would allocate reported estimated use tax among state, local, and district use taxes.

Gene Johnson's June 13, 2011, email asked why the Board's Initial Statement of Reasons says that the Board has determined that the adoption of proposed Regulation 1685.5 "will not have a significant adverse economic impact on business," but also states that the adoption of the proposed regulation "may affect small business." The email suggests that the Board simply adopt an estimated use tax percentage that consumers can multiply by their adjusted gross income to estimate their use tax liabilities, rather than a use tax table, and that the Board adopt a de minimis exemption from use tax for consumers with small use tax liabilities. The email asks whether the proposed regulation should specify who may or may not use the Board's use tax tables to estimate their use tax liabilities. The email also asks whether the Board is precluded from assessing additional use tax when a consumer reports his or her estimated use tax liability and that amount is less than the consumer's actual use tax liability.

Furthermore, the Board received inquiries from members of the general public, such as Candy Messer and Katherine Craig, via email and telephone, as to whether the Board was seeking to impose a new tax on Californians by adopting proposed Regulation 1685.5.

#### Responses to Public Comments and Questions

First, the Board does not have the authority to impose new taxes via a regulation and the adoption of proposed Regulation 1685.5 will not impose any new taxes, as explained in the Initial Statement of Reasons. The Board is adopting proposed Regulation 1685.5 to prescribe the use tax table that eligible consumers may, but are not required, to use to estimate their calendar-year 2011 use taxes based upon their adjusted gross incomes, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year, as explained above and in the Initial Statement of Reasons.

Second, the Board did not have adequate time to conduct interested parties meetings before initiating the formal rulemaking process to adopt proposed Regulation 1685.5 because:

- The use tax table provisions were added to RTC section 6452.1 on March 23, 2011;
- The Board needed to adopt a 2011 use tax table and forward it to the FTB for inclusion in the instructions to the FTB's 2011 income tax returns by the July 30, 2011, deadline specified in RTC section 6452.1; and
- The FTB needs to know that the 2011 use tax table adopted by the Board has been approved by OAL by September 1 and will be effective for use with 2011 income tax returns so that the FTB can include the 2011 use tax table in the instructions to its 2011 income tax returns, which will be sent out for publication and incorporation into return preparation software on September 1, 2011.

However, the Board has already scheduled interested parties meetings to discuss whether the Board needs to amend Regulation 1685.5 before the July 30, 2012, deadline, in which it is required to estimate consumers' 2012 use tax liabilities based upon their adjusted gross incomes and prepare a 2012 use tax table for transmission to the FTB.

Third, the Board does not believe that the 2011 use tax table overestimates consumers' use tax liabilities based upon their adjusted gross incomes. Proposed Regulation 1685.5 prescribes a reasonable methodology for estimating consumers' use tax liabilities based upon their adjusted gross income ranges using a "use tax liability factor" determined by:

1. Multiplying the percentage of income spent on electronic and mail order purchases for the preceding calendar year, as determined by the United States Census Bureau, by 0.37, which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers; and
2. Multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

The Board believes that this methodology provides a reasonably accurate estimate of California consumers' use tax liabilities based upon the assumptions that California consumers spend an average percentage of their incomes on electronic and mail order purchases and that they also make an average percentage of their total purchases of tangible personal property for use in California from unregistered out-of-state retailers. The Board recognizes that a particular consumer's actual use tax liability may be higher or lower than the consumer's estimated use tax liability as determined using the methodology in the proposed regulation, however, that would be the case with any reasonable estimate.

Fourth, the 2011 use tax table prescribed by subdivision (d)(1) of proposed Regulation 1685.5 uses a "use tax liability factor" that was generally computed in accordance with

the methodology prescribed in subdivision (b) of the regulation. However, the Board was aware that the statewide sales and use tax rate would decrease by 1 percent effective July 1, 2011. As such, the Board used the average of the statewide sales and use tax rates effective before and after July 1, 2011, as the rate of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.), for the purpose of calculating the use tax liability factor for the 2011 use tax table, which will apply to use taxes incurred between January 1, 2011, and December 31, 2011. Therefore, the 2011 use tax table prescribed by proposed Regulation 1685.5 does take the July 1, 2011, rate change into account. And, it was necessary for the Board to incorporate the entire 2011 use tax table into the proposed regulation in order for that table to employ an average statewide use tax rate for calendar year 2011.

Fifth, the Board understands that the rate of district taxes varies throughout the state. However, the Board's estimated use tax table is intended to make it more convenient for consumers to report their use taxes by allowing them to report estimated amounts determined by reference to their adjusted gross income ranges. It also eliminates the need for consumers to calculate their actual use tax liabilities by determining the total "sales price" of all the tangible personal property they purchased from unregistered out-of-state retailers for use in California, determining their cumulative state, local, and district use tax rates, and then multiplying their total sales prices by their cumulative use tax rates. Therefore, the Board decided to create one statewide use tax table for each year and to simplify its use tax table by incorporating a weighted average rate of district taxes into the "use tax liability factor" prescribed by proposed Regulation 1685.5. Otherwise, the Board would be required to adopt a separate use tax table for each cumulative state, local, and district use tax rate in effect in California. This would cause further inconvenience for consumers by requiring that they look-up their own cumulative use tax rates and estimate their use taxes using the use tax table that corresponds with their cumulative use tax rates. Reported estimated use tax will first be allocated to local and district taxes and the remainder will be allocated to state use tax. Local use taxes are imposed in accordance with the uniform rates specified in RTC sections 7203 and 7203.1.

Sixth, the Board understands that a person with no adjusted gross income can incur a \$7 use tax liability if the person makes sufficient purchases of tangible personal property for use in California from unregistered out-of-state retailers using income that is excluded from the calculation of the person's adjusted gross income, the person's savings, borrowed funds, and/or money received as a gift. For example, if a consumer with no adjusted gross income receives a \$100 cash gift, that person could incur an actual \$7.75 use tax liability by making a single \$100 purchase of tangible personal property for use in California from an unregistered out-of-state retailer, assuming a 7.75 percent cumulative state, local, and district use tax rate applies and that the use of the property is not exempt from use tax.

Seventh, ABx1 28 was not signed into law until the middle of 2011 and the Board has not documented any noticeable increase in the number of out-of-state retailers registered with

the Board to collect California use tax since the enactment of ABx1 28, which is described in more detail below. Therefore, the Board does not believe that proposed Regulation 1685.5 needs to be amended to take into account the revenue the Legislature estimated that the Board would collect due to the enactment of ABx1 28. However, the Board will continue to monitor the effect of ABx1 28 and may consider amending Regulation 1685.5 if it does have a relevant effect on the behavior of out-of-state retailers.

Eighth, the Board did not have enough time and data to determine whether the Board's use tax tables should estimate that lower income consumers owe a higher amount of use tax as a percentage of their adjusted gross income than higher income consumers or whether the Board needs to add more adjusted gross income ranges to its use tax tables. Therefore, Board staff has already committed to specifically discussing whether the Board's use tax tables should estimate that lower income consumers owe a higher amount of use tax as a percentage of their adjusted gross income than higher income consumers and whether the Board needs to add more adjusted gross income ranges to its use tax tables during the interested parties meetings to discuss whether the Board needs to amend Regulation 1685.5 for the July 30, 2012, deadline.

Ninth, the Board understands that there is a potential for double taxation when California consumers purchase tangible personal property for use in California from unregistered out-of-state retailers that the Board determines are engaged in business in this state. For example, assume that California consumer A purchases tangible personal property for use in California from unregistered out-of-state retailer B and then California consumer A reports and pays A's own use tax liability. However, the Board subsequently determines that unregistered out-of-state retailer B is engaged in business in California. Therefore, unregistered out-of-state retailer B was required to register with the Board, collect applicable use tax from its California customers, including California consumer A, and remit the use tax to the Board, and unregistered out-of-state retailer B is personally liable for California use taxes that B failed to collect pursuant to the Board's regulations. (Cal. Code Regs., tit. 18, § 1684, subds. (a) and (e).) In such a case, it is potentially possible that the Board could bill unregistered out-of-state retailer B for the use tax it failed to collect from California consumer A, but which California consumer A already reported and paid. However, the Board will not bill an unregistered out-of-state retailer, such as B in the above example, when the Board knows that the use tax has already been reported and paid by a consumer, such as California consumer A in the above example. The fact that a consumer may report his or her estimated use tax liability to the Board, instead of reporting the consumer's actual use tax liability, does not increase the likelihood of double taxation.

Tenth, RTC section 6452.1 requires the Board to transmit a look up table to the FTB that consumers can use to estimate their use tax liabilities based upon their adjusted gross incomes. The Board does not see how this statutory requirement can be satisfied by simply adopting an estimated use tax percentage that consumers can multiply by their adjusted gross incomes to estimate their use tax liabilities, rather than a use tax table. Further, it is more convenient for consumers to use a use tax table that prescribes the

estimated use tax liabilities for consumers in most adjusted gross income ranges, rather than a table that requires all consumers to make additional calculations to estimate their use tax liabilities.

Eleventh, the Sales and Use Tax Law does not provide a de minimis exemption from sales and use tax. Therefore, the Board does not believe that it has authority to adopt such an exemption through a regulation.

Twelfth, RTC section 6452.1 specifies the types of consumers who may use the Board's use tax tables to estimate their use tax liabilities. Therefore, proposed Regulation 1685.5 does not need to incorporate the same information.

Thirteenth, eligible consumers may report their use tax liabilities on their income tax returns, but they are not required to report their use taxes on their income tax returns and they always have the option to report and pay their actual use tax liabilities directly to the Board. Furthermore, eligible consumers that choose to report their use taxes on their income tax returns are not required to use the Board's use tax tables to estimate their use tax liabilities and then report their estimated use taxes on their income tax returns; they still have the option to calculate their actual use tax liabilities and report their actual use taxes on their income tax returns. However, if an eligible consumer elects to satisfy his or her use tax reporting obligation by reporting his or her estimated use tax liability based upon the consumer's adjusted gross income, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table prescribe by the Board, instead of calculating and reporting the consumer's actual unpaid use tax liability, then the Board is precluded from assessing additional tax on such nonbusiness purchases per RTC section 6452.1, subdivision (g).

Fourteenth, OAL staff has requested that all of the Board's Initial Statements of Reasons state that "the proposed regulation may affect small business." Board staff is not aware of any legal authority requiring the statement, but the Board includes the statement as a courtesy to OAL staff. The statement does not indicate that the Board believes that the proposed regulation "will" actually affect small business or have a significant adverse economic impact on business.

### Alternatives Considered

The Board considered whether to begin the formal rulemaking process to adopt proposed Regulation 1685.5 on April 26, 2011, or, alternatively, whether to take no action at that time and seek additional input from interested parties. However, the Board decided to begin the formal rulemaking process to adopt the proposed regulation in order to comply with deadlines for including the Board's use tax table in the instructions to the FTB's 2011 income tax returns, as explained in the Initial Statement of Reasons.

Furthermore, on June 14, 2011, language was added to the text of ABx1 28 to amend the definition of a "retailer engaged in business in this state" in RTC section 6203. The

amendments to RTC section 6203 were intended to increase the number of out-of-state retailers that are “engaged in business in this state” and therefore required to register with the Board, collect California use tax from their California customers, and remit the use tax to the Board.

Prior to the Board’s June 21, 2011, public hearing, Senator George Runner (Ret.), Board Member for Board of Equalization District 2, asked Board staff to prepare an alternative use tax table for the 2011 use tax table proposed to be prescribed by subdivision (d)(1) of Regulation 1685.5. He also requested that the alternative use tax table be based upon the assumptions that: (1) Governor Brown would sign ABx1 28; and (2) the Board would collect, during the remaining portion of 2011, all of the approximately \$317 million of additional state, local, and district use tax (approximately \$200 million General Fund) the Legislature estimated that the Board would collect during the 2011-2012 fiscal year (July 1, 2011, to June 30, 2012) due to the enactment of ABx1 28. Therefore, Board staff prepared the alternative use tax table and distributed it to the Board Members as part of a June 20, 2011, memorandum from Robert Ingenito, Chief of the Board’s Research and Statistics Section, for consideration at the June 21, 2011, public hearing.

During the June 21, 2011, public hearing, the Board considered whether to:

- Adopt the original text of proposed Regulation 1685.5 without any changes;
- Make changes to the original text of the proposed regulation to substitute Senator Runner’s alternative use tax table for the use tax table originally proposed to be included in Regulation 1685.5, subdivision (d)(1); or
- Make changes to the original text of the proposed regulation so that the regulation includes Senator Runner’s alternative use tax table and the use tax table originally proposed to be included in Regulation 1685.5, subdivision (d)(1), and provides that the former will be effective if ABx1 28 is enacted and the latter is effective if ABx1 28 is not enacted.

However, on June 21, 2011, the Board could not be certain that Governor Brown would sign ABx1 28 or that the Board would realize the use tax revenue estimated to be collected as a result of its signing. Therefore, the Board voted to continue the public hearing during its July 26-27, 2011, meeting.

Governor Brown signed ABx1 28 on June 28, 2011, and the bill amended RTC section 6203 as explained above. However, the Board did not see a noticeable increase in the number of out-of-state retailers registered with the Board to collect California use tax after the enactment of ABx1 28. Furthermore, on July 18, 2011, Attorney General Kamala D. Harris delivered the circulating title and summary to the Secretary of State for a proposed statewide referendum on ABx1 28.

On July 26, 2011, the Board continued the public hearing regarding the adoption of proposed Regulation 1685.5. At the conclusion of the continued July 26, 2011, public hearing, the Board voted to adopt Regulation 1685.5, as originally proposed, because the Board did not see a noticeable increase in the number of out-of-state retailers registered with the Board to collect California use tax after the enactment of ABx1 28.

### No Federal Mandate

The adoption of proposed Regulation 1685.5 was not mandated by federal statutes or regulations and there is no federal regulation that is identical to proposed Regulation 1685.5.

**Updated Informative Digest for  
Adoption of California Code of Regulations,  
Title 18, Section 1685.5,  
*Calculation of Estimated Use Tax - Use Tax Table***

Out-of-state retailers that are “engaged in business in this state,” as defined by Revenue and Taxation Code (RTC) section 6203, are required to register with the State Board of Equalization (Board), collect California use tax from their California customers when they purchase tangible personal property from the retailers for use in California, and then report and pay the use tax to the Board. (Cal. Code Regs., tit. 18, § 1684, subd. (a).) However, if California consumers purchase tangible personal property for use in California from out-of-state retailers that are not registered with the Board to collect California use tax, then the California consumers must report and pay their own use taxes. (Cal. Code Regs., tit. 18, § 1685, subd. (a).)

The Informative Digest included in the Notice of Proposed Regulatory Action explains that:

RTC section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

The Informative Digest included in the Notice of Proposed Regulatory Action further explains that:

SB 86 was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision

(d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

The Informative Digest included in the Notice of Proposed Regulatory Action also explains that:

- On April 26, 2011, the Board proposed to adopt California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*, “to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year”;
- “The objectives of the proposed regulation are to fulfill the Board’s duty to estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years”; and
- “There are no comparable federal regulations or statutes to Regulation 1685.5.”

There have not been any changes to the applicable laws or the general effect of the adoption of proposed Regulation 1685.5 described in the Informative Digest included in the Notice of Proposed Regulatory Action. The following events occurred after the issuance of the Notice of Proposed Regulatory Action.

On June 13, 2011, the Board received written comments and questions regarding the adoption of proposed Regulation 1685.5 from Gene Johnson.

On June 14, 2011, language was added to the text of Assembly Bill No. 28X (2011-2012 1<sup>st</sup>. Ex. Sess.) (ABx1 28) to amend the definition of a “retailer engaged in business in this state” in RTC section 6203. The amendments to RTC section 6203 were intended to increase the number of out-of-state retailers that are “engaged in business in this state” and therefore required to register with the Board, collect California use tax from their California customers, and remit the use tax to the Board.

On June 20, 2011, the Board received written comments from Gina Rodriguez, Vice President of Tax Policy for the California Taxpayers Association (CalTax), regarding the adoption of proposed Regulation 1685.5.

On June 21, 2011, the Board held a public hearing regarding the adoption of proposed Regulation 1685.5. Prior to the hearing, Senator George Runner (Ret.), Board Member for Board of Equalization District 2, asked Board staff to prepare an alternative use tax table for the 2011 use tax table proposed to be prescribed by subdivision (d)(1) of Regulation 1685.5. He also requested that the alternative use tax table be based upon the assumptions that: (1) Governor Brown would sign ABx1 28; and (2) the Board would collect, during the remaining portion of 2011, all of the approximately \$317 million of additional state, local, and district use tax (approximately \$200 million General Fund) the Legislature estimated that the Board would collect during the 2011-2012 fiscal year (July 1, 2011, to June 30, 2012) due to the enactment of ABx1 28. Therefore, Board staff prepared the alternative use tax table and distributed it to the Board Members as part of a June 20, 2011, memorandum from Robert Ingenito, Chief of the Board's Research and Statistics Section, for consideration at the June 21, 2011, public hearing.

During the June 21, 2011, public hearing, the Board considered whether to:

- Adopt the original text of proposed Regulation 1685.5 without any changes;
- Make changes to the original text of the proposed regulation to substitute Senator Runner's alternative use tax table for the use tax table originally proposed to be included in Regulation 1685.5, subdivision (d)(1); or
- Make changes to the original text of the proposed regulation so that the regulation includes Senator Runner's alternative use tax table and the use tax table originally proposed to be included in Regulation 1685.5, subdivision (d)(1), and provides that the former will be effective if ABx1 28 is enacted and the latter is effective if ABx1 28 is not enacted.

However, on June 21, 2011, the Board could not be certain that Governor Brown would sign ABx1 28 or that the Board would realize the use tax revenue estimated to be collected as a result of its signing. Therefore, the Board voted to continue the public hearing during its July 26-27, 2011, meeting. (No interested parties made oral comments to the Board during the June 21, 2011, public hearing.)

Governor Brown signed ABx1 28 on June 28, 2011, and the bill amended RTC section 6203 as explained above. However, the Board did not see an immediate increase in the number of out-of-state retailers registered with the Board to collect California use tax subsequent to the enactment of ABx1 28. Furthermore, on July 18, 2011, Attorney General Kamala D. Harris delivered the circulating title and summary to the Secretary of State for a proposed statewide referendum on ABx1 28.

On July 26, 2011, the Board continued the public hearing regarding the adoption of proposed Regulation 1685.5. Gina Rodriguez appeared at the public hearing on behalf of CalTax and commented that, in CalTax's opinion, the 2011 use tax table proposed to be prescribed by Regulation 1685.5, subdivision (d)(1), over estimates consumers' use tax liabilities based upon their adjusted gross income and urged the Board to work with CalTax and other interested parties to further refine the calculations for the 2012 use tax table. (Gina Rodriguez's oral comments are more fully summarized and responded to

below). Also, during the public hearing, Board staff explained the need for the Board to adopt proposed Regulation 1685.5 so that: (1) the Board could forward the 2011 use tax table prescribed by Regulation 1685.5, subdivision (d)(1), to the FTB by the July 30, 2011, deadline specified in RTC section 6452.1; and (2) there would be some chance that the regulation would be reviewed and approved by the Office of Administrative Law (OAL) prior to the FTB's September 1 deadline to transmit the instructions for its 2011 income tax returns to its publisher and the software developers. The September 1 deadline ensures that the printed 2011 instructions and 2011 return preparation software is available at the end of 2011 when taxpayers can begin preparing their 2011 income tax returns.

At the conclusion of the continued July 26, 2011, public hearing, the Board voted to adopt Regulation 1685.5, as originally proposed, because the Board determined that its adoption is necessary to prescribe:

- The use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross incomes;
- The manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income for calendar-year 2012 and subsequent years; and
- The format of the use tax tables the Board must make available to the FTB by July 30 each year.

The Board considered Gene Johnson's and Gina Rodriguez's comments prior to the adoption of proposed Regulation 1685.5 and their comments are summarized and responded to below and in the Final Statement of Reasons.

#### *Public Comments and Questions*

In her June 20, 2011, letter, Gina Rodriguez expressed CalTax's recommendation that the Board reject proposed Regulation 1685.5. In her letter, Gina Rodriguez questioned whether the Board needed to adopt a regulation to implement, interpret, and make specific the use tax table provisions of RTC section 6452.1 and whether the Board needed to include the 2011 use tax table in the regulation. She expressed concern that the Board's rulemaking timeline did not give CalTax adequate time to vet its concerns, and she expressed CalTax's opinion that the 2011 use tax table prescribed by proposed Regulation 1685.5, subdivision (d)(1), overstates a taxpayer's use tax liability. She also said that the 2011 use tax table prescribed by the proposed regulation is inaccurate because it estimates that a person with \$1 of adjusted gross income may have a \$7 use tax liability.

In addition, Gina Rodriguez attached an April 25, 2011, letter from Robert Gutierrez, Research Analyst for CalTax, to Board Chairman Jerome Horton to her June 20, 2011, letter. In the April 25, 2011, letter, Robert Gutierrez expressed his desire that the Board conduct interested parties meetings to further discuss the methodology used to develop proposed Regulation 1685.5. He stated that he thought the Board should use different

percentages to estimate the use tax liabilities for consumers in different income ranges, and he thought the Board should do more to take differing local use tax rates into account when estimating use tax liabilities. He also stated that he thought the statewide use tax rate may decline on July 1, 2011, and that he thinks the 2011 use tax table prescribed by Regulation 1685.5 does not take this rate change into account.

During the continued July 26, 2011, public hearing, Gina Rodriguez stated that CalTax now understands why the Board needs to adopt a regulation to implement, interpret, and make specific the use tax table provisions of RTC section 6452.1, but that CalTax still questions the need to prescribe the specific 2011 use tax table in a regulation. She expressed CalTax's opinions that the 2011 use tax table prescribed by Regulation 1685.5, subdivision (d)(1), should take into account the effect of ABx1 28, that Regulation 1685.5 should estimate that lower income consumers owe a higher amount of use tax as a percentage of their adjusted gross income than higher income consumers because the sales and use tax is essentially a regressive tax, that the Board's use tax tables should have more adjusted gross income ranges, and that the Board's use tax tables should somehow allow consumers to use varying district use tax rates to determine their estimated use tax liabilities. She expressed some concern that the Board might impose a double tax if a taxpayer reports its estimated use tax using the Board's look-up table. She also asked how the Board would allocate reported estimated use tax among state, local, and district use taxes.

Gene Johnson's June 13, 2011, email asked why the Board's Initial Statement of Reasons says that the Board has determined that the adoption of proposed Regulation 1685.5 "will not have a significant adverse economic impact on business," but also states that the adoption of the proposed regulation "may affect small business." The email suggests that the Board simply adopt an estimated use tax percentage that consumers can multiply by their adjusted gross income to estimate their use tax liabilities, rather than a use tax table, and that the Board adopt a de minimis exemption from use tax for consumers with small use tax liabilities. The email asks whether the proposed regulation should specify who may or may not use the Board's use tax tables to estimate their use tax liabilities. The email also asks whether the Board is precluded from assessing additional use tax when a consumer reports his or her estimated use tax liability and that amount is less than the consumer's actual use tax liability.

Furthermore, the Board received inquiries from members of the general public, such as Candy Messer and Katherine Craig, via email and telephone, as to whether the Board was seeking to impose a new tax on Californians by adopting proposed Regulation 1685.5.

#### *Responses to Public Comments and Questions*

First, the Board does not have the authority to impose new taxes via a regulation and the adoption of proposed Regulation 1685.5 will not impose any new taxes, as explained in the Initial Statement of Reasons. The Board is adopting proposed Regulation 1685.5 to prescribe the use tax table that eligible consumers may, but are not required, to use to estimate their calendar-year 2011 use taxes based upon their adjusted gross incomes,

prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year, as explained above and in the Notice of Proposed Regulatory Action.

Second, the Board did not have adequate time to conduct interested parties meetings before initiating the formal rulemaking process to adopt proposed Regulation 1685.5 because:

- The use tax table provisions were added to RTC section 6452.1 on March 23, 2011;
- The Board needed to adopt a 2011 use tax table and forward it to the FTB for inclusion in the instructions to the FTB's 2011 income tax returns by the July 30, 2011, deadline specified in RTC section 6452.1; and
- The FTB needs to know that the 2011 use tax table adopted by the Board has been approved by OAL by September 1 and will be effective for use with 2011 income tax returns so that the FTB can include the 2011 use tax table in the instructions to its 2011 income tax returns, which will be sent out for publication and incorporation into return preparation software on September 1, 2011.

However, the Board has already scheduled interested parties meetings to discuss whether the Board needs to amend Regulation 1685.5 before the July 30, 2012, deadline, in which it is required to estimate consumers' 2012 use tax liabilities based upon their adjusted gross incomes and prepare a 2012 use tax table for transmission to the FTB.

Third, the Board does not believe that the 2011 use tax table overestimates consumers' use tax liabilities based upon their adjusted gross incomes. Proposed Regulation 1685.5 prescribes a reasonable methodology for estimating consumers' use tax liabilities based upon their adjusted gross income ranges using a "use tax liability factor" determined by:

1. Multiplying the percentage of income spent on electronic and mail order purchases for the preceding calendar year, as determined by the United States Census Bureau, by 0.37, which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers; and
2. Multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

The Board believes that this methodology provides a reasonably accurate estimate of California consumers' use tax liabilities based upon the assumptions that California consumers spend an average percentage of their incomes on electronic and mail order purchases and that they also make an average percentage of their total purchases of tangible personal property for use in California from unregistered out-of-state retailers. The Board recognizes that a particular consumer's actual use tax liability may be higher

or lower than the consumer's estimated use tax liability as determined using the methodology in the proposed regulation, however, that would be the case with any reasonable estimate.

Fourth, the 2011 use tax table prescribed by subdivision (d)(1) of proposed Regulation 1685.5 uses a "use tax liability factor" that was generally computed in accordance with the methodology prescribed in subdivision (b) of the regulation. However, the Board was aware that the statewide sales and use tax rate would decrease by 1 percent effective July 1, 2011. As such, the Board used the average of the statewide sales and use tax rates effective before and after July 1, 2011, as the rate of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.), for the purpose of calculating the use tax liability factor for the 2011 use tax table, which will apply to use taxes incurred between January 1, 2011, and December 31, 2011. Therefore, the 2011 use tax table prescribed by proposed Regulation 1685.5 does take the July 1, 2011, rate change into account. And, it was necessary for the Board to incorporate the entire 2011 use tax table into the proposed regulation in order for that table to employ an average statewide use tax rate for calendar year 2011.

Fifth, the Board understands that the rate of district taxes varies throughout the state. However, the Board's estimated use tax table is intended to make it more convenient for consumers to report their use taxes by allowing them to report estimated amounts determined by reference to their adjusted gross income ranges. It also eliminates the need for consumers to calculate their actual use tax liabilities by determining the total "sales price" of all the tangible personal property they purchased from unregistered out-of-state retailers for use in California, determining their cumulative state, local, and district use tax rates, and then multiplying their total sales prices by their cumulative use tax rates. Therefore, the Board decided to create one statewide use tax table for each year and to simplify its use tax table by incorporating a weighted average rate of district taxes into the "use tax liability factor" prescribed by proposed Regulation 1685.5. Otherwise, the Board would be required to adopt a separate use tax table for each cumulative state, local, and district use tax rate in effect in California. This would cause further inconvenience for consumers by requiring that they look-up their own cumulative use tax rates and estimate their use taxes using the use tax table that corresponds with their cumulative use tax rates. Reported estimated use tax will first be allocated to local and district taxes and the remainder will be allocated to state use tax. Local use taxes are imposed in accordance with the uniform rates specified in RTC sections 7203 and 7203.1.

Sixth, the Board notes that a person with no adjusted gross income can incur a \$7 use tax liability if the person makes sufficient purchases of tangible personal property for use in California from unregistered out-of-state retailers using income that is excluded from the calculation of the person's adjusted gross income, the person's savings, borrowed funds, and/or money received as a gift. For example, if a consumer with no adjusted gross income receives a \$100 cash gift, that person could incur an actual \$7.75 use tax liability by making a single \$100 purchase of tangible personal property for use in California from

an unregistered out-of-state retailer, assuming a 7.75 percent cumulative state, local, and district use tax rate applies and that the use of the property is not exempt from use tax.

Seventh, ABx1 28 was not signed into law until the middle of 2011 and the Board has not documented any noticeable increase in the number of out-of-state retailers registered with the Board to collect California use tax since the enactment of ABx1 28. Therefore, the Board does not believe that proposed Regulation 1685.5 needs to be amended to take into account the revenue the Legislature estimated that the Board would collect due to the enactment of ABx1 28. However, the Board will continue to monitor the effect of ABx1 28 and may consider amending Regulation 1685.5 if it does have a relevant effect on the behavior of out-of-state retailers.

Eighth, the Board did not have enough time and data to determine whether the Board's use tax tables should estimate that lower income consumers owe a higher amount of use tax as a percentage of their adjusted gross income than higher income consumers or whether the Board needs to add more adjusted gross income ranges to its use tax tables. Therefore, Board staff has already committed to specifically discussing whether the Board's use tax tables should estimate that lower income consumers owe a higher amount of use tax as a percentage of their adjusted gross income than higher income consumers and whether the Board needs to add more adjusted gross income ranges to its use tax tables during the upcoming interested parties meetings to discuss whether the Board needs to amend Regulation 1685.5 for the July 30, 2012, deadline.

Ninth, the Board understands that there is a potential for double taxation when California consumers purchase tangible personal property for use in California from unregistered out-of-state retailers that the Board determines are engaged in business in this state. For example, assume that California consumer A purchases tangible personal property for use in California from unregistered out-of-state retailer B and then California consumer A reports and pays A's own use tax liability. However, the Board subsequently determines that unregistered out-of-state retailer B is engaged in business in California. Therefore, unregistered out-of-state retailer B was required to register with the Board, collect applicable use tax from its California customers, including California consumer A, and remit the use tax to the Board, and unregistered out-of-state retailer B is personally liable for California use taxes that B failed to collect pursuant to the Board's regulations. (Cal. Code Regs., tit. 18, § 1684, subds. (a) and (e).) In such a case, it is potentially possible that the Board could bill unregistered out-of-state retailer B for the use tax it failed to collect from California consumer A, but which California consumer A already reported and paid. However, the Board will not bill an unregistered out-of-state retailer, such as B in the above example, when the Board knows that the use tax has already been reported and paid by a consumer, such as California consumer A in the above example. The fact that a consumer may report his or her estimated use tax liability to the Board, instead of reporting the consumer's actual use tax liability, does not increase the likelihood of double taxation.

Tenth, RTC section 6452.1 requires the Board to transmit a look up table to the FTB that consumers can use to estimate their use tax liabilities based upon their adjusted gross

incomes. The Board does not see how this statutory requirement can be satisfied by simply adopting an estimated use tax percentage that consumers can multiply by their adjusted gross incomes to estimate their use tax liabilities, rather than a use tax table. Further, it is more convenient for consumers to use a use tax table that prescribes the estimated use tax liabilities for consumers in most adjusted gross income ranges, rather than a table that requires all consumers to make additional calculations to estimate their use tax liabilities.

Eleventh, the Sales and Use Tax Law does not provide a de minimis exemption from sales and use tax. Therefore, the Board does not believe that it has authority to adopt such an exemption through a regulation.

Twelfth, RTC section 6452.1 specifies the types of consumers who may use the Board's use tax tables to estimate their use tax liabilities. Therefore, proposed Regulation 1685.5 does not need to incorporate the same information.

Thirteenth, eligible consumers may report their use tax liabilities on their income tax returns, but they are not required to report their use taxes on their income tax returns and they always have the option to report and pay their actual use tax liabilities directly to the Board. Furthermore, eligible consumers that choose to report their use taxes on their income tax returns are not required to use the Board's use tax tables to estimate their use tax liabilities and then report their estimated use taxes on their income tax returns; they still have the option to calculate their actual use tax liabilities and report their actual use taxes on their income tax returns. However, if an eligible consumer elects to satisfy his or her use tax reporting obligation by reporting his or her estimated use tax liability based upon the consumer's adjusted gross income, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table prescribe by the Board, instead of calculating and reporting the consumer's actual unpaid use tax liability, then the Board is precluded from assessing additional tax on such nonbusiness purchases per RTC section 6452.1, subdivision (g).

Fourteenth, OAL staff has requested that all of the Board's Initial Statements of Reasons state that "the proposed regulation may affect small business." Board staff is not aware of any legal authority requiring the statement, but the Board includes the statement as a courtesy to OAL staff. The statement does not indicate that the Board believes that the proposed regulation "will" actually affect small business or have a significant adverse economic impact on business.



BOARD OF EQUALIZATION

**BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: APRIL 26, 2011, TIME: 10:00 A.M.

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**ACTION ITEMS & STATUS REPORT ITEMS**

**Agenda Item No: 1**

**Title: Proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax***

**Issue/Topic:**

Request approval and authorization to publish proposed amendments to Regulations 1807 and 1828 to improve the processes for handling local and district tax petitions.

**Committee Discussion:**

Staff presented the proposed amendments to Regulations 1807 and 1828. Interested parties addressed the Board explaining the need for additional deadlines throughout the local and district tax appeal process. There were suggestions and discussion about the costing model in regard to how costs are allocated to jurisdictions, the quality of petitions filed, the process by which staff investigates petitions, what causes delays, and whether additional deadlines or staffing would resolve excessive delays.

**Committee Action:**

At the suggestion of Ms. Yee, the Committee directed staff to develop guidelines for explaining what is expected of the parties involved in the process. This guidance should include: what jurisdictions and consultants need to provide when the petition is submitted, how the Allocation Group and Appeals Division staff will investigate and process the petition, and what is expected of taxpayers when they are asked to provide information.

These expectations will be discussed at the July 26, 2011 Business Taxes Committee meeting.

**Agenda Item No: 2**

**Title: Proposed Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

**Issue:**

Request approval and authorization to publish proposed Regulation 1685.5 to implement the new use tax table provisions of Revenue and Taxation Code section 6452.1.

**Committee Discussion:**

Staff presented the proposed Regulation 1685.5 and explained that due to time constraints in meeting the statutory deadline, an interested parties meeting was not held. Staff proposed to hold interested parties meetings for 2012 and subsequent years.

Mr. Robert Gutierrez with the California Taxpayers Association, addressed the Committee expressing a number of policy concerns with the fact that an interested parties meeting was not held to discuss and deliberate the use tax table and the methodology used in the regulation.

In response to Board Members’ questions, staff addressed the need for a regulation and explained the calculation of the use tax factor. Senator Runner expressed concerns that the use tax table does not increase compliance with use tax reporting and stated that further taxpayer education is needed.

**Committee Action:**

Upon motion by Ms. Yee, seconded by Mr. Horton, the Committee approved and authorized for publication the proposed regulation. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed Regulation 1685.5 is attached. The Committee further directed staff to hold interested parties meetings on a going forward basis.

The vote was as follows:

<b>MEMBER</b>	Horton	Steel	Yee	Runner	Mandel
<b>VOTE</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>

/s/ Betty T. Yee

Honorable Betty T. Yee, Committee Chair

/s/ Kristine Cazadd

Kristine Cazadd, Interim Executive Director

BOARD APPROVED

at the April 27, 2011 Board Meeting

/s/ Diane Olson

Diane Olson, Chief  
Board Proceedings Division



**BOARD OF EQUALIZATION**

**BUSINESS TAXES COMMITTEE MEETING AGENDA**

HONORABLE BETTY YEE, COMMITTEE CHAIRWOMAN

450 N STREET, SACRAMENTO - ROOM 121

**APRIL 26, 2011 – 10:00 A.M.**

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1. Proposed changes to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Staff request for approval and authorization to publish proposed revisions to improve the local tax appeals process.

2. Proposed Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

Staff request for approval to publish the proposed regulation to implement the new use tax table provisions of Revenue and Taxation Code section 6452.1.

**Regulation 1685.5. Calculation of Estimated Use Tax – Use Tax Table**

*Reference:* Section 6452.1, Revenue and Taxation Code.

**(a) IN GENERAL**

The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

**(b) DEFINITIONS AND DATA SOURCES**

(1) AGI RANGES. The use tax table shall be separated into eight (8) AGI ranges as follows:

- (A) AGI less than \$20,000;
- (B) AGI of \$20,000 to \$39,999;
- (C) AGI of \$40,000 to \$59,999;
- (D) AGI of \$60,000 to \$79,999;
- (E) AGI of \$80,000 to \$99,999;
- (F) AGI of \$100,000 to \$149,999;
- (G) AGI of \$150,000 to \$199,999;
- (H) AGI more than \$199,999.

(2) USE TAX LIABILITY FACTOR OR USE TAX TABLE PERCENTAGE. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On May 1, 2012, and each May 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on electronic and mail order purchases for the proceeding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) TOTAL PERSONAL INCOME. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) TOTAL SPENDING AT ELECTRONIC SHOPPING AND MAIL ORDER HOUSES. Total spending at electronic shopping and mail order houses shall be determined by reference

to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) **PERCENTAGE OF INCOME SPENT ON ELECTRONIC AND MAIL ORDER PURCHASES.** The percentage of income spent on electronic and mail order purchases during a calendar year shall be calculated by dividing the total spending at electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(6) **AVERAGE STATE, LOCAL, AND DISTRICT SALES AND USE TAX RATE.** The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

### **(c) CALCULATION OF THE ESTIMATED USE TAX LIABILITY**

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying \$10,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through (G) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(H) shall be determined by multiplying each range member's actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

**(d) USE TAX TABLE FORMAT**

(1) The use tax table for calendar year 2011 shall provide as follows:

<b>Adjusted Gross Income (AGI) Range</b>	<b>Use Tax Liability</b>
Less Than \$20,000	\$7
\$20,000 to \$39,999	\$21
\$40,000 to \$59,999	\$35
\$60,000 to \$79,999	\$49
\$80,000 to \$99,999	\$63
\$100,000 to \$149,999	\$88
\$150,000 to \$199,999	\$123
More than \$199,999 -Multiply AGI by 0.070% (.0007)	

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as the use tax table for calendar year 2011.

Estimates of Monthly Retail and Food Services Sales by Kind of Business, 2010

(Estimates are shown in millions of dollars and are based on data from the Monthly Retail Trade Survey, Annual Retail Trade Survey, and administrative records.)

NAICS Code Kind of Business

	Jan. 2010	Feb. 2010	Mar. 2010	Apr. 2010	May 2010	Jun. 2010	Jul. 2010	Aug. 2010	Sep. 2010	Oct. 2010	Nov. 2010	Dec. 2010	TOTAL
<b>NOT ADJUSTED</b>													
Retail and food services sales, total	321,550	317,961	369,339	366,002	370,659	368,021	372,451	370,373	355,517	376,326	439,431	4,822,079	
Retail sales and food services, excl. motor vehicle and parts	270,535	264,903	300,054	299,646	302,523	302,523	302,523	302,523	292,568	302,504	316,172	370,579	3,640,311
Retail sales, total	285,436	281,098	329,238	329,049	332,049	332,049	332,049	332,049	324,960	334,530	399,302	3,786,523	
Small sales, total (excl. motor vehicles and parts dealers)	254,420	250,940	293,553	293,033	295,933	295,933	295,933	295,933	289,237	299,339	353,414	3,136,361	
045211	80,396	83,856	92,433	94,983	96,835	96,835	96,835	96,835	96,163	98,374	111,159	1,148,842	
441 Motor vehicle and parts dealers	51,015	53,953	60,275	62,626	64,528	64,528	64,528	64,528	63,713	65,154	73,154	800,808	
4411, 4412 Automobile and other motor vehicle dealers	45,619	47,392	52,568	53,703	54,703	54,703	54,703	54,703	53,864	55,360	63,423	693,828	
4411 Automobile dealers	42,518	43,724	46,340	47,314	48,080	48,080	48,080	48,080	47,527	48,851	56,182	624,879	
44111 New car dealers	37,378	37,412	39,271	40,314	40,880	40,880	40,880	40,880	40,285	41,524	49,150	562,819	
44112 Used car dealers	5,140	5,294	5,569	5,699	5,809	5,809	5,809	5,809	5,635	5,727	6,681	72,069	
4412 Automobile parts, acc., and tire stores	5,966	5,696	6,696	6,696	6,696	6,696	6,696	6,696	6,733	6,733	6,495	70,236	
442 Furniture, home furn., electronics and appliance stores	14,566	15,133	15,319	14,574	15,348	15,611	15,968	16,180	15,479	14,643	17,990	20,476	194,145
442 Furniture and home furnishings stores	6,767	6,935	7,110	7,238	7,463	7,463	7,790	7,859	7,623	7,245	8,177	9,104	91,528
4421 Furniture stores	3,922	4,095	4,352	4,448	4,628	4,628	4,825	4,825	4,620	4,197	4,859	5,280	49,897
4422 Home furnishings stores	2,845	2,841	3,448	3,318	3,238	3,427	3,579	3,635	3,436	3,335	3,818	4,800	41,831
4423 Floor covering stores	1,069	1,154	1,346	1,329	1,301	1,428	1,466	1,478	1,312	1,312	1,356	1,546	13,392
442399 All other home furnishings stores	1,069	1,154	1,346	1,329	1,301	1,428	1,466	1,478	1,312	1,312	1,356	1,546	13,392
443 Electronics and appliance stores	6,696	6,998	6,967	6,796	6,925	6,925	6,925	6,925	6,858	6,858	7,559	8,413	26,369
44311 Appl. TV, and other elec. stores	6,036	6,346	6,075	5,927	5,995	6,149	6,149	6,149	6,155	6,203	6,742	7,376	16,139
443111 Household appliance stores	1,166	1,181	1,290	1,320	1,428	1,428	1,428	1,428	1,417	1,448	1,579	1,579	6,121
443112 Radio, TV, and other elec. stores	4,871	5,165	4,785	4,796	4,567	4,761	4,732	4,807	4,545	4,344	3,804	4,400	11,212
44312 Computer and software stores	1,669	1,672	1,699	1,699	1,699	1,699	1,699	1,699	1,699	1,699	1,699	1,699	3,006
443121 Computer and software stores	1,669	1,672	1,699	1,699	1,699	1,699	1,699	1,699	1,699	1,699	1,699	1,699	3,006
4432 Building mat. and supplies stores	16,245	16,625	20,463	20,710	20,378	20,411	20,874	20,035	23,025	23,025	20,617	20,831	208,371
44321 Paint and wallpaper stores	13,195	13,235	16,992	16,992	16,992	16,992	16,992	16,992	16,992	16,992	16,992	16,992	164,498
44322 Carpet and wallpaper stores	2,777	2,725	3,471	3,718	3,386	3,419	3,882	3,043	6,033	6,033	3,625	3,839	43,873
4433 Hardware stores	1,277	1,235	1,524	1,535	1,726	1,726	1,625	1,625	1,625	1,625	1,625	1,625	18,756
4434 Food and beverage stores	47,688	48,629	48,771	47,717	50,232	46,407	50,522	48,127	48,222	49,466	49,721	54,643	569,370
44341 Grocery stores	43,313	43,751	43,954	43,954	44,307	43,233	43,922	43,563	43,040	44,096	44,244	47,220	505,470
443411 Supermarkets and other grocery (except convenience) stores	41,120	39,324	41,469	40,264	42,590	40,670	42,505	41,221	40,823	41,610	41,860	44,757	437,286
44342 Beer, wine, and liquor stores	2,954	2,895	3,295	3,328	3,459	3,442	3,605	3,442	3,442	3,442	3,442	3,442	41,394
44343 Food and personal care stores	20,966	20,369	22,761	21,754	24,905	21,900	21,614	21,923	21,601	22,109	22,167	24,271	263,898
443431 Pharmacies and drug stores	18,009	17,364	19,369	18,426	18,496	18,281	19,481	19,481	18,681	18,681	18,767	21,041	223,500
443432 Cosmetics and skin care stores	2,957	2,965	3,392	3,328	3,409	3,619	3,619	3,619	3,619	3,619	3,619	3,619	40,398
443433 Health and personal care stores	38,618	38,863	35,754	37,385	37,818	36,913	38,169	37,840	36,996	37,748	37,748	43,384	433,384
443434 Clothing and clothing accessories stores	13,609	16,420	17,119	17,385	17,245	18,532	17,245	18,532	17,245	18,532	20,372	20,372	218,149
443435 Cleaning stores	10,637	10,695	13,133	12,935	13,180	12,291	12,249	12,249	12,249	12,249	15,099	20,372	158,611
443436 Laundry stores	591	576	635	702	671	684	684	684	684	684	754	1,114	8,177
443437 Dry cleaning stores	2,278	2,426	3,183	3,248	3,203	2,949	2,792	2,858	2,949	3,027	3,377	4,416	35,753
443438 Women's clothing stores	4,990	5,507	6,394	6,753	6,934	6,362	6,983	7,313	6,418	6,964	8,351	11,309	84,859
443439 Family clothing stores	983	902	954	927	960	960	960	960	960	960	960	960	11,568
44344 Other clothing stores	1,732	2,067	2,346	2,262	2,266	2,078	2,233	2,850	2,111	2,189	2,327	3,079	27,357
443441 Jewelry stores	6,074	2,384	2,036	2,050	2,557	2,063	2,076	2,184	1,900	2,184	2,741	5,827	29,638
45 Sporting goods, hobby, book, and music stores	2,528	2,472	3,219	3,148	3,272	3,620	3,507	3,737	3,026	3,627	3,397	3,346	40,209
4511 Sporting goods stores	1,157	1,219	1,419	1,305	1,277	1,260	1,319	1,260	1,304	1,304	1,304	1,304	19,153
45111 Hobby, toy, and game stores	2,234	1,012	1,013	916	1,095	1,095	1,095	1,095	1,095	1,095	1,095	1,095	16,497
45121 Book stores	44,319	45,020	49,181	48,269	50,336	49,842	49,181	50,311	48,246	49,652	56,078	72,463	810,279
452 General merchandise stores	12,429	13,126	14,783	14,783	15,006	14,408	14,981	14,964	13,635	14,515	18,570	26,792	186,604
45211 Department stores (incl. L.D.)	6,599	8,822	10,917	9,270	9,996	9,670	9,556	10,153	8,937	9,613	12,126	16,560	123,309
452111 Department stores (except department stores)	3,820	4,304	4,706	4,706	5,009	5,011	4,738	4,536	4,822	4,660	5,442	10,232	63,295
45212 Department stores (incl. L.D.)	12,707	13,424	15,116	14,820	15,306	14,708	14,306	15,275	13,982	14,838	19,010	27,382	130,780
4522 Discount drug stores	8,727	8,954	10,173	9,412	10,145	9,315	9,702	9,702	9,315	9,315	9,702	12,122	106,796
45221 Department supermarkets, discount department stores	3,900	4,470	4,943	4,264	4,893	4,693	4,693	4,693	4,693	4,693	4,693	4,693	55,558
45222 Other general merchandise stores	37,680	31,902	34,366	35,364	35,962	34,434	36,104	35,957	32,611	35,137	37,508	45,681	422,675
4523 Warehouse clubs and supercenters	28,433	28,135	30,188	29,638	31,594	31,144	30,890	30,720	28,468	30,720	32,858	39,613	371,394
45231 All other gen. merchandise stores	3,467	3,767	4,260	4,329	4,388	4,280	4,149	4,149	4,149	4,149	4,149	4,149	52,258
453 Miscellaneous store retailers	8,198	8,211	9,985	9,985	9,985	9,985	9,985	9,985	9,985	9,985	9,985	9,985	120,661
45321 Office supplies, stationery, and gift stores	2,932	2,816	2,983	2,860	3,002	2,943	3,464	3,464	3,252	3,252	3,252	3,252	20,549
453211 Office supplies and stationery stores	1,871	1,875	1,962	1,962	1,962	1,962	1,962	1,962	1,962	1,962	1,962	1,962	17,778
45322 Gift, novelty, and souvenir stores	1,061	1,145	1,251	1,251	1,467	1,420	1,415	1,362	1,362	1,362	1,362	1,362	2,544
4533 Used merchandise stores	906	999	1,130	1,101	1,122	1,023	1,119	1,119	1,119	1,119	1,119	1,119	13,766
454 Nonstore retailers	29,080	27,094	30,090	27,608	28,640	28,196	26,712	28,652	28,963	29,437	34,131	44,286	361,078
4541 Electronic shopping and mail-order houses	20,201	18,844	21,973	20,806	21,431	21,630	20,237	22,516	22,118	22,237	26,384	34,354	272,215
45411 Full dealers	5,453	4,745	5,370	5,170	5,261	5,261	5,261	5,261	5,261	5,261	5,261	5,261	3,077
45412 Food services and drinking places	36,115	35,963	40,521	40,053	41,430	40,862	38,048	40,507	40,862	37,793	40,169	47,350	40,442
722 Food services and drinking places	15,790	15,620	17,456	17,353	18,013	17,670	17,372	18,070	18,442	17,561	18,442	18,442	203,000
7222 Limited service eating places	18,672	18,512	17,254	17,000	17,696	17,536	18,162	18,008	18,642	17,645	18,546	17,210	204,893
7224 Eatery places	1,692	1,625	1,890	1,725	1,793	1,750	1,868	1,868	1,868	1,868	1,868	1,868	21,035

	Jan. 2010	Feb. 2010	Mar. 2010	Apr. 2010	May 2010	Jun. 2010	Jul. 2010	Aug. 2010	Sep. 2010	Oct. 2010	Nov. 2010	Dec. 2010	TOTAL
<b>ADJUSTED(1)</b>													
Retail and food services stores, total	354,736	365,570	364,936	365,987	362,319	361,170	362,909	365,982	368,440	375,460	378,361	380,483	380,483
Auto sales and food services excl motor vehicle and parts	204,820	207,852	202,528	200,261	209,480	209,365	206,140	203,164	206,611	208,136	210,828	211,668	211,668
Retail sales, total	149,916	157,718	162,408	165,726	152,839	151,805	156,769	162,818	161,829	167,324	167,533	168,815	168,815
Retail sales, total (excl. motor vehicle and parts dealers)	256,560	257,847	262,880	265,465	252,348	250,563	260,944	263,508	265,301	269,377	270,020	271,679	271,679
GAPCO(2)	54,417	55,271	56,404	56,948	55,002	55,331	55,371	55,716	56,196	56,373	56,270	56,219	56,219
441 Motor vehicle and parts dealers	59,816	62,718	62,508	62,612	62,819	62,819	62,819	62,819	62,819	62,819	62,819	62,819	62,819
441.1412 Automobile and other motor vehicle dealers	53,705	51,401	51,334	51,334	51,334	51,334	51,334	51,334	51,334	51,334	51,334	51,334	51,334
441.1413 Automobile parts, acc., and tire stores	6,111	11,317	11,174	11,278	11,485	11,485	11,485	11,485	11,485	11,485	11,485	11,485	11,485
442 Furniture, home furnishings, electronics, and appliance stores	19,831	19,267	19,431	19,278	19,278	19,278	19,278	19,278	19,278	19,278	19,278	19,278	19,278
443 Furniture and home furnishings stores	7,527	7,706	7,873	7,873	7,873	7,873	7,873	7,873	7,873	7,873	7,873	7,873	7,873
443.12 Electronics and appliance stores	12,304	11,561	11,558	11,405	11,405	11,405	11,405	11,405	11,405	11,405	11,405	11,405	11,405
444 Building mat. and garden equip. and supplies dealers	15,607	15,607	15,607	15,607	15,607	15,607	15,607	15,607	15,607	15,607	15,607	15,607	15,607
445 Food and beverage stores	48,435	49,023	49,150	49,312	49,312	49,312	49,312	49,312	49,312	49,312	49,312	49,312	49,312
445.1 Grocery stores	40,270	40,709	40,801	40,956	40,956	40,956	40,956	40,956	40,956	40,956	40,956	40,956	40,956
445.2 Beer, wine and liquor stores	3,962	3,165	3,472	3,472	3,472	3,472	3,472	3,472	3,472	3,472	3,472	3,472	3,472
446 Health and personal care stores	21,318	21,552	21,657	21,754	21,657	21,657	21,657	21,657	21,657	21,657	21,657	21,657	21,657
446.1 Pharmacies and drug stores	18,139	18,722	18,429	18,478	18,469	18,469	18,469	18,469	18,469	18,469	18,469	18,469	18,469
447 Gasoline stations	35,225	35,386	35,260	35,277	35,277	35,277	35,277	35,277	35,277	35,277	35,277	35,277	35,277
448 Clothing and clothing accessories stores	17,731	17,938	18,471	18,252	18,133	18,118	18,077	18,139	18,139	18,046	18,046	18,046	18,046
448.11 Men's clothing stores(4)	12,865	13,065	13,422	13,264	13,178	13,178	13,178	13,178	13,178	13,178	13,178	13,178	13,178
448.12 Women's clothing stores	3,625	3,629	3,106	3,056	3,056	3,056	3,056	3,056	3,056	3,056	3,056	3,056	3,056
448.2 Shoes stores	2,241	2,281	2,306	2,271	2,271	2,271	2,271	2,271	2,271	2,271	2,271	2,271	2,271
448.3 Jewelry stores	2,464	2,394	2,964	2,522	2,519	2,458	2,478	2,478	2,449	2,560	2,538	2,413	2,413
449 Sporting goods, hobby, book, and music stores	7,184	7,184	7,272	7,181	7,271	7,271	7,271	7,271	7,271	7,271	7,271	7,271	7,271
452 General merchandise stores	50,315	50,653	51,012	50,960	50,294	50,533	50,650	50,939	51,130	51,172	51,304	51,261	51,261
452.1 Department stores (incl. L.D.)	16,712	16,802	15,982	15,668	15,298	15,570	15,419	15,445	15,290	15,733	15,403	15,403	15,403
452.2 Other general merchandise stores	34,603	34,851	35,030	35,192	34,996	34,963	35,231	35,494	35,840	35,882	35,901	35,858	35,858
4523 Wholesale clubs and superstores	30,377	30,592	30,722	30,606	30,555	30,533	30,349	31,002	31,217	31,451	31,623	31,514	31,514
45299 All other gen. merchandise stores	4,226	4,271	4,308	4,386	4,339	4,360	4,382	4,428	4,448	4,421	4,443	4,344	4,344
453 Miscellaneous stores (retails)	9,482	9,508	9,751	9,796	9,890	9,967	10,015	10,102	10,295	10,469	10,243	10,246	10,246
454 Nonstore retailers	28,648	28,878	29,081	29,081	29,081	29,081	29,081	29,081	29,081	29,081	29,081	29,081	29,081
454.1 Electronic shopping and mail order houses	21,942	21,469	21,793	21,873	22,029	22,029	22,029	22,029	22,029	22,029	22,029	22,029	22,029
454.31 Fuel dealers	3,510	3,525	3,126	3,129	3,181	3,181	3,181	3,181	3,181	3,181	3,181	3,181	3,181
722 Food services and drinking places	38,251	39,005	39,401	39,383	39,317	39,317	39,317	39,317	39,317	39,317	39,317	39,317	39,317

(S) Suppressed

(1) GAPCO represents stores classified in the following NAICS codes: 442, 443, 448, 451, 452, and 4532. NAICS code 4532 includes office supplies, stationery, and gift stores.

(2) Includes data for leased departments operated within department stores. Data for this line not included in any aggregate kind-of-business totals.  
 (3) Estimates are adjusted for seasonal variations and trading day differences, but not for price changes. Consumer seasonally adjusted sales estimates are not tabulated.  
 (4) With the introduction of a new sample with estimates for the September 2008 data month, we have identified a change in the seasonal pattern for estimates in light of trading days (NAICS 44911). As a result, we have temporarily suspended the release of seasonally adjusted estimates for this industry. Details of the seasonal adjustment methodology, we have also suspended from publication all estimates back through the January 2001 data month for this industry. We will continue to provide estimates not adjusted for seasonality, however, these estimates should be used with caution, as the new sample estimates may not be comparable with estimates from the old sample.

Note: Estimates are not adjusted for price changes. Retail and food services total and other subsector totals may include data for kinds of business not shown. Information on sample design, estimation procedures, and measures of sampling variability can be found on the internet at [http://www.census.gov/wholesale\\_surveys/are\\_collected.html](http://www.census.gov/wholesale_surveys/are_collected.html)

**Bureau of Economic Analysis**  
**National Income and Product Accounts Table**  
**Table 2.1. Personal Income and Its Disposition**

[Billions of dollars]

Today is: 4/12/2011 Last Revised on March 25, 2011 Next Release Date April 28, 2011

Line		2008	2009	2010
1	<b>Personal income</b>	<b>12,391.1</b>	<b>12,174.9</b>	<b>12,546.7</b>
2	Compensation of employees, received	8,065.8	7,806.7	7,991.1
3	Wage and salary disbursements	6,559.0	6,274.1	6,405.0
4	Private industries	5,415.1	5,100.5	5,217.9
5	Government	1,144.0	1,173.6	1,187.1
6	Supplements to wages and salaries	1,506.8	1,532.6	1,586.1
7	Employer contributions for employee pension and insurance funds	1,036.6	1,072.0	1,106.8
8	Employer contributions for government social insurance	470.1	460.6	479.2
9	Proprietors' income with inventory valuation and capital consumption adjustments	1,102.0	1,011.9	1,055.0
10	Farm	50.8	30.5	44.9
11	Nonfarm	1,051.2	981.5	1,010.1
12	Rental income of persons with capital consumption adjustment	222.0	274.0	300.9
13	Personal income receipts on assets	2,109.3	1,919.7	1,907.6
14	Personal interest income	1,314.7	1,222.3	1,194.9
15	Personal dividend income	794.6	697.4	712.7
16	Personal current transfer receipts	1,879.2	2,132.8	2,296.4
17	Government social benefits to persons	1,842.6	2,096.8	2,259.0
18	Old-age, survivors, disability, and health insurance benefits	1,068.3	1,164.5	1,213.9
19	Government unemployment insurance benefits	50.7	128.6	136.6
20	Veterans benefits	45.6	52.3	61.4
21	Family assistance <sup>1</sup>	19.3	20.1	19.8
22	Other	658.7	731.3	827.4
23	Other current transfer receipts, from business (net)	36.7	36.0	37.4
24	Less: Contributions for government	987.2	970.3	1,004.4

	social insurance, domestic			
25	<b>Less: Personal current taxes</b>	<b>1,438.2</b>	<b>1,140.0</b>	<b>1,166.8</b>
26	<b>Equals: Disposable personal income</b>	<b>10,952.9</b>	<b>11,034.9</b>	<b>11,379.9</b>
27	<b>Less: Personal outlays</b>	<b>10,505.0</b>	<b>10,379.6</b>	<b>10,720.7</b>
28	Personal consumption expenditures	10,104.5	10,001.3	10,349.1
29	Personal interest payments <sup>2</sup>	246.2	216.8	198.9
30	Personal current transfer payments	154.3	161.4	172.7
31	To government	89.7	95.0	100.8
32	To the rest of the world (net)	64.6	66.5	71.9
33	<b>Equals: Personal saving</b>	<b>447.9</b>	<b>655.3</b>	<b>659.2</b>
34	<b>Personal saving as a percentage of disposable personal income</b>	<b>4.1</b>	<b>5.9</b>	<b>5.8</b>
	<b>Addenda:</b>			

**Bureau of Economic Analysis**  
**National Income and Product Accounts Table**  
**Table 2.1. Personal Income and Its Disposition**

[Billions of dollars]

Today is: 4/12/2011 Last Revised on March 25, 2011 Next Release Date April 28, 2011

Line		2008	2009	2010
35	<b>Personal income excluding current transfer receipts, billions of chained (2005) dollars<sup>3</sup></b>	<b>9,638.5</b>	<b>9,191.1</b>	<b>9,224.8</b>
	<b>Disposable personal income:</b>			
36	Total, billions of chained (2005) dollars <sup>3</sup>	10,042.9	10,099.8	10,241.4
	Per capita:			
37	Current dollars	35,931	35,888	36,697
38	Chained (2005) dollars	32,946	32,847	33,025
39	Population (midperiod, thousands)	304,831	307,483	310,106
	Percent change from preceding period:			
40	<b>Disposable personal income, current dollars</b>	<b>5.1</b>	<b>0.7</b>	<b>3.1</b>
41	<b>Disposable personal income, chained (2005) dollars</b>	<b>1.7</b>	<b>0.6</b>	<b>1.4</b>



BOARD OF EQUALIZATION  
**REVENUE ESTIMATE**

**ELECTRONIC COMMERCE AND MAIL ORDER SALES**

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**Summary**

Updated Estimates. Based on information released by the U.S. Census Bureau and other sources in 2010, we have updated our estimates of remote sales (electronic and traditional mail order sales) revenue losses from out-of-state vendors. We now estimate annual revenue losses of \$1.145 billion in calendar year 2010 (to be remitted in fiscal year 2010-11). Of the total, \$795 million are owed by consumers and \$350 million were unpaid by businesses. These revenues are spread among approximately 13.1 million households and 3.4 million businesses. Unpaid sales and use tax liabilities in 2010-11 average \$61 per year for each California household and \$102 per year for each California business. Revenue from these out-of-state electronic commerce and mail order purchases are a significant component of the sales and use tax gap. (As defined here, the tax gap is the difference between what taxpayers owe and what they voluntarily pay.) This paper documents our estimates of sales and use tax revenues associated with electronic commerce and mail order sales that are not voluntarily paid from fiscal years 2008-09 through 2011-12.

Comparisons to Previous Estimates. Our previous estimates of remote sales revenue losses were released about a year ago. The estimates presented in this paper reflect the following new developments:

- The U.S. Census Bureau revised historical e-commerce estimates of purchases for both businesses and consumers. Most of the revisions were upward for both consumers and businesses.
- The recession that began in December 2007 ended in June 2009. Available evidence indicates that e-commerce growth rates for consumers and businesses have increased since the recession ended.
- The Board of Equalization implemented the In-state Service Business Component of the Tax Gap program in July 2008. We reviewed our revenue estimates for this program in light of additional information that became available within the past year.
- Legislation was passed and signed into law in 2009 (ABx4 18, Statutes of 2009) that we expect to significantly improve compliance of use tax payments by businesses, starting in fiscal year 2009-10. We reviewed and updated our compliance assumptions and revenue estimates associated with this program in light of additional information that became available within the past year.
- SB 1009 (Statutes of 2003), required a line on the income tax form to encourage consumers to pay their use tax obligations. This legislation and Board of Equalization outreach efforts have contributed to more consumers paying their use tax obligations on their income tax forms in recent years. The SB 1009 provisions were scheduled to sunset on January 1, 2010. However, legislation enacted in October 2010 (SB 858,

Statutes of 2010) extends the requirement to apply to sales made in 2010 and subsequent years.<sup>1</sup>

## Background, Methodology, and Assumptions

### (1) Background Sources and Data Assumptions

The methodology used to derive these estimates is very similar to that which we used in our previous revenue estimates. There are two major markets for electronic commerce: business-to-consumer (B-to-C) and business-to-business (B-to-B). Each market has its own separate data sources and critical assumptions. We will assume all mail order sales are B-to-C. A more detailed description of our methodology and assumptions is found in our technical documentation.<sup>2</sup>

### (2) Business-to-Consumer (B-to-C)

Other than reflecting the developments discussed above, we made no major changes in our methodology used to estimate business-to-consumer (B-to-C) purchases.

(A) Data Sources. We define remote sales as all sales from retail sellers to households that are made electronically or by using traditional mail order sales channels. Our basic data source is the U.S. Census Bureau, as it was in previous estimates. The Census Bureau publishes sales estimates for North American Industrial Classification System (NAICS) Industry 4541 ("Electronic Shopping and Mail Order Houses," or ESMOH) monthly, annually and every five years in various reports.<sup>3</sup> This industry data is our basic data source, and it consists of retailers whose primary business (or a separate subsidiary) is mail order or electronic commerce sales. From another Census Bureau publication we add an estimate of e-commerce sales from companies that make a portion of their sales from websites, but have no separate website subsidiaries.<sup>4</sup>

(B) Taxable Portion of Remote B-to-C Sales. Data from the *2007 Economic Census* for remote sales for NAICS Industry 4541 include detailed product categories and sales volumes of each. Based on this list of products, we estimate that about 30.5 percent of U.S. remote sales were exempt in 2007 under the California sales and use tax law. The vast majority of these exempt sales, 25.8 percent of the 30.5 percent, are prescription drugs. These percentages apply to all remote sales; there are no separate product data for electronic and mail order sales. We will assume that these national product category percentages of remote sales also apply to

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<sup>1</sup> SB 858 (Statutes of 2010) applies to purchases of tangible personal property made on or after January 1, 2010, in taxable years beginning on or after January 1, 2010.

<sup>2</sup> "2010 Electronic Commerce and Mail Order Sales Revenue Estimates – Technical Documentation," December 6, 2010.

<sup>3</sup> Every five years the U.S. Census Bureau takes a census of businesses. The most recent census year was 2007.

<sup>4</sup> *2008 E-Commerce Multi-sector Report*, U.S. Census Bureau, May 27, 2010, web site: <http://www.census.gov/eos/www/ebusiness614.htm>.

California. This premise implies that 69.5 percent of remote sales are taxable to California purchasers.

→ (C) Compliance and Nexus Percentage Assumptions. For revenue estimation purposes, we assume that all retailers registered with the Board of Equalization (firms with California nexus) are remitting the sales and use taxes they owe. We further assume that all use tax payments made by households were remitted on their income tax forms. ←

→ Based on research done in 2004 and updated with more recent information from the 2007 *Economic Census of Retail Trade*, we estimate that about 63 percent of remote sales to California households were made from retailers that have nexus in California. This estimate is based on company reports and employment and sales by employment size category.<sup>5</sup> We also confirmed this estimate with data from the *Internet Retailer Top 500 Guide*. This percentage implies that 37 percent of revenues related to sales made by remote sellers to California households are not paid except for the amounts paid on income tax forms. ←

(D) Estimate and Forecast Assumptions. The most detailed data available are for 2008, and some data are available for 2009. An estimate of remote sales to consumers (ESMOH, as discussed earlier) for 2010 was made based on data available for the first nine months of the year. ESMOH sales from January through September 2010 increased 15.6 percent compared to the same period of 2009. Forecasts for 2011 and 2012 growth were made assuming the growth rate of ESMOH for the three years preceding the recession (2005, 2006, and 2007). This average growth rate is 13.3 percent per year.

Table 1 shows how these assumptions and data were combined to result in revenue estimates for each year. The data in the table are documented with line number references. We assume that all calendar year liabilities are all paid in the fiscal year ending July 1 of the following year. We first estimate what we call baseline revenues and then adjust them by subtracting use tax liabilities, most of which are paid by consumers on their income tax forms.<sup>6</sup> These use tax payments on income tax forms increased about 14 percent in 2009. We assumed that this growth rate would continue through 2011.

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<sup>5</sup> Memo from Joe Fitz, Chief Economist, to Board Member Leonard, "Electronic Commerce," August 30, 2005.

<sup>6</sup> Line 14 of Table 1 includes some unknown amounts of use taxes paid by sole proprietors on their income tax forms.

Line No.		Calendar Years				
		Actual	Estimated	Estimated	Forecast	Forecast
		2008	2009	2010	2011	2012
1	U.S. Sales Made by Electronic Shopping and Mail-Order Houses (ESMOH, NAICS 4541)	227,084	n.a.	n.a.	n.a.	n.a.
2	Other U.S. Retail E-commerce Sales (Excluding Cars) <sup>1/</sup>	9,357	n.a.	n.a.	n.a.	n.a.
3	Total Remote Sales (Line 1 + Line 2)	238,449	246,943	285,397	323,217	366,049
4	Growth Rate	2.1%	3.6%	15.6%	13.3%	13.3%
5	Taxable Percentage in 2007	69.5%	69.5%	69.5%	69.5%	69.5%
6	Estimated Taxable U.S. Remote Sales (Line 3 x Line 5)	165,722	171,625	198,351	224,636	254,404
7	California Share of U.S.	12%	12%	12%	12%	12%
8	California-Taxable U.S. Remote Sales (Line 6 x Line 7)	19,887	20,595	23,802	26,956	30,528
9	Noncompliance Rate	37%	37%	37%	37%	37%
10	Revenue Loss Tax Base (Line 8 x Line 9)	7,404	7,668	8,862	10,036	11,366
11	Tax Rate (Average Annual Rate for Calendar Year)	8.00%	8.83%	9.10%	8.61%	8.11%
12	Estimated Baseline Revenues (Line 10 x Line 11)	\$592	\$677	\$806	\$864	\$922
		Fiscal Years				
		2008-09	2009-10	2010-11	2011-12	2012-13
13	Estimated Baseline Revenues	\$592	\$677	\$806	\$864	\$922
14	Estimated Use Taxes Paid	\$9	\$10	\$11	\$13	\$15
15	<b>Estimated Revenues Losses (Line 13 - Line 14)</b>	<b>\$583</b>	<b>\$667</b>	<b>\$795</b>	<b>\$851</b>	<b>\$907</b>
Notes:						
1/ Line 2 adjusts online sales to include sales from companies without website subsidiaries. These are generally relatively small sellers.						

(2) Business-to-Business (B-to-B)

(A) Data Sources and Definitions

For a variety of reasons the data available for estimating B-to-B revenues are less certain than that for B-to-C revenues.<sup>7</sup> We based our B-to-B revenue estimate on data from the Merchant Wholesale Trade Sales Survey published by the U.S. Census Bureau.<sup>8</sup> Unlike the B-to-C data, we are not aware of any Census Bureau estimates that include traditional mail order sales to businesses. We assume that B-to-B electronic commerce sales include traditional mail order sales from one business to another business.

(B) California Adjustments

Vehicle Sales Adjustments and Industry Exemptions. We excluded transportation equipment purchases from our estimates because most vehicles are registered with the Department of Motor Vehicles and sales and use tax compliance is generally very high as a result. Some industries have exemptions or partial exemptions that reduce their use tax liabilities. The industries with exemptions for which we made adjustments are insurance (which is exempt from the use tax) and agriculture, which is exempt from the state portion of sales and use taxes for equipment purchases.

We adjusted for vehicle sales and these specific industry exemptions because we found data sources that in our judgment could reasonably estimate the exemptions. No data exists, to our knowledge, for online purchases for these adjustments. Therefore, we assumed that the overall purchase data relationships matched the online data relationships. Sources of data for these adjustments are the U.S. Census Bureau and the U.S. Bureau of Economic Analysis (BEA).<sup>9</sup>

California Share of U.S. Sales. Unlike B-to-C sales, we excluded the California portion of sales explicitly. (In B-to-C sales, the California portion is subsumed in the portion of all U.S. retail companies selling online that are registered with the Board. For B-to-B sales we are unable to determine the percentage of all companies that are registered with the Board.) Instead, we assume an estimate of the California share of all U.S. companies are registered with the Board. We use an estimate of 13 percent for the California share of U.S. B-to-B sales, which is slightly higher than our population share of the nation (12 percent) to reflect the share of California to U.S. gross domestic product.

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<sup>7</sup> U.S. Census Bureau e-commerce data are collected in several separate surveys. These surveys use different measures of economic activity (shipments, sales and revenues). The Census Bureau notes that these measures "should be interpreted with caution." There is potential for double counting of sales if the data are interpreted incorrectly. Furthermore, from a taxation perspective we do not know with certainty how much of the total B-to-B sales and use tax obligation has already been paid by businesses. For a more detailed discussion of these issues, see the Technical Documentation. The B-to-B estimates are subject to change to the extent that additional research may result in more accurate information.

<sup>8</sup> 2008 E-Commerce Multi-sector Report, U.S. Census Bureau, May 27, 2010, web site: <http://www.census.gov/eos/www/ebusiness614.htm>.

<sup>9</sup> Sources: 2010 Capital Spending Report: U.S. Capital Spending Patterns, 1999-2008, U.S. Census Bureau; Table 5.5.5 and "Industry Tables," U.S. Bureau of Economic Analysis.

(C) Exempt Sales. Sales data tabulated by the Census Bureau include all sales, both final sales and sales of intermediate goods used as inputs in the production process. We assume that 60 percent of sales are exempt, either because the exemption is related to the kinds of final goods sold or because the sales are not of final goods, but are instead sales for resale or intermediate goods used in production. If 60 percent of sales are exempt, this implies that the remaining 40 percent of sales are taxable under California law.

(D) Compliance by Businesses. These estimates reflect all taxable purchases made by businesses without addressing the issue of whether sales or use taxes have been paid. There are several channels through which sales and use taxes on purchases could be paid by businesses. Purchases are often made from companies that are registered with the state, and sales taxes would be paid at the time of purchase. Alternatively, use taxes could be paid by the purchasing firm or on income tax returns of individual proprietors. Overall compliance rates by businesses using any of these channels are unknown.

Through one means or another we believe that sales and use taxes are paid on 90 percent of the California taxable B-to-B electronic commerce sales. Board data on tax returns processed under AB 4x 18 indicate a similar percentage. The Illinois Department of Revenue estimates that businesses pay 90 percent of their sales and use tax liabilities.<sup>10</sup> This compliance percentage also falls within a range reported by the U.S. General Accountability Office (GAO), which assumed a range of 50 to 95 percent compliance rates for taxable B-to-B purchases excluding cars.<sup>11</sup> We believe that California is likely to have far better compliance than most states because of both our size (which implies a greater percentage of business purchases from firms with nexus) and our long tradition of relatively strong tax administration. Ninety percent compliance implies that the remaining 10 percent of taxes due are not paid.

(E) Estimate and Forecast Assumptions. The most recent B-to-B e-commerce data are available for 2008. Census Bureau and BEA data indicate that the vast majority of business spending for final consumption are for capital equipment items. We estimated B-to-B e-commerce for 2009 using the growth rates in capital equipment spending from the BEA. For the 2010 through 2012 period we used forecasts of capital equipment spending from the UCLA Anderson Forecast.<sup>12</sup>

Table 2 shows how these assumptions and data were combined to result in revenue estimates for each year. The data in the table are documented with line number references. We assume that all calendar year liabilities are all paid in the fiscal year ending July 1 of the following year. We first estimate what we call baseline revenues and then adjust them by subtracting estimates of use tax liabilities to be paid by businesses because of both the BOE Tax Gap program efforts and AB x4 18. Revenues from BOE Tax Gap Program efforts are estimated to be \$70 million per year. The revenue estimates for AB x4 18 range from \$59 million in fiscal year 2010-11 to

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<sup>10</sup> "A New Method for Estimating Illinois's E-Commerce Losses," Andy Chupick and Natalie Davila, *Tax Analysts Special Report*, February 16, 2009.

<sup>11</sup> *Sales Taxes: Electronic Commerce Growth Presents Challenges; Revenue Losses Are Uncertain*, U.S. General Accounting Office, June, 2000. Car sales are often excluded in such analyses because with vehicle registration requirements, tax compliance rates for car purchases are assumed to be close to 100 percent.

<sup>12</sup> *UCLA Anderson Forecast*, September 2010 forecast.

\$116 million in fiscal year 2012-13. These estimates have the effect of subtracting over one-third of baseline revenues from the estimates in fiscal year 2012-13.

Line No.		Calendar Years				
		Actual	Estimated	Estimated	Forecast	
		2008	2009	2010	2011	2012
1	Merchant Wholesale Trade Sales (MWTS) E-commerce	1,262,370	1,064,079	1,188,463	1,305,152	1,431,051
2	Percent Change	0.9%	-15.7%	11.7%	9.8%	9.6%
<u>California Adjustments:</u>						
3	Transportation equipment	30,323	15,738	17,578	19,304	21,166
4	Partial exemption for agricultural equipment	5,644	5,047	5,637	6,190	6,788
5	Insurance equipment	2,515	2,120	2,368	2,600	2,851
6	U.S. E-commerce Adjusted for Industry Exemptions (Line 1 - Line 3 - Line 4 - Line 5)	1,223,888	1,041,174	1,162,880	1,277,058	1,400,247
7	California share of U.S. Gross Domestic Product	13%	13%	13%	13%	13%
8	Exclude Estimated Sales Made by CA Businesses (Line 6 x Line 7)	159,105	135,353	151,174	166,018	182,032
9	California-Adjusted U.S. Remote Sales (Line 6 - Line 8)	1,064,782	905,821	1,011,706	1,111,040	1,218,215
10	Estimated Share of Taxable Sales	40%	40%	40%	40%	40%
11	California-Taxable U.S. Remote Sales (Line 7 x Line 9 x Line 10)	55,369	47,103	52,609	57,774	63,347
12	Baseline Noncompliance Rate	10%	10%	10%	10%	10%
13	Revenue Loss Tax Base (Line 11 x Line 12)	5,537	4,710	5,261	5,777	6,335
14	Tax Rate (Average Annual Rate for Calendar Year)	8.00%	8.83%	9.10%	8.61%	8.11%
		Fiscal Years				
		2008-09	2009-10	2010-11	2011-12	2012-13
15	Estimated CA-adjusted baseline revenues (Line 13 x Line 14)	\$443	\$416	\$479	\$497	\$514
16	<u>Revenue Adjustments:</u>					
17	BOE Tax Gap Program		70	70	70	70
18	Assembly Bill x4 18		29	59	81	86
19	<b>Estimated Revenues Losses (Line 15 - Line 17 - Line 18)</b>	<b>\$443</b>	<b>\$317</b>	<b>\$350</b>	<b>\$346</b>	<b>\$358</b>

## Revenue Summary

California electronic commerce and mail order sales and use tax revenue estimates for fiscal years 2008-09 through 2011-12 are summarized in Table 3 below.

<b>Table 3</b>				
<b>Estimated Revenue Losses From Total Remote Sales (B-to-B and B-to-C)</b>				
<b>(Millions of Dollars)</b>				
	<b>Fiscal Years</b>			
	<b><u>2009-10</u></b>	<b><u>2010-11</u></b>	<b><u>2011-12</u></b>	<b><u>2012-13</u></b>
<b>Total Estimated State and Local Revenue Losses<sup>1/</sup></b>	<b>\$983</b>	<b>\$1,145</b>	<b>\$1,197</b>	<b>\$1,265</b>
State General Fund	\$641	\$755	\$765	\$780
State Fiscal Recovery Fund	\$28	\$31	\$35	\$39
Local Funds	\$315	\$359	\$397	\$446
1/ Total estimated state and local revenue losses are the sum of figures from Table 1, Line 15 and Table 2, Line 19.				

## Qualifying Remarks

These revenue estimates are based on overall projections of taxable sales without knowing whether or not sales or use taxes have already been paid. We then make assumptions about compliance to determine the revenue estimates. It is extremely difficult, if not impossible, to accurately determine the extent to which taxpayers are complying.

We also note that the most cost efficient method of collecting sales and use tax is to have the seller collect the tax and remit it to the Board. The state's sales and use tax law is designed to collect the revenue in this manner. The electronic commerce transactions that these estimates address are from out-of-state sellers who are not registered with the Board because they are not "engaged in business" in California. Federal law precludes states from requiring businesses not engaged in business in their states to collect the use tax from the purchaser. Without the ability to require the seller to collect the use tax and remit it to the Board, collecting these use tax liabilities from the purchaser can become very difficult and expensive.

In these electronic commerce transactions, since the seller is not registered with the Board, the purchaser has a use tax liability. Our estimates identify electronic commerce transactions as either business-to-business or business-to-consumer. For the most part neither the purchasing business nor the consumer may be aware of their use tax liability.

According to the *Economic Census* there were 3,426,952 businesses in California in 2007. The total unpaid use tax from electronic commerce sales made to these businesses is estimated to be \$350 million in fiscal year 2010-11. (This is 10 percent of total taxable B-to-B spending on which taxes are not being paid referenced on Line 13 in Table 2, adjusted for Board of Equalization Tax Gap programs and AB 4x 18.) That means that the average use tax liability is about \$102 per year. While some taxpayers may owe large amounts, others will have paid their liability in full or may not have use tax liabilities from remote purchases. Without the expensive

process of auditing a large number of these taxpayers, it would be difficult to know how much of this revenue we can expect to receive.

For business-to-consumer electronic commerce sales, it would be even less cost effective to pursue individual purchasers. There are about 13.1 million households in California. The average liability for electronic commerce sales would be about \$61 per household per year. (This is 37 percent of total taxable B-to-C spending on which taxes are not being paid referenced on Line 15 in Table 1.)

## **Preparation**

This revenue estimate was prepared by Joe Fitz, Research and Statistics Section. For additional information, please contact Mr. Fitz at (916) 323-3802.

Current as of December 6, 2010.

cc: Ms. Kristine Cazadd, Interim Executive Director  
Mr. Jeff McGuire  
Ms. Susanne Buehler  
Ms. Margaret S. Shedd

# Memorandum

**To** : Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, First District  
Senator George Runner, Second District  
Honorable John Chiang, State Controller

**Date:** April 15, 2011

**From** : Jeffrey L. McGuire, Deputy Director  
Sales and Use Tax Department (MIC 43)



**Subject** : Board Meeting, April 26, 2011  
Business Taxes Committee  
Request approval to publish proposed Regulation 1685.5,  
*Calculation of Estimated Use Tax – Use Tax Table*

Board staff requests your approval and authorization to publish proposed Sales and Use Tax Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table* (Exhibit 1). The proposed regulation prescribes the use tax table for calendar year 2011, which the Board is required to forward to the Franchise Tax Board (FTB) by July 30, 2011, and prescribes the methodology the Board will use to calculate the estimated amount of use tax due according to a person's adjusted gross income for calendar year 2012 and subsequent years so that the Board can prepare and forward use tax tables to the FTB by July 30 of each of those years.

## I. Background

Section 6451.2 of the Revenue and Taxation Code (RTC), as amended by Senate Bill No. 86 (Statutes 2011, Chapter 14) approved by the Governor on March 24, 2011, gives eligible consumers the option to satisfy their use tax obligations with regard to their nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000) by reporting their estimated amount of use tax as calculated by the Board on their California income tax returns. Section 6451.2 also requires the Board to annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year, beginning July 30, 2011, make available to the FTB such amounts in the form of a use tax table for inclusion in the instructions to the FTB's income tax returns.

Taxpayers will continue to have the option to satisfy their use tax obligations by reporting the amount of use tax they owe after applying their actual use tax rates to their actual purchases subject to use tax. Furthermore, funds received from the use tax line on the FTB returns will continue to be allocated according to the taxpayer's address as received by the FTB. Local taxes will be allocated to the countywide pools and applicable district taxes will be allocated based on the countywide pools, with consideration given as to whether the taxpayer's address is within a city that imposes a district tax.

## II. Need for a Regulation

The Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) does not prescribe the manner in which the Board is to calculate the estimated amount of use tax due according to a person's adjusted gross income or how the use tax estimates derived from such calculations are to be formatted into use tax tables. Therefore, the Board must prescribe how the estimated amount of use tax due according to a person's adjusted gross income shall be calculated and how such estimates are to be formatted into use tax tables pursuant to section 6451.2.

The California Administrative Procedure Act (commencing with section 11340 of chapter 3.5 of part 1 of division 3 of title 2 of the Government Code) defines the term "Regulation" to mean "*every rule, regulation, order, or standard of general application* or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code, § 11342.600, *emphasis added*.) The California Administrative Procedure Act also establishes procedural requirements for the Board's adoption of regulations. Board staff believes that when the Board prescribes how the estimated amount of use tax due according to a person's adjusted gross income shall be calculated and how the estimates shall be formatted into use tax tables, the procedures will constitute rules of general application (or regulations), which must be adopted in accordance with the Administrative Procedure Act's formal rulemaking procedures.

Given the statutory requirement that the Board provide the 2011 use tax table to FTB by July 30, 2011, and given the 2011 California Regulatory Notice Register Publication Schedule set by the Office of Administrative Law (OAL), staff will be requesting the Board's authorization to publish proposed Regulation 1685.5 at the April 26, 2011, meeting. If the Board authorizes publication on April 26, 2011, and Board staff delivers the notice of action for the proposed regulation to OAL by the close of business the same day, it will permit OAL to publish the notice of action on May 6, 2011, allow the Board to complete the 45 day notice and comment period by June 20, 2011, and allow the Board to hold a public hearing and adopt the regulation during its June 21-24, 2011, meeting. Furthermore, this timeline will allow staff to submit the required final rulemaking documents to OAL for approval as soon as possible and commence the 30-working-day period OAL has to review and either approve or reject the Board's regulation. Unfortunately, the March 23 amendments to section 6451.2 have not allowed staff enough time to discuss the proposed regulation with interested parties or to schedule this matter for Board discussion before the April 26 meeting of the Business Taxes Committee.

The timeline is summarized as follows:

1. April 26, 2011 - Board authorizes publication and notice of action is delivered to OAL;
2. May 6, 2011 – Notice of Action published;
3. June 20, 2011 - 45 day comment period completed;
4. June 21-24, 2011 - Board conducts a public hearing and adopts the proposed regulation; and
5. Week of June 27, 2011 (or sooner if possible) – Staff prepares final statement of reasons and delivers final rulemaking file to OAL to commence OAL's review period.

### **III. Proposed Regulation 1685.5 (Methodology)**

Proposed Regulation 1685.5 prescribes the use tax table for calendar year 2011. It also prescribes how the estimated amount of use tax due according to a person's adjusted gross income shall be calculated and how the estimates shall be formatted into use tax tables in subsequent years.

As prescribed in proposed Regulation 1685.5, a person's estimated use tax liability is calculated by applying a use tax liability factor to the specified Adjusted Gross Income (AGI) for the person's AGI range. The calculations are presented in a table that allows a taxpayer to find their AGI within an established AGI range and read across to the right column to find their estimated use tax liability. The goal is to develop a simple table that is consistent with AGI ranges reported by the FTB with similar percentages of taxpayers in each AGI range.

The established eight AGI ranges are based on data provided by FTB. The use tax liability factor is prescribed in the regulation, based on: 1) data regarding U.S. Spending at Electronic Shopping and Mail Order Houses obtained from the U.S. Department of Commerce Bureau of the Census (Exhibit 2); 2) U.S. personal income data obtained from U.S. Department of Commerce Bureau of Economic Analysis (Exhibit 3); 3) the average percentage of California purchases from out-of-state vendors without nexus based on the Board's revenue estimate, "Electronic Commerce and Mail Order Sales" (Exhibit 4, Page 3); and 4) the average state, local, and district sales and use tax rates.

**IV. Conclusion**

By July 30 of each year, the BOE is required to provide the FTB a table that a taxpayer may use to report an estimated amount of use tax due. Since section 6451.2 does not specify a formula for estimating use tax liabilities and does not specify the format of the required table, Board staff requests the Board's authorization to publish the proposed regulation to prescribe the methodology that the Board shall use to estimate the amount of use tax due according to a person's adjusted gross income and format the estimates into use tax tables.

Approved:   
Kristine E. Cazadd  
Interim Executive Director

JLM:rw

cc: Mr. Alan LoFaso (MIC 71)  
Ms. Regina Evans  
Mr. Sean Wallentine (MIC 78)  
Mr. Louis Barnett (MIC 77)  
Ms. Marcy Jo Mandel  
Ms. Kristine Cazadd (MIC 73)  
Mr. Randy Ferris

**Regulation 1685.5. Calculation of Estimated Use Tax – Use Tax Table**

*Reference:* Section 6452.1, Revenue and Taxation Code.

**(a) IN GENERAL**

The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

**(b) DEFINITIONS AND DATA SOURCES**

(1) AGI RANGES. The use tax table shall be separated into eight (8) AGI ranges as follows:

- (A) AGI less than \$20,000;
- (B) AGI of \$20,000 to \$39,999;
- (C) AGI of \$40,000 to \$59,999;
- (D) AGI of \$60,000 to \$79,999;
- (E) AGI of \$80,000 to \$99,999;
- (F) AGI of \$100,000 to \$149,999;
- (G) AGI of \$150,000 to \$199,999;
- (H) AGI more than \$199,999.

(2) USE TAX LIABILITY FACTOR OR USE TAX TABLE PERCENTAGE. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On May 1, 2012, and each May 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on electronic and mail order purchases for the proceeding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) TOTAL PERSONAL INCOME. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) TOTAL SPENDING AT ELECTRONIC SHOPPING AND MAIL ORDER HOUSES. Total spending at electronic shopping and mail order houses shall be determined by reference

to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) **PERCENTAGE OF INCOME SPENT ON ELECTRONIC AND MAIL ORDER PURCHASES.** The percentage of income spent on electronic and mail order purchases during a calendar year shall be calculated by dividing the total spending at electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(6) **AVERAGE STATE, LOCAL, AND DISTRICT SALES AND USE TAX RATE.** The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

### **(c) CALCULATION OF THE ESTIMATED USE TAX LIABILITY**

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying \$10,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through (G) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(H) shall be determined by multiplying each range member's actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

**(d) USE TAX TABLE FORMAT**

(1) The use tax table for calendar year 2011 shall provide as follows:

<b>Adjusted Gross Income (AGI) Range</b>	<b>Use Tax Liability</b>
Less Than \$20,000	\$7
\$20,000 to \$39,999	\$21
\$40,000 to \$59,999	\$35
\$60,000 to \$79,999	\$49
\$80,000 to \$99,999	\$63
\$100,000 to \$149,999	\$88
\$150,000 to \$199,999	\$123
More than \$199,999 -Multiply AGI by 0.070% (.0007)	

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as the use tax table for calendar year 2011.

Estimates of Monthly Retail and Food Services Sales by Kind of Business, 2010

(Estimates are shown in millions of dollars and are based on data from the Monthly Retail Trade Survey and Administrative Records)

NAICS Code	Kind of Business	2010												TOTAL
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
	<b>NOT ADJUSTED</b>	321,556	317,961	369,339	366,002	376,859	369,031	372,451	373,373	355,353	362,517	376,306	418,431	4,402,073
	Retail and food services sales: total	270,535	264,903	300,004	306,642	308,503	302,953	303,635	302,950	292,369	292,804	316,172	373,528	3,640,211
	Retail sales and food services sales: motor vehicle and parts	286,430	278,948	359,308	359,049	359,308	379,111	370,812	376,145	358,533	358,533	358,533	358,533	3,328,522
	Retail sales: total	254,420	253,940	293,033	293,033	293,033	293,033	293,033	293,033	293,033	293,033	293,033	293,033	2,765,461
	640000	90,494	83,665	90,494	90,494	90,494	90,494	90,494	90,494	90,494	90,494	90,494	90,494	814,842
	441 Motor, vehicle and parts dealers	51,916	53,258	63,275	66,358	67,170	66,581	68,026	67,475	69,325	67,713	69,154	68,309	701,862
	4411 Automobile and other motor vehicle dealers	45,648	47,382	58,568	62,568	63,082	62,720	64,369	63,612	65,295	64,206	65,664	65,426	693,626
	4412 Automobile dealers	47,318	43,778	59,271	63,314	64,500	63,081	64,827	63,612	65,295	64,206	65,664	65,426	693,626
	4413 Used car dealers	5,140	5,886	6,868	6,868	6,868	6,868	6,868	6,868	6,868	6,868	6,868	6,868	68,236
	4414 Used car dealers, exc. and fire stores	3,966	5,996	6,868	6,868	6,868	6,868	6,868	6,868	6,868	6,868	6,868	6,868	68,236
	442 Furniture, home furn., electronics and appliance stores	14,666	15,153	15,919	14,574	15,345	15,611	15,968	16,150	15,479	14,844	17,990	22,476	134,143
	442 Furniture and home furnishings stores	6,767	6,935	7,810	7,208	7,468	7,428	7,799	7,695	7,163	7,285	8,177	9,104	91,528
	4421 Furniture stores	3,922	4,096	4,562	4,202	4,399	4,225	4,525	4,500	4,187	4,269	4,869	4,869	49,697
	4422 Home furnishings stores	2,845	2,849	3,248	3,006	3,069	3,203	3,274	3,195	2,978	3,016	3,400	4,000	41,831
	4423 Floor covering stores	1,918	1,954	1,946	1,946	1,946	1,946	1,946	1,946	1,946	1,946	1,946	1,946	18,145
	44299 All other home furnishings stores	1,696	1,596	1,596	1,679	1,679	1,679	1,679	1,679	1,679	1,679	1,679	1,679	16,569
	443 Electronics and appliance stores	2,953	3,038	3,038	3,038	3,038	3,038	3,038	3,038	3,038	3,038	3,038	3,038	28,569
	4431 TV, TV and other elec. stores	6,036	6,346	6,079	5,520	5,995	6,169	6,169	6,169	6,169	6,169	6,169	6,169	57,372
	44311 Household appliance stores	1,168	1,184	1,280	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	10,002
	44312 Radio, TV, and other elec. stores	4,871	5,172	4,799	4,220	4,977	5,148	5,148	5,148	5,148	5,148	5,148	5,148	47,370
	44313 Computer and software stores	1,696	1,692	1,692	1,692	1,692	1,692	1,692	1,692	1,692	1,692	1,692	1,692	16,370
	4432 Building material and garden supply stores	16,247	16,225	21,663	20,710	20,710	20,710	20,710	20,710	20,710	20,710	20,710	20,710	183,374
	44321 Building material and garden supply stores	14,195	14,235	18,690	17,921	17,921	17,921	17,921	17,921	17,921	17,921	17,921	17,921	154,694
	44322 Lawn and garden stores	2,052	1,990	2,973	2,789	2,789	2,789	2,789	2,789	2,789	2,789	2,789	2,789	28,680
	444 Beer, wine, and liquor stores	2,854	2,854	3,225	3,328	3,459	3,442	3,663	3,663	3,663	3,663	3,663	3,663	33,554
	4441 Beer, wine, and liquor stores	20,969	20,969	22,761	21,754	21,900	21,614	21,900	21,614	21,900	21,614	21,900	21,614	187,381
	4442 Food and beverage stores	16,009	17,363	19,269	18,281	18,426	18,426	18,426	18,426	18,426	18,426	18,426	18,426	161,338
	4443 Pharmacies and drug stores	32,618	30,963	35,734	36,794	37,617	36,913	38,168	37,816	39,977	37,240	35,896	37,746	323,506
	447 Clothing and clothing stores	13,695	15,242	17,715	17,175	18,179	16,532	17,245	16,500	17,753	20,372	20,300	21,849	183,374
	4471 Clothing and clothing stores	10,037	10,826	13,153	12,335	13,180	12,221	12,749	13,211	15,249	13,189	15,059	16,811	156,811
	4481 Men's clothing stores	521	526	635	705	702	671	681	681	681	681	681	681	6,177
	44812 Men's clothing stores	2,273	2,426	3,163	3,243	3,243	3,243	3,243	3,243	3,243	3,243	3,243	3,243	36,783
	44814 Women's clothing stores	4,990	5,607	6,994	6,793	6,964	6,362	6,362	6,362	6,362	6,362	6,362	6,362	59,377
	44814 Family clothing stores	983	902	944	927	975	960	960	960	960	960	960	960	9,256
	44819 Other clothing stores	1,732	2,067	2,386	2,266	2,078	2,243	2,063	2,111	2,183	2,322	2,322	2,322	21,517
	4482 Shoe stores	1,703	2,094	2,036	2,036	2,036	2,036	2,036	2,036	2,036	2,036	2,036	2,036	18,707
	4483 Jewelry stores	2,528	2,472	3,319	3,168	3,272	3,620	3,507	3,707	3,026	3,827	3,397	3,748	40,204
	451 Sporting goods, hobby, book and music stores	1,157	1,219	1,419	1,305	1,277	1,266	1,319	1,243	1,304	1,369	1,266	1,266	13,153
	4511 Sporting goods stores	2,294	2,013	1,013	1,013	1,087	1,095	1,090	1,090	1,090	1,090	1,090	1,090	10,497
	45112 Hobby, toy, and game stores	44,319	45,028	49,181	48,269	50,380	48,842	49,181	50,380	48,842	49,181	50,380	48,842	410,270
	4512 Book stores	12,429	13,126	14,783	14,306	15,008	14,408	14,081	14,964	13,635	14,515	18,570	26,782	186,654
	452 Department stores	8,589	8,822	10,917	9,270	9,998	9,670	9,998	10,152	9,837	10,126	10,232	10,232	123,309
	4521 Department stores (incl. L.D.)	3,830	4,304	4,766	5,050	5,011	4,738	4,638	4,802	4,668	4,922	6,446	6,446	63,295
	4522 Department stores (incl. L.D.)	5,277	4,518	15,116	14,220	15,320	11,708	11,360	15,278	13,962	14,838	19,010	27,982	190,760
	4523 Discount dept. stores	3,180	4,470	4,463	5,206	5,160	4,993	4,993	4,993	4,993	4,993	4,993	4,993	45,556
	4529 Other general merchandise stores	31,850	31,850	34,368	33,964	33,964	34,334	35,104	35,057	32,611	35,137	37,508	45,481	423,670
	45299 All other gen. merchandise stores	28,433	29,130	30,138	29,638	31,594	30,144	30,680	30,939	28,468	30,728	32,896	39,613	371,394
	453 Wholesale clubs and supercenters	3,457	3,767	4,200	4,328	4,398	4,224	4,449	4,449	4,449	4,449	4,449	4,449	38,281
	4531 Wholesale clubs and supercenters	2,196	2,321	2,555	2,663	2,663	2,663	2,663	2,663	2,663	2,663	2,663	2,663	25,589
	4532 Miscellaneous store retailers	1,871	1,673	1,782	1,607	1,538	1,538	1,538	1,538	1,538	1,538	1,538	1,538	12,691
	45321 Office supplies, stationery, and gift stores	1,061	1,145	1,231	1,253	1,467	1,423	1,415	1,392	1,423	1,423	1,423	1,423	12,691
	45322 Office supplies and stationery stores	906	993	1,130	1,101	1,122	1,159	1,159	1,159	1,159	1,159	1,159	1,159	11,278
	45323 Gift, novelty, and souvenir stores	29,080	27,095	30,080	28,643	28,186	26,712	28,962	28,962	28,962	29,497	34,131	44,286	361,328
	454 Nonstore retailers	20,201	18,844	21,973	20,806	20,431	21,630	20,627	22,515	22,118	22,289	26,364	34,354	272,215
	4541 Electronic shopping and mail-order houses	5,458	4,745	3,770	2,741	2,268	2,114	2,268	2,114	2,268	2,114	3,677	5,335	40,442
	45431 Mail order houses	36,115	35,963	40,201	40,053	41,430	40,902	39,648	40,967	37,793	40,367	37,793	40,367	473,250
	722 Food services and drinking places	15,790	15,920	17,668	17,068	17,068	17,068	17,068	17,068	17,068	17,068	17,068	17,068	150,000
	7221 Full service restaurants	15,672	15,812	17,264	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	150,000
	7222 Limited service eating places	1,092	1,092	1,800	1,725	1,759	1,753	1,759	1,759	1,759	1,759	1,759	1,759	204,683



	Jan 2010	Feb 2010	Mar 2010	Apr 2010	May 2010	Jun 2010	Jul 2010	Aug 2010	Sep 2010	Oct 2010	Nov 2010	Dec 2010	TOTAL
<b>ADJUSTED(1)</b>													
Food and food services (2)(3)	354,728	365,870	364,836	365,897	366,219	367,170	362,809	365,992	369,440	375,460	378,381	380,883	3,416,828
Alcohol, tobacco, and other products (2)(3)	234,820	237,892	232,328	233,201	234,403	235,363	234,140	235,440	236,611	237,816	239,028	240,240	2,111,668
Retail sales and food, alcoholic and tobacco products and drugs (2)(3)	316,479	325,435	326,614	327,912	329,314	330,774	328,949	330,552	332,051	333,646	335,248	336,850	3,016,634
Perishables (2)(3)	296,563	305,847	307,327	308,818	310,309	311,800	309,983	311,576	313,067	314,558	316,049	317,540	2,771,879
Nonperishables (2)(3)	44,116	49,588	49,287	49,104	49,005	48,974	48,966	48,976	48,984	49,088	49,199	49,310	437,755
441 Motor vehicle and parts dealers	59,915	57,218	52,618	52,819	52,819	52,819	52,819	52,819	52,819	52,819	52,819	52,819	472,015
4412 Automobile and other motor vehicle dealers	53,226	51,401	50,134	50,224	50,315	50,406	50,497	50,588	50,679	50,770	50,861	50,952	437,285
4413 Suburban parts, accessories, and maintenance shops	6,689	6,817	6,484	6,595	6,504	6,409	6,421	6,431	6,442	6,449	6,458	6,467	54,730
442 Car parts, accessories, and maintenance shops	7,527	7,796	7,584	7,595	7,606	7,617	7,628	7,639	7,650	7,661	7,672	7,683	67,793
443 Electronics and appliance stores	4,504	4,661	4,818	4,975	5,132	5,289	5,446	5,603	5,760	5,917	6,074	6,231	52,800
4432 Computer and software stores	1,845	1,914	2,024	2,134	2,244	2,354	2,464	2,574	2,684	2,794	2,904	3,014	25,013
444 Bookery, mail, and stationery stores and software stores	16,507	16,608	16,709	16,810	16,911	17,012	17,113	17,214	17,315	17,416	17,517	17,618	150,899
445 Food and beverage stores	48,433	48,023	47,613	47,203	46,793	46,383	45,973	45,563	45,153	44,743	44,333	43,923	400,814
4451 Grocery stores	43,270	42,759	42,248	41,737	41,226	40,715	40,204	39,693	39,182	38,671	38,160	37,649	341,524
4452 Grocers, milk and bakery stores	5,163	5,264	5,365	5,466	5,567	5,668	5,769	5,870	5,971	6,072	6,173	6,274	59,290
446 Health and personal care stores	21,318	21,532	21,746	21,960	22,174	22,388	22,602	22,816	23,030	23,244	23,458	23,672	212,624
4461 Pharmacies and drug stores	18,126	18,272	18,418	18,564	18,710	18,856	18,999	19,145	19,291	19,437	19,583	19,729	170,284
4462 Cosmetics and toiletries stores	3,192	3,260	3,328	3,396	3,464	3,532	3,600	3,668	3,736	3,804	3,872	3,940	32,340
447 Gasoline stations	35,225	35,296	35,367	35,438	35,509	35,580	35,651	35,722	35,793	35,864	35,935	36,006	305,227
448 Clothing and clothing accessories stores	17,731	17,938	18,145	18,352	18,559	18,766	18,973	19,180	19,387	19,594	19,801	20,008	181,316
4481 Clothing stores	12,865	13,062	13,259	13,456	13,653	13,850	14,047	14,244	14,441	14,638	14,835	15,032	133,382
44811 Men's clothing stores	5,511	5,582	5,653	5,724	5,795	5,866	5,937	6,008	6,079	6,150	6,221	6,292	53,151
44812 Women's clothing stores	3,025	3,076	3,127	3,178	3,229	3,280	3,331	3,382	3,433	3,484	3,535	3,586	30,939
4482 Sport stores	2,241	2,306	2,371	2,436	2,501	2,566	2,631	2,696	2,761	2,826	2,891	2,956	24,167
4483 Jewelry stores	2,464	2,534	2,604	2,674	2,744	2,814	2,884	2,954	3,024	3,094	3,164	3,234	27,169
449 Sporting goods, hobby, book, and music stores	7,168	7,272	7,376	7,480	7,584	7,688	7,792	7,896	8,000	8,104	8,208	8,312	71,449
4492 General merchandise stores	58,375	58,685	59,000	59,315	59,630	59,945	60,260	60,575	60,890	61,205	61,520	61,835	511,381
4521 Department stores (incl. L.D.)	14,712	15,002	15,292	15,582	15,872	16,162	16,452	16,742	17,032	17,322	17,612	17,902	154,443
45231 Warehouse clubs and supercenters	14,615	14,905	15,195	15,485	15,775	16,065	16,355	16,645	16,935	17,225	17,515	17,805	154,443
4529 All other general merchandise stores	30,377	30,552	30,727	30,902	31,077	31,252	31,427	31,602	31,777	31,952	32,127	32,302	283,938
453 Miscellaneous stores retailers	4,226	4,271	4,316	4,361	4,406	4,451	4,496	4,541	4,586	4,631	4,676	4,721	40,344
454 Nonstore retailers	9,482	9,528	9,574	9,620	9,666	9,712	9,758	9,804	9,850	9,896	9,942	9,988	84,246
4541 Electronic shopping and mail order houses	28,646	28,876	29,106	29,336	29,566	29,796	30,026	30,256	30,486	30,716	30,946	31,176	261,142
4542 Fuel dealers	21,242	21,459	21,676	21,893	22,110	22,327	22,544	22,761	22,978	23,195	23,412	23,629	203,834
722 Food services and drinking places	36,257	36,005	35,753	35,501	35,249	35,000	34,748	34,496	34,244	34,000	33,748	33,496	300,899

(S) Suppressed

(1) GAFC merchandise stores classified in the following NAICS codes: 442, 443, 444, 445, and 4822. NAICS code 4822 includes office supplies, stationery, and gift stores.

(2) Includes data for leased departments operated within department stores. Data for this line not included in any aggregate kind-of-business totals.

(3) Estimates are adjusted for seasonal variations and holiday and trading-day differences, but not for price changes. Cumulative seasonally adjusted sales estimates are not finalized.

(4) With the introduction of a new sample with estimates for the September 2006 data month, we have implemented a change in the seasonal pattern for estimates in Men's clothing stores (NAICS 44811). As a result, we have a temporary suspension of the release of seasonally adjusted estimates for this industry. Because of the seasonal adjustment methodology, we have also suspended from publication all estimates back through the January 2001 data month for this industry. We will continue to provide estimates for seasonality, however, as these estimates should be used with caution, as the new sample estimates may not be comparable with estimates from the old sample.

Note: Estimates are not adjusted for price changes. Retail and food services total and other subtotals may include data for kinds of business not shown.

Information on sample design, estimation procedures, and measures of sampling variability can be found on the internet at [http://www.census.gov/research/information/survey\\_methods.html](http://www.census.gov/research/information/survey_methods.html).

**Bureau of Economic Analysis**  
**National Income and Product Accounts Table**  
**Table 2.1. Personal Income and Its Disposition**

[Billions of dollars]

Today is: 4/12/2011 Last Revised on March 25, 2011 Next Release Date April 28, 2011

Line		2008	2009	2010
1	<b>Personal income</b>	<b>12,391.1</b>	<b>12,174.9</b>	<b>12,546.7</b>
2	Compensation of employees, received	8,065.8	7,806.7	7,991.1
3	Wage and salary disbursements	6,559.0	6,274.1	6,405.0
4	Private industries	5,415.1	5,100.5	5,217.9
5	Government	1,144.0	1,173.6	1,187.1
6	Supplements to wages and salaries	1,506.8	1,532.6	1,586.1
7	Employer contributions for employee pension and insurance funds	1,036.6	1,072.0	1,106.8
8	Employer contributions for government social insurance	470.1	460.6	479.2
9	Proprietors' income with inventory valuation and capital consumption adjustments	1,102.0	1,011.9	1,055.0
10	Farm	50.8	30.5	44.9
11	Nonfarm	1,051.2	981.5	1,010.1
12	Rental income of persons with capital consumption adjustment	222.0	274.0	300.9
13	Personal income receipts on assets	2,109.3	1,919.7	1,907.6
14	Personal interest income	1,314.7	1,222.3	1,194.9
15	Personal dividend income	794.6	697.4	712.7
16	Personal current transfer receipts	1,879.2	2,132.8	2,296.4
17	Government social benefits to persons	1,842.6	2,096.8	2,259.0
18	Old-age, survivors, disability, and health insurance benefits	1,068.3	1,164.5	1,213.9
19	Government unemployment insurance benefits	50.7	128.6	136.6
20	Veterans benefits	45.6	52.3	61.4
21	Family assistance <sup>1</sup>	19.3	20.1	19.8
22	Other	658.7	731.3	827.4
23	Other current transfer receipts, from business (net)	36.7	36.0	37.4
24	Less: Contributions for government	987.2	970.3	1,004.4

	social insurance, domestic			
25	<b>Less: Personal current taxes</b>	<b>1,438.2</b>	<b>1,140.0</b>	<b>1,166.8</b>
26	<b>Equals: Disposable personal income</b>	<b>10,952.9</b>	<b>11,034.9</b>	<b>11,379.9</b>
27	<b>Less: Personal outlays</b>	<b>10,505.0</b>	<b>10,379.6</b>	<b>10,720.7</b>
28	Personal consumption expenditures	10,104.5	10,001.3	10,349.1
29	Personal interest payments <sup>2</sup>	246.2	216.8	198.9
30	Personal current transfer payments	154.3	161.4	172.7
31	To government	89.7	95.0	100.8
32	To the rest of the world (net)	64.6	66.5	71.9
33	<b>Equals: Personal saving</b>	<b>447.9</b>	<b>655.3</b>	<b>659.2</b>
34	<b>Personal saving as a percentage of disposable personal income</b>	<b>4.1</b>	<b>5.9</b>	<b>5.8</b>
	<b>Addenda:</b>			

**Bureau of Economic Analysis**  
**National Income and Product Accounts Table**  
**Table 2.1. Personal Income and Its Disposition**

[Billions of dollars]

Today is: 4/12/2011 Last Revised on March 25, 2011 Next Release Date April 28, 2011

Line		2008	2009	2010
35	<b>Personal income excluding current transfer receipts, billions of chained (2005) dollars<sup>3</sup></b>	<b>9,638.5</b>	<b>9,191.1</b>	<b>9,224.8</b>
	<b>Disposable personal income:</b>			
36	Total, billions of chained (2005) dollars <sup>3</sup>	10,042.9	10,099.8	10,241.4
	Per capita:			
37	Current dollars	35,931	35,888	36,697
38	Chained (2005) dollars	32,946	32,847	33,025
39	Population (midperiod, thousands)	304,831	307,483	310,106
	Percent change from preceding period:			
40	<b>Disposable personal income, current dollars</b>	<b>5.1</b>	<b>0.7</b>	<b>3.1</b>
41	<b>Disposable personal income, chained (2005) dollars</b>	<b>1.7</b>	<b>0.6</b>	<b>1.4</b>



BOARD OF EQUALIZATION  
**REVENUE ESTIMATE**

**ELECTRONIC COMMERCE AND MAIL ORDER SALES**

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**Summary**

Updated Estimates. Based on information released by the U.S. Census Bureau and other sources in 2010, we have updated our estimates of remote sales (electronic and traditional mail order sales) revenue losses from out-of-state vendors. We now estimate annual revenue losses of \$1.145 billion in calendar year 2010 (to be remitted in fiscal year 2010-11). Of the total, \$795 million are owed by consumers and \$350 million were unpaid by businesses. These revenues are spread among approximately 13.1 million households and 3.4 million businesses. Unpaid sales and use tax liabilities in 2010-11 average \$61 per year for each California household and \$102 per year for each California business. Revenue from these out-of-state electronic commerce and mail order purchases are a significant component of the sales and use tax gap. (As defined here, the tax gap is the difference between what taxpayers owe and what they voluntarily pay.) This paper documents our estimates of sales and use tax revenues associated with electronic commerce and mail order sales that are not voluntarily paid from fiscal years 2008-09 through 2011-12.

Comparisons to Previous Estimates. Our previous estimates of remote sales revenue losses were released about a year ago. The estimates presented in this paper reflect the following new developments:

- The U.S. Census Bureau revised historical e-commerce estimates of purchases for both businesses and consumers. Most of the revisions were upward for both consumers and businesses.
- The recession that began in December 2007 ended in June 2009. Available evidence indicates that e-commerce growth rates for consumers and businesses have increased since the recession ended.
- The Board of Equalization implemented the In-state Service Business Component of the Tax Gap program in July 2008. We reviewed our revenue estimates for this program in light of additional information that became available within the past year.
- Legislation was passed and signed into law in 2009 (ABx4 18, Statutes of 2009) that we expect to significantly improve compliance of use tax payments by businesses, starting in fiscal year 2009-10. We reviewed and updated our compliance assumptions and revenue estimates associated with this program in light of additional information that became available within the past year.
- SB 1009 (Statutes of 2003), required a line on the income tax form to encourage consumers to pay their use tax obligations. This legislation and Board of Equalization outreach efforts have contributed to more consumers paying their use tax obligations on their income tax forms in recent years. The SB 1009 provisions were scheduled to sunset on January 1, 2010. However, legislation enacted in October 2010 (SB 858,

Statutes of 2010) extends the requirement to apply to sales made in 2010 and subsequent years.<sup>1</sup>

## Background, Methodology, and Assumptions

### (1) Background Sources and Data Assumptions

The methodology used to derive these estimates is very similar to that which we used in our previous revenue estimates. There are two major markets for electronic commerce: business-to-consumer (B-to-C) and business-to-business (B-to-B). Each market has its own separate data sources and critical assumptions. We will assume all mail order sales are B-to-C. A more detailed description of our methodology and assumptions is found in our technical documentation.<sup>2</sup>

### (2) Business-to-Consumer (B-to-C)

Other than reflecting the developments discussed above, we made no major changes in our methodology used to estimate business-to-consumer (B-to-C) purchases.

(A) Data Sources. We define remote sales as all sales from retail sellers to households that are made electronically or by using traditional mail order sales channels. Our basic data source is the U.S. Census Bureau, as it was in previous estimates. The Census Bureau publishes sales estimates for North American Industrial Classification System (NAICS) Industry 4541 ("Electronic Shopping and Mail Order Houses," or ESMOH) monthly, annually and every five years in various reports.<sup>3</sup> This industry data is our basic data source, and it consists of retailers whose primary business (or a separate subsidiary) is mail order or electronic commerce sales. From another Census Bureau publication we add an estimate of e-commerce sales from companies that make a portion of their sales from websites, but have no separate website subsidiaries.<sup>4</sup>

(B) Taxable Portion of Remote B-to-C Sales. Data from the 2007 Economic Census for remote sales for NAICS Industry 4541 include detailed product categories and sales volumes of each. Based on this list of products, we estimate that about 30.5 percent of U.S. remote sales were exempt in 2007 under the California sales and use tax law. The vast majority of these exempt sales, 25.8 percent of the 30.5 percent, are prescription drugs. These percentages apply to all remote sales; there are no separate product data for electronic and mail order sales. We will assume that these national product category percentages of remote sales also apply to

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<sup>1</sup> SB 858 (Statutes of 2010) applies to purchases of tangible personal property made on or after January 1, 2010, in taxable years beginning on or after January 1, 2010.

<sup>2</sup> "2010 Electronic Commerce and Mail Order Sales Revenue Estimates – Technical Documentation," December 6, 2010.

<sup>3</sup> Every five years the U.S. Census Bureau takes a census of businesses. The most recent census year was 2007.

<sup>4</sup> 2008 E-Commerce Multi-sector Report, U.S. Census Bureau, May 27, 2010, web site: <http://www.census.gov/eos/www/ebusiness614.htm>.

California. This premise implies that 69.5 percent of remote sales are taxable to California purchasers.

→ (C) Compliance and Nexus Percentage Assumptions. For revenue estimation purposes, we assume that all retailers registered with the Board of Equalization (firms with California nexus) are remitting the sales and use taxes they owe. We further assume that all use tax payments made by households were remitted on their income tax forms. ←

→ Based on research done in 2004 and updated with more recent information from the 2007 *Economic Census of Retail Trade*, we estimate that about 63 percent of remote sales to California households were made from retailers that have nexus in California. This estimate is based on company reports and employment and sales by employment size category.<sup>5</sup> We also confirmed this estimate with data from the *Internet Retailer Top 500 Guide*. This percentage implies that 37 percent of revenues related to sales made by remote sellers to California households are not paid except for the amounts paid on income tax forms. ←

(D) Estimate and Forecast Assumptions. The most detailed data available are for 2008, and some data are available for 2009. An estimate of remote sales to consumers (ESMOH, as discussed earlier) for 2010 was made based on data available for the first nine months of the year. ESMOH sales from January through September 2010 increased 15.6 percent compared to the same period of 2009. Forecasts for 2011 and 2012 growth were made assuming the growth rate of ESMOH for the three years preceding the recession (2005, 2006, and 2007). This average growth rate is 13.3 percent per year.

Table 1 shows how these assumptions and data were combined to result in revenue estimates for each year. The data in the table are documented with line number references. We assume that all calendar year liabilities are all paid in the fiscal year ending July 1 of the following year. We first estimate what we call baseline revenues and then adjust them by subtracting use tax liabilities, most of which are paid by consumers on their income tax forms.<sup>6</sup> These use tax payments on income tax forms increased about 14 percent in 2009. We assumed that this growth rate would continue through 2011.

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<sup>5</sup> Memo from Joe Fitz, Chief Economist, to Board Member Leonard, "Electronic Commerce," August 30, 2005.

<sup>6</sup> Line 14 of Table 1 includes some unknown amounts of use taxes paid by sole proprietors on their income tax forms.

Line No.		Calendar Years				
		Actual	Estimated	Estimated	Forecast	Forecast
		2008	2009	2010	2011	2012
1	U.S. Sales Made by Electronic Shopping and Mail-Order Houses (ESMOH, NAICS 4541)	227,084	n.a.	n.a.	n.a.	n.a.
2	Other U.S. Retail E-commerce Sales (Excluding Cars) <sup>1/</sup>	9,357	n.a.	n.a.	n.a.	n.a.
3	Total Remote Sales (Line 1 + Line 2)	238,449	246,943	285,397	323,217	366,049
4	Growth Rate	2.1%	3.6%	15.6%	13.3%	13.3%
5	Taxable Percentage in 2007	69.5%	69.5%	69.5%	69.5%	69.5%
6	Estimated Taxable U.S. Remote Sales (Line 3 x Line 5)	165,722	171,625	198,351	224,636	254,404
7	California Share of U.S.	12%	12%	12%	12%	12%
8	California-Taxable U.S. Remote Sales (Line 6 x Line 7)	19,887	20,595	23,802	26,956	30,528
9	Noncompliance Rate	37%	37%	37%	37%	37%
10	Revenue Loss Tax Base (Line 8 x Line 9)	7,404	7,668	8,862	10,036	11,366
11	Tax Rate (Average Annual Rate for Calendar Year)	8.00%	8.83%	9.10%	8.61%	8.11%
12	Estimated Baseline Revenues (Line 10 x Line 11)	\$592	\$677	\$806	\$864	\$922
		Fiscal Years				
		2008-09	2009-10	2010-11	2011-12	2012-13
13	Estimated Baseline Revenues	\$592	\$677	\$806	\$864	\$922
14	Estimated Use Taxes Paid	\$9	\$10	\$11	\$13	\$15
15	<b>Estimated Revenues Losses (Line 13 - Line 14)</b>	<b>\$583</b>	<b>\$667</b>	<b>\$795</b>	<b>\$851</b>	<b>\$907</b>
Notes:						
1/	Line 2 adjusts online sales to include sales from companies without website subsidiaries. These are generally relatively small sellers.					

## (2) Business-to-Business (B-to-B)

### (A) Data Sources and Definitions

For a variety of reasons the data available for estimating B-to-B revenues are less certain than that for B-to-C revenues.<sup>7</sup> We based our B-to-B revenue estimate on data from the Merchant Wholesale Trade Sales Survey published by the U.S. Census Bureau.<sup>8</sup> Unlike the B-to-C data, we are not aware of any Census Bureau estimates that include traditional mail order sales to businesses. We assume that B-to-B electronic commerce sales include traditional mail order sales from one business to another business.

### (B) California Adjustments

Vehicle Sales Adjustments and Industry Exemptions. We excluded transportation equipment purchases from our estimates because most vehicles are registered with the Department of Motor Vehicles and sales and use tax compliance is generally very high as a result. Some industries have exemptions or partial exemptions that reduce their use tax liabilities. The industries with exemptions for which we made adjustments are insurance (which is exempt from the use tax) and agriculture, which is exempt from the state portion of sales and use taxes for equipment purchases.

We adjusted for vehicle sales and these specific industry exemptions because we found data sources that in our judgment could reasonably estimate the exemptions. No data exists, to our knowledge, for online purchases for these adjustments. Therefore, we assumed that the overall purchase data relationships matched the online data relationships. Sources of data for these adjustments are the U.S. Census Bureau and the U.S. Bureau of Economic Analysis (BEA).<sup>9</sup>

California Share of U.S. Sales. Unlike B-to-C sales, we excluded the California portion of sales explicitly. (In B-to-C sales, the California portion is subsumed in the portion of all U.S. retail companies selling online that are registered with the Board. For B-to-B sales we are unable to determine the percentage of all companies that are registered with the Board.) Instead, we assume an estimate of the California share of all U.S. companies are registered with the Board. We use an estimate of 13 percent for the California share of U.S. B-to-B sales, which is slightly higher than our population share of the nation (12 percent) to reflect the share of California to U.S. gross domestic product.

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<sup>7</sup> U.S. Census Bureau e-commerce data are collected in several separate surveys. These surveys use different measures of economic activity (shipments, sales and revenues). The Census Bureau notes that these measures "should be interpreted with caution." There is potential for double counting of sales if the data are interpreted incorrectly. Furthermore, from a taxation perspective we do not know with certainty how much of the total B-to-B sales and use tax obligation has already been paid by businesses. For a more detailed discussion of these issues, see the Technical Documentation. The B-to-B estimates are subject to change to the extent that additional research may result in more accurate information.

<sup>8</sup> *2008 E-Commerce Multi-sector Report*, U.S. Census Bureau, May 27, 2010, web site: <http://www.census.gov/eos/www/ebusiness614.htm>.

<sup>9</sup> Sources: *2010 Capital Spending Report: U.S. Capital Spending Patterns, 1999-2008*, U.S. Census Bureau; Table 5.5.5 and "Industry Tables," U.S. Bureau of Economic Analysis.

(C) Exempt Sales. Sales data tabulated by the Census Bureau include all sales, both final sales and sales of intermediate goods used as inputs in the production process. We assume that 60 percent of sales are exempt, either because the exemption is related to the kinds of final goods sold or because the sales are not of final goods, but are instead sales for resale or intermediate goods used in production. If 60 percent of sales are exempt, this implies that the remaining 40 percent of sales are taxable under California law.

(D) Compliance by Businesses. These estimates reflect all taxable purchases made by businesses without addressing the issue of whether sales or use taxes have been paid. There are several channels through which sales and use taxes on purchases could be paid by businesses. Purchases are often made from companies that are registered with the state, and sales taxes would be paid at the time of purchase. Alternatively, use taxes could be paid by the purchasing firm or on income tax returns of individual proprietors. Overall compliance rates by businesses using any of these channels are unknown.

Through one means or another we believe that sales and use taxes are paid on 90 percent of the California taxable B-to-B electronic commerce sales. Board data on tax returns processed under AB 4x 18 indicate a similar percentage. The Illinois Department of Revenue estimates that businesses pay 90 percent of their sales and use tax liabilities.<sup>10</sup> This compliance percentage also falls within a range reported by the U.S. General Accountability Office (GAO), which assumed a range of 50 to 95 percent compliance rates for taxable B-to-B purchases excluding cars.<sup>11</sup> We believe that California is likely to have far better compliance than most states because of both our size (which implies a greater percentage of business purchases from firms with nexus) and our long tradition of relatively strong tax administration. Ninety percent compliance implies that the remaining 10 percent of taxes due are not paid.

(E) Estimate and Forecast Assumptions. The most recent B-to-B e-commerce data are available for 2008. Census Bureau and BEA data indicate that the vast majority of business spending for final consumption are for capital equipment items. We estimated B-to-B e-commerce for 2009 using the growth rates in capital equipment spending from the BEA. For the 2010 through 2012 period we used forecasts of capital equipment spending from the UCLA Anderson Forecast.<sup>12</sup>

Table 2 shows how these assumptions and data were combined to result in revenue estimates for each year. The data in the table are documented with line number references. We assume that all calendar year liabilities are all paid in the fiscal year ending July 1 of the following year. We first estimate what we call baseline revenues and then adjust them by subtracting estimates of use tax liabilities to be paid by businesses because of both the BOE Tax Gap program efforts and AB x4 18. Revenues from BOE Tax Gap Program efforts are estimated to be \$70 million per year. The revenue estimates for AB x4 18 range from \$59 million in fiscal year 2010-11 to

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<sup>10</sup> "A New Method for Estimating Illinois's E-Commerce Losses," Andy Chupick and Natalie Davila, *Tax Analysts Special Report*, February 16, 2009.

<sup>11</sup> *Sales Taxes: Electronic Commerce Growth Presents Challenges; Revenue Losses Are Uncertain*, U.S. General Accounting Office, June, 2000. Car sales are often excluded in such analyses because with vehicle registration requirements, tax compliance rates for car purchases are assumed to be close to 100 percent.

<sup>12</sup> *UCLA Anderson Forecast*, September 2010 forecast.

\$116 million in fiscal year 2012-13. These estimates have the effect of subtracting over one-third of baseline revenues from the estimates in fiscal year 2012-13.

Line No.		Calendar Years				
		Actual	Estimated	Estimated	Forecast	
		2008	2009	2010	2011	2012
1	Merchant Wholesale Trade Sales (MWTS) E-commerce	1,262,370	1,064,079	1,188,463	1,305,152	1,431,051
2	Percent Change	0.9%	-15.7%	11.7%	9.8%	9.6%
<u>California Adjustments:</u>						
3	Transportation equipment	30,323	15,738	17,578	19,304	21,166
4	Partial exemption for agricultural equipment	5,644	5,047	5,637	6,190	6,788
5	Insurance equipment	2,515	2,120	2,368	2,600	2,851
6	U.S. E-commerce Adjusted for Industry Exemptions (Line 1 - Line 3 - Line 4 - Line 5)	1,223,888	1,041,174	1,162,880	1,277,058	1,400,247
7	California share of U.S. Gross Domestic Product	13%	13%	13%	13%	13%
8	Exclude Estimated Sales Made by CA Businesses (Line 6 x Line 7)	159,105	135,353	151,174	166,018	182,032
9	California-Adjusted U.S. Remote Sales (Line 6 - Line 8)	1,064,782	905,821	1,011,706	1,111,040	1,218,215
10	Estimated Share of Taxable Sales	40%	40%	40%	40%	40%
11	California-Taxable U.S. Remote Sales (Line 7 x Line 9 x Line 10)	55,369	47,103	52,609	57,774	63,347
12	Baseline Noncompliance Rate	10%	10%	10%	10%	10%
13	Revenue Loss Tax Base (Line 11 x Line 12)	5,537	4,710	5,261	5,777	6,335
14	Tax Rate (Average Annual Rate for Calendar Year)	8.00%	8.83%	9.10%	8.61%	8.11%
		<b>Fiscal Years</b>				
		<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>
15	Estimated CA-adjusted baseline revenues (Line 13 x Line 14)	\$443	\$416	\$479	\$497	\$514
16	<u>Revenue Adjustments:</u>					
17	BOE Tax Gap Program		70	70	70	70
18	Assembly Bill x4 18		29	59	81	86
<b>19</b>	<b>Estimated Revenues Losses (Line 15 - Line 17 - Line 18)</b>	<b>\$443</b>	<b>\$317</b>	<b>\$350</b>	<b>\$346</b>	<b>\$358</b>

## Revenue Summary

California electronic commerce and mail order sales and use tax revenue estimates for fiscal years 2008-09 through 2011-12 are summarized in Table 3 below.

<b>Table 3</b>				
<b>Estimated Revenue Losses From Total Remote Sales (B-to-B and B-to-C)</b>				
<b>(Millions of Dollars)</b>				
	<b>Fiscal Years</b>			
	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
<b>Total Estimated State and Local Revenue Losses<sup>1/</sup></b>	<b>\$983</b>	<b>\$1,145</b>	<b>\$1,197</b>	<b>\$1,265</b>
State General Fund	\$641	\$755	\$765	\$780
State Fiscal Recovery Fund	\$28	\$31	\$35	\$39
Local Funds	\$315	\$359	\$397	\$446

1/ Total estimated state and local revenue losses are the sum of figures from Table 1, Line 15 and Table 2, Line 19.

## Qualifying Remarks

These revenue estimates are based on overall projections of taxable sales without knowing whether or not sales or use taxes have already been paid. We then make assumptions about compliance to determine the revenue estimates. It is extremely difficult, if not impossible, to accurately determine the extent to which taxpayers are complying.

We also note that the most cost efficient method of collecting sales and use tax is to have the seller collect the tax and remit it to the Board. The state's sales and use tax law is designed to collect the revenue in this manner. The electronic commerce transactions that these estimates address are from out-of-state sellers who are not registered with the Board because they are not "engaged in business" in California. Federal law precludes states from requiring businesses not engaged in business in their states to collect the use tax from the purchaser. Without the ability to require the seller to collect the use tax and remit it to the Board, collecting these use tax liabilities from the purchaser can become very difficult and expensive.

In these electronic commerce transactions, since the seller is not registered with the Board, the purchaser has a use tax liability. Our estimates identify electronic commerce transactions as either business-to-business or business-to-consumer. For the most part neither the purchasing business nor the consumer may be aware of their use tax liability.

According to the *Economic Census* there were 3,426,952 businesses in California in 2007. The total unpaid use tax from electronic commerce sales made to these businesses is estimated to be \$350 million in fiscal year 2010-11. (This is 10 percent of total taxable B-to-B spending on which taxes are not being paid referenced on Line 13 in Table 2, adjusted for Board of Equalization Tax Gap programs and AB 4x 18.) That means that the average use tax liability is about \$102 per year. While some taxpayers may owe large amounts, others will have paid their liability in full or may not have use tax liabilities from remote purchases. Without the expensive

process of auditing a large number of these taxpayers, it would be difficult to know how much of this revenue we can expect to receive.

For business-to-consumer electronic commerce sales, it would be even less cost effective to pursue individual purchasers. There are about 13.1 million households in California. The average liability for electronic commerce sales would be about \$61 per household per year. (This is 37 percent of total taxable B-to-C spending on which taxes are not being paid referenced on Line 15 in Table 1.)

## **Preparation**

This revenue estimate was prepared by Joe Fitz, Research and Statistics Section. For additional information, please contact Mr. Fitz at (916) 323-3802.

Current as of December 6, 2010.

cc: Ms. Kristine Cazadd, Interim Executive Director  
Mr. Jeff McGuire  
Ms. Susanne Buehler  
Ms. Margaret S. Shedd



April 25, 2011

The Honorable Jerome Horton, Chair  
California State Board of Equalization  
450 N Street, MIC 72  
Sacramento, CA 95814

**Subject: Proposed Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table**

Dear Honorable Jerome Horton:

The California Taxpayers Association is a nonpartisan, nonprofit association that supports good tax policy, opposes unnecessary taxes and promotes government efficiency. CalTax urges the members of the Board of Equalization to postpone adoption of the proposed regulations for the use tax look-up table.

To date, no interested parties meetings have been held to discuss the use tax table. CalTax believes that the interested parties meeting process is crucial to developing a fair and accurate table. The table proposed in Regulation 1685.5 is neither accurate nor a fair representation of what a taxpayer's use tax liability would be under the law. Listed below are CalTax's concerns:

- **Use Tax Table Methodology Needs Further Review.** The use tax table relies on several estimates that need further clarification to substantiate the accuracy of the table's calculation. For example, the regulation uses data that shows use tax liabilities have grown exponentially during the past several years, despite a global financial crisis and the crash of the housing market.
- **Does the Use Tax Table Seek to Generate Revenue Beyond What is Owed?** Another concern CalTax has is whether the BOE's design of the lookup table generate revenue beyond what is owed. As intended, the use tax table should purely be a tool for the Board to improve compliance.

Of the nine other states currently utilize use tax lookup tables, three states have a set range for taxpayers to use when calculating their use tax liability. Basing the use tax table percentage on a range make the use tax liability computation more reasonable, and reflects differences in consumption patterns.

- **Use Tax Table Does Not Account for Different Local Use Tax Rates.** Local sales and use tax rates differ by city and county, and such differences should be reflected in a lookup table. The Board of Equalization could address use tax rate differences by creating a new publication. The BOE already publishes data in [Publication Z1](#), which lists the sales and use tax rates for all counties, cities and special districts in California.

The Honorable Jerome Horton, Chair  
State Board of Equalization  
Page 2

- **Use Tax Table Does Not Reflect Prospective Changes in the Use Tax Rate.** It is uncertain whether the use tax rate will remain at 8.25 percent past June 30. Currently, the Legislature is deliberating whether the rate should be extended. It is uncertain what will happen. The regulation assumes the rate will continue by using the January 1 use tax rate for the entire year.

CalTax looks forward to working with the Board of Equalization members and the Board's staff as the use tax table is implemented. However, for the foregoing reasons, we respectfully request that the Board postpone enactment of the use tax lookup table and vet the regulation through the interested parties' process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Gutierrez', written over a horizontal dotted line.

Robert Gutierrez, Research Analyst  
California Taxpayers Association

cc: Honorable Michelle Steel, Vice Chair, California State Board of Equalization  
Honorable Betty T. Yee, California State Board of Equalization  
Honorable George Runner, California State Board of Equalization  
Honorable John Chiang, State Controller  
Jeff McGuire, Deputy Director of the Sales and Use Tax Department

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

APRIL 26, 2011

BUSINESS TAXES COMMITTEE

Reported by: Juli Price Jackson

No. CSR 5214

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P R E S E N T

For the Board  
of Equalization:

Betty T. Yee  
Chair

Jerome E. Horton  
Member

George Runner  
Member

Michelle Steel  
Member

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

Diane G. Olson  
Chief, Board  
Proceedings Division

---oOo---

ITEM 1 STAFF

Susanne Buehler  
Sales and Use Tax  
Department

Cary Huxoll  
Legal Department

Kevin Hanks  
Sales and Use Tax  
Department

Lynn Whitaker  
Sales and Use Tax  
Department

ITEM 2 STAFF

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Susanne Buehler  
Sales and Use Tax  
Department

Kevin Hanks.  
Sales and Use Tax  
Department

Steven Mercer  
Budget Section

Bradley Heller  
Legal Department

Joe Fitz  
Research and Statistics

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1 SPEAKERS ITEM ONE

2 ---o0o---

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6	Christy Bouma	18
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10 SPEAKERS ITEM TWO

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14  
15 ---o0o---

1 450 N Street  
2 Sacramento, California  
3 April 26, 2011

4 ----oOo----

5 MR. HORTON: Let us call the Board of  
6 Equalization meeting to order.

7 Ms. Olson, what is our first matter?

8 MS. OLSON: Our first matter -- our first  
9 matter -- can you hear me?

10 MS. MANDEL: Not really.

11 MR. HORTON: Testing, 1, 2, 3.

12 MS. OLSON: Thank you.

13 Our first order of business today is the  
14 Business Taxes Committee.

15 Ms. Yee is the Chair of that Committee.

16 Ms. Yee?

17 MS. YEE: Thank you very much, Ms. Olson. Good  
18 morning, Members.

19 We have two items before the Business Taxes  
20 Committee this morning. The first item is the proposed  
21 changes to Regulations 1807 and 1828.

22 We'll have the parties come forward. I know  
23 there are several speakers to speak on this particular  
24 item. I'm going to have you all, if you will, just take  
25 turns and be respectful of those speaking after you.

26 Okay. Let me have the staff introduce the  
27 issue.

28 Good morning.

1 MS. BEUHLER: Good morning. I am Susanne  
2 Beuhler with the Sales and Use Tax Department.

3 With me today are Cary Huxsoll from our Legal  
4 Department and Kevin Hanks and Lynn Whitaker from Sales  
5 and Use Tax.

6 We have two agenda items for your consideration  
7 this morning. Agenda item 1 includes one action item  
8 for vote and one informational item.

9 In the action item we ask that the Board  
10 approve and authorize for publication proposed  
11 amendments to Regulation 1807, Petitions for  
12 Reallocation of Local Tax, and 1828, Petitions for  
13 Distribution and Redistribution of Transactions and Use  
14 Tax.

15 Staff and interested parties have worked  
16 together and reached agreement on several issues, some  
17 involving future revisions to the Board's procedural  
18 manuals and some involving regulatory change.

19 We prepared a PowerPoint overview of the local  
20 tax appeals process, highlighting the regulatory  
21 changes, including the alternatives before you this  
22 morning and the areas where staff and interested parties  
23 disagree.

24 Before we get into the presentation, however, I  
25 wanted to address an informational item on the agenda  
26 regarding holding local tax distributions in suspense  
27 while a suspected misallocation is investigated.

28 During the interested parties process and in

1 written submission, the HdL Companies commented that  
2 that procedures should be included in the BOE procedure  
3 manuals, explaining when distributions can be held.

4 Staff does not believe it is necessary to  
5 develop formal procedures for holding distributions or  
6 requesting that distributions be held. These cases are  
7 rare. And we believe staff must evaluate the facts and  
8 circumstances surrounding each case to determine if it  
9 is necessary to hold local tax distributions.

10 This issue does not involve regulatory  
11 amendment and does not require Board action. It is  
12 included for informational purposes only.

13 We have speakers on agenda item 1 and we would  
14 be happy to answer any questions you may have after the  
15 PowerPoint presentation.

16 I'm going to turn it over to Lynn Whitaker now  
17 for that presentation.

18 MS. YEE: Okay. Please, good morning.

19 MS. WHITAKER: Good morning. I'm Lynn Whitaker.  
20 I'm with the Sales and Use Tax Department.

21 Since this is a complicated issue, we prepared  
22 an overview of the local tax petition process to explain  
23 the alternatives before you.

24 Alternative 1 are amendments proposed by staff.  
25 These revisions have a prospective application and  
26 include an explanation of the extension request process  
27 with regards to the Local Revenue Allocation Unit  
28 notices, a mechanism allowing the Petitioner to request

1 the Allocation Group issue its supplemental decision and  
2 notification of potentially affected jurisdictions  
3 beginning at the Appeals Division level.

4 Alternative 2 are amendments proposed by  
5 Mr. Klehs and supported by the HdL Companies. In  
6 addition to the extension request procedure and  
7 notification at the Appeals level, this alternative  
8 includes additional time limits to issue decisions and  
9 schedule conferences and hearings at the Allocation,  
10 Appeals and Board Member levels.

11 Alternative 3 are amendments proposed by  
12 Muniservices. In addition to the extension request and  
13 notification at the Appeals level, these revisions  
14 include new processes at the Allocation level that  
15 include specific time frames and meetings between staff  
16 and the Petitioner, a limit on the acceptance of post  
17 Appeals conference submissions and a new process  
18 requiring Board Members to rule on the admissibility of  
19 new factual information provided with the request for  
20 hearing.

21 Muniservices' recommendation includes  
22 Alternatives 3.1 and 3.2 because Muniservices proposes  
23 two choices for making the revisions prospective.

24 The petition process begins when the Allocation  
25 Group receives the petition. The information is  
26 verified and Allocation issues its decision.

27 There isn't a time limit for Allocation to  
28 issue its decision, however, if the Allocation does not

1 issue a decision within six months, the Petitioner may  
2 request a decision and Allocation will issue one within  
3 90 days of the request.

4 Muniservices recommends a new process. They  
5 propose that Allocation has 270 days to issue its  
6 decision. At the end of this time if Allocation has not  
7 issued a decision, Allocation will meet and confer with  
8 the Petitioner within 30 days to discuss the scope and  
9 timeline of further investigations.

10 At any time after the meet and confer meeting,  
11 the Petitioner may ask Allocation to issue its decision  
12 within 90 days.

13 If no objection is received in response to  
14 Allocation's decision, the decision is final.

15 If an objection is received, Allocation will  
16 consider the objection, including any new information or  
17 evidence presented, and issue a supplemental decision.

18 The current regulation doesn't have a defined  
19 time limit at this step and this is an area where staff  
20 agreed with interested parties that revision was needed.  
21 Staff proposes that if Allocation does not issue a  
22 supplemental decision within six months, the Petitioner  
23 or notified jurisdiction may request Allocation issue a  
24 decision and Allocation will issue one within 90 days --  
25 a process similar to that with the first decision at the  
26 Allocation Group level.

27 Mr. Klehs and HdL proposed that Allocation has  
28 90 days to issue their supplemental decision.

1            Muniservices proposes that Allocation has  
2            90 days to issue their supplemental decision. If no  
3            decision is issued, Allocation will meet and confer with  
4            the Petitioner. At that time -- any time after the meet  
5            and confer meeting, the Petitioner may request  
6            Allocation to issue its supplemental decision within  
7            30 days.

8            If no objection is received to Allocation's  
9            supplemental decision, the decision is final.

10           If an objection is received, Allocation sends  
11           the file to the Appeals Division.

12           After the file has been sent to the Appeals  
13           Division, Petitioner, notified jurisdiction and the  
14           Sales and Use Tax Department are notified at least  
15           45 days before the conference.

16           One of the changes that was initially proposed  
17           by Mr. Klehs, but staff and the other interested parties  
18           agreed to, is to expand notification of the Appeals  
19           conference to any jurisdiction that would be  
20           substantially affected if the petition were granted.  
21           Currently this isn't done until a petition reaches the  
22           Board Member level of appeal.

23           As with general sales and use tax appeals,  
24           there is currently no time requirement of when an  
25           Appeals conference may be scheduled. Mr. Klehs and HdL  
26           propose that the Notice of Conference be sent within six  
27           months of the Appeals decision -- excuse me, Appeals  
28           Division receiving the file.

1           After a file is transferred to the Appeals  
2           Division, the Petitioner or notified jurisdiction may  
3           continue to discuss the issue with the Allocation staff.  
4           Based on that investigation, Allocation may issue a  
5           second supplemental decision.

6           If that decision is issued and there is no  
7           objection, the decision is final.

8           If there is an objection, the Appeals  
9           conference is scheduled. Mr. Klehs and HdL propose  
10          establishing a 60-day time limit to issue the second  
11          supplemental decision. And if an objection is filed,  
12          require that the Notice of the Appeals Conference be  
13          sent within 90 days.

14          Next the Appeals conference is held. If during  
15          the Appeals -- if during the conference a participant  
16          asks to submit additional information, they are allowed  
17          up to 30 days to provide additional written argument or  
18          documentary evidence. And other participants are  
19          allowed 15 days to respond.

20          Staff and interested parties agree to simplify  
21          this by allowing 30 days for each.

22          Muniservices proposes that the Appeals Division  
23          may not accept argument or evidence beyond these 30-day  
24          deadlines, except upon agreement by all participants.

25          Within 90 days of the Appeals conference or  
26          final submission of additional information, the Appeals  
27          Division will issue its Decision and Recommendation.

28          The Chief Counsel may approve an additional

1 90 days to prepare the D & R upon request by the Appeals  
2 Division. Mr. Klehs and HdL recommend shortening this  
3 extension request to 30 days.

4 The Petitioner and notified jurisdictions may  
5 appeal a Decision and Recommendation or a Supplemental  
6 Decision and Recommendation by submitting a request for  
7 Board hearing.

8 A decision may also be appealed by submitting a  
9 request for reconsideration to the Appeals Division.  
10 And the Appeals Division may issue a Supplemental D & R  
11 in response.

12 Mr. Klehs and HdL propose eliminating the  
13 request for reconsideration and Supplemental D & R  
14 processes.

15 If there is no timely request for a Board  
16 hearing or request for reconsideration, the D & R or  
17 SD & R is final.

18 If a request is received and additional factual  
19 information is sent with the Board hearing request,  
20 Muniservices proposes a new process requiring the  
21 request include justification of why that information  
22 was not provided at the Appeals conference and that  
23 Board Members will rule on the admissibility of that  
24 additional information no later than 75 days before the  
25 hearing is set.

26 If a request for a Board hearing is received,  
27 the Notice of Hearing is sent at least 75 days before  
28 the hearing.

1           Mr. Klehs and HdL propose adding the  
2 requirement that a Hearing Notice be sent within 90 days  
3 of the request for hearing.

4           There is one final issue to consider with  
5 regard to the proposed amendments, it has to do with  
6 making the application of the revisions prospective.

7           During the preparation of the issue paper,  
8 staff realized that the operative date language in the  
9 regulation was specific to the 2008 revision and that we  
10 needed to clarify that any new amendments would be  
11 added -- would be applied prospectively.

12           On April 4, we sent our proposed revisions to  
13 the interested parties that had submitted regulatory  
14 language for the issue paper.

15           Mr. Klehs and HdL didn't submit any further  
16 revisions. And if the Board does approve Alternative 2,  
17 staff recommends revising Subdivisions 1807(g) and  
18 1828(f) to include language to make the revisions  
19 prospective and that can probably be done during the  
20 public hearing process.

21           There was an additional subdivision -- excuse  
22 me, submission from Muniservices, although they agree  
23 the proposed revisions should apply prospectively, they  
24 had concerns with staff's language.

25           Muniservices proposes two options for the Board  
26 to consider, Alternative 3.1, which would retire current  
27 Regulations 1807 and 1828 and adopt new Regulations  
28 1807.1 and 1828.1, which include their proposed

1 amendments and prospective language.

2 As an alternative, Muniservices offers 3.2,  
3 which would amend Regulations 1807 and 1828 to provide  
4 that the amendments adopted by the Board on or about X  
5 date would have no retroactive effect.

6 And that concludes our PowerPoint.

7 MS. YEE: Thank you very much, Miss Whitaker.

8 Questions at this point, Members, before we  
9 hear the speakers?

10 Okay. Why don't we turn to the public comment?  
11 If you'll introduce yourselves for the record, you each  
12 have three minutes.

13 ---o0o---

14 JOHAN KLEHS

15 City of Livermore

16 ---o0o---

17 MR. KLEHS: My name -- excuse me, my name is  
18 Johan Klehs. I represent the City of Livermore. I've  
19 been working with HdL on this and they will speak from  
20 their own perspective.

21 We want to, first of all, thank the staff for  
22 doing a very diligent job in putting together an  
23 excellent presentation with the appropriate charts.

24 Our main argument is that the Regulation 1807  
25 process has an absence of several key deadlines that we  
26 think should be placed in the process.

27 Right now there are a host of applications that  
28 go back as far as 12 years. The process which allocates

1 sales tax monies to the appropriate local agencies  
2 should take, frankly, less time than a two-year  
3 legislative session. Having cases drag on for 12 years,  
4 seven years or, in the case of one that I was involved  
5 in, a fast track case taking three years, is simply too  
6 much time.

7 The staff's position has been that in order to  
8 get the right answer that they need to have as much time  
9 as possible.

10 Our position is that we would also like to get  
11 to the right decision, but we believe that if as much of  
12 the deadlines are placed in the process, certainly in  
13 the Allocation Group level, that we will get to the  
14 right decision in a faster period of time. And the  
15 sales tax monies will be allocated to the right local  
16 agency in the appropriate manner.

17 And we'd be happy to comment on each of the  
18 various deadlines that we're recommending.

19 Thank you.

20 MS. YEE: Thank you, Mr. Klehs.

21 Next speaker, please?

22 ---o0o--

23 ROBIN STURDIVANT

24 The HdL Companies

25 ---o0o---

26 MS. STURDIVANT: Good morning, my name is Robin  
27 Sturdivant and I'm with the HdL Companies. And I  
28 appreciate the opportunity to participate in today's

1 proceedings.

2           During this process we were asked how much the  
3 Board of Equalization collects in administrative fees  
4 for the local tax programs. And I have given some  
5 exhibits to Board Proceedings this morning that show  
6 that, according to the 2008-09 BOE annual report, the  
7 Board of Equalization withheld over \$60 million from  
8 local sales tax for administrating the local tax program  
9 and over 43 million for the special transaction or  
10 District taxes.

11           Our goal at HdL is to see that the local tax  
12 investigations are completed as quickly and as  
13 accurately as possible. And we're certain that the  
14 Board Members and the Board staff share that goal.

15           And I'd like to start with some facts to give  
16 you an overview of HdL's case inventory. We submit an  
17 average of 4500 petitions to the Board of Equalization  
18 each year. We have 3,633 open or unresolved petitions  
19 in front of Board staff. Of those petitions, 1,140 are  
20 over two years old. The oldest dating back to 1998. Of  
21 the older cases, only three petitions involving two  
22 taxpayers are currently with the Appeals Division. The  
23 remainder are still at the first level of review, which  
24 is the Allocation Group.

25           The most recent issue paper says that the  
26 Allocation Group received 6,651 petitions in fiscal  
27 '09-'10 and cleared almost as many, about 340 less. And  
28 that's a great number if you are just trying to keep up.

1 But that pace won't do anything to clear our current  
2 backlog.

3 The majority of our older petitions, those over  
4 two years old, were submitted in 2007. So, that's four  
5 years in the system with no resolution.

6 The issue paper suggests that part of the  
7 problem lies with the quality of the petitions and I  
8 have to take exception with that. And I'd like remind  
9 everyone that taxpayers are not obligated to provide  
10 information to a local government agency or a  
11 consultant.

12 And having said that, we make every effort to  
13 ensure that the petitions we submit are accurate and  
14 contain as much information as possible. In addition to  
15 the name, phone number and address, we often include  
16 maps, photos, copies of web pages, County Assessors'  
17 information. We make purchases to show receipts,  
18 shipping and tracking information.

19 I can give you specific examples where  
20 petitions were submitted to the Allocation Group and had  
21 20, 30 and 40 pages of documentation and yet they still  
22 take years to get resolved.

23 In the cases where the taxpayer will not  
24 provide information to a consultant, we must rely on the  
25 Allocation Group to complete a timely and accurate  
26 investigation. To insure a timely investigation, we  
27 need deadlines, timelines and goals.

28 In 2006 the US Bureau of Labor and Statistics

1 published a 25-year study showing that Americans change  
2 jobs, on average, every two and a half years. That  
3 means that the contact person I list on the petition I  
4 submit today will probably be not working at that firm  
5 three years from now.

6 When petitions age, information becomes stale,  
7 facts change, businesses close. Time is of the essence.  
8 We need to work with Board staff to find a way to move  
9 these petitions through the process in a more expedited  
10 manner.

11 Thank you.

12 MS. YEE: Thank you, Miss Sturdivant.

13 Next speaker, please?

14 ---o0o---

15 CHRISTY BOUMA

16 Muniservices

17 ---o0o---

18 MS. BOUMA: Madam Chair, Members, Christy Bouma  
19 representing Muniservices.

20 I just wanted to come before you, first of all,  
21 to thank the Chairwoman and the Board for moving these  
22 issues to the interested parties process. I think our  
23 company believes that it was a very robust discussion  
24 and what -- one thing that we discovered that we had  
25 unanimity around during the discussion was that having,  
26 you know, a process that is effective and efficient with  
27 good data, everybody was focused on making sure that  
28 when you ultimately end up before you and we are arguing

1 cases, that we should be arguing over the law and not  
2 disputing what the facts are. And, so, everybody  
3 continued to refocus on how do we get better facts?

4 So, while deadlines were central to some of the  
5 communications and I think those are pivotal to  
6 providing a timely process, we also saw the value in  
7 trying to come up with options or alternatives to insure  
8 that good data is being investigated, reviewed before  
9 these cases either come up to your level, which means  
10 that a lot of time has passed, or that they get disposed  
11 of quickly as they should.

12 And so, to that end, Muniservices appeared  
13 frequently in the slide show with many alternatives and  
14 I would, frankly, just suggest to you, that because of  
15 the quality of the interested parties' process,  
16 particularly the second discussion generated a lot more  
17 discussion about fact finding, and as active and  
18 cooperative participants to allow you to deliberate on  
19 what is the best way for you to conduct your business,  
20 we thought it was at least our duty to continue to  
21 provide alternatives, options, "How do we make sure that  
22 the parties are discussing the facts that are before  
23 them and how can they discover -- or continue to  
24 retrieve the data that's necessary to come to a good  
25 legal decision on an issue?"

26 And that is why you have lots of options before  
27 you.

28 And graciously and thankfully, Eric Myers will

1       come in behind me to speak more specifically about any  
2       of those should you have any questions.

3               Thank you.

4               MS. YEE: Thank you very much.

5               Okay, if you'll relinquish your seats and we'll  
6       have the next set of speakers.

7               Thank you.

8               Good morning. Please?

9                               ---o0o---

10                              ERIC MYERS

11                              Muniservices

12                              ---o0o---

13               MR. MYERS: Madam Chair, thank you, Members of  
14       the Committee.

15               My name is Eric Myers and I'm here on behalf of  
16       Muniservices. You just heard from Christy on, I think,  
17       the central point in our -- our proposal. I'd like to  
18       touch briefly on the -- our proposal regarding the  
19       prospective application of this -- of the amendments.

20               We agree with staff conceptually that the  
21       changes to the amendments should be prospective. Our  
22       concern with staff's language centers around making two  
23       points clear.

24               The first is that the transition rules be  
25       stated in the past tense, in this case, the past  
26       perfect, and I think we agree with staff on that. I  
27       think our language is essentially the same as theirs.

28               The second is to make sure that no mischief is

1       caused by language that's extraneous. In the staff's  
2       proposed language amendments to Subsection (g), they  
3       have characterized the 2008 amendments as being a repeal  
4       and re adoption of Regulation 1807.

5               We don't see the need for that language. We  
6       don't see that it adds any benefit. And from our  
7       perspective it invites some mischief. And, so, we would  
8       ask that that language be stricken.

9               We are also, at this point, although we had  
10       proposed two options, which one was to effectively  
11       sunset or retire Regulation 1807, which is our  
12       Option 3.1, we're more than happy to have the Board  
13       proceed with just considering Option 3.2, which is an  
14       amendment without the retirement of Regulation 1807.

15              And then, finally, just to note, part of what  
16       we understood this interested party process to be about  
17       was not a criticism of staff, but an opportunity to look  
18       at ways we might improve the process.

19              While we appreciate and thank staff for their  
20       diligent efforts in looking into what could be revised  
21       in the process and we agree with staff as far as they  
22       go, we think that there might be a missed opportunity  
23       here if we don't go a little farther.

24              And that opportunity is to -- to make sure that  
25       facts are developed more fully earlier in the process  
26       and that we create a process that has incentives for  
27       staff, who has the tools -- they have the sticks and the  
28       carrots -- and to make sure that those tools are used

1 early to develop the facts fully.

2 Thank you.

3 MS. YEE: Thank you very much, Mr. Myers.

4 ---o0o---

5 BOB CENDEJAS

6 Cities of Long Beach, Ontario, et al.

7 ---o0o---

8 MR. CENDEJAS: Good morning, Mr. Chairman and  
9 Members of the Board. I'm Bob Cendejas. I'm  
10 representing Long Beach, Ontario and some other cities.

11 First I want to commend the staff for  
12 conducting meetings that fully developed the issues and  
13 for being very objective during the process. As your  
14 staff has probably reported to you, they're always  
15 well-conducted meetings.

16 I also want to commend Mr. Klehs, who, after  
17 listening to the concerns of the City, withdrew his  
18 proposal to impound disputed City revenue during the  
19 appeal process. That was of utmost concern to the  
20 cities I represent and other cities I heard from.

21 However, I have to break from my colleagues, I  
22 support staff's alternative. The way I see it is the  
23 Board collects and distributes to the cities the cities'  
24 imposed local sales tax for which it charges a fee.

25 Therefore, the Cities are the Allocation  
26 Group's client. And the Allocation Group's goal should  
27 be to do everything it can to accommodate both sides to  
28 the City dispute to arrive at the correct answer the

1 first time.

2 It should not merely kick the dispute to the  
3 next level. If it is -- because it's running out of  
4 time. Providing the wrong answer at this level creates  
5 additional problems for each side of the dispute. As  
6 you can imagine, these -- a city to get what later is  
7 determined to be the wrong answer and realizes it can't  
8 spend revenue or it thinks it's getting revenue that  
9 it's not going to get, presents some big problems for  
10 it.

11 Also at this time the staff really has limited  
12 resources. It has a high number of new disputes each  
13 quarter. And it has fluctuating workloads. You know,  
14 this regulation being a good example. Therefore, at  
15 this time, I do not believe it's prudent to impose  
16 additional deadlines or eliminate procedures that would  
17 help to arrive at the correct answer the first time.

18 I think Robin mentioned that we'd like it to be  
19 speedy and accurate. I think most important one is  
20 accurate. I think we have to get the right answer. We  
21 have to get it early. We don't want it to continue with  
22 bad facts.

23 So, unfortunately, sometimes that takes longer  
24 than a lot of us would like. But I -- I think the most  
25 important thing, considering the limited resources staff  
26 has, is to make sure we get the facts right first, even  
27 if it does take longer than we all would like to see.

28 Thank you

1 MS. YEE: Thank you very much, Mr. Cendejas.  
2 Other speakers? Other public comment on this  
3 item?

4 Okay, hearing none, Members, I wanted to first  
5 compliment the staff for the thorough work that they've  
6 done on this petition. I really appreciate the clarity  
7 of certainly eliminating the current process and the  
8 proposed changes.

9 And I wanted to see if I could maybe set the  
10 stage for the discussion on this issue.

11 I was supportive of this petition in terms of  
12 entertaining the deadlines just because, as you know,  
13 many of the cases that this Board hears are dated. And  
14 I think particularly at a time such as this, where the  
15 State and local governments are so pressed for resources  
16 that we really do have to examine whether there is more  
17 that we can do to try to resolve these cases and the  
18 proper allocation occurs.

19 Having said that, I'm mindful of limited  
20 resources that this agency has. And certainly I think  
21 the discussion that did take place with respect to how  
22 these types of matters -- local allocation matters --  
23 compare to other business tax matters that come before  
24 the Board and associated time frames relative to those  
25 other tax matters actually peaked my curiosity. Because  
26 what I found myself thinking was, "We ought to be doing  
27 better in those other business tax matters with respect  
28 to having, hopefully, some better resolution, more

1       timely." And if it is a resource issue, I'd like to  
2       focus it as a the resource issue.

3               But, frankly, I'd like to think about being in  
4       the parties' shoes who have to rely on this -- on the  
5       Board's decision on these matters and what makes sense.

6               And I think I'm -- I'm very supportive of  
7       imposing some sort of time frame deadlines and  
8       timelines, but I also want to address the resource issue  
9       as well.

10              And I'll have questions to the staff as it  
11       relates to what our current cost model provides for  
12       relative to staffing.

13              But having said that, let me entertain  
14       questions and discussion, Members?

15              Mr. Runner?

16              MR. RUNNER: Yeah, my observation is, I think,  
17       along the same lines. And I'd like to hear some of that  
18       discussion in regards to whether or not we have a  
19       resource problem in the sense of staff not assigned, not  
20       enough staff to deal with these issues in a -- in a way  
21       that moves them through in a period of time that's  
22       reasonable or whether or not we truly had any deadlines  
23       in order then to make those decisions and move those up  
24       into the process.

25              So, I do have questions in regards to, I guess,  
26       both sides of that, No. 1.

27              If we go through some of these deadlines and  
28       apply some of these deadlines, what is the cost? What

1 is the -- what are staff requirements going to be in  
2 that regard?

3 But backing up to that, I also want to at least  
4 hear from -- and maybe from both sides on that issue --  
5 in regards to these are services to which these local  
6 governments do pay for.

7 So, I have a basic question and that is, do  
8 they pay enough? Do they pay too much? Are they  
9 getting -- are they basically getting the services to  
10 which they are reimbursing the BOE for?

11 Because, you know, if -- if, indeed, the model  
12 is something like they pay enough, but we don't hire  
13 enough people in order to fill the -- for the revenues  
14 that we are receiving, then that seems to be a staffing  
15 problem that we have to address.

16 And, so, I'm interested in kind of some  
17 observations, I think, in that regard. And it seems to  
18 me that so much of what we're dealing with and some of  
19 these differences all revolve around the issue of  
20 deadlines. I think that is going to be the core part of  
21 some of this discussion from my perspective.

22 MS. YEE: Maybe staff can respond to that  
23 question with -- speaking about currently what the cost  
24 model provides for relative to the amount of resources  
25 we have to deal with these types of matters.

26 MR. HUXSOLL: We have Steven Mercer here from  
27 budget.

28 MS. YEE: Okay.

1 MR. HUXSOLL: If you have specific questions on  
2 the cost --

3 MS. YEE: Sure.

4 MR. HUXSOLL: -- model.

5 MS. YEE: Okay. Good morning.

6 MR. MERCER: Good morning, Chair, good morning,  
7 Members.

8 My name is Steven Mercer and I'm with the  
9 budget section here.

10 MS. YEE: Okay.

11 MR. MERCER: Currently the sales and use tax  
12 allocation model looks at things at a very high level.  
13 And by doing so, when you get into these fine details,  
14 it doesn't necessarily address it.

15 But during the -- but in that allocation model  
16 the Bradley-Burns and the special taxing jurisdictions  
17 do pay for approximately one-third of the cost of the  
18 sales and use tax program. The State pays the other  
19 two-thirds.

20 Now, if the workload associated with the -- the  
21 local governments and special taxing jurisdictions went  
22 away and we lost one-third of our funding, we could not  
23 maintain the current level of program activities for the  
24 sales and use tax program because the State and the  
25 locals both share a lot of costs together.

26 So, I think it's a mutually beneficial  
27 allocation model where both pay for shared costs. But  
28 we just don't get down to these direct activities to --

1 when you're looking at these, you know, detailed cost  
2 shifts.

3 MS. YEE: Okay. Can you maybe just elaborate  
4 on whether that one-third cost share from the local  
5 jurisdictions, what does that actually support?

6 MR. MERCER: It supports all of the sales and  
7 use tax program, the registration of taxpayers, the  
8 auditing of taxpayers, the returns processing,  
9 collection activities -- you know, all of those, and  
10 also all of the administration component of the Board as  
11 well that's associated with the program.

12 MS. YEE: Okay. Ms. Mandel?

13 MS. MANDEL: So, what -- I think what you're  
14 saying is that the direct cost of the petition for  
15 reallocation of local sales tax process is not a  
16 separate nugget in there, it's part of the overall  
17 administrative -- everything is just -- it's a one-third  
18 across the Board?

19 MR. MERCER: That's correct, at a very high  
20 level.

21 We look at those -- each of those four  
22 activities -- the registration, returns processing,  
23 collections and auditing -- and we -- for the three of  
24 those -- the registration, collections and auditing --  
25 we look at the revenue associated with each of those  
26 activities. And based on that percentage, we allocate  
27 the cost of those activities to the State and the  
28 locals.

1           For the returns processing part -- portion of  
2           it, we go a little bit further, we do a little bit of  
3           workload activity. We look at what's on the return and  
4           how many lines of the return are associated with the  
5           State and with the local entities and we also factor the  
6           revenue in that a little bit as well.

7           And then we allocate the cost of that element  
8           to the State and the locals. Overall it comes out to be  
9           about two-thirds, one-third, but each individual  
10          activity may vary.

11          MS. YEE: And this particular, I guess,  
12          activity, the local allocation piece of it, that is  
13          funded out of the return processing element?

14          MR. MERCER: Yes, that's associated with the  
15          returns processing.

16          MS. YEE. Okay. And my understanding is that  
17          that element or local allocation is paid -- what is  
18          it -- or is it return processing?

19          What's the 4753 stand for?

20          MR. MERCER: That's the returns processing.

21          MS. YEE: Okay, return processing, okay.

22          So, within that element and with respect to the  
23          current workload of the Allocation Unit, are we  
24          sufficiently funded?

25          MR. MERCER: I believe the allocation is fair.  
26          I can't tell you exactly, you know, if they're getting  
27          the bang for their buck.

28          But I believe --

1 MS. YEE: I guess the question I'm driving at  
2 is, is the absence of deadlines and timelines now and  
3 the way in which local allocation works, in response to  
4 the available support and funding?

5 Or I guess what's driving? And then when we  
6 overlay the proposed timelines and deadlines, I want to  
7 know then what the impact will be?

8 MR. KLEHS: May I just interject briefly?

9 MS. YEE: Let me have -- let me see if you can  
10 answer, then I'll get to you.

11 MR. MERCER: That's a very hard question to  
12 answer.

13 MS. YEE: Okay, all right.

14 MR. KLEHS: So, I was going to assist you with  
15 the question where, you know, there is one person who  
16 handles all of these tax cases. It's an exceptional  
17 lawyer, highly qualified, does a great job.

18 MS. YEE: Yes.

19 MR. KLEHS: But, perhaps, the question to ask  
20 is should there be more money allocated --

21 MS. YEE: Well --

22 MR. KLEHS: -- for two or three people?

23 MS. YEE: Yeah, I am -- we'll get there.

24 Part of the problem is that we're working  
25 within a cost model that is not flexible.

26 And, so, we have that challenge and I think we  
27 can talk about kind of what the workload need will be if  
28 we were to adopt these revisions with -- to impose

1 timelines and deadlines.

2 I'm trying to get a sense of the current lay of  
3 the land with respect to what's driving the current  
4 workload and staffing. Is it because -- are we working  
5 up to kind of what's available relative to the resources  
6 for local allocation from this return processing  
7 element, I guess, is really --

8 MR. MERCER: We don't set like targets.

9 MS. YEE: Okay.

10 MS. MANDEL: Is that a question for the budget  
11 guy or a question for the staff that handles it?

12 Because I had the impression he was from the  
13 budget office.

14 MS. YEE: Yeah.

15 MS. MANDEL: So, I'm am a little confused.

16 MS. YEE: But I guess to the extent that we are  
17 tracking, kind of, these expenditures from each of these  
18 elements, I didn't know quite how to account for --

19 MS. MANDEL: Okay.

20 MS. YEE: -- the expenditure, but I'm open to  
21 hearing it from both.

22 Mr. Hanks, do you have a view?

23 MR. HANKS: Yes. Ms. Yee, I could offer the  
24 staffing model that we've have got in the Allocation  
25 Group and I think that's the majority of the work that  
26 we're talking about here, where we've got the active  
27 petitions, we've got a group of approximately ten  
28 individuals that are actively engaged in working the

1 petitions that the consultants are talking about this  
2 morning.

3 We believe that we have sufficient staffing,  
4 actually, to handle the work flow that is given to us.  
5 We actually process a number of these petitions. We're  
6 actively engaged in doing that each month. We might  
7 receive 500 of these cases a month. We might process as  
8 many as 600 of these cases a month.

9 Now, we do have -- as has been noted  
10 previously, we have approximately a thousand open  
11 inquiries that are over two years. However, what's  
12 significant about that is that 60 percent of those only  
13 relate to six accounts, six taxpayer accounts. And, so  
14 they're complicated cases that are, consequently, taking  
15 more staff time to investigate and determine whether or  
16 not a misallocation has occurred.

17 We're very mindful of the dates of knowledge  
18 that we're operating with. We want to ensure that the  
19 local tax is allocated correctly. And I think that's --  
20 that's probably what leads to some of the time frames  
21 that we're talking about.

22 That said, we think that there is sufficient  
23 triggers, however, within the statute that can be pulled  
24 that identify when our Allocation Group needs to make a  
25 decision. We're mindful of that. I know that the  
26 consultants would like to recommend different timelines  
27 or stricter timelines, but, actually, I think when you  
28 look at the current regulations, actually the time

1 frames within the current regulation are somewhat  
2 parallel to some of the time frames that have been  
3 suggested this morning.

4 With regard to processing more of the active  
5 petitions in our Appeals Division, we have only -- we  
6 have less than ten active cases in the Appeals Division.  
7 A majority of the cases that are under review are  
8 actually being worked and handled by our Allocation  
9 Group. We're mindful of that.

10 We are in a position where we ought to  
11 investigate further whether or not a misallocation has  
12 occurred, whether or not we need to recommend  
13 reallocations. We're mindful of that.

14 And just transferring these cases to the  
15 Appeals Division after -- if we haven't thoroughly  
16 investigated these cases, it isn't going to be to the  
17 benefit of the locals, certainly it's not going to be  
18 advantageous for our Appeals Division staff, looking at  
19 undeveloped cases. So, I think that explains why some  
20 of these cases are taking longer than expected.

21 But with that said, however, I've got an  
22 inventory listing that identifies a number of these  
23 petition cases that we close on a month to month basis.

24 In March of this year we closed 361 cases. The  
25 month prior we closed 560 cases. The month before that  
26 we closed 950 cases.

27 And I note that over time, actually, that  
28 inventory of -- ending inventory of petition cases that

1 we have in the Allocation Group is gradually  
2 diminishing. It's gradually getting smaller because  
3 we've got more people now actively engaged in working  
4 these petitions.

5 As the Board Members and everyone's mindfully  
6 aware, there were times for nine months when we couldn't  
7 retain a supervisor, even, for the Allocation Group. We  
8 couldn't hire to -- to fully staff that section.

9 Now we can and the Allocation Group is staffed.  
10 And we're actively involved in processing and clearing  
11 these cases.

12 MS. YEE: Okay. I assume -- I'm sorry,  
13 Mr. Runner, I'll be back to you, we're kind off on a  
14 tangent.

15 I assume the cases you are able to clear each  
16 month are the ones for which you have a lot of  
17 information. They probably are, maybe, lower dollar  
18 items, although not necessarily, but that -- but that  
19 information is much more readily available that will  
20 allow you to get rid of those cases.

21 MR. HANKS: That's correct. I'm not certain  
22 about the dollar value --

23 MS. YEE: Okay.

24 MR. HANKS: -- but I think, actually, the  
25 information component is another critical factor.

26 What we have determined in looking at just some  
27 of the recent petitions that have been filed, within the  
28 last several weeks, we note that many of those petitions

1       come to us with insufficient information for us to make  
2       a determination on whether a reallocation needs to  
3       occur.

4               We would comment to the consultants especially  
5       that many times the cases and petitions that they're  
6       processing with us are filed with us in an incomplete  
7       manner.

8               And what we need is three informations, really,  
9       to determine whether or not a misallocation or  
10       reallocation is needed. We need the amount of the  
11       transfer. We need to know who's getting the funds. We  
12       need to know where the funds are coming from.

13               Oftentimes that information isn't fully  
14       developed for our staff to identify that a reallocation  
15       is necessary.

16               MS. YEE: Okay.

17               MR. HANKS: When that information is deficient,  
18       we have to investigate and that leads to additional time  
19       by staff.

20               MS. YEE: Okay. I think that it's probably  
21       fair to say you see a variety of degrees of completion  
22       when these petitions are filed.

23               MR. HANKS: That's correct.

24               MS. YEE: Okay. And I would think imposing the  
25       timelines and deadlines would put all parties' feet to  
26       the fire in terms of being sure that there's complete  
27       information submitted.

28               And my last question is, elaborate a little bit

1 on the complexity of the cases and kind of how you  
2 assign staff resources to them.

3 And I understand that when they're focused on,  
4 perhaps, one single large taxpayer and it can be  
5 complex, but those generally might be -- and I don't  
6 know, just hypothetically say -- probably involve larger  
7 dollar or maybe more jurisdictions?

8 MR. HANKS: Correct.

9 MS. YEE: So, how do we kind of work through  
10 those, because those do tend to be the ones that are  
11 dated that come before the Board and you've got many  
12 jurisdictions, obviously, that are waiting for the  
13 outcome --

14 MR. HANKS: Right.

15 MS. YEE: -- the proper allocation.

16 MR. HANKS: Right. We do analyze the cases  
17 when they're first submitted to us. We review them, try  
18 and determine their complexity, determine whether or not  
19 we're looking at a taxpayer that is engaged in multiple  
20 or all jurisdictions within California.

21 The simpler cases are handled by the staff that  
22 have the requisite knowledge and experience to handle  
23 those cases. The more experienced auditors are handling  
24 the more difficult and complex cases.

25 Recently we've been involved in the one case, I  
26 believe, that Mr. Klehs was discussing, extremely  
27 complex matter involving different issues that we  
28 haven't necessarily had to review before. We've got

1 revenue agreements that have been drafted with cities  
2 that add even more complexity. We have got multiple  
3 jurisdictions involved.

4 Those types of cases are handled by our more  
5 senior auditors. They typically involve investigations  
6 where we'll send staff from our Allocation Group out  
7 into the field, out into the Districts, to observe the  
8 sales activities of the businesses that are allegedly  
9 involved in new business operations in new locations.  
10 So, those do entail more effort, more staff time,  
11 certainly more consultation with their supervisors.

12 We've just retained a new supervisor within our  
13 Allocation Group, he's only been on the staff for a few  
14 months now. We're very happy to have him. He's a very  
15 seasoned and experienced auditor. And I'm thrilled that  
16 we're able to retain him for working in our Allocation  
17 Group. And I think under his stewardship that -- that  
18 we're going to be working these cases and our inventory  
19 is going to decrease even from the level that we see  
20 today.

21 MS. YEE: Okay, all right. And any difference  
22 in terms of how you work cases where the taxpayer's no  
23 longer in operation?

24 MR. HANKS: Those are very difficult cases for  
25 us to look at. Oftentimes we consult with our auditors  
26 in the field. They are involved in doing these types of  
27 investigations for us.

28 If the businesses have closed, it's extremely

1 difficult for us to obtain information from -- from any  
2 of the employees, of course, they're not available to  
3 talk to. Oftentimes the documentation is nonexistent at  
4 that point. It's very difficult for us to obtain  
5 information for businesses that have either closed or  
6 just sold their operations or have relocated to new  
7 locations elsewhere, out of state, in some cases. So,  
8 those are particularly difficult for us to work.

9 MS. YEE: Although for those types of cases, at  
10 some point, the information you have is the information  
11 you have and --

12 MR. HANKS: Correct.

13 MS. YEE: -- you proceed more expeditiously?

14 Okay, Mr. Runner, I am very sorry for going off  
15 on a tangent.

16 MR. RUNNER: Back up a little bit to some of  
17 the finance issues just real quick.

18 MS. YEE: All right.

19 MR. RUNNER: From an overview, the  
20 administrative charge that is coming in from the local  
21 governments covers about a third?

22 MR. MERCER: Of the cost of the sales and use  
23 tax program.

24 MR. RUNNER: Of the sales and tax --

25 MR. MERCER: Program.

26 MR. RUNNER: -- program.

27 MR. MERCER: Yes.

28 MR. RUNNER: And we don't -- well, let me -- as

1       opposed to, for instance, we don't have a connection  
2       between what their costs are, what their -- what their  
3       administrative charge is and the whole process of the  
4       appeal and the distribution side of that?

5               MR. MERCER: Correct. We do not go down to  
6       that level of detail.

7               MR. RUNNER: Let me just ask, I guess, some  
8       local government reps or at least people who -- is  
9       that -- is that the understanding that you have with the  
10      administrative charge, that the administrative charge  
11      would not be connected to the cost of the administration  
12      of the allocation program?

13              MS. STURDIVANT: Well, it's the understanding  
14      of the local government agency that the fee that's  
15      withheld to cover the administrative costs of the sales  
16      and use tax program is to cover that local tax portion,  
17      the amounts that the cities get back and they use to  
18      fund their vital services -- police and fire.

19              And again from the 2008-2009 annual report,  
20      that that amount was combined \$100 million.

21              MR. RUNNER: Okay.

22              MS. STURDIVANT: So, if it's a third, it's only  
23      funding a third, So, that program in its entirety, I  
24      guess, we're saying is a \$300 million program?

25              MR. MERCER: That's correct.

26              MR. RUNNER: We believe that the allocation  
27      program is a \$300 million program?

28              MR. MERCER: I'm sorry, not -- that's the sales

1 and use tax program.

2 MR. RUNNER: The whole -- oh, okay, the  
3 whole -- but we don't know what the cost is?

4 MR. MERCER: Specifically of the allocation  
5 portion of it, no.

6 MR. RUNNER: Is that -- I guess I don't  
7 understand how we don't know.

8 And I don't know whether I go to the program  
9 people or the budget people.

10 Do we not know how many people work in that  
11 area, what the -- you know, what the costs are? How do  
12 we not know what a function like that costs us?

13 MR. HANKS: Senator Runner, we certainly know  
14 what the staff cost within our Allocation Group, we know  
15 the number of individuals that are in that section.

16 MR. RUNNER: Right.

17 MR. HANKS: I don't have the particular numbers  
18 in front of me because I thought we're speaking more in  
19 terms of a global budget for handling local tax matters.

20 MR. RUNNER: Okay. Well, I guess the point --

21 MR. HANKS: Definitely it's --

22 MR. RUNNER: -- a point, I guess, I'd make is  
23 that it seems to me it is appropriate if you are going  
24 to have a customer out there and you're collecting a fee  
25 from these customers to provide a service, we ought to  
26 know what the cost of that service is so that we know  
27 whether they're paying enough or too much.

28 Seems reasonable to me at that point, is that,

1 at least as I would understand, maybe the relationship  
2 isn't that.

3 Let me go back to issue of the covering the  
4 third. So, when you say it covers a third of the total  
5 program, help me understand the distribution of that  
6 sales tax in terms of where it ends up going.

7 Because not a third of that sales tax goes to  
8 local governments.

9 MR. MERCER: A third of the tax collected --  
10 well, currently, not -- it doesn't currently now because  
11 of the additional 1 percent tax that was added to the  
12 State legislation -- or the legislation was put in to  
13 exclude that 1 percent revenue from the cost allocation  
14 model.

15 But with -- without that 1 percent,  
16 approximately one-third of the revenue goes to local  
17 governments, the special taxing jurisdictions.

18 And then there is also the local or local  
19 revenue fund and public safety fund, which also goes to  
20 local governments as well.

21 MR. RUNNER: But not the new -- not the  
22 1 percent, the additional 1?

23 MR. MERCER: The additional 1 percent is  
24 excluded.

25 MR. RUNNER: Okay, okay. I don't know. I'm  
26 just getting a feeling like, actually, local  
27 government's overpaying a bit for what it is -- the  
28 services that they're receiving, just my general feeling

1 here.

2 And I guess it's unfortunate that we don't  
3 exactly have that number.

4 Let me just ask then the specific question  
5 because it is an issue to me, again, for service for  
6 what people are paying for.

7 And in many of the discussions, as Mr. Klehs  
8 has brought up, that it has come down to one of the  
9 examples is a single attorney in the Appeals process at  
10 that point, as an example.

11 Let me just ask, is it the opinion that -- of  
12 staff that if they had more -- an additional person  
13 there that we could shorten the time process that we  
14 have or does it merely, in the opinion of staff, not  
15 make any difference?

16 MR. HUXSOLL: There's -- in analyzing the cases  
17 in Appeals right now there is adequate staffing in  
18 Appeals to prevent a backlog from occurring.

19 As far as the numbers go, since 2008 Appeals  
20 had an inventory of 1552 petitions with only 540  
21 taxpayers. And currently all that's left in inventory  
22 are cases involving 18 taxpayers. There are currently  
23 only five cases that remain to be set for Appeals  
24 conferences.

25 And Appeals anticipates that all the  
26 conferences will be set by the end of the year.

27 And in the last three years -- in 2009, Appeals  
28 received three cases. In 2010, one case to went to

1 Appeals. And in 2011 there have not been any cases that  
2 have been forwarded to Appeals.

3 So, there is adequate staffing at the Appeals  
4 level to handle this.

5 MR. RUNNER: Let me go back and ask the folks  
6 at the other side.

7 In terms of -- do those who are in the Appeals  
8 process or before the Board in certain levels feel like  
9 there's adequate staff at that point?

10 MR. KLEHS: Well, speaking for the City of  
11 Livermore and what I've observed in the process so far  
12 and looking at the number of cases that are going back  
13 to 13 years, a case shouldn't go back 13, 12 or five  
14 years. It just -- it doesn't make a lot of sense.

15 And it also doesn't make a lot of sense if you  
16 have one person handling all of these appeals going back  
17 as far as 13 years. So, that's enough people to handle  
18 the workload.

19 You would think that the Appeals Division would  
20 have more than one person doing this. Because what if  
21 the person got sick? Or what if they go on vacation?  
22 Or what if something else happens? Then you have nobody  
23 handling this.

24 It just seems -- it's a good idea to have more  
25 than one person doing this job

26 MR. RUNNER: Okay.

27 MR. KLEHS: And Senator Runner, you and I were  
28 both in the legislature. We know that process takes two

1 years, right?

2 But it seems to me that you can go from the  
3 beginning to the end of one of these processes in about  
4 a two-year period where you get as much accurate  
5 information as possible for the Allocation Group, the  
6 Appeals Division and the Board to make an accurate  
7 decision and have the money go to the right  
8 jurisdiction.

9 MR. RUNNER: Let me just ask one other question  
10 then in terms of -- has there been any analysis done  
11 then by staff if, indeed, these dates were implemented,  
12 what would be the cost requirements, the staffing  
13 requirements, in order to meet the deadlines as have  
14 been presented in some of the alternatives?

15 MR. HUXSOLL: I'm not aware of that analysis.

16 MR. RUNNER: We could we put these deadlines to  
17 get this done faster and it wouldn't take any more  
18 staff?

19 MR. HANKS: Senator Runner, I don't believe  
20 that the issue is a bottleneck of cases within our  
21 Appeals Division, first and foremost.

22 I think -- I'm respectful of Mr. Klehs's  
23 concern that there is only one individual currently  
24 handling these cases, but I am certain that the Appeals  
25 Division also has contingencies. If that attorney were  
26 unavailable, the workload, of course, would be  
27 reassigned.

28 MR. RUNNER: You know, I assume there's people

1 cross trained for that too, but maybe just ask that.

2 Now I'm a little confused. You mean we could  
3 actually implement these deadlines, which would speed  
4 the process, and there wouldn't be any staff  
5 requirements on our part?

6 MR. HANKS: I think the result from my  
7 Allocation Group would be if there are stricter  
8 deadlines than what are currently available, I would  
9 guess that probably we wouldn't be spending the  
10 requisite time that we believe is necessary to  
11 thoroughly investigate these cases.

12 And as a result, we would be transferring to  
13 the Appeals Division cases that are likely undeveloped.

14 We could certainly deny more of these cases,  
15 but that's not our intention. We're probably guilty in  
16 the sense of holding some of these cases open too long.  
17 But we're only mindful that we're trying to do the  
18 correct thing to make sure that the local tax is  
19 appropriately allocated.

20 However, when there is -- there is no  
21 additional information that's coming to our Allocation  
22 Group from the consultants, we do deny the petitions.

23 And it's at that point then the consultants  
24 are --

25 MR. RUNNER: So, what I'm hearing --

26 MR. HANKS: -- working the cases.

27 MR. RUNNER: -- so, what I'm hearing is that  
28 the decision would be to maintain at the current

1 staffing levels and then just move items based upon  
2 these deadlines and, therefore, the concern on the  
3 staff's part would be they would not have the adequate  
4 review and the quality of what would be done would be  
5 less?

6 Is that a fair summary?

7 MR. HANKS: That's correct.

8 MR. RUNNER: Okay, I have just a couple -- one  
9 or two other questions I want to get to just in regards  
10 to the aspect of what slows down the process and the  
11 issues of reports and responses and if deadlines really  
12 accomplish anything.

13 But I'll let somebody else, I think, answer --  
14 ask a couple of questions first.

15 Take a little time here.

16 MS. YEE: Thank you, Mr. Runner.

17 Mr. Horton?

18 MR. HORTON: Thank you, Madam Chair.

19 I just wanted to -- let me ask a couple of  
20 questions first.

21 What is the history of the backlogs, the reason  
22 for the backlogs -- and in an effort to identify what  
23 the problem is, whether or not this is a systemic  
24 problem, an institutional problem or whether or not it  
25 is a problem that requires deadlines?

26 So, can you give us somewhat of the history of  
27 why these backlogs occurred in the first place?

28 I think we're all concerned about when it takes

1 13 years or an exorbitant amount of time. Even given  
2 the complexity of the transaction, that seems to be a  
3 little longer.

4 So, can you share with us the history of why  
5 the original backlogs occurred and where we are now  
6 relative to backlogs?

7 MR. HANKS: Absolutely.

8 Mr. Horton, I think part of the difficulty that  
9 our Allocation Group had was during the time of the  
10 budget freeze when we couldn't hire additional staff  
11 members within our Allocation Group. We were short  
12 staffed. We didn't have a supervisor over the section

13 It was at that time, I think, that we had a  
14 ramp up of the number of unworked cases. That was just  
15 a matter of those times.

16 Fortunately, we've passed beyond that.  
17 We're -- now we're staffed within the Allocation Group.  
18 We have a new supervisor that's very mindful of the  
19 inventory that he's got within his database. He's  
20 mindful that we need to tackle that -- that history and  
21 inventory of cases.

22 We currently have 4300 cases that are shown in  
23 inventory. I do note, however, that the opening  
24 inquiries that we have that are older than two years old  
25 really relate only to six accounts, 60 percent of that  
26 backlog relates to six accounts where we've got very  
27 complex transactions involving multiple jurisdictions  
28 throughout the State.

1           Another matter complicating our completing  
2 these cases in a more timely manner is just the lack of  
3 cooperation at times, frankly, from taxpayers.

4           They recognize that the local tax is a shifting  
5 of the 1 percent tax from one jurisdiction to another.  
6 There -- there is no impetus for the taxpayers  
7 necessarily to cooperate with us and identify where  
8 these sales transactions occurred because they're still  
9 paying the 1 percent regardless of whether the local  
10 tax goes to Sacramento County or Los Angeles County.  
11 So, that's that's another difficulty that's posed in  
12 completing these cases even quicker than we have today.

13           Another factor is the consultants giving us  
14 inquiries where they suspect there might be a  
15 misallocation, but they're not exactly sure if that  
16 allocation exists.

17           So, oftentimes they will give us incomplete  
18 petitions that we need to go and examine and investigate  
19 to see whether or not a misallocation has occurred and  
20 whether or not we recommend a reallocation.

21           For large transactions where there is  
22 special -- a special allocation to the jurisdiction,  
23 where the use is made for \$500,000 and above type  
24 transactions, we're finding that the consultants will  
25 hand us paperwork showing that these sales were made for  
26 amounts in excess of \$500,000.

27           Well, there is no evidence that the  
28 jurisdiction that received that local tax money should

1 be reallocated to another jurisdiction. I think  
2 sometimes the -- the jurisdictions are just mindful of  
3 that Schedule F being filed with us and they suspect  
4 there is a misallocation.

5 But, again, there's lack of complete  
6 information coming to our Allocation Group to really  
7 explore some of these cases to determine whether or not  
8 a reallocation is necessary.

9 So, I think those are all of the factors that  
10 really come together to -- to slow down this process a  
11 bit. Although at the same time I want to be mindful  
12 that we are clearing between 300 and 900 cases a month.  
13 And we are slowly decreasing the amount of the petition  
14 workload that we have within our Allocation Group.

15 MR. HORTON: Thank you.

16 So, given that the personnel matters, the  
17 budget, allocation of staff and all of that has been  
18 resolved, the backlog itself has been taken care of, for  
19 the most part, and staff believes that they can project  
20 that these backlogs won't occur as long as we keep the  
21 same -- the current level of staffing, is that an  
22 accurate summation?

23 MR. HANKS: Mr. Horton, I think that that's  
24 accurate.

25 I mean, I would love to say that I would like  
26 to have the Allocation Group double in size and we'd  
27 have twice the number of staff working these cases, but  
28 I don't think that it's necessary.

1           I think that if we -- if we are able to target  
2       these petitions, these open petitions, working the old,  
3       backlogged cases, especially, I think we can reduce the  
4       backlog to a manageable level within the current  
5       staffing model we have today.

6           MR. HORTON: What can be done to address the  
7       front load, the front end, where you're not receiving  
8       information timely, you're not receiving adequate  
9       information in order to make the decision?

10           Why not deny the petition? And I am not  
11       suggesting that you do, I'm just really asking, why  
12       don't we deny the petition?

13           Or why not set a deadline on the time that it  
14       takes to receive the information, otherwise the petition  
15       is denied or some action is taken?

16           I got to share that the concern of shifting the  
17       workload from this department to the Appeals Department  
18       and then ultimately to the Board and then ultimately  
19       back to a 30-30-30 situation if the information is not  
20       adequate, does not appear to be the solution, in my  
21       mind.

22           But possibly on the front end is there anything  
23       that the staff would recommend or the taxpayer's  
24       representatives can recommend to address that?

25           MR. HANKS: Mr. Horton, I think that's an  
26       excellent suggestion. And that's something that I'm  
27       discussing with the Section supervisor as well as our  
28       Local Allocation Group supervisor.

1           What I think we need to do is to revise the  
2           procedures that we have for acknowledging petitions as  
3           they're filed with the Allocation Group. I think within  
4           the first 30 day window especially that we receive these  
5           petitions, we need to review them for their  
6           completeness.

7           And if they aren't complete, we need to refer  
8           them back to the jurisdictions and have them submit  
9           complete information that we can use to explore further  
10          whether or not a reallocation is necessary. And those  
11          are procedures that we're looking into today.

12          MR. HORTON: So, let's ask the representatives  
13          about that 30-day deadline and that procedure.

14          MS. STURDIVANT: Again, I'd like to remind  
15          everyone that a taxpayer is not obligated in any way to  
16          provide information to a third party consultant.

17          Oftentimes a taxpayer considers that  
18          information proprietary. And they will confirm to us  
19          that there is an error on the return, that there was a  
20          misallocation, there was a large use tax transaction,  
21          but they're not comfortable releasing that information  
22          to a third party. But they will, however, release it to  
23          the Board.

24          In recent months we've been asked by the  
25          Allocation Group,

26          "Could you get the amended schedules from the  
27          taxpayer? Could you get a copy of the invoice?  
28          Could you get a copy of the shipping

1 documents?"

2 We can certainly try, but again they're not  
3 obligated to give that information to us. So, we don't  
4 have the authority of the Board of Equalization behind  
5 us to request that information.

6 So, to say that a petition is not complete  
7 because I don't have a copy of the invoice, because the  
8 taxpayer is not required to give that to me, is a little  
9 unfair.

10 We need some -- we need some compromise. We  
11 need some work from the Allocation Group.

12 MR. HORTON: So, let's ask the more global  
13 question then, why not submit to the Board of  
14 Equalization all of the information that you have, as  
15 well as delineate the information that you believe is  
16 necessary that is -- that you don't have the authority  
17 to acquire?

18 And why can't the Board of Equalization, at  
19 that point, seek out the information in order to be able  
20 to answer the question whether or not there is a proper  
21 allocation to get to the best answers?

22 And can that be accomplished within a timeline?  
23 And what would that timeline be? And would there be a  
24 requirement for additional staff on the front load in  
25 order to accomplish that?

26 MS. MANDEL: Could I --

27 MS. YEE: Ms. Mandel, please?

28 MS. MANDEL: Because it seems -- I don't know

1        what these things say when they come in, but in the  
2        scenario that was just mentioned where the taxpayer says  
3        they -- where the consultant tried to get it but the  
4        taxpayer says, "I'm not comfortable," that sounds like  
5        the sort of thing that ought to be laid out in the  
6        petition --

7                "That we did seek this information, we are  
8                informed that the -- that the taxpayer has the  
9                information. But the taxpayer is not  
10              comfortable providing it to a third party and  
11              that's why it's not included with this  
12              petition."

13             MS. STURDIVANT: Ms. Mandel?

14             MS. MANDEL: And I don't know, maybe that's  
15        what you do say now.

16             MS. STURDIVANT: In those cases, we'll -- you  
17        know, in the case of --

18             MS. YEE: Hold on. Mr. Horton?

19             MR. HORTON: One second -- I think that global  
20        question, if it got answered it would answer my -- both  
21        my question as well as --

22             MS. YEE: Right.

23             MR. HORTON: -- Ms. Mandel's elaboration on  
24        that.

25             So, possibly let's see if staff can answer the  
26        question as a starting point.

27             MR. HANKS: Mr. Horton, we would welcome the  
28        information that's been described if we knew who that

1 contact person was at the taxpayer's place of business  
2 that the consultant was talking to, the date of that  
3 conversation, specifically, you know, addressing the  
4 type of transaction that's in question, I think that  
5 that would speak volumes toward giving us a more  
6 complete file and allowing us to investigate our cases  
7 sooner.

8 But what I'm mentioning and what I'm hearing  
9 from the Allocation Group is that oftentimes that level  
10 of detail isn't there. And it just necessitates more --  
11 more work for our Allocation Group to do these  
12 investigations.

13 MR. HORTON: Well, I don't want to interrupt  
14 you, but I think we all acknowledge that there are  
15 situations where the level of detail isn't there.

16 So, the question is what is the solution in  
17 order to get us there as quickly as possible or get us  
18 to a point that we can make a decision that the  
19 information is not available and we can't obtain it, the  
20 Board of Equalization doesn't have the authority to  
21 obtain it for whatever proprietary restrictions might  
22 exist, and we either deny or begin to work on the case?

23 And the -- and the follow-up to that was, is  
24 there a cost associated? Do we need additional staffing  
25 on the front end?

26 And what would be a reasonable deadline to  
27 provide to the taxpayer in order to give that -- provide  
28 that information to the Board, given the subjective

1 ability to extend that deadline, which we all know will  
2 occur?

3 MR. HANKS: Right. Mr. Horton, I'm mindful of  
4 what Ms. Mandel has mentioned. And I think if that  
5 level of detail were supplied in the petitions that  
6 we're receiving, we'd be very happy to contact the  
7 taxpayer and to thoroughly investigate the claims that  
8 local taxes need to be reallocated.

9 I don't believe that we need additional  
10 staffing to necessarily do that. I think that within  
11 the first 30 days after acknowledging a petition that we  
12 can examine the case that's been filed with us, we can  
13 make a determination whether or not we need sufficient  
14 -- we need additional information. And, if so, we  
15 can -- we can return the petition to the consultant for  
16 this additional information.

17 But I think if the consultant is mindful that  
18 we need to have that level of detail as Ms. Mandel  
19 described, that would be important for us.

20 MS. MANDEL: Mr. Horton?

21 MR. HORTON: Sure.

22 MS. MANDEL: I think what I'm hearing Mr. Hanks  
23 answer to be is that if staff would develop more -- I  
24 don't know what they are because I haven't ever filed  
25 one of these petitions -- but more clear, exacting  
26 guidelines as to what people should put in the petition  
27 so that they may be worked promptly, then staff,  
28 presumably, hopefully, will get what Mr. Hanks is

1 talking about.

2 MR. HORTON: Or, at a minimum, be able to  
3 identify -- or the taxpayer to be able to identify the  
4 information that they can not obtain --

5 MS. MANDEL: Right, meaning the consultants.

6 MR. HORTON: -- in negotiations.

7 MR. MYERS: If I may comment very quickly in  
8 response --

9 MS. YEE: Mr. Myers, quickly.

10 MR. MYERS: -- to that?

11 Thank you, Madam Chair.

12 The regulation already requires us to provide  
13 seven pieces of information when we file a petition in  
14 order to establish a date of knowledge.

15 Included among those are the specific reasons  
16 and evidence why the taxpayer's allocation is  
17 questioned.

18 So, when we file the petition, we're already  
19 required to produce what we have.

20 We remain more than open and willing to work  
21 with staff if there's a process whereby we can identify,  
22 you know, further information that is needed, that they  
23 might immediately proceed to try to acquire that because  
24 they have authority that we don't have.

25 So, if we know that there's a report but the  
26 taxpayers told us -- I don't think -- I am not speaking  
27 for HdL, but I think we'd be more than happy to work  
28 with staff on that.

1           The concern that I have is the description that  
2 these are incomplete petitions. Now, the definition of  
3 a petition is already set forth in the regulation. What  
4 I hear staff saying is, "If you gave us more information  
5 we could do our investigations faster."

6           Well, staff, No. 1, has the regulatory to do  
7 the investigation. Once we provide the initial  
8 information to set forth a petition and establish a date  
9 of knowledge, then staff's duty is to do the  
10 investigation under the regulation.

11           But we're more than happy to work with them on  
12 trying to expedite that. But my recent experience has  
13 been that that's not -- the issue hasn't been that you  
14 look at a petition and don't know what to do next, but  
15 that staff will give extensions after extensions to  
16 taxpayers during an investigation.

17           And at the end of the day -- and this is not  
18 meant as a black mark on staff at all -- but they'll  
19 give extension after extension after extension to a  
20 taxpayer who keeps saying, "I'll get you the documents.  
21 I'll get you the documents. I'll get the documents."

22           I watched this happen for six months in a  
23 recent matter. And, at the end of the day, the taxpayer  
24 didn't produce the documents.

25           MS. YEE: Okay, I'm going to have you stop.

26           MR. MYERS: Yeah, okay.

27           MS. YEE: Mr. Horton?

28           MS. STURDIVANT: If I could add to that real

1 quickly?

2 MS. YEE: Ms. Sturdivant, let me get all of the  
3 questions out because I think we're starting to hear  
4 some things that we want to try to coalesce into how we  
5 move next.

6 Mr. Horton?

7 MR. HORTON: The question of the Budget  
8 Director, shall I say, I just wanted a little clarity on  
9 the variables that are involved in not only verifying  
10 the Bradley-Burns local tax, but also collecting and  
11 administering and the whole compliance effort.

12 I don't want us to walk away perceiving that  
13 this element of dealing with the local tax is the only  
14 cost that the Board has.

15 I mean, this began from the beginning of  
16 filling out the return -- I mean applying for a permit.  
17 The taxpayer first comes in is coded and, theoretically,  
18 the local tax is coded properly and goes to the right  
19 place or it may not go to the right place. A number of  
20 decisions are made.

21 Auditors will go out and conduct audits and may  
22 very well look at the local tax allocation at that point  
23 and cause a reallocation.

24 It could be very much part of the Appeals  
25 process. It's certainly part of the process of the  
26 Board reviewing it.

27 So, when you look at the costs associated with  
28 that, it is a combination of all of the activity that

1 the Board participates in that gets us to a point where  
2 we can actually begin to deliberate over whether or not  
3 this information is correct.

4 And that, in and of itself, which goes on the  
5 appeals to the Board, is part of the cost?

6 MR. MERCER: That is correct.

7 MR. HORTON: Okay. All right, I am -- let me  
8 hear from the consultants their recommendation on how to  
9 deal with the front end of -- given -- what I'm  
10 presuming I'm hearing from staff is that we're really  
11 dealing with the exception and not the rule.

12 And, so, I'll -- as a former legislator, I have  
13 a challenge sometimes changing the law for the  
14 exception, not the rule, and particularly when staff has  
15 indicated that there is no backlog. They have caught --  
16 they have caught up. Personnel issues have been  
17 addressed.

18 But we still have those issues on the front end  
19 where the taxpayer is allowed to have these delays. And  
20 that, it itself causes ultimate delay.

21 So, your advice to us?

22 MS. STURDIVANT: Well, if I submit a petition  
23 and include all of the information that Miss Mandel has  
24 suggested, including the contact name, the return  
25 period, the dollar figure, but the phone call -- the  
26 first initial phone call isn't made to that taxpayer  
27 until two or three years after the day I submitted that  
28 petition, of course, the taxpayer is going to ask for a

1 delay. They've got to go pull that information out of  
2 an archive file or it's a different taxpayer.

3 You know, oftentimes we'll contact the Board  
4 and say, "Okay, we submitted this petition in 2006. We  
5 haven't heard anything from you. Can we get an update?"

6 And we'll hear, "Well, you know, we're working  
7 working on it." Or, "We've sent a letter."

8 If you send me a letter and say, "Could you  
9 call me?" And not give me the reason, I'm probably not  
10 going to call.

11 MR. HORTON: Not to interrupt you, but I think  
12 -- at least I understand the problem, I'm asking for  
13 your advice on what the solution might be on the front  
14 end.

15 MS. STURDIVANT: I think maybe better training  
16 within the Allocation Group. It's very difficult to  
17 cold call someone and be able to extract that kind of  
18 propriety information.

19 Training on how to do that, guidelines,  
20 perhaps, in the CC or CPPM -- this is your first step,  
21 this is your second step, this is what you do next if  
22 that doesn't work. You know, maybe it gets forwarded to  
23 a supervisor.

24 Something so that they have a guideline. I  
25 think that each auditor sort of works petitions in their  
26 own way and I am not aware that there is any sort  
27 uniform procedures in place on how to handle these  
28 petitions.

1 MR. HORTON: Okay. Staff, your recommendations  
2 on how to address the front?

3 MR. HANKS: Mr. Horton, I like Ms. Mandel's  
4 suggestion that we really modify the information that  
5 we're requesting from the consultants and through the  
6 interested parties process, actually, we've had  
7 discussions where -- where we've made the suggestion  
8 that we want to modify the short form that we're talking  
9 about, modify the type of information that we're  
10 attempting to obtain from the consultants.

11 Now, being mindful, though, that many of the  
12 cases that the consultants provide us are complete.  
13 They are complete, we have the requisite information we  
14 need to determine if reallocation is necessary.

15 So, we're only talking about the cases where  
16 that information is deficient.

17 It's been mentioned that we don't have a  
18 procedures manual for handling these types of inquiries.  
19 Actually, we do. We've got an ADRS Procedures Manual  
20 for the Allocation Group that discusses this process and  
21 discusses some of -- some of the procedures that you go  
22 through.

23 I don't know that it's as detailed as  
24 identifying that this is what you do in all of these  
25 circumstances, I don't believe that it's that detailed.  
26 But we do have a policy and procedures manual for  
27 addressing these types of inquiries.

28 MR. HORTON: You know, Madam Chair, if I may?

1 MS. YEE: Yes, Mr. Horton?

2 MR. HORTON: You know, I want to get to what  
3 the solution is. I think I understand that there's --  
4 there's a procedure manual here.

5 I really understand that there is an exception  
6 and that we're dealing with the exception and not the  
7 rule. And I am very mindful of the inherent danger of  
8 making a law or rule around the exception, particularly  
9 when it's more of a systemic or personnel matter,  
10 possibly some management issues.

11 But -- and I want to say this as well, is that  
12 I don't want to -- I don't want to shift the  
13 responsibility to the consultant when the Board has a  
14 level of responsibility, a level of compensation, in  
15 order to address these exceptional transactions.

16 So, I haven't really heard a solution, but I am  
17 prepared to make a recommendation without hearing one  
18 from someone.

19 MR. KLEHS: May I just --

20 MS. YEE: Hold on.

21 MR. HORTON: But I'm -- I'm -- at this point  
22 that concludes my --

23 MS. YEE: You want to put something on the  
24 table, Mr. Horton?

25 MS. MANDEL: Ms. Yee?

26 MS. YEE: Ms. Mandel?

27 MS. MANDEL: When Mr. Horton first started  
28 talking, I thought we might get an answer to a question

1 that I had because I thought it was the kind of the  
2 question he asked.

3 I mean, I don't know how much of what is  
4 generating the complaints are because of things that  
5 happened sometime ago, that the staffing up sounds like  
6 it's handling.

7 But cases may have, in the past, taken a long  
8 period of time, I don't know what they're taking now.  
9 What I heard being asked at the up -- at the start was  
10 something about do we know -- for cases that we have  
11 now, do we know what's holding them up?

12 I mean like when we have cases deferred on our  
13 docket, we know that it's deferred because there's  
14 litigation. We know that it's deferred because it went  
15 off to settlement or whatever. We know what's holding  
16 the case up. So that if a Member were to ask, "Why do  
17 we have all these cases in inventory?" We -- we know  
18 why and where they are.

19 And I thought that in trying to get at  
20 potential systemic issues in the handling of these types  
21 of cases that that was the question was that being  
22 asked. Because there may be different categories. It  
23 may be that a lot of cases are getting closed because  
24 incredibly simple, obvious things are coming in and  
25 they're all boom, boom, boom and, you know, there's more  
26 complex ones and I just -- it's hard to know.

27 I know that there were a couple of cases, or  
28 one or two maybe or some big case that people were upset

1 about and were mindful of not, you know, not letting the  
2 last ride govern how we are going down, you know, this  
3 line but staff is proposing some changes in the timing.  
4 But I don't know if there are systemic types of things  
5 from these cases, aside from what you've just identified  
6 as some percentage of them maybe, if you had more meat  
7 or more something on the front end, you'd be better off.

8 And in terms of -- in terms of things that --  
9 where the taxpayer says, "Yeah, I'll get it to you.  
10 Yeah, I'll get it to you." I -- backing up, I don't  
11 know, you know, how quickly now the contacts are being  
12 made or if it's -- or if it's old news that the  
13 taxpayers were contacted, you know, a year or two down  
14 the road.

15 And where the taxpayer is putting the  
16 Allocation Group off, I don't know at what point there  
17 is an executive decision made, you know, that the  
18 taxpayers -- we're just never going to see this stuff  
19 and we've exhausted our ability to try to get it.

20 I don't know what contact there is with the  
21 person who filed the petition saying, "You know, the  
22 guy's -- it's been like four months and we are not  
23 getting any warm fuzzies that we're actually going to  
24 see this stuff, what do you want to do with your  
25 petition?"

26 But it was the systemic grouping that was first  
27 asked about that I thought would sort of inform whether  
28 something more really needs to happen.

1 MR. KLEHS: Ms. Mandel, I think the numbers  
2 speak for themselves. 28 of the cases that HdL has  
3 enumerated here go back to before Ms. Yee was on the  
4 Board.

5 MS. MANDEL: But I don't know why.

6 MR. KLEHS: Let me finish the number.

7 MS. MANDEL: I don't know why.

8 MR. KLEHS: Another 57 go back before Ms. Steel  
9 was on the Board.

10 MS. YEE: Yeah.

11 MR. KLEHS: And Mr. Hanks genuinely believes  
12 that the entire backlog will be cleaned up and the best  
13 way to see if that's going to happen is to schedule a  
14 meeting exactly one year from today and see if the  
15 numbers have changed all that much. And I bet they will  
16 not have that much.

17 MS. YEE: Mr. Klehs --

18 MR. KLEHS: So, that's why we're advocating for  
19 more deadlines.

20 MS. YEE: Ms. Mandel?

21 MS. MANDEL: No, but that --

22 MR. HANKS: Ms. Mandel, if I could comment?

23 I think everything that's been discussed today  
24 I think will go great lengths to reduce the number of  
25 cases that we're processing now.

26 I don't think there is a single solution, I  
27 think it's a multi-pronged approach that's really going  
28 to work this -- this inventory to a more manageable

1 level.

2 I think if we're receiving more complete short  
3 forms from the jurisdictions, that's going to assist us  
4 work these faster. If we have tax information bulletins  
5 that identify the importance of a taxpayer's identifying  
6 to us when they change locations, I think that that will  
7 help.

8 We have guidelines now that we give to new  
9 registrants about the importance of communicating to us  
10 when they move to new jurisdictions. That isn't  
11 repeated to them over time, however. I think we need to  
12 get that type of information out to the public.

13 If we have 30 day reviews, we're acknowledging  
14 and reviewing these petitions as they come in and  
15 returning them, if necessary, for additional  
16 information. I think that will speed the process.

17 I think having new staffing within our  
18 Allocation Group is going to assist quite a bit.

19 And then also I would recommend that -- that we  
20 have more frequent consultant meetings. The consultants  
21 actually do telephone us. We meet with them quite  
22 regularly. But perhaps that could be made more  
23 frequent as well where we can -- we can get together and  
24 discuss their concerns regarding specific cases.

25 MS. YEE: I want to make a comment here.

26 I'm -- I guess I'm frustrated that we're hearing some  
27 things maybe for the first time today about the workload  
28 and how workload is addressed in Local Allocation.

1 I continue to be a proponent of the timelines  
2 and the deadlines, but here's what I would like to  
3 suggest: This conversation reminds me an awful lot of  
4 the audit regulation that we recently had promulgated  
5 relative to timely furnishing of records.

6 And I think there is a real disconnect  
7 between -- a real disconnect in terms of what the  
8 expectations are of the parties with respect to these  
9 matters of the local jurisdictions, their  
10 representatives, of the Board staff and Local  
11 Allocation, of the taxpayer.

12 I mean, the fact that we're now talking about  
13 putting tax information bulletins out to taxpayers  
14 informing them of what they ought to be doing when they  
15 change jurisdiction, we should be doing that anyway.

16 So, I think, in large part, this is -- this  
17 is -- this encompasses a number of management issues  
18 that I think -- I am certainly not willing to  
19 memorialize a solution in a regulation, but there has  
20 got to be something stronger than just kind of what you  
21 just articulated, Mr. Hanks.

22 There has got to be some clear expectation of  
23 what Petitioners, local jurisdictions, taxpayers can  
24 expect in allocation petition matter.

25 And I don't know how you memorialize that, but  
26 with -- and in terms of what the steps are, I mean, it  
27 is unacceptable, at least in my view, that if a petition  
28 is filed that the taxpayer isn't even contacted for two

1 years. That's just unacceptable -- regardless of how  
2 much information was provided upfront.

3 We know who the taxpayer is, there ought to be  
4 some contact made.

5  
6 MR. HANKS: I don't know any case where we've  
7 waited two years.

8 MS. YEE: That's okay, it's maybe a  
9 hypothetical, but you get the gist.

10 I don't think any of us sitting up here thinks  
11 that that's something that we would tolerate.

12 But I do think that there's got to be some --  
13 and maybe it's guidelines coming out of your unit, but I  
14 think that we've got to just be very clear about what  
15 the process is, what the expectations are of a completed  
16 petition.

17 And I know that the representatives believe  
18 that they are filing completed petitions, but I also  
19 know that they are going to be limited in terms of how  
20 complete it can be because of their inability to get  
21 information from the taxpayer in question.

22 So, is there -- what's the best mechanism for  
23 making those expectations clear for each of the parties  
24 involved in a matter like this?

25 And I want to have that articulated and come  
26 back to the Board so that we have the confidence that  
27 the workload is being worked through on a timely basis  
28 and that there are no ambiguities with respect to what

1 to expect when a petition is filed, what to expect in  
2 terms of response from the staff and what to expect with  
3 response -- with respect to how a taxpayer is approached  
4 and then, hopefully, will respond with information.

5 MS. MANDEL: And --

6 MR. RUNNER: Mr. Runner, then Ms. Mandel.

7 MR. RUNNER: Just real quick. I mean, I think  
8 those are certainly important. I guess part of my  
9 question would be -- and even some of the suggestions I  
10 heard about getting together, having conversations, I'm  
11 thinking, why didn't we do that before?

12 We're building up -- we clearly are building up  
13 a backlog. It takes this discussion in order for us to  
14 say, "Hey, maybe we ought to meet more often."?

15 MS. YEE: All right.

16 MR. RUNNER: So, I am a bit perplexed with that  
17 as kind of a solution coming from staff.

18 Let me just ask, I guess -- against -- it's  
19 interesting both with the Muniservices and HdL in the  
20 sense that you have clients on both sides of this  
21 issues. So, this isn't an issue to where, you know,  
22 you've got winners and losers as to who you represent.  
23 You have clients on both sides of the issues.

24 MS. STURDIVANT: Absolutely.

25 MR. RUNNER: Which is -- which is very helpful  
26 to me because then it's not an issue where you're saying  
27 I want to do this to benefit Client A or Client B,  
28 you're just trying to figure out what the process is,

1 whether you benefit from it -- from -- sometimes from it  
2 or whether you don't benefit sometimes from it.

3 Let me ask, you heard the staff's response in  
4 regards to, well, if we use these deadlines, we're going  
5 to have a concern with the quality of information that  
6 we're going to have as this moves through the process.

7 Let me ask you -- both of you as  
8 representatives of your clients, is that a concern for  
9 you or your clients?

10 MR. MYERS: Sure, Mr. Runner. We -- we  
11 definitely want accurate decisions. But we think that  
12 some reasonable deadlines give staff a tool to use.

13 MR. RUNNER: Let me rephrase it. Let me  
14 rephrase that.

15 MR. MYERS: Yes, sir.

16 MR. RUNNER: Rather than asking that, I will  
17 ask more specifically.

18 Do the deadlines that are proposed create for  
19 you a feeling that you will have your clients  
20 disadvantaged with bad information?

21 MS. STURDIVANT: I'll take a shot at that.

22 MR. MYERS: Go ahead, Robin.

23 MS. STURDIVANT: No, because when you present a  
24 petition with information, you want the Allocation Group  
25 to get back to the taxpayer while that information is at  
26 till fresh, while the person that you spoke to that  
27 provided you the information still holds that petition,  
28 where they can still access that recent sales and use

1 tax return to get the backup to provide that to Board  
2 staff.

3 A longer investigation doesn't ensure better  
4 investigation. And you -- what we hope, from having  
5 clients on both sides, is for the losing jurisdiction  
6 you want to minimize that loss. So, rather than -- you  
7 know, just a year or two of back adjustments rather than  
8 ten years of back adjustments.

9 MR. MYERS: And I would -- if I may,  
10 Mr. Runner?

11 MR. RUNNER: Yeah.

12 MR. MYERS: Just add to that slightly -- with  
13 the assumption that the investigation is starting at the  
14 date of knowledge and going through the deadlines don't  
15 trouble us. Maybe they could be a little bit longer.

16 We, on behalf of our clients, are flexible  
17 about does it need to be 90 days? If it needs to be a  
18 little bit longer, that's fine, as you saw in our  
19 proposal. But we do think the deadlines give a good  
20 tool. And if that needs to be done at CPPM, which I  
21 know we have one coming up, in order to address this  
22 front-end type of issue and what the expectations will  
23 be, then we would welcome moving it to the CPPM, that's  
24 fine with us too.

25 But we we need to -- you know, we're not  
26 concerned that not having five years to investigate is  
27 going to hurt our clients.

28 MR. RUNNER: Okay. I guess -- I guess based

1       upon -- again, knowing that we have folks here,  
2       advocates who represent both sides of the issue and  
3       hearing from staff in regards to what their concern is  
4       with the dates, you know, I'm compelled to feel like  
5       putting deadlines will, indeed, be a better process for  
6       us.

7               So, quite frankly, I'm not -- I would be one  
8       that would be open to dealing with some -- dealing with  
9       these deadlines. And, you know, at that point I guess  
10      we will learn, in a year or two, what we accomplished  
11      and things can be tweaked at that point.

12             But I am -- again, if the advocates  
13      representing both sides of the client over here think  
14      that the deadlines do not disadvantage their clients --  
15      and again that's theoretically who we're trying to deal  
16      with and protect -- then it seems to me those deadlines  
17      should be something we should consider.

18             MS. YEE: Thank you, Mr. Runner.

19             Mr. Horton?

20             MR. HORTON: Well, I don't know if that's a  
21      fair assessment.

22             If you're on the side that is losing the  
23      revenue, it's in your interest to delay the transaction  
24      as long as you possibly can because you want to hold  
25      on to that revenue. And, so, oftentimes they delay it.

26             And, I mean, it's just inherently natural. I  
27      mean, if we were talking to city managers and we said,

28             "Well, if you know you are going to lose and

1           you are going to have to allocate \$20 million  
2           out of your general fund to another city,  
3           how cooperative are you going to be in doing  
4           that expeditiously?"

5           I would beg to differ if the answer would be,  
6           "Very, very cooperative and we are prepared to  
7           cut that \$20 million check as soon as this  
8           resolved."

9           And, so, we have mixed interests here. Even  
10          though you may be representing one side or the other,  
11          when you're on the winning side, you have a different  
12          charge. When you're on the losing side, you have a  
13          different charge. And to that degree I guess there is  
14          some commonality.

15          But let me just ask the question of staff and  
16          the consultants. Let's say that -- we -- you have  
17          shared with us the process by which a case could be  
18          denied expeditiously -- not receiving information, not  
19          having enough information, conducting a timely  
20          investigation to get as much information as you possibly  
21          could.

22          Is there a situation where you could actually  
23          allow the case, because of the lack of cooperation on  
24          the side of the jurisdiction not providing information?

25          MR. HANKS: Certainly, certainly, if --

26          MR. HORTON: I mean, does that exist in the  
27          CPPM? Or is there any legislative authority for the  
28          Board to say,

1            "We have enough information. The consultants  
2            have provided enough information that indicates  
3            that there is an allocation. We can quantify  
4            it based on the information that we do have.  
5            However, we'd like to have the rest of this  
6            information. But if we don't get we're  
7            prepared to allow this."?

8            And then what that does, it drives the -- the  
9            person that -- or the entity, if you will, that seeks to  
10           delay the process, for whatever reason, it drives them  
11           into an appeal environment to say, "Well, let me get  
12           this information so that I can appeal this case."

13           And that may be a good thing on certain  
14           transactions.

15           MR. HANKS: Mr. Horton, I would just comment  
16           that if we have got sufficient information that a  
17           reallocation needs to be processed, we'll certainly make  
18           that recommendation.

19           If there's information coming from whatever  
20           source that indicates that it should not, then we're  
21           very comfortable in denying.

22           MR. HORTON: No, the question -- the question  
23           is more along the lines if you are conducting a sales  
24           tax audit -- let me draw a parallel, if you will -- and  
25           the taxpayer fails to cooperate.

26           So, you know, we will issue a jeopardy  
27           determination and say, "Here is how much you owe based  
28           on the liability."

1           And what that does, it causes the taxpayer to  
2 cooperate because they're now in a position of every  
3 disputing an exact amount that is of concern to them.

4           So, in this case do we have that authority, in  
5 the absence of sufficient information, not necessarily  
6 from the consultants, but from the interested parties  
7 after we've requested the information, we gave -- we  
8 give them 30 days to comply and if they fail to comply,  
9 are we in a position to now allow the -- or at least  
10 notify them that we're going to allow the reallocation?

11           MR. HUXOLL: Mr. Horton, in order to -- for  
12 staff to issue a reallocation, they would have to  
13 demonstrate that by a preponderance of the evidence,  
14 whether provided by the Petitioner or Board staff, shows  
15 that there was a misallocation.

16           So, there has to be evidence that a  
17 misallocation did occur, it has to be shown by a  
18 preponderance of the evidence.

19           MR. HORTON: So, is the information that we  
20 currently request from the consultants, is that  
21 sufficient enough of information for us to make that  
22 call?

23           MR. HUXSOLL: Well, as Mr. Hanks discussed  
24 earlier, certainly there are cases where we receive  
25 information from the consultants. He may be able to  
26 speak to this more, but it outlines all of the details  
27 of the --

28           MR. HORTON: Let's say they're in full

1 compliance with what we have asked them to provide.  
2 They have provided all eight items, hypothetically.

3 And is that -- would -- given that that  
4 information is sufficient, is that enough information  
5 for us to make a determination?

6 MR. HANKS: That would be, Mr. Horton, yes,  
7 yes.

8 MR. HORTON: And, so, would it be inappropriate  
9 for us to notify the other party, let's say, that the  
10 Board is prepared to make a determination and reallocate  
11 this unless you have evidence to the contrary?

12 And can we do that expeditiously?

13 MR. HANKS: We do do that with any of the  
14 substantially affected jurisdictions, they would be made  
15 aware of our intention to reallocate.

16 And they'd be given a time deadline as the  
17 regulation currently allows for them to either agree or  
18 disagree with that decision.

19 MR. HORTON: So, so, so -- so, it sounds -- I  
20 mean, just to have another analogy, it sounds like  
21 the -- it sounds like the stop signs are there, the  
22 police officers are there, but they're still running the  
23 stop signs, they're still speeding. And that is because  
24 we're not enforcing our existing policy and procedure?

25 And there's more of a management issue here,  
26 which makes it -- which -- what happens is when you get  
27 into this environment and what concern -- I mean, you  
28 end up with Prop. 34. You end up with -- I don't want

1 to get into all the legislation, but you end up with  
2 term limits, you end up with all these other things that  
3 is not necessarily the real problem.

4 And I'd like for us to get to where the real  
5 problem is.

6 MS. YEE: Mr. Horton, let me take a shot at  
7 something?

8 MR. HORTON: Sure.

9 MS. YEE: Because I know we've spent a bit of  
10 time on this.

11 I think all of the parties, including those of  
12 us sitting up here, are committed to reaching a decision  
13 where we're making the proper and correct allocation.

14 I think what I've heard today -- and I have to  
15 concur with Mr. Runner, I still am not off the deadline  
16 timeline issue yet because it suggests to me, at least  
17 what I have heard today, there are some internal  
18 management issues and internal judgment call issues.

19 I think the fundamental question is what  
20 constitutes sufficient evidence? And it's a judgment  
21 call.

22 MR. HORTON: Yeah.

23 MS. YEE: And I don't know if it's -- you know,  
24 whether we need to look at that question and staff can  
25 establish some comfort around that?

26 And it's a balance. And I know I personally,  
27 as a Member of this Board, don't want the balance to be  
28 at the expense of time, where we're seeing this, you

1 know, a decade from now. I don't think any of us wants  
2 that.

3 And, so, I am not prepared to adopt the  
4 revisions before us today. I'd like to have the staff  
5 go back and really clearly articulate the expectations  
6 of all parties in local allocation matters, from the  
7 Petitioner representing the jurisdictions, the  
8 jurisdictions, the taxpayer, the Local Allocation staff,  
9 Appeals -- and really coming back with just what are  
10 expectations once we receive the petition and what do  
11 you want to see in that petition.

12 Because, frankly, at the end of the day, we may  
13 end up, in my mind, with a situation of where not only  
14 are we clarifying it in the CPPM in terms of what we  
15 want, I still may want to impose deadlines.

16 MS. MANDEL: Madam Chair?

17 MS. YEE: Ms. Mandel?

18 MS. MANDEL: You know, we're -- we're open to  
19 the idea of deadlines. This aging report is concerning.  
20 And when I say to Mr. Klehs, yeah, those are numbers,  
21 but I don't know why, that's my question for staff.

22 But even when staff says we're -- you know,  
23 we're getting so many in per month and we're clearing so  
24 many per month, so, it's all going to, you know, be  
25 happy, I still don't know why -- someone said up here  
26 that could -- or maybe Mr. Klehs said it -- that could  
27 be that they are clearing the easy ones and the hard  
28 ones are still hanging around for a long time.

1           So, it would be nice to know what the plan is  
2           to process. And this is just an aging report from HdL,  
3           so, I don't know what else is out there, but is there a  
4           plan to move and process what, you know, these  
5           delayed -- if you want to call them delayed -- or  
6           petitions over -- let's say petitions over two years  
7           old, is there a plan to get them through the system and  
8           get them out?

9           MR. RUNNER: At this point --

10          MS. YEE: Mr. Runner?

11          MR. RUNNER: -- again, it sounds like we're  
12          going to ask staff to go back review and deal with some  
13          of these issues with, I think, a clear understanding at  
14          least there are a number of Members who -- who don't  
15          have a passion against deadlines.

16          But let me just say that I think the front end  
17          is an important issue, but some of the other deadlines  
18          are deadlines in the process also. And, so, I think  
19          those all -- I am not going to be satisfied with just  
20          saying, how can we -- how can we help the intake side?

21          I think there is some other processes --

22          MS. YEE: Yeah.

23          MR. RUNNER: -- here that we go from 90 to  
24          45 --

25          MS. YEE: Yeah.

26          MR. RUNNER: -- there's 60 to 30 that I think  
27          are reasonable also.

28          MS. YEE: Yeah, and Mr. Runner, I think my

1 direction to staff in terms of articulating what the  
2 expectations are really relate to the entire process,  
3 from receipt of petition to Appeals. So that we can  
4 see, you know, just what the expectations are at each  
5 stage of the process.

6 And when it comes back, hopefully, have a  
7 little better sense and tagging on Ms. Mandel's inquiry  
8 about why we've got so many of these cases that are aged  
9 that aren't moving through and then, at that point,  
10 maybe having us here, the five Members of this Board,  
11 decide whether the imposition of hard deadlines makes  
12 sense or not.

13 Mr. Horton?

14 MR. HORTON: Let me clarify. I am supportive  
15 of deadlines. It's just where do you place those  
16 deadlines?

17 I am supportive of stop signs, the question is  
18 where do you place them?

19 And then the other concern is professional  
20 judgment. I believe in professional judgment. I  
21 believe in managerial oversight. And I believe those  
22 two components can address this issue to some degree.

23 And, so, the question that I have that I'd like  
24 for us to -- for staff to consider, what happens if you  
25 don't meet the deadline? You extend it? You -- I mean,  
26 there is just one point, deny and accept, unless you've  
27 accepted it.

28 Once you've accepted the case, it goes through

1 the process. So, you know, and there is no penalty.

2 But you're still back to professional  
3 discretion, managerial oversight and those types of  
4 things that will get us to where we need to be.

5 MS. YEE: Yeah, they have to exercise that.

6 MR. HORTON: So --

7 MS. YEE: Okay.

8 MR. KLEHS: Perhaps the question of the staff  
9 should also be how long do they think a case should  
10 take?

11 MS. YEE: Yeah, I mean I think some of the  
12 qualitative questions that the Members have posed today  
13 really are trying to tease out, you know, what are some  
14 of the reasons for the delays?

15 And if there are some discrete reasons that are  
16 common, that come up all of the time, I think we can  
17 have a flavor as to how those are handled. But -- I  
18 mean I think we all can appreciate that not every  
19 petition is the same. Some are more complex than  
20 others, but I think really -- at least, the  
21 appropriateness I feel about the discussion that we've  
22 had this morning is that the expectations aren't clear  
23 within the unit and, certainly, outside the unit with  
24 other parties and certainly with the taxpayer affected.

25 Do you have enough guidance to come back with  
26 the -- okay.

27 MR. HANKS: I believe we do.

28 MS. YEE: Looking at the entire process from a

1 receipt of petition to Appeals, what the expectations  
2 are of all parties.

3 And let me just talk about time frame for a  
4 minute -- when's our next meeting?

5 MS. OLSON: The next meeting is May 24th.

6 MS. YEE: Okay. So, the PAN would be the 14th?

7 MS. OLSON: Uh-huh.

8 MS. YEE: It's not enough time. And June we're  
9 in --

10 MS. OLSON: Culver City.

11 MS. YEE: Okay, maybe for the July Sacramento  
12 meeting?

13 MS. OLSON: Our July, the PAN is the 15th and  
14 the meeting is the 26th.

15 MS. YEE: Okay.

16 Mr. Chair, any objection to having this be a  
17 Culver City item?

18 MR. HORTON: No, other than assuring that the  
19 consultants and everyone can be available that is  
20 currently participating in the discussion.

21 MS. YEE: Do you prefer it up here?

22 MS. STURDIVANT: I won't be in the country  
23 during that Culver City meeting.

24 MS. YEE: Okay, well then July then. Why don't  
25 we move it to July then?

26 MS. STURDIVANT: Thank you, I appreciate  
27 that.

28 MS. YEE: Okay. Let me also suggest this, I

1 wouldn't wait until the July meeting if there's  
2 something that you've drafted that you want to  
3 circulate, please come see my office and the Committee  
4 will make available any drafts that the staff wishes to  
5 share.

6 MR. HORTON: Madam Chair, would it be advisable  
7 or appropriate for the parties to meet outside of the  
8 interested parties process so that they can share  
9 their perspectives with each other?

10 MS. YEE: Okay. Let me work with the staff on  
11 a calendar.

12 It sounds like there might be some schedule  
13 conflicts coming up.

14 MR. HORTON: Okay.

15 MS. YEE: But we'll work it out to where  
16 there's some -- there is some back and forth.

17 MR. RUNNER: And I would assume that certainly  
18 in this discussion time that it would be ongoing  
19 discussions with staff and those that are interested in  
20 seeing the process.

21 MS. YEE: I think I'd like staff just to kind  
22 of go back and really hunker down on kind of what --  
23 what does this process look like?

24 Because we've heard a lot today. And as you  
25 have pointed out, Mr. Runner, I think there are things  
26 that we thought in the natural were already happening  
27 but there are suggestions that are just being made  
28 today. And, so, I will encourage and facilitate the

1 back and forth.

2 MR. RUNNER: Yes.

3 MS. YEE: I don't know that it's necessarily  
4 kind of a formalized interested parties meeting, but --

5 MR. RUNNER: No, no, I don't think --

6 MS. YEE: Certainly before it comes back in  
7 July.

8 MR. RUNNER: -- I don't think it needs to be a  
9 formalized --

10 MS. YEE: Yeah.

11 MR. RUNNER: -- but I think there could be --

12 MS. YEE: But certainly before it comes back in  
13 July, we will have had the opportunity to be sure both  
14 sides have taken a look at what the staff has put  
15 together.

16 Other questions or comments?

17 Staff, anything else?

18 MR. HANKS: I don't believe so.

19 MS. YEE: Okay, anything else?

20 MR. MYERS: No, thank you, Madam Chair.

21 MR. KLEHS: Thank you.

22 MS. YEE: Okay, thank you very much --

23 MS. STURDIVANT: Thank you.

24 MS. YEE: -- everyone for your patience.

25 I guess we are on the second Business Taxes  
26 Committee item, which is proposed Regulation 1685.5,  
27 this is the -- relates to the use tax table.

28 Mr. Heller, good morning.

1 MR. HELLER: Good morning.

2 MS. BUEHLER: For agenda item 2, staff seeks  
3 your approval and authorization to publish proposed  
4 Regulation 1685.5 to implement the use tax table  
5 provisions of Revenue and Taxation Section 6452.1, added  
6 by Senate bill 86.

7 The proposed regulation proscribes the use tax  
8 table for calendar year 2011, which the Board is  
9 required to forward to Franchise Tax Board by July 30,  
10 2011 and proscribes the methodology the Board will use  
11 to calculate the estimated amount of use tax due  
12 according to a person's adjusted gross income.

13 Because Senate bill 86 was approved by the  
14 Governor on March 24th, 2011 and the Board is required  
15 to provide a use tax table to the Franchise Tax Board by  
16 July 30th, 2011, staff was not able to hold an  
17 interested parties meeting to discuss this item before  
18 today.

19 I am proposing, however, that we soon begin an  
20 interested parties process to discuss a use tax table  
21 and potential revisions to the a regulation for 2012 and  
22 subsequent years.

23 Bradley Heller has additional comments  
24 regarding the rulemaking process and timeline. And we  
25 would happy to answer any questions that you may have.

26 I believe we also have speakers on this issue.

27 MS. YEE: We have one speaker.

28 Let me have Mr. Heller, if you'll comment, and

1 then we'll move to the speaker.

2 MR. HELLER: Thank you, Madam Chair.

3 First of all, thank you very much for placing  
4 this on the Business Taxes Committee's agenda so  
5 quickly. As we indicated this was -- this legislation  
6 was just enacted about a month ago. And staff's been  
7 acting quickly to bring this to the Board's attention so  
8 that you can give us proper direction.

9 Today -- or I should say, in addition, we've  
10 also contacted the Franchise Tax Board and they have  
11 indicated that they do need the format for the 2011 use  
12 tax table by July 30th of this year. But that they  
13 basically have a practical deadline for receiving the  
14 actual use tax table of September 1st.

15 And, so, basically what we've outlined here is  
16 a request for authorization to publish a proposed  
17 Regulation 1685.5 and, as indicated, that would  
18 prescribe the 2011 use tax table and the format for how  
19 we would do the calculations for all of the subsequent  
20 tables.

21 And if the Board authorizes publication today,  
22 I will actually file the Notice of Action for the  
23 proposed regulation with OAL today. So that the Board  
24 can bring this back and hold the public hearing on the  
25 proposed regulation during the -- excuse me, the June  
26 meeting in Culver City.

27 Staff will then be able to submit the final  
28 rulemaking file, including the June transcript, to OAL

1 by close of business on July 1st and OAL will have until  
2 August 15th to review and approve the regulation and  
3 file with the Secretary of State.

4 Furthermore, staff will forward the adopted  
5 2011 use tax table to the FTB by July 30th and staff  
6 will notify the FTB that the 2011 use tax table is ready  
7 for publication as soon as it's approved by OAL and  
8 filed with the Secretary of State.

9 Board staff has proposed this expedited process  
10 due to the timeline for complying with the FTB's --  
11 basically with the statute and also with FTB's practical  
12 deadlines.

13 And we are open to also meeting with the  
14 interested parties between now and the June Board  
15 meeting and then also discussing further with the FTB if  
16 there's any way we can get any additional extension of  
17 their practical deadline.

18 Basically, if we were to identify important,  
19 substantive changes that could be made at the June Board  
20 meeting and that could be accommodated by an extended  
21 deadline from the FTB, then we would recommend those at  
22 that time.

23 The Board could then make those changes and  
24 send the regulation with the changes to the 15-day file  
25 and then come back adopt the regulation in July -- or  
26 the July Board meeting. And then we would be able to  
27 still get OAL approval by, we think, about September  
28 19th.

1           And, so, we're not sure if we'll be able to  
2           make changes and still meet the FTB's practical  
3           deadlines, but we're definitely still interested in  
4           meeting with the interested parties to make sure we're  
5           aware of any concerns they have and so that we can all  
6           address them for the Board at the June meeting as  
7           well.

8           MS. YEE: Thank you very much, Mr. Heller.  
9           Let us hear from the speaker.

10          Good morning.

11                         ---o0o---

12                         ROB GUTIERREZ

13                         California Taxpayers Association

14                         ---o0o---

15          MR. GUTIERREZ: Good morning. My name's Rob  
16          Gutierrez, I'm with the California Taxpayers  
17          Association.

18                 I'm just wondering if there's any way that we  
19                 could postpone the adoption of this and probably go  
20                 through an interested parties meeting a little bit  
21                 sooner -- just to hear from all of the public on this  
22                 issue and go forward with that?

23                 In our short amount of time that we've had to  
24                 review the regulation, we have a number of policy  
25                 concerns that we would like to talk with staff about and  
26                 questions about how this will be enacted as far as  
27                 methodology and other things.

28                 The use tax compliance is a major problem in

1 California. We recognize that. And SB 86 provided  
2 taxpayers a tool that we can use to help improve  
3 compliance. But the important thing is we need to get  
4 this right. And we need to have the time to discuss  
5 this, to deliberate it. And, to date, that hasn't  
6 happened.

7 I talked to Sales and Use Tax staff almost a  
8 month ago and they said this is probably something that  
9 would rise to an interested parties meeting. But we  
10 haven't had that yet. Hopefully, we can further discuss  
11 this.

12 Thank you.

13 MS. YEE: Thank you, Mr. Gutierrez.

14 Comments, Members?

15 MR. RUNNER: Yeah, just a couple.

16 MS. YEE: Mr. Runner?

17 MR. RUNNER: Yeah, just a couple of  
18 observations. Again I am going to use this as a  
19 discussion to a broader discussion in regards to some  
20 use tax challenges that I think we have, because I am  
21 afraid that this is, to me, an example of what happens  
22 with what I see as our kind of patchwork approach to  
23 trying to deal with, explain and collect use tax.

24 And this is another example of a hurried up  
25 issue because we have got to do something. A couple of  
26 quick observations, of course, on this. The legislation  
27 only required us to adopt a table, correct?

28 MR. HELLER: That is correct, each year.

1 MR. RUNNER: Not a regulation?

2 MR. HELLER: The Legal Department believes that  
3 the way that the statute's written, the Board can -- the  
4 Board would be required to adopt a regulation in order  
5 to implement the provisions in that statute.

6 MR. RUNNER: As we would have to or FTB would  
7 have to or --

8 MR. HELLER: The Board of -- well, we believe  
9 that the Board of Equalization needs to adopt a document  
10 regulation in order to implement the terms of the --

11 MR. RUNNER: Who's Legal? Is Legal here? Who  
12 has that opinion?

13 MR. HELLER: I am here from the Legal  
14 Department.

15 MR. RUNNER: Oh, okay.

16 MR. HELLER: Certainly.

17 MR. RUNNER: I'm sorry, I'm new here, okay.

18 MR. HELLER: Essentially --

19 MR. RUNNER: And what basis is that opinion?

20 MR. HELLER: And, essentially, it just has to  
21 do with the terms of the Administrative Procedure Act  
22 and essentially, as far as we can tell, when you --  
23 well, let me first go -- a regulation is essentially  
24 just a rule of general application.

25 MR. RUNNER: Right.

26 MR. HELLER: And, so, if the Board's going to  
27 basically adopt a table that every taxpayer in the State  
28 of California that's eligible can use to determine their

1 actual use tax liability, that would be a regulation  
2 unless it's already prescribed by a statute.

3 MR. RUNNER: But this is not -- this is not  
4 mandatory, right? This is --

5 MR. HELLER: No, it's not mandatory.

6 MR. RUNNER: Okay, so, it's not mandatory, it's  
7 just -- it's just a tool?

8 MR. HELLER: But it does allow them, basically,  
9 to report their use tax based on that table.

10 MR. RUNNER: Right.

11 MR. HELLER: If they do, then they're relieved  
12 of liability for their actual use tax.

13 And, therefore, we think it is a rule of  
14 general application. And then, in addition in  
15 particular case, there are circumstances where the  
16 Board's required to do certain calculations or estimate  
17 certain amounts, but the legislature generally does a  
18 pretty good job of prescribing exactly what they want us  
19 to do or I should say what the Board --

20 MR. RUNNER: They do?

21 That's not my understanding usually, but that's  
22 -- I'm glad you feel that way.

23 MR. HELLER: Usually we can at least decipher  
24 some, you know --

25 MR. RUNNER: Okay.

26 MR. HELLER: -- some substantive direction on  
27 what we're supposed to do.

28 In this particular case -- and I think this

1 goes directly to CalTax's concerns as well, is that the  
2 -- is that the statute itself just basically tells the  
3 Board to estimate what somebody's use tax liability  
4 would be based on their adjusted gross income.

5 MR. RUNNER: Right

6 MR. HELLER: And, essentially, that really  
7 doesn't prescribe any sort of formula and different  
8 minds could differ on how -- what even approach you  
9 might take.

10 MR. RUNNER: Okay, I get -- here's where -- and  
11 I guess --

12 MR. HELLER: That's why we --

13 MR. RUNNER: -- we can talk through -- I will  
14 disagree at that point in the sense that -- and, again  
15 the -- what drives me to that issue is the fact of the  
16 timeline.

17 And -- because it's a much easier process, it  
18 seems to me, to go through the process, go ahead and  
19 adopt this -- I don't agree with it -- but this  
20 guideline in regards to, you know, follow the chart, see  
21 where you land because that's what the legislature has  
22 asked us to do, as opposed to then going through the  
23 regulatory process, which takes more time, effort and  
24 that we're -- what worries me is we're driving through a  
25 regulatory process without public input in the kind of  
26 way it should be.

27 And, so, I -- I don't like that as a procedure.  
28 Let me just -- I guess I will do that in the context of

1        what I think are the challenges that we have for the use  
2        tax in general.

3                You know, we have, I think, four or five ways  
4        to which people can identify their use tax right now.  
5        And I think most people are very confused about that.  
6        And I'm not sure a table helps them out very much, you  
7        know, at that point.

8                Let me just see, it's -- and, quite frankly,  
9        the other issue that we've got is the process that we  
10       use, they can use their line on their income tax form,  
11       right? And they can go ahead and put that out.

12               And, so far, we got -- I think my records show  
13       that we collected about \$10 million. That's grown to  
14       that about -- that amount of money on the form.

15               Then the -- to help that out, we're going to  
16       use a look up table in order to help people identify  
17       what that amount could be.

18               But yet I'm interested in the fact -- and I'm  
19       not sure who projected it, whether it was us or the  
20       legislature -- but this is booked at an additional \$10  
21       million.

22               So, we're going through this whole process to  
23       get another \$10 million, which basically works out to,  
24       as we look at what we think that is out there, a 1  
25       percent compliance rate.

26               So, we believe getting this table is going to  
27       actually move us up to a 1 percent compliance rate,  
28       which to me talks about what the real core of the

1 problem is, and that is that people don't understand the  
2 use tax. And to give them a table -- and even our best  
3 suggestion at that point is this will move us to a 1  
4 percent compliance rate, it seems to me doesn't answer  
5 the core issue and, that is, people don't understand.  
6 They don't understand what their obligations are or why  
7 they have obligations there.

8 You know on top of that then we have the  
9 qualified purchaser program, you know, that was put in  
10 place. We did a few hundred thousand -- or 100,000  
11 letters last year and just did 200,000 more or something  
12 in that regard, for those businesses that, you know,  
13 have \$100,000 gross income.

14 And again we estimated in 2010 that we're going  
15 to collect \$81 million and we received \$24 million. So,  
16 again, not a lot of -- and that was going back three  
17 years that the people could do that.

18 I tried to get figures for this year's and we  
19 haven't been able to because somehow we've blended  
20 information. And, so, up to January -- well, actually,  
21 the budget for this particular year is \$183 million that  
22 we're supposed to collect with the qualified purchasers.  
23 Up to January we had only received \$2.4 million.

24 I asked yesterday if I could get an updated  
25 figure and was told, well, now our numbers are all  
26 blended together and we can't pull out individual  
27 figures any more. It's going to take us a few weeks to  
28 do that now.

1           So, we don't even know right now how successful  
2 this program has been, actually, it's really not a level  
3 of success, it's a level of failure in regards to the  
4 amount of dollars that we have.

5           And the -- and the big issue there is people  
6 are responding, it's just that most of them all put  
7 zero. Now, that's compliance. It's zero. You may not  
8 believe that they're doing it correctly, but they are  
9 complying. And they are putting zero at that point,

10           Then the -- of course, then on that particular  
11 issue, it's a e-file that has to be done by April 15th.  
12 Now, we have other ways that people have to collect --  
13 or can do their -- their use tax filing and that's where  
14 we really get confusing with people because they can use  
15 certain forms now that have dates of January 31st due  
16 dates.

17           And, in fact, we have an instruction that we  
18 had that said it was due on June 31st (verbatim) in one  
19 place and another place in that same material said  
20 April 15th. So, we -- and the unfortunate thing --  
21 issue was that during that same period of time, we were  
22 collecting penalties from people, even though we had an  
23 April 15th due date. Even though people -- so, people  
24 who filed on March 1st could have filed on April 15th,  
25 we sent them a penalty -- we created a penalty for them  
26 that they did it on March 1st.

27           MS. YEE: Many of which we're relieving.

28           MR. RUNNER: What's that?

1 MS. YEE: Many of which we're relieving.

2 MR. RUNNER: I have asked for them all to be  
3 relieved.

4 And I was told that we can't do that. So, I  
5 think -- I don't know why we would do some of them, we  
6 ought to do all them.

7 MS. YEE: Mr. Runner, I want to -- I'm just  
8 looking at the hour, can you -- can you -- do you have a  
9 view about the proposal before us?

10 MR. RUNNER: Well, I know I want to -- again,  
11 yes, in the context of the total discussion of use tax.

12 Because again I think we have to be able to  
13 deal with use tax in its -- in the success of us helping  
14 people understand use tax. And my -- my opinion is that  
15 having a table, even our estimates the success of  
16 putting a table in is a 1 percent compliance rate.

17 So, my point would be the table clearly isn't  
18 done correctly or it doesn't help us with compliance.

19 And, in conclusion, I think what our goal  
20 should be is this Board needs to figure out a way to  
21 adequately educate people on their use tax requirements  
22 and their -- and on the law.

23 I think the challenge that we have with use  
24 tax -- and, again, if -- there has been lots of articles  
25 written about use tax and issues and who should pay it  
26 and I'll tell you one of the most fascinating issues for  
27 me is when you see one of those articles, just read the  
28 comments after the articles. Read the comments that the

1 readers are saying.

2 Because, see, here's our problem, our problems  
3 is people don't even think they owe it. Because they  
4 have this philosophy that says -- they have the thing,  
5 oh, the internet's tax free. They don't understand the  
6 issue between the difference between a transaction tax  
7 that they have and a tax on the internet.

8 And, as a result of that, they think that there  
9 shouldn't be a tax and that this is a new tax. They  
10 don't understand the implication of the use tax and  
11 their responsibilities at that point.

12 I believe it's an obligation for -- if we're  
13 going to be successful at increasing the amount of use  
14 tax collection, one of our primary responsibilities  
15 should be education of that, of helping people  
16 understand.

17 And that means not sending them a notice.  
18 Believe me, education by sending people who earn --  
19 gross \$100,000 and say, "You now owe a use tax," isn't  
20 education. Because they still don't know why.

21 So, I'm concerned that what we're doing is  
22 doing piecemeal approaches that are going to get us very  
23 little real money in the door that we have missed by far  
24 the targets that we have even set for these.

25 And, so, those are my concerns. Let me speak  
26 specifically to the table. Why did we pick the number  
27 that we picked on the table?

28 MS. BUEHLER: Joe Fitz is joining us from the

1 Research and Statistics Section.

2 And he can comment on that for you.

3 MR. FITZ: Yes, the reason the 0.7 percent is  
4 really the result of three calculations. One is we take  
5 the percentage of electronic shopping and mail order  
6 houses spending, collected by the Census Bureau, divide  
7 that by income. That gives us a percentage of 2.2  
8 percent for 2010.

9 Then we have estimated here at the Board in  
10 prior research that approximately 37 percent of the  
11 sales are purchases made by California households over  
12 the internet and through mail order are from companies  
13 that are -- that are not registered with the Board and  
14 then we take our sales tax rate, which is a blended rate  
15 of 8.61 percent statewide average, which includes  
16 through June 30th and then after June 30th the rate  
17 changes, as you know.

18 So, you take those percentages, multiply them  
19 together and you get 0.7.

20 MR. RUNNER: How do you factor in drop  
21 shippers?

22 MR. FITZ: I have not factored in drop  
23 shippers.

24 MR. RUNNER: Because those would be individuals  
25 who bought something in California, they were buying  
26 from it an out-of-state and the out-of-state then uses a  
27 California drop shipper then who pays the sales tax,  
28 correct?

1 MR. FITZ: That's my understanding, yes.

2 MR. RUNNER: So -- so -- so, could that rate be  
3 high then? If you don't factor in drop shippers?

4 MR. FITZ: Well, that's an individual  
5 situation that I really don't have any data to be able  
6 to estimate the drop shippers.

7 MR. RUNNER: So -- but there are drop shippers?

8 MR. FITZ: There are drop shippers. I do not  
9 know --

10 MR. RUNNER: We do know that there are drop  
11 shippers. You didn't recognize drop shippers, so,  
12 wouldn't that make that number higher?

13 I realize you don't know how far to take it  
14 down, but if you didn't factor in drop shippers, that's  
15 an overestimate?

16 MR. FITZ: Yes.

17 MR. RUNNER: Okay, thank you.

18 MS. YEE: Thank you, Mr. Runner.

19 Other comments, Members?

20 MS. YEE: Let me say this, I am disturbed that  
21 we didn't have sufficient time for an interested parties  
22 meeting, that we are under the deadlines as proscribed  
23 by the Franchise Tax Board.

24 I appreciate staff's recommendation about  
25 establishing an interested parties process going forward  
26 for the subsequent years and I would wholeheartedly  
27 support that.

28 Mr. Runner, I would agree with you with respect

1 to use tax compliance. It is a very, very tough area  
2 this Board has to deal with and I hope that each of us  
3 as Members of this Board are doing our due diligence  
4 with respect to outreach and education to taxpayers  
5 about use tax compliance.

6 But I would maintain -- and you and I are on  
7 different sides of this issue -- the only way we're  
8 going to get really a great degree of compliance is to  
9 have the online retailers be responsible for the  
10 collection of the tax.

11 With that, I'd like to move the revised staff  
12 recommendation that Ms. Buehler put forth.

13 Is there a second?

14 MR. HORTON: Second.

15 MS. YEE: Second by Mr. Horton.

16 Further --

17 MS. MANDEL: It was to rebut?

18 MS. YEE: Well, it was to authorize  
19 publication, but to --

20 MS. MANDEL: -- oh, to have --

21 MS. YEE: -- have interested parties meeting  
22 going forward, right, so that we can still comply with  
23 the immediate Franchise Tax Board deadline.

24 Okay.

25 MS. MANDEL: Can I ask one question?

26 MS. YEE: Ms. Mandel, please?

27 MS. MANDEL: You know, the tables -- a lot of  
28 these things are legislatively mandated, so, you know,

1 we have to do them.

2 I assume you'll be writing instructions that  
3 will go with the table in the booklet or wherever -- on  
4 the web, wherever people are now getting the  
5 information?

6 MS. BUEHLER: Ms. Mandel, yes, you're correct,  
7 we are currently drafting those instructions.

8 MS. MANDEL: Okay. And in the course of the  
9 interested parties meeting, will there be discussion of  
10 the potential instructions?

11 I mean I -- I just happened to notice that if  
12 this table had been in place this year and I had chosen  
13 to use the table, you would have got less use tax from  
14 me than the fact that I went through all those receipts.

15 But mine are not internet, mine are  
16 out-of-state purchases brought back. And I don't know  
17 if a regular person would have a sense of what these use  
18 tax numbers equate to to decide whether they wanted  
19 to -- and this would be one of the taxpayer's issues,  
20 you know, they are protected if they use the table.  
21 They are protected, which is a big benefit, even if --  
22 even if they might overpay by a dollar or two, it's a  
23 big benefit.

24 But I -- and I don't know how tables are  
25 portrayed in other states, whether they give an  
26 indication of if you were at the -- you know, the use  
27 tax liability level of X dollars, that's essentially  
28 equivalent to X dollars of purchases. Because then the

1 taxpayer has, you know, the choice, do they want the  
2 protection of the table or do they want to go through  
3 all their receipts and find out that they really only  
4 had \$5 of tax that they owed?

5 So, I -- I don't want to suggest one way or  
6 another whether that's the right way to do it or a wrong  
7 way to do it, but if I would -- I was amused that I  
8 would have been protected at a considerably lower level  
9 and I also discovered that I spent way too much money  
10 last year.

11 MS. YEE: To cancel you out, I might be paying  
12 more, so --

13 MS. MANDEL: Oh, okay, there you go, it's all  
14 in the family then.

15 MS. YEE: All right. But I think the  
16 instructions are going to be really really important to  
17 guide the filing.

18 MS. BUEHLER: We agree.

19 MR. RUNNER: Just for my information, what does  
20 it mean to be protected?

21 If somebody puts in \$63 in that line item  
22 because that's where they fall on the chart, what does  
23 that mean that they're protected?

24 MS. MANDEL: That was my understanding, that  
25 the -- that there was something in the statute.

26 MR. RUNNER: Well, I think no -- I think they  
27 said that.

28 I just don't know what that -- and I'm kind of

1 trying to figure out what "protected" means.

2 MR. HELLER: Basically just means that if we  
3 were to go and audit that taxpayer, which -- which based  
4 on my answer we would not do -- but if we were, we  
5 basically could not -- we could not assess them for  
6 additional tax over the amount required by that chart.

7 MR. RUNNER: And how do we -- how do we audit  
8 somebody on -- again, these are individuals, this isn't  
9 a company.

10 So, how do you -- how do you audit an  
11 individual in regards to -- when you are going to do an  
12 audit, how -- what would you ask for if you were  
13 auditing somebody on their online purchases?

14 What would you ask them to bring forth?

15 MS. BUEHLER: It would typically be their  
16 purchase records.

17 MR. RUNNER: So, you think people out there  
18 keep -- individuals, their purchase records?

19 MS. BUEHLER: Some individuals might, but we'd  
20 also be using the data that we receive as far as our  
21 normal data mining processes, the things that we would  
22 find from other companies, where we can see the  
23 purchases that are made by individuals.

24 MR. RUNNER: We have information that shows  
25 individual purchases that they make on the internet?

26 MS. BUEHLER: I don't know that they would be  
27 internet purchases, per se, no.

28 MR. RUNNER: Well, let me ask, we know

1 individual purchases that -- which people make that they  
2 owe use tax on?

3 MS. BUEHLER: In some instances, yes.

4 MR. RUNNER: How do we get that data?

5 MS. BUEHLER: That data is obtained through our  
6 sources that we have via audit of other companies.

7 In the past we have also subpoenaed companies  
8 for information on equipment purchases. Farming  
9 equipment, for example, was done previously.

10 MR. RUNNER: But this -- these are individuals  
11 now, we're not -- I get the --

12 MS. BUEHLER: Right, with the --

13 MR. RUNNER: -- we're talking about just going  
14 Joe Taxpayer out there now.

15 MS. BUEHLER: Right.

16 MR. RUNNER: Because we don't normally allege  
17 do this, this is -- this is like a whole new area for  
18 us, right?

19 MS. BUEHLER: Yes, internet --

20 MR. RUNNER: We normally do businesses.

21 MS. BUEHLER: Right.

22 MR. RUNNER: So, this is a whole new area that  
23 we're dealing with?

24 And, so -- again I am just -- so, what I'm  
25 hearing you tell me is that what we will do is --  
26 actually, there was a little bit of distinction there,  
27 one said we won't audit and it sounded like the other  
28 one said we would audit.

1 MS. BUEHLER: We have not audited individuals  
2 at this point.

3 MR. RUNNER: But I guess -- I guess if they  
4 didn't put a number in there the answer to that is we  
5 could audit them?

6 MR. HELLER: That is correct.

7 MS. BUEHLER: Correct.

8 MR. RUNNER: So, basically, what we're saying  
9 you put a number in there, even if they put zero then we  
10 won't audit them? They're protected? They put zero and  
11 they're protected?

12 MR. HELLER: No, they're not -- we can -- if a  
13 taxpayer reports zero and we were to audit them and  
14 determine that they had a liability in excess of zero,  
15 then we could audit -- we could go ahead and assess that  
16 liability, because that amount wouldn't be from our --  
17 from the -- least the use tax table being recommended  
18 today, which doesn't have a zero liability for anyone.

19 MR. RUNNER: Oh, okay. Since they didn't use a  
20 number.

21 MR. HELLER: If they used one of the numbers  
22 from the chart, though, then they would be protected  
23 from being audited.

24 MR. RUNNER: So, the BOE believes that  
25 everybody right now in the State of California should  
26 keep all their purchase records for all their out of  
27 state purchases?

28 Now, again, the problem is, as we talked about,

1 drop shippers -- the problem is that if they put the  
2 wrong number down and one of their issues with a drop  
3 shipper, our number's wrong for them, right?

4 Because we -- we have overestimated this chart,  
5 correct?

6 MR. FITZ: Yes.

7 MR. RUNNER: why would do -- well, let me do  
8 this -- why would we overestimate the chart?

9 Why would -- if we don't know the number, why  
10 would we automatically assume that the number is zero  
11 and charge people a higher tax?

12 MR. HELLER: Senator Runner, there was  
13 definitely no plan to overestimate anyone's liability.

14 The real issue here, and one of the main  
15 reasons we're in front of the Board today -- and this  
16 wasn't just a mathematical calculation that Joe could  
17 just go ahead and do and send off to the Franchise Tax  
18 Board, is that we're really trying to get this estimate  
19 of everyone in a certain class so that large groups of  
20 people can use this to determine their estimated use tax  
21 based on adjusted gross income.

22 And you can understand how there's probably  
23 lots of people in the pool who may not have any  
24 purchases where there was a drop shipper involved.

25 MR. RUNNER: Yeah.

26 MR. HELLER: There may be some that have every  
27 purchase that's like that.

28 MR. RUNNER: And they don't know.

1 MR. HELLER: There's really no --

2 MR. RUNNER: They don't know.

3 MR. HELLER: -- there's really no way -- we  
4 still have to create an estimate that's sort of an  
5 average.

6 MR. RUNNER: Okay.

7 MR. HELLER: And, so, I don't think it was an  
8 intention to not account for it, it was, as Joe is  
9 saying --

10 MR. RUNNER: Yeah.

11 MR. HELLER: -- or as Joe was saying before, it  
12 was really data that was going out.

13 MR. RUNNER: I get the problem. And I'm not --  
14 I wish -- I think we need to figure out how to solve it.

15 I'm -- I don't think it's solved. As the  
16 Members said that we need to just go out there and do  
17 ourselves, educate people.

18 I think we need to really review to see what  
19 people even understand about the use tax. I think it  
20 ought to be a total Board obligation, not an individual  
21 Board Member obligation.

22 MS. YEE: I think it is. I hope it is.

23 MR. RUNNER: Well, but I haven't seen it.  
24 We've never had a program.

25 MS. YEE: Oh, we have.

26 MR. RUNNER: No, we haven't.

27 MS. YEE: We have had public awareness  
28 campaigns funded. You've put money in the budget to do

1 it, we've done it.

2 MR. RUNNER: But again --

3 MS. YEE: This is where we are.

4 MR. RUNNER: -- again here -- no, but what  
5 we've done is we've -- we've paid to tell people what  
6 their obligations are, we have not done a program in  
7 regards to helping people understand the issue of use  
8 tax.

9 But to that -- just in closing, I think the  
10 issue that -- that we deal with here is that all of this  
11 effort, all of this issue about potential audits, all of  
12 the issue about putting the number down, our goal is a  
13 1 percent compliance rate. That's what we -- that's we  
14 estimate, a 1 percent compliance rate.

15 MS. YEE: A lot of dollars, a lot of dollars.

16 MR. RUNNER: No, it's \$10 million more.

17 MR. HORTON: Madam Chair, if I may?

18 MS. YEE: Mr. Horton?

19 Let me remind you, we do have a motion and a  
20 second on the table.

21 MR. HORTON: Sure, the uniqueness of drop  
22 shipping generally implies that it would actually go the  
23 other way, in my opinion.

24 Because drop shipping is so unique, it would be  
25 offset and probably have more taxpayers without drop  
26 shipping than you do in this situation than you actually  
27 do.

28 So, in that case, the number would actually be

1 higher if you put it in there. So, I would beg to  
2 differ about the estimate, about it being lower.

3 And since our inception in 1879 ongoing  
4 education has been the goal and objective.

5 I concur with Mr. Runner and Mrs. Yee that  
6 there should be some formalized effort, how we define  
7 that -- certainly, we should spend some time discussing  
8 that and maybe we'll bring it back an agenda as item  
9 somewhere down the road or set up a process to allow  
10 that to happen.

11 The cost benefit analysis that measures success  
12 is just that. In this case the revenue generated far  
13 outweighs the actual cost of generating that revenue.  
14 So, therefore, we're successful.

15 So, what staff and what the legislature is  
16 doing, even though it's not generating billions,  
17 10 million is a lot of money and it is a successful  
18 project because of the cost benefit analysis. The  
19 actual cost of doing this is minimal.

20 The other thing that I'd like for us to be  
21 cognizant of is that the Board of Equalization is not a  
22 -- is certainly perceived by some as a taxing agency,  
23 but there are others who see the agency as a compliance  
24 agency.

25 And if you look at the numbers, the majority of  
26 the revenue generated by the Board of Equalization is  
27 through compliance which -- which occurs as a result of  
28 education, an element of enforcement, as well, and a

1 huge element of cooperation that exists.

2 And, so, you've got to have something in  
3 play -- in place, a regulation in place, a chart of  
4 some -- some sort of guidance in place in order to begin  
5 to educate about -- the taxpayer in order to enhance  
6 self-compliance.

7 The dollars generated by the Board of  
8 Equalization conceivably would not be sufficient, I  
9 believe the Board generates some \$700 million relative  
10 to historical \$53 billion that it's collected.

11 So, it's a very small percentage of the money  
12 that we actually generate. So, I would encourage us to  
13 measure our success to include the compliance element.

14 It is unfortunate that -- that the chart  
15 couldn't have been given more taxpayer's participation,  
16 I mean -- but this is the intersection we find  
17 ourselves, unfortunately.

18 MS. YEE: Okay. I think we want to balance  
19 that, though, against not having this tool available  
20 immediately, so --

21 MR. HORTON: Yeah.

22 MS. YEE: -- we've had -- and I think Cal-Tax  
23 actually has been a proponent of the tax table that -- I  
24 would agree, I wish the time could have allowed for more  
25 public input.

26 Thank you. We have a motion and second to  
27 adopt the revised staff recommendation to publish --  
28 authorize publication, and to proceed with an interested

1 parties meeting for use of the tax table going forward.

2 Please call the roll.

3 MS. OLSON: Ms. Yee?

4 MS. YEE: Aye.

5 MS. OLSON: MR. Horton?

6 MR. HORTON: Aye.

7 MS. OLSON: Ms. Steel?

8 MS. STEEL: No.

9 MS. OLSON: Mr. Runner?

10 MR. RUNNER: No.

11 MS. OLSON: Ms. Mandel?

12 MS. MANDEL: Aye.

13 MS. OLSON: Motion carries.

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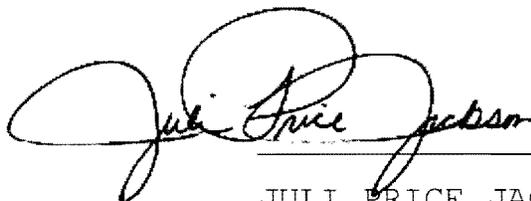
REPORTER'S CERTIFICATE

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State of California )  
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County of Sacramento )

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on April 26, 2011, 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 111 constitute a complete and accurate transcription of the shorthand writing.

Dated: July 1, 2011



JULI PRICE JACKSON

Hearing Reporter

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

**Proposed Amendment of Sales and Use Tax Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

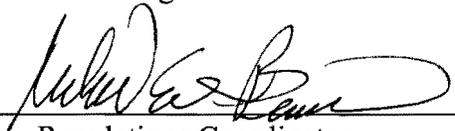
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

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

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

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

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

Statement  
Prepared by  Date 4-28-2011  
Regulations Coordinator

Approved by  Date 4/29/11  
Acting Chief Counsel

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

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

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

**NOTE: SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.**

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

STD. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1685.5, Calculation of Estimated Use Tax - Use Tax Table		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)**

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |  |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements   |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance  |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits.): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

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

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

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

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

 Yes  No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)**

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

4. Describe other economic costs that may occur: \_\_\_\_\_

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)**

2. If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_  
\_\_\_\_\_

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ \_\_\_\_\_

4. Will this regulation directly impact housing costs?  Yes  No If yes, enter the annual dollar cost per housing unit: \_\_\_\_\_ and the number of units: \_\_\_\_\_

5. Are there comparable Federal regulations?  Yes  No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

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**C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)**

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_  
\_\_\_\_\_

2. Are the benefits the result of :  specific statutory requirements, or  goals developed by the agency based on broad statutory authority?  
Explain: \_\_\_\_\_

3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

---

**D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)**

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_  
\_\_\_\_\_

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_  
\_\_\_\_\_

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?  Yes  No

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

---

**E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.**

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million ?  Yes  No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

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

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

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

Regulation: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_
Alternative 1: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_
Alternative 2: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in \_\_\_\_\_, Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_ (FISCAL YEAR)

2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in \_\_\_\_\_

b. implements the court mandate set forth by the \_\_\_\_\_ court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_ election; (DATE)

d. is issued only in response to a specific request from the \_\_\_\_\_, which is/are the only local entity(s) affected;

e. will be fully financed from the \_\_\_\_\_ (FEES, REVENUE, ETC.) authorized by Section \_\_\_\_\_ of the \_\_\_\_\_ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

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

3. Savings of approximately \$ \_\_\_\_\_ annually.

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

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)**

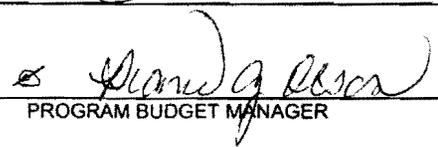
5. No fiscal impact exists because this regulation does not affect any local entity or program.
6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- a. be able to absorb these additional costs within their existing budgets and resources.
- b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other.

SIGNATURE 	TITLE Regulations Coordinator
AGENCY SECRETARY <sup>1</sup> APPROVAL/CONCURRENCE 	DATE 4/25/2011
DEPARTMENT OF FINANCE <sup>2</sup> APPROVAL/CONCURRENCE  Exempt under SAM section 6660	DATE

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2011-0426-05</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
RECEIVED FOR FILING PUBLICATION DATE  APR 26 '11      MAY 06 '11  Office of Administrative Law		REGULATIONS	
NOTICE			

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 Calculation of Estimated Use Tax	TITLE(S) 18	FIRST SECTION AFFECTED 1685.5	2. REQUESTED PUBLICATION DATE May 6, 2011
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

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

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

<b>ACTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT
	AMEND
TITLE(S)	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 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 type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
--	--	--	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

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

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	DATE
TYPED NAME AND TITLE OF SIGNATORY	

For use by Office of Administrative Law (OAL) only

## **Notice of Proposed Regulatory Action**

### **The State Board of Equalization Proposes to Adopt California Code of Regulations, Title 18, Section 1685.5, *Calculation of Estimated Use Tax - Use Tax Table***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*. Regulation 1685.5 prescribes the manner in which the Board “shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table,” as required by Revenue and Taxation Code (RTC) section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14), and prescribes the use tax table for calendar year 2011.

PUBLIC HEARING

A public hearing on the adoption of the proposed regulatory action will be held in Room 207, 5901 Green Valley Circle, Culver City, at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed adoption of Regulation 1685.5.

AUTHORITY

RTC section 7051.

REFERENCE

RTC section 6452.1.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

#### Prior Law

RTC section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use

taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer's purchases of tangible personal property subject to use tax.

#### Current Law

SB 86 was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their "estimated use tax liabilities," based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table" for inclusion in the instructions to the FTB's returns and use by eligible taxpayers.

#### Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board's duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years.

There are no comparable federal regulations or statutes to Regulation 1685.5.

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

The Board has determined that the adoption of proposed Regulation 1685.5 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of proposed Regulation 1685.5 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

## NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of proposed Regulation 1685.5 will enable the Board to fulfill its duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years. The Board's use tax tables will enable taxpayers to choose to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), instead of calculating and reporting their actual unpaid use tax liabilities (as discussed above). And, the proposed regulation will not impose any new taxes, it will not change any exemptions or exclusions, and it will not even require taxpayers to use the Board's use tax tables to report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulation 1685.5 may affect small business.

## NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has determined that the adoption of proposed Regulation 1685.5 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

## NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of proposed Regulation 1685.5 will not have a significant effect on housing costs.

## DETERMINATION REGARDING ALTERNATIVES

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

## CONTACT PERSONS

Questions regarding the substance of the proposed regulation should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

## WRITTEN COMMENT PERIOD

The written comment period ends when the public hearing begins at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt proposed Regulation 1685.5. The Board will only consider written comments received by that time.

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

The Board has prepared an underscored version of the text of proposed Regulation 1685.5 illustrating its express terms and an initial statement of reasons for the adoption of the proposed regulation. These documents and all the information on which the proposed regulation is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

## SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt proposed Regulation 1685.5 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts proposed Regulation 1685.5, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

**Regulation 1685.5. Calculation of Estimated Use Tax – Use Tax Table**

*Reference:* Section 6452.1, Revenue and Taxation Code.

**(a) IN GENERAL**

The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

**(b) DEFINITIONS AND DATA SOURCES**

(1) AGI RANGES. The use tax table shall be separated into eight (8) AGI ranges as follows:

- (A) AGI less than \$20,000;
- (B) AGI of \$20,000 to \$39,999;
- (C) AGI of \$40,000 to \$59,999;
- (D) AGI of \$60,000 to \$79,999;
- (E) AGI of \$80,000 to \$99,999;
- (F) AGI of \$100,000 to \$149,999;
- (G) AGI of \$150,000 to \$199,999;
- (H) AGI more than \$199,999.

(2) USE TAX LIABILITY FACTOR OR USE TAX TABLE PERCENTAGE. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On May 1, 2012, and each May 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on electronic and mail order purchases for the proceeding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) TOTAL PERSONAL INCOME. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) TOTAL SPENDING AT ELECTRONIC SHOPPING AND MAIL ORDER HOUSES. Total spending at electronic shopping and mail order houses shall be determined by reference

to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) PERCENTAGE OF INCOME SPENT ON ELECTRONIC AND MAIL ORDER PURCHASES. The percentage of income spent on electronic and mail order purchases during a calendar year shall be calculated by dividing the total spending at electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(6) AVERAGE STATE, LOCAL, AND DISTRICT SALES AND USE TAX RATE. The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

#### **(c) CALCULATION OF THE ESTIMATED USE TAX LIABILITY**

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying \$10,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through (G) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(H) shall be determined by multiplying each range member's actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

**(d) USE TAX TABLE FORMAT**

(1) The use tax table for calendar year 2011 shall provide as follows:

<b>Adjusted Gross Income (AGI) Range</b>	<b>Use Tax Liability</b>
Less Than \$20,000	\$7
\$20,000 to \$39,999	\$21
\$40,000 to \$59,999	\$35
\$60,000 to \$79,999	\$49
\$80,000 to \$99,999	\$63
\$100,000 to \$149,999	\$88
\$150,000 to \$199,999	\$123
More than \$199,999 -Multiply AGI by 0.070% (.0007)	

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as the use tax table for calendar year 2011.

## Bennion, Richard

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**From:** BOE-Board Meeting Material  
**Sent:** Friday, May 06, 2011 10:29 AM  
**To:** Alonzo, Mary Ann (Legal); Anderson, Karen E.; Barnett, Louis; Bartolo, Lynn; Bennion, Richard; Bisauta, Christine (Legal); Blake, Sue (Legal); BOE-Board Meeting Material; Boring, Dilara; Carey, Lynne; Cazadd, Kristine; Chung, Sophia (Legal); Cooke, Deborah (Legal); Creager, Bernice; Davis, Toya; Delgado, Maria; Duran, David; Epolite, Anthony (Legal); Evans, Regina; Ferris, Randy (Legal); Forman, Amber M; Garcia, Laura; Gau, David; Gilman, Todd; Giorgi, Dolores; Goehring, Teresa; Gore, Anita; Hale, Mike; Hall, Gail; Harrison, Ryan; Harvill, Mai; He, Mengjun; Heller, Bradley (Legal); Hellmuth, Leila; Hughes, Shellie L; Ingenito, Robert; Jacobson, Andrew; Kinkle, Sherrie; Kuhl, James; Lambert, Robert (Legal); Levine, David H. (Legal); LoFaso, Alan; Maddox, Ken; Madrigal, Claudia; Maeng, Elizabeth; MarcyJo.Mandel@boe.ca.gov; Matsumoto, Sid; McGuire, Jeff; Miller, Brad; mmandel@sco.ca.gov; Moon, Richard (Legal); Morquecho, Raymond; Olson, Diane; Pales, Karen; Ralston, NaTasha; Riley, Denise (Legal); Ruwart, Carole (Legal); Scott, Megan; Shah, Neil; Smith, Rose; Stowers, Yvette; Suero, Cynthia; Thomas, Robert; Torres, Rodrigo; Tran, Mai (Legal); Treichelt, Tim; Vasquez, Rosalyn; Wallentine, Sean; Whitaker, Lynn; Williams, Lee; Worley, Tabitha; Zivkovich, Robert  
**Subject:** State Board of Equalization - Announcement of Regulatory Change 1685.5

The State Board of Equalization proposes to adopt Regulation 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*, to clarify the new use tax table provisions of Revenue and Taxation Code section 6452.1. A public hearing regarding the adoption of the proposed regulation will be held in 5901 Green Valley Circle, Room 207, Culver City, at 10:00 a.m., or as soon thereafter as the matter may be heard, on Tuesday, June 21, 2011.

The proposed regulation prospectively clarifies the manner in which the Board "shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table," as required by Revenue and Taxation Code section 6452.1, and prescribes the use tax table for calendar year 2011.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:  
[http://www.boe.ca.gov/regs/reg\\_1685\\_5.htm](http://www.boe.ca.gov/regs/reg_1685_5.htm).

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

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

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39601, 39607, 39608, and 40925.5. This action is proposed to implement, interpret, and make specific Health and Safety Code, sections 39607, 39608, and 40925.5.

### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990.

### SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Have documents available in an alternate format (i.e. Braille, large print, etc.) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del

Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

## TITLE 18. BOARD OF EQUALIZATION

### Notice of Proposed Regulatory Action

#### **The State Board of Equalization Proposes to Adopt California Code of Regulations, Title 18, Section 1685.5, *Calculation of Estimated Use Tax — Use Tax Table***

### NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax — Use Tax Table*. Regulation 1685.5 prescribes the manner in which the Board "shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table," as required by Revenue and Taxation Code (RTC) section 6452.1, as amended by section 1 of Senate Bill. No. (SB) 86 (Stats. 2011, ch. 14), and prescribes the use tax table for calendar year 2011.

### PUBLIC HEARING

A public hearing on the adoption of the proposed regulatory action will be held in Room 207, 5901 Green Valley Circle, Culver City, at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed adoption of Regulation 1685.5.

### AUTHORITY

RTC section 7051.

### REFERENCE

RTC section 6452.1.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

Prior Law

RTC section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley–Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

Current Law

SB 86 was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar–year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income for calendar–year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board’s duty to estimate the amount of use tax due ac-

ording to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar–year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to the person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar–year 2012 and subsequent years.

There are no comparable federal regulations or statutes to Regulation 1685.5.

NO MANDATE ON LOCAL AGENCIES AND  
SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulation 1685.5 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of proposed Regulation 1685.5 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non–discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT DIRECTLY  
AFFECTING BUSINESS

The adoption of proposed Regulation 1685.5 will enable the Board to fulfill its duty to estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar–year 2011 and clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar–year 2012 and subsequent years. The Board’s use tax tables will enable taxpayers to choose to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), instead of calculating and reporting their actual unpaid use tax liabilities (as discussed above). And, the proposed regulation will not impose

any new taxes, it will not change any exemptions or exclusions, and it will not even require taxpayers to use the Board's use tax tables to report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulation 1685.5 may affect small business.

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

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

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

The Board has determined that the adoption of proposed Regulation 1685.5 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

#### NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of proposed Regulation 1685.5 will not have a significant effect on housing costs.

#### DETERMINATION REGARDING ALTERNATIVES

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

#### CONTACT PERSONS

Questions regarding the substance of the proposed regulation should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller,

MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

#### WRITTEN COMMENT PERIOD

The written comment period ends when the public hearing begins at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt proposed Regulation 1685.5. The Board will only consider written comments received by that time.

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

The Board has prepared an underscored version of the text of proposed Regulation 1685.5 illustrating its express terms and an initial statement of reasons for the adoption of the proposed regulation. These documents and all the information on which the proposed regulation is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

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

The Board may adopt proposed Regulation 1685.5 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adop-

tion. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT  
OF REASONS**

If the Board adopts proposed Regulation 1685.5, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING**

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or CEIR has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.  
DBA ASI Telesystems, Inc.  
21150 Califa Street  
Woodland Hills, CA 91367

Bay Recycling  
800 77th Avenue  
Oakland, CA 94621

C & C Disposal Service  
P.O. Box 234  
Rocklin, CA 95677

Choi Engineering Corp.  
286 Greenhouse

Marketplace, Suite 329  
San Leandro, CA 94579

Fries Landscaping  
25421 Clough  
Escalon, CA 95320

Marinda Moving, Inc.  
8010 Betty Lou Drive  
Sacramento, CA 95828

MI-LOR Corporation  
P.O. Box 60  
Leominster, MA 01453

Peoples Ridesharing  
323 Fremont Street  
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital  
446 26th Street  
San Diego, CA

Southern CA Chemicals  
8851 Dice Road  
Santa Fe Springs, CA 90670

Tanemura and Antle Co.  
1400 Schilling Place  
Salinas, CA 93912

Turtle Building Maintenance Co.  
8132 Darien Circle  
Sacramento, CA 95828

Univ Research Foundation  
8422 La Jolla Shore Dr.  
La Jolla, CA 92037

Vandergoot Equipment Co.  
P.O. Box 925  
Middletown, CA 95461

**DEPARTMENT OF FISH AND GAME**

**Department of Fish and Game —  
Public Interest Notice**

For Publication May 6, 2011  
CESA CONSISTENCY DETERMINATION  
REQUEST FOR  
Dublin Ranch West Project  
(2080-2011-012-03)  
Alameda County

The Department of Fish and Game (Department) received a notice on April 22, 2011 that Martin W. Inderbitzen, Attorney at Law proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action includes construction of a residential neighborhood, park, and open space development.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION  
450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
www.boe.ca.gov

BETTY T. YEE  
First District, San Francisco

SEN. GEORGE RUNNER (RET.)  
Second District, Lancaster

MICHELLE STEEL  
Third District, Rolling Hills Estates

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

KRISTINE CAZADD  
Interim Executive Director

May 6, 2011

To Interested Parties:

**Notice of Proposed Regulatory Action  
by the  
State Board of Equalization**

**Proposed to Adopt Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*. Regulation 1685.5 prescribes the manner in which the Board “shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table,” as required by Revenue and Taxation Code (RTC) section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14), and prescribes the use tax table for calendar year 2011.

**PUBLIC HEARING**

A public hearing on the adoption of the proposed regulatory action will be held in Room 207, 5901 Green Valley Circle, Culver City, at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed adoption of Regulation 1685.5.

**AUTHORITY**

RTC section 7051.

**REFERENCE**

RTC section 6452.1.

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

### Prior Law

RTC section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

### Current Law

SB 86 was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

### Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board’s duty to estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years.

There are no comparable federal regulations or statutes to Regulation 1685.5.

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

The Board has determined that the adoption of proposed Regulation 1685.5 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of proposed Regulation 1685.5 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

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

The adoption of proposed Regulation 1685.5 will enable the Board to fulfill its duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years. The Board's use tax tables will enable taxpayers to choose to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), instead of calculating and reporting their actual unpaid use tax liabilities (as discussed above). And, the proposed regulation will not impose any new taxes, it will not change any exemptions or exclusions, and it will not even require taxpayers to use the Board's use tax tables to report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulation 1685.5 may affect small business.

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

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

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

The Board has determined that the adoption of proposed Regulation 1685.5 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

**NO SIGNIFICANT EFFECT ON HOUSING COSTS**

Adoption of proposed Regulation 1685.5 will not have a significant effect on housing costs.

**DETERMINATION REGARDING ALTERNATIVES**

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

**CONTACT PERSONS**

Questions regarding the substance of the proposed regulation should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

**WRITTEN COMMENT PERIOD**

The written comment period ends when the public hearing begins at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt proposed Regulation 1685.5. The Board will only consider written comments received by that time.

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

The Board has prepared an underscored version of the text of proposed Regulation 1685.5 illustrating its express terms and an initial statement of reasons for the adoption of the proposed regulation. These documents and all the information on which the proposed regulation is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

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

The Board may adopt proposed Regulation 1685.5 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts proposed Regulation 1685.5, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov)

Sincerely,



Diane G. Olson, Chief  
Board Proceedings Division

DGO:reb

## **Initial Statement of Reasons**

### **Proposed Adoption of California Code of Regulations, Title 18, Section 1685.5, *Calculation of Estimated Use Tax - Use Tax Table***

#### **SPECIFIC PURPOSE AND NECESSITY**

##### Prior Law

Revenue and Taxation Code (RTC) section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

##### Current Law

Senate Bill No. (SB) 86 (Stats. 2011, ch. 14) was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

##### Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate

the estimated amount of use tax due according to a person's adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board's duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years.

During its April 26, 2011, meeting, the Board determined that it was necessary to adopt Regulation 1685.5 for the specific purposes of implementing, interpreting, and making specific the provisions of RTC section 6452.1 providing that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table" and prescribing the use tax table for calendar-year 2011.

There are no comparable federal regulations or statutes to Regulation 1685.5.

#### **DOCUMENTS RELIED UPON**

The Deputy Director for the Board's Sales and Use Tax Department, Jeffrey McGuire, submitted a memorandum dated April 15, 2011, to the Board Members for consideration at the April 26, 2011, Board meeting, which contained staff's request for the Board's authorization to begin the formal rulemaking process to adopt Regulation 1685.5. The Board relied upon the April 15, 2011, memorandum, the exhibits to the April 15, 2011, memorandum, which illustrate the text of proposed Regulation 1685.5 and identify the sources of the data the Board will use to perform the calculations prescribed by Regulation 1685.5, and comments made during the April 26, 2011, discussion of the April 15, 2011, memorandum in deciding to propose the adoption of Regulation 1685.5.

#### **ALTERNATIVES CONSIDERED**

The Board considered whether to begin the formal rulemaking process to adopt proposed Regulation 1685.5 at this time or, alternatively, whether to take no action at this time and seek additional input from interested parties. However, the Board decided to begin the formal rulemaking process to adopt the proposed regulation at this time in order to comply with deadlines for including the Board's use tax table in the instructions to the FTB's 2011 income tax returns.

#### **NO ADVERSE ECONOMIC IMPACT ON BUSINESS**

The adoption of proposed Regulation 1685.5 will enable the Board to implement the provisions of RTC section 6452.1 providing that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by

July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” and prescribe the use tax table for calendar-year 2011. Eligible taxpayers will have the option to use the Board’s use tax tables to estimate their use tax liabilities for calendar-year 2011 and subsequent years, but taxpayers may also choose to continue to calculate and report their actual unpaid use tax liabilities (as discussed above). Furthermore, the adoption of the proposed regulation will not impose any new taxes, and it will not change any exemptions or exclusions. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

**Proposed Text of  
California Code of Regulations, Title 18, Section 1685.5**

**Section 1685.5. Calculation of Estimated Use Tax - Use Tax Table.**

**(a) In General.**

The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

**(b) Definitions and Data Sources.**

(1) AGI Ranges. The use tax table shall be separated into eight (8) AGI ranges as follows:

- (A) AGI less than \$20,000;
- (B) AGI of \$20,000 to \$39,999;
- (C) AGI of \$40,000 to \$59,999;
- (D) AGI of \$60,000 to \$79,999;
- (E) AGI of \$80,000 to \$99,999;
- (F) AGI of \$100,000 to \$149,999;
- (G) AGI of \$150,000 to \$199,999;
- (H) AGI more than \$199,999.

(2) Use Tax Liability Factor or Use Tax Table Percentage. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On May 1, 2012, and each May 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on electronic and mail order purchases for the proceeding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) Total Personal Income. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) Total Spending at Electronic Shopping and Mail Order Houses. Total spending at electronic shopping and mail order houses shall be determined by reference to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) Percentage of Income Spent on Electronic and Mail Order Purchases. The percentage of income spent on electronic and mail order purchases during a calendar year shall be calculated by dividing the total spending at electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(6) Average State, Local, and District Sales and Use Tax Rate. The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

(c) Calculation of the Estimated Use Tax Liability.

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying \$10,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through (G) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(H) shall be determined by multiplying each range member's actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(d) Use Tax Table Format.

(1) The use tax table for calendar year 2011 shall provide as follows:

<u>Adjusted Gross Income (AGI) Range</u>	<u>Use Tax Liability</u>
<u>Less Than \$20,000</u>	<u>\$7</u>
<u>\$20,000 to \$39,999</u>	<u>\$21</u>
<u>\$40,000 to \$59,999</u>	<u>\$35</u>
<u>\$60,000 to \$79,999</u>	<u>\$49</u>
<u>\$80,000 to \$99,999</u>	<u>\$63</u>
<u>\$100,000 to \$149,999</u>	<u>\$88</u>
<u>\$150,000 to \$199,999</u>	<u>\$123</u>
<u>More than \$199,999 -Multiply AGI by 0.070% (.0007)</u>	

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as the use tax table for calendar year 2011.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6452.1, Revenue and Taxation Code.

## Regulation History

**Type of Regulation:** Sales and Use Tax

Regulation: 1685.5

Title: 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

**Preparation:** Brad Heller

**Legal Contact:** Brad Heller

Board proposes to adopt Regulation 1685.5, *Calculation for Estimated Use Tax – Use Tax Table*, for the specific purpose of implementing the new use tax table provisions of Revenue and Taxation Code section 6452.1.

### History of Proposed Regulation:

May 6, 2011	OAL publication date; 45-day public comment period begins; Interested Parties mailing
April 26, 2011	Notice to OAL
April 26, 2011	Business Tax Committee, Board Authorized Publication (Vote 3-2)

Sponsor: NA

Support: NA

Oppose: NA

## Statement of Compliance

The State Board of Equalization, in process of adopting Special Taxes Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on May 6, 2011, 46 days prior to the public hearing.

June 23, 2011



Richard Bennion  
Regulations Coordinator  
State Board of Equalization

BILL NUMBER: SB 86      CHAPTERED  
BILL TEXT

CHAPTER 14  
FILED WITH SECRETARY OF STATE MARCH 24, 2011  
APPROVED BY GOVERNOR MARCH 24, 2011  
PASSED THE SENATE MARCH 17, 2011  
PASSED THE ASSEMBLY MARCH 17, 2011  
AMENDED IN ASSEMBLY MARCH 17, 2011  
AMENDED IN ASSEMBLY MARCH 14, 2011

INTRODUCED BY      Committee on Budget and Fiscal Review

JANUARY 10, 2011

An act to amend Sections 6452.1, 17052.6, 18510, 19116, 19164, 19504, 19774, and 19777 of, to add Sections 19266 and 19560.5 to, to add the headings of Article 1 (commencing with Section 19751), Article 2 (commencing with Section 19755), and Article 4 (commencing with Section 19772) to, and to add Article 3 (commencing with Section 19761) to, Chapter 9.5 of Part 10.2 of Division 2 of, and to repeal and amend Sections 19751, 19752, 19753, 19754, and 19755 of, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

SB 86, Committee on Budget and Fiscal Review. Tax administration: Franchise Tax Board: State Board of Equalization.

(1) The Sales and Use Tax Law generally provides, for a transaction not subject to sales tax, that every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer for storage, use, or other consumption in this state is liable for use tax, and must pay the use tax to the State Board of Equalization, unless that person has paid the use tax to a retailer registered to collect the tax. Existing law authorizes an eligible person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax return.

This bill would, for taxable years beginning on or after January 1, 2011, authorize an eligible person, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, to either report the estimated amount of use tax due based on the person's California adjusted gross income as reflected in the use tax table shown in the accompanying instructions of the acceptable tax return or the actual amount of use tax that was not paid to a registered retailer. This bill would require the Franchise Tax Board to revise the accompanying instructions for the income tax forms to include the use tax table.

(2) The Personal Income Tax Law, in modified informality with federal income tax laws, authorizes a refundable credit against the taxes imposed by that law for household and dependent care expenses

necessary for gainful employment, as provided.

This bill would make that credit nonrefundable.

(3) Existing law imposes various duties on the Franchise Tax Board with respect to the imposition of penalties in connection with tax avoidance, and partially conforms to federal income tax laws with respect to the penalties imposed.

This bill, in modified conformity with federal income tax laws, would revise the penalties imposed on underpayments, as specified.

The bill would also require the Franchise Tax Board to develop and administer a voluntary compliance initiative, as specified, to be conducted during the period from August 1, 2011, to October 31, 2011, inclusive, and to apply to tax liabilities attributable to the use of abusive tax avoidance transactions and unreported income from the use of offshore financial arrangements, as specified, for taxable years beginning before January 1, 2011. The bill would require the Franchise Tax Board to issue forms and instructions, and to publicize the initiative to maximize public awareness and participation. The bill would authorize any taxpayer meeting the requirements to elect to participate in the voluntary compliance initiative, subject to specified requirements and limitations. For a taxpayer who elects to comply, this bill would waive or abate all penalties, including criminal penalties, as a result of the unreported tax liabilities, except as specified.

The bill would extend the timeframe in which a notice of a proposed deficiency assessment for an abusive tax avoidance transaction may be mailed to a taxpayer from within 8 to 12 years after the return was filed, for notices mailed on or after August 1, 2011.

(4) Existing laws require the Franchise Tax Board to administer specified taxes and collect those taxes from delinquent tax debtors.

This bill would require the board, in coordination with financial institutions doing business in this state, to operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible in order to allow the board to match its list of delinquent tax debtors with the lists provided by the financial institutions. The bill would authorize the board to disclose specified taxpayer information for purposes of data matching, to institute civil proceedings to enforce specified provisions of the bill, and would impose specified penalties on financial institutions for failure to provide records in connection with the match system, as provided. This bill would provide that the specified use of certain data is a misdemeanor.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would appropriate \$1,000 from the General Fund to the State Board of Equalization for administrative operations.

(6) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier

proclamation for purpose of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

(7) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6452.1 of the Revenue and Taxation Code is amended to read:

6452.1. (a) Notwithstanding Section 6451, every person that purchases tangible personal property, the storage, use, or other consumption of which is subject to qualified use tax, as defined in subdivision (d), that is otherwise required to report and remit that tax pursuant to this part, may elect to report and remit qualified use tax on an acceptable tax return.

(b) (1) A person that reports qualified use tax on an acceptable tax return is deemed to have made the election authorized by this section.

(2) (A) In the case of a married individual filing a separate California personal income tax return, an election may be made to report either one-half of the qualified use tax or the entire qualified use tax on his or her separate California personal income tax return.

(B) If an individual elects to report one-half of the qualified use tax, that election will not be binding with respect to the remaining one-half of the qualified use tax owed by that individual and that individual's spouse.

(c) An election to report qualified use tax on an acceptable tax return shall be irrevocable. An acceptable tax return that contains use tax shall be considered a tax return for purposes of this part.

(d) For purposes of this section:

(1) "Acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(2) (A) Except as provided in subparagraph (B), "qualified use tax" means either of the following:

(i) For one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000), either of the following:

(I) The use tax imposed under this part, Article XIII of the California Constitution, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(II) The estimated amount of use tax as calculated by the board. The board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to Franchise Tax Board such amounts in the form of a use tax table as part of the accompanying

instructions of the acceptable tax return.

(ii) For one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of one thousand dollars (\$1,000) or more, or for any tangible personal property purchased for use in a trade or business, the amount of use tax imposed under this part, Article XIII of the California Constitution, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(B) "Qualified use tax" does not include:

(i) Use tax imposed on the storage, use, or other consumption of a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use tax imposed on the storage, use, or other consumption of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(ii) Use tax imposed on the storage, use, or other consumption of a vehicle, vessel, or aircraft.

(iii) Use tax imposed on a lease of tangible personal property.

(iv) Use tax imposed on the storage, use, or other consumption of cigarettes, tobacco products, or cigarettes and tobacco products for which the purchaser is registered with the board as a cigarette consumer, a tobacco products consumer, or a cigarette and tobacco products consumer.

(e) (1) If a person elects to report qualified use tax on an acceptable tax return, that person shall report and remit the qualified use tax by reporting the amount due based on all taxable purchases of tangible personal property made during the taxable year for which the acceptable tax return is required to be filed. A person that has made one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000) may satisfy his or her tax liability for those purchases by using the use tax table shown in the accompanying instructions of the acceptable tax return.

(2) The qualified use tax shall be reported on and remitted with an acceptable tax return that is required to be filed for the taxable year in which the liability for the qualified use tax was incurred.

(f) (1) The penalties and interest imposed under this part, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) shall apply to use tax reported as qualified use tax on an acceptable return.

(2) Any claims for refunds or credits of any use tax reported as qualified use tax on an acceptable tax return shall be made in accordance with Chapter 7 (commencing with Section 6901) of this part.

(3) Qualified use tax shall be considered to be timely reported and remitted for purposes of this part, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), if the qualified use tax is timely reported on and remitted

with an acceptable tax return in accordance with the provisions of this section.

(g) Notwithstanding a person's payment of qualified use tax on an acceptable tax return, the board is not precluded from making any determinations for understatements of qualified use tax against that person in accordance with this chapter. However, with respect to one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000), the board shall be precluded from making any such determination against any person who uses the use tax table for purposes of satisfying his or her use tax liability when the person uses that table in accordance with the accompanying instructions.

(h) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under Part 10.2 (commencing with Section 18401).

(2) Qualified use tax reported on the acceptable tax return in accordance with this section.

(i) (1) This section does not apply to a person who is otherwise required to hold a seller's permit or to register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of this division.

(2) This section applies to purchases of tangible personal property made on or after January 1, 2010, in taxable years beginning on or after January 1, 2010.

(3) The amendments made by the act adding this paragraph shall apply to purchases of tangible personal property made on or after January 1, 2011, in taxable years beginning on or after January 1, 2011.

SEC. 2. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the "net tax", as defined in Section 17039, an amount determined in accordance with Section 21 of the Internal Revenue Code, except that the amount of the credit shall be a percentage, as provided in subdivision (b) of the allowable federal credit without taking into account whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

(1) For taxable years beginning before January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
\$40,000 or less.....	63%
Over \$40,000 but not over \$70,000.....	53%
Over \$70,000 but not over \$100,000.....	42%
Over \$100,000.....	0%

(2) For taxable years beginning on or after January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
\$40,000 or less.....	50%
Over \$40,000 but not over \$70,000.....	43%
Over \$70,000 but not over \$100,000.....	34%
Over \$100,000.....	0%

(c) For purposes of this section, "adjusted gross income" means adjusted gross income as computed for purposes of paragraph (2) of subdivision (h) of Section 17024.5.

(d) The credit authorized by this section shall be limited, as follows:

(1) Employment-related expenses, within the meaning of Section 21 of the Internal Revenue Code, shall be limited to expenses for household services and care provided in this state.

(2) Earned income, within the meaning of Section 21(d) of the Internal Revenue Code, shall be limited to earned income subject to tax under this part. For purposes of this paragraph, compensation received by a member of the armed forces for active services as a member of the armed forces, other than pensions or retired pay, shall be considered earned income subject to tax under this part, whether or not the member is domiciled in this state.

(e) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child, as defined in Section 151(c)(3) of the Internal Revenue Code, shall be treated, for purposes of Section 152 of the Internal Revenue Code, as applicable for purposes of this section, as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a "custodial parent," within the meaning of Section 152(e) of the Internal Revenue Code, as applicable for purposes of this section, and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who lived apart at all times during the last six months of the calendar year.

(2) The child is in the custody of one or both of his or her parents for more than one-half of the calendar year.

(f) The amendments to this section made by Section 1.5 of Chapter 824 of the Statutes of 2002 shall apply only to taxable years beginning on or after January 1, 2002.

(g) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2011.

SEC. 3. Section 18510 of the Revenue and Taxation Code is amended to read:

18510. (a) (1) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11, and the

accompanying instructions for filing those returns, in a form and manner approved by the State Board of Equalization, to allow a person to report and pay qualified use tax in accordance with the provisions of Section 6452.1.

(2) Within 10 working days of receiving from the Franchise Tax Board the returns and instructions described in paragraph (1), the State Board of Equalization shall do either of the following:

(A) Approve the form and manner of the returns and instructions and notify the Franchise Tax Board of this approval.

(B) Submit comments to the Franchise Tax Board regarding changes to the returns and instructions that shall be incorporated before the State Board of Equalization approves the form and manner of the returns and instructions.

(b) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under this part.

(2) Qualified use tax as reported on the acceptable tax return, in accordance with Section 6452.1.

(c) The Franchise Tax Board shall transfer the qualified use tax received pursuant to Section 6452.1, and any information the State Board of Equalization deems necessary for its administration of the use tax, to the State Board of Equalization within 60 days from the date the use tax is received or the acceptable tax return is processed, whichever is later.

(d) This section shall be operative for returns filed for taxable years beginning on and after January 1, 2010.

(e) The amendments made by the act adding this subdivision shall apply to returns filed for taxable years beginning on and after January 1, 2011.

SEC. 4. Section 19116 of the Revenue and Taxation Code is amended to read:

19116. (a) In the case of an individual who files a return of tax imposed under Part 10 (commencing with Section 17001) for a taxable year on or before the due date for the return, including extensions, if the Franchise Tax Board does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis of the liability before the close of the notification period, the Franchise Tax Board shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(b) For purposes of this section:

(1) Except as provided in subdivision (e), "notification period" means the 36-month period beginning on the later of either of the following:

(A) The date on which the return is filed.

(B) The due date of the return without regard to extensions.

(2) "Suspension period" means the period beginning on the day after the close of the notification period and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(3) If, after the return for a taxable year is filed, the taxpayer

provides to the Franchise Tax Board one or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, paragraph (1) shall be applied by substituting the date the last of the documents was provided for the date on which the return was filed.

(c) This section shall be applied separately with respect to each item or adjustment.

(d) This section shall not apply to any of the following:

(1) Any penalty imposed by Section 19131.

(2) Any penalty imposed by Section 19132.

(3) Any interest, penalty, addition to tax, or additional amount involving fraud.

(4) Any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return.

(5) Any criminal penalty.

(6) Any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement.

(7) Any interest, penalty, addition to tax, or additional amount relating to any reportable transaction with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, and any listed transaction, as defined in Section 6707A(c) of the Internal Revenue Code.

(8) Any interest, penalty, addition to tax, or additional amount relating to any abusive tax avoidance transaction, as defined in Section 19777, as amended by the act adding this paragraph.

(e) For taxpayers required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority the following rules shall apply:

(1) The notification period under subdivision (a) shall be either of the following:

(A) One year from the date the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if the taxpayer or the Internal Revenue Service reports that change or correction within six months after the final federal determination.

(B) Two years from the date when the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if after the six-month period required in Section 18622, a taxpayer or the Internal Revenue Service reports a change or correction.

(2) The suspension period under subdivision (a) shall mean the period beginning on the day after the close of the notification period under paragraph (1) and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(f) For notices sent after January 1, 2004, this section does not apply to taxpayers with taxable income greater than two hundred thousand dollars (\$200,000) that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter as defined by Section 19777, as added by Chapter 656 of the Statutes of 2003 and amended by Section 331 of Chapter 183 of the Statutes of 2004.

(g) This section shall apply to taxable years ending after October 10, 1999.

(h) The amendments made to this section by Chapter 691 of the Statutes of 2005 shall apply to notices sent after January 1, 2005.

(i) (1) The amendments made to paragraph (1) of subdivision (b) by Chapter 14 of the Statutes of 2010 shall apply to notices provided after January 1, 2011.

(2) Paragraph (3) of subdivision (b), as added by Chapter 14 of the Statutes of 2010, shall apply to documents provided on or after January 1, 2011.

(3) Paragraph (8) of subdivision (d), as added by the act adding this paragraph, shall apply to notices provided, or amended returns filed, on or after January 1, 2012.

SEC. 5. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) (A) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty on underpayments, as amended by Section 1409 (b) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), except as otherwise provided.

(B) (i) Except for understatements relating to reportable transactions to which Section 19164.5 applies, in the case of any proposed deficiency assessment issued after the last date of the amnesty period specified in Chapter 9.1 (commencing with Section 19730) for any taxable year beginning prior to January 1, 2003, the penalty specified in Section 6662(a) of the Internal Revenue Code shall be computed by substituting "40 percent" for "20 percent."

(ii) Clause (i) shall not apply to any taxable year of a taxpayer beginning prior to January 1, 2003, if, as of the start date of the amnesty program period specified in Section 19731, the taxpayer is then under audit by the Franchise Tax Board, or the taxpayer has filed a protest under Section 19041, or the taxpayer has filed an appeal under Section 19045, or the taxpayer is engaged in settlement negotiations under Section 19442, or the taxpayer has a pending judicial proceeding in any court of this state or in any federal court relating to the tax liability of the taxpayer for that taxable year.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All taxable years beginning on or after January 1, 1990.

(B) Any other taxable year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating to treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(3) Section 6662(d)(1)(B) of the Internal Revenue Code is modified to provide that in the case of a corporation, other than an "S" corporation, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of:

(A) Ten percent of the tax required to be shown on the return for the taxable year (or, if greater, two thousand five hundred dollars (\$2,500)).

(B) Five million dollars (\$5,000,000).

(4) Section 6662(d)(2)(A) of the Internal Revenue Code is modified to additionally provide that the excess determined under Section 6662(d)(2)(A) of the Internal Revenue Code shall be determined without regard to items to which Section 19164.5 applies and without regard to items with respect to which a penalty is imposed by Section 19774.

(5) The provisions of Sections 6662(e)(1) and 6662(h)(2) of the Internal Revenue Code shall apply to returns filed on or after January 1, 2010.

(b) For purposes of Section 6662(d) of the Internal Revenue Code, Section 6664 of the Internal Revenue Code, Section 6694(a)(1) of the Internal Revenue Code, and this part, the Franchise Tax Board may prescribe a list of positions for which the Franchise Tax Board believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. That list (and any revisions thereof) shall be published through the use of Franchise Tax Board Notices or other published positions. In addition, the "listed transactions" identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty, except as otherwise provided.

(d) (1) Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply, except as otherwise provided.

(2) Section 6664(c)(3) of the Internal Revenue Code shall apply to returns filed on or after January 1, 2010.

(3) Section 6664(c)(4) of the Internal Revenue Code shall apply to appraisals prepared with respect to returns or submissions filed on or after January 1, 2010.

(e) Except for purposes of subdivision (e) of Section 19774, Section 6662(b)(6) of the Internal Revenue Code shall not apply.

(f) Except for purposes of subdivision (e) of Section 19774, Section 6662(i) of the Internal Revenue Code, relating to increase in penalty in case of nondisclosed noneconomic substance transactions, shall not apply.

(g) Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply, except as otherwise provided.

(h) The amendments made to this section by the act adding this subdivision shall apply to notices mailed on or after January 1, 2012.

SEC. 6. Section 19266 is added to the Revenue and Taxation Code, to read:

19266. (a) (1) The Franchise Tax Board, in coordination with financial institutions doing business in this state, shall operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible.

(2) The Franchise Tax Board shall prescribe any rules and regulations that may be necessary or appropriate to implement this section. These rules and regulations shall include all of the following:

(A) A structure by which financial institutions, or their designated data-processing agents, shall receive from the Franchise Tax Board the file or files of delinquent debtors that the institution shall match with its own list of accountholders to

identify delinquent tax debtor accountholders at the institution.

(B) An option by which financial institutions without the technical ability to process the data exchange, or without the ability to employ a third-party data processor to process the data exchange, may forward to the Franchise Tax Board a list of all accountholders and their social security numbers or other taxpayer identification numbers, so that the Franchise Tax Board shall match that list with the file or files of delinquent tax debtors.

(C) Authority for the Franchise Tax Board to exempt a financial institution from the requirements of this section if the Franchise Tax Board determines that the financial institution participation would not generate sufficient revenue to be cost effective for the Franchise Tax Board.

(D) Authority for the Franchise Tax Board to temporarily suspend the requirements of this section for a financial institution if the financial institution provides the Franchise Tax Board with a written notice from its supervisory banking authority that it is determined to be undercapitalized, significantly undercapitalized, or critically undercapitalized as defined by FDIC Regulation 325.103(b)(3), (4), and (5) or NCUA Regulation 702.102. The notice provided pursuant to this subparagraph shall be subject to the protections of Section 19542.

(b) The Financial Institution Record Match System shall not be subject to any limitation set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the

Government Code. However, any use of the information provided pursuant to this section for any purpose other than the collection of delinquent franchise or income tax or other debts referred to the Franchise Tax Board for collection, as imposed under Part 5 (commencing with Section 10701), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001) shall be a violation of Section 19542.

(c) (1) To effectuate the Financial Institution Record Match System, financial institutions subject to this section shall provide to the Franchise Tax Board on a quarterly basis the name, record address, and other addresses, social security number or other taxpayer identification number, and other identifying information for each delinquent tax debtor, as identified by the Franchise Tax Board by name and social security number or other taxpayer identification number, who maintains an account at the institution.

(2) The first data file created by the Franchise Tax Board for purposes of matching tax debtor records to financial institution accountholder records shall be limited to 600,000 tax debtor records. The number of tax debtor records included in a subsequent data file created by the Franchise Tax Board may be increased by no more than 600,000 tax debtor records greater than the number of tax debtor records included in the immediately preceding data file until all eligible tax debtor records are included in the data match file.

(d) Unless otherwise required by law, a financial institution furnishing a report or providing information to the Franchise Tax Board pursuant to this section shall not disclose to a depositor or an accountholder, or a codepositor or coaccountholder, that the name, address, social security number or other taxpayer identification number, or other identifying information of that delinquent tax debtor has been received from or furnished to the Franchise Tax Board.

(e) A financial institution shall incur no obligation or liability to any person arising from any of the following:

(1) Furnishing information to the Franchise Tax Board as required by this section.

(2) Failing to disclose to a depositor or accountholder that the name, address, social security number or other taxpayer identification number, or other identifying information of that delinquent tax debtor was included in the data exchange with the Franchise Tax Board required by this section.

(3) Any other action taken in good faith to comply with the requirements of this section.

(f) The Franchise Tax Board may institute civil proceedings to enforce this section.

(g) Any financial institution that willfully fails to comply with the rules and regulations promulgated by the Franchise Tax Board for the administration of delinquent tax collections, unless it is shown to the satisfaction of the Franchise Tax Board that the failure is due to reasonable cause, shall be assessed a penalty upon notice and demand of the Franchise Tax Board and collected in the same manner as tax. The penalty imposed under this section shall be in an amount equal to fifty dollars (\$50) for each record not provided, but the total imposed on that financial institution for all such failures during any calendar year shall not exceed one hundred thousand dollars (\$100,000).

(h) For purposes of this section:

(1) "Account" means a demand deposit account, share or share draft account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account, regardless of whether the account bears interest.

(2) "Financial institution" means:

(A) A depository institution, as defined in Section 1813(c) of Title 12 of the United States Code.

(B) An institution-affiliated party, as defined in Section 1813(u) of Title 12 of the United States Code.

(C) A federal credit union or state credit union, as defined in Section 1752 of Title 12 of the United States Code, including an institution-affiliated party of a credit union, as defined in Section 1786(r) of Title 12 of the United States Code.

(D) A benefit association, insurance company, safe deposit company, money-market fund, or similar entity authorized to do business in this state.

(3) "Delinquent tax debtor" means any person liable for any income or franchise tax or other debt referred to the Franchise Tax Board for collection as imposed under Part 5 (commencing with Section 10701), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), including tax, penalties, interest, and fees, where the tax or debt, including the amount, if any, referred to the Franchise Tax Board for collection remains unpaid after 30 days from demand for payment by the Franchise Tax Board, and the person is not making current timely installment payments on the liability under an agreement pursuant to Section 19006.

(i) A financial institution shall be reimbursed by the Franchise Tax Board for actual costs incurred to implement the provisions of this section. Upon receipt of an invoice from the financial institution, cost reimbursement by the Franchise Tax Board shall be limited to the following:

(1) For one-time startup costs of a financial institution, no more than two thousand five hundred dollars (\$2,500).

(2) For data matching costs of a financial institution, other than one-time startup costs, no more than two hundred fifty dollars (\$250) per calendar quarter.

(j) The first data exchange for purposes of matching tax debtor records to financial institution accountholder records shall occur no earlier than April 1, 2012.

(k) This section shall be operative 120 days after the effective date of the act adding this section and shall apply with respect to persons that are delinquent tax debtors on and after that date.

SEC. 7. Section 19504 of the Revenue and Taxation Code is amended to read:

19504. (a) The Franchise Tax Board, for the purpose of administering its duties under this part, including ascertaining the correctness of any return; making a return where none has been made; determining or collecting the liability of any person in respect of any liability imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part (or the liability at law or in equity of any transferee in respect of that liability); shall have the power to require by demand, that an entity of any kind including, but not limited to, employers, persons, or financial institutions provide information or make available for examination or copying at a specified time and place, or both, any book, papers, or other data which may be relevant to that purpose. Any demand to a financial institution shall comply with the California Right to Financial Privacy Act set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. Information that may be required upon demand includes, but is not limited to, any of the following:

(1) Addresses and telephone numbers of persons designated by the Franchise Tax Board.

(2) Information contained on Federal Form W-2 (Wage and Tax Statement), Federal Form W-4 (Employee's Withholding Allowance Certificate), or State Form DE-4 (Employee's Withholding Allowance Certificate).

(b) The Franchise Tax Board may require the attendance of the taxpayer or of any other person having knowledge in the premises and may take testimony and require material proof for its information and administer oaths to carry out this part.

(c) (1) The Franchise Tax Board may issue subpoenas or subpoenas duces tecum, which subpoenas must be signed by any member of the Franchise Tax Board, and may be served on any person for any purpose.

(2) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of an abusive tax avoidance transaction, as defined in Section 19777, the subpoena may be signed by any member of the Franchise Tax Board, the Executive Officer of the Franchise Tax Board, or any designee.

(d) Obedience to subpoenas or subpoenas duces tecum issued in accordance with this section may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(e) When examining a return, the Franchise Tax Board shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless

the Franchise Tax Board has a reasonable indication that there is a likelihood of unreported income. This subdivision applies to any examination beginning on or after October 10, 1999.

(f) The amendments made to this section by the act adding this subdivision shall apply to subpoenas issued on or after the effective date of the act adding this subdivision.

SEC. 8. Section 19560.5 is added to the Revenue and Taxation Code, to read:

19560.5. Notwithstanding any law to the contrary, to effectuate the Financial Institution Record Match System prescribed under Section 19266, the Franchise Tax Board may disclose the name and social security number or taxpayer identification number to designated financial institutions or their authorized processing agent for purposes of matching debtor records to accountholder records at the financial institution. Any use of the data provided by the Franchise Tax Board for a purpose other than those identified by Section 19266 is prohibited and considered a violation of Section 19542.

SEC. 9. The heading of Article 1 (commencing with Section 19751) is added to Chapter 9.5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, immediately preceding Section 19751, to read:

#### Article 1. Voluntary Compliance Initiative One

SEC. 10. Section 19751 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 11. Section 19751 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19751. (a) The Franchise Tax Board shall develop and administer a voluntary compliance initiative for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this article.

(b) The voluntary compliance initiative shall be conducted during the period from January 1, 2004, to April 15, 2004, inclusive, pursuant to Section 19754. This initiative shall apply to tax liabilities attributable to the use of abusive tax avoidance transactions for taxable years beginning before January 1, 2003.

(c) The Franchise Tax Board shall issue forms and instructions and may take any other actions necessary, including the use of closing agreements, to implement this article.

(d) The Franchise Tax Board shall publicize the voluntary compliance initiative so as to maximize public awareness of and participation in the initiative. The Franchise Tax Board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this article.

(e) Any correspondence mailed by the Franchise Tax Board to a taxpayer at the taxpayer's last known address outlining the voluntary compliance initiative under this article constitutes "contact" within the meaning of Treasury Regulation Section 1.6664-2(c)(3), relating to qualified amended returns, and paragraph (3) of the former subdivision (e) of Section 19773 and Section 19777.

SEC. 12. Section 19752 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 13. Section 19752 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to

read:

19752. Any taxpayer who meets the requirements of Section 19754 may elect the application of either, but not both, of the following:

(a) Voluntary compliance without appeal. If this option is elected, then each of the following shall apply:

(1) The Franchise Tax Board shall waive or abate all penalties imposed by this part, for all taxable years where the taxpayer elects to participate in the initiative, as a result of the underreporting of tax liabilities attributable to the use of abusive tax avoidance transactions.

(2) Except as provided in Section 19753, no criminal action shall be brought against the taxpayer for the taxable years with respect to issues for which the taxpayer voluntarily complies under this article.

(3) No penalty may be waived or abated under this article if the penalty imposed is attributable to an assessment of taxes that became final prior to December 31, 2003.

(4) Notwithstanding Chapter 6 (commencing with Section 19301) of this part, the taxpayer may not file a claim for refund for the amounts paid in connection with abusive tax avoidance transactions under this article.

(b) Voluntary compliance with appeal. If this option is elected, then each of the following shall apply:

(1) The Franchise Tax Board shall waive or abate all penalties, except the accuracy related penalty under Section 19164 (as in effect immediately before enactment of the act adding this section), imposed by this part, for each of the taxable years for which the taxpayer elects to participate in the initiative, that are owed as a result of the underreporting of tax liabilities attributable to the use of abusive tax avoidance transactions.

(2) Except as provided in Section 19753, no criminal action may be brought against the taxpayer for each of the taxable years for which the taxpayer voluntarily complies under this section.

(3) No penalty may be waived under this article if the penalty imposed is attributable to an assessment of taxes that became due and payable prior to December 31, 2003.

(4) The taxpayer may file a claim for refund under Chapter 6 (commencing with Section 19301) of this part. Notwithstanding Section 19331, the taxpayer may not file an appeal to the board until after either of the following:

(A) The date the Franchise Tax Board takes action on the claim for refund for the tax year to which this article applies.

(B) The later of either of the following dates:

(i) The date that is 180 days after the date of a final determination by the Internal Revenue Service with respect to the transaction or transactions to which this article applies.

(ii) The date that is four years after the date the claim for refund was filed or one year after full payment of all tax, including penalty and interest was made, whichever date is later.

(5) The taxpayer shall be subject to the accuracy related penalty under Section 19164.

(A) The penalty may be assessed:

(i) When the Franchise Tax Board takes action on the claim for refund.

(ii) When a federal determination becomes final for the same issue, in which case the penalty shall be assessed (and may not be abated) if the penalty was assessed at the federal level.

(B) In determining the amount of the underpayment of tax, Treasury Regulation Section 1.6664-2(c)(2), as promulgated under Section 6664 of the Internal Revenue Code, relating to qualified amended returns, shall not apply. The amount of the underpayment is the difference between the amount of tax shown on the original return and the correct amount of tax for the taxable year. The underpayment amount shall not be less than the amount of the claim for refund filed by the taxpayer under paragraph (4) that was denied.

(C) The penalty is due and payable upon notice and demand pursuant to Section 19049. Only after the taxpayer has paid all amounts due, including the penalty, and the claim is denied in whole or in part, may the taxpayer file an appeal under Chapter 6 (commencing with Section 19301), of this part in conjunction with the appeal filed under paragraph (4).

(c) A taxpayer's election under this section shall be made for all taxable years of the taxpayer governed by this article. A separate election for each taxable year governed by this article is not allowed.

SEC. 14. Section 19753 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 15. Section 19753 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19753. (a) This article does not apply to violations of this part for which, as of December 31, 2003, any of the following applies:

(1) A criminal complaint was filed against the taxpayer in connection with an abusive tax avoidance transaction or transactions.

(2) The taxpayer is the subject of a criminal investigation in connection with an abusive tax avoidance transaction or transactions.

(b) No refund or credit shall be granted with respect to any penalty paid prior to the time the taxpayer participates in the voluntary compliance initiative authorized by this article.

(c) For purposes of this article, an "abusive tax avoidance transaction" means a plan or arrangement devised for the principal purpose of avoiding tax. Abusive tax avoidance transactions include, but are not limited to, "listed transactions" as described in paragraph (4) of subdivision (a) of Section 18407.

SEC. 16. Section 19754 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 17. Section 19754 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19754. (a) The voluntary compliance initiative described in this article applies to any taxpayer who was not eligible to participate in the Internal Revenue Service's Offshore Voluntary Compliance Initiative described in Revenue Procedure 2003-11, and during the period from January 1, 2004, to April 15, 2004, does both of the following:

(1) Files an amended tax return under this part for each taxable year for which the taxpayer has previously filed a tax return using an abusive tax avoidance transaction to underreport the taxpayer's tax liability for that taxable year. Each amended return shall report all income from all sources, without regard to the abusive tax avoidance transaction.

(2) Except as provided in subdivision (b), pays in full all taxes

and interest due.

(b) The Franchise Tax Board may enter into an installment payment agreement in lieu of the full payment required under paragraph (2) of subdivision (a). Any installment payment agreement authorized by this subdivision shall include interest on the unpaid amount at the rate prescribed in Section 19521. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) After April 15, 2004, the Franchise Tax Board may issue a deficiency assessment upon an amended return filed pursuant to subdivision (a), impose penalties, or initiate criminal action under this part with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 19752.

(d) In addition to any other authority to examine returns, for the purpose of improving state tax administration, the Franchise Tax Board may inquire into the facts and circumstances related to the use of abusive tax avoidance transactions to underreport the tax liabilities for which a taxpayer has participated in the voluntary compliance initiative under this article. Taxpayers shall cooperate fully with inquiries described in this subdivision. Failure by a taxpayer to fully cooperate in an inquiry described in this subdivision shall render the waiver of penalties under this article null and void and the taxpayer may be assessed any penalties that may apply.

SEC. 18. The heading of Article 2 (commencing with Section 19755) is added to Chapter 9.5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, immediately preceding Section 19755, to read:

Article 2. Statute of Limitations for Abusive Tax Avoidance Transactions

SEC. 19. Section 19755 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 20. Section 19755 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19755. (a) (1) Notwithstanding Section 19057, and except as provided in paragraph (2), with respect to proposed deficiency assessments related to an abusive tax avoidance transaction, a notice of a proposed deficiency assessment may be mailed to the taxpayer within eight years after the return was filed, or within the period otherwise provided in Article 3 (commencing with Section 19031) of Chapter 4 of this part, whichever expires later.

(2) For notices mailed on or after August 1, 2011, with respect to proposed deficiency assessments related to an abusive tax avoidance transaction, a notice of a proposed deficiency assessment may be mailed to the taxpayer within 12 years after the return was filed, or within the period otherwise provided in Article 3 (commencing with Section 19031) of Chapter 4 of this part, whichever expires later.

(b) This section shall apply to any return filed under this part on or after January 1, 2000. Paragraph (2) of subdivision (a) shall apply to taxable years that have not been closed by a statute of limitations, *res judicata*, or otherwise, as of August 1, 2011.

SEC. 21. Article 3 (commencing with Section 19761) is added to Chapter 9.5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 3. Voluntary Compliance Initiative Two

19761. (a) The Franchise Tax Board shall develop and administer a voluntary compliance initiative for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this article.

(b) The voluntary compliance initiative shall be conducted during the period from August 1, 2011, to October 31, 2011, inclusive, pursuant to Section 19764. This initiative shall apply to tax liabilities attributable to the use of abusive tax avoidance transactions and to unreported income from the use of offshore financial arrangements for taxable years beginning before January 1, 2011.

(c) The Franchise Tax Board shall issue forms and instructions and may take any other actions necessary, including the use of closing agreements, to implement this article.

(d) The Franchise Tax Board shall publicize the voluntary compliance initiative so as to maximize public awareness of and participation in the initiative. The Franchise Tax Board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this article.

(e) Any correspondence mailed by the Franchise Tax Board to a taxpayer at the taxpayer's last known address outlining the voluntary compliance initiative under this article constitutes "contact" within the meaning of Treasury Regulation Section 1.6664-2(c)(3), relating to qualified amended returns, and Sections 19164.5 and 19777.

19762. (a) Any taxpayer who meets the requirements of Section 19764 may elect to participate in the voluntary compliance initiative under this article.

(b) For taxpayers electing to participate in the voluntary compliance initiative under this article, all of the following shall apply:

(1) (A) Except as provided in subparagraph (B), the Franchise Tax Board shall waive or abate all penalties imposed by this part, for all taxable years where the taxpayer elects to participate in the initiative, as a result of the unreported tax liabilities attributable to the use of abusive tax avoidance transactions and to unreported income from the use of offshore financial arrangements.

(B) The penalties imposed under Section 19138 or 19777.5 may not be waived.

(2) Except as provided in Section 19763, no criminal action shall be brought against the taxpayer for the taxable years with respect to issues for which the taxpayer voluntarily complies under this article.

(3) No penalty assessed after July 31, 2011, may be waived or abated under this article if the penalty imposed is attributable to an assessment of taxes that became final prior to July 31, 2011. For purposes of this paragraph, assessment of taxes does not include taxes self-assessed on an original or amended return filed before August 1, 2011.

(4) Notwithstanding Chapter 6 (commencing with Section 19301) of

this part, no refund or credit shall be allowed for amounts paid in connection with abusive tax avoidance transactions or unreported income from the use of offshore financial arrangements under this article.

19763. (a) This article does not apply to violations of this part for which, as of July 31, 2011, any of the following applies:

(1) A criminal complaint was filed against the taxpayer in connection with an abusive tax avoidance transaction, transactions, or unreported income from the use of an offshore financial arrangement or arrangements.

(2) The taxpayer is the subject of a criminal investigation in connection with an abusive tax avoidance transaction, transactions, or unreported income from the use of an offshore financial arrangement or arrangements.

(b) No refund or credit shall be allowed with respect to any penalty paid prior to the time the taxpayer participates in the voluntary compliance initiative authorized by this article.

(c) For purposes of this article, an "abusive tax avoidance transaction" has the same meaning as in Section 19777, as amended by the act adding this section.

19764. (a) The voluntary compliance initiative described in this article applies to any taxpayer who, during the period from August 1, 2011, to October 31, 2011, makes an election as described in Section 19762 and does both of the following:

(1) (A) Files an amended tax return under this part for each taxable year for which the taxpayer has previously filed a tax return using an abusive tax avoidance transaction or an offshore financial arrangement to underreport the taxpayer's tax liability for that taxable year or failed to include income from the offshore financial arrangement. Each amended return shall report all income from all sources, without regard to the abusive tax avoidance transaction, including all income from offshore financial arrangements. No deduction shall be allowed for transaction costs associated with an abusive tax avoidance transaction or for transaction or other costs associated with unreported income from the use of an offshore financial arrangement.

(B) For purposes of this article, an "offshore financial arrangement" means any transaction involving financial arrangements that in any manner rely on the use of offshore payment cards, including credit, debit, or charge cards, issued by banks in foreign jurisdictions or offshore financial arrangements, including arrangements with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities to avoid or evade income or franchise tax.

(2) Except as provided in subdivision (b), pays in full all taxes and interest due.

(b) The Franchise Tax Board may enter into an installment payment agreement in lieu of the full payment required by paragraph (2) of subdivision (a), but only if final payment under the terms of that installment payment agreement is due and paid no later than June 15, 2012. Any installment payment agreement authorized by this subdivision shall include interest on the unpaid amount at the rate prescribed in Section 19521. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) After October 31, 2011, the Franchise Tax Board may issue a

deficiency assessment upon an amended return filed pursuant to subdivision (a), impose penalties, or initiate criminal action under this part with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 19762.

(d) In addition to any other authority to examine returns, for the purpose of improving state tax administration, the Franchise Tax Board may inquire into the facts and circumstances related to the use of abusive tax avoidance transactions or offshore financial arrangements to underreport the tax liabilities for which a taxpayer has participated in the voluntary compliance initiative under this article. Taxpayers shall cooperate fully with inquiries described in this subdivision. Failure by a taxpayer to fully cooperate in an inquiry described in this subdivision shall render the waiver of penalties under this article null and void and the taxpayer may be assessed any penalties that may apply.

SEC. 22. The heading of Article 4 (commencing with Section 19772) is added to Chapter 9.6 of Part 10.2 of Division 2 of the Revenue and Taxation Code, immediately preceding Section 19772, to read:

#### Article 4. Penalties and Interest

SEC. 23. Section 19774 of the Revenue and Taxation Code is amended to read:

19774. (a) If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of that understatement.

(b) (1) Subdivision (a) shall be applied by substituting "20 percent" for "40 percent" with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

(2) For taxable years beginning before January 1, 2003, "adequately disclosed" includes the disclosure of the tax shelter identification number on the taxpayer's return as required by subdivision (c) of Section 18628, as applicable for the year in which the transaction was entered into.

(c) For purposes of this section:

(1) The term "noneconomic substance transaction understatement" means any amount which would be an understatement under Section 6662A (b) of the Internal Revenue Code, as modified by subdivision (b) of Section 19164.5 if Section 6662A(b) of the Internal Revenue Code were applied by taking into account items attributable to noneconomic substance transactions rather than items to which Section 6662A(b) applies.

(2) A "noneconomic substance transaction" includes:

(A) The disallowance of any loss, deduction or credit, or addition to income attributable to a determination that the disallowance or addition is attributable to a transaction or arrangement that lacks economic substance including a transaction or arrangement in which an entity is disregarded as lacking economic substance. A transaction shall be treated as lacking economic substance if the taxpayer does not have a valid nontax California business purpose for entering into the transaction.

(B) Any disallowance of claimed tax benefits by reason of a

transaction lacking economic substance, within the meaning of Section 7701(o) of the Internal Revenue Code, relating to clarification of economic substance doctrine, as added by Section 1409(a) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), except as otherwise provided.

(i) For purposes of this subparagraph, the phrase "apart from state income tax effects" shall be substituted for the phrase "apart from Federal income tax effects" in each place it appears in Section 7701(o) (1) of the Internal Revenue Code.

(ii) For purposes of this subparagraph, the phrase "any federal or local income tax effect which is related to a state income tax effect" shall be treated in the same manner as a state income tax effect" is substituted for the phrase "any State or local income tax effect which is related to a Federal income tax effect shall be treated in the same manner as a Federal income tax effect" in Section 7701(o) (3) of the Internal Revenue Code.

(d) (1) If the notice of proposed assessment of additional tax has been sent with respect to a penalty to which this section applies, only the Chief Counsel of the Franchise Tax Board may compromise all or any portion of that penalty.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(e) Notwithstanding anything to the contrary in this section, if a penalty has been assessed for federal income tax purposes pursuant to Section 6662(b) (6) of the Internal Revenue Code, as added by Section 1409(b) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), on an underpayment attributable to the disallowance of claimed tax benefits by reason of a transaction lacking economic substance, then a penalty shall be imposed under this section for that portion of an understatement attributable to that transaction, and shall not be abated unless the taxpayer can establish that the imposition of the federal penalty under Section 6662 of the Internal Revenue Code for an underpayment attributable to that transaction was clearly erroneous.

(f) The amendments made to this section by the act adding this subdivision shall apply to notices mailed on or after the effective date of the act adding this subdivision.

SEC. 24. Section 19777 of the Revenue and Taxation Code is amended to read:

19777. (a) If a taxpayer has been contacted by the Franchise Tax Board regarding an abusive tax avoidance transaction, and has a deficiency attributable to an abusive tax avoidance transaction, there shall be added to the tax an amount equal to 100 percent of the interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the date the notice of proposed assessment is mailed.

(b) For purposes of this section, "abusive tax avoidance transaction" means any of the following:

(1) A tax shelter as defined in Section 6662(d) (2) (C) of the Internal Revenue Code. For purposes of this chapter, Section 6662(d) (2) (C) of the Internal Revenue Code is modified by substituting the phrase "income or franchise tax" for "Federal income tax."

(2) A reportable transaction, as defined in Section 6707A(c)(1) of the Internal Revenue Code, with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met.

(3) A listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code.

(4) A gross misstatement, within the meaning of Section 6404(g)(2)(D) of the Internal Revenue Code.

(5) Any transaction to which Section 19774 applies.

(c) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(d) (1) If a taxpayer files an amended return reporting an abusive tax avoidance transaction, described in subdivision (b), after the taxpayer is contacted by the Franchise Tax Board regarding that abusive tax avoidance transaction but before a notice of proposed assessment is issued under Section 19033, then the amount of the penalty under this section shall be 50 percent of the interest payable under Section 19101 with respect to the amount of any additional tax reflected in the amended return attributable to that abusive tax avoidance transaction.

(2) If a notice of proposed assessment under Section 19033, with respect to an abusive tax avoidance transaction as described in subdivision (a), is issued after the amended return described in paragraph (1) is filed, the penalty imposed pursuant to subdivision (a) shall be applicable to the additional tax reflected in the notice of proposed assessment attributable to that abusive tax avoidance transaction in excess of the additional tax shown on the amended return.

(e) The amendments made to this section by the act adding this subdivision shall apply to notices mailed on or after the effective date of that act and to amended returns filed more than 90 days after that effective date with respect to taxable years for which the statute of limitations for mailing a notice of proposed assessment has not expired as of that date.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 26. The sum of one thousand dollars (\$1,000) is hereby appropriated from the General Fund to the State Board of Equalization for administrative operations.

SEC. 27. This act addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation on January 20, 2011, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 28. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

**Bennion, Richard**

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**Subject:** FW: Regulation 1685.5, Calculation of Estimated Use Tax - Use Tax Table

**Sent:** Monday, May 09, 2011 11:34 AM

**To:** Heller, Bradley (Legal)

**Subject:** Regulation 1685.5, Calculation of Estimated Use Tax - Use Tax Table

Bradley,

I just read the e-mail about this proposed regulation. I want to clarify to make sure I understand correctly. Is this a tax that is going to be imposed on individuals? It looks like it is a tax on an individual's AGI. I thought the BOE was for businesses. If passed, how will this tax be collected? It seems it may be taxed on the CA tax return if the info is sent to the FTB. Can you clarify this regulation for me?

Sincerely,

Candy Messer

Affordable Bookkeeping and Payroll Services

24404 S. Vermont Ave Suite 207

Harbor City, CA 90710

310-534-5577 Office

310-534-5598 Fax

**Bennion, Richard**

---

**From:** KATY CRAIG [<mailto:katyc@dslextreme.com>]

**Sent:** Wednesday, May 18, 2011 11:58 PM

**To:** Heller, Bradley (Legal)

**Subject:** Use tax table

Mr. Heller,

Am I understanding this correctly ? Is the BOE now going to charge a new use tax to everyone based on their income ? Is this a new tax ? Is this going to be added to our state income tax return ? I have Read the proposed text through the link on this website and that is how I am understanding it. If I am reading this wrong or misunderstanding it, please explain it to me in plain English.

Concerned tax payer, small business owner, & citizen,  
Katherine Craig

**From:** Gene Johnson [mailto:gjohnsonca@comcast.net]  
**Sent:** Monday, June 13, 2011 12:02 PM  
**To:** Heller, Bradley (Legal)  
**Subject:** Proposed Regulation 1685.5  
**Importance:** High

**Proposed Adoption of Regulation 1685.5**  
**Calculation of Estimated Use Tax – Use Tax Table**  
Submitted via email on June 13, 2011  
by Gene Johnson

I recently reviewed this proposed regulation, and in response to your request for written comments from the public I am submitting the following.

The adoption of a use tax table greatly simplifies record keeping for the average person, but its use does raise several questions. Before listing these questions, I would like to point out an inconsistency, or at least poor wording, at the bottom of page 3 in the “Initial Statement of Reasons.” The following is a direct quote:

*Therefore, the Board has made an initial determination that the adoption of Proposed Regulation 1685.5 will not have a significant adverse economic impact on business.*

*The proposed regulation may affect small business. (Emphasis added)*

You are saying it may affect small business, but it will not have an adverse economic impact. Does this imply it will have a positive economic impact? This seems confusing but it is a small point.

The following questions are listed in no particular order.

1. One must question whether the use tax amount produced by this table bears any resemblance to reality. To the best of my knowledge, nobody has been able to prove a direct correlation between incomes and use tax liabilities incurred. Some people with very high incomes might not make any purchases subject to use tax. Some lower income people might make a lot of these purchases. It might be difficult to defend this concept against a serious challenge by a taxpayer rights organization. I know the use of the table is voluntary, but I am unaware of any other tax that is routinely based on estimates like this. Certainly the factors used to calculate the tax can be subject to question. The income ranges used appear to be random and they can create a situation where \$1 in additional income can result in a healthy increase in the amount of use tax due. Why not simply publish a factor to be multiplied by the taxpayer’s actual AGI to determine the use tax amount due?
2. Has BOE considered allowing a de minimis exemption from use tax? Is it really worth anyone’s time (taxpayer, FTB, or BOE) to report \$7 in use tax? If I understand correctly, BOE will not issue a determination for less than \$50 because the administrative costs make it impractical. Why require use tax reporting for less than this amount? I

understand the argument that \$7 reported by a million people adds up to serious money. However, this tax has already generated a lot of negative publicity because so many taxpayers think it is a new tax; perhaps giving the "little guy" a break might help with public relations.

3. In the past, I believe that practitioner-prepared returns have been less likely to report use tax to FTB than individually-prepared returns. This seems to result from the opinion of tax professionals that reporting use tax on the FTB tax return is an election and not a requirement. The inclusion of an optional table in this regulation does little to dispel this misconception.
4. Should this regulation state that persons registered with BOE as cigarette and tobacco products consumers cannot use this table?
5. Taxpayers who are able to maintain records adequate enough to calculate their actual use tax liability are very likely to report the amount from the table if it is less than their actual obligation. Is BOE precluded from issuing a subsequent determination if the person reported use tax based on the look-up table? Should there be a provision for a substantial understatement (say 25% or more) of actual use tax liability if the taxpayer uses this table?
6. I am not sure if this comment directly affects this regulation, but it involves FTB's collection of the use tax on behalf of BOE. It also affects the public relations impact of their procedures. When FTB receives payment for the amount due on a state income tax return that also includes use tax, a serious problem develops if there is an underpayment. FTB applies the money to the total liability in the following order:
  - i. State income tax due
  - ii. Penalties or interest applicable to state income tax due
  - iii. Use tax due

Taxpayers are sometimes unaware of additional penalties or interest they owe to FTB on their state income tax liability so they remit only funds for the state income tax and the use tax they are reporting. However, FTB will apply the funds first to state income tax due, second to penalties and interest owed them, and third to use tax. Then they report any unpaid use tax to BOE. When BOE attempts to collect funds due for use tax, taxpayers seldom understand why BOE is contacting them about a liability they reported to FTB and which they believe they have already paid to FTB. While this appears to be a simple administrative procedure, it often results in unfavorable public relations which should be considered. It also creates additional unnecessary work for FTB and BOE. The obvious solution is for FTB to apply funds to the tax due (including use tax) first and then to their penalties and interest. This also more closely matches the intent of the taxpayer.

Thank you for considering my comments. I would appreciate hearing your response.



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Board Proceedings

June 20, 2011

Rick Bennion  
Regulations Coordinator  
California Board of Equalization  
450 N Street  
Sacramento, CA 95814  
[richard.bennion@boe.ca.gov](mailto:richard.bennion@boe.ca.gov)

**Re: Upcoming Board Agenda Item F1, Proposed Adoption of 18 CCR §1685.5**

Dear Mr. Bennion:

On June 21, 2011, the Board is scheduled to vote on the staff's request to adopt proposed Regulation §1685.5 to implement the new use table provisions under R&TC §6452.1. This letter serves as a request for the Board to reject the staff's recommendation.

R&TC §6452.1(d)(2)(A), as amended by SB 86 (Ch. 11-14), directs the Board to calculate the estimated amount of use tax according to a person's state adjusted gross income, and, by July 30 of each calendar year, make the amounts available to the Franchise Tax Board in the form of a table. The statute does not require the Board to promulgate a regulation, nor does it require the Board to include a use tax look-up table as part of a regulation.

CalTax believes that the Board should not promulgate a regulation at this time. The public has not had sufficient opportunity to vet its concerns about the methodology used to prepare the table.

CalTax sent a letter to BOE Chair Jerome Horton on April 25 (following) pointing out numerous problems with the Board's proposed use tax look-up table and urging members of the Board to postpone adoption of the proposed regulations. CalTax's Dave Doerr, Rob Gutierrez and I also verbally expressed our concerns at the staff's May 18, 2011 use tax gap stakeholders' meeting. CalTax's main concern is that the table overstates a taxpayer's use tax liability.

To date, we have not received a response from the Board or staff addressing our concerns. We understand that a second stakeholders' meeting has been scheduled for 1 p.m. on June 28 in Sacramento. However, this date is after the scheduled Board vote on June 21. If the Board approves the staff's recommendation and adopts the regulation, it will be too late to change the table based on comments received from taxpayers on June 28.

In addition, the use tax look-up table should not be included as part of a regulation if the staff believes a regulation is necessary. The regulation should address the methodology, but should not include the actual look-up numbers. If staff wants to change the table in the future and it is included as part of a regulation, they must first go through the regulatory process.

Rick Bennion  
June 20, 2011  
Page 2

CalTax has historically supported a use tax look-up table as a way to increase compliance for California's use tax laws, as long as using such a table would not subject taxpayers to an audit. SB 86 addressed CalTax's concerns by adding R&TC §6452.1(g), which precludes the Board from making any understatement determinations for certain taxpayers who elect to use the use tax look-up table. That said, it is in the state's best interest to make the use tax look-up table as enticing as possible so that taxpayers will use it. As currently drafted, a taxpayer with California adjusted gross income a little as \$1 would owe \$7 in use tax. Of course, this is an extreme example, but it should prove the point that the look-up table produces an overstated use tax liability for some taxpayers, as pointed out in CalTax's April 25 letter.

For the foregoing reasons, CalTax respectfully requests the Board to reject staff's recommendation to adopt the regulation in its current form. We also request that staff continue to work with CalTax and other stakeholders with a common goal of meeting the July 30 statutory deadline for making the use tax look-up table available to the Franchise Tax Board.

Sincerely,



Gina Rodriguez  
Vice President of State Tax Policy

cc: The Honorable Jerome Horton, Chair, Board of Equalization  
The Honorable Michelle Steel, Vice Chair, California State Board of Equalization  
The Honorable Betty T. Yee, California State Board of Equalization  
The Honorable George Runner, California State Board of Equalization  
The Honorable John Chiang, State Controller



April 25, 2011

The Honorable Jerome Horton, Chair  
California State Board of Equalization  
450 N Street, MIC 72  
Sacramento, CA 95814

**Subject: Proposed Regulation 1685.5, Calculation of Estimated Use Tax – Use Tax Table**

Dear Honorable Jerome Horton:

The California Taxpayers Association is a nonpartisan, nonprofit association that supports good tax policy, opposes unnecessary taxes and promotes government efficiency. CalTax urges the members of the Board of Equalization to postpone adoption of the proposed regulations for the use tax look-up table.

To date, no interested parties meetings have been held to discuss the use tax table. CalTax believes that the interested parties meeting process is crucial to developing a fair and accurate table. The table proposed in Regulation 1685.5 is neither accurate nor a fair representation of what a taxpayer's use tax liability would be under the law. Listed below are CalTax's concerns:

- **Use Tax Table Methodology Needs Further Review.** The use tax table relies on several estimates that need further clarification to substantiate the accuracy of the table's calculation. For example, the regulation uses data that shows use tax liabilities have grown exponentially during the past several years, despite a global financial crisis and the crash of the housing market.
- **Does the Use Tax Table Seek to Generate Revenue Beyond What is Owed?** Another concern CalTax has is whether the BOE's design of the lookup table generate revenue beyond what is owed. As intended, the use tax table should purely be a tool for the Board to improve compliance.

Of the nine other states currently utilize use tax lookup tables, three states have a set range for taxpayers to use when calculating their use tax liability. Basing the use tax table percentage on a range make the use tax liability computation more reasonable, and reflects differences in consumption patterns.

- **Use Tax Table Does Not Account for Different Local Use Tax Rates.** Local sales and use tax rates differ by city and county, and such differences should be reflected in a lookup table. The Board of Equalization could address use tax rate differences by creating a new publication. The BOE already publishes data in Publication 71, which lists the sales and use tax rates for all counties, cities and special districts in California.

The Honorable Jerome Horton, Chair  
April 25, 2011  
Page 2

- **Use Tax Table Does Not Reflect Prospective Changes in the Use Tax Rate.** It is uncertain whether the use tax rate will remain at 8.25 percent past June 30. Currently, the Legislature is deliberating whether the rate should be extended. It is uncertain what will happen. The regulation assumes the rate will continue by using the January 1 use tax rate for the entire year.

CalTax looks forward to working with the Board of Equalization members and the Board's staff as the use tax table is implemented. However, for the foregoing reasons, we respectfully request that the Board postpone enactment of the use tax lookup table and vet the regulation through the interested parties' process.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Gutierrez", with a large, stylized flourish at the end.

Robert Gutierrez, Research Analyst  
California Taxpayers Association

cc: Honorable Michelle Steel, Vice Chair, California State Board of Equalization  
Honorable Betty T. Yee, California State Board of Equalization  
Honorable George Runner, California State Board of Equalization  
Honorable John Chiang, State Controller  
Jeff McGuire, Deputy Director of the Sales and Use Tax Department

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION  
5901 GREEN VALLEY CIRCLE  
CULVER CITY, CALIFORNIA

REPORTER'S TRANSCRIPT

JUNE 21, 2011

PUBLIC HEARING

ITEM F1

PROPOSED ADOPTION OF REGULATION 1685.5,  
CALCULATION OF ESTIMATED USE TAX - USE TAX TABLE

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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

Michelle Steel  
Vice-Chairwoman

Betty T. Yee  
Member

George Runner  
Member

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

Diane G. Olson  
Chief, Board  
Proceedings Division

For the staff:

Bradley Heller  
Legal Department

Robert Ingenito  
Research and  
Statistics

---oOo---

5901 GREEN VALLEY CIRCLE  
CULVER CITY, CALIFORNIA  
JUNE 21, 2011

---oOo---

MR. HORTON: Welcome back to the Board of  
Equalization.

Ms. Olson, what is our next scheduled matter?

MS. OLSON: Our next scheduled matter, we're  
going to move forward on the calendar to F1, Proposed  
adoption of Regulation 1685.5, Calculations of estimated  
use tax - use tax table.

MR. HORTON: Thank you very much, Ms. Olson.  
Members, staff is here to present on this  
matter.

Please introduce yourself and commence with  
your presentation.

MR. HELLER: Good afternoon, Chairman Horton.  
I'm Bradley Heller from the Board's Legal Department and  
I'm here with Robert Ingenito from the Research and --  
Research and Statistics Section, I don't know why that's  
sticking so badly, I apologize.

MR. HORTON: Don't worry.

MR. HELLER: It's in the Legislative Division,  
in case you're interested.

We're here to request that the Board adopt  
Regulation 1685.5. It's to prescribe the use tax look  
up table for the 2011 taxable year and to prescribe the  
formula that the Board would use to estimate -- estimate

1 income taxpayer's use tax based on their adjusted gross  
2 income for future years, beginning with 2012.

3 I also wanted to mention that we've -- there is  
4 a pending bill that has -- that was passed by the  
5 legislature but has not been signed by the Governor,  
6 ABX1-28. That would substantially rewrite the  
7 provisions in Revenue and Taxation Code Section 6203  
8 dealing with out-of-state retailers that are engaged in  
9 business in California and required to collect use tax  
10 from their customers.

11 And we were -- staff was asked to prepare an  
12 alternative table and calculations in case that was  
13 enacted.

14 And also I wanted to point out that we've  
15 received public comments from Gene Johnson, who mostly  
16 had some questions. We received public comments from  
17 Cal-Tax, who opposes the current regulation, mostly  
18 because, I believe, they did want interested parties  
19 meetings to discuss the calculations before the Board  
20 adopted it. And I believe they still -- they do intend  
21 to think that, at least from their opinion, that there  
22 is some taxpayers' estimated use tax might be overstated  
23 by our table. We don't necessarily agree, but that's  
24 their comments.

25 And we also received a comment from Katy Craig,  
26 who inquired as to whether the Board was actually  
27 imposing a brand-new tax on taxpayers. And I just  
28 wanted to clarify for the record that this is just a use

1 tax look up table that taxpayers have the option to use  
2 instead of reporting their actual use tax. But it does  
3 not impose any brand-new tax or additional taxes on any  
4 California taxpayers.

5 And, in addition, based on our discussion back  
6 in April, staff did follow up with the Franchise Tax  
7 Board as with regard to their deadlines for receiving  
8 our finalized look up tables for inclusion in their --  
9 the instructions to their 2011 income tax returns. And,  
10 basically, we're -- they confirmed that they still --  
11 their drop dead date is, essentially, still  
12 September 1st, but they're -- if the Board wanted to  
13 make changes today to -- to consider the alternative  
14 table or to give them -- basically to -- to incorporate  
15 two alternatives into the proposed regulations, that we  
16 would give -- it would give the Board more time to wait  
17 and see if ABX 1-28 is actually signed by the Governor.

18 And they've indicated that the FTB's willing to  
19 go with the information -- the best information we can  
20 provide them by September 1 and then hold off and, if  
21 necessary, duplicate their instructional review process  
22 to incorporate any changes we make that wouldn't be  
23 finalized until closer to the end of September.

24 And that's mainly because we have to send them  
25 to the -- once the Board adopts the regulation today --  
26 or in July, assuming that happens -- we have to submit  
27 it to the Office of Administrative Law for review and  
28 approval. And there's a slight delay before the

1 regulation would be approved by them and we would know  
2 that it was a final and that that language becomes --  
3 would become the law.

4 And, so, the FTB basically understands our  
5 situation and they're willing to work with us, but it's  
6 definitely an inconvenience for them and it's -- creates  
7 extra work.

8 With that, Robert discuss the new calculations  
9 for the alternative table and I can answer any questions  
10 you have about the legislation as well.

11 MR. HORTON: Thank you very much.

12 MR. INGENITO: Good afternoon, Mr. Chair,  
13 Members of the Board. Robert Ingenito with the Board's  
14 Research and Statistics Section.

15 Just as a quick overview of the alternative  
16 table, as Mr. Heller mentioned, the original table you  
17 were asked to consider looked at a specific use tax gap  
18 which would be impacted by ABX 1-28, the bill that's  
19 been passed by the legislature that is under  
20 consideration for the Governor now.

21 So, what we were asked to do was to develop an  
22 alternative table that assumes that, No. 1, the Governor  
23 signs the bill and, No. 2, the revenues that are scored  
24 are realized. That's alternative table that was  
25 presented to you in a memorandum yesterday. I believe  
26 you all have it in front of you.

27 What we did was we basically assumed that the  
28 revenues that will be generated by the bill would close

1 roughly two-fifths of the business to consumer use tax  
2 gap.

3 As a consequence, we brought down the use tax  
4 liabilities for all the AGI classes commensurately.

5 I'd be to happy to answer any questions you  
6 have.

7 MR. HORTON: Thank you.

8 Discussion, Members?

9 Mr. Runner?

10 MR. RUNNER: Just a quick -- I appreciate, you  
11 know, again things are -- you know, obviously, it's not  
12 a very static world out there and so things are moving  
13 around rapidly.

14 So, I appreciate the consideration of the fact  
15 that there may, indeed, be some circumstances here with  
16 the bill that is before the Governor in regards to that  
17 table being adjusted.

18 That being said, I still don't like the table.  
19 I don't like the assumptions. But I appreciate the fact  
20 that there was recognition that, indeed, is something  
21 that we need to consider.

22 MR. HORTON: Further discussion, Members? Is  
23 there a motion?

24 MS. YEE: Move the staff recommendation.

25 MS. MANDEL: What -- can ask I what the staff  
26 recommendation is now with this -- with this other  
27 table? Where is the staff recommendation?

28 MR. HELLER: Ms. Mandel, the staff

1 recommendation is still the proposed regulation as  
2 authorized for publication back in April.

3 And mainly right now there's a couple of issues  
4 that, at least right now, don't lead staff to recommend  
5 any changes and it's mainly that ABX 1-28 isn't signed  
6 yet, so, we certainly don't know if it will become the  
7 law.

8 And then the second issue is we really don't  
9 know -- we really have to just estimate what compliance  
10 we would receive from these out-of-state retailers. And  
11 we're not super confident that they'll -- that we'll get  
12 100 percent compliance beginning the day after the  
13 legislation's enacted.

14 And, so, we -- we're not super confident that  
15 the alternative table would actually reflect those  
16 retailers' behavior if ABX 1-28 was actually enacted.

17 And we'd really like to see how those retailers  
18 respond before we try to incorporate both the  
19 legislation and their behavior into a future table.

20 But I do know the Board's already authorized  
21 staff to do interested parties meetings regarding the  
22 2012 table and the formulas.

23 So, if this -- if that legislation is enacted  
24 and we do do start to see any change in behavior by  
25 out-of-state retailers, we can make adjustments for next  
26 year.

27 MS. YEE: Good. Follow-up?

28 MR. HORTON: Member Yee?

1 MS. YEE: So, just in terms of timing, should  
2 28X become law, it takes effect immediately?

3 MR. HELLER: It's my understanding, yes.

4 MS. YEE: Okay.

5 MR. HORTON: Was that an -- I don't recall that  
6 it was considered emergency legislation. I don't think  
7 it gets enacted immediately, but I could be wrong.

8 MS. YEE: It's an extraordinary session bill.

9 MR. HORTON: Extraordinary, you are right.

10 MS. YEE: And is it contingent -- but, no, I  
11 guess it depends.

12 Does it have an urgency? Otherwise, the enact  
13 -- the effective date, I think, is triggered by the  
14 adjournment of the extraordinary session.

15 MR. HORTON: I think so.

16 MR. HELLER: Well, Ms. Yee and Chairman Horton,  
17 I'm -- the legislation itself says it's to take effect  
18 immediately.

19 And so far staff's in agreement that it would  
20 take effect immediately, but --

21 MS. YEE: Okay.

22 MR. HELLER: -- but it'd not urgency  
23 legislation.

24 MS. YEE: Okay. So, we -- we have the current  
25 proposed table before us. You've provided an  
26 alternative to try to respond to 28X, as we know it.

27 Are we going to be putting out-of-state  
28 retailers in a different place than in-state retailers

1 with respect to -- well, I guess -- no, not retailers.

2 Are consumers going be confused, I guess, with  
3 respect to what needs to happen relative to use tax  
4 compliance once 28X becomes law?

5 MR. HELLER: Well, I would assume from the  
6 consumer standpoint, you really need to know that a  
7 retailer's registered to collect tax in California  
8 before you can satisfy your use tax obligation by paying  
9 use tax to that retailer.

10 So, essentially once we actually start to seek  
11 compliance with the new few legislation and we can  
12 update our permits, taxpayers can then get -- be able to  
13 check whether or not these new -- these additional  
14 retailers are permitized or are registered to collect  
15 use tax.

16 And, in addition, we can do more outreach,  
17 assuming we see large retailers that are registering,  
18 but it -- I think right now it's probably premature to  
19 day exactly how we'd have to inform the consumers.

20 MS. YEE: Okay. I guess to the extent that we  
21 know this other -- these other provisions are out there,  
22 I would just ask that we maybe start to focus some  
23 specific attention on it -- whether it's enacted now or  
24 later.

25 I mean, I don't think the issue's going away  
26 relative to what will be putting in place as relates to  
27 outreach and particularly if it's got a provision where  
28 the provisions take effect immediately, what -- what

1           ought our response be to that?

2                   I don't want put -- I don't want to add more  
3           confusion to the whole use tax compliance landscape, as  
4           Mr. Runner has alluded to in the past. And I think we  
5           have an ability to make it easier with respect to these  
6           look up tables. And I think just this added layer will  
7           bring us back to a little confusion for consumers.

8                   MR. HORTON: Okay.

9                   MS. STEEL: Is that due date once already past,  
10          April 15th for this year -- last year's for use tax  
11          report?

12                   MS. YEE: That was for the program.

13                   MS. STEEL: This is over \$100,000.

14                   MS. YEE: The qualified purchaser program,  
15          yeah.

16                   MS. STEEL: Well, I really don't think that,  
17          you know, more income means that you're buying more from  
18          outside of California.

19                   But having said that, if Governor doesn't sign  
20          it, then what happen?

21                   MR. HELLER: Then there would be no change in  
22          the statute determining whether or not an out-of-state  
23          business is engaged in business in California and  
24          required to collect use tax.

25                   We would presume that the out-of-state  
26          retailers' behaviors would stay the same and that they  
27          would not register with the Board. And we'd have the  
28          about same percentage of California consumers' purchases

1 from out-of-state retailers that aren't registered with  
2 the Board.

3 MR. HORTON: Mr. Runner?

4 MR. RUNNER: Yeah, just -- just to see if I can  
5 clarify, maybe I was premature in what I thought I  
6 thanked you guys for.

7 Let me just say -- now, what you -- the staff  
8 recommendation is to stay, no matter what happens to the  
9 to the chart that was proposed at the last meeting?

10 MR. HELLER: The staff recommendation is still  
11 the chart that the Board authorized for publication back  
12 in April.

13 MR. RUNNER: Does the -- okay.

14 MR. HELLER: The alternative, the Board  
15 certainly direct staff and I --

16 MR. RUNNER: Hold on, I got -- we get that.

17 So, at this point the legislature in their  
18 budget, which I guess is of much debate these days, but  
19 at least in this particular bill an item in the budget  
20 has booked \$200 million to this.

21 So, I guess what I'm hearing is the BOE staff  
22 does not think that that \$200 million is going to come  
23 in this year.

24 MR. HELLER: Mr. Runner, honestly, we're --  
25 mainly we were -- I was just responding to Ms. Steel's  
26 question about what would happen if the legislation  
27 wasn't enacted.

28 And if it wasn't enacted, we certainly wouldn't

1 realize the revenues.

2 MR. RUNNER: Yeah, but that's not -- that's not  
3 my question.

4 MR. HELLER: But, in addition, at this point  
5 I'm not very confident that large retailers that have  
6 been refusing to register with the Board are just going  
7 to immediately come in and register as of the day that  
8 that bill's signed.

9 MR. RUNNER: So -- so, my point is the same  
10 then, you do not believe that the legislation that's  
11 gone to the Governor or is somewhere between the  
12 legislature and the Governor is going to get the \$200  
13 million that they've -- that they have booked for it?

14 MR. HELLER: To me, it does not seem --

15 MR. RUNNER: Well, let me put it this way, if  
16 you did -- if you did believe it, then you would have to  
17 recommend the second chart, right?

18 I mean, if you did believe the \$200 million was  
19 going to come in, then we would be double collecting?

20 MR. HELLER: Mr. Runner, if I was certain -- if  
21 I had a steady certainty at all that the bill would  
22 be -- would enacted, then I would definitely recommend  
23 modifications, first of all.

24 MR. RUNNER: Okay.

25 MR. HELLER: But the size of the modifications  
26 are kind of what I was getting to as far as what I think  
27 the behavior would be.

28 I definitely think some retailers will come in

1 and register. But I don't know that --

2 MR. RUNNER: But that's --

3 MR. HELLER: -- there will be the kind of  
4 response that the legislature --

5 MR. RUNNER: Mr. Heller, that's -- I guess not.

6 I guess I'm trying -- that's what I'm trying to  
7 get through here. And, that is, so, if you don't  
8 believe they're going to register -- and they're not  
9 going to collect it, then you must not believe -- the  
10 BOE staff must not believe that the \$200 million is  
11 going to be collected.

12 That's an easy yes or no answer. Do you  
13 believe it is or do you believe it's not?

14 MR. HELLER: Well, I'm -- Mr. Runner, I'm not  
15 not speaking for all staff right now, I am just trying  
16 to give you my opinion as far as -- as far as I  
17 understand it, I have no expectations that those -- that  
18 those retailers are going to immediately register and  
19 start to pay those large amounts.

20 And I'm am really anticipating a lot of  
21 litigation over that particular amendment to the  
22 section.

23 MR. RUNNER: So, it would be fair to say that  
24 the Legal Department, represented by you, Mr. Heller,  
25 does not believe that the \$200 million that is booked  
26 right now in the budget proposal is going to be -- is  
27 going to come in?

28 MR. HELLER: Well, yes.

1 MR. RUNNER: Okay, that's fine.

2 MR. HELLER: The Legal Department does not  
3 believe it will get all that money in that first year  
4 immediately.

5 MR. RUNNER: Okay, that's -- of course it's the  
6 first year, it's the budget year.

7 So, again, I just want to clarify, what we --  
8 what we're saying here and that is -- because that's  
9 what's driving us to that other chart, to the original  
10 chart, because if you believed that the money was going  
11 to come in, then the alternative chart would be  
12 correct?

13 MR. HELLER: And also if the legislation was  
14 enacted.

15 MR. RUNNER: Well, again, the legislation  
16 enacted is an issue that we can deal with either  
17 by passing both -- both charts and then letting them --  
18 one go into effect if the -- if the bill is signed or  
19 not signed.

20 So, we can get through that issue in regards to  
21 the bill enacted or not enacted.

22 But the point would be that -- at least I'm  
23 hearing now BOE Legal staff, you representing them,  
24 Mr. Heller, is that you do not believe that the  
25 budget -- the bills that were passed by the legislature  
26 that booked \$200 million is going to come in?

27 MR. HELLER: My answer is essentially the same  
28 as before.

1 MR. RUNNER: What's that a yes or no?

2 MR. HELLER: No.

3 MR. RUNNER: Thank you, thank you.

4 MR. HORTON: Member Yee?

5 MS. YEE: I was just looking up the bill.

6 Looks like there is some language in 28X that calls for  
7 it to take effect immediately, but it's tied it being a  
8 budget bill under the provisions of Proposition 25. So,  
9 I think with the underlying budget having been vetoed,  
10 it kind of puts everything up in the air.

11 But I think that generally then we fall back to  
12 the effective date of extraordinary session bills to be  
13 effective 90 days after the adjournment of the session.  
14 So, we may have some time here.

15 My concern was just that if it were to take  
16 effect immediately and immediately meant tomorrow, that  
17 we have something in place that is consistent with what  
18 you're asking us to continue to move forward with right  
19 now as it relates to the use tax as we currently know  
20 it.

21 MR. RUNNER: Just a follow-up question too and  
22 can I real quick?

23 MR. HORTON: Sure, Mr. Runner.

24 MR. RUNNER: Just to get perspective.

25 I believe that the target amount that we  
26 believe the tax gap is for this consumer use tax is  
27 \$800 million?

28 MR. Ingenito: That's correct.

1 MR. RUNNER: Okay. So, the \$800 million is the  
2 target to which this chart is -- its goal is to collect,  
3 the target amount because that's what the -- that's what  
4 the unpaid use tax is?

5 MR. HELLER: Mr. Runner, the legislation that  
6 required the Board to -- to estimate people's use tax  
7 based on their adjusted gross income I believe had a  
8 revenue estimate of about \$10 million, I believe, of  
9 revenue.

10 I don't think it was --

11 MR. RUNNER: That was based upon the compliance  
12 level.

13 MR. HELLER: Well, you know --

14 MR. RUNNER: If everybody complied -- if  
15 everybody complied, it would collect far more than  
16 \$10 million, correct?

17 MR. HELLER: Oh, absolutely, yes.

18 MR. RUNNER: Okay, okay. So, the target --

19 MR. HELLER: If everyone used it.

20 MR. RUNNER: -- so, it was -- so, again, you --  
21 the target of the chart was the 200 million. Now as to  
22 how many people comply with it is a different issue, but  
23 the target is -- was to close the consumer tax gap,  
24 correct?

25 MR. HELLER: It is a tool to close the gap,  
26 absolutely.

27 MR. RUNNER: Okay. So, the goal -- and that  
28 tax gap on consumer use tax is \$\$800 millions?

1           And, so, again, the budget here and the bills  
2           that have been booked by the legislature says that it'll  
3           collect about 25 percent of those, which is the \$200  
4           million they booked against that.

5           But the chart then, just to make clear, the  
6           chart in its -- in its goal, was to do the consumer tax  
7           gap, which is \$800 million.

8           MR. HELLER: Well, what --

9           MR. RUNNER: If it wasn't, what was it for?

10          MR. HELLER: The chart itself is really just  
11          designed to allow individual income taxpayers to  
12          determine an estimate of their individual estimated --

13          MR. RUNNER: And no relationship to what the  
14          tax gap is?

15          MR. HELLER: But it really wasn't designed with  
16          an estimate of starting working backwards from how could  
17          we collect \$800 million, right, and divide that by the  
18          number of Californians or their AGI. That's not really  
19          now it's done.

20          The calculations are really just based on the  
21          spending behavior as a percentage of income. So, I mean  
22          I don't disagree with you that in the end, if we could  
23          get full compliance and every single taxpayer was  
24          reporting on this, we might get somewhat close to --

25          MR. RUNNER: Let me -- well, let me go about it  
26          this way --

27          MR. HELLER: But that's not the target.

28          MR. RUNNER: -- well, let me --

1 MR. HELLER: -- exactly.

2 MR. RUNNER: Let me -- let me go at it this  
3 way, what is the chart trying to accomplish?

4 MR. HELLER: It's trying to estimate the  
5 California consumers use tax liability based upon their  
6 adjusted gross income.

7 MR. RUNNER: And is there a target amount out  
8 that there that we believe we -- that consumers aren't  
9 paying?

10 MR. HELLER: We do -- we do have a consumer use  
11 tax gap.

12 MR. RUNNER: And what is that amount?

13 MR. HELLER: We were just discussing that, we  
14 think it's about 800 million.

15 MR. RUNNER: Okay. So, again, I would assume  
16 that this -- the assumption is the chart helps -- is the  
17 goal to help get there.

18 So, again, the bill that's before the -- the  
19 bill that was passed by the legislature, it's before the  
20 Governor, is to lower that by 25 percent by our --  
21 collect \$200 million of that.

22 That's the goal of the -- of that legislation.  
23 Again we'll see what happens, if it's going to get  
24 signed or not signed, although the Governor said he was  
25 open to that -- to that particular concept.

26 And, so, if indeed he signed that, then would  
27 -- wouldn't this -- wouldn't this chart be overstated?

28 MR. HELLER: It could be. Would you --

1 MR. RUNNER: Tell me under what conditions  
2 would it not be overstated?

3 MR. HELLER: Well, it just depends on the  
4 behavior of those retailers and if there are no -- if  
5 retailers react in the way the legislature's  
6 contemplated --

7 MR. RUNNER: Uh-huh.

8 MR. HELLER: -- if all of them come in and  
9 register, right, then they -- it's not actually, I don't  
10 think, all of them register --

11 MR. RUNNER: Yes, it's --

12 MR. HELLER: -- it's a substantial portion.

13 MR. RUNNER: It's whatever's caught up in the  
14 law, sure.

15 MR. HELLER: And if they were all to do that,  
16 then we could, potentially, realize that 2 -- full  
17 \$200 million of general revenue -- general fund revenue.

18 But, again, anything in between there reduces  
19 the effect.

20 MR. RUNNER: Okay.

21 MR. HELLER: And if very few or none of them  
22 come in, then essentially the chart is still accurate.

23 MR. RUNNER: Okay. So, it's --

24 MR. HELLER: So, at this point, I just don't --

25 MR. RUNNER: Okay.

26 MR. HELLER: -- know how people are going to  
27 behave.

28 MR. RUNNER: Okay. So, it's fair, I guess,

1 from this whole discussion, I think it's fair for me to  
2 hear that the BOE staff is not confident that the  
3 \$200 million will be realized and, as a result of that,  
4 we need to go back to the original chart?

5 MR. HELLER: That's correct, although the --

6 MR. RUNNER: Okay, okay.

7 I just -- that's fine. I just want to make it  
8 clear that one of the issues that we will -- I will be  
9 talking about is BOE is not confident that \$200 million  
10 to going to be collected from those bills because we're  
11 so, in fact, concerned that it's not, that we've decided  
12 to go ahead and adopt a chart that neglects any income  
13 revenue from those particular bills.

14 MS. YEE: I'm going to take issue with that,  
15 I'm sorry, Mr. Chairman.

16 MR. HORTON: Go ahead, Member Yee.

17 MS. YEE: I mean, I think the two issues have  
18 to be bifurcated.

19 The reason these tables are before us is to  
20 really make it easy for consumers to report and pay  
21 their use tax so they don't have to collect the  
22 individual receipts in shoe box every year, take it out  
23 when they're ready to file their income tax return and  
24 figure out what sales tax -- or what use tax they owe.

25 I mean, that's purely what it is, is to  
26 simplify that process for consumers to, hopefully,  
27 facilitate compliance.

28 I think 28X effect is -- I don't know that we

1 fully know what the dynamic of that will be yet. And,  
2 so, I mean, when posed with the question of what would a  
3 use taxable look in response that, I think that the  
4 staff had done a pretty good job preliminarily to at  
5 least respond to that.

6 But I'm sure further refinement will need to  
7 take place. But the table before us now is solely to  
8 deal with the use tax compliance issue that we have now  
9 and to really just try to give consumers a tool by which  
10 to be able to identify what amount of use tax they owe  
11 based on income and report it and pay it.

12 I think that's -- I think we're reading way too  
13 much more into this. I really don't and I want to kind  
14 of move on and approve the table before us.

15 I think we're going to have to come back should  
16 28X become law and really discuss what would be  
17 appropriate with respect to similarly offering consumers  
18 similar assistance with the use tax.

19 MR. HORTON: Thank you, Member Yee.

20 Members, we -- this sort of reminds of a couple  
21 of oxymorons and one in particular is a balanced  
22 budget.

23 You know, the budget is never balanced. It's a  
24 living document, much like the process that we're going  
25 through here. It's a living process. There are a  
26 number of conditions subsequent, economic variables that  
27 will have to take place in order for any of this to come  
28 true.

1           The unfortunate thing is is none of us have a  
2 crystal ball and we just don't know. And, so, the  
3 Department has made their best estimate and codified  
4 that in this chart to provide the taxpayer some  
5 direction or some assistance in complying.

6           They certainly still have the option of doing  
7 it on an actual basis. And this chart would mean  
8 absolutely nothing. If the conditions changed, this  
9 chart means absolutely nothing relative to the totality  
10 of what happens at the end of the day.

11           MR. RUNNER: Mr. Chair, real quick, though,  
12 the chart is --

13           MR. HORTON: One second, Mr. Runner -- one of  
14 the benefits of being Chair.

15           MR. RUNNER: Yeah, go ahead. I appreciate  
16 that. I get it.

17           MR. HORTON: The -- and, so, the way that the  
18 chart was calculated took in a number of factors in its  
19 consideration.

20           And I believe the question before us might be  
21 did the chart take into consideration the new  
22 legislation and its potential impact? And I would  
23 speculate that the answer would be no at this point in  
24 time, given that that is a condition subsequent.

25           And, so, the decision before us, it would be to  
26 wait until that bill is enacted and then make an  
27 assessment on the bill and re-do the chart. And if we  
28 have that luxury, we certainly should have that on the

1 table. If we don't have that, luxury relative to the  
2 timelines, we can move forward and always bring the  
3 matter back if, in fact, the -- some action of the  
4 legislature will ultimately influence the bill, the  
5 equity of the chart relative to the taxpayer.

6 Do you have any comments on that, Mr. Heller?

7 MR. HELLER: Chairman Horton, I actually  
8 just -- just one.

9 Essentially the Legal Department has looked at  
10 the issue of kind of, you know, how to give the Board  
11 more time to see what happens with whether or not the  
12 Governor signs this particular bill.

13 And, like I said earlier, we did talk with the  
14 Franchise Tax Board. And we've been told that we do  
15 have a little bit more leeway in time.

16 So, the Board, if it wanted to -- and that's  
17 100 percent within your discretion -- if you felt that  
18 the alternative chart was indicative of what we think --  
19 what we think the taxpayer's estimates of their use tax  
20 should be, based on their adjusted gross income after  
21 ABX 1-28 is enacted, the Board could direct staff to  
22 incorporate both -- both tables into our regulation and  
23 specify which one will take effect if the bill is  
24 actually signed.

25 Then we could make further adjustments to the  
26 regulation so that the future calculations would be  
27 based on the conditions of ABX 1-28, if you so chose.

28 But it makes it a kind of an unclear or

1 somewhat more convoluted process and the Board will have  
2 to come back in the July meeting to adopt, one, the  
3 regulation with the alternatives in it.

4 MR. HORTON: Yeah, Members and then I'll go to  
5 you, Mr. Runner, and my apologies.

6 But Members, I would propose that we move  
7 forward based on the information and facts before us  
8 today. It -- it surprised when the Governor vetoed the  
9 budget within 24 hours.

10 And, so, I would not make any prediction as it  
11 is related to the budget these days. The only  
12 prediction I would make is that I do have confidence in  
13 their ability to ultimately resolve it and that's  
14 because historically, we've always come out with a  
15 balanced -- with a budget. It's just matter of when.

16 So, that would be my recommendations.

17 Mr. Runner?

18 MR. RUNNER: My only observation would be that  
19 we do have the option of making sure that the correct --  
20 most correct table would be adopted and that would  
21 simply be by moving both of them forward, coming back  
22 then in a month, and making our action based upon what  
23 did take place.

24 It's not like this a bill that's out there and  
25 we don't know what's -- you know, that's in the  
26 legislature somewhere. This is a bill that's actually  
27 been passed by the legislature, is waiting for  
28 signature.

1           And again we don't know, but yet it's a long  
2 ways through the process. And by doing -- by having  
3 both charts, we at least make sure that we are treating  
4 taxpayers fairly.

5           And again I would submit that this first tax  
6 chart was based upon an \$800 million tax gap. That's  
7 why -- that's the gap we're trying to fill with the  
8 chart.

9           Certainly if you have a legislation plan that  
10 reduces that by 25 percent, it would make sense that the  
11 chart should be reduced by 25 percent.

12           Now the other issue I would make -- I would  
13 have to say is, let's not pretend that this is just some  
14 kind of a little chart to which people can go and not go  
15 to.

16           Remember what happens? If you use the chart,  
17 you then have safe harbor. So, we are enticing  
18 taxpayers to the chart. We are not just saying use it  
19 or don't use it, doesn't make any difference. We're  
20 directing them to it and giving them benefit if they do  
21 use it.

22           So, my concern is that we could be directing  
23 them toward a chart that's overstated at that point  
24 based upon the legislation that had been given to the I  
25 Governor.

26           The easy solution, go ahead and take both  
27 charts out. In July we can make a decision in terms  
28 of -- and we will know the lay of the land.

1           If we don't -- if we just pass this on today,  
2           we won't know the lay of the land and we will be  
3           actually enticing taxpayers to a chart potentially that  
4           overstates their use tax liability.

5           MR. HORTON: Mr. Heller, when is the chart  
6           enacted?

7           MR. HELLER: The chart itself? Well, the way  
8           it would work is once the Board actually adopts the  
9           regulation then we'll finalize the rulemaking file,  
10          submit it to the Office of Administrative Law. They  
11          have 30 business days to review and approve it.

12          Assuming they approve it, then we ill know that  
13          that -- it will become a law, but it won't be effective  
14          for 30 more days. It has to be filed with the Secretary  
15          of State for 30 days before it's effective.

16          But essentially in our case the table won't be  
17          used until people are filing their 2011 income tax  
18          returns. So, the effective date's not as important as  
19          the fact that we just have to have an approved chart to  
20          give to the Franchise Tax Board so they can include it  
21          in the instructions to their returns while they go  
22          through the printing process, which is taking place  
23          really right now.

24          MR. HORTON: Okay. So -- and if the -- I was  
25          going to say if the world comes to an end, but --

26          MR. RUNNER: That was last month.

27          MR. HORTON: -- if the legislature acts  
28          differently than what we currently -- what's currently

1 before us, will we have the opportunity to amend the  
2 chart?

3 MR. HELLER: I don't believe we would have any  
4 opportunity to amend the chart because it's basically  
5 already going to be published in the Franchise Tax  
6 Board's instructions to the returns.

7 And I have talked with the Franchise Tax Board  
8 and my understanding is that -- let me rephrase.

9 The Board absolutely could amend the  
10 regulation. There is nothing that would stop --  
11 prohibit us from amending the regulation. But basically  
12 all of the published materials that went out before that  
13 amendment or based on the FTB's publications scheme  
14 would already be published and taxpayers those returns  
15 and instructions would already see the existing chart.

16 I have been told that once -- if we were  
17 to submit a revised chart to the FTB way after  
18 publication, that they do -- they can update their  
19 electronic instructions on their website so that those  
20 are current and note that there's been a change.

21 So, I think there's some way to at least get  
22 that information out to taxpayers when they update the  
23 Franchise Tax Board's publications on a going forward  
24 basis, but it might already where some taxpayers have  
25 received their original instructions that have the  
26 unamended table.

27 MR. HORTON: So, this is tied into a point  
28 definite relative to printing the chart and a point

1 uncertain relative to the budget.

2 So, if the -- in printing the chart, how much  
3 time does the Franchise Tax Board need in order to be  
4 able to get the chart out in a timely manner and get  
5 their forms out in a timely manner?

6 MR. HELLER: Well, they've told us for their  
7 initial publication, the one which is typically their  
8 only publication, is -- essentially they wanted to have  
9 us have the regulation adopted by the Board and approved  
10 by the Office of Administrative Law so that they would  
11 be certain that that was the -- that was the regulation  
12 and table by September 1st and that that was their  
13 cutoff date for them to have all their final  
14 instructions go to their upper management for the final  
15 review and then to their publishers for publication.

16 They have expressed to me that if the Board  
17 felt that they wanted to look at alternatives and could  
18 adopt in July, that they're willing to kind of -- kind  
19 of throw a little wrench and slow down their review  
20 process and make it somewhat redundant so that what we  
21 send them -- what we send them as a placeholder gets  
22 reviewed and then what we send them in September also  
23 goes back in the secondary review process.

24 But they've indicated that if the Board has  
25 adopted the regulation and it's approved by OAL by  
26 October 1, that they could still incorporate it into the  
27 initial publication.

28 MS. MANDEL: Because of when they print?

1 MR. HELLER: Right, because --

2 MS. MANDEL: When they actually print.

3 MR. HELLER: But essentially, it's -- they're  
4 very much accommodating the Board in that case. And in;  
5 general it would have been September 1. But they  
6 understand that this is a very --

7 MR. HORTON: So --

8 MR. HELLER: -- peculiar situation.

9 MR. HORTON: -- so, what if we put this over to  
10 our July meeting?

11 MR. HELLER: We can put the whole regulation  
12 over.

13 The only issue I would say and I -- and while I  
14 would agree with Mr. Runner just in the respect that  
15 from a procedural standpoint, if the Board wanted to  
16 adopt changes to the regulation, then we need to -- we  
17 need to -- we need to incorporate those into the  
18 proposed text and issue a 15-day notice so that the  
19 public has notice of those changes and can comment on  
20 them.

21 Then the Board would be in a position to adopt  
22 the changed regulation at the July meeting.

23 If we don't -- if we don't make those changes  
24 now and then we discuss the changes at the July meeting,  
25 then we would have to go through that notice process  
26 afterwards and we would not make the October 1 date and  
27 the FTB would not not be able to include anything in the  
28 initial publication.

1 So, we just have a a blank.

2 MS. MANDEL: Can I ask --

3 MR. HORTON: Sure, Ms. Mandel?

4 MS. MANDEL: -- one question?

5 I don't know if this applies. But if the Board  
6 goes forward and adopts the recommended table. And if,  
7 for some reason, this bill gets signed and goes into  
8 effect that in such a way. I don't know, it sounds a  
9 little attenuated --

10 MR. HORTON: At best.

11 MS. MANDEL: -- yeah, it sounds kind of  
12 attenuated because the budget bill was vetoed and the 90  
13 days in the extraordinary session and everything.

14 But does -- I know we sometimes make  
15 Section 100 changes because of legislative changes, is  
16 this the sort of thing that would fall in -- do you  
17 think would fall under Section 100, which has -- I mean,  
18 I thought Section 100 changes had a different like  
19 thing -- way that they time frame and everything.

20 I am just wondering. It occurred to me.

21 MR. HELLER: Well, in this case if it was -- I  
22 think what would happen is is we would actually be -- it  
23 wouldn't be a Rule 100 change or a nonsubstantive change  
24 because --

25 MS. MANDEL: Oh.

26 MR. HELLER: -- we would actually be --

27 MS. MANDEL: Changing the number?

28 MR. HELLER: -- a discretionary decision about

1 what we think the impact of the legislation is and  
2 then --

3 MS. MANDEL: All right, I just was wondering.  
4 I understand what you are saying, thank you.

5 MR. HORTON: So, Mr. Heller, it seems to me --  
6 so, if from a timing perspective the chart may not go  
7 out in the FTB's first printing, but a subsequent chart  
8 would go out in time for the taxpayers to file?

9 MR. HELLER: Well, my understanding is that the  
10 FTB deals with the fact that legislation changes all of  
11 the time.

12 And they do send stuff to publication and they  
13 can't change the printed forms that they've printed up.  
14 But, essentially, they will re-do the electronic  
15 documents and forms on their website and post notices.

16 And they try to do it in a somewhat real time  
17 fashion when there's changes to law.

18 So, my understanding is if -- that we didn't --  
19 either -- even if we have a table in the original  
20 publications or not, once we were to forward them an  
21 adopted table, they would do their best to get it  
22 implemented into the electronic instructions and  
23 available to the public in real time, based on their --  
24 just their physical practical constraints.

25 And I am not sure exactly what time frame that  
26 is, I think it's a few weeks before they can actually  
27 have a fully approved revised form. But, essentially --  
28 it would just depend on when have it, how quickly they

1 can get to taxpayers.

2 And, mainly, no one should be filing before  
3 January 1, 2012. So, if they were to have this -- have  
4 the finally adopted table by then, then they at least  
5 could make it available to the public in the  
6 instructions on the website.

7 MR. HORTON: You know, our actions of getting  
8 this right is being governed by the printing press?

9 Makes absolutely no sense to me.

10 MR. RUNNER: Again, just to clarify, though, if  
11 we adopted both of them with the caveat that we only use  
12 the alternative if, indeed, the AB 1-28 is adopted, then  
13 we -- then everything still makes all the timetables,  
14 right?

15 MR. HELLER: If the Board was to direct staff  
16 to make changes just to incorporate the alternatives so  
17 that it would be effective if ABX 1-28 was -- was signed  
18 into law and then the Board adopted the regulation with  
19 those changes in July, then I've been told that we can  
20 -- we would be able to get that to the Franchise Tax  
21 Board in time so that -- assuming we, by then knew what  
22 had been --

23 MR. RUNNER: Right.

24 MR. HELLER: -- signed, they would know which  
25 chart to publish and they would include it in the  
26 initial publications on the hard copy.

27 MR. RUNNER: And if it didn't get signed or it  
28 all went away then -- then we'd just move right ahead to

1 the --

2 MR. HELLER: That's right.

3 MR. RUNNER: -- first recommended chart?

4 MR. HELLER: That's correct.

5 And then it would just depend if the Board  
6 agrees that they -- if they think that chart is accurate  
7 as to what the effects of ABX 1-28 is, because that's  
8 what --

9 MR. HORTON: What --

10 MR. HELLER: -- would be in effect.

11 MR. HORTON: At what point in time is that  
12 decision made and by whom?

13 MR. HELLER: Which decision?

14 MR. HORTON: The decision as to which chart to  
15 use?

16 MR. HELLER: Well, I was recommending that  
17 basically when we -- when we change the regulation to  
18 incorporate the second chart that the amendment specify  
19 that the alternative chart would only take effect, as  
20 opposed to the other chart, if ABX 1-28 was signed.

21 MR. HORTON: And what the happens if the  
22 legislature changes its mind?

23 MR. HELLER: And if it's not -- if it's not  
24 signed --

25 MR. HORTON: Decides to do something different?

26 MS. YEE: Right.

27 MR. HELLER: Then that chart would not take  
28 effect and the initial chart would or the one that we've

1 already --

2 MR. RUNNER: Contingency.

3 MR. HORTON: No, I mean, decides to do  
4 something different that actually affects the chart?

5 MR. HELLER: Then we would have no ability  
6 to -- well, let's just say the Board couldn't meet that  
7 October 1 deadline because we would have to then -- if  
8 you wanted to incorporate any effects from that  
9 legislation, we'd have to make additional changes to the  
10 regulation.

11 We'd have to notice the public on those changes  
12 so they can comment on them. So, it would delay us and  
13 we probably wouldn't be able to get the -- whatever  
14 chart into the printed publication instructions from the  
15 FTB.

16 But, again, once we actually had an adopted  
17 chart, we could get the FTB to publicize it and put it  
18 in there electronic instructions.

19 But again, it's very hard. And I would just  
20 mention, Chairman Horton, the legislature actually  
21 completely contemplated placing the Board under these  
22 kind of time constraints based on FTB's printing  
23 requirements and they specifically incorporated the  
24 July 30th date into the statute requiring us to transmit  
25 all of the information to the FTB for its instructions  
26 by that date.

27 And the FTB has been very accommodating for the  
28 Board because they recognize that the legislature didn't

1 give us enough time for the Board to actually consider a  
2 regulation and adopt it and get it approved by OAL.

3 To have made it by July 30th, which would --  
4 which is impossible, even if the Board was to adopt the  
5 regulation today.

6 And, so, they've originally accommodated us all  
7 of the way out to September 1st and now they've really  
8 gone out of their way to say that they can wait until  
9 October 1.

10 But the legislature absolutely talked with the  
11 FTB and got their drop dead publication date originally  
12 and codified it.

13 MS. YEE: Mr. Chairman?

14 MR. HORTON: Member Yee?

15 MS. YEE: I'm going to propose that we put this  
16 over 'til the July meeting. It gives us a little bit  
17 more time just to see what the -- action may be taken on  
18 28X, AB 28X.

19 I don't feel comfortable moving out ahead of  
20 its enactment to put a table out there -- even with the  
21 caveats and the regulation itself that it's effective --  
22 it's -- it would be effective only if AB 28X is enacted.

23 And I don't want to create more confusion than  
24 there already is.

25 MR. HORTON: I agree.

26 MS. MANDEL: Okay.

27 MR. HORTON: Further discussion, Members?

28 Without objection -- is it -- I don't believe

1 we need a motion to put this over, so --

2 MS. MANDEL: You can do it.

3 MR. HORTON: Let's -- so be it, Members.

4 We will take this matter up in our July  
5 meeting. At that time we would ask that the staff, and  
6 in particular Miss Shedd the legislative process, make  
7 us aware of it expeditiously and particularly if there  
8 is any significant changes and then at that time, please  
9 notify the Internal Revenue of our action.

10 MS. YEE: Franchise Tax Board.

11 MR. HORTON: Franchise Tax Board, my  
12 apologies.

13 MS. YEE: IRS may be interested.

14 MR. HORTON: And my apologies.

15 And for the legislature, I really don't know  
16 what they're going to do if we don't meet their  
17 deadlines.

18 Just out of curiosity, I mean, what's the  
19 penalty for not meeting the deadline?

20 MR. HELLER: My understanding is right now  
21 there is -- there is really no penalty.

22 The -- the only outcome is --

23 MR. HORTON: Just kidding.

24 MR. HELLER: -- just, you know, we do want to  
25 make this -- this tool available.

26 MR. HORTON: I think my point, my point,  
27 Mr. Heller is is that this agency wants to get it right.

28 MS. YEE: Right.

1                   MR. HORTON: Irrespective of when the printer  
2 needs to print, when the FTB needs to send it out and so  
3 forth.

4                   We want to minimize the confusion as it relates  
5 to the taxpayers that we represent. And we want the  
6 chart to be as accurate as possible, based on the  
7 information that we have at the time that we make the  
8 decision.

9                   I am not going to make to decision contingent  
10 upon what the legislature might or might not do.

11                   So, let's take it up again at our July meeting.  
12 And we look forward to your presentation then.

13                   Thank you.

14                   ---o0o---

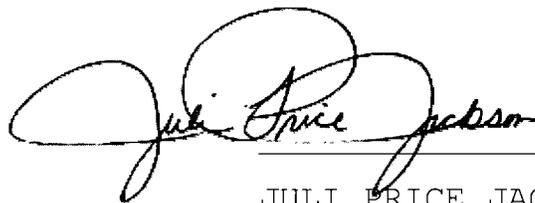
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REPORTER'S CERTIFICATE

State of California )  
 ) ss  
County of Sacramento )

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on JUNE 21, 2011 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 38 constitute a complete and accurate transcription of the shorthand writing.

Dated: July 13, 2011



JULI PRICE JACKSON

Hearing Reporter

# Memorandum

To : Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, First District  
Senator George Runner (Ret.), Second District  
Honorable John Chiang, State Controller

Date : June 20, 2011

From : Robert Ingenito  
Chief, Research and Statistics Section

Subject **Project Regulation 1685.5 Alternative Use Tax Lookup Table - Should ABx1 28 become Law.**

This Memo follows up on a request that staff develop an alternative lookup table for consideration by the Board, should the Governor sign ABx1 28. The Research & Statistics staff reviewed the current proposed lookup table and the language in the proposed ABx1 28, and calculated the alternative look up table set forth below. The alternative lookup table does not reflect other current and potential future actions by the Legislature.

Current Lookup Table before the Board:

**Regulation 1685.5 as Proposed.** This is the lookup table currently under consideration with respect to Regulation 1685.5:

Adjusted Gross Income (AGI) Class		Use Tax Liability
Less Than \$20,000		\$7
\$20,000	to \$39,999	\$21
\$40,000	to \$59,999	\$35
\$60,000	to \$79,999	\$49
\$80,000	to \$99,999	\$63
\$100,000	to \$149,999	\$88
\$150,000	to \$199,999	\$123
Over \$200,000 Multiply AGI by 0.070%		

Alternative Lookup Table, if ABx1 28 is signed into law:

Below is an alternative lookup table, which assumes that (1) the Governor signs ABx1 28, and (2) the bill's revenue estimate of a \$317 million (\$200 million General Fund) revenue gain is actually realized. An increase of \$317 million would reduce the 2011-12 estimated use tax gap by 37 percent. Thus, the alternative table reduces the use tax liability for each income class by that amount (adjusting for a half-year effect, before rounding to the nearest dollar).

Adjusted Gross Income (AGI) Class			Use Tax Liability <sup>1</sup>
Less Than \$20,000			\$6
\$20,000	to	\$39,999	\$17
\$40,000	to	\$59,999	\$29
\$60,000	to	\$79,999	\$40
\$80,000	to	\$99,999	\$51
\$100,000	to	\$149,999	\$71
\$150,000	to	\$199,999	\$100
Over \$200,000 Multiply AGI by 0.057%			
<sup>1</sup> These use tax liabilities reflect a half-year effect of the enactment of ABx1 28.			

Please let me know if you have any questions or need additional information.

RI:ls

cc: Ms. Regina Evans  
 Mr. Louis Barnett  
 Mr. Alan LoFaso  
 Mr. Sean Wallentine  
 Ms. Marcy Jo Mandel  
 Ms. Kristine Cazadd  
 Mr. Randy Ferris  
 Ms. Margaret Shedd

**2011 MINUTES OF THE STATE BOARD OF EQUALIZATION**

**Tuesday, June 21, 2011**

**PUBLIC HEARINGS**

**F1 Proposed Adoption of Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding the Staff request for approval to publish the proposed regulation to implement the new use tax table provisions of Revenue and Taxation Code section 6452.1(Exhibit 6.6).

Speakers were invited to address the Board, but there were none.

Action: The Board deferred consideration of the matter to July meeting.

**F2 Business Taxpayer's Bill of Rights Hearings**

Todd Gilman, Taxpayer Rights Advocate, Taxpayer's Rights Advocate Office, Executive Department, made introductory remarks for individuals to have the opportunity to present their ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board's administration of its tax programs, including sales and use taxes, environmental fees, fuel taxes, and excise taxes, and any problems identified in the Taxpayers' Rights Advocate's Annual Report (Exhibit 6.7).

Speakers were invited to address the Board, but there were none.

**F3 Property Taxpayers' Bill of Rights Hearings**

Todd Gilman, Taxpayer Rights Advocate, Taxpayer's Rights Advocate Office, Executive Department, made introductory remarks for individuals to have the opportunity to present their ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board's administration of its tax programs, including state and county property tax programs, and any problems identified in the Taxpayer's Rights Advocate's Annual Report (Exhibit 6.8).

Speaker: Peter J. Fatooh, Taxpayer (Exhibit 6.9)



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION  
450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
www.boe.ca.gov

BETTY T. YEE  
First District, San Francisco

SEN. GEORGE RUNNER (RET.)  
Second District, Lancaster

MICHELLE STEEL  
Third District, Rolling Hills Estates

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

KRISTINE CAZADD  
Interim Executive Director

May 6, 2011

To Interested Parties:

**Notice of Proposed Regulatory Action  
by the  
State Board of Equalization**

**Proposed to Adopt Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*. Regulation 1685.5 prescribes the manner in which the Board “shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table,” as required by Revenue and Taxation Code (RTC) section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14), and prescribes the use tax table for calendar year 2011.

**PUBLIC HEARING**

A public hearing on the adoption of the proposed regulatory action will be held in Room 207, 5901 Green Valley Circle, Culver City, at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed adoption of Regulation 1685.5.

**AUTHORITY**

RTC section 7051.

**REFERENCE**

RTC section 6452.1.

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

### Prior Law

RTC section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

### Current Law

SB 86 was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

### Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board’s duty to estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years.

There are no comparable federal regulations or statutes to Regulation 1685.5.

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

The Board has determined that the adoption of proposed Regulation 1685.5 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of proposed Regulation 1685.5 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

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

The adoption of proposed Regulation 1685.5 will enable the Board to fulfill its duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years. The Board's use tax tables will enable taxpayers to choose to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), instead of calculating and reporting their actual unpaid use tax liabilities (as discussed above). And, the proposed regulation will not impose any new taxes, it will not change any exemptions or exclusions, and it will not even require taxpayers to use the Board's use tax tables to report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulation 1685.5 may affect small business.

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

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

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

The Board has determined that the adoption of proposed Regulation 1685.5 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

**NO SIGNIFICANT EFFECT ON HOUSING COSTS**

Adoption of proposed Regulation 1685.5 will not have a significant effect on housing costs.

**DETERMINATION REGARDING ALTERNATIVES**

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

**CONTACT PERSONS**

Questions regarding the substance of the proposed regulation should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

**WRITTEN COMMENT PERIOD**

The written comment period ends when the public hearing begins at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt proposed Regulation 1685.5. The Board will only consider written comments received by that time.

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

The Board has prepared an underscored version of the text of proposed Regulation 1685.5 illustrating its express terms and an initial statement of reasons for the adoption of the proposed regulation. These documents and all the information on which the proposed regulation is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

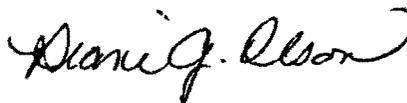
**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8**

The Board may adopt proposed Regulation 1685.5 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts proposed Regulation 1685.5, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov)

Sincerely,



Diane G. Olson, Chief  
Board Proceedings Division

DGO:reb

## **Initial Statement of Reasons**

### **Proposed Adoption of California Code of Regulations, Title 18, Section 1685.5, *Calculation of Estimated Use Tax - Use Tax Table***

#### **SPECIFIC PURPOSE AND NECESSITY**

##### Prior Law

Revenue and Taxation Code (RTC) section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

##### Current Law

Senate Bill No. (SB) 86 (Stats. 2011, ch. 14) was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

##### Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate

the estimated amount of use tax due according to a person's adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board's duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years.

During its April 26, 2011, meeting, the Board determined that it was necessary to adopt Regulation 1685.5 for the specific purposes of implementing, interpreting, and making specific the provisions of RTC section 6452.1 providing that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table" and prescribing the use tax table for calendar-year 2011.

There are no comparable federal regulations or statutes to Regulation 1685.5.

#### **DOCUMENTS RELIED UPON**

The Deputy Director for the Board's Sales and Use Tax Department, Jeffrey McGuire, submitted a memorandum dated April 15, 2011, to the Board Members for consideration at the April 26, 2011, Board meeting, which contained staff's request for the Board's authorization to begin the formal rulemaking process to adopt Regulation 1685.5. The Board relied upon the April 15, 2011, memorandum, the exhibits to the April 15, 2011, memorandum, which illustrate the text of proposed Regulation 1685.5 and identify the sources of the data the Board will use to perform the calculations prescribed by Regulation 1685.5, and comments made during the April 26, 2011, discussion of the April 15, 2011, memorandum in deciding to propose the adoption of Regulation 1685.5.

#### **ALTERNATIVES CONSIDERED**

The Board considered whether to begin the formal rulemaking process to adopt proposed Regulation 1685.5 at this time or, alternatively, whether to take no action at this time and seek additional input from interested parties. However, the Board decided to begin the formal rulemaking process to adopt the proposed regulation at this time in order to comply with deadlines for including the Board's use tax table in the instructions to the FTB's 2011 income tax returns.

#### **NO ADVERSE ECONOMIC IMPACT ON BUSINESS**

The adoption of proposed Regulation 1685.5 will enable the Board to implement the provisions of RTC section 6452.1 providing that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by

July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” and prescribe the use tax table for calendar-year 2011. Eligible taxpayers will have the option to use the Board’s use tax tables to estimate their use tax liabilities for calendar-year 2011 and subsequent years, but taxpayers may also choose to continue to calculate and report their actual unpaid use tax liabilities (as discussed above). Furthermore, the adoption of the proposed regulation will not impose any new taxes, and it will not change any exemptions or exclusions. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

**Proposed Text of  
California Code of Regulations, Title 18, Section 1685.5**

**Section 1685.5. Calculation of Estimated Use Tax - Use Tax Table.**

**(a) In General.**

The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

**(b) Definitions and Data Sources.**

(1) AGI Ranges. The use tax table shall be separated into eight (8) AGI ranges as follows:

- (A) AGI less than \$20,000;
- (B) AGI of \$20,000 to \$39,999;
- (C) AGI of \$40,000 to \$59,999;
- (D) AGI of \$60,000 to \$79,999;
- (E) AGI of \$80,000 to \$99,999;
- (F) AGI of \$100,000 to \$149,999;
- (G) AGI of \$150,000 to \$199,999;
- (H) AGI more than \$199,999.

(2) Use Tax Liability Factor or Use Tax Table Percentage. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On May 1, 2012, and each May 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on electronic and mail order purchases for the proceeding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) Total Personal Income. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) Total Spending at Electronic Shopping and Mail Order Houses. Total spending at electronic shopping and mail order houses shall be determined by reference to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) Percentage of Income Spent on Electronic and Mail Order Purchases. The percentage of income spent on electronic and mail order purchases during a calendar year shall be calculated by dividing the total spending at electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(6) Average State, Local, and District Sales and Use Tax Rate. The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

(c) Calculation of the Estimated Use Tax Liability.

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying \$10,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through (G) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(H) shall be determined by multiplying each range member's actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(d) Use Tax Table Format.

(1) The use tax table for calendar year 2011 shall provide as follows:

<u>Adjusted Gross Income</u>		<u>Use Tax Liability</u>
<u>(AGI) Range</u>		
<u>Less Than \$20,000</u>		<u>\$7</u>
<u>\$20,000</u>	<u>to \$39,999</u>	<u>\$21</u>
<u>\$40,000</u>	<u>to \$59,999</u>	<u>\$35</u>
<u>\$60,000</u>	<u>to \$79,999</u>	<u>\$49</u>
<u>\$80,000</u>	<u>to \$99,999</u>	<u>\$63</u>
<u>\$100,000</u>	<u>to \$149,999</u>	<u>\$88</u>
<u>\$150,000</u>	<u>to \$199,999</u>	<u>\$123</u>
<u>More than \$199,999 -Multiply AGI by 0.070% (.0007)</u>		

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as the use tax table for calendar year 2011.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6452.1, Revenue and Taxation Code.

## Regulation History

**Type of Regulation:** Sales and Use Tax

Regulation: 1685.5

Title: 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

**Preparation:** Brad Heller

**Legal Contact:** Brad Heller

Board proposes to adopt Regulation 1685.5, *Calculation for Estimated Use Tax – Use Tax Table*, for the specific purpose of implementing the new use tax table provisions of Revenue and Taxation Code section 6452.1.

### History of Proposed Regulation:

May 6, 2011	OAL publication date; 45-day public comment period begins; Interested Parties mailing
April 26, 2011	Notice to OAL
April 26, 2011	Business Tax Committee, Board Authorized Publication (Vote 3-2)

Sponsor: NA

Support: NA

Oppose: NA



STATE BOARD OF EQUALIZATION  
130 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
www.boe.ca.gov

BETTY T. YEE  
First District, San Francisco  
SEN. GEORGE RUNNER (RET.)  
Second District, Lancaster  
MICHELLE STEEL  
Third District, Rolling Hills Estates  
JEROME E. HORTON  
Fourth District, Los Angeles  
JOHN CHIANG  
State Controller  
KRISTINE CAZADD  
Interim Executive Director

June 30, 2011

To Interested Parties:

Notice of Continuation

Proposed to Adopt Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

By notice published in the May 6, 2011, California Regulatory Notice Register (Register 2011, No. 18-Z), the State Board of Equalization (Board) announced that it would conduct a public hearing on June 21, 2011, to consider the adoption of proposed California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, and the public hearing was conducted on June 21, 2011, in accordance with the May 6, 2011, notice. However, the Board did not vote on whether to adopt the proposed regulation or vote to make changes to the text of the proposed regulation on June 21, 2011. Instead, the Board voted to continue the public hearing at its July 26-27, 2011, meeting in Sacramento, California, and directed staff to present the proposed regulation to the Board for further consideration at that time.

The public agenda notice for the July 26-27, 2011, meeting, will be posted on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days prior to the meeting. Written comments for the Board's consideration, notice of intent to present testimony or witnesses during the continued public hearing to be conducted during the July 26-27, 2011, meeting, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Questions regarding the substance of the proposed regulation should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Sincerely,

Diane G. Olson, Chief  
Board Proceedings Division

DGO:bmh:reb

## **Bennion, Richard**

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**To:** Bennion, Richard  
**Subject:** State Board of Equalization - Notice of Continuation of Regulatory Change 1685.5

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**From:** Bennion, Richard [<mailto:Richard.Bennion@BOE.CA.GOV>]  
**Sent:** Thursday, June 30, 2011 9:50 AM  
**To:** [BOE\\_REGULATIONS@LISTSERV.STATE.CA.GOV](mailto:BOE_REGULATIONS@LISTSERV.STATE.CA.GOV)  
**Subject:** State Board of Equalization - Notice of Continuation of Regulatory Change 1685.5

### **Notice of Continuation**

#### **Proposed to Adopt Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

By notice published in the May 6, 2011, California Regulatory Notice Register (Register 2011, No. 18-Z), the State Board of Equalization (Board) announced that it would conduct a public hearing on June 21, 2011, to consider the adoption of proposed California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, and the public hearing was conducted on June 21, 2011, in accordance with the May 6, 2011, notice. However, the Board did not vote on whether to adopt the proposed regulation or vote to make changes to the text of the proposed regulation on June 21, 2011. Instead, the Board voted to continue the public hearing at its July 26-27, 2011, meeting in Sacramento, California, and directed staff to present the proposed regulation to the Board for further consideration at that time.

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BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

JULY 26, 2011

ITEM F1

PUBLIC HEARING

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Board  
of Equalization:

Jerome E. Horton  
Chairman

Michelle Steel  
Vice-Chairwoman

Betty T. Yee  
Member

George Runner  
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 Division

---oOo---

1 Sacramento, California

2 July 26, 2011

3 ---oOo---

4 MR. HORTON: Ms. Olson.

5 MS. OLSON: Our next item is F1, Proposed  
6 Adoption of Regulation 1685.5, Calculations of Estimated  
7 Use Tax -- Use Tax Table.

8 And we have two speakers.

9 MR. HORTON: Okay. Members, Mr. Heller will  
10 present on behalf of the Department. I'd like to take  
11 the speakers prior to his presentation, but they don't  
12 seem to be here -- but okay.

13 MR. RUNNER: Here comes somebody.

14 MR. HORTON: Okay. Members, before us is Gina  
15 Rodriguez with the California Taxpayers Association.  
16 And I believe there's one other speaker, Ms. Fosler.  
17 Okay. Ms. Rodriguez -- Rodriguez.

18 MS. RODRIGUEZ: Thank you, Mr. Chair, Members.  
19 Gina Rodriguez. I'm the Vice-President of State Tax  
20 Policy for the California Taxpayers Association.

21 CalTax submitted a letter to the Board on April  
22 25th. We also testified before the Board on April 26th  
23 and sent another letter on June 20th to express our  
24 concerns about the adoption of Reg. 1685.5.

25 To date, unfortunately, our concerns have not  
26 been addressed. The 2011 table has quite a few problems  
27 that I'd like to address today. And we recommend that  
28 staff start to address these problems now so that when

1 July 30th comes around next year staff can release a  
2 2012 Use Tax table that is more reflective of reality.

3 The table proposed in this regulation is  
4 neither accurate nor a fair representation of what a  
5 taxpayer's Use Tax liability would be under the law.

6 Excuse me.

7 First, CalTax questioned the need for a  
8 regulation at all but Mr. Heller explained to us the  
9 rationale and we agree that there is a need for a  
10 regulation, so thank you, Mr. Heller.

11 However, we do not agree that the 2011 table  
12 amounts should be placed in a regulation. Mr. Heller  
13 explained that this was done only for the 2011 table to  
14 set forth the template in -- in the regulation.  
15 However, staff can set forth the template in the  
16 regulation without use of the amounts in the reg.

17 So in the spirit of transparency, staff could  
18 provide the amounts in a draft form much like FTB  
19 provides us with draft forms of -- of their proposals.

20 Our concern is that the amount's overstated and  
21 still need refining and fine tuning.

22 The law requires the BOE to make available to  
23 the FTB such amounts in the form of a Use Tax table by  
24 July 30th. And that's a quote from the law.

25 We don't think that the statute prohibits the  
26 BOE from making changes to the amounts after July 30th,  
27 but this cannot be accomplished if the amounts are set  
28 forth in the regulation, which is why we propose taking

1 the amounts out of the regulation.

2 Second, the proposed table does not appear to  
3 reflect the passage of AB 28x, the bill that expanded  
4 the definition of nexus and is expected to bring in \$200  
5 million.

6 According to staff no one has yet changed their  
7 behavior as a result of the passage of the bill and  
8 staff has therefore not made any concrete adjustments to  
9 the table to account for the full \$200 million.

10 Also, and probably of greater concern, if  
11 online retailers are held liable for Sales Tax for 2011  
12 purchases, what assurance do we have that customers  
13 won't be double-taxed if they use the table to report  
14 their actual Use Tax for purchases of taxable tangible  
15 personal property?

16 Third, the table uses a flat seven percent rate  
17 across the board and assumes that the incident of Sales  
18 Tax is proportional to income. Every study that -- with  
19 which CalTax is aware shows that Sales Tax is actually  
20 regressive to some extent. Mr. Heller has agreed to  
21 review some of these studies and plos -- possibly make  
22 adjustments to the table for 2012, including -- and this  
23 is another one of our proposals -- allowing more AGI  
24 ranges for taxpayers.

25 Fourth, the table does not account for  
26 different local tax rates. Local tax rates differ by  
27 City and County, as you know, and such differences  
28 should be reflected in a look up table.

1           For example, I live in El Dorado County, which  
2 has a lower rate than L. A. County, yet I will pay the  
3 same amount as an L. A. County resident if I elect to  
4 use the table.

5           Finally, it is not clear how the tax will be  
6 allocated among the locals. This ties to the fact that  
7 the table doesn't seem to account for a rate  
8 differential. So, in other words, will L. A. County be  
9 getting more money than El Dorado County, for example,  
10 because L. A. County has a -- has a higher rate?

11           The CalTax policy team does look forward to  
12 continuing to work with staff in the coming months and  
13 hopefully we can help you with any questions you have.

14           Thank you.

15           MR. HORTON: Thank you very much.

16           Mr. Heller, please commence with your  
17 presentation.

18           MR. HELLER: Good afternoon, Chairman Horton  
19 and Members of the Board. Again, I'm Bradley Heller  
20 from the Board's Legal Department, and I'm here to  
21 request that the Board vote to adopt Regulation 1685.5,  
22 Calculation of Estimated Use Tax - Use Tax Table today.

23           The text of the regulation is the same text  
24 that staff recommended and the Board approved for  
25 publication during the April Business Taxes Committee  
26 meeting. And staff recommends that the Board adopt the  
27 proposed regulation today so that the Board can forward  
28 the 2011 Use Tax table prescribed by the regulation to

1 the Franchise Tax Board by the statutory July 30th  
2 deadline, and there will still be some chance that the  
3 regulation will be approved by the Office of  
4 Administrative Law prior to the FTB September 1st  
5 deadline for transmitting its 2011 materials to its  
6 publishers and the software developer so that they can  
7 develop everything and publish all the materials and  
8 have them ready for taxpayers in January of 2012.

9 I would also like to add that I spoke to the  
10 FTB's Executive Director, Selvi Stanislaus, and she  
11 stressed the need for the Board to adopt Regulation  
12 1685.5 and have it approved by OAL prior to the FTB  
13 September 1st deadline. And I have not received any  
14 assurances or suggestions of any ways to accommodate the  
15 Board if we -- we don't make the September 1 deadline,  
16 although I'm certain that the FTB will try to do  
17 something to accommodate us.

18 With that, the Board's Legal Department and the  
19 Board Proceedings Division has already made arrangements  
20 with the Office of Administrative Law to ask them to  
21 expedite their review of Regulation 1685.5, assuming  
22 it's -- assuming it's adopted today so that there would  
23 still be that potential that we can meet the September  
24 1st deadline.

25 I can answer any questions or address any  
26 comments if you'd like.

27 MR. HORTON: Thank you, Mr. Heller.

28 Discussion, Members?

1 MS. STEEL: Just have a comment.

2 MR. HORTON: Member Steel.

3 MS. STEEL: Well, I think my concern's same as  
4 CalTax that, you know, by the multiply Adjusted Gross  
5 Income by .07 percent by the income level doesn't mean  
6 that they are spending that much money.

7 And then second, it's not really accurate, you  
8 know, it's most likely to overstate it. But I have one  
9 more concern is when you put those tax -- tax -- the  
10 table, Use Tax table, and then what happen is most of  
11 the people when they do tax return and automatically  
12 they think that they owe them, so they going to put  
13 those amount down even they don't owe us anything.

14 And than Use Tax, though, you know we send a  
15 letter out to these corporations that has gross -- gross  
16 income more than \$100 thousand, 86 percent of them send  
17 us the tax report of zero.

18 So I really don't know this taxpay -- tax table  
19 is really needed on the tax return because this is just  
20 extra work that we never going to collect.

21 I'm done.

22 MR. HORTON: Oh, okay.

23 Mr. Runner.

24 MR. RUNNER: Just a couple of observations.  
25 I think we are dealing -- dealing with this particular  
26 table today because I think we've come to conclusion  
27 that, yes, indeed, we're not going to collect the \$200  
28 million so therefore we have the -- the -- the -- the

1 larger amounts on the table.

2 Let me just -- a couple of questions that I  
3 have and I think, Mr. Heller, we -- we had asked some  
4 information, I think you had -- and you had provided  
5 us -- to us, but let me step before I go there, the  
6 universe of people who we're trying to catch with  
7 this -- with this -- with this table would be those who  
8 we would, what, consider business to consumer Use Tax?

9 MR. HELLER: Senator Runner, essentially we're  
10 not trying to catch anyone. And in this case we're just  
11 providing an optional Use Tax table for the convenience  
12 of the taxpayer and in your --

13 MR. RUNNER: I -- I --

14 MR. HELLER: Isn't that your question?

15 MR. RUNNER: Let me back -- let me back. I  
16 don't --

17 MR. HELLER: Absolutely --

18 MR. RUNNER: I don't mean catch in the sense  
19 of, you know, a negative. I mean the ones who we're  
20 trying to reach out to and help at this point.

21 MR. HELLER: Oh, absolutely. And that is the  
22 con -- ultimate consumers who are not themselves a  
23 business who are --

24 MR. RUNNER: Right.

25 MR. HELLER: -- purchasing from a retailer.

26 MR. RUNNER: Okay. So that's -- that's the --  
27 that's kind of the target that we're trying to assist by  
28 giving them this chart?

1 MR. HELLER: Correct, those will be the people  
2 eligible to use it.

3 MR. RUNNER: What -- do -- what is the amount  
4 of tax gap that we've established that that particular  
5 group owes?

6 MR. HELLER: My understanding it's  
7 approximately \$851 million for just that consumer set  
8 part.

9 MR. RUNNER: Okay. So let me -- using that  
10 then as the -- as kind of a target to which we're trying  
11 to get with this particular group, \$851 million is the  
12 missing amount, in -- in one sense some of that gets  
13 taken up, that 851 million, in our -- in our Qualified  
14 Purchaser Program, right? Because Qualified Purchaser  
15 is not only related to the issue of their business to  
16 business tax in regards to their -- in terms of their  
17 form for Qualified Purchasers, but it's also their  
18 personal unpaid or paid Use Tax, too, correct?

19 MR. HELLER: It would total -- it would depend  
20 on the type of business and the returns they file. But  
21 if you had a Schedule C type business person I think  
22 that could be the case. But essentially if you have a  
23 corporation, the corporation's the business, the owners  
24 of the corporation could file separate consumer Use Tax  
25 returns for their purchases.

26 MR. RUNNER: Right. But -- but the point I  
27 guess I was trying to make, and I think I got that  
28 right, and that is if you are using the Qualified

1 Purchaser form, the form that you're filling out is not  
2 only items that you bought for your business but it's  
3 also items that you may have bought for your personal  
4 use?

5 MR. HELLER: I think -- they could be included  
6 in that return --

7 MR. RUNNER: Okay.

8 MR. HELLER: -- if you are like a Schedule C  
9 business --

10 MR. RUNNER: All right, okay.

11 MR. HELLER: -- that the individual is  
12 synonymous --

13 MR. RUNNER: Okay. So --

14 MR. HELLER: -- with the business.

15 MR. RUNNER: Okay.

16 MR. HELLER: I think that's possible.

17 MR. RUNNER: Okay. The other issue in this  
18 table, and again my -- my concern is that the table is  
19 overstated -- is that if the target is \$851 million that  
20 we project is -- is -- is the missing amount, the table  
21 that at least was reported back to us, and this is the  
22 figure you guys had given us, is that the -- the  
23 assumption is that the tabl -- if everybody fully used  
24 the table that the amount of dollars that would come in  
25 would be around \$700 million. Is that right?

26 MR. HELLER: Mr. Runner, that was -- my  
27 understanding is that answer is based on the assumption  
28 that every single California taxpayer regardless of

1       whether they owed any Use Tax liability or whether it  
2       was really -- they had one that was eligible for use on  
3       the Use -- with the Use Tax table would actually go  
4       ahead and report the amount by AGI on their income tax  
5       return.

6               MR. RUNNER: Well, our assumption is that  
7       anybody who reports it owes it, right?

8               MR. HELLER: Our assumption is, but we never  
9       assume that every single Californian who files an income  
10      tax return owes Use Tax.

11              MR. RUNNER: Oh. Okay. But the assumption is  
12      if they use the Use -- if they -- the assumption is if  
13      they use the Use Tax table they're using it because they  
14      believe they owe a Use Tax?

15              MR. HELLER: That is correct. Maybe I could --

16              MR. RUNNER: Okay.

17              MR. HELLER: Could I rephrase real quickly?

18              MR. RUNNER: Sure. Sure.

19              MR. HELLER: Because I don't want to be -- I'm  
20      not trying to have a tangent; I think assuming that  
21      every California taxpayer actually in fact had a Use Tax  
22      liability chose to -- to pay that liability by using the  
23      tax look up table amount --

24              MR. RUNNER: Right.

25              MR. HELLER: -- then we do believe it would be  
26      about \$708 million --

27              MR. RUNNER: Okay.

28              MR. HELLER: -- approximately.

1 MR. RUNNER: So -- so here's where I think it's  
2 overstated then, because the Use Tax table -- I mean,  
3 the -- the instructions on the table indicate that it's  
4 only for purchases -- purchases over \$1,000, right --  
5 are to be added to it, correct?

6 MR. HELLER: That is correct.

7 MR. RUNNER: Okay. So, do we have any -- any  
8 idea -- so -- so really the balance there is about \$150  
9 million. The assumption I guess we're making is that  
10 there's only \$150 million worth of Use Tax that's due  
11 for consumer -- for retailer or business to consumer  
12 sales that are over \$1,000?

13 MR. HELLER: Senator Runner, it's really not  
14 the way that our table's constructed and what -- the way  
15 our assumptions were done. And as I said back during  
16 the June Board meeting, we were never trying to aim at  
17 closing a specific tax gap amount. And we worked  
18 backwards from the amount of percentage of AGI that  
19 California consumers spend at the types of retailers who  
20 wouldn't be registered with the Board.

21 And so there was never an assumption that there  
22 was a certain amount of money that's maybe coming from  
23 the Qualified Purchasers or purchases over \$1,000 and  
24 shouldn't be accounted for in the table.

25 MR. RUNNER: Uh-huh.

26 MR. HELLER: Because we worked back from a  
27 different starting premise.

28 MR. RUNNER: Okay. Well, here -- here --

1           MR. HELLER: That's not to say that that's not  
2 a relevant idea, it's just not what we did.

3           MR. RUNNER: Okay. Here -- here's my concern,  
4 though, is that with the guideline that we may be giving  
5 our taxpayers out there, and it could be a bit  
6 overstated, it -- because if indeed they all paid it  
7 according to the chart and they also then paid the  
8 additional amount of -- of Use Tax for the purchases  
9 over -- over \$1,000 indeed I believe under that scenario  
10 we'd be collecting far more than the \$850 million  
11 supposedly gap -- tax gap.

12           The reason why I think that's a concern for us  
13 is because we're actually steering them toward that  
14 chart. It would be one thing if we just said use the  
15 chart, but the fact is we actually steer them toward the  
16 chart by giving them a safe harbor.

17           So we can say, hey, you can use the chart if  
18 you want. Oh, by the way, if you use the chart you're  
19 going to have some protection.

20           So we are steering them toward a chart that I  
21 feel is probably overstated. And, again, I'm -- this is  
22 my opinion and that's, I guess -- I guess the issue I  
23 just want to get on record at that point.

24           But that's my concern in regards to the chart.  
25 I think it's overstated. It makes assumptions.

26           Let me just conclude by this -- by these  
27 obser -- or by at least some issues, and this is going  
28 to come up I think a little bit later when we start

1 talking about people's issues and concerns tomorrow when  
2 we start talking about Use Tax and people's  
3 understanding.

4 L. A. Times had an article last week in a poll.  
5 And in the L. A. Times poll that they had done their  
6 poll indicated that by their record, and this was a -- a  
7 legitimate I think poll that went to 1600 people --  
8 that they did for 1600 people -- and in their poll, in  
9 this story, they related the fact that 82 percent of  
10 the -- 82 percent of the people they polled said they  
11 never or rarely make internet purchases.

12 And so, my concern is that certainly this chart  
13 does not make that this assumption. The chart actually  
14 makes the assumption that everybody does. And because  
15 of where we -- because, again, we're going to gather all  
16 the money.

17 The other issue that I think is of interest,  
18 and I think it does go back to the point that Member  
19 Steel said, and that is it does not reflect the  
20 information we're getting back from our own Qualified  
21 Purchaser returns, which are closer between 90 -- 85 and  
22 90 percent of the people who return those say "no tax  
23 due."

24 So I guess that's my concern by then having a  
25 the chart and steering people toward a chart, assuming  
26 and promising them kind of -- some kind of safe harbor  
27 is we're kind of directing them to a chart I believe is  
28 overstated.

1 Thank you.

2 MR. HORTON: Further discussion, Members?

3 Hearing none, is there a motion?

4 MS. YEE: I'm going to move to adopt the staff  
5 recommendation.

6 MR. HORTON: Been moved by Ms. Yee to adopt  
7 staff recommendation. Is there a second?

8 MS. MANDEL: Second.

9 MR. HORTON: Second by Ms. Mandel.

10 Presume objection.

11 MS. STEEL: Objection.

12 MR. HORTON: Ms. Olson, please call the roll.

13 MS. OLSON: Mr. Horton.

14 MR. HORTON: Aye.

15 MS. OLSON: Ms. Steel.

16 MS. STEEL: No.

17 MS. OLSON: Mr. Runner.

18 MR. RUNNER: No.

19 MS. OLSON: Ms. Yee.

20 MS. YEE: Aye.

21 MS. OLSON: Ms. Mandel.

22 MS. MANDEL: Aye.

23 MR. HORTON: Motion carries.

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REPORTER'S CERTIFICATE

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State of California )  
 ) ss  
County of Sacramento )

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on July 26, 2011 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 16 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: July 28, 2011.



*Beverly D Toms*

BEVERLY D. TOMS  
Hearing Reporter

**2011 MINUTES OF THE STATE BOARD OF EQUALIZATION**

Tuesday, July 26, 2011

**PUBLIC HEARINGS****Proposed Adoption of Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks concerning the continuation of the June 21, 2011 public hearing regarding staff's request that the Board adopt proposed Sales and Use Tax Regulation 1685.5 to implement the new use tax table provisions of Revenue and Taxation Code section 6452.1 (Exhibit 7.5).

Speaker: Gina Rodriguez, Vice President of State Tax Policy, CalTax

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board adopted proposed Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, as recommended by staff.

**CHIEF COUNSEL MATTERS****RULEMAKING****Proposed Amendments to Regulation 1533.2, *Diesel Fuel Used in Farming Activities of Food Processing* and Regulation 1598, *Motor Vehicle and Aircraft Fuels*.**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for adoption of proposed amendments to Sales and Use Tax Regulations 1533.2 and 1598 to incorporate provisions of the fuel tax swap (Stats. 2010, ch. 11) as re-enacted by Assembly Bill No. 105 (Stats. 2011, ch. 6) on March 24, 2011 (Exhibit 7.6).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the revised amendments as published in the 15-day file.

**OTHER CHIEF COUNSEL MATTERS****Outreach Partnerships**

Deborah Cooke, Tax Counsel, Legal Department, and Anita Gore, Deputy Director, External Affairs Department, provided an update and discussion on the development of guidelines for outreach partnerships (Exhibit 7.7).



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
[www.boe.ca.gov](http://www.boe.ca.gov)

BETTY T. YEE  
First District, San Francisco

SEN. GEORGE RUNNER (RET.)  
Second District, Lancaster

MICHELLE STEEL  
Third District, Rolling Hills Estates

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

KRISTINE CAZADD  
Interim Executive Director

June 30, 2011

**To Interested Parties:**

**Notice of Continuation**

**Proposed to Adopt Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

By notice published in the May 6, 2011, California Regulatory Notice Register (Register 2011, No. 18-Z), the State Board of Equalization (Board) announced that it would conduct a public hearing on June 21, 2011, to consider the adoption of proposed California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, and the public hearing was conducted on June 21, 2011, in accordance with the May 6, 2011, notice. However, the Board did not vote on whether to adopt the proposed regulation or vote to make changes to the text of the proposed regulation on June 21, 2011. Instead, the Board voted to continue the public hearing at its July 26-27, 2011, meeting in Sacramento, California, and directed staff to present the proposed regulation to the Board for further consideration at that time.

The public agenda notice for the July 26-27, 2011, meeting, will be posted on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days prior to the meeting. Written comments for the Board's consideration, notice of intent to present testimony or witnesses during the continued public hearing to be conducted during the July 26-27, 2011, meeting, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Questions regarding the substance of the proposed regulation should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Sincerely,

Diane G. Olson, Chief  
Board Proceedings Division

DGO:bmh:reb



STATE OF CALIFORNIA

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450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
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www.boe.ca.gov

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Fourth District, Los Angeles  
JOHN CHIANG  
State Controller  
KRISTINE CAZADD  
Interim Executive Director

**May 6, 2011**

**To Interested Parties:**

**Notice of Proposed Regulatory Action  
by the  
State Board of Equalization**

**Proposed to Adopt Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*. Regulation 1685.5 prescribes the manner in which the Board “shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table,” as required by Revenue and Taxation Code (RTC) section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14), and prescribes the use tax table for calendar year 2011.

**PUBLIC HEARING**

A public hearing on the adoption of the proposed regulatory action will be held in Room 207, 5901 Green Valley Circle, Culver City, at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed adoption of Regulation 1685.5.

**AUTHORITY**

RTC section 7051.

**REFERENCE**

RTC section 6452.1.

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

### Prior Law

RTC section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

### Current Law

SB 86 was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

### Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board’s duty to estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years.

There are no comparable federal regulations or statutes to Regulation 1685.5.

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

The Board has determined that the adoption of proposed Regulation 1685.5 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of proposed Regulation 1685.5 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

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

The adoption of proposed Regulation 1685.5 will enable the Board to fulfill its duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years. The Board's use tax tables will enable taxpayers to choose to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), instead of calculating and reporting their actual unpaid use tax liabilities (as discussed above). And, the proposed regulation will not impose any new taxes, it will not change any exemptions or exclusions, and it will not even require taxpayers to use the Board's use tax tables to report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulation 1685.5 may affect small business.

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

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

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

The Board has determined that the adoption of proposed Regulation 1685.5 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

**NO SIGNIFICANT EFFECT ON HOUSING COSTS**

Adoption of proposed Regulation 1685.5 will not have a significant effect on housing costs.

**DETERMINATION REGARDING ALTERNATIVES**

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

**CONTACT PERSONS**

Questions regarding the substance of the proposed regulation should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

**WRITTEN COMMENT PERIOD**

The written comment period ends when the public hearing begins at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt proposed Regulation 1685.5. The Board will only consider written comments received by that time.

May 6, 2011

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

The Board has prepared an underscored version of the text of proposed Regulation 1685.5 illustrating its express terms and an initial statement of reasons for the adoption of the proposed regulation. These documents and all the information on which the proposed regulation is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

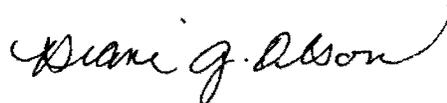
**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE  
SECTION 11346.8**

The Board may adopt proposed Regulation 1685.5 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts proposed Regulation 1685.5, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boc.ca.gov](http://www.boc.ca.gov)

Sincerely,



Diane G. Olson, Chief  
Board Proceedings Division

DGO:reb

## **Initial Statement of Reasons**

### **Proposed Adoption of California Code of Regulations, Title 18, Section 1685.5, *Calculation of Estimated Use Tax - Use Tax Table***

#### **SPECIFIC PURPOSE AND NECESSITY**

##### Prior Law

Revenue and Taxation Code (RTC) section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

##### Current Law

Senate Bill No. (SB) 86 (Stats. 2011, ch. 14) was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

##### Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate

the estimated amount of use tax due according to a person's adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board's duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years.

During its April 26, 2011, meeting, the Board determined that it was necessary to adopt Regulation 1685.5 for the specific purposes of implementing, interpreting, and making specific the provisions of RTC section 6452.1 providing that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table" and prescribing the use tax table for calendar-year 2011.

There are no comparable federal regulations or statutes to Regulation 1685.5.

#### **DOCUMENTS RELIED UPON**

The Deputy Director for the Board's Sales and Use Tax Department, Jeffrey McGuire, submitted a memorandum dated April 15, 2011, to the Board Members for consideration at the April 26, 2011, Board meeting, which contained staff's request for the Board's authorization to begin the formal rulemaking process to adopt Regulation 1685.5. The Board relied upon the April 15, 2011, memorandum, the exhibits to the April 15, 2011, memorandum, which illustrate the text of proposed Regulation 1685.5 and identify the sources of the data the Board will use to perform the calculations prescribed by Regulation 1685.5, and comments made during the April 26, 2011, discussion of the April 15, 2011, memorandum in deciding to propose the adoption of Regulation 1685.5.

#### **ALTERNATIVES CONSIDERED**

The Board considered whether to begin the formal rulemaking process to adopt proposed Regulation 1685.5 at this time or, alternatively, whether to take no action at this time and seek additional input from interested parties. However, the Board decided to begin the formal rulemaking process to adopt the proposed regulation at this time in order to comply with deadlines for including the Board's use tax table in the instructions to the FTB's 2011 income tax returns.

#### **NO ADVERSE ECONOMIC IMPACT ON BUSINESS**

The adoption of proposed Regulation 1685.5 will enable the Board to implement the provisions of RTC section 6452.1 providing that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by

July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” and prescribe the use tax table for calendar-year 2011. Eligible taxpayers will have the option to use the Board’s use tax tables to estimate their use tax liabilities for calendar-year 2011 and subsequent years, but taxpayers may also choose to continue to calculate and report their actual unpaid use tax liabilities (as discussed above). Furthermore, the adoption of the proposed regulation will not impose any new taxes, and it will not change any exemptions or exclusions. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

**Proposed Text of  
California Code of Regulations, Title 18, Section 1685.5**

**Section 1685.5. Calculation of Estimated Use Tax - Use Tax Table.**

**(a) In General.**

The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

**(b) Definitions and Data Sources.**

(1) AGI Ranges. The use tax table shall be separated into eight (8) AGI ranges as follows:

- (A) AGI less than \$20,000;
- (B) AGI of \$20,000 to \$39,999;
- (C) AGI of \$40,000 to \$59,999;
- (D) AGI of \$60,000 to \$79,999;
- (E) AGI of \$80,000 to \$99,999;
- (F) AGI of \$100,000 to \$149,999;
- (G) AGI of \$150,000 to \$199,999;
- (H) AGI more than \$199,999.

(2) Use Tax Liability Factor or Use Tax Table Percentage. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On May 1, 2012, and each May 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on electronic and mail order purchases for the proceeding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) Total Personal Income. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) Total Spending at Electronic Shopping and Mail Order Houses. Total spending at electronic shopping and mail order houses shall be determined by reference to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) Percentage of Income Spent on Electronic and Mail Order Purchases. The percentage of income spent on electronic and mail order purchases during a calendar year shall be calculated by dividing the total spending at electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(6) Average State, Local, and District Sales and Use Tax Rate. The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

(c) Calculation of the Estimated Use Tax Liability.

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying \$10,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through (G) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(H) shall be determined by multiplying each range member's actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(d) Use Tax Table Format.

(1) The use tax table for calendar year 2011 shall provide as follows:

<u>Adjusted Gross Income</u> <u>(AGI) Range</u>		<u>Use Tax Liability</u>
<u>Less Than \$20,000</u>		<u>\$7</u>
<u>\$20,000</u>	<u>to \$39,999</u>	<u>\$21</u>
<u>\$40,000</u>	<u>to \$59,999</u>	<u>\$35</u>
<u>\$60,000</u>	<u>to \$79,999</u>	<u>\$49</u>
<u>\$80,000</u>	<u>to \$99,999</u>	<u>\$63</u>
<u>\$100,000</u>	<u>to \$149,999</u>	<u>\$88</u>
<u>\$150,000</u>	<u>to \$199,999</u>	<u>\$123</u>
<u>More than \$199,999 -Multiply AGI by 0.070% (.0007)</u>		

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as the use tax table for calendar year 2011.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6452.1, Revenue and Taxation Code.

## Regulation History

**Type of Regulation:** Sales and Use Tax

Regulation: 1685.5

Title: 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

**Preparation:** Brad Heller

**Legal Contact:** Brad Heller

Board proposes to adopt Regulation 1685.5, *Calculation for Estimated Use Tax – Use Tax Table*, for the specific purpose of implementing the new use tax table provisions of Revenue and Taxation Code section 6452.1.

### History of Proposed Regulation:

July 26, 2011	Public Hearing Continued
June 21, 2011	Public Hearing
May 6, 2011	OAL publication date; 45-day public comment period begins; Interested Parties mailing
April 26, 2011	Notice to OAL
April 26, 2011	Business Tax Committee, Board Authorized Publication (Vote 3-2)

Sponsor: NA

Support: NA

Oppose: NA