

Rulemaking File
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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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**State of California
Office of Administrative Law**

**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. 2012-0406-01 S

Adopt sections:

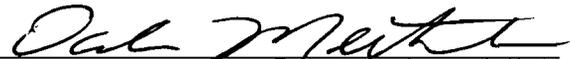
Amend sections: 1685.5

Repeal sections:

This rulemaking action amends section 1685.5 of title 18 of the California Code of Regulations to facilitate the payment by taxpayers of use tax liability by, among other things, clarifying the optional nature of utilization of the use-tax tables, clarifying the safe harbor available through use of the use-tax tables, moving the use tax calculation date from May 1 to June 1 to ensure the availability of certain U.S. Census bureau data, and requiring the Board of Equalization to use the percentage of income spent on taxable purchases to calculate use tax liability for 2012 and beyond.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 5/31/2012.

Date: 5/1/2012



Dale P. Mentink
Senior Staff Counsel

For: DEBRA M. CORNEZ
Director

Original: Kristine Cazadd
Copy: Richard Bennion

RECEIVED

MAY 4 2012

Board Proceedings

OFFICE OF ADMINISTRATIVE LAW

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



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 5/4/2012
RE: Return of Approved Rulemaking Materials
OAL File No. 2012-0406-01S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2012-0406-01S 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 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
Z-		2012-0406-015	

For use by Office of Administrative Law (OAL) only

<p style="text-align: center;">NOTICE</p>	<p style="text-align: center;">REGULATIONS</p>
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ENDORSED FILED IN THE OFFICE OF

2012 MAY -1 PM 2:09

Joann Richmond
 SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY
 State Board of Equalization

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2012, 42	PUBLICATION DATE 1-27-2012

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 AMEND 1685.5 REPEAL
TITLE(S) 18	

3. TYPE OF FILING			
<input checked="" 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 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
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE April 4, 2012
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVAL

MAY 01 2012

Office of Administrative Law

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1685.5**

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

(a) In General.

(1) Estimated Use Tax and Use Tax Table. 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.

(2) Who is Eligible to Use BOE Use Tax Tables.

(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns 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 (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.

(3) Safe Harbor. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

(b) Definitions and Data Sources.

(1) AGI Ranges. The use tax table shall be separated into ~~fifteen (15)~~^{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.~~
- (A) AGI less than \$10,000;
- (B) AGI of \$10,000 to \$19,999;
- (C) AGI of \$20,000 to \$29,999;
- (D) AGI of \$30,000 to \$39,999;
- (E) AGI of \$40,000 to \$49,999;
- (F) AGI of \$50,000 to \$59,999;
- (G) AGI of \$60,000 to \$69,999;
- (H) AGI of \$70,000 to \$79,999;
- (I) AGI of \$80,000 to \$89,999;
- (J) AGI of \$90,000 to \$99,999;
- (K) AGI of \$100,000 to \$124,999;
- (L) AGI of \$125,000 to \$149,999;
- (M) AGI of \$150,000 to \$174,999;
- (N) AGI of \$175,000 to \$199,999;
- (O) 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 ~~June~~May 1, 2012, and each ~~June~~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 ~~taxable~~electronic and mail-order purchases for the ~~preceding~~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) Total Spending on Taxable Purchases. Total spending on taxable purchases shall be determined by:

(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:

(i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;

(ii) Prescriptions;

(iii) Video content downloads;

(iv) Audio content downloads;

(v) Prepackaged computer software, including software downloads; and

(vi) All nonmerchandise receipts.

(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

(56) Percentage of Income Spent on ~~Taxable Electronic and Mail Order~~ Purchases. The percentage of income spent on ~~taxable electronic and mail order~~ purchases during

a calendar year shall be calculated by dividing the total spending on taxable purchases 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.

(67) 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 ~~\$5,000~~~~\$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)(HO) 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:

Adjusted Gross Income (AGI) Range		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
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 follows:~~the use tax table for calendar year 2011.~~

Adjusted Gross Income (AGI) Range		Use Tax Liability
Less Than \$10,000		\$
\$10,000	to \$19,999	\$
\$20,000	to \$29,999	\$
\$30,000	to \$39,999	\$
\$40,000	to \$49,999	\$
\$50,000	to \$59,999	\$
\$60,000	to \$69,999	\$
\$70,000	to \$79,999	\$
\$80,000	to \$89,999	\$
\$90,000	to \$99,999	\$
\$100,000	to \$124,999	\$
\$125,000	to \$149,999	\$
\$150,000	to \$174,999	\$
\$175,000	to \$199,999	\$
More than \$199,999 -Multiply AGI by % (.000)		

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

File#2012-0405-02
**BOARD FOR PROFESSIONAL ENGINEERS,
 LAND SURVEYORS AND GEOLOGISTS**
 Fees

This regulatory action revises the application and renewal fees for various types of professional engineer and land surveyor licenses. The examination fee had previously been included in the application fee, but will now be paid separately to the National Council of Examiners for Engineering and Surveying.

Title 16
 California Code of Regulations
 AMEND: 407, 428
 Filed 04/27/2012
 Effective 04/27/2012
 Agency Contact: Jeff Alameida (916) 263-2269

File# 2012-0406-01
BOARD OF EQUALIZATION
 Calculation of Estimated Use Tax — Use Tax Table

This rulemaking action amends section 1685.5 of title 18 of the California Code of Regulations to facilitate the payment by taxpayers of use tax liability by, among other things, clarifying the optional nature of utilization of the use-tax tables, clarifying the safe harbor available through use of the use-tax tables, moving the use tax calculation date from May 1 to June 1 to ensure the availability of certain U.S. Census bureau data, and requiring the Board of Equalization to use the percentage of income spent on taxable purchases to calculate use tax liability for 2012 and beyond.

Title 18
 California Code of Regulations
 AMEND: 1685.5
 Filed 05/01/2012
 Effective 05/31/2012
 Agency Contact:
 Richard E. Bennion (916) 445-2130

File# 2012-0320-04
CALIFORNIA HORSE RACING BOARD
 Application for License to Operate a Minisatellite Wagering Facility

The California Horse Racing Board (CHRB) submits this non-substantive matter to correct the number on the Application for License to Operate a Minisatellite Wagering Facility (CHRB-228 (New 11/08)). In OAL file number 2009-0121-04S, the form was given the number CHRB-88, but it should have been CHRB-228 as form CHRB-88 is a form already in use. It is the Personal History Statement Instructions (Non-Peace Officer). This error was recently discovered and to avoid

confusion, this amendment to the regulation and number on the incorporated form are being made.

Title 4
 California Code of Regulations
 AMEND: 2066
 Filed 04/26/2012
 Agency Contact: Erica Ward (916) 263-6025

File# 2012-0316-05
COMMISSION ON TEACHER CREDENTIALING
 Fingerprint Submissions

This regulatory action requires that individuals re-submit their fingerprints if they have not held a valid credential, certificate, permit, waiver or other type of authorizing document for more than eighteen months. In addition, if fingerprints are submitted prior to filing an application form, the application form must be filed within eighteen months to be valid.

Title 5
 California Code of Regulations
 AMEND: 80028, 80301, 80442
 Filed 04/25/2012
 Effective 05/25/2012
 Agency Contact:
 Tammy A. Duggan (916) 323-5354

File# 2012-0321-01
DEPARTMENT OF CONSUMER AFFAIRS
 Eligibility for Funding

This action corrects a cross reference in section 3605 to a section in the Business and Professions Code. The section cited currently (407.2(g)) does not exist. The intended section to be cross referenced is section 467.2(g) which relates to the subject matter of section 3605.

Title 16
 California Code of Regulations
 AMEND: 3605
 Filed 04/26/2012
 Agency Contact: Rebecca Bon (916) 574-8220

File# 2012-0316-06
DEPARTMENT OF FISH AND GAME
 Suction Dredge Mining Regulation Amendments

The Department of Fish and Game amended its suction dredge mining program, set forth in title 14, California Code of Regulations, sections 228 and 228.5.

Title 14
 California Code of Regulations
 AMEND: 228, 228.5
 Filed 04/27/2012
 Effective 04/27/2012
 Agency Contact: Mark Stopher (530) 225-2275

Rulemaking File Index

Title 18. Public Revenue

Sales and Use Tax

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

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 - Minutes
 - BTC Agenda
 - Formal Issue Paper 11-006
 - Exhibit 1 Revenue Estimate
 - Exhibit 2 Staff Proposed Amendments to Regulation 1685.5
 - Exhibit 3 Lee Williams' Comments
 - Regulation History
4. [Reporter's Transcript Business Taxes Committee, December 14, 2011](#)
5. [Estimate of Cost or Savings, March 28, 2012](#)
6. [Economic and Fiscal Impact Statements, December 21, 2011](#)
7. [Notice of Publications](#)
 - Form 400 and Notice, Publication Date January 27, 2012
 - Proposed Text of Regulation 1685.5
 - Email sent to Interested Parties, January 27, 2012
 - CA Regulatory Notice Register 2012, Volume No. 4-Z
8. [Notice to Interested Parties, January 27, 2012](#)

The following items are exhibited:

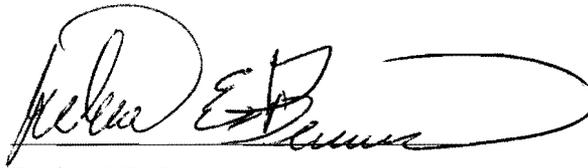
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 - Regulation History

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 April 4, 2012 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.

April 4, 2012

A handwritten signature in black ink, appearing to read "Richard E. Bennion", written in a cursive style with a large initial "R" and a long horizontal flourish extending to the right.

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for
Adoption of Proposed Amendments to 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 factual basis, specific purpose, and necessity for, and the anticipated benefits from, the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*, are the same as provided in the initial statement of reasons.

The State Board of Equalization (Board) did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the amendments to 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 adoption of the proposed amendments to Regulation 1685.5 was not mandated by federal statutes or regulations and there is no federal regulation that is identical to Regulation 1685.5.

No Mandate on Local Agencies or School Districts

The Board has determined that the proposed amendments to Regulation 1685.5 do not impose a mandate on local agencies or school districts.

Public Comment

On January 28, 2012, Donna LeCroy emailed the Board her comment that the proposed amendments to Regulation 1685.5 are unconstitutional because they would require every taxpayer to pay an estimated amount of use tax to the Board regardless of whether the taxpayers actually owed use tax. The Board disagreed with this comment and Board staff noted on the record at the March 20, 2012, public hearing that there is nothing in the proposed amendments that would require a taxpayer to pay a use tax that the taxpayer does not owe. In fact, the amendments adding subdivision (a)(2)(A) to Regulation 1685.5 expressly provide that:

Consumers may elect to use the use tax tables included in the instructions to their FTB returns 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 (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

Therefore, at the conclusion of the March 20, 2012, public hearing, the Board voted to adopt the proposed amendments to Regulation 1685.5 without any changes. No other interested parties submitted written comments regarding the proposed amendments to Regulation 1685.5 and no interested parties asked to speak at the public hearing.

Determinations Regarding Alternatives

By its motion, the Board determined that no alternative to the proposed amendments to Regulation 1685.5 would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Furthermore, the Board did not reject any alternatives to the proposed amendments to Regulation 1685.5 or any alternatives that would lessen the adverse economic impact on small businesses. No alternative amendments were presented to the Board for consideration.

The proposed amendments are anticipated to provide the following benefits:

- Clarify the purpose and use of the Board's use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;
- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range; and
- Generally encourage consumers to use the Board use tax tables.

No Significant Adverse Economic Impact on Business

The adoption of the proposed amendments to Regulation 1685.5 will update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years in order to respond to interested parties comments and generally improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range. The proposed amendments will not impose any new taxes or change any exemptions or exclusions. And, the proposed amendments expressly provide that taxpayers are not required to use the Board's use tax tables to estimate and report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulation 1685.5 will not have a significant adverse economic impact on business.

The proposed amendments may affect small business.

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

On March 20, 2012, the State Board of Equalization (Board) held a public hearing on and voted to adopt the original text of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*, described in the notice of proposed regulatory action. The Board received one written comment regarding the proposed amendments to Regulation 1685.5 which is summarized and responded to below and in the final statement of reasons. No interested parties appeared at the public hearing on March 20, 2012, and there have not been any changes to the applicable laws or the effect of the adoption of the proposed amendments to Regulation 1685.5 described in the informative digest included in the notice of proposed regulatory action.

The informative digest included in the notice of proposed regulatory action provides:

“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 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 AGIs 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.

“Regulation 1685.5

“The Board adopted Regulation 1685.5 on July 26, 2011, to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their AGIs, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s AGI 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 California Taxpayers Association (CalTax) requested that the Board conduct interested parties meetings to discuss the methodology used to develop the proposed regulation before the Board voted to adopt Regulation 1685.5. The Board’s response to this request, as provided in the final statement of reasons for the adoption of Regulation 1685.5, was that:

[T]he 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.

“Proposed Amendments

“Board staff met with interested parties on August 29, 2011, and October 11, 2011, to discuss whether it is necessary to amend Regulation 1685.5 to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. As a result of public comments, including comments from CalTax, Board staff recommended that the Board amend Regulation 1685.5 to:

- Clarify that the Board's use tax tables are optional and may only be used to report estimated use tax for nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, as provided in RTC section 6452.1, subdivision (d)(2)(A)(i);
- Provide assurance to consumers that if they correctly report their estimated use tax liabilities for their eligible nonbusiness purchases in accordance with the Board's use tax tables, then the Board may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the Board's use tax tables and the consumers' actual use tax liabilities, as provided in RTC section 6452.1, subdivision (g);
- Add seven additional AGI ranges to the Board's use tax tables for calendar year 2012 and subsequent years and narrow the intervals between the AGI ranges in the Board's use tax tables so that estimated use tax liabilities increase or decrease by smaller amounts between AGI ranges;
- Move the use tax liability factor calculation date from May 1 to June 1 beginning in calendar year 2012 because the United States Census Bureau typically publishes its electronic shopping and mail order house spending data during May of each year;
- Require the Board to make adjustments to the amount of spending at electronic shopping and mail order houses to arrive at total spending on taxable purchases;
- Require the Board to calculate the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases; and
- Require the Board to use the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases, to calculate the use tax liability factors for calendar-year 2012 and subsequent years.

“During its December 14, 2011, Business Taxes Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years, and the Board voted to propose their adoption. The objectives of the proposed amendments are to clarify the purpose and use of the Board's use tax tables, help ensure that use taxes due on business purchases are not reported twice, help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years, improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range, and generally encourage consumers to use the Board use tax tables. The proposed amendments are anticipated to provide the following specific benefits:

- Clarify the purpose and use of the Board's use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;

- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range; and
- Generally encourage consumers to use the Board use tax tables.

"The Board has performed an evaluation of whether the proposed amendments to Regulation 1685.5 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1685.5 is the only state regulation prescribing 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 RTC section 6452.1, as amended by section 1 of SB 86.

"There are no comparable federal regulations or statutes to Regulation 1685.5.

"Note Regarding Assembly Bill No. (AB) 155 and the Use Tax Liability Factor

"The proposed amendments to Regulation 1685.5, subdivision (b)(2), will require that the Board multiply the percentage of income spent on taxable purchases during the preceding year by 0.37, which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers. AB 155 (Stats. 2011, ch. 313) expanded the use tax registration requirements so that they apply to some out-of-state retailers, including Internet retailers, that were previously not required to register with the Board to collect and remit use tax on their sales of tangible personal property to California customers. However, section 6 of AB 155 provides that the new registration requirements will not be operative until either September 15, 2012, or January 1, 2013, and the Board is currently unable to determine whether the new registration requirements will reduce the percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers during 2012 or in subsequent years, and, if so, the extent of such reduction. Therefore, the Board is not proposing to amend Regulation 1685.5 to account for the new registration requirements imposed by AB 155 at this time. However, the Board is continuing to monitor the implementation of AB 155 and considering whether to propose sufficiently related changes to the original text of the proposed amendments to Regulation 1685.5 to account for the enactment of AB 155 or other events that may change the percentage of taxable purchases that California consumers make from unregistered out-of-state retailers during 2012 or subsequent years."

Public Comment:

On January 28, 2012, Donna LeCroy emailed the Board her comment that the proposed amendments to Regulation 1685.5 are unconstitutional because they would require every taxpayer to pay an estimated amount of use tax to the Board regardless of whether the taxpayers actually owed use tax. The Board disagreed with this comment and Board staff noted on the record at the March 20, 2012, public hearing that there is nothing in the proposed amendments that would require a taxpayer to pay a use tax that the taxpayer does not owe. In fact, the amendments adding subdivision (a)(2)(A) to Regulation 1685.5 expressly provide that:

Consumers may elect to use the use tax tables included in the instructions to their FTB returns 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 (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

Therefore, the Board concluded that Donna LeCroy's comment was the result of a misunderstanding regarding the effect of the proposed amendments and the Board did not make any changes to the proposed amendments in response to Donna LeCroy's comment.



BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: DECEMBER 14, 2011, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

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

Issue/Topic:

Request approval and authorization to publish proposed amendments to update the methodology by which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and make such amounts available to the Franchise Tax Board in the form of a use tax table for calendar year 2012 and subsequent years.

Committee Discussion:

None.

Committee Action:

Upon motion by Mr. Horton, seconded by Ms. Yee, the Committee approved and authorized for publication the proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*. 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 amendments to Regulation 1685.5 is attached.

The vote was as follows:

MEMBER	Yee	Steel	Horton	Mandel
VOTE	Yes	No	Yes	Yes

/s/ Betty T. Yee

Honorable Betty T. Yee, Committee Chair

/s/ Kristine Cazadd

Kristine Cazadd, Executive Director

BOARD APPROVED

at the December 15, 2011 Board Meeting

/s/ Diane Olson

Diane Olson, Chief
Board Proceedings Division

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

Reference: Section 6452.1, Revenue and Taxation Code.

(a) IN GENERAL.

(1) ESTIMATED USE TAX AND USE TAX TABLE. 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.

(2) WHO IS ELIGIBLE TO USE BOE USE TAX TABLES.

(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns 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 (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.

(3) SAFE HARBOR. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

(b) DEFINITIONS AND DATA SOURCES.

(1) AGI RANGES. The use tax table shall be separated into fifteen (15)~~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.~~

(A) AGI less than \$10,000;

(B) AGI of \$10,000 to \$19,999;

(C) AGI of \$20,000 to \$29,999;

(D) AGI of \$30,000 to \$39,999;

(E) AGI of \$40,000 to \$49,999;

(F) AGI of \$50,000 to \$59,999;

(G) AGI of \$60,000 to \$69,999;

(H) AGI of \$70,000 to \$79,999;

(I) AGI of \$80,000 to \$89,999;

(J) AGI of \$90,000 to \$99,999;

(K) AGI of \$100,000 to \$124,999;

(L) AGI of \$125,000 to \$149,999;

(M) AGI of \$150,000 to \$174,999;

(N) AGI of \$175,000 to \$199,999;

(O) 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 ~~June~~May 1, 2012, and each ~~June~~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 ~~taxable electronic and mail order~~ purchases for the ~~preceding~~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) TOTAL SPENDING ON TAXABLE PURCHASES. Total spending on taxable purchases shall be determined by:

(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following

categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:

- (i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;
- (ii) Prescriptions;
- (iii) Video Content Downloads;
- (iv) Audio Content Downloads;
- (v) Prepackaged computer software, including software downloads; and
- (vi) All nonmerchandise receipts.

(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

~~(6)(5) PERCENTAGE OF INCOME SPENT ON TAXABLE ELECTRONIC AND MAIL ORDER PURCHASES.~~ The percentage of income spent on taxable electronic and mail order purchases during a calendar year shall be calculated by dividing the total spending on taxable purchases 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.

~~(7)(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 ~~\$5,000~~~~\$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 ~~(N)(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 members 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:

Adjusted Gross Income (AGI) Range	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
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 follows:~~the use tax table for calendar year 2011.~~

<u>Adjusted Gross Income</u> <u>(AGI) Range</u>	<u>Use Tax Liability</u>
<u>Less Than \$10,000</u>	<u>\$</u>
<u>\$10,000 to \$19,999</u>	<u>\$</u>
<u>\$20,000 to \$29,999</u>	<u>\$</u>
<u>\$30,000 to \$39,999</u>	<u>\$</u>
<u>\$40,000 to \$49,999</u>	<u>\$</u>
<u>\$50,000 to \$59,999</u>	<u>\$</u>
<u>\$60,000 to \$69,999</u>	<u>\$</u>
<u>\$70,000 to \$79,999</u>	<u>\$</u>
<u>\$80,000 to \$89,999</u>	<u>\$</u>
<u>\$90,000 to \$99,999</u>	<u>\$</u>
<u>\$100,000 to \$124,999</u>	<u>\$</u>
<u>\$125,000 to \$149,999</u>	<u>\$</u>
<u>\$150,000 to \$174,999</u>	<u>\$</u>
<u>\$175,000 to \$199,999</u>	<u>\$</u>
<u>More than \$199,999 -Multiply AGI by % (.000)</u>	



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING AGENDA

HONORABLE BETTY YEE, COMMITTEE CHAIRWOMAN

450 N STREET, SACRAMENTO - ROOM 121

DECEMBER 14, 2011 – 10:00 A.M.

1. Proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

Request approval and authorization to publish proposed amendments to adjust the estimated use tax table and make it available to the Franchise Tax Board in 2012 and subsequent years.

Issue Paper Number 11-006



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Regulation 1685.5, Calculation of Estimated Use Tax – Use Tax Table

I. Issue

Whether it is necessary to amend Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, to update the manner in which the Board shall 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) in the form of a use tax table for calendar year 2012 and subsequent years.

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize publication of proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*. The proposed amendments:

- Clarify the persons who are eligible to use the use tax table to report their use tax obligations and for what type of purchases – new subdivision (a)(2);
- Explain the “safe harbor” provision (described below) – new subdivision (a)(3);
- Increase the number of adjusted gross income ranges to a total of fifteen (15) – amended subdivision (b)(1);
- Modify the intervals of the established AGI ranges – amended subdivision (b)(1);
- Change the use tax liability factor calculation date from May 1 to June 1 each year – amended subdivision (b)(2);
- Require an adjustment to the U.S. Spending at Electronic Shopping and Mail Order Houses data, published by the U.S. Census Bureau, to estimate taxable purchases of tangible personal property – new subdivision (b)(5); and
- Provide the format of the use tax table for calendar year 2012 and subsequent years – amended subdivision (d)(2).

The full text of the proposed amendments to Regulation 1685.5 under this alternative is included in Exhibit 2 (attached).

III. Other Alternative Considered

Do not amend Regulation 1685.5.

IV. Background

Section 6452.1 of the Revenue and Taxation Code (RTC), as amended by Senate Bill No. 86 (Stats. 2011, ch. 14) approved by the Governor on March 24, 2011, requires the Board to annually calculate the estimated amount of use tax due according to a person's AGI and, by July 30 of each calendar year, make available to the Franchise Tax Board (FTB) such amounts in the form of a use tax table for inclusion in the instructions to the FTB's income tax returns. Section 6452.1 also 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. Furthermore, section 6452.1 includes a "safe harbor" provision that precludes the Board from assessing the difference between a consumer's reported estimated use tax liability based on the Board's use tax table and the consumer's actual use tax liability, for eligible nonbusiness purchases, provided the consumer uses the table correctly.

The Board adopted Regulation 1685.5 on July 26, 2011. The regulation was approved by the Office of Administrative Law (OAL) on August 16, 2011, and became effective on September 15, 2011. The Board was unable to hold interested parties meetings to discuss Regulation 1685.5 prior to beginning the formal rulemaking process given the statutory requirement that the Board provide the 2011 use tax table to the FTB by July 30, 2011, and other practical deadlines. However, the Board directed staff to meet with interested parties to discuss whether Regulation 1685.5 needs to be amended before the Board is required to estimate consumers' use tax liabilities and prepare a use tax table for 2012. Staff met with interested parties on August 29, 2011, and October 11, 2011, to discuss whether to amend Regulation 1685.5. The Business Taxes Committee is scheduled to discuss this issue at the December 14, 2011, committee meeting.

V. Discussion

The use tax law has been in existence since 1935. California's use tax generally applies to the storage, use, or other consumption of tangible personal property in California that was purchased from an out-of-state retailer. (RTC § 6201.) California's use tax is intended to eliminate the incentive for California consumers to purchase tangible personal property from out-of-state retailers in order to avoid paying the sales tax that would apply if the property were sold in California.

California's use tax is imposed on consumers. (RTC § 6202.) However, out-of-state retailers that are engaged in business in California must register with the Board and collect any applicable use tax from their California customers. (Regulation 1684.) Furthermore, consumers may satisfy their use tax liabilities by paying applicable use taxes to retailers that are registered with the Board and retaining receipts showing that they paid the taxes. Otherwise, consumers are required to report and pay their own use tax liabilities. (Regulation 1685.)

California consumers that do not maintain complete records of their purchases of tangible personal property throughout the year may have difficulty determining how much they spent on purchases of tangible personal property from out-of-state retailers, and whether they paid use tax to the out-of-state retailers when they made their purchases. In addition, some consumers may have difficulty determining the cumulative rate of state, local, and district use tax applicable to their purchases of tangible personal property. The optional use tax table prescribed by Regulation 1685.5 is intended to make it more convenient for eligible consumers to comply with their use tax reporting obligations by eliminating the need for each consumer to maintain records regarding eligible nonbusiness purchases, the need for each consumer to determine his or her own cumulative state, local, and district use tax rate, and the need for

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each consumer to calculate his or her actual use tax liability. Eligible consumers include consumers with taxable nonbusiness purchases of individual items of tangible personal property with a sales price of less than \$1,000.

With respect to the allocation of total use tax paid, the amounts received from the use tax line on the FTB returns will continue to be allocated according to the taxpayer's address as reported to 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. The balance is then allocated to the statewide components of the use tax rate.

Methodology in the Current Regulation

Regulation 1685.5 prescribes a methodology for estimating consumers' use tax liabilities based upon their AGI ranges using a "use tax liability factor" determined by:

1. Multiplying the percentage of total personal income spent on electronic and mail order house purchases for the preceding calendar year, as determined from data provided by the United States Bureau of Economic Analysis and the United States Census Bureau, by 37 percent (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 weighted average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

The Board determined 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 an average percentage of their total purchases of tangible personal property for use in California are from unregistered out-of-state retailers. The Board recognized 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 regulation; however, that would be the case with any reasonable estimate. Furthermore, the Board noted that consumers always have the option to report their actual use tax liabilities, and consumers may continue to report their actual use tax liabilities whenever their actual use tax liabilities are lower than their estimated use tax liabilities.

The format of the use tax table prescribed by Regulation 1685.5 allows the majority of consumers to find their AGI within an established AGI range and read across to the right column to find their estimated use tax liabilities. However, consumers with AGIs over \$199,999 are required to multiply their actual AGIs by the use tax liability factor specified for their AGI range to determine their estimated use tax liabilities. Therefore, the use tax table eliminates the need for consumers preparing California personal income tax returns reporting AGIs that are \$199,999 or less, regardless of filing status (i.e., single, married, filing jointly, etc.), to perform any mathematical calculations to estimate, report, and pay their eligible use tax liabilities,¹ and greatly simplifies the calculations that consumers with AGIs over \$199,999 are required to make to calculate, report, and pay their eligible use tax liabilities. Furthermore, the format of the use tax table prescribed by Regulation 1685.5 completely eliminates the need for all eligible consumers to

¹ Data provided by the FTB indicates that 96 percent of California personal income tax returns filed for taxable year 2008, the most recent year for which data is available, reported AGIs of \$200,000 or less. Therefore, staff believes that the current format of the Board's use tax tables eliminates the need for approximately 96 percent of California consumers who purchased tangible personal property for use in California from unregistered out-of-state retailer to perform additional calculations to estimate their own use tax liabilities.

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refer to any external sources for additional information, such as the use tax rate, in order to estimate, report, and pay their eligible use tax liabilities.

The AGI ranges used in the use tax table prescribed by Regulation 1685.5 are based on AGI ranges provided by the FTB and there are similar percentages of California taxpayers in each of the eight AGI ranges. Staff understands that nine other states have use tax tables. Of those nine states, three states have more AGI ranges (Maine-11, Oklahoma-31, and North Carolina-31) than California, three states have fewer AGI ranges (Kansas-6, Massachusetts-6, and Vermont-7) than California, and three have the same number of AGI ranges (Michigan, New York and New Jersey) as California (8).

Assembly Bill No. 155

Assembly Bill No. (AB) 155 expanded the use tax registration requirements so that they apply to some out-of-state retailers, including Internet retailers, that were previously not required to register with the Board to collect and remit use tax on their sales of tangible personal property to California customers. However, the new registration requirements will not be operative until either September 15, 2012, or January 1, 2013, and Board staff is currently unable to determine the extent to which the new registration requirements will reduce the percentage of taxable purchases that California consumers make from unregistered out-of-state retailers after the new requirements are operative. Therefore, staff is not recommending that the Board amend Regulation 1685.5 to adjust for the new registration requirements imposed by AB 155 at this time, but staff will continue to monitor the implementation of AB 155 and may recommend additional amendments when sufficient data is available.

Interested Parties Submissions

The California Taxpayers Association (CalTax) submitted written comments in response to the First Discussion Paper. In response to CalTax's comments, Board staff is recommending that the Board amend Regulation 1685.5 to increase the number of AGI ranges and reduce the number of consumers in each AGI range so that consumers' estimated use tax liabilities increase/decrease by lesser amounts between AGI ranges. Board staff is also recommending that the Board amend the regulation so that the methodology for estimating consumers' use tax liabilities is based upon the percentage of consumers' personal income spent on "taxable" purchases from electronic and mail order houses, rather than all spending at electronic and mail order shopping houses. (CalTax's comments and staff's responses are discussed more fully in the discussion of alternative 1 below.)

CalTax did not submit written comments following the Second Discussion Paper and second meeting with interested parties. However, Mr. Lee Williams of Senator Runner's Office submitted written comments for the Board's consideration, which are included as Exhibit 3 (attached). Mr. Williams' comments are summarized and responded to below.

Comment 1

Mr. Williams suggests that the regulation and instructions to the FTB income tax return should contain a general explanation of the difference between a line item amount and a transaction total and provide examples as well. The comment further suggests that the regulation and FTB instructions explain that "items of tangible personal property each with a sales price of less than one thousand (\$1,000)," as stated in proposed subdivision (a)(2), is referring to the line item amount and not the transaction total.

Staff does not believe that the difference between a line item amount and a transaction total needs to be prescribed by regulation. Staff agrees that it would be helpful to explain the difference between line item amounts and transaction totals to consumers estimating their use tax liabilities. However, staff is somewhat concerned that the examples recommended by Mr. Williams may confuse taxpayers by implying that there is some record keeping requirement for eligible nonbusiness purchases reported

pursuant to the Board's use tax table, even though the use tax table is intended to assist those consumers who may not have complete records. Also, staff is of the opinion that consumers will most likely refer to the instructions that accompany their FTB income tax returns for guidance or clarification regarding the difference between line item amounts and transaction totals when reporting their use tax liabilities, rather than Regulation 1685.5. Therefore, staff has not recommended any amendments to Regulation 1685.5 in response to this suggestion. However, Board staff will include an explanation of the difference between line item amounts and transaction totals in the estimated use tax table instructions for 2012 and subsequent years. In addition, staff has no objection to including the examples in the instructions if the Board determines that the examples will help consumers estimate their use tax liabilities without creating any undue confusion and directs staff to include the examples.

Comment 2

Mr. Williams suggests the "Total Spending on Taxable Purchases," as provided in proposed subdivision (b)(5), should be reduced by 1.817 percent to account for the portion of transactions that involve individual items with a sales price of \$1,000 or more. Mr. Williams' suggested reduction of 1.817 percent is based on his analysis of line item data included in the summary audit transaction data for two large national retailers. Mr. Williams acknowledges that the adjustment is not sufficient to change an example calculation of the use tax liability factor that was discussed during the second interested parties meeting, but he is of the opinion an adjustment should be made in the interest of accuracy and eliminating perceived bias. Mr. Williams also suggests that his reduction of 1.817 percent could be improved with more empirical data.

Mr. Williams' suggestion to reduce total spending on taxable purchases by 1.817 percent is based upon limited data from two unidentified companies and the assumptions that: (A) the two companies' data is representative of 99.5 percent of all electronic shopping and mail order house retailers; and (B) half of the spending at the other 0.5 percent of electronic shopping and mail order house retailers is attributable to individual items with a sales price of \$1,000 or more. Staff performed research to determine whether there is some reasonably reliable way to adjust the methodology for estimating consumers' use tax liabilities in Regulation 1685.5 to account for the portion of transactions that involve individual items with a sales price of \$1,000 or more. However, staff is not aware of any publicly available data sources for the composition of individual purchase transactions from Internet or mail order companies that could be used to isolate the percentage of spending on individual items of tangible personal property each with a sales price of \$1,000 or more that could be used to verify or improve Mr. Williams' suggested reduction of 1.817 percent.

The best publicly available data source that staff has found is *The 2011 Internet Retailer Top 500 Guide* (Vertical Web Media LLC, Chicago, Illinois, online version), which has data on average ticket purchases (transaction totals) for 2010. Staff analyzed this data, and found that:

- Eight of the 500 companies had average ticket purchases of \$1,000 or more and were located outside of California (their retail industries were jewelry, furniture, fitness equipment, and coin dealers);
- These eight companies accounted for less than one-half of one percent of total sales made by the *Internet Retailer Top 500* companies; and
- There was no data to determine what portion of the eight companies' sales tickets contained purchases of single items with a sales price of \$1,000 or more, rather than purchases of multiple items, each with a sales price of less than \$1,000, but with a total ticket price of \$1,000 or more.

Staff also considered whether it was feasible to use data compiled from retailers' sales and use tax returns, audits, etc., to adjust the methodology for estimating consumers' use tax liabilities in Regulation 1685.5 to account for the portion of transactions that involve individual items with a sales price of

\$1,000 or more. Staff found that retailers' sales and use tax returns do not contain sufficient detail and the only likely internal source of such detailed information would be the invoices or sales transactions data reviewed in retailers' audits. However, the records reviewed in retailers' audits are confidential. Furthermore, there is no guarantee that such audit data would be available from a representative sample of electronic shopping and mail order house retailers from year-to-year and that such retailers would have line item data that would distinguish between sales made through websites and traditional brick and mortar locations in California.

Staff also noted that Mr. Williams comment appears to indicate to staff that he thinks the 1.817 percent adjustment should be made to "Total Spending on Taxable Purchases" (as calculated under new subdivision (b)(5), which staff recommends adding to Regulation 1685.5). However, staff is of the opinion that any adjustment should be applied to the "Total Spending at Electronic Shopping and Mail Order Houses," after that amount is increased by \$10,000,000,000 to account for spending that is not included in the spending data published by the United States Census Bureau (as provided in subdivision (b)(5)(B), which staff recommends adding to Regulation 1685.5), and prior to adjusting for the nontaxable categories (listed in subdivision (b)(5)(A), which staff recommends adding to Regulation 1685.5). To do otherwise would imply that all purchases of \$1,000 or more are of items that would be subject to tax.

Lastly, staff has determined that the suggested reduction (1.817%) does not affect the estimated use tax liabilities in the example calculation (Exhibit 4) and would not do so even if the percentage adjustment were increased to 4.0 percent. For these reasons, staff does not believe the regulation can be reliably amended to account for the portion of transactions that involve individual items with a sales price of \$1,000 or more, and the suggestion to make a 1.817 percent adjustment is not incorporated into the proposed amendments to the regulation. However, if the Board determines that Mr. Williams' estimate is sufficiently reliable, then staff has no objection to making Mr. Williams' 1.817 percent adjustment to "Total Spending at Electronic Shopping and Mail Order Houses," after that amount is increased by \$10,000,000,000 to account for spending that is not included in the spending data published by the United States Census Bureau, and prior to adjusting for the nontaxable categories.

Comment 3

As discussed in the interested parties process, it is possible for taxpayers to receive income from multiple lines of businesses, including a sole proprietorship, partnership, S-corporation, and farming activities. Some of these businesses may be required to register with the BOE (such as a qualified purchaser, or retailers making sales of items subject to tax). Mr. Williams explains that it appears to him that the current methodology for estimating a person's estimated use tax liability based on the person's AGI does not recognize use tax paid under these other programs and thus the use tax estimate is overstated. Mr. Williams suggests the AGI received from entities that have already reported tax be excluded from the person's AGI when determining their estimated use tax liabilities. Alternatively, Mr. Williams suggests a credit for tax paid under other BOE programs could be applied to the estimated use tax liability as calculated in the use tax table.

Staff acknowledges that a person may receive income from a variety of businesses, including those registered with the BOE and reporting tax under the accounts for which they are registered. However, staff understands that taxable purchases made by registered businesses, including sole proprietorships, partnerships, limited liability companies, and corporations, should be reported under the accounts for which those businesses are registered and taxable purchases made by businesses that are not registered with the BOE may either be reported directly to the Board or on the businesses' income tax returns on an actual basis. Staff further understands that the use tax table is an option available for consumers to report tax on their nonbusiness purchases of items each with a sales price of less than \$1,000 (i.e., their personal

purchases). In addition, staff understands that the methodology used to develop the use tax table is based upon personal income data and all of the income included in an individual's AGI is generally available for use by that individual's household to make nonbusiness purchases of tangible personal property from unregistered out-of-state retailers, regardless of its source.

Therefore, staff does not believe that the methodology used to develop the use tax table will lead consumers to report estimated use tax on purchases made by businesses from which they receive income and staff does not believe that Regulation 1685.5 needs to be amended to prescribe adjustments to consumers' AGI. But, staff does recommend that the amendments adding subdivision (a)(2)(B) to Regulation 1685.5 further clarify that "The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE," as shown in Exhibit 2, to ensure that business purchases are not reported twice.

VI. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, as illustrated in Exhibit 2.

A. Description of Alternative 1

Clarifying Language (subdivision (a)(2) and (a)(3))

Regulation 1685.5 currently prescribes the methodology by which the Board shall annually calculate a person's estimated use tax liability according to their AGI and the format of the use tax table for calendar year 2011. The regulation does not provide guidance with respect to who may use the table and does not specify the type of purchases that may be reported using the use tax table. Staff recommends adding subdivision (a)(2) to clarify that the table is for nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000.

Furthermore, staff recommends adding subdivision (a)(3) to provide assurance that if eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the Board may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

AGI Ranges (subdivision (b)(1)(A)-(O))

During the interested parties process, representatives from CalTax expressed concern that the current AGI range intervals in the Board's use tax tables are too broad and that the tables should include many more AGI ranges. As explained above, staff understands that three of the nine states with use tax tables have use tax tables that employ more AGI ranges than California. Staff understands that the number of AGI ranges and the intervals of such ranges can affect a particular taxpayer's estimated use tax liability. Staff understands that establishing additional AGI ranges with narrower intervals will increase the probability that a taxpayer's estimated use tax liability determined using the Board's use tax tables will be closer to that taxpayer's estimated use tax liability determined by multiplying the taxpayer's actual AGI by the Board's use tax liability factor. In addition, increased AGI ranges will result in tables that have estimated use tax liabilities that increase/decrease by lesser amounts between AGI ranges.

Therefore, staff recommends amending Regulation 1685.5 so as to nearly double (increase from 8 to 15) the number of AGI ranges in the Board's use tax tables. Specifically, staff recommends using AGI range intervals of \$10,000 (rather than \$20,000) up to an AGI of \$99,999. In addition, staff recommends

establishing additional AGI ranges for AGI ranges between \$100,000 and \$199,000 with intervals of \$25,000 (rather than \$50,000). The highest AGI range will continue to be AGI of more than \$199,999 and taxpayers in this range will continue to be required to calculate their estimated use tax liabilities by multiplying their actual AGIs by the use tax liability factor. Although taxpayers in the highest range are required to perform an additional step to calculate their use tax liabilities, staff estimates the number of taxpayers within the highest range is approximately 4 percent, and staff believes this format provides a simple table for the majority of taxpayers. (See new table format recommended to be added to Regulation 1685.5, subd. (d)(2) in Exhibit 2.)

Use Tax Liability Factor Calculation Date (subdivision (b)(2))

Regulation 1685.5, subdivision (b)(2) currently requires the Board to calculate the use tax liability factor for calendar year 2012 using the most current data available on May 1, 2012, and to calculate the use tax liability factors for subsequent years using the most current data available on May 1 of those subsequent years. However, the United States Census Bureau typically publishes its electronic shopping and mail order house spending data during May of each year. Therefore, staff recommends amending subdivision (b)(2) to change the use tax liability factor calculation date from May 1 to June 1 of each year so that Board will use the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years.

U.S. Spending at Electronic Shopping and Mail Order Houses (subdivision (b)(5))

Adjustment for Purchases from Retailers not within the Electronic Shopping Category of Business

As explained above, one component of the calculation of the estimated use tax is the total amount of U.S. Spending at Electronic Shopping and Mail Order Houses, obtained from the U.S. Census Bureau. Staff determined that the U.S. Census Bureau's calculation of U.S. Spending at Electronic Shopping and Mail Order Houses does not include all purchases of tangible personal property from unregistered out-of-state retailers for use in California, and estimated that this category of U.S. Census Bureau data failed to account for approximately \$10 billion of total taxable and nontaxable purchases from electronics and appliance stores, building materials and garden equipment and supplies stores, food and beverage stores, health and personal care stores, clothing and clothing accessories stores, sporting goods, hobby, book, and music stores, general merchandise stores, and other miscellaneous stores (Source: U.S. Census Bureau, 2009 Annual Retail Trade Survey). (See Exhibit 5.) This would include items purchased from websites operated by retailers who do not fall within the electronic shopping category of business. Therefore, staff recommends that the Board amend Regulation 1685.5 to require that \$10 billion be added to the U.S. Spending at Electronic Shopping and Mail Order Houses data, obtained from the U.S. Census Bureau.

Adjustment to Estimate Taxable Purchases

During the interested parties process, questions were raised as to whether the U.S. Spending at Electronic Shopping and Mail Order Houses data included nontaxable purchases. Staff examined the data obtained from the U.S. Census Bureau and *Retail Trade: Subject Series: Product Lines: Product Lines Statistics by Kind of Business for the United States: 2007* (See Exhibit 6) and determined that the following categories of items included in the U.S. Census Bureau's total U.S. Spending at Electronic Shopping and Mail Order Houses data, which were separately itemized in the additional 2007 statistics, were either fully or substantially nontaxable:

1. Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;
2. Prescriptions;
3. Video Content Downloads;
4. Audio Content Downloads;
5. Prepackaged computer software, including software downloads; and
6. All nonmerchandise receipts.

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Therefore, staff recommends that the adjusted U.S. Spending at Electronic Shopping and Mail Order Houses (as adjusted above) be reduced so as to eliminate all six of the fully or substantially nontaxable categories of sales data.

Use Tax Table Format (subdivision (d)(2))

Staff recommends adding subdivision (d)(2) as it prescribes the format of the use tax table to be used for 2012 and subsequent years utilizing the methodology set forth in the proposed amendments to the regulation.

B. Pros of Alternative 1

- Clarifies that the use tax table is to be used for nonbusiness purchases of individual items each with a sales price of less than \$1,000 and provides assurance to consumers that if they use the table according to the FTB income tax return instructions, then they eliminate exposure to potential assessments of tax due with respect to such purchases.
- Clarifies that the use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE, to help ensure that business purchases are not reported twice.
- Establishes additional AGI ranges with narrower intervals that will improve the precision of the Board's estimated amount of use tax due according to a person's AGI range.
- Adjusts the U.S. Spending at Electronic Shopping and Mail Order Houses data to account for items purchased from websites operated by retailers who do not fall within the electronic and mail order shopping category of business and for purchases of nontaxable items in order to more accurately reflect the percentage of consumers' income spent on taxable purchases during the calendar year.
- Ensures that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years."

C. Cons of Alternative 1

None.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require adoption of amendments to Regulation 1685.5.

E. Operational Impact of Alternative 1

None.

F. Administrative Impact of Alternative 1**1. Cost Impact**

The workload associated with publishing the regulation is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

2. Revenue Impact

The estimated revenue under Alternative 1 is \$1,000,000 less than the estimated revenue under the current regulation. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

No anticipated impact.

H. Critical Time Frames of Alternative 1

Implementation will begin 30 days following approval of the regulation by the State Office of Administrative Law.

VII. Other Alternatives

A. Description of Alternative 2

Do not revise Regulation 1685.5.

B. Pros of Alternative 2

The Board would avoid the workload involved with processing and publicizing the revised regulation.

C. Cons of Alternative 2

The methodology could overstate a person's estimated use tax liability since it does not take into account the fact that a portion of a person's online purchases may include items that are not subject to tax. Furthermore, the difference in the estimated use tax liabilities between AGI ranges will be such that a nominal increase or decrease in a person's AGI may result in a significantly higher or lower estimated use tax liability.

D. Statutory or Regulatory Change for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

None.

H. Critical Time Frames of Alternative 2

None.

Preparer/Reviewer Information

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: November 30, 2011

AGENDA — December 14, 2011 Business Taxes Committee Meeting
Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table

**Action 1 – Staff
Recommendation**

(a) IN GENERAL.

(1) ESTIMATED USE TAX AND USE TAX TABLE. 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.

(2) WHO IS ELIGIBLE TO USE BOE USE TAX TABLES.

(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns 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 (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.

(3) SAFE HARBOR. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

AGENDA — December 14, 2011 Business Taxes Committee Meeting
Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table

**Action 1 – Staff
Recommendation**

(b) DEFINITIONS AND DATA SOURCES.

(1) AGI RANGES. The use tax table shall be separated into fifteen (15)~~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.
- (A) AGI less than \$10,000;
 - (B) AGI of \$10,000 to \$19,999;
 - (C) AGI of \$20,000 to \$29,999;
 - (D) AGI of \$30,000 to \$39,999;
 - (E) AGI of \$40,000 to \$49,999;
 - (F) AGI of \$50,000 to \$59,999;
 - (G) AGI of \$60,000 to \$69,999;
 - (H) AGI of \$70,000 to \$79,999;
 - (I) AGI of \$80,000 to \$89,999;
 - (J) AGI of \$90,000 to \$99,999;
 - (K) AGI of \$100,000 to \$124,999;
 - (L) AGI of \$125,000 to \$149,999;
 - (M) AGI of \$150,000 to \$174,999;
 - (N) AGI of \$175,000 to \$199,999;
 - (O) AGI more than \$199,999

AGENDA — December 14, 2011 Business Taxes Committee Meeting
Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table

Action 1 – Staff Recommendation

(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 June~~May~~ 1, 2012, and each June~~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 ~~taxable~~ ~~electronic and mail order~~ purchases for the ~~preceding~~ ~~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) TOTAL SPENDING ON TAXABLE PURCHASES. Total spending on taxable purchases shall be determined by:

(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:

- (i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;
- (ii) Prescriptions;
- (iii) Video Content Downloads;
- (iv) Audio Content Downloads;
- (v) Prepackaged computer software, including software downloads; and
- (vi) All nonmerchandise receipts.

(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and

AGENDA — December 14, 2011 Business Taxes Committee Meeting
Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

~~(6)(5) PERCENTAGE OF INCOME SPENT ON TAXABLEELECTRONIC AND MAIL-ORDER PURCHASES.~~ The percentage of income spent on ~~taxableelectronic and mail-order~~ purchases during a calendar year shall be calculated by dividing the total spending on ~~taxable purchasesat 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.

~~(7)(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.

AGENDA — December 14, 2011 Business Taxes Committee Meeting
Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table

(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 ~~\$5,000~~\$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 ~~(N)~~(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)(OH) shall be determined by multiplying each range members 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:

Adjusted Gross Income (AGI) Range	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
More than \$199,999 -Multiply AGI by 0.070% (.0007)	

AGENDA — December 14, 2011 Business Taxes Committee Meeting
Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table

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

<u>Adjusted Gross Income</u> <u>(AGI) Range</u>	<u>Use Tax Liability</u>
Less Than \$10,000	\$
<u>\$10,000</u> to <u>\$19,999</u>	\$
<u>\$20,000</u> to <u>\$29,999</u>	\$
<u>\$30,000</u> to <u>\$39,999</u>	\$
<u>\$40,000</u> to <u>\$49,999</u>	\$
<u>\$50,000</u> to <u>\$59,999</u>	\$
<u>\$60,000</u> to <u>\$69,999</u>	\$
<u>\$70,000</u> to <u>\$79,999</u>	\$
<u>\$80,000</u> to <u>\$89,999</u>	\$
<u>\$90,000</u> to <u>\$99,999</u>	\$
<u>\$100,000</u> to <u>\$124,999</u>	\$
<u>\$125,000</u> to <u>\$149,000</u>	\$
<u>\$150,000</u> to <u>\$174,999</u>	\$
<u>\$175,000</u> to <u>\$199,999</u>	\$
More than \$199,999 -Multiply AGI by % (.000)	



BOARD OF EQUALIZATION

REVENUE ESTIMATE

FORMAL ISSUE PAPER 11-006

Regulation 1685.5, Calculation of Estimated Use Tax – Use Tax Table

Issue

Whether it is necessary to amend Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, to update the manner in which the Board shall 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) in the form of a use tax table for calendar year 2012 and subsequent years.

Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize publication of proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*. The proposed amendments:

- Clarify the persons who are eligible to use the use tax table to report their use tax obligations and for what type of purchases – new subdivision (a)(2);
- Explain the “safe harbor” provision (described below) – new subdivision (a)(3);
- Increase the number of adjusted gross income ranges to a total of fifteen (15) – amended subdivision (b)(1);
- Modify the intervals of the established AGI ranges – amended subdivision (b)(1);
- Change the use tax liability factor calculation date from May 1 to June 1 each year – amended subdivision (b)(2);
- Require an adjustment to the U.S. Spending at Electronic Shopping and Mail Order Houses data, published by the U.S. Census Bureau, to estimate taxable purchases of tangible personal property – new subdivision (b)(5); and
- Provide the format of the use tax table for calendar year 2012 and subsequent years – amended subdivision (d)(2).

Other Alternative Considered

Do not amend Regulation 1685.5.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

SB 86 (Statutes of 2011, Chapter 14) requires the Board of Equalization to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and by July 30 of each calendar year make available to the Franchise Tax Board (FTB) such amounts in the form of a use tax table as part of the accompanying instructions of the acceptable tax return. Regulation 1685.5 specifies what this "lookup table" is to consist of. The table currently has eight AGI brackets. For the bottom seven brackets use tax liability estimates are calculated by multiplying the midpoint of each bracket by 0.070 percent. In the top bracket the individual taxpayer's AGI is multiplied by 0.070 percent. The 0.070 percent figure is calculated using U.S. personal income, U.S. remote sales purchases, and the average statewide sales and use tax rate. The 2011 table reflects a blend of the current sales and use tax rate and a temporary sales and use tax rate increase of one percent that expired July 31, 2011.

Alternative 1 proposes the following changes related to revenues for Regulation 1685.5:

- Increase the number of AGI ranges from eight to fifteen. This involves modifying the intervals of the established AGI ranges as follows: increments of \$10,000 up to \$99,999 in AGI and increments of \$25,000 for AGI ranging from \$100,000 to \$199,999.
- Adjust the U.S. Spending at Electronic Shopping and Mail Order Houses data to eliminate the following six fully or substantially nontaxable categories of sales:
 1. Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;
 2. Prescriptions;
 3. Video Content Downloads;
 4. Audio Content Downloads;
 5. Prepackaged computer software, including software downloads (we assume that the vast majority of software purchased by consumers in this Census Bureau product category is downloaded, and therefore exempt from taxation); and
 6. All nonmerchandise receipts.
- Add \$10 billion of total taxable and nontaxable purchases from U.S. electronics and appliance stores, building materials and garden equipment and supplies stores, food and beverage stores, health and personal care stores, clothing and clothing accessories stores, sporting goods, hobby, book, and music stores, general merchandise stores, and other miscellaneous stores (Source: U.S. Census Bureau, *2009 Annual Retail Trade Survey*). This would include items purchased from websites operated by retailers who do not fall within the electronic shopping category of business.

We did two sets of calculations to estimate revenues associated with Alternative 1. First, we calculated a lookup table percentage (or use tax liability factor) of 0.068 percent under current law using the data available for the most recent twelve month period (the last three months of 2010 and the first nine months of 2011), and an average statewide sales and use tax rate of 8.11

percent. We then multiplied this percentage by the most recent twelve months of data for California personal income (the last two quarters of 2010 and the first two quarters of 2011) and an assumed participation rate of 1.8 percent of all taxpayers, which resulted in revenues of approximately \$20 million. This is the total revenue estimated for SB 86 under current law, and it includes about \$10 million in revenues received under the law prior to the passage of SB 86.

The second set of calculations was to use the same set of the most current data, but this time include the adjustments proposed in Alternative 1. Under Alternative 1, we calculated a lookup table percentage (or use tax liability factor) of 0.049 percent. We assumed participation would improve from 1.8 percent to 2.3 percent under Alternative 1. There are at least three reasons we believe participation would increase. First, the number of brackets increased from eight to fifteen, making the estimates more precise for greater numbers of taxpayers. One interested party expressed the opinion that participation would improve if the number of brackets were increased. Second, use tax liabilities are lower in each bracket because of adjusting for exempt purchases. Lower liability estimates should result in increased participation. Third, participation may also increase from what we had estimated in March of 2011 because of the greater publicity surrounding AB 155 (which defines retailers engaged in business in this state), related state legislation, and proposed federal legislation on this subject.

The difference between the two revenue estimates (under current law and under Alternative 1) is a revenue loss of about \$1 million.

Alternative 2 - Other Alternative – do not amend Regulation 1685.5

There is nothing in the alternative 2 that would impact sales and use tax revenue.

Revenue Summary

Alternative 1 - Staff Recommendation

We estimate revenues to be about \$1 million less under the changes proposed in Alternative 1.

Alternative 2 - Do not amend Regulation 1685.5.

There is no revenue impact if Regulation 1685.5 is not amended.

Qualifying Remarks

How many personal income tax return filers will use the lookup table for their 2012 use tax liabilities (which determines the assumed participation rate used in the revenue estimate) is highly uncertain. We do not yet have data for numbers of filers and associated revenues using the 2011 lookup table, so it is difficult to make accurate revenues estimates for making proposed changes to the table.

Preparation

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

Current as of November 30, 2011.

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

Reference: Section 6452.1, Revenue and Taxation Code.

(a) IN GENERAL.

(1) ESTIMATED USE TAX AND USE TAX TABLE. 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.

(2) WHO IS ELIGIBLE TO USE BOE USE TAX TABLES.

(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns 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 (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.

(3) SAFE HARBOR. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

(b) DEFINITIONS AND DATA SOURCES.

(1) AGI RANGES. The use tax table shall be separated into ~~fifteen (15)~~^{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.~~

(A) AGI less than \$10,000;

(B) AGI of \$10,000 to \$19,999;

(C) AGI of \$20,000 to \$29,999;

(D) AGI of \$30,000 to \$39,999;

(E) AGI of \$40,000 to \$49,999;

(F) AGI of \$50,000 to \$59,999;

(G) AGI of \$60,000 to \$69,999;

(H) AGI of \$70,000 to \$79,999;

(I) AGI of \$80,000 to \$89,999;

(J) AGI of \$90,000 to \$99,999;

(K) AGI of \$100,000 to \$124,999;

(L) AGI of \$125,000 to \$149,999;

(M) AGI of \$150,000 to \$174,999;

(N) AGI of \$175,000 to \$199,999;

(O) 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 ~~June~~May 1, 2012, and each ~~June~~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 ~~taxable electronic and mail order~~ purchases for the ~~preceding~~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) TOTAL SPENDING ON TAXABLE PURCHASES. Total spending on taxable purchases shall be determined by:

(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following

categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:

- (i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;
- (ii) Prescriptions;
- (iii) Video Content Downloads;
- (iv) Audio Content Downloads;
- (v) Prepackaged computer software, including software downloads; and
- (vi) All nonmerchandise receipts.

(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

~~(6)(5) PERCENTAGE OF INCOME SPENT ON TAXABLE ELECTRONIC AND MAIL ORDER PURCHASES.~~ The percentage of income spent on ~~taxable electronic and mail order purchases~~ during a calendar year shall be calculated by dividing the total spending on taxable purchases 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.

~~(7)(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 ~~\$5,000~~~~\$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 ~~(N)~~~~(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)~~(Q)~~~~(H)~~ shall be determined by multiplying each range members 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:

Adjusted Gross Income (AGI) Range	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
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 follows; ~~the use tax table for calendar year 2011.~~

<u>Adjusted Gross Income</u>		<u>Use Tax Liability</u>
<u>(AGI) Range</u>		
<u>Less Than \$10,000</u>		<u>\$</u>
<u>\$10,000</u>	<u>to \$19,999</u>	<u>\$</u>
<u>\$20,000</u>	<u>to \$29,999</u>	<u>\$</u>
<u>\$30,000</u>	<u>to \$39,999</u>	<u>\$</u>
<u>\$40,000</u>	<u>to \$49,999</u>	<u>\$</u>
<u>\$50,000</u>	<u>to \$59,999</u>	<u>\$</u>
<u>\$60,000</u>	<u>to \$69,999</u>	<u>\$</u>
<u>\$70,000</u>	<u>to \$79,999</u>	<u>\$</u>
<u>\$80,000</u>	<u>to \$89,999</u>	<u>\$</u>
<u>\$90,000</u>	<u>to \$99,999</u>	<u>\$</u>
<u>\$100,000</u>	<u>to \$124,999</u>	<u>\$</u>
<u>\$125,000</u>	<u>to \$149,000</u>	<u>\$</u>
<u>\$150,000</u>	<u>to \$174,999</u>	<u>\$</u>
<u>\$175,000</u>	<u>to \$199,999</u>	<u>\$</u>
<u>More than \$199,999 -Multiply AGI by</u>		<u>% (.000)</u>

From: Williams, Lee
Sent: Thursday, October 27, 2011 3:17 PM
To: Wilke, Robert
Subject: Reg. 1685.5 Comments

Robert
As per the 2nd Discussion Paper, my comments follow.

Comment 1:

For the benefit of taxpayers who do not regularly deal with use tax matters, there should be a general explanation in the reg. (and the instructions to the FTB) explaining the difference between a line item and a transaction total and that the exclusion from the table, as per (a)(2), is based on the line item amount, not the transaction total.

Examples should also be provided, either by reference or as part of the general explanation, in the reg. (and the instructions to the FTB). As has been previously suggested for other regulations, the provided examples should illustrate both included and excluded items. Some possible examples are presented below:

For all examples:

<u>Line</u> <u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Extension</u>
Transaction A:				
	Automobile Tires	4	\$300.00	\$1,200.00
	Automobile Wheels	4	\$400.00	\$1,600.00
	Total			<u>\$2,800.00</u>

Commentary:

Entire amount includable in table estimate as no single item has a cost of \$1,000 or more.

Transaction B:

	Desktop Computer	1	\$900.00	\$ 900.00
	Monitor	1	\$500.00	\$ 500.00
	Surge Protector	1	\$ 30.00	\$ 30.00
	Installed Software	1	\$300.00	<u>\$ 300.00</u>
	Total			<u>\$1,730.00</u>

Commentary:

Entire amount includable in table estimate as no single item has a cost of \$1,000 or more.

Transaction C:

	High Definition TV	1	\$1,100.00	\$1,100.00
	Surge Protector	1	\$ 30.00	\$ 30.00
	Cable Package	1	\$ 50.00	<u>\$ 50.00</u>
	Total			<u>\$1,180.00</u>

Commentary:

\$80 includable in table estimate.

\$1,100 excluded from the table estimate.

Comment 2:

An adjustment should be made to the calculation as per Handout 1 (aka Page 18) and the related section of the regulation to attempt to estimate the portion of transactions that involve individual items of \$1000 or more.

I understand the current rationale for not making any adjustment to be that retailers in the top 500 of which have average transaction sizes of \$1,000 or more were less than .5% of the total dollars. In my opinion, this logic ignores the impact of a small percentage of transactions for the other 99.5%+ of transactions. Even a 1.0% rate for the other sellers would result in a .995% overall percentage of transactions, which would be almost twice the overall portion of large transactions from the identified retailers, .5%, even assuming all the transactions for the identified retailers involved items selling for \$1000 or more. Using the various assumptions described below, the portion of the overall rate for the 99.5% of sellers was about six times the portion of the rate for the large transaction size retailers identified.

I have attempted an estimate of the portion of the retail sales as described at I.b)1) and I.b)2) [\$289 billion and \$10 billion] related to the sales of individual items selling for \$1,000 or more in two parts. I would be the first to suggest the estimate could be improved with more empirical data. It is also possible there are other, better estimating methods. However, I am unaware of any other estimating method being presented.

First, I assumed two large national retailers would be roughly comparable to the 99.5% of retailers with respect to the portion of sales of items selling for \$1000 or more. These retailers were selected primarily because empirical transaction data was available on a timely basis. In my opinion, there is ample reason to believe transaction results for these retailers are comparable to internet and mail order sellers since both retailers operate web sites in addition to the physical stores and effectively compete with a large range of the entire universe of sellers. The summary audit transaction test information info. is described below:

<u>Description</u>	<u>Total of \$ Amounts</u>	<u>Total of Line Items</u>	<u>% of \$ with Line Items > than \$1000</u>
Retailer A	\$ 6,532,670	992,114	5.587655%
Retailer B	\$118,357,504	29,984,228	.833120%

The average sales as reported in the public annual reports of the retailers for the five fiscal years 2011 to 2007 were used to provide weightings for the above percentage estimates. The five year financial statement data indicates the weightings should be about 15.6% and 84.4% for Retailers A and B, respectively. These weightings were applied to the 99.5% of retailers previously described to yield revised overall weightings of 15.522% and 83.978% for Retailers A and B, respectively.

Second, for the .5% of sales related to retailers with average transaction sizes of \$1000 or more, I assumed half of the transactions would relate to individual items of \$1000 or more. This was merely a convenient estimate and could hopefully be refined.

The combined effect is summarized below:

<u>Description</u>	<u>Weighting</u>	<u>% for \$1000+</u>	<u>Product</u>
Retailer A	15.522%	5.587655%	.867316%
Retailer B	83.978%	.833120%	.699638%
Subtotal	99.500%		1.566953%
Large \$ retailers	.500%	50.000000%	.250000%
Total	<u>100.000%</u>		<u>1.816953%</u>

Thus, on a rounded basis, I would recommend the Handout 1 estimate of b) Total Spending on Taxable Purchases be reduced by 1.817% to \$203 Billion. Although this reduction is not sufficient to change the end result of the example as shown in Handout 1, I am of the opinion the estimate should still include some adjustment in the interest of accuracy and eliminating perceived bias in the estimate. I would also note that it would not take a very large change in the percentage estimate for there to be an actual effect.

I would further recommend that before any table is issued for the 2012 tax year, some further work be done on improving the estimate of the portion of transactions involving items selling for \$1000 or more. It would not seem terribly difficult to obtain transaction data for additional retailers to improve the likelihood the estimate is broadly based. After all, a substantial portion of the SUTD's activities are related to auditing transaction data so it would seem obtaining empirical transaction data for a number of retailers would not be beyond our capabilities.

Although I am of the opinion many other retailers will have results more similar to Retailer A than Retailer B, any additional empirical evidence would be welcome.

Comment 3:

An adjustment should be made to the regulation and any related FTB instructions to account for use tax already reported under other programs. As was noted at the interested parties meeting, it is possible for taxpayers to be involved with multiple business and entities. Not making any adjustment will cause over-estimates that will be primarily borne by individuals actively involved in business enterprises, arguably the last group that should be burdened with duplicative tax assessments.

As was briefly discussed, an individual may operate a sole proprietorship (reported on a Schedule C) service business and the business might have receipts in excess of \$100,000 such that the "qualified purchaser" program applies and tax is paid to the BOE as per that program. The individual might also have another sole proprietorship (reported on another Schedule C) that is involved with the sale of TPP and has a permit and reports use tax via regular return filing. The individual might also have another sole proprietorship (reported on a third Schedule C) that does not require a permit and does not fall within the "qualified purchaser" program.

A similar range of possibilities exists for partnerships and trusts, S-corp.'s, LLC's and similar "pass-thru" entities (generally reported on Schedule E based on K-1 information returns from the entities) and for farming enterprises (generally reported on Schedule F.)

Finally, an individual may also be filing a joint return with income from similar sources or perhaps income solely from salaries or other sources to which no other tax reporting program might apply.

Under the current scheme, it would appear that there is no recognition of use tax paid under any other program and thus the use tax estimate is overstated.

As the commentary to date indicates a strong desire for simplicity, my first suggestion is to have the instructions and regulation exclude entities from which tax is already reported from the gross income calculations. As the filers have to segregate information on an entity basis already, this will not be a terribly difficult computational task and would only require some simple addition and subtraction.

Alternatively, a credit to the table estimate for use tax paid under other programs would also serve to minimize any duplication. However, it is not clear this is a simple alternative. The "Qualified purchaser" program as per RTC §6225 is strictly a calendar year program, creating some moderate to severe timing differences for fiscal year filers. Similarly, many fiscal year filers will have moderate timing issues as permit holders generally file on periods ending on calendar quarters, regardless of when their fiscal year ends. Even for calendar year filers this will create additional documents required to accurately prepare an income tax return.

Lee Williams

REGULATION HISTORY

TYPE OF REGULATION: Sales and Use Tax
REGULATION: 1685.5
TITLE: *Calculation of Estimated Use Tax – Use Tax Table*
PREPARATION: Robert Wilke/Lynn Whitaker
LEGAL CONTACT: Bradley Heller/Robert Tucker

The proposed regulatory amendments update the methodology by which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and make such amounts available to the Franchise Tax Board in the form of a use tax table for calendar year 2012 and subsequent years.

HISTORY OF PROPOSED AMENDMENTS:

December 14, 2011: Business Taxes Committee (BTC) Meeting
October 11, 2011: 2nd Interested Parties Meeting
August 29, 2011: 1st Interested Parties Meeting
July 19, 2011: Topic Placed on BTC Calendar

Sponsor: Board Staff

Support: None

Oppose: None

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

DECEMBER 14, 2011

BUSINESS TAXES COMMITTEE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Committee:

Betty T. Yee
Chair

Michelle Steel
Member

Jerome E. Horton
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 Department:

Susanne Buehler
Sales and Use Tax Department

Bradley Heller
Legal Department

---oOo---

450 N STREET
SACRAMENTO, CALIFORNIA
DECEMBER 14, 2011

----oOo----

MS. OLSON: Our next item is the Business Taxes Committee. Ms. Yee is the Chair of that Committee.

Ms. Yee.

MS. YEE: Thank you very much, Ms. Olson.

We'll convene the Business Taxes Committee.

And, uh, the first item, let me have staff introduce the issue, please.

MS. BUEHLER: Good morning. I am Susanne Buehler with the Sales and Use Tax Department. With me today is Bradley Heller from our Legal Department.

We have one issue, or one agenda item for the Committee this morning. Staff requests your approval and authorization to publish our proposed amendments to Regulation 1685.5, Calculation of Estimated Use Tax - Use Tax Table.

The proposed amendments update the methodology by which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and make such amounts available to the Franchise Tax Board in the form of a use tax table for calendar year 2012 and subsequent years.

We would be happy to answer any questions you may have.

MR. HORTON: Move to adopt staff

1 recommendation.

2 MS. YEE: Okay. Motion by Mr. Horton to adopt
3 the staff recommendation.

4 Is there a second?

5 MS. STEEL: I have objection.

6 MS. YEE: Um, I'll second that motion.

7 Ms. Steel.

8 MS. STEEL: Objection.

9 MS. YEE: Okay. Let me thank the staff for
10 convening the parties and, uh, really working through,
11 uh, many of the issues that were raised, particularly
12 from CalTax. And, uh, I think we, uh, feel very
13 confident that we're using, uh, the best information
14 that's available to, uh, develop these tables. Thank
15 you.

16 We have an objection. Please call the roll.

17 MS. OLSON: Ms. Yee.

18 MS. YEE: Aye.

19 MS. OLSON: Mr. Horton.

20 MR. HORTON: Aye.

21 MS. OLSON: Ms. Steel.

22 MS. STEEL: No.

23 MS. YEE: Ms. Mandel?

24 MS. MANDEL: Aye.

25 MS. OLSON: Motion carries.

26 MS. YEE: Okay. That concludes the Business
27 Taxes Committee.

28 ----oOo----

**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*

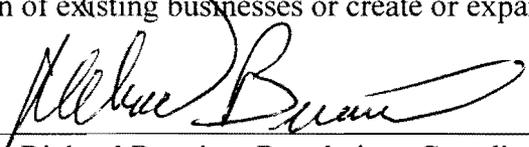
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

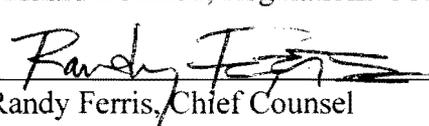
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that 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 3-28-12
Richard Bennion, Regulations Coordinator

Approved by  Date 3/28/12
Randy Ferris, Chief Counsel

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

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 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 Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		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 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: _____

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: \$ _____

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 _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____

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 _____ (DATE) election;

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 _____

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 ¹		DATE	
APPROVAL/CONCURRENCE		12/21/11	
DEPARTMENT OF FINANCE ²	PROGRAM BUDGET MANAGER	DATE	
APPROVAL/CONCURRENCE	 Exempt under SAM section 6660		

- 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.
- 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 Z-2012-0113-01	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE JAN 13 '12 JAN 27 '12 Office of Administrative Law	NOTICE REGULATIONS
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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 – Use Tax Table	TITLE(S) 18	FIRST SECTION AFFECTED 1685.5	2. REQUESTED PUBLICATION DATE January 27, 2012
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Rick Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING

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

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

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 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) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

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

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to 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 amendments to 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 RTC section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14). The proposed amendments update the manner in which the Board shall 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) in the form of a use tax table for calendar year 2012 and subsequent years.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on March 20-22, 2012. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on March 20, 21, or 22, 2012. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to 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 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 AGIs 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.

Regulation 1685.5

The Board adopted Regulation 1685.5 on July 26, 2011, to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their AGIs, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s AGI 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 California Taxpayers Association (CalTax) requested that the Board conduct interested parties meetings to discuss the methodology used to develop the proposed regulation before the Board voted to adopt Regulation 1685.5. The Board’s response to this request, as provided in the final statement of reasons for the adoption of Regulation 1685.5, was that:

“[T]he 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."

Proposed Amendments

Board staff met with interested parties on August 29, 2011, and October 11, 2011, to discuss whether it is necessary to amend Regulation 1685.5 to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. As a result of public comments, including comments from CalTax, Board staff recommended that the Board amend Regulation 1685.5 to:

- Clarify that the Board's use tax tables are optional and may only be used to report estimated use tax for nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, as provided in RTC section 6452.1, subdivision (d)(2)(A)(i);
- Provide assurance to consumers that if they correctly report their estimated use tax liabilities for their eligible nonbusiness purchases in accordance with the Board's use tax tables, then the Board may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the Board's use tax tables and the consumers' actual use tax liabilities, as provided in RTC section 6452.1, subdivision (g);
- Add seven additional AGI ranges to the Board's use tax tables for calendar year 2012 and subsequent years and narrow the intervals between the AGI ranges in the Board's use tax tables so that estimated use tax liabilities increase or decrease by smaller amounts between AGI ranges;
- Move the use tax liability factor calculation date from May 1 to June 1 beginning in calendar year 2012 because the United States Census Bureau typically publishes its electronic shopping and mail order house spending data during May of each year;
- Require the Board to make adjustments to the amount of spending at electronic shopping and mail order houses to arrive at total spending on taxable purchases;

- Require the Board to calculate the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases; and
- Require the Board to use the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases, to calculate the use tax liability factors for calendar-year 2012 and subsequent years.

During its December 14, 2011, Business Taxes Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years, and the Board voted to propose their adoption. The objectives of the proposed amendments are to clarify the purpose and use of the Board's use tax tables, help ensure that use taxes due on business purchases are not reported twice, help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years, improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range, and generally encourage consumers to use the Board use tax tables. The proposed amendments are anticipated to provide the following specific benefits:

- Clarify the purpose and use of the Board's use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;
- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range; and
- Generally encourage consumers to use the Board use tax tables.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1685.5 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1685.5 is the only state regulation prescribing 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 RTC section 6452.1, as amended by section 1 of SB 86.

There are no comparable federal regulations or statutes to Regulation 1685.5.

Note Regarding Assembly Bill No. (AB) 155 and the Use Tax Liability Factor

The proposed amendments to Regulation 1685.5, subdivision (b)(2), will require that the Board multiply the percentage of income spent on taxable purchases during the preceding

year by 0.37, which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers. AB 155 (Stats. 2011, ch. 313) expanded the use tax registration requirements so that they apply to some out-of-state retailers, including Internet retailers, that were previously not required to register with the Board to collect and remit use tax on their sales of tangible personal property to California customers. However, section 6 of AB 155 provides that the new registration requirements will not be operative until either September 15, 2012, or January 1, 2013, and the Board is currently unable to determine whether the new registration requirements will reduce the percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers during 2012 or in subsequent years, and, if so, the extent of such reduction. Therefore, the Board is not proposing to amend Regulation 1685.5 to account for the new registration requirements imposed by AB 155 at this time. However, the Board is continuing to monitor the implementation of AB 155 and considering whether to propose sufficiently related changes to the original text of the proposed amendments to Regulation 1685.5 to account for the enactment of AB 155 or other events that may change the percentage of taxable purchases that California consumers make from unregistered out-of-state retailers during 2012 or subsequent years.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to 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 the proposed amendments to 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 the proposed amendments to Regulation 1685.5 will update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. The proposed amendments

will not impose any new taxes or change any exemptions or exclusions. Furthermore, the proposed amendments expressly provide that taxpayers are not required to use the Board's use tax tables to estimate and report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to 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 the proposed amendments to 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 ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). The Board has determined that the adoption of the proposed amendments to 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to 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 the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at

Bradley.Heller@boe.ca.gov, 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, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on March 20, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulation 1685.5 during the March 20-22, 2012, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to 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 and strikeout version of the text of Regulation 1685.5 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the information on which the proposed amendments are based, including the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the Initial Statement of Reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to 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 amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of

such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 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.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1685.5**

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

(a) In General.

(1) Estimated Use Tax and Use Tax Table. 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.

(2) Who is Eligible to Use BOE Use Tax Tables.

(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns 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 (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.

(3) Safe Harbor. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

(b) Definitions and Data Sources.

(1) AGI Ranges. The use tax table shall be separated into ~~fifteen (15)~~^{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.~~
- (A) AGI less than \$10,000;
- (B) AGI of \$10,000 to \$19,999;
- (C) AGI of \$20,000 to \$29,999;
- (D) AGI of \$30,000 to \$39,999;
- (E) AGI of \$40,000 to \$49,999;
- (F) AGI of \$50,000 to \$59,999;
- (G) AGI of \$60,000 to \$69,999;
- (H) AGI of \$70,000 to \$79,999;
- (I) AGI of \$80,000 to \$89,999;
- (J) AGI of \$90,000 to \$99,999;
- (K) AGI of \$100,000 to \$124,999;
- (L) AGI of \$125,000 to \$149,999;
- (M) AGI of \$150,000 to \$174,999;
- (N) AGI of \$175,000 to \$199,999;
- (O) 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 ~~June~~May 1, 2012, and each ~~June~~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 ~~taxable electronic and mail-order~~ purchases for the ~~preceding~~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) Total Spending on Taxable Purchases. Total spending on taxable purchases shall be determined by:

(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:

(i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;

(ii) Prescriptions;

(iii) Video content downloads;

(iv) Audio content downloads;

(v) Prepackaged computer software, including software downloads; and

(vi) All nonmerchandise receipts.

(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

(56) Percentage of Income Spent on ~~Taxable Electronic and Mail Order~~ Purchases. The percentage of income spent on ~~taxable electronic and mail order~~ purchases during

a calendar year shall be calculated by dividing the total spending on taxable purchases 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.

(67) 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 ~~\$5,000~~\$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 (GN) 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)(HO) 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:

Adjusted Gross Income (AGI) Range	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
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 follows:~~the use tax table for calendar year 2011.~~

Adjusted Gross Income (AGI) Range	Use Tax Liability
Less Than \$10,000	\$
<u>\$10,000</u> to <u>\$19,999</u>	<u>\$</u>
<u>\$20,000</u> to <u>\$29,999</u>	<u>\$</u>
<u>\$30,000</u> to <u>\$39,999</u>	<u>\$</u>
<u>\$40,000</u> to <u>\$49,999</u>	<u>\$</u>
<u>\$50,000</u> to <u>\$59,999</u>	<u>\$</u>
<u>\$60,000</u> to <u>\$69,999</u>	<u>\$</u>
<u>\$70,000</u> to <u>\$79,999</u>	<u>\$</u>
<u>\$80,000</u> to <u>\$89,999</u>	<u>\$</u>
<u>\$90,000</u> to <u>\$99,999</u>	<u>\$</u>
<u>\$100,000</u> to <u>\$124,999</u>	<u>\$</u>
<u>\$125,000</u> to <u>\$149,999</u>	<u>\$</u>
<u>\$150,000</u> to <u>\$174,999</u>	<u>\$</u>
<u>\$175,000</u> to <u>\$199,999</u>	<u>\$</u>
More than \$199,999 -Multiply AGI by % (.000)	

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

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
[StateBoardofEqualization-AnnouncementofRegulatoryChange@BOE.CA.GOV]
Sent: Friday, January 27, 2012 3:51 PM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 1685.5

The State Board of Equalization proposes to amend Regulation 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Tuesday, March 20, 2012.

The proposed amendments update the manner in which the Board shall 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) in the form of a use tax table for calendar year 2012 and subsequent years, as required by Revenue and Taxation Code section 6452.1.

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_2012.htm.

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

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov 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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<http://www.boe.ca.gov/info/privacyinfo.htm>

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above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Dixie Van Allen at the above address, or by accessing the Board's website at http://www.chiro.ca.gov/business_rulemaking.htm.

TITLE 18. BOARD OF EQUALIZATION

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to 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 amendments to 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 RTC section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14). The proposed amendments update the manner in which the Board shall 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) in the form of a use tax table for calendar year 2012 and subsequent years.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on March 20–22, 2012. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on March 20, 21, or 22, 2012. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to 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 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 AGIs 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.

Regulation 1685.5

The Board adopted Regulation 1685.5 on July 26, 2011, to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their AGIs, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s AGI 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 California Taxpayers Association (CalTax) requested that the Board conduct interested parties meetings to discuss the methodology used to develop the proposed regulation before the Board voted to adopt Regulation 1685.5. The Board’s response to this request, as provided in the final statement of reasons for the adoption of Regulation 1685.5, was that:

“[T]he 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.”

Proposed Amendments

Board staff met with interested parties on August 29, 2011, and October 11, 2011, to discuss whether it is necessary to amend Regulation 1685.5 to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s

AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. As a result of public comments, including comments from CalTax, Board staff recommended that the Board amend Regulation 1685.5 to:

- Clarify that the Board’s use tax tables are optional and may only be used to report estimated use tax for nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, as provided in RTC section 6452.1, subdivision (d)(2)(A)(i);
- Provide assurance to consumers that if they correctly report their estimated use tax liabilities for their eligible nonbusiness purchases in accordance with the Board’s use tax tables, then the Board may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the Board’s use tax tables and the consumers’ actual use tax liabilities, as provided in RTC section 6452.1, subdivision (g);
- Add seven additional AGI ranges to the Board’s use tax tables for calendar year 2012 and subsequent years and narrow the intervals between the AGI ranges in the Board’s use tax tables so that estimated use tax liabilities increase or decrease by smaller amounts between AGI ranges;
- Move the use tax liability factor calculation date from May 1 to June 1 beginning in calendar year 2012 because the United States Census Bureau typically publishes its electronic shopping and mail order house spending data during May of each year;
- Require the Board to make adjustments to the amount of spending at electronic shopping and mail order houses to arrive at total spending on taxable purchases;
- Require the Board to calculate the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases; and
- Require the Board to use the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases, to calculate the use tax liability factors for calendar-year 2012 and subsequent years.

During its December 14, 2011, Business Taxes Committee meeting, the Board determined that staff’s recommended amendments are reasonably necessary to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years, and the Board voted to pro-

pose their adoption. The objectives of the proposed amendments are to clarify the purpose and use of the Board's use tax tables, help ensure that use taxes due on business purchases are not reported twice, help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years, improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range, and generally encourage consumers to use the Board use tax tables. The proposed amendments are anticipated to provide the following specific benefits:

- Clarify the purpose and use of the Board's use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;
- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range; and
- Generally encourage consumers to use the Board use tax tables.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1685.5 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1685.5 is the only state regulation prescribing 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 RTC section 6452.1, as amended by section 1 of SB 86.

There are no comparable federal regulations or statutes to Regulation 1685.5.

Note Regarding Assembly Bill No. (AB) 155 and the Use Tax Liability Factor

The proposed amendments to Regulation 1685.5, subdivision (b)(2), will require that the Board multiply the percentage of income spent on taxable purchases during the preceding year by 0.37, which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers. AB 155 (Stats. 2011, ch. 313) expanded the use tax registration requirements so that they apply to some out-of-

state retailers, including Internet retailers, that were previously not required to register with the Board to collect and remit use tax on their sales of tangible personal property to California customers. However, section 6 of AB 155 provides that the new registration requirements will not be operative until either September 15, 2012, or January 1, 2013, and the Board is currently unable to determine whether the new registration requirements will reduce the percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers during 2012 or in subsequent years, and, if so, the extent of such reduction. Therefore, the Board is not proposing to amend Regulation 1685.5 to account for the new registration requirements imposed by AB 155 at this time. However, the Board is continuing to monitor the implementation of AB 155 and considering whether to propose sufficiently related changes to the original text of the proposed amendments to Regulation 1685.5 to account for the enactment of AB 155 or other events that may change the percentage of taxable purchases that California consumers make from unregistered out-of-state retailers during 2012 or subsequent years.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to 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 the proposed amendments to 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 the proposed amendments to Regulation 1685.5 will update the manner in which the Board

shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. The proposed amendments will not impose any new taxes or change any exemptions or exclusions. Furthermore, the proposed amendments expressly provide that taxpayers are not required to use the Board's use tax tables to estimate and report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to 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 the proposed amendments to 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 ECONOMIC IMPACT
ANALYSIS REQUIRED BY GOVERNMENT
CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). The Board has determined that the adoption of the proposed amendments to 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will not affect the health and welfare of California residents, worker safety, or the state's environment.

**NO SIGNIFICANT EFFECT ON
HOUSING COSTS**

Adoption of the proposed amendments to 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 identi-

fied and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, 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, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on March 20, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulation 1685.5 during the March 20-22, 2012 Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to 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 and strikeout version of the text of Regulation 1685.5 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the in-

formation on which the proposed amendments are based, including the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the Initial Statement of Reasons are also available on the Board's Website at www.boe.ca.gov.

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

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

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulation 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.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice
For Publication January 27, 2012
**PROPOSED RESEARCH ON FULLY
PROTECTED SPECIES**
Research on Population Dynamics of Golden Eagles

The Department of Fish and Game (Department) received a proposal on November 4, 2011 from Jeff

Smith, H.T. Harvey and Associates, requesting authorization to take the golden eagle (*Aquila chrysaetos*) (eagle), Fully Protected bird, for research purposes consistent with the protection and recovery of this species. The purpose of the research is to study population dynamics through inventories, monitoring, and radio-tracking, with detailed investigations on home range and flight dynamics statewide.

The applicant is in the process of obtaining the required Scientific Collecting Permit (SCP) to take protected species of wildlife. Permit conditions require that the holder of an SCP obtain special authorization from the Department for research on Fully Protected species. The proposed activities include surveys with the use of helicopters; nest monitoring; capturing, banding, auxiliary marking (including telemetry); and taking tissue samples such as blood and feathers. The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize the applicant to carry out the proposed activities.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected birds after 30 days notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after February 27, 2012, for an initial and renewable term of two years. Contact: Wildlife Branch, 1812 9th Street, Sacramento, CA 95811, Attn.: Dale Steele.

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

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

File# 2011-1202-01
BOARD OF EQUALIZATION
Federal Areas

The Board of Equalization adopted a new subdivision (d)(4)(G) in section 1616 of title 18 of the California Code of Regulations further prescribing the circumstances under which a sale of tangible personal property to, and the storage, use, or other consumption of tangi-



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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KRISTINE CAZADD
Interim Executive Director

January 27, 2012

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 amendments to 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 RTC section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14). The proposed amendments update the manner in which the Board shall 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) in the form of a use tax table for calendar year 2012 and subsequent years.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on March 20-22, 2012. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on March 20, 21, or 22, 2012. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to 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 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 AGIs 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.

Regulation 1685.5

The Board adopted Regulation 1685.5 on July 26, 2011, to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their AGIs, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s AGI 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 California

Taxpayers Association (CalTax) requested that the Board conduct interested parties meetings to discuss the methodology used to develop the proposed regulation before the Board voted to adopt Regulation 1685.5. The Board's response to this request, as provided in the final statement of reasons for the adoption of Regulation 1685.5, was that:

“[T]he 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.”

Proposed Amendments

Board staff met with interested parties on August 29, 2011, and October 11, 2011, to discuss whether it is necessary to amend Regulation 1685.5 to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. As a result of public comments, including comments from CalTax, Board staff recommended that the Board amend Regulation 1685.5 to:

- Clarify that the Board's use tax tables are optional and may only be used to report estimated use tax for nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, as provided in RTC section 6452.1, subdivision (d)(2)(A)(i);
- Provide assurance to consumers that if they correctly report their estimated use tax liabilities for their eligible nonbusiness purchases in accordance with the Board's use tax tables, then the Board may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the Board's use tax tables and the consumers' actual use tax liabilities, as provided in RTC section 6452.1, subdivision (g);
- Add seven additional AGI ranges to the Board's use tax tables for calendar year 2012 and subsequent years and narrow the intervals between the AGI ranges in the Board's use tax

tables so that estimated use tax liabilities increase or decrease by smaller amounts between AGI ranges;

- Move the use tax liability factor calculation date from May 1 to June 1 beginning in calendar year 2012 because the United States Census Bureau typically publishes its electronic shopping and mail order house spending data during May of each year;
- Require the Board to make adjustments to the amount of spending at electronic shopping and mail order houses to arrive at total spending on taxable purchases;
- Require the Board to calculate the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases; and
- Require the Board to use the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases, to calculate the use tax liability factors for calendar-year 2012 and subsequent years.

During its December 14, 2011, Business Taxes Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years, and the Board voted to propose their adoption. The objectives of the proposed amendments are to clarify the purpose and use of the Board's use tax tables, help ensure that use taxes due on business purchases are not reported twice, help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years, improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range, and generally encourage consumers to use the Board use tax tables. The proposed amendments are anticipated to provide the following specific benefits:

- Clarify the purpose and use of the Board's use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;
- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range; and
- Generally encourage consumers to use the Board use tax tables.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1685.5 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1685.5 is the only state regulation prescribing 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 RTC section 6452.1, as amended by section 1 of SB 86.

There are no comparable federal regulations or statutes to Regulation 1685.5.

Note Regarding Assembly Bill No. (AB) 155 and the Use Tax Liability Factor

The proposed amendments to Regulation 1685.5, subdivision (b)(2), will require that the Board multiply the percentage of income spent on taxable purchases during the preceding year by 0.37, which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers. AB 155 (Stats. 2011, ch. 313) expanded the use tax registration requirements so that they apply to some out-of-state retailers, including Internet retailers, that were previously not required to register with the Board to collect and remit use tax on their sales of tangible personal property to California customers. However, section 6 of AB 155 provides that the new registration requirements will not be operative until either September 15, 2012, or January 1, 2013, and the Board is currently unable to determine whether the new registration requirements will reduce the percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers during 2012 or in subsequent years, and, if so, the extent of such reduction. Therefore, the Board is not proposing to amend Regulation 1685.5 to account for the new registration requirements imposed by AB 155 at this time. However, the Board is continuing to monitor the implementation of AB 155 and considering whether to propose sufficiently related changes to the original text of the proposed amendments to Regulation 1685.5 to account for the enactment of AB 155 or other events that may change the percentage of taxable purchases that California consumers make from unregistered out-of-state retailers during 2012 or subsequent years.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to 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 the proposed amendments to 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 the proposed amendments to Regulation 1685.5 will update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. The proposed amendments will not impose any new taxes or change any exemptions or exclusions. Furthermore, the proposed amendments expressly provide that taxpayers are not required to use the Board's use tax tables to estimate and report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to 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 the proposed amendments to 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 ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). The Board has determined that the adoption of the proposed amendments to 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to 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 the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private

persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, 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, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on March 20, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulation 1685.5 during the March 20-22, 2012, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to 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 and strikeout version of the text of Regulation 1685.5 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the information on which the proposed amendments are based, including the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the Initial Statement of Reasons are also available on the Board's Website at www.boe.ca.gov.

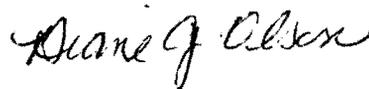
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

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

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 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.

Sincerely,



Diane G. Olson, Chief
Board Proceedings Division

DGO:reb

Initial Statement of Reasons

Adoption of Proposed Amendments to 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 incomes (AGIs) 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.

Regulation 1685.5

The Board adopted California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*, on July 26, 2011, to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based

upon their AGIs, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI 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 California Taxpayers Association (CalTax) requested that the Board conduct interested parties meetings to discuss the methodology used to develop the regulation before the Board voted to adopt Regulation 1685.5. The Board's response to this request, as provided in the final statement of reasons for the adoption of Regulation 1685.5, was that:

“[T]he 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.”

Methodology in the Current Regulation

Regulation 1685.5 currently prescribes a methodology for estimating consumers' use tax liabilities based upon their AGI ranges using a “use tax liability factor” determined by:

1. Multiplying the percentage of total personal income spent on electronic and mail order house purchases for the preceding calendar year, as determined from data provided by the United States Bureau of Economic Analysis and the United States Census Bureau, by 37 percent (0.37), which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect California use tax from their customers; and
2. Multiplying the product by the weighted average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

The format of the use tax table currently prescribed by Regulation 1685.5 allows the majority of consumers to find their AGIs within an established AGI range and read across to the right column to find their estimated use tax liabilities. However, consumers with AGIs over \$199,999 are required to multiply their actual AGIs by the use tax liability factor specified for their AGI range to determine their estimated use tax liabilities. Therefore, the current format of the use tax table prescribed by Regulation 1685.5 eliminates the need for consumers preparing California personal income tax returns reporting AGIs that are \$199,999 or less, regardless of filing status (i.e., single, married, filing jointly, etc.), to perform any mathematical calculations to estimate, report, and pay their eligible use tax liabilities, and greatly simplifies the calculations that consumers with AGIs over \$199,999 are required to make to calculate, report, and pay their eligible use tax liabilities. Furthermore, the current format of the use tax table prescribed by Regulation 1685.5 completely eliminates the need for all eligible consumers to refer to any external sources for additional information, such as the use tax rate, in order to estimate, report, and pay their eligible use tax liabilities.

In addition, data provided by the FTB indicates that 96 percent of California personal income tax returns filed for taxable year 2008, the most recent year for which data is available, reported AGIs of \$200,000 or less. Therefore, the Board believes that the current format of the Board's use tax tables eliminates the need for approximately 96 percent of California consumers who purchased tangible personal property for use in California from unregistered out-of-state retailers to perform additional calculations to estimate their own use tax liabilities.

Interested Parties Comments

Board staff met with interested parties on August 29, 2011, and October 11, 2011, to discuss whether it is necessary to amend Regulation 1685.5 to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. During the interested parties process, staff received comments indicating that the Board should:

- Clarify the persons who are eligible to use the Board's use tax tables to report their use tax obligations and for what type of purchases;
- Base the "use tax liability factor" for 2012 and subsequent years on the percentage of income spent on "taxable purchases" during the preceding year, rather than the percentage of income spent on "electronic and mail order purchases" for the preceding year; and
- Add more AGI ranges to its use tax tables and narrow the intervals between the AGI ranges so that estimated use tax liabilities increase or decrease by smaller amounts between AGI ranges.

Proposed Amendments

At the conclusion of the interested parties process, Board staff recommended that the Board amend Regulation 1685.5 to:

- Clarify that the Board's use tax tables are optional and may only be used to report estimated use tax for nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, as provided in RTC section 6452.1, subdivision (d)(2)(A)(i);
- Provide assurance to consumers that if they correctly report their estimated use tax liabilities for their eligible nonbusiness purchases in accordance with the Board's use tax tables, then the Board may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the Board's use tax tables and the consumers' actual use tax liabilities, as provided in RTC section 6452.1, subdivision (g);
- Add seven additional AGI ranges to the Board's use tax tables for calendar year 2012 and subsequent years and narrow the intervals between the AGI ranges in the Board's use tax tables so that estimated use tax liabilities increase or decrease by smaller amounts between AGI ranges;
- Move the use tax liability factor calculation date from May 1 to June 1 beginning in calendar year 2012 because the United States Census Bureau typically publishes its electronic shopping and mail order house spending data during May of each year;
- Require the Board to make adjustments to the amount of spending at electronic shopping and mail order houses to arrive at total spending on taxable purchases;
- Require the Board to calculate the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases; and
- Require the Board to use the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases, to calculate the use tax liability factors for calendar-year 2012 and subsequent years.

Business Taxes Committee Meeting

During its December 14, 2011, Business Taxes Committee meeting, the Board proposed the adoption of staff's recommended amendments because the Board determined that the amendments are reasonably necessary for the specific purposes of:

- Clarifying the purpose and use of the Board's use tax tables;
- Helping ensure that use taxes due on business purchases are not reported twice;
- Helping ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years; and
- Improving the overall precision of the Board's estimated amount of use tax due according to a person's AGI range in order to further encourage consumers to use the Board use tax tables.

The proposed amendments are anticipated to provide the following benefits:

- Clarify the purpose and use of the Board's use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;
- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range; and
- Generally encourage consumers to use the Board use tax tables.

The proposed amendments to Regulation 1685.5 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1685.5.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 11-006, the exhibits to the formal issue paper, and comments made during the Board's discussion of the formal issue paper during its December 14, 2011, Business Taxes Committee meeting in deciding to propose the amendments to Regulation 1685.5 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1685.5 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the amendments are necessary to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years in order to respond to comments received from interested parties regarding the current provisions of Regulation 1685.5 and generally improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The adoption of the proposed amendments to Regulation 1685.5 will update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years in order to respond to interested parties comments and generally improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range. The proposed amendments will not impose any new taxes or change any exemptions or exclusions. And, the proposed amendments expressly provide that taxpayers are not required to use

the Board's use tax tables to estimate and report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulation 1685.5 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE
SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1).

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1685.5**

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

(a) In General.

(1) Estimated Use Tax and Use Tax Table. 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.

(2) Who is Eligible to Use BOE Use Tax Tables.

(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns 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 (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.

(3) Safe Harbor. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

(b) Definitions and Data Sources.

(1) AGI Ranges. The use tax table shall be separated into ~~fifteen (15)~~^{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.~~
- (A) AGI less than \$10,000;
- (B) AGI of \$10,000 to \$19,999;
- (C) AGI of \$20,000 to \$29,999;
- (D) AGI of \$30,000 to \$39,999;
- (E) AGI of \$40,000 to \$49,999;
- (F) AGI of \$50,000 to \$59,999;
- (G) AGI of \$60,000 to \$69,999;
- (H) AGI of \$70,000 to \$79,999;
- (I) AGI of \$80,000 to \$89,999;
- (J) AGI of \$90,000 to \$99,999;
- (K) AGI of \$100,000 to \$124,999;
- (L) AGI of \$125,000 to \$149,999;
- (M) AGI of \$150,000 to \$174,999;
- (N) AGI of \$175,000 to \$199,999;
- (O) 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 ~~June~~May 1, 2012, and each ~~June~~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 ~~taxable electronic and mail order~~ purchases for the ~~preceding~~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) Total Spending on Taxable Purchases. Total spending on taxable purchases shall be determined by:

(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:

(i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;

(ii) Prescriptions;

(iii) Video content downloads;

(iv) Audio content downloads;

(v) Prepackaged computer software, including software downloads; and

(vi) All nonmerchandise receipts.

(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

(56) Percentage of Income Spent on ~~Taxable Electronic and Mail Order~~ Purchases. The percentage of income spent on ~~taxable electronic and mail order~~ purchases during

a calendar year shall be calculated by dividing the total spending on taxable purchases 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.

(67) 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 ~~\$5,000~~^{\$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 (GN) 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)(HO) 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:

Adjusted Gross Income (AGI) Range	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
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 follows:~~the use tax table for calendar year 2011.~~

Adjusted Gross Income (AGI) Range	Use Tax Liability
Less Than \$10,000	\$
<u>\$10,000</u> to <u>\$19,999</u>	<u>\$</u>
<u>\$20,000</u> to <u>\$29,999</u>	<u>\$</u>
<u>\$30,000</u> to <u>\$39,999</u>	<u>\$</u>
<u>\$40,000</u> to <u>\$49,999</u>	<u>\$</u>
<u>\$50,000</u> to <u>\$59,999</u>	<u>\$</u>
<u>\$60,000</u> to <u>\$69,999</u>	<u>\$</u>
<u>\$70,000</u> to <u>\$79,999</u>	<u>\$</u>
<u>\$80,000</u> to <u>\$89,999</u>	<u>\$</u>
<u>\$90,000</u> to <u>\$99,999</u>	<u>\$</u>
<u>\$100,000</u> to <u>\$124,999</u>	<u>\$</u>
<u>\$125,000</u> to <u>\$149,999</u>	<u>\$</u>
<u>\$150,000</u> to <u>\$174,999</u>	<u>\$</u>
<u>\$175,000</u> to <u>\$199,999</u>	<u>\$</u>
More than \$199,999 -Multiply AGI by % (.000)	

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:

January 27, 2012	Notice to OAL
December 14, 2011	Business Tax Committee, Board Authorized Publication (Vote 3-1)

Sponsor: NA

Support: NA

Oppose: NA

Economic Impact Analysis

For Proposed Amendments to California Code of Regulations, Title 18, Section 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*

California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, prescribes the manner in which the State Board of Equalization (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 RTC section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14). The proposed amendments to Regulation 1685.5 update the manner in which the Board shall 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) in the form of a use tax table for calendar year 2012 and subsequent years in order to:

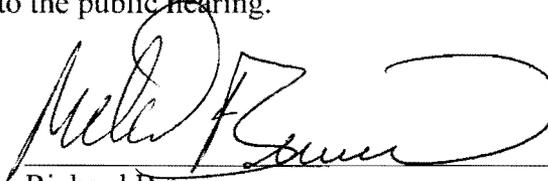
- Clarify the purpose and use of the Board’s use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;
- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board’s estimated amount of use tax due according to a person’s AGI range; and
- Generally encourage consumers to use the Board “optional” use tax tables.

Regulation 1685.5 does not regulate the health and welfare of California residents, worker safety, or the state’s environment. The proposed amendments to Regulation 1685.5 will not impose new obligations on businesses or eliminate obligations currently imposed on businesses. Therefore, the Board has determined that the adoption of the proposed amendments to 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will not affect the health and welfare of California residents, worker safety, or the state’s environment.

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 January 27, 2012, 53 days prior to the public hearing.

March 28, 2012

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

Richard Bennion
Regulations Coordinator
State Board of Equalization

Bennion, Richard

From: Donna LeCroy [donna@weinstein.com]
Sent: Saturday, January 28, 2012 8:42 AM
To: Bennion, Richard
Subject: This proposed mandatory Tax.

Mr. Bennion - I feel this regulatory change is unconstitutional, because it would require every taxpayer whether they owed Used Tax or not to pay a proposed amount. I feel this goes beyond the State's boundaries of its people. I do not need a reply to this email. Just look at the whole consideration of what The State Board of Equalization is considering. A IRRATATED CALIFORNIA CITIZEN!!!! Sincerely, Donna LeCroy

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MARCH 20, 2012

F1 PUBLIC HEARING

PROPOSED ADOPTION OF AMENDMENTS TO

REGULATION 1685.5,

CALCULATION OF ESTIMATED USE TAX - USE TAX TABLE

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 Staff:

Bradley Heller
Tax Counsel IV
Tax and Fee Division
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 MARCH 20, 2012

4 ---oOo---

5 MR. HORTON: Ms. Olson, what's our next item?

6 MS. OLSON: Our next item is F1, Proposed
7 Adoption of Amendments to Regulation 1685.5, Calculation
8 of Estimated Use Tax -- Use Tax Table.

9 MR. HORTON: Discussion, Members?

10 Hearing, is there a motion?

11 MR. RUNNER: I've got -- I think we have a
12 presentation, right?

13 MR. HORTON: All right, Mr. Heller.

14 MR. HELLER: Good evening, Chairman Horton and
15 Members of the Board. Again I'm Bradley Heller from the
16 Board's Legal Department. And I'm just here to request
17 that the Board vote to adopt the proposed amendments to
18 Sales and Use Tax Regulation 1685.5, Calculation of
19 Estimated Use Tax - Use Tax Table, that the Board
20 authorized for publication back in December. The
21 proposed amendments update the manner in which the Board
22 shall annually calculate the estimated amount of use tax
23 due according to a person's adjusted gross income and
24 make such amounts available to the Franchise Tax Board
25 in the form of a use tax table for calendar year 2012
26 and subsequent years.

27 And I just wanted to briefly note that we did
28 receive one public comment from someone who -- who

1 misunderstood the proposed amendments and believed that
2 they were imposing a use tax payment requirement or an
3 estimated use tax payment requirement on taxpayers who
4 don't -- have not made any purchases subject to use tax
5 and don't have any use tax liability. And I just wanted
6 to emphasize that that's not correct and that the use
7 tax table is fully optional and no taxpayer has to use
8 it at all. And if -- and only taxpayers who actually
9 have a use tax liability should use it and that will be
10 explained.

11 MR. HORTON: Thank you very much.

12 Discussion, Members? Mr. Runner.

13 MR. RUNNER: Yeah, help -- the -- the -- the
14 formula that's used to kind of help create the -- the
15 table, what impact did we apply AB 155 to that formula
16 for -- in light of the fact that when AB 155 passed, we
17 were now going to be -- have this additional collection
18 of use tax, therefore, my assumption would be that,
19 therefore, the -- the -- it would be reduced, I guess,
20 the -- you know, to some degree. The scales would be
21 reduced because there will be a higher collection of use
22 tax as a result of AB 155.

23 So, how does that apply to this particular
24 issue?

25 MR. HELLER: Well, let me -- first off, the
26 staff -- let me remove -- explain AB 155.

27 AB 155 expanded retailers' use tax collection
28 obligations. And it will become effective either

1 September 15th of 2012 or January 1, 2013, depending on
2 federal legislation and there's still time for that to
3 happen. And staff is not a clear whether or not -- or
4 what the effective date of that legislation will be.

5 In addition, staff has really no way of
6 estimating what retailers' behavior will specifically be
7 or what consumers' behavior will be when that
8 legislation becomes effective. And we have absolutely
9 no data at all to estimate what the -- what the amount
10 of consumers' purchases from unregistered, out-of-state
11 retailers will necessarily be after the legislation
12 takes effect.

13 We've been monitoring retailers' behavior and
14 we have not seen an increase in retailer registration at
15 this point. If we do see one, we'll do our best to
16 estimate the changes in consumers' and retailers'
17 behavior once we have actual data. But right now we
18 don't have any new data to rely on. So, we haven't made
19 any changes for 2012 and we're sure that there will be
20 any legislative change for 2012 or that retailers --

21 MR. RUNNER: When we're talking about 2012,
22 we're talking about tax year 2012, right?

23 MR. HELLER: Yes, I'm sorry, for calendar year
24 2012, correct.

25 MR. RUNNER: Yeah.

26 MR. HELLER: And, so -- so, at this point we
27 haven't recommended any changes. These were the same
28 ones that we prev -- that we recommended to the Board

1 back in December.

2 And, so, at this point we don't have any new
3 data and nothing to base any --

4 MR. RUNNER: So, if --

5 MR. HELLER: -- adjustments on.

6 MR. RUNNER: -- so, if, indeed -- at least
7 as -- as -- at least I was under the impression, is that
8 under -- under AB 155, that certain retailers,
9 particularly one really large one, was going to begin to
10 collect the sales tax at that point -- use tax at that
11 point.

12 We're not factoring that in to take place in
13 September then?

14 MR. HELLER: I would say we -- we have no data
15 all to factor in.

16 MR. RUNNER: Okay, that's -- I don't --

17 MR. HELLER: But -- but if we did, we would. I
18 mean --

19 MR. RUNNER: Yeah.

20 MR. HELLER: -- if we had concrete data about
21 what will actually happen, we would --

22 MR. RUNNER: Okay. So, let --

23 MR. HELLER: -- do our best.

24 MR. RUNNER: -- ask you this: If, indeed, we
25 get to September 1st, 'cause I mean I'm -- I'm one who
26 does not hold out how much hope for a federal solution,
27 you know, in terms -- one that would be acceptable to
28 many, many states, including California.

1 So, if, indeed, though, that we do see that the
2 policy changes and that there is a clear pattern of then
3 collection, as I think was the assumption under AB 155,
4 starting in September 15th -- or whenever that date was,
5 I forgot what it was -- would we then come in and adjust
6 this?

7 MR. HELLER: Assuming this all happened and we
8 saw retailers' behavior change in -- in mid-September of
9 2012.

10 MR. RUNNER: Uh-huh.

11 MR. HELLER: It would be too late to go and do
12 any changes at that time. We would have already done
13 the use tax table and submitted it to the FTB. And the
14 FTB would have already sent it off for publication and a
15 the materials for its instructions to the 2012 income
16 tax returns.

17 And, honestly, at that point we still wouldn't
18 really necessarily have any data that we could make an
19 adjustment on.

20 We would really to have see -- after we
21 actually saw how everybody behaves, let's say, for a
22 full quarter or more, we would be able to see whether or
23 not the additional retailers registered and, in fact,
24 collected additional use tax or maybe changed their
25 business model so now that they were making sales tax
26 transactions, we'd have to factor that in.

27 And we'd also have to look at what consumers'
28 behavior is. So, let's say I'm always buying from a

1 particular retailer because they aren't registered and
2 I'd prefer not to pay tax --

3 MR. RUNNER: Okay.

4 MR. HELLER: -- which isn't me, but let's say
5 it was --

6 MR. RUNNER: I'm -- obviously wouldn't be you.

7 MR. HELLER: Right. Well, or -- you know, if
8 I --

9 MR. RUNNER: Right.

10 MR. HELLER: -- if they -- let's say I cannot
11 find my product elsewhere, then I would report my own
12 use tax.

13 MR. RUNNER: Okay.

14 MR. HELLER: But -- but even still, if I'm a
15 person who's looking at that bottom line and I don't
16 want to pay use tax to the retailer --

17 MR. RUNNER: Uh-huh.

18 MR. HELLER: -- then I may switch retailers
19 after the one that I'm -- I'm used to purchasing from
20 now registers, assuming that happens.

21 So -- so, staff's kind of at a loss at what
22 adjustment to make.

23 MR. RUNNER: Is most of the exposure then that
24 we would be dealing with then probably then a -- what
25 would it be, just a -- well, it'd be the third quarter?

26 Basically, it'd be the third quarter that all
27 of a sudden some of the larger retailers did do what
28 they said they were going to do, it would be just

1 basically applied to the third quarter and -- anyhow?
2 Is that --

3 MR. HELLER: I would say -- well, it should
4 only have -- assuming retailers wait until the law
5 becomes effective, then they would be registering like
6 in the last couple of days of the third quarter --

7 MR. RUNNER: Uh-huh.

8 MR. HELLER: -- and then would be registered
9 for all of the fourth quarter of 2012.

10 MR. RUNNER: Excuse me, fourth, I meant fourth
11 quarter, right.

12 MR. HELLER: And then it would just depend on,
13 you know, as to the consumers themselves, it would just
14 depend on when they're making their purchases whether or
15 not that retailer's registered and how it would impact
16 -- impact, you know, how would you calculate
17 (unintelligible) --

18 MR. RUNNER: We would assume, though, then --
19 then at some point in the future if indeed then that
20 that is the -- the anticipated effect of AB 155, let me
21 phrase it that way --

22 MR. HELLER: Uh-huh.

23 MR. RUNNER: -- is fulfilled, that we would see
24 a reduction in the table?

25 MR. HELLER: Absolutely.

26 MR. RUNNER: Okay.

27 MR. HELLER: And staff's trying to track that
28 data right now.

1 MR. RUNNER: Okay.

2 MR. HELLER: And if we see a change, we will
3 recommend changes for 2013.

4 MR. RUNNER: Thanks.

5 MR. HORTON: Further discussion, Members?

6 Mr. Heller, thank you very much for your
7 presentation.

8 MS. YEE: I'll move adoption.

9 MR. HORTON: Moved adoption by Member Yee,
10 second by Member Steel --

11 MS. STEEL: Objection.

12 MR. HORTON: -- objection noted by
13 Member Steel, second by Ms. Mandel.

14 Ms. Olson, please call the roll.

15 MS. OLSON: Mr. -- Mr. Horton?

16 MR. HORTON: Aye.

17 MS. OLSON: Ms. Steel?

18 MS. STEEL: No.

19 MS. OLSON: Mr. Runner?

20 MR. RUNNER: Not voting.

21 MS. OLSON: Ms. Yee?

22 MS. YEE: Aye.

23 MS. OLSON: Ms. Mandel?

24 MS. MANDEL: Aye.

25 MS. OLSON: Motion carries.

26 MR. HORTON: Thank you.

27 MR. HELLER: Thank you.

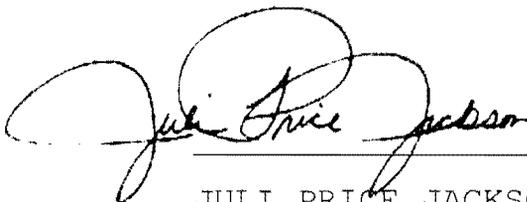
28 ----oOo----

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 MARCH 20, 2012 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 11 constitute a complete and accurate transcription of the shorthand writing.

Dated: April 3, 2012



JULI PRICE JACKSON
Hearing Reporter

2012 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, March 20, 2012

C4. Jamshid Parivash, 494295 (GH)

07-21-04 to 01-31-05, \$15,084.28 Tax, \$1,252.02 Late Payment Penalty, \$512.80 Failure-to-File Penalty

For Taxpayer: Jamshid Parivash, Taxpayer

For Department: Erin Dendorfer, Tax Counsel

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

Issue: Whether taxpayer is personally liable as a responsible person for the unpaid liabilities incurred by JPS Homes II, Inc. during the period when the corporation was suspended.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

C5. Mohammad K. Abukhdair, 518237 (KH)

07-01-05 to 06-30-08, \$21,902.63 Tax, \$2,218.18 Negligence Penalty, \$2,217.76 Finality Penalty

For Taxpayer: Mohammad Abukhdair, Taxpayer

For Department: Scott Lambert, Hearing Representative

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

Issues: Whether adjustments are warranted to the amount of unreported taxable sales.
Whether taxpayer was negligent.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

F1 Proposed Amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

Bradley Heller, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments updating the way the Board annually estimates consumers' use tax liabilities (Exhibit 3.4).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel voting no, Mr. Runner not participating, the Board adopted the proposed amendments to regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*.



STATE BOARD OF EQUALIZATION

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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

January 27, 2012

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 amendments to 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 RTC section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14). The proposed amendments update the manner in which the Board shall 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) in the form of a use tax table for calendar year 2012 and subsequent years.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on March 20-22, 2012. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on March 20, 21, or 22, 2012. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to 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 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 AGIs 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.

Regulation 1685.5

The Board adopted Regulation 1685.5 on July 26, 2011, to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their AGIs, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s AGI 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 California

Taxpayers Association (CalTax) requested that the Board conduct interested parties meetings to discuss the methodology used to develop the proposed regulation before the Board voted to adopt Regulation 1685.5. The Board's response to this request, as provided in the final statement of reasons for the adoption of Regulation 1685.5, was that:

“[T]he 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.”

Proposed Amendments

Board staff met with interested parties on August 29, 2011, and October 11, 2011, to discuss whether it is necessary to amend Regulation 1685.5 to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. As a result of public comments, including comments from CalTax, Board staff recommended that the Board amend Regulation 1685.5 to:

- Clarify that the Board's use tax tables are optional and may only be used to report estimated use tax for nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, as provided in RTC section 6452.1, subdivision (d)(2)(A)(i);
- Provide assurance to consumers that if they correctly report their estimated use tax liabilities for their eligible nonbusiness purchases in accordance with the Board's use tax tables, then the Board may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the Board's use tax tables and the consumers' actual use tax liabilities, as provided in RTC section 6452.1, subdivision (g);
- Add seven additional AGI ranges to the Board's use tax tables for calendar year 2012 and subsequent years and narrow the intervals between the AGI ranges in the Board's use tax

tables so that estimated use tax liabilities increase or decrease by smaller amounts between AGI ranges;

- Move the use tax liability factor calculation date from May 1 to June 1 beginning in calendar year 2012 because the United States Census Bureau typically publishes its electronic shopping and mail order house spending data during May of each year;
- Require the Board to make adjustments to the amount of spending at electronic shopping and mail order houses to arrive at total spending on taxable purchases;
- Require the Board to calculate the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases; and
- Require the Board to use the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases, to calculate the use tax liability factors for calendar-year 2012 and subsequent years.

During its December 14, 2011, Business Taxes Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years, and the Board voted to propose their adoption. The objectives of the proposed amendments are to clarify the purpose and use of the Board's use tax tables, help ensure that use taxes due on business purchases are not reported twice, help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years, improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range, and generally encourage consumers to use the Board use tax tables. The proposed amendments are anticipated to provide the following specific benefits:

- Clarify the purpose and use of the Board's use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;
- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range; and
- Generally encourage consumers to use the Board use tax tables.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1685.5 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1685.5 is the only state regulation prescribing 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 RTC section 6452.1, as amended by section 1 of SB 86.

There are no comparable federal regulations or statutes to Regulation 1685.5.

Note Regarding Assembly Bill No. (AB) 155 and the Use Tax Liability Factor

The proposed amendments to Regulation 1685.5, subdivision (b)(2), will require that the Board multiply the percentage of income spent on taxable purchases during the preceding year by 0.37, which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers. AB 155 (Stats. 2011, ch. 313) expanded the use tax registration requirements so that they apply to some out-of-state retailers, including Internet retailers, that were previously not required to register with the Board to collect and remit use tax on their sales of tangible personal property to California customers. However, section 6 of AB 155 provides that the new registration requirements will not be operative until either September 15, 2012, or January 1, 2013, and the Board is currently unable to determine whether the new registration requirements will reduce the percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers during 2012 or in subsequent years, and, if so, the extent of such reduction. Therefore, the Board is not proposing to amend Regulation 1685.5 to account for the new registration requirements imposed by AB 155 at this time. However, the Board is continuing to monitor the implementation of AB 155 and considering whether to propose sufficiently related changes to the original text of the proposed amendments to Regulation 1685.5 to account for the enactment of AB 155 or other events that may change the percentage of taxable purchases that California consumers make from unregistered out-of-state retailers during 2012 or subsequent years.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to 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 the proposed amendments to 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 the proposed amendments to Regulation 1685.5 will update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. The proposed amendments will not impose any new taxes or change any exemptions or exclusions. Furthermore, the proposed amendments expressly provide that taxpayers are not required to use the Board's use tax tables to estimate and report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to 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 the proposed amendments to 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 ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). The Board has determined that the adoption of the proposed amendments to 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to 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 the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private

persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, 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, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on March 20, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulation 1685.5 during the March 20-22, 2012, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to 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 and strikethrough version of the text of Regulation 1685.5 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the information on which the proposed amendments are based, including the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the Initial Statement of Reasons are also available on the Board's Website at www.boe.ca.gov.

January 27, 2012

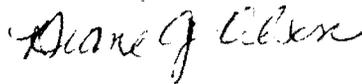
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

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

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 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.

Sincerely,



Diane G. Olson, Chief
Board Proceedings Division

DGO:reb

Initial Statement of Reasons

Adoption of Proposed Amendments to 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 incomes (AGIs) 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.

Regulation 1685.5

The Board adopted California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*, on July 26, 2011, to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based

upon their AGIs, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI 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 California Taxpayers Association (CalTax) requested that the Board conduct interested parties meetings to discuss the methodology used to develop the regulation before the Board voted to adopt Regulation 1685.5. The Board's response to this request, as provided in the final statement of reasons for the adoption of Regulation 1685.5, was that:

“[T]he 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.”

Methodology in the Current Regulation

Regulation 1685.5 currently prescribes a methodology for estimating consumers' use tax liabilities based upon their AGI ranges using a “use tax liability factor” determined by:

1. Multiplying the percentage of total personal income spent on electronic and mail order house purchases for the preceding calendar year, as determined from data provided by the United States Bureau of Economic Analysis and the United States Census Bureau, by 37 percent (0.37), which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect California use tax from their customers; and
2. Multiplying the product by the weighted average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

The format of the use tax table currently prescribed by Regulation 1685.5 allows the majority of consumers to find their AGIs within an established AGI range and read across to the right column to find their estimated use tax liabilities. However, consumers with AGIs over \$199,999 are required to multiply their actual AGIs by the use tax liability factor specified for their AGI range to determine their estimated use tax liabilities. Therefore, the current format of the use tax table prescribed by Regulation 1685.5 eliminates the need for consumers preparing California personal income tax returns reporting AGIs that are \$199,999 or less, regardless of filing status (i.e., single, married, filing jointly, etc.), to perform any mathematical calculations to estimate, report, and pay their eligible use tax liabilities, and greatly simplifies the calculations that consumers with AGIs over \$199,999 are required to make to calculate, report, and pay their eligible use tax liabilities. Furthermore, the current format of the use tax table prescribed by Regulation 1685.5 completely eliminates the need for all eligible consumers to refer to any external sources for additional information, such as the use tax rate, in order to estimate, report, and pay their eligible use tax liabilities.

In addition, data provided by the FTB indicates that 96 percent of California personal income tax returns filed for taxable year 2008, the most recent year for which data is available, reported AGIs of \$200,000 or less. Therefore, the Board believes that the current format of the Board's use tax tables eliminates the need for approximately 96 percent of California consumers who purchased tangible personal property for use in California from unregistered out-of-state retailers to perform additional calculations to estimate their own use tax liabilities.

Interested Parties Comments

Board staff met with interested parties on August 29, 2011, and October 11, 2011, to discuss whether it is necessary to amend Regulation 1685.5 to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. During the interested parties process, staff received comments indicating that the Board should:

- Clarify the persons who are eligible to use the Board's use tax tables to report their use tax obligations and for what type of purchases;
- Base the "use tax liability factor" for 2012 and subsequent years on the percentage of income spent on "taxable purchases" during the preceding year, rather than the percentage of income spent on "electronic and mail order purchases" for the preceding year; and
- Add more AGI ranges to its use tax tables and narrow the intervals between the AGI ranges so that estimated use tax liabilities increase or decrease by smaller amounts between AGI ranges.

Proposed Amendments

At the conclusion of the interested parties process, Board staff recommended that the Board amend Regulation 1685.5 to:

- Clarify that the Board's use tax tables are optional and may only be used to report estimated use tax for nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, as provided in RTC section 6452.1, subdivision (d)(2)(A)(i);
- Provide assurance to consumers that if they correctly report their estimated use tax liabilities for their eligible nonbusiness purchases in accordance with the Board's use tax tables, then the Board may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the Board's use tax tables and the consumers' actual use tax liabilities, as provided in RTC section 6452.1, subdivision (g);
- Add seven additional AGI ranges to the Board's use tax tables for calendar year 2012 and subsequent years and narrow the intervals between the AGI ranges in the Board's use tax tables so that estimated use tax liabilities increase or decrease by smaller amounts between AGI ranges;
- Move the use tax liability factor calculation date from May 1 to June 1 beginning in calendar year 2012 because the United States Census Bureau typically publishes its electronic shopping and mail order house spending data during May of each year;
- Require the Board to make adjustments to the amount of spending at electronic shopping and mail order houses to arrive at total spending on taxable purchases;
- Require the Board to calculate the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases; and
- Require the Board to use the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases, to calculate the use tax liability factors for calendar-year 2012 and subsequent years.

Business Taxes Committee Meeting

During its December 14, 2011, Business Taxes Committee meeting, the Board proposed the adoption of staff's recommended amendments because the Board determined that the amendments are reasonably necessary for the specific purposes of:

- Clarifying the purpose and use of the Board's use tax tables;
- Helping ensure that use taxes due on business purchases are not reported twice;
- Helping ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years; and
- Improving the overall precision of the Board's estimated amount of use tax due according to a person's AGI range in order to further encourage consumers to use the Board use tax tables.

The proposed amendments are anticipated to provide the following benefits:

- Clarify the purpose and use of the Board's use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;
- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range; and
- Generally encourage consumers to use the Board use tax tables.

The proposed amendments to Regulation 1685.5 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1685.5.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 11-006, the exhibits to the formal issue paper, and comments made during the Board's discussion of the formal issue paper during its December 14, 2011, Business Taxes Committee meeting in deciding to propose the amendments to Regulation 1685.5 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1685.5 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the amendments are necessary to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years in order to respond to comments received from interested parties regarding the current provisions of Regulation 1685.5 and generally improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The adoption of the proposed amendments to Regulation 1685.5 will update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years in order to respond to interested parties comments and generally improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range. The proposed amendments will not impose any new taxes or change any exemptions or exclusions. And, the proposed amendments expressly provide that taxpayers are not required to use

the Board's use tax tables to estimate and report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulation 1685.5 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

**ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE
SECTION 11346.3, SUBDIVISION (b)**

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1).

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1685.5**

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

(a) In General.

(1) Estimated Use Tax and Use Tax Table. 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.

(2) Who is Eligible to Use BOE Use Tax Tables.

(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns 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 (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.

(3) Safe Harbor. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

(b) Definitions and Data Sources.

(1) AGI Ranges. The use tax table shall be separated into ~~fifteen (15)~~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.~~
- (A) AGI less than \$10,000;
- (B) AGI of \$10,000 to \$19,999;
- (C) AGI of \$20,000 to \$29,999;
- (D) AGI of \$30,000 to \$39,999;
- (E) AGI of \$40,000 to \$49,999;
- (F) AGI of \$50,000 to \$59,999;
- (G) AGI of \$60,000 to \$69,999;
- (H) AGI of \$70,000 to \$79,999;
- (I) AGI of \$80,000 to \$89,999;
- (J) AGI of \$90,000 to \$99,999;
- (K) AGI of \$100,000 to \$124,999;
- (L) AGI of \$125,000 to \$149,999;
- (M) AGI of \$150,000 to \$174,999;
- (N) AGI of \$175,000 to \$199,999;
- (O) 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 ~~June~~May 1, 2012, and each ~~June~~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 ~~taxable~~electronic and mail order purchases for the ~~preceding~~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) Total Spending on Taxable Purchases. Total spending on taxable purchases shall be determined by:

(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:

(i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;

(ii) Prescriptions;

(iii) Video content downloads;

(iv) Audio content downloads;

(v) Prepackaged computer software, including software downloads; and

(vi) All nonmerchandise receipts.

(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

(56) Percentage of Income Spent on ~~Taxable Electronic and Mail Order~~ Purchases. The percentage of income spent on ~~taxable electronic and mail order~~ purchases during

a calendar year shall be calculated by dividing the total spending on taxable purchases 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.

(67) 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 ~~\$5,000~~~~\$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 (GN) 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:

Adjusted Gross Income (AGI) Range	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
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 follows:~~the use tax table for calendar year 2011.~~

Adjusted Gross Income (AGI) Range	Use Tax Liability
Less Than \$10,000	\$
\$10,000 to \$19,999	\$
\$20,000 to \$29,999	\$
\$30,000 to \$39,999	\$
\$40,000 to \$49,999	\$
\$50,000 to \$59,999	\$
\$60,000 to \$69,999	\$
\$70,000 to \$79,999	\$
\$80,000 to \$89,999	\$
\$90,000 to \$99,999	\$
\$100,000 to \$124,999	\$
\$125,000 to \$149,999	\$
\$150,000 to \$174,999	\$
\$175,000 to \$199,999	\$
More than \$199,999 -Multiply AGI by % (.000)	

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:

January 27, 2012

Notice to OAL

December 14, 2011

Business Tax Committee, Board Authorized Publication
(Vote 3-1)

Sponsor: NA

Support: NA

Oppose: NA