

1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1336, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1422.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2251, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
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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. 2010-0407-01 S

**Adopt sections: 1004, 1032, 1124.1, 1249,
1336, 1422.1, 2251, 2303.1,
2433, 2571, 3022, 3302.1,
3502.1, 4106, 4903**

**Amend sections:
Repeal sections:**

The State Board of Equalization proposed to adopt sections 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106 and 4903 in title 18 of the California Code of Regulations to provide for relief for innocent spouses and registered domestic partners from liability under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Law, or Fuel Tax Law.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 6/17/2010.

Date: 5/18/2010

CRAIG TARPENNING

Craig S. Tarpenning
Senior Staff Counsel

For: SUSAN LAPSLEY
Director

Original: Ramon Hirsig
Copy: Richard Bennion

Board Proceedings
MAY 19 2010
RECEIVED

OFFICE OF ADMINISTRATIVE LAW

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



SUSAN LAPSLEY
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk *RB*
DATE: 5/19/2010
RE: Return of Approved Rulemaking Materials
OAL File No. 2010-0407-01S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2010-0407-01S regarding Innocent Spouse or Registered Domestic Partner Relief from Liability).

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)

NOTICE FILE NUMBER Z-2010-0111-01	REGULATORY ACTION NUMBER 2010-0407-015	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED FILED IN THE OFFICE OF

2010 MAY 18 PM 3:19

2010 APR -7 AM 9:20

OFFICE OF ADMINISTRATIVE LAW

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY

State Board of Equalization

AGENCY FILE NUMBER (if any)

ct

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

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER <i>2010 #478</i>	PUBLICATION DATE <i>1-22-2010</i>

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Innocent Spouse or Registered Domestic Partner Relief from Liability	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, and 4903
	AMEND
	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 §511346.2-11347.3 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 §511349.3, 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) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

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

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Diane G. Olson</i>	DATE <i>4/7/2010</i>
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 18 2010

Office of Administrative Law

**Final Proposed Text of
California Code of Regulations,
Title 18, Sections**

1004, Innocent Spouse or Registered Domestic Partner Relief from Liability
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4903, Innocent Spouse or Registered Domestic Partner Relief from Liability

1004. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the private railroad car tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 11651, Revenue and Taxation Code. Reference: Sections 11408.5 and 11551-11555, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1032. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the timber yield tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 38701, Revenue and Taxation Code. Reference: Sections 38454.5 and 38601-38607, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1124.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the motor vehicle fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7657.5 and 8101-8131, Revenue and Taxation Code; Sections 297, 297.5 and 308, Family Code.

1249. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the underground storage tank maintenance fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50112.6 and 50139-50142.2, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1336. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the use fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 9251, Revenue and Taxation Code. Reference: Sections 8880 and 9151-9156, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1422.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the diesel fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60210.5 and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2251. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the oil spill response, prevention, and administration fees, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 46601, Revenue and Taxation Code. Reference: Sections 46159 and 46501-46507, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2303.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the energy resources surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections 40105 and 40111-40117, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2433. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the emergency telephone users surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41099 and 41100-41106, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2571. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the alcoholic beverage tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 32451, Revenue and Taxation Code. Reference: Sections 32258 and 32401-32407, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3022. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the hazardous substances tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Sections 43159.1, 43159.2, and 43451-43456, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3302.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the integrated waste management fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Sections 45158 and 45651-45656, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3502.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for tax, fees, or surcharge under the fee collection procedures law, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 55045.1 and 55221-55226, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

4106. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the cigarette and tobacco products tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30285 and 30361-30384, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

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

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

(A) A liability is incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, or Use Fuel Tax Law;

(B) The liability is attributable to the nonclaiming spouse;

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

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

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

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

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

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

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

(d) WRITTEN REQUEST FOR RELIEF. To seek relief under these provisions, a claiming spouse may submit a written request for relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) STATUTE OF LIMITATIONS. These provisions shall apply to all calendar months, quarters, or years for claims made no later than one year after the board's first contact with the spouse making the claim.

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

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

whichever is later.

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

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

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

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

(1) Criteria for Equitable Relief.

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

1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.

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

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

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

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

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

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

(i) The board shall send notification by mail of the claim for relief from liability and the basis for that claim to the nonclaiming spouse.

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

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

Memorandum

To : Craig Tarpinning
Attorney
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Date: May 17, 2010

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

Subject : *OAL File No. 2010-0407-01S*
Regulation 4903, Innocent Spouse or Registered Domestic Partner Relief from Liability

This memo is to provide you authorization to:

- 1) Replace the Verification with the new one brought over this morning.
- 2) Insert "State Board of Equalization" on the Rulemaking Authority line on the STD 400.

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

2010 MAY 17 AM 8:54
OFFICE OF
ADMINISTRATIVE LAW

REB

("OBD") systems on used 2010 and subsequent heavy duty engines, amends the OBD regulation that specifies the required capabilities of OBD systems installed in passenger cars, light duty trucks, and medium duty vehicles, and updates the regulation that specifies the emission standards pertinent to OBD systems and other requirements applicable to 2010 and subsequent heavy-duty engines.

Title 13
California Code of Regulations
ADOPT: 1971.5 AMEND: 1968.2, 1971.1
Filed 05/18/2010
Effective 06/17/2010
Agency Contact: Amy Whiting (916) 322-6533

File# 2010-0407-01
BOARD OF EQUALIZATION
Innocent Spouse or Registered Domestic Partner Relief from Liability

The State Board of Equalization adopted sections 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106 and 4903 in title 18 of the California Code of Regulations to provide for relief for innocent spouses and registered domestic partners from liability under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Law, or Fuel Tax Law.

Title 18
California Code of Regulations
ADOPT: 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903
Filed 05/18/2010
Effective 06/17/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0406-01
BOARD OF EQUALIZATION
Membership Fees

This change without regulatory effect deletes subdivision (c) of section 1584 which states "The provisions of this regulation are operative January 1, 1996" because all of the reporting periods that began prior to January 1, 1996, ended more than 14 years ago, the Board does not expect to issue any new notices of determina-

tion or receive any new claims for refund for those reporting periods because of statutory deadlines, and therefore, the reporting periods are closed for all material regulatory purposes.

Title 18
California Code of Regulations
AMEND: 1584
Filed 05/13/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0406-02
BOARD OF EQUALIZATION
Reporting Methods for Grocers

Sections 1602.5 and 1700 of title 18 contain examples for calculating applicable tax using a 6% tax rate. This change without regulatory effect replaces the outdated 6% tax rate, which currently does not apply anywhere in California, with an 8.25% tax rate in the examples for calculating applicable tax.

Title 18
California Code of Regulations
AMEND: 1602.5, 1700
Filed 05/13/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0415-07
BUREAU OF AUTOMOTIVE REPAIR
Motor Vehicle Inspection Program Definitions

This Section 100 change without regulatory effect amends the existing Motor Vehicle Inspection Program definitions regulation by rearranging the definitions into alphabetical order.

Title 16
California Code of Regulations
AMEND: 3340.1
Filed 05/19/2010
Agency Contact: Steven Hill (916) 255-2135

File# 2010-0330-01
CALIFORNIA EMERGENCY MANAGEMENT AGENCY
Office of Emergency Services — Change of Agency Name and Corrections

This change without regulatory effect implements Assembly Bill 38, Chapter 372, of 2008. Assembly Bill 38 changed the name of the agency from the Office of Emergency Services (OES) to the California Emergency Management Agency (Cal EMA) and changed the title of the head of the agency from Director to Secretary. This change without regulatory effect also made corrective grammar, spelling, alphabetizing, cross-reference, Authority and Reference Citation, and punctua-

Rulemaking File Index
Title 18. Public Revenue
Sales and Use Tax

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1. [Final Statement of Reasons](#)
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4. [Reporter's Transcript Chief Counsel Matters, Item J2, December 16, 2009](#)
5. [Estimate of Cost or Savings, January 14, 2010](#)
6. [Economic and Fiscal Impact Statements, Regulation 4903, January 7, 2010](#)
7. [Notice of Publications](#)
 - [Form 400 submitted to OAL January 11, 2010](#)
 - [Notice and Proposed Text of Regulation 4903](#)
 - [Email sent to Interested Parties, January 22, 2010](#)
 - [CA Regulatory Notice Register 2010, Volume No. 4-Z](#)
8. [Notice to Interested Parties, January 22, 2010](#)

The following items are exhibited:

 - [Notice of Hearing](#)
 - [Initial Statement of Reasons](#)
 - [Proposed Text of Regulation 1698.5](#)
 - [Regulation History](#)
9. [Statement of Compliance](#)

10. Reporter's Transcript, Item F2, Public Hearing, March 23, 2010
11. Draft Minutes, March 23, 2010, and Exhibits

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 6, 2010 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 6, 2010

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

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for
Proposed Adoption of California Code of Regulations,
Title 18, Sections:**

1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
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4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

Update of Information in the Initial Statement of Reasons

The factual basis, specific purpose, and necessity for the proposed adoption of California Code of Regulations, title 18, section (Regulation) 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, “cross-referencing regulations”), are the same as provided in the Initial Statement of Reasons.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting Regulation 4903 or the cross-referencing regulations that was not identified in the Initial Statement of Reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

The Board did not reject any reasonable alternatives to the original proposed text of Regulation 4903 or the cross-referencing regulations or any alternatives that would lessen the adverse economic impact on small businesses. No alternative amendments were presented to the Board for consideration.

Furthermore, the Board has determined that the adoption of Regulation 4903 and the cross-referencing regulations will not have a significant adverse economic impact on business.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of proposed Regulation 4903 and the cross-referencing regulations does not impose a mandate on local agencies or school districts.

Response to Public Comment

On March 23, 2010, the Board held a public hearing on the proposed adoption of Regulation 4903 and the cross-referencing regulations. No one appeared at the public hearing and no written comments were received.

Alternatives Considered

By its motion, the Board determined that no alternative to proposed Regulation 4903 and the cross-referencing regulations would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

No Federal Mandate

The adoption of Regulation 4903 and the cross-referencing regulations was not mandated by federal statutes or regulations.

**Updated Informative Digest for
Proposed Adoption of California Code of Regulations,
Title 18, Sections:**

1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
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3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

On March 23, 2010, the Board of Equalization (Board) held a public hearing on and adopted the original proposed text of California Code of Regulations, title 18, section (Regulation) 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and the original proposed text of Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, “cross-referencing regulations”), described in the Notice of Proposed Regulatory Action. There have not been any changes to the applicable laws or the effect of the adoption of Regulation 4903 and the cross-referencing regulations described in the Informative Digest included in the Notice of Proposed Regulatory Action.

Current Law

In 1993, Revenue and Taxation Code section (section) 6456 was enacted to authorize the Board to grant innocent spouse and other equitable relief from sales and use tax liabilities to qualified spouses, under regulations prescribed by the Board. (Stats. 1993, ch. 181.) In 1997, the Board adopted Regulation 1705.1¹ to implement, interpret, and make specific section 6456 with respect to sales and use tax liabilities. Then, in January 2007, the Board added subdivision (j) to Regulation 1705.1 to recognize that on and after January 1, 2005, registered domestic partners have the same rights, protections and benefits under the law as are granted to and imposed upon spouses, including the ability to qualify for relief under section 6456. (Fam. Code, §§ 297 and 297.5.)

¹ Regulation 1705.1 is available at <http://www.boe.ca.gov/pdf/reg1705-1.pdf>.

In March 2007, the Legislature enacted sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 (for ease of expression, hereafter, collectively “new relief statutes”), to authorize the Board to relieve an innocent spouse, including a registered domestic partner, from liabilities incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, and Use Fuel Tax Law (for ease of expression, hereafter, collectively, “applicable special tax and fee laws”). (Stats. 2007, ch. 342.) The new relief statutes are comparable to section 6456 and authorize the Board to grant innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws to qualified spouses and registered domestic partners, under regulations prescribed by the Board, effective January 1, 2008. However, prior to March 23, 2010, the Board had not adopted regulations to implement, interpret, and make specific the provisions of the new relief statutes.

Proposed Regulations

The Board proposed to adopt Regulation 4903, which is comparable to Regulation 1705.1, to prescribe the procedures and criteria for relieving an innocent spouse or registered domestic partner from liability under the applicable special tax and fee laws. Regulation 4903, subdivision (a), lists the general requirements that a spouse or registered domestic partner claiming relief must meet in order to be relieved from liability for the applicable special taxes and fees. Specifically, the claimant must establish that:

- The liability is attributable to the nonclaiming spouse or registered domestic partner;
- The claimant did not know of, and a reasonably prudent person in the claimant’s circumstances would not have had reason to know of, the liability; and
- It would be inequitable to hold the claimant liable for the liability, taking into account whether the claimant significantly benefitted directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 4903, subdivision (b), defines the term “benefitted,” as it is used in the phrase “benefitted directly or indirectly.” Regulation 4903, subdivision (c), defines the term “attribution,” as it is used in the phrase “attributable to the nonclaiming spouse.”

Regulation 4903, subdivision (d), provides that, if a spouse or registered domestic partner chooses to claim relief under the regulation, the request must be in writing and set forth the tax or fee account number, the period for which relief is requested, and the specific grounds on which the request for relief is based.

Regulation 4903, subdivision (e), clarifies the statute of limitations that applies to claims for relief from liability under the regulation, and subdivision (f) explains that refunds of taxes and fees are subject to the more specific statutory requirements provided by the relevant provisions in the applicable tax and fee laws. Regulation 4903, subdivision (g), clarifies that Regulation 4903 is retroactive to liabilities arising prior to January 1, 2008.

Regulation 4903, subdivision (h), explains that the Board may still relieve a claimant from liability if, taking into account all the facts and circumstances, it would be inequitable to hold the claimant liable for an amount attributable to an item for which relief is not available under subdivisions (a) through (d), described above. Subdivision (h) also sets forth the criteria for equitable relief and lists the non-exclusive factors the Board may consider in deciding whether to grant or deny equitable relief.

Regulation 4903, subdivision (i), provides that the Board must notify a nonclaiming spouse or registered domestic partner by mail when his or her spouse or registered domestic partner files a claim for relief from liability and include the basis for the claim.

Regulation 4903, subdivision (j), clarifies that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties, as are granted to and imposed upon spouses and thereby makes all of the provisions applicable to spouses applicable to registered domestic partners.

The specific purpose of Regulation 4903 is to specify the requirements for claiming and granting innocent spouse and other equitable relief from liabilities incurred under the applicable special tax and fee laws. Regulation 4903 is necessary to prescribe the requirements for claiming and granting innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws.

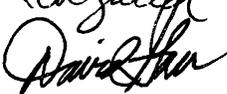
Furthermore, the Board has proposed to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under all the applicable special tax and fee laws. Therefore, the Board has also proposed to adopt the cross-referencing regulations, which will be located in other chapters in title 18 that specifically apply to each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. As a result, the specific purpose of the cross-referencing regulations is to refer taxpayers to the operative provisions in Regulation 4903; and the cross-referencing regulations are necessary to ensure that taxpayers can easily locate Regulation 4903 in chapter 9.9, Special Taxes Administration-Miscellaneous.²

² The Board followed a consistent approach when it adopted Regulation 4902, *Relief from Liability*, and Regulations 1124, 1248, 1335, 1422, 2250, 2303, 2432, 2570, 3021, 3302, 3502, and 4105, *Relief from Liability*, which cross-reference Regulation 4902.

M e m o r a n d u m

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

Date: November 20, 2009

From: Kristine Cazadd, Chief Counsel
Legal Department, MIC:83 
David Gau, Deputy Director 
Property and Special Taxes Department, MIC:63

Subject: Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
Chief Counsel's Rulemaking Calendar
Board Meeting—December 15-17, 2009

We request your approval to place proposed Regulation 4903 and related cross-referencing regulations on the Chief Counsel's Rulemaking Calendar for the Board meeting on December 15-17, 2009. Board authorization is requested to begin the formal rulemaking process to add Regulation 4903 to chapter 9.9, Special Taxes Administration – Miscellaneous, of division 2 of title 18 of the California Code of Regulations and to add related cross-referencing regulations to the chapters in divisions 1 and 2 of title 18 of the California Code of Regulations that contain regulations for each special tax and fee program covered by Regulation 4903, as applicable.

Statutes 2007, chapter 342 (Assem. Bill 1748), effective January 1, 2008, added Revenue and Taxation Code sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5. These statutes authorize the Board to grant innocent spouse and other equitable relief to spouses and registered domestic partners under the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, Private Railroad Car Tax Law, and Timber Yield Tax Law. Each of these statutes is comparable to Revenue and Taxation Code section 6456, which authorizes the Board to grant innocent spouse and other equitable relief under the Sales and Use Tax Law, and each statute states that its provisions will be implemented pursuant to "regulations prescribed by the board."

Consequently, staff recommends that the Board authorize staff to begin the process to adopt proposed Regulation 4903 to prescribe the requirements for requesting and granting innocent spouse and other equitable relief under the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground

Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, Private Railroad Car Tax Law, and Timber Yield Tax Law. Regulation 4903 is based upon and comparable to Regulation 1705.1, Innocent Spouse or Domestic Partner Relief from Liability (copy attached), which prescribes the requirements for requesting and granting innocent spouse and other equitable relief under the Sales and Use Tax Law.

Further, staff recommends that the Board authorize staff to begin the process to add Regulations 1004 and 1032 to chapters 10 and 11 in division 1 of title 18 of the California Code of Regulations, and Regulations 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106 to each of the respective chapters in division 2 of title 18 of the California Code of Regulations containing regulations for the special tax and fee programs covered by Regulation 4903. These regulations will cross-reference, and help taxpayers and their representatives find, Regulation 4903. The cross-referencing regulations are similar to the cross-referencing regulations that refer to Regulation 4902, Relief from Liability, in chapter 9.9, Special Taxes Administration – Miscellaneous, of division 2 of title 18 of the California Code of Regulations. (See, e.g., Regulation 1124, Relief from Liability.)

The text of proposed Regulation 4903 and the cross-referencing regulations is attached hereto.

If you have any questions regarding this request, please let me know or contact Ms. Carolee Johnstone, at 323-7713.

Recommendation by:

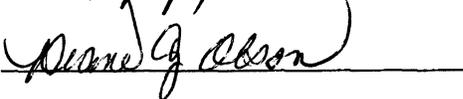

Kristine Cazadd, Chief Counsel

Approved:


Ramon J. Hirsig, Executive Director

Approved:


David Gau, Deputy Director
Property and Special Taxes Department

BOARD APPROVED
At the 12/16/09 Board Meeting

Diane Olson, Chief
Board Proceedings Division

Attachments

cc (with attachments):

- Ms. Diane Olson (MIC 80)
- Mr. Randy Ferris (MIC 82)
- Mr. Steve Smith (MIC 82)
- Mr. Bradley Heller (MIC 82)
- Ms. Monica Silva (MIC 82)
- Mr. David McKillip (MIC 63)

- Mr. Ed King (MIC 33)
- Ms. Lynn Bartolo (MIC 56)
- Ms. Julia Findley (MIC 48)
- Mr. Dean Kinnee (MIC 64)
- Mr. Ken Thompson (MIC 61)
- Mr. Gil Haas (MIC 42)

California Code of Regulations,
Title 18, Public Revenues
Division 2, State Board of Equalization – Business Taxes
Chapter 4, Sales and Use Tax

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

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

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

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

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

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

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a retailer of taxable items related to the liability. If neither spouse rendered substantial services as a retailer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

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

(e) Statute of Limitations. These provisions shall apply to all calendar quarters for claims made no later than one year after the board's first contact with the spouse making the claim.

Claims made after one year from the board's first contact with the spouse making the claim shall not apply to any calendar quarter that is more than
five years from the return due date for nonpayment on a return, or
five years from the finality date on the board-issued determination,
whichever is later.

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

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

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

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

(1) Criteria for Equitable Relief.

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

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

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

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

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

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

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

(i) The Board shall send notification by mail of the claim for relief from liability and the basis for that claim to the nonclaiming spouse.

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

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

PROPOSED REGULATIONS

1. Add Regulation 4903, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 9.9, Special Taxes Administration – Miscellaneous, of division 2 of title 18 of the California Code of Regulations, to read as follows:

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

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

(A) A liability is incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, or Use Fuel Tax Law;

(B) The liability is attributable to the nonclaiming spouse;

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

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

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

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

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

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

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

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

(e) Statute of Limitations. These provisions shall apply to all calendar months, quarters, or years for claims made no later than one year after the board's first contact with the spouse making the claim.

Claims made after one year from the board's first contact with the spouse making the claim shall not apply to any calendar month, quarter, or year that is
more than five years from the return due date for nonpayment on a return, or
more than five years from the finality date on the board-issued determination or similar
billing document for collection of a tax or fee,
whichever is later.

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

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

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

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

(1) Criteria for Equitable Relief.

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

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

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

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

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

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

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

(i) The board shall send notification by mail of the claim for relief from liability and the basis for that claim to the nonclaiming spouse.

(j) Registered Domestic Partners. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other

provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

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

2. Add Regulation 1004, Innocent Spouse or Registered Domestic Partner Relief from Liability, to article 1, General Provisions, of chapter 10, Private Railroad Car Tax, of division 1 of title 18 of the California Code of Regulations, to read as follows:

Regulation 1004. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the private railroad car tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 11651, Revenue and Taxation Code. Reference: Sections 11408.5 and 11551-11555, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3. Add Regulation 1032, Innocent Spouse or Registered Domestic Partner Relief from Liability, to article 2, Timber Yield Tax – Administration, of chapter 11, Timber Yield Tax, of division 1 of title 18 of the California Code of Regulations, to read as follows:

Regulation 1032. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the timber yield tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 38701, Revenue and Taxation Code. Reference: Sections 38454.5 and 38601-38607, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

4. Add Regulation 1124.1, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 1, Motor Vehicle Fuel Tax, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 1124.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the motor vehicle fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7657.5 and 8101-8131, Revenue and Taxation Code; Sections 297, 297.5 and 308, Family Code.

5. Add Regulation 1249, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 1.5, Underground Storage Tank Maintenance Fee, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 1249. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the underground storage tank maintenance fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50112.6 and 50139-50142.2, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

6. Add Regulation 1336, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 2, Use Fuel Tax, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 1336. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the use fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 9251, Revenue and Taxation Code. Reference: Sections 8880 and 9151-9156, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

7. Add Regulation 1422.1, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 3, Diesel Fuel Tax, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 1422.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the diesel fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60210.5 and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

8. Add Regulation 2251, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 4.5, Oil Spill Response, Prevention and Administration Fees, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 2251. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the oil spill response, prevention, and administration fees, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 46601, Revenue and Taxation Code. Reference: Sections 46159 and 46501-46507, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

9. Add Regulation 2303.1, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 5, Energy Resources Surcharge, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 2303.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the energy resources surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections 40105 and 40111-40117, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

10. Add Regulation 2433, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 5.5, Emergency Telephone Users Surcharge, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 2433. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the emergency telephone users surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41099 and 41100-41106, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

11. Add Regulation 2571, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 6, Alcoholic Beverage Tax, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 2571. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the alcoholic beverage tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 32451, Revenue and Taxation Code. Reference: Sections 32258 and 32401-32407, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

12. Add Regulation 3022, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 8, Hazardous Substances Tax, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 3022. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the hazardous substances tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Sections 43159.1, 43159.2, and 43451-43456, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

13. Add Regulation 3302.1, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 8.3, Integrated Waste Management Fee, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 3302.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the integrated waste management fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Sections 45158 and 45651-45656, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

14. Add Regulation 3502.1, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 8.5, Fee Collection Procedures, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 3502.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for tax, fees, or surcharge under the fee collection procedures law, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 55045.1 and 55221-55226, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

15. Add Regulation 4106, Innocent Spouse or Registered Domestic Partner Relief from Liability, to chapter 9, Cigarette and Tobacco Products Tax, of division 2 of title 18 of the California Code of Regulations, to read as follows:

Regulation 4106. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the cigarette and tobacco products tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30285 and 30361-30384, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

DECEMBER 16, 2009

ITEM J2

CHIEF COUNSEL MATTERS

RULEMAKING

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Board
of Equalization:

Betty Yee
Chair

Judy Chu
Vice-Chair

Bill Leonard
Member

Michelle Steel
Member

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

Diane Olson
Chief, Board
Proceedings Division

Board of Equalization
Staff:

Bradley Heller
Legal Department, Tax and Fee
Programs Division

Carolee Johnstone
Legal Department, Tax and Fee
Programs Division

---oOo---

1 Sacramento, California

2 December 16, 2009

3 ----oOO----

4 MS. OLSON: Our next matter is J2, Regulation
5 4903, Innocent Spouse or Registered Domestic Partner
6 Relief from Liability.

7 MS. YEE: Okay. Great. Thank you.

8 Good morning, Mr. Heller.

9 MR. HELLER: Good morning, Madam Chair, Members
10 of the Board. I'm Bradley Heller. I'm here with
11 Carolee Johnstone. We're both with the Tax and Fee
12 Programs Division of the Legal Department.

13 And we're requesting the Board's authorization
14 to begin the rulemaking process to adopt Regulation 4903
15 and related cross-referencing regulations.

16 And based on the earlier discussion I just
17 wanted to point out we haven't had an interested parties
18 process prior to this request, but it basically mirrors
19 our current Regulation 1705.1 which applies to Sales
20 and Use Tax and just extends those provisions to the
21 specified additional tax and fee programs for which the
22 Board obtained additional statutory authority in 2008.

23 So essentially it just fills a regulatory gap.
24 And if we were to get authorization today we would issue
25 a Notice of Rulemaking and an Initial Statement of
26 Reasons and we would hold a public hearing. I think it
27 would be scheduled in March.

28 MS. YEE: Okay.

1 MS. MANDEL: So it's about as close to Section
2 100 changes as you can get --

3 MS. YEE: As you can get, right.

4 MS. MANDEL: -- with --

5 MR. HELLER: Without --

6 MS. MANDEL: -- new legislative authority in
7 other program areas exact -- to do the exact same thing.

8 MR. HELLER: Absolutely

9 MS. YEE: Okay. Any questions or concerns,
10 Members?

11 Okay. Hearing none, is there a motion?

12 MR. HORTON: So moved.

13 MS. YEE: Okay. Motion by Mr. Horton.

14 MR. LEONARD: Second.

15 MS. STEEL: Second.

16 MS. YEE: Second by Mr. Leonard.

17 Without objection, that motion carries to
18 approve the staff's request for authorization to
19 publish.

20 Thank you.

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REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on December 16, 2009 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 4 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: December 28, 2009.

BEVERLY D. TOMS
Hearing Reporter

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

Proposed Amendment of Sales and Use Tax Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

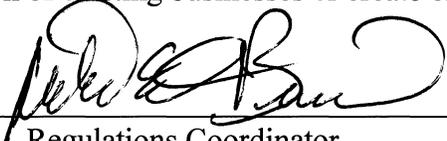
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

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 1-6-2010
Regulations Coordinator

Approved by  Date 1/14/10
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 Title 18, Section (See Attached)		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:

- a. Impacts businesses and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance
- g. Impacts individuals
- 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.)

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

Alternative 1: _____

Alternative 2: _____

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

Regulation: \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: \$ _____ Cost-effectiveness ratio: \$ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

d. is issued only in response to a specific request from the _____
_____, which is/are the only local entity(s) affected;

e. will be fully financed from the _____ authorized by Section _____
(FEES, REVENUE, ETC.)
_____ 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 APPROVAL/CONCURRENCE  PROGRAM BUDGET MANAGER	DATE 1/7/10
DEPARTMENT OF FINANCE ² APPROVAL/CONCURRENCE Exempt under SAM section 6660	DATE

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

1004, Innocent Spouse or Registered Domestic Partner Relief from Liability
1032, Innocent Spouse or Registered Domestic Partner Relief from Liability
1124.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
1249, Innocent Spouse or Registered Domestic Partner Relief from Liability
1336, Innocent Spouse or Registered Domestic Partner Relief from Liability
1422.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
2251, Innocent Spouse or Registered Domestic Partner Relief from Liability
2303.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
2433, Innocent Spouse or Registered Domestic Partner Relief from Liability
2571, Innocent Spouse or Registered Domestic Partner Relief from Liability
3022, Innocent Spouse or Registered Domestic Partner Relief from Liability
3302.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
3502.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
4106, Innocent Spouse or Registered Domestic Partner Relief from Liability
4903, Innocent Spouse or Registered Domestic Partner Relief from Liability

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-2010-0111-c1	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
RECEIVED FOR FILING PUBLICATION DATE			
JAN 11 '10 JAN 22 '10			
Office of Administrative Law			
NOTICE		REGULATIONS	

AGENCY WITH RULEMAKING AUTHORITY
 State Board of Equalization

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE Innocent Spouse (See attached)		TITLE(S) 18	FIRST SECTION AFFECTED 1004	2. REQUESTED PUBLICATION DATE 1/22/10
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130
5. ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY		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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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) _____

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.**

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

For use by Office of Administrative Law (OAL) only

1004, Innocent Spouse or Registered Domestic Partner Relief from Liability
1032, Innocent Spouse or Registered Domestic Partner Relief from Liability
1124.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
1249, Innocent Spouse or Registered Domestic Partner Relief from Liability
1336, Innocent Spouse or Registered Domestic Partner Relief from Liability
1422.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
2251, Innocent Spouse or Registered Domestic Partner Relief from Liability
2303.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
2433, Innocent Spouse or Registered Domestic Partner Relief from Liability
2571, Innocent Spouse or Registered Domestic Partner Relief from Liability
3022, Innocent Spouse or Registered Domestic Partner Relief from Liability
3302.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
3502.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
4106, Innocent Spouse or Registered Domestic Partner Relief from Liability
4903, Innocent Spouse or Registered Domestic Partner Relief from Liability

Notice of Proposed Regulatory Action

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

1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1336, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1422.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2251, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2303.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2433, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2571, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3022, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3302.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code sections (sections) 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt California Code of Regulations, title 18, section (Regulation) 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*. The proposed regulation will implement, interpret, and make specific Revenue and Taxation Code sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 (for ease of expression, hereafter, collectively “new relief statutes”), which authorize the Board to relieve an innocent spouse, including a registered domestic partner, from liability for the particular taxes or fees to which the statutes pertain and provide the criteria upon which such relief may be based. Further, the proposed regulation implements, interprets, and makes specific sections 8101-8131, 9151-9156, 11551-11555, 30361-30384, 32401-32407, 38601-38607, 40111-40117, 41100-41106, 43451-43456, 45651-45656, 46501-46507, 50139-50142.2, 55221-55226, and 60501-60512 by clarifying that they apply to refunds that might be claimed under proposed Regulation 4903. The proposed regulation also implements, interprets, and makes specific Family Code sections 297, 297.5, and 308 defining registered domestic partners, the rights of registered domestic partners, and the recognition of marriages contracted outside of California, respectively.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, and Use Fuel Tax Law (for ease of expression, hereafter, collectively, “applicable special tax and fee laws”). Therefore, the Board also proposes, to adopt cross-referencing Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, “cross-referencing regulations”). These cross-referencing regulations will be located in other chapters in title 18 that correspond with each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. The Board proposes to adopt the cross-referencing regulations pursuant to the following statutory authorities in order to implement, interpret, and make specific the following statutes, in addition to Family Code sections 297, 297.5, and 308:

Regulation	Authority	Reference
Regulation 1004	Section 11651	Sections 11408.5 and 11551-11555
Regulation 1032	Section 38701	Sections 38454.5 and 38601-38607
Regulation 1124.1	Section 8251	Sections 7657.5 and 8101-8131
Regulation 1249	Section 50152	Sections 50112.6 and 50139-50142.2
Regulation 1336	Section 9251	Sections 8880 and 9151-9156
Regulation 1422.1	Section 60601	Sections 60210.5 and 60501-60512
Regulation 2251	Section 46601	Sections 46159 and 46501-46507
Regulation 2303.1	Section 40171	Sections 40105 and 40111-40117
Regulation 2433	Section 41128	Sections 41099 and 41100-41106
Regulation 2571	Section 32451	Sections 32258 and 32401-32407
Regulation 3022	Section 43501	Sections 43159.1, 43159.2, and 43451-43456
Regulation 3302.1	Section 45851	Sections 45158 and 45651-45656
Regulation 3502.1	Section 55301	Sections 55045.1 and 55221-55226
Regulation 4106	Section 30451	Sections 30285 and 30361-30384

A public hearing on the proposed adoption of Regulation 4903 and the cross-referencing regulations will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed regulations. In addition, if the Board receives written comments prior to the hearing on March 23, 2010, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

In 1993, section 6456 was enacted to authorize the Board to grant innocent spouse and other equitable relief from sales and use tax liabilities to qualified spouses, under regulations prescribed by the Board. (Stats. 1993, ch. 181.) In 1997, the Board adopted Regulation 1705.1¹ to implement, interpret, and make specific section 6456 with respect to sales and use tax liabilities. Then, in January 2007, the Board added subdivision (j) to Regulation 1705.1 to recognize that on and after January 1, 2005, registered domestic partners have the same rights, protections and benefits under the law as are granted to and imposed upon spouses, including the ability to qualify for relief under section 6456. (Fam. Code, §§ 297 and 297.5.)

The new relief statutes are comparable to section 6456. They were enacted in March 2007 (Stats. 2007, ch. 342) to authorize the Board to grant innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws to qualified spouses and registered domestic partners, under regulations prescribed by the Board, effective January 1, 2008. However, the Board has not adopted regulations to implement, interpret, and make specific the provisions of the new relief statutes.

Proposed Regulations

The Board proposes to adopt Regulation 4903, which is comparable to Regulation 1705.1, to prescribe the procedures and criteria for relieving an innocent spouse or registered domestic partner from liability under the applicable special tax and fee laws. Regulation 4903, subdivision (a), lists the general requirements that a spouse or registered domestic partner claiming relief must meet in order to be relieved from liability for the applicable special taxes and fees. Specifically, the claimant must establish that:

- The liability is attributable to the nonclaiming spouse or registered domestic partner;

¹ Regulation 1705.1 is available at www.boe.ca.gov/pdf/reg1705-1.pdf.

- The claimant did not know of, and a reasonably prudent person in the claimant's circumstances would not have had reason to know of, the liability; and
- It would be inequitable to hold the claimant liable for the liability, taking into account whether the claimant significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 4903, subdivision (b), defines the term "benefitted," as it is used in the phrase "benefitted directly or indirectly." Regulation 4903, subdivision (c), defines the term "attribution," as it is used in the phrase "attributable to the nonclaiming spouse."

Regulation 4903, subdivision (d), provides that, if a spouse or registered domestic partner chooses to claim relief under the regulation, the request must be in writing and set forth the tax or fee account number, the period for which relief is requested, and the specific grounds on which the request for relief is based.

Regulation 4903, subdivision (e), clarifies the statute of limitations that applies to claims for relief from liability under the regulation, and subdivision (f) explains that refunds of taxes and fees are subject to the more specific statutory requirements provided by the relevant provisions in the applicable tax and fee laws. Regulation 4903, subdivision (g), clarifies that Regulation 4903 is retroactive to liabilities arising prior to January 1, 2008.

Regulation 4903, subdivision (h), explains that the Board may still relieve a claimant from liability if, taking into account all the facts and circumstances, it would be inequitable to hold the claimant liable for an amount attributable to an item for which relief is not available under subdivisions (a) through (d), described above. Subdivision (h) also sets forth the criteria for equitable relief and lists the non-exclusive factors the Board may consider in deciding whether to grant or deny equitable relief.

Regulation 4903, subdivision (i), provides that the Board must notify a nonclaiming spouse or registered domestic partner by mail when his or her spouse or registered domestic partner files a claim for relief from liability and include the basis for the claim.

Regulation 4903, subdivision (j), clarifies that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties, as are granted to and imposed upon spouses and thereby makes all of the provisions applicable to spouses applicable to registered domestic partners.

The specific purpose of proposed Regulation 4903 is to specify the requirements for claiming and granting innocent spouse and other equitable relief from liabilities incurred under the applicable special tax and fee laws. Proposed Regulation 4903 is necessary to prescribe the requirements for claiming and granting innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under all the applicable special tax and fee laws. Therefore, the Board also proposes to adopt the cross-referencing regulations, which will be located in other chapters in title 18 that specifically apply to each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. Therefore, the specific purpose of the proposed cross-referencing regulations is to refer taxpayers to the operative provisions in Regulation 4903; and these cross-referencing regulations are necessary to ensure that taxpayers can easily locate Regulation 4903 in chapter 9.9, Special Taxes Administration-Miscellaneous.²

COMPARABLE FEDERAL REGULATIONS AND STATUTES

Portions of the new relief statutes are comparable to portions of section 6015 of title 26 of the United State Code (Internal Revenue Code) and portions of proposed Regulation 4903 are comparable to portions of sections 1.6015-1 through 1.6015-8 of title 26 (Internal Revenue) of the Code of Federal Regulations pertaining to innocent spouse relief and equitable relief. The comparable provisions in Regulation 4903 and the federal regulations do not differ significantly, however, Regulation 4903, subdivision (e), pertaining to the statute of limitations for submitting claims, is slightly more favorable to the claimant than the comparable federal provision. (See 26 U.S.C.S. § 6015(b)(1)(E); and 26 C.F.R. § 1.6015.5(b)(1).) The proposed cross-referencing regulations do not have comparable federal regulations.

The significant differences between the new relief statutes and Internal Revenue Code section 6015 and significant differences between Regulation 4903 and the relevant federal regulations are due to differences in California and federal law that are not related to innocent spouse relief and equitable relief. For example, federal law does not allow registered domestic partners to file joint federal returns and therefore registered domestic partners cannot receive federal innocent spouse or equitable relief; and California law provides its own procedures for appealing liabilities imposed under the applicable special tax and fee laws.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

² The Board followed a consistent approach when it adopted Regulation 4902, *Relief from Liability*, and Regulations 1124, 1248, 1335, 1422, 2250, 2303, 2432, 2570, 3021, 3302, 3502, and 4105, *Relief from Liability*, which cross-reference Regulation 4902.

The Board has determined that proposed Regulation 4903 and the proposed cross-referencing regulations do not impose a mandate on local agencies or school districts that are 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 proposed Regulation 4903 and the proposed cross-referencing regulations will result in no direct or indirect cost or savings to any state agency, no costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or any other non-discretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The new relief statutes are comparable to section 6456. Proposed Regulation 4903 is consistent with the new relief statutes and Regulation 1705.1, which implements, interprets, and makes specific section 6456. Furthermore, the proposed cross-referencing regulations provide cross-references to Regulation 4903. Therefore, the Board has made an initial determination that proposed Regulation 4903 and the proposed cross-referencing regulations 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 proposed regulation 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. This is because the proposed regulations do not impose any fees.

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

The Board has determined that the adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Ms. Carolee D. Johnstone, Tax, Counsel III (Specialist), by telephone at (916) 323-7713, by e-mail at Carolee.Johnstone@boe.ca.gov, or by mail at State Board of Equalization, Attn: Carolee D. Johnstone, 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, Acting 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:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an Initial Statement of Reasons and an underscored version of proposed Regulation 4903 and the proposed cross-referencing regulations showing their express terms. These documents and all information on which the proposed regulations are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation 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 proposed Regulation 4903 and the proposed cross-referencing regulations 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 to a proposed regulation, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts proposed Regulation 4903 and the proposed cross-referencing regulations, 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.

**Proposed Text of California Code of Regulations,
Title 18, Sections**

1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1336, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1422.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2251, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2303.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2433, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2571, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3022, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3302.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

1004. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the private railroad car tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 11651, Revenue and Taxation Code. Reference: Sections 11408.5 and 11551-11555, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1032. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the timber yield tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 38701, Revenue and Taxation Code. Reference: Sections 38454.5 and 38601-38607, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1124.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the motor vehicle fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7657.5 and 8101-8131, Revenue and Taxation Code; Sections 297, 297.5 and 308, Family Code.

1249. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the underground storage tank maintenance fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50112.6 and 50139-50142.2, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1336. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the use fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 9251, Revenue and Taxation Code. Reference: Sections 8880 and 9151-9156, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1422.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the diesel fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60210.5 and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2251. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the oil spill response, prevention, and administration fees, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 46601, Revenue and Taxation Code. Reference: Sections 46159 and 46501-46507, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2303.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the energy resources surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections 40105 and 40111-40117, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2433. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the emergency telephone users surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41099 and 41100-41106, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2571. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the alcoholic beverage tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 32451, Revenue and Taxation Code. Reference: Sections 32258 and 32401-32407, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3022. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the hazardous substances tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Sections 43159.1, 43159.2, and 43451-43456, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3302.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the integrated waste management fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Sections 45158 and 45651-45656, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3502.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for tax, fees, or surcharge under the fee collection procedures law, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 55045.1 and 55221-55226, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

4106. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the cigarette and tobacco products tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30285 and 30361-30384, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

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

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

(A) A liability is incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, or Use Fuel Tax Law;

(B) The liability is attributable to the nonclaiming spouse;

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

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

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

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

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

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

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

(d) WRITTEN REQUEST FOR RELIEF. To seek relief under these provisions, a claiming spouse may submit a written request for relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) STATUTE OF LIMITATIONS. These provisions shall apply to all calendar months, quarters, or years for claims made no later than one year after the board's first contact with the spouse making the claim.

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

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

whichever is later.

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

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

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

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

(1) Criteria for Equitable Relief.

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

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

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

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

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

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

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

(i) The board shall send notification by mail of the claim for relief from liability and the basis for that claim to the nonclaiming spouse.

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

Note: Authority cited: Sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.

Reference: Sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5, and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, January 22, 2010 10:31 AM
To: Alonzo, Mary Ann; Anderson, Doug; Anderson, Karen E.; Baland, Tabitha; Barnett, Louis; Bartolo, Lynn; Bennion, Richard; Blake, Sue; BOE-Board Meeting Material; Boring, Dilara; Cazadd, Kristine; Chinn, Elan; Chung, Sophia; Davis, Toya; Delgado, Maria; Epolite, Anthony; Evans, Regina; Ferris, Randy; Forman, Amber M; Garcia, Laura; Gau, David; Gilman, Todd; Gore, Anita; Hale, Mike; Harvill, Mai; He, Mengjun; Heller, Bradley; Hellmuth, Leila; Henry, Randie; Hirsig, Ramon; Hudson, Tom; Ingenito, Robert; Jacobson, Andrew; Kinkle, Sherrie; Lambert, Robert; Levine, David H. - Legal; LoFaso, Alan; Maddox, Ken; Maeng, Elizabeth; Mannering, Shari; MarcyJo.Mandel@boe.ca.gov; Matsumoto, Sid; mmandel@sco.ca.gov; Moon, Richard; Ograd, Jean; Olson, Diane; Pennington, Margaret; Qualset, Gary; Ralston, NaTasha; Riley, Denise; Ruwart, Carole; Shah, Neil; Smith, Rose; Stowers, Yvette; Tran, Mai; Treichel, Tim; Whitaker, Lynn; Williams, Lee
Subject: State Board of Equalization - Announcement of Regulatory Change to Sales Tax Regulation 4903

The State Board of Equalization will hold a public hearing to consider the adoption of Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and related cross-referencing regulations to prescribe procedures for filing and granting claims for innocent spouse and other equitable relief under the applicable special tax and fee laws. The public hearing on the proposed regulation 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 23, 2010.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
www.boe.ca.gov/regs/reg4903.htm

Questions regarding the substance of the proposed amendments to Regulation 4903 should be directed to: Mr. Bradley Heller, Tax Counsel III (Specialist), by telephone at (916) 324-2657, 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, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

Please do not reply to this message. For additional information on this item, please contact:

Board Proceedings Division, MIC: 80
 Richard Bennion
 Contribution Disclosure Analyst
 Phone (916) 445-2130
 Fax (916) 324-3984
Richard.Bennion@boe.ca.gov

and less burdensome to affected private persons or businesses than the regulatory action.

Availability of Statement of Reasons and Text of Proposed Regulations:

CIRM has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which CIRM relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

Availability of Changed or Modified Text:

After the close of the comment period, CIRM may make the regulation permanent if it remains substantially the same as described in the Policy Statement Overview. If CIRM does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. CIRM will accept written comments on any changes for 15 days after the modified text is made available.

Agency Contact:

Written comments about the proposed regulatory action; requests for a copy of the Initial Statements of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

C. Scott Tocher, Counsel to the Chair
ICOC
California Institute for Regenerative Medicine
210 King Street
San Francisco, CA 94107
(415) 396-9100

or,

Nancy Koch
California Institute for Regenerative Medicine
(415) 396-9253

The Notice of Proposed Regulatory Adoption, the Initial Statement of Reasons and any attachments, and the proposed text of the regulations are also available on CIRM’s website, www.cirm.ca.gov.

Availability of Final Statement of Reasons:

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9, subdivision (a), may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on CIRM’s webpage and accessed at www.cirm.ca.gov.

TITLE 18. BOARD OF EQUALIZATION

Notice of Proposed Regulatory Action

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

- 1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 1336, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 1422.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 2251, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 2303.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 2433, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 2571, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 3022, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 3302.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability***
- 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code sections (sections) 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt California Code of Regulations, title 18, section (Regulation) 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*. The proposed regulation will implement, interpret, and make specific Revenue and Taxation Code sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 (for ease of expression, hereafter, collectively “new relief statutes”), which authorize the Board to relieve an innocent

spouse, including a registered domestic partner, from liability for the particular taxes or fees to which the statutes pertain and provide the criteria upon which such relief may be based. Further, the proposed regulation implements, interprets, and makes specific sections 8101–8131, 9151–9156, 11551–11555, 30361–30384, 32401–32407, 38601–38607, 40111–40117, 41100–41106, 43451–43456, 45651–45656, 46501–46507, 50139–50142.2, 55221–55226, and 60501–60512 by clarifying that they apply to refunds that might be claimed under proposed Regulation 4903. The proposed regulation also implements, interprets, and makes specific Family Code sections 297, 297.5, and 308 defining registered domestic partners, the rights of registered domestic partners, and the recognition of marriages contracted outside of California, respectively.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration–Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, and Use Fuel Tax Law (for ease of expression, hereafter, collectively, “applicable special tax and fee laws”). Therefore, the Board also proposes, to adopt cross-referencing Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, “cross-referencing regulations”). These cross-referencing regulations will be located in other chapters in title 18 that correspond with each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. The Board proposes to adopt the cross-referencing regulations pursuant to the following statutory authorities in order to implement, interpret, and make specific the following statutes, in addition to Family Code sections 297, 297.5, and 308:

Regulation	Authority	Reference
Regulation 1004	Section 11651	Sections 11408.5 and 11551–11555
Regulation 1032	Section 38701	Sections 38454.5 and 38601–38607
Regulation 1124.1	Section 8251	Sections 7657.5 and 8101–8131

Regulation	Authority	Reference
Regulation 1249	Section 50152	Sections 50112.6 and 50139–50142.2
Regulation 1336	Section 9251	Sections 8880 and 9151–9156
Regulation 1422.1	Section 60601	Sections 60210.5 and 60501–60512
Regulation 2251	Section 46601	Sections 46159 and 46501–46507
Regulation 2303.1	Section 40171	Sections 40105 and 40111–40117
Regulation 2433	Section 41128	Sections 41099 and 41100–41106
Regulation 2571	Section 32451	Sections 32258 and 32401–32407
Regulation 3022	Section 43501	Sections 43159.1, 43159.2, and 43451–43456
Regulation 3302.1	Section 45851	Sections 45158 and 45651–45656
Regulation 3502.1	Section 55301	Sections 55045.1 and 55221–55226
Regulation 4106	Section 30451	Sections 30285 and 30361–30384

A public hearing on the proposed adoption of Regulation 4903 and the cross-referencing regulations will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed regulations. In addition, if the Board receives written comments prior to the hearing on March 23, 2010, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed regulations.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Current Law

In 1993, section 6456 was enacted to authorize the Board to grant innocent spouse and other equitable relief from sales and use tax liabilities to qualified spouses, under regulations prescribed by the Board. (Stats. 1993, ch. 181.) In 1997, the Board adopted Regulation 1705.1¹ to implement, interpret, and make specific section 6456 with respect to sales and use tax liabilities. Then, in January 2007, the Board added subdivision (j) to Regulation 1705.1 to recognize that on and after January 1, 2005, registered domestic partners have the same rights, protections and benefits under the law

¹ Regulation 1705.1 is available at www.boe.ca.gov/pdf/reg1705-1.pdf.

as are granted to and imposed upon spouses, including the ability to qualify for relief under section 6456. (Fam. Code, §§ 297 and 297.5.)

The new relief statutes are comparable to section 6456. They were enacted in March 2007 (Stats. 2007, ch. 342) to authorize the Board to grant innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws to qualified spouses and registered domestic partners, under regulations prescribed by the Board, effective January 1, 2008. However, the Board has not adopted regulations to implement, interpret, and make specific the provisions of the new relief statutes.

Proposed Regulations

The Board proposes to adopt Regulation 4903, which is comparable to Regulation 1705.1, to prescribe the procedures and criteria for relieving an innocent spouse or registered domestic partner from liability under the applicable special tax and fee laws. Regulation 4903, subdivision (a), lists the general requirements that a spouse or registered domestic partner claiming relief must meet in order to be relieved from liability for the applicable special taxes and fees. Specifically, the claimant must establish that:

- The liability is attributable to the nonclaiming spouse or registered domestic partner;
- The claimant did not know of, and a reasonably prudent person in the claimant’s circumstances would not have had reason to know of, the liability; and
- It would be inequitable to hold the claimant liable for the liability, taking into account whether the claimant significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 4903, subdivision (b), defines the term “benefitted,” as it is used in the phrase “benefitted directly or indirectly.” Regulation 4903, subdivision (c), defines the term “attribution,” as it is used in the phrase “attributable to the nonclaiming spouse.”

Regulation 4903, subdivision (d), provides that, if a spouse or registered domestic partner chooses to claim relief under the regulation, the request must be in writing and set forth the tax or fee account number, the period for which relief is requested, and the specific grounds on which the request for relief is based.

Regulation 4903, subdivision (e), clarifies the statute of limitations that applies to claims for relief from liability under the regulation, and subdivision (f) explains that refunds of taxes and fees are subject to the more specific statutory requirements provided by the relevant provisions in the applicable tax and fee laws. Regulation 4903, subdivision (g), clarifies that Regula-

tion 4903 is retroactive to liabilities arising prior to January 1, 2008.

Regulation 4903, subdivision (h), explains that the Board may still relieve a claimant from liability if, taking into account all the facts and circumstances, it would be inequitable to hold the claimant liable for an amount attributable to an item for which relief is not available under subdivisions (a) through (d), described above. Subdivision (h) also sets forth the criteria for equitable relief and lists the non-exclusive factors the Board may consider in deciding whether to grant or deny equitable relief.

Regulation 4903, subdivision (i), provides that the Board must notify a nonclaiming spouse or registered domestic partner by mail when his or her spouse or registered domestic partner files a claim for relief from liability and include the basis for the claim.

Regulation 4903, subdivision (j), clarifies that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties, as are granted to and imposed upon spouses and thereby makes all of the provisions applicable to spouses applicable to registered domestic partners.

The specific purpose of proposed Regulation 4903 is to specify the requirements for claiming and granting innocent spouse and other equitable relief from liabilities incurred under the applicable special tax and fee laws. Proposed Regulation 4903 is necessary to prescribe the requirements for claiming and granting innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration–Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under all the applicable special tax and fee laws. Therefore, the Board also proposes to adopt the cross-referencing regulations, which will be located in other chapters in title 18 that specifically apply to each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. Therefore, the specific purpose of the proposed cross-referencing regulations is to refer taxpayers to the operative provisions in Regulation 4903; and these cross-referencing regulations are necessary to ensure that taxpayers can easily locate Regulation 4903 in chapter 9.9, Special Taxes Administration–Miscellaneous.²

² The Board followed a consistent approach when it adopted Regulation 4902, *Relief from Liability*, and Regulations 1124, 1248, 1335, 1422, 2250, 2303, 2432, 2570, 3021, 3302, 3502, and 4105, *Relief from Liability*, which cross-reference Regulation 4902.

COMPARABLE FEDERAL
REGULATIONS AND STATUTES

Portions of the new relief statutes are comparable to portions of section 6015 of title 26 of the United State Code (Internal Revenue Code) and portions of proposed Regulation 4903 are comparable to portions of sections 1.6015-1 through 1.6015-8 of title 26 (Internal Revenue) of the Code of Federal Regulations pertaining to innocent spouse relief and equitable relief. The comparable provisions in Regulation 4903 and the federal regulations do not differ significantly, however, Regulation 4903, subdivision (e), pertaining to the statute of limitations for submitting claims, is slightly more favorable to the claimant than the comparable federal provision. (See 26 U.S.C.S. § 6015(b)(1)(E); and 26 C.F.R. § 1.6015.5(b)(1).) The proposed cross-referencing regulations do not have comparable federal regulations.

The significant differences between the new relief statutes and Internal Revenue Code section 6015 and significant differences between Regulation 4903 and the relevant federal regulations are due to differences in California and federal law that are not related to innocent spouse relief and equitable relief. For example, federal law does not allow registered domestic partners to file joint federal returns and therefore registered domestic partners cannot receive federal innocent spouse or equitable relief; and California law provides its own procedures for appealing liabilities imposed under the applicable special tax and fee laws.

NO MANDATE ON LOCAL AGENCIES
AND SCHOOL DISTRICTS

The Board has determined that proposed Regulation 4903 and the proposed cross-referencing regulations do not impose a mandate on local agencies or school districts that are 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 proposed Regulation 4903 and the proposed cross-referencing regulations will result in no direct or indirect cost or savings to any state agency, no costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or any other non-discretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE
ADVERSE ECONOMIC IMPACT
DIRECTLY AFFECTING BUSINESS

The new relief statutes are comparable to section 6456. Proposed Regulation 4903 is consistent with the new relief statutes and Regulation 1705.1, which implements, interprets, and makes specific section 6456. Furthermore, the proposed cross-referencing regulations provide cross-references to Regulation 4903. Therefore, the Board has made an initial determination that proposed Regulation 4903 and the proposed cross-referencing regulations 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 proposed regulation 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. This is because the proposed regulations do not impose any fees.

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

The Board has determined that the adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT
ON HOUSING COSTS

Adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will not have a significant effect on housing costs.

DETERMINATION REGARDING
ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Ms. Carolee D. John-

stone, Tax, Counsel III (Specialist), by telephone at (916) 323-7713, by e-mail at Carolee.Johnstone@boe.ca.gov, or by mail at State Board of Equalization, Attn: Carolee D. Johnstone, 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, Acting 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:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

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

The Board has prepared an Initial Statement of Reasons and an underscored version of proposed Regulation 4903 and the proposed cross-referencing regulations showing their express terms. These documents and all information on which the proposed regulations are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation 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 proposed Regulation 4903 and the proposed cross-referencing regulations 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 to a proposed regulation, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

If the Board adopts proposed Regulation 4903 and the proposed cross-referencing regulations, 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

BOARD OF EQUALIZATION

NOTICE OF CORRECTION

**Concerning the Board of Equalization's
Notice of Proposed Action**

The State Board of Equalization published a Notice of Proposed Regulatory Action (NOPRA) concerning the proposed adoption of California Code of Regulations, title 18, section (Regulation) 1698.5, Audit Procedures, in the January 15, 2010, edition of the California Regulatory Notice Register (Register 2010, No. 3-Z, Page 89). The second paragraph of the published NOPRA contained a typographical error, which incorrectly indicated that the public hearing regarding the proposed regulatory action was scheduled for March 23, 2009, and that the deadline for the Board to receive written comments was prior to the start of the 2009 hearing. The NOPRA should have correctly provided that:

"A public hearing on the proposed adoption of Regulation 1698.5 will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed regulation."

"Any interested person may also submit written comments regarding the adoption of the proposed regulation. The written comment period closes at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2010. Written comments received by Mr. Rick Bennion, at the postal address, email address, or fax number provided below, prior to the close of the written comment period will be submitted to and considered by the Board before the Board decides whether to adopt the proposed regulation."

Any inquiries regarding this correction should be made to Mr. Rick Bennion, Acting Regulations Coordi-



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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State Controller

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Executive Director

January 22, 2010

To Interested Parties:

Notice of Proposed Regulatory Action

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

1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1336, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1422.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
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2571, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3022, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3302.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code sections (sections) 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt California Code of Regulations, title 18, section (Regulation) 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*. The proposed regulation will implement, interpret, and make specific Revenue and Taxation Code sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 (for ease of expression, hereafter,

collectively “new relief statutes”), which authorize the Board to relieve an innocent spouse, including a registered domestic partner, from liability for the particular taxes or fees to which the statutes pertain and provide the criteria upon which such relief may be based. Further, the proposed regulation implements, interprets, and makes specific sections 8101-8131, 9151-9156, 11551-11555, 30361-30384, 32401-32407, 38601-38607, 40111-40117, 41100-41106, 43451-43456, 45651-45656, 46501-46507, 50139-50142.2, 55221-55226, and 60501-60512 by clarifying that they apply to refunds that might be claimed under proposed Regulation 4903. The proposed regulation also implements, interprets, and makes specific Family Code sections 297, 297.5, and 308 defining registered domestic partners, the rights of registered domestic partners, and the recognition of marriages contracted outside of California, respectively.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, and Use Fuel Tax Law (for ease of expression, hereafter, collectively, “applicable special tax and fee laws”). Therefore, the Board also proposes, to adopt cross-referencing Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, “cross-referencing regulations”). These cross-referencing regulations will be located in other chapters in title 18 that correspond with each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. The Board proposes to adopt the cross-referencing regulations pursuant to the following statutory authorities in order to implement, interpret, and make specific the following statutes, in addition to Family Code sections 297, 297.5, and 308:

Regulation	Authority	Reference
Regulation 1004	Section 11651	Sections 11408.5 and 11551-11555
Regulation 1032	Section 38701	Sections 38454.5 and 38601-38607
Regulation 1124.1	Section 8251	Sections 7657.5 and 8101-8131
Regulation 1249	Section 50152	Sections 50112.6 and 50139-50142.2
Regulation 1336	Section 9251	Sections 8880 and 9151-9156
Regulation 1422.1	Section 60601	Sections 60210.5 and 60501-60512
Regulation 2251	Section 46601	Sections 46159 and 46501-46507
Regulation 2303.1	Section 40171	Sections 40105 and 40111-40117

Regulation 2433	Section 41128	Sections 41099 and 41100-41106
Regulation 2571	Section 32451	Sections 32258 and 32401-32407
Regulation 3022	Section 43501	Sections 43159.1, 43159.2, and 43451-43456
Regulation 3302.1	Section 45851	Sections 45158 and 45651-45656
Regulation 3502.1	Section 55301	Sections 55045.1 and 55221-55226
Regulation 4106	Section 30451	Sections 30285 and 30361-30384

A public hearing on the proposed adoption of Regulation 4903 and the cross-referencing regulations will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed regulations. In addition, if the Board receives written comments prior to the hearing on March 23, 2010, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

In 1993, section 6456 was enacted to authorize the Board to grant innocent spouse and other equitable relief from sales and use tax liabilities to qualified spouses, under regulations prescribed by the Board. (Stats. 1993, ch. 181.) In 1997, the Board adopted Regulation 1705.1¹ to implement, interpret, and make specific section 6456 with respect to sales and use tax liabilities. Then, in January 2007, the Board added subdivision (j) to Regulation 1705.1 to recognize that on and after January 1, 2005, registered domestic partners have the same rights, protections and benefits under the law as are granted to and imposed upon spouses, including the ability to qualify for relief under section 6456. (Fam. Code, §§ 297 and 297.5.)

The new relief statutes are comparable to section 6456. They were enacted in March 2007 (Stats. 2007, ch. 342) to authorize the Board to grant innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws to qualified spouses and registered domestic partners, under regulations prescribed by the Board, effective January 1, 2008. However, the Board has not adopted regulations to implement, interpret, and make specific the provisions of the new relief statutes.

Proposed Regulations

The Board proposes to adopt Regulation 4903, which is comparable to Regulation 1705.1, to prescribe the procedures and criteria for relieving an innocent spouse or

¹ Regulation 1705.1 is available at www.boe.ca.gov/pdf/reg1705-1.pdf.

registered domestic partner from liability under the applicable special tax and fee laws. Regulation 4903, subdivision (a), lists the general requirements that a spouse or registered domestic partner claiming relief must meet in order to be relieved from liability for the applicable special taxes and fees. Specifically, the claimant must establish that:

- The liability is attributable to the nonclaiming spouse or registered domestic partner;
- The claimant did not know of, and a reasonably prudent person in the claimant's circumstances would not have had reason to know of, the liability; and
- It would be inequitable to hold the claimant liable for the liability, taking into account whether the claimant significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 4903, subdivision (b), defines the term "benefitted," as it is used in the phrase "benefitted directly or indirectly." Regulation 4903, subdivision (c), defines the term "attribution," as it is used in the phrase "attributable to the nonclaiming spouse."

Regulation 4903, subdivision (d), provides that, if a spouse or registered domestic partner chooses to claim relief under the regulation, the request must be in writing and set forth the tax or fee account number, the period for which relief is requested, and the specific grounds on which the request for relief is based.

Regulation 4903, subdivision (e), clarifies the statute of limitations that applies to claims for relief from liability under the regulation, and subdivision (f) explains that refunds of taxes and fees are subject to the more specific statutory requirements provided by the relevant provisions in the applicable tax and fee laws. Regulation 4903, subdivision (g), clarifies that Regulation 4903 is retroactive to liabilities arising prior to January 1, 2008.

Regulation 4903, subdivision (h), explains that the Board may still relieve a claimant from liability if, taking into account all the facts and circumstances, it would be inequitable to hold the claimant liable for an amount attributable to an item for which relief is not available under subdivisions (a) through (d), described above. Subdivision (h) also sets forth the criteria for equitable relief and lists the non-exclusive factors the Board may consider in deciding whether to grant or deny equitable relief.

Regulation 4903, subdivision (i), provides that the Board must notify a nonclaiming spouse or registered domestic partner by mail when his or her spouse or registered domestic partner files a claim for relief from liability and include the basis for the claim.

Regulation 4903, subdivision (j), clarifies that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties, as are granted to and imposed upon spouses and thereby

makes all of the provisions applicable to spouses applicable to registered domestic partners.

The specific purpose of proposed Regulation 4903 is to specify the requirements for claiming and granting innocent spouse and other equitable relief from liabilities incurred under the applicable special tax and fee laws. Proposed Regulation 4903 is necessary to prescribe the requirements for claiming and granting innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under all the applicable special tax and fee laws. Therefore, the Board also proposes to adopt the cross-referencing regulations, which will be located in other chapters in title 18 that specifically apply to each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. Therefore, the specific purpose of the proposed cross-referencing regulations is to refer taxpayers to the operative provisions in Regulation 4903; and these cross-referencing regulations are necessary to ensure that taxpayers can easily locate Regulation 4903 in chapter 9.9, Special Taxes Administration-Miscellaneous.²

COMPARABLE FEDERAL REGULATIONS AND STATUTES

Portions of the new relief statutes are comparable to portions of section 6015 of title 26 of the United State Code (Internal Revenue Code) and portions of proposed Regulation 4903 are comparable to portions of sections 1.6015-1 through 1.6015-8 of title 26 (Internal Revenue) of the Code of Federal Regulations pertaining to innocent spouse relief and equitable relief. The comparable provisions in Regulation 4903 and the federal regulations do not differ significantly, however, Regulation 4903, subdivision (e), pertaining to the statute of limitations for submitting claims, is slightly more favorable to the claimant than the comparable federal provision. (See 26 U.S.C.S. § 6015(b)(1)(E); and 26 C.F.R. § 1.6015.5(b)(1).) The proposed cross-referencing regulations do not have comparable federal regulations.

The significant differences between the new relief statutes and Internal Revenue Code section 6015 and significant differences between Regulation 4903 and the relevant federal regulations are due to differences in California and federal law that are not related to innocent spouse relief and equitable relief. For example, federal law does not allow registered domestic partners to file joint federal returns and therefore registered domestic partners cannot receive federal innocent spouse or equitable relief; and California law provides its own procedures for appealing liabilities imposed under the applicable special tax and fee laws.

² The Board followed a consistent approach when it adopted Regulation 4902, *Relief from Liability*, and Regulations 1124, 1248, 1335, 1422, 2250, 2303, 2432, 2570, 3021, 3302, 3502, and 4105, *Relief from Liability*, which cross-reference Regulation 4902.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that proposed Regulation 4903 and the proposed cross-referencing regulations do not impose a mandate on local agencies or school districts that are 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 proposed Regulation 4903 and the proposed cross-referencing regulations will result in no direct or indirect cost or savings to any state agency, no costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or any other non-discretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The new relief statutes are comparable to section 6456. Proposed Regulation 4903 is consistent with the new relief statutes and Regulation 1705.1, which implements, interprets, and makes specific section 6456. Furthermore, the proposed cross-referencing regulations provide cross-references to Regulation 4903. Therefore, the Board has made an initial determination that proposed Regulation 4903 and the proposed cross-referencing regulations 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 proposed regulation 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. This is because the proposed regulations do not impose any fees.

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

The Board has determined that the adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Ms. Carolee D. Johnstone, Tax, Counsel III (Specialist), by telephone at (916) 323-7713, by e-mail at *Carolee.Johnstone@boe.ca.gov*, or by mail at State Board of Equalization, Attn: Carolee D. Johnstone, 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, Acting 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:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an Initial Statement of Reasons and an underscored version of proposed Regulation 4903 and the proposed cross-referencing regulations showing their express terms. These documents and all information on which the proposed regulations are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation 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

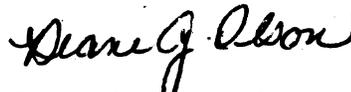
The Board may adopt proposed Regulation 4903 and the proposed cross-referencing regulations with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on

notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made to a proposed regulation, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts proposed Regulation 4903 and the proposed cross-referencing regulations, 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

Enclosures

Initial Statement of Reasons

Proposed Adoption of California Code of Regulations, Title 18, Sections

1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
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3302.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

SPECIFIC PURPOSE AND NECESSITY

Current Law

In 1993, Revenue and Taxation Code section (section) 6456 was enacted to authorize the Board to grant innocent spouse and other equitable relief from sales and use tax liabilities to qualified spouses, under regulations prescribed by the Board. (Stats. 1993, ch. 181.) In 1997, the Board adopted California Code of Regulations, title 18, section (Regulation) 1705.1¹ to implement, interpret, and make specific section 6456 with respect to sales and use tax liabilities. Then, in January 2007, the Board added subdivision (j) to Regulation 1705.1 to recognize that on and after January 1, 2005, registered domestic partners have the same rights, protections, and benefits under the law as are granted to and imposed upon spouses, including the ability to qualify for relief under section 6456. (Fam. Code, §§ 297 and 297.5.)

Sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 (for ease of expression, hereafter, collectively "new relief statutes"), which are comparable to section 6456, were enacted in March 2007 (Stats. 2007, ch. 342) to authorize the Board to grant innocent spouse and other equitable relief from liabilities imposed under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous

¹ Regulation 1705.1 is available at www.boe.ca.gov/pdf/reg1705-1.pdf.

Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, and Use Fuel Tax Law (for ease of expression, hereafter, collectively, “applicable special tax and fee laws”) to qualified spouses and registered domestic partners, under regulations prescribed by the Board, effective January 1, 2008. However, the Board has not adopted regulations to implement, interpret, and make specific the provisions of the new relief statutes.

Proposed Regulations

The Board proposes to adopt Regulation 4903, which is comparable to Regulation 1705.1, to prescribe the procedures and criteria for relieving an innocent spouse or registered domestic partner from liability under the applicable special tax and fee laws. Regulation 4903, subdivision (a), lists the general requirements that a spouse or registered domestic partner claiming relief must meet in order to be relieved from liability for the applicable special taxes and fees. Specifically, the claimant must establish that:

- The liability is attributable to the nonclaiming spouse or registered domestic partner;
- The claimant did not know of, and a reasonably prudent person in the claimant’s circumstances would not have had reason to know of, the liability; and
- It would be inequitable to hold the claimant liable for the liability, taking into account whether the claimant significantly benefitted directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 4903, subdivision (b), defines the term “benefitted,” as it is used in the phrase “benefitted directly or indirectly.” Regulation 4903, subdivision (c), defines the term “attribution,” as it is used in the phrase “attributable to the nonclaiming spouse.”

Regulation 4903, subdivision (d), provides that, if a spouse or registered domestic partner chooses to claim relief under the regulation, the request must be in writing and set forth the tax or fee account number, the period for which relief is requested, and the specific grounds on which the request for relief is based.

Regulation 4903, subdivision (e), clarifies the statute of limitations that applies to claims for relief from liability under the regulation, and subdivision (f) explains that refunds of taxes and fees are subject to the more specific statutory requirements provided by the relevant provisions in the applicable tax and fee laws. Regulation 4903, subdivision (g), clarifies that Regulation 4903 is retroactive to liabilities arising prior to January 1, 2008.

Regulation 4903, subdivision (h), explains that the Board may still relieve a claimant from liability if, taking into account all the facts and circumstances, it would be inequitable to hold the claimant liable for an amount attributable to an item for which relief is not available under subdivisions (a) through (d), described above. Subdivision (h) also sets forth the criteria for equitable relief and lists the non-exclusive factors the Board may consider in deciding whether to grant or deny equitable relief.

Regulation 4903, subdivision (i), provides that the Board must notify a nonclaiming spouse or registered domestic partner by mail when his or her spouse or registered domestic partner files a claim for relief from liability and include the basis for the claim.

Regulation 4903, subdivision (j), clarifies that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties, as are granted to and imposed upon spouses and thereby makes all of the provisions applicable to spouses applicable to registered domestic partners.

The specific purpose of proposed Regulation 4903 is to specify the requirements for claiming and granting innocent spouse and other equitable relief from liabilities incurred under the applicable special tax and fee laws. Proposed Regulation 4903 is necessary to prescribe the requirements for claiming and granting innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under all the applicable special tax and fee laws. Therefore, the Board also proposes to adopt cross-referencing Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, "cross-referencing regulations"), which will be located in other chapters in title 18 that specifically apply to each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. The Board proposes to adopt the cross-referencing regulations pursuant to the following statutory authorities in order to implement, interpret, and make specific the following statutes, in addition to Family Code sections 297, 297.5, and 308:

Regulation	Authority	Reference
Regulation 1004	Section 11651	Sections 11408.5 and 11551-11555
Regulation 1032	Section 38701	Sections 38454.5 and 38601-38607
Regulation 1124.1	Section 8251	Sections 7657.5 and 8101-8131

Regulation 1249	Section 50152	Sections 50112.6 and 50139-50142.2
Regulation 1336	Section 9251	Sections 8880 and 9151-9156
Regulation 1422.1	Section 60601	Sections 60210.5 and 60501-60512
Regulation 2251	Section 46601	Sections 46159 and 46501-46507
Regulation 2303.1	Section 40171	Sections 40105 and 40111-40117
Regulation 2433	Section 41128	Sections 41099 and 41100-41106
Regulation 2571	Section 32451	Sections 32258 and 32401-32407
Regulation 3022	Section 43501	Sections 43159.1, 43159.2, and 43451- 43456
Regulation 3302.1	Section 45851	Sections 45158 and 45651-45656
Regulation 3502.1	Section 55301	Sections 55045.1 and 55221-55226
Regulation 4106	Section 30451	Sections 30285 and 30361-30384

The specific purpose of the proposed cross-referencing regulations is to refer taxpayers to the operative provisions in Regulation 4903; and these cross-referencing regulations are necessary to ensure that taxpayers can easily locate Regulation 4903 in chapter 9.9, Special Taxes Administration-Miscellaneous.²

DOCUMENTS RELIED UPON

The Board relied upon a staff memorandum dated November 20, 2009, requesting Board authorization to begin the formal rulemaking process to add Regulation 4903 and the cross-referencing regulations to title 18 of the California Code of Regulations (November 20, 2009) and on comments from Board staff made during the Board's December 16, 2009, meeting in deciding to propose the adoption of Regulation 4903 and the cross-referencing regulations. The memorandum is available on the Board's Web site at www.boe.ca.gov/meetings/pdf/Item_J2_121509.pdf. The audio and video from the Board's December 16, 2009, meeting are available on the Board's Website at www.visualwebcaster.com/event.asp?id=53991.

ALTERNATIVES CONSIDERED

The Board considered whether it would be more appropriate to take no action as an alternative to adopting proposed Regulation 4903 and the cross-referencing regulations, during the Board's December 16, 2009, meeting. The Board decided to propose the adoption of Regulation 4903 and the cross-referencing regulations because the Board is required to do so by the new relief statutes added to the applicable special tax and fee laws effective January 1, 2008, and

² The Board followed a consistent approach when it adopted Regulation 4902, *Relief from Liability*, and Regulations 1124, 1248, 1335, 1422, 2250, 2303, 2432, 2570, 3021, 3302, 3502, and 4105, *Relief from Liability*, which cross-reference Regulation 4902.

the regulations are necessary to implement, interpret, and make specific those statutes.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The new relief statutes are comparable to section 6456. Proposed Regulation 4903 is consistent with the new relief statutes and Regulation 1705.1, which implements, interprets, and makes specific section 6456. Furthermore, the proposed cross-referencing regulations provide cross-references to Regulation 4903. Therefore, the Board has made an initial determination that proposed Regulation 4903 and the proposed cross-referencing regulations will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

**Proposed Text of California Code of Regulations,
Title 18, Sections**

1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
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4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

1004. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the private railroad car tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 11651, Revenue and Taxation Code. Reference: Sections 11408.5 and 11551-11555, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1032. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the timber yield tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 38701, Revenue and Taxation Code. Reference: Sections 38454.5 and 38601-38607, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1124.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the motor vehicle fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7657.5 and 8101-8131, Revenue and Taxation Code; Sections 297, 297.5 and 308, Family Code.

1249. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the underground storage tank maintenance fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50112.6 and 50139-50142.2, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1336. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the use fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 9251, Revenue and Taxation Code. Reference: Sections 8880 and 9151-9156, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1422.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the diesel fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60210.5 and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2251. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the oil spill response, prevention, and administration fees, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 46601, Revenue and Taxation Code. Reference: Sections 46159 and 46501-46507, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2303.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the energy resources surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections 40105 and 40111-40117, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2433. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the emergency telephone users surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41099 and 41100-41106, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2571. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the alcoholic beverage tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 32451, Revenue and Taxation Code. Reference: Sections 32258 and 32401-32407, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3022. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the hazardous substances tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Sections 43159.1, 43159.2, and 43451-43456, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3302.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the integrated waste management fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Sections 45158 and 45651-45656, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3502.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for tax, fees, or surcharge under the fee collection procedures law, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 55045.1 and 55221-55226, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

4106. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the cigarette and tobacco products tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30285 and 30361-30384, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

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

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

(A) A liability is incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, or Use Fuel Tax Law;

(B) The liability is attributable to the nonclaiming spouse;

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

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

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

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

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

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

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

(d) WRITTEN REQUEST FOR RELIEF. To seek relief under these provisions, a claiming spouse may submit a written request for relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) STATUTE OF LIMITATIONS. These provisions shall apply to all calendar months, quarters, or years for claims made no later than one year after the board's first contact with the spouse making the claim.

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

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

whichever is later.

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

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

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

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

(1) Criteria for Equitable Relief.

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

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

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

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

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

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

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

(i) The board shall send notification by mail of the claim for relief from liability and the basis for that claim to the nonclaiming spouse.

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

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

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 4903

Title: 1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1336, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1422.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2251, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2303.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2433, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2571, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3022, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3302.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

Preparation: Brad Heller

Legal Contact: Brad Heller

The regulatory action is necessary to specify the application of the applicable special tax and fee laws to claims for innocent spouse and other equitable relief and is a clarification of existing law

History of Proposed Regulation:

March 23, 2010 Public hearing
March 8, 2010 45-day public comment period ends
January 22, 2010 OAL publication date; 45-day public comment period begins; IP mailing
January 11 2010 Notice to OAL
November 17, 2009 Business Tax Committee, Board Authorized Publication (vote 5 -0)

Sponsor: NA
Support: NA
Oppose: NA

Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Tax Regulations 1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 1336, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 1422.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 2251, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 2303.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 2433, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 2571, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 3022, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 3302.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and 4903, Computers, Programs, and Data Processing, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on January 22, 2009, 60 days prior to the public hearing.

April 6, 2010



Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

MARCH 23, 2010

ITEM F2

PUBLIC HEARINGS

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Board
of Equalization:

Betty Yee
Chair

Jerome E. Horton
Vice-Chair

Bill Leonard
Member

Michelle Steel
Member

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

Diane Olson
Chief, Board
Proceedings Division

Board of Equalization
Staff:

Carolee Johnstone
Tax Counsel III

---oOo---

1 Sacramento, California

2 March 23, 2010

3 ---oOO---

4 MS. OLSON: Our next item is F2, Regulation
5 4903, Innocent Spouse and Registered Domestic Partner
6 relief from liabilities and related cross-referencing
7 regulations.

8 MS. YEE: Thank you.

9 MS. JOHNSTONE: Good Afternoon --

10 MS. YEE: Good afternoon.

11 MS. JOHNSTONE: -- Madam Chair and Members of
12 the Board. I'm Carolee Johnstone, Tax Counsel III with
13 the Board's Legal Department. I'm here today to request
14 that the Board vote to adopt the text of the proposed
15 Regulation 4903 and the related cross-referencing
16 regulations that implement, interpret and make specific
17 the innocent spouse and domestic partner relief statutes
18 enacted in 2007 and effective January 1, 2008 under
19 various Special Tax and Fee programs administered by the
20 Board.

21 Regulation 4903 is virtually the same as
22 Regulation 1705.1 that was adopted by the Board in 1997
23 and that implements, interprets and makes specific the
24 Sales and Use Tax innocent spouse relief statute Section
25 6456.

26 I'm happy to answer any questions you may have.
27 And thank you.

28 MS. YEE: Thank you very much, Ms. Johnstone.

1 Any questions, Members?

2 MS. STEEL: Okay, so moved.

3 MS. YEE: Okay, hearing none, we have a motion
4 by Ms. Steel, second by Ms. Alby.

5 Without objection, that motion carries.

6 MS. JOHNSTONE: Thank you.

7 MS. YEE: Thank you.

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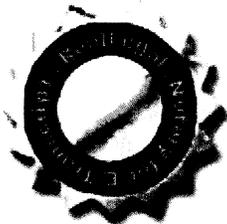
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1 REPORTER'S CERTIFICATE.
2

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

7 I, BEVERLY D. TOMS, Hearing Reporter for the
8 California State Board of Equalization certify that on
9 March 23, 2010 I recorded verbatim, in shorthand, to the
10 best of my ability, the proceedings in the
11 above-entitled hearing; that I transcribed the shorthand
12 writing into typewriting; and that the preceding 4 pages
13 constitute a complete and accurate transcription of the
14 shorthand writing.

15
16 Dated: April 1, 2010.



20 *Beverly D Toms*

21 BEVERLY D. TOMS

22 Hearing Reporter
23
24
25
26
27
28

2010 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, March 23, 2010

B4 Clovus M. Sykes, 492696, 492702
2001, \$2,686.00 Tax, \$1,623.68 Penalty
2004, \$2,831.00 Tax, \$707.75 Penalty

For Appellant:

Clovus M. Sykes, Taxpayer

For Franchise Tax Board:

Jane Perez, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the underlying tax assessment.
Whether appellant has shown reasonable cause for the abatement of penalties.
Whether the Board should impose a frivolous appeal penalty.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.2)

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

PUBLIC HEARINGS

F1 Proposed Adoption of Regulation 1698.5, *Audit Procedures*

Robert Tucker, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's recommendation to adopt additional changes to the original text of proposed Sales and Use Tax Regulation 1698.5, *Audit Procedures*, pursuant to Government Code section 11346.8. (Exhibit 3.3.)

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board approved further changes to the published version of Regulation 1698.5 and ordered that the changed version be placed in the rulemaking file for 15 days.

F2 Proposed Amendments to Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

Carolee Johnstone, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding the proposed amendments to Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and related cross-referencing regulations, to prescribe the requirements for obtaining innocent spouse relief from specified taxes and fees. (Exhibit 3.4.)

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



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

January 22, 2010

To Interested Parties:

Notice of Proposed Regulatory Action

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

1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1336, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
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3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code sections (sections) 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt California Code of Regulations, title 18, section (Regulation) 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*. The proposed regulation will implement, interpret, and make specific Revenue and Taxation Code sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 (for ease of expression, hereafter,

collectively “new relief statutes”), which authorize the Board to relieve an innocent spouse, including a registered domestic partner, from liability for the particular taxes or fees to which the statutes pertain and provide the criteria upon which such relief may be based. Further, the proposed regulation implements, interprets, and makes specific sections 8101-8131, 9151-9156, 11551-11555, 30361-30384, 32401-32407, 38601-38607, 40111-40117, 41100-41106, 43451-43456, 45651-45656, 46501-46507, 50139-50142.2, 55221-55226, and 60501-60512 by clarifying that they apply to refunds that might be claimed under proposed Regulation 4903. The proposed regulation also implements, interprets, and makes specific Family Code sections 297, 297.5, and 308 defining registered domestic partners, the rights of registered domestic partners, and the recognition of marriages contracted outside of California, respectively.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, and Use Fuel Tax Law (for ease of expression, hereafter, collectively, “applicable special tax and fee laws”). Therefore, the Board also proposes, to adopt cross-referencing Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, “cross-referencing regulations”). These cross-referencing regulations will be located in other chapters in title 18 that correspond with each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. The Board proposes to adopt the cross-referencing regulations pursuant to the following statutory authorities in order to implement, interpret, and make specific the following statutes, in addition to Family Code sections 297, 297.5, and 308:

Regulation	Authority	Reference
Regulation 1004	Section 11651	Sections 11408.5 and 11551-11555
Regulation 1032	Section 38701	Sections 38454.5 and 38601-38607
Regulation 1124.1	Section 8251	Sections 7657.5 and 8101-8131
Regulation 1249	Section 50152	Sections 50112.6 and 50139-50142.2
Regulation 1336	Section 9251	Sections 8880 and 9151-9156
Regulation 1422.1	Section 60601	Sections 60210.5 and 60501-60512
Regulation 2251	Section 46601	Sections 46159 and 46501-46507
Regulation 2303.1	Section 40171	Sections 40105 and 40111-40117

Regulation 2433	Section 41128	Sections 41099 and 41100-41106
Regulation 2571	Section 32451	Sections 32258 and 32401-32407
Regulation 3022	Section 43501	Sections 43159.1, 43159.2, and 43451-43456
Regulation 3302.1	Section 45851	Sections 45158 and 45651-45656
Regulation 3502.1	Section 55301	Sections 55045.1 and 55221-55226
Regulation 4106	Section 30451	Sections 30285 and 30361-30384

A public hearing on the proposed adoption of Regulation 4903 and the cross-referencing regulations will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed regulations. In addition, if the Board receives written comments prior to the hearing on March 23, 2010, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

In 1993, section 6456 was enacted to authorize the Board to grant innocent spouse and other equitable relief from sales and use tax liabilities to qualified spouses, under regulations prescribed by the Board. (Stats. 1993, ch. 181.) In 1997, the Board adopted Regulation 1705.1¹ to implement, interpret, and make specific section 6456 with respect to sales and use tax liabilities. Then, in January 2007, the Board added subdivision (j) to Regulation 1705.1 to recognize that on and after January 1, 2005, registered domestic partners have the same rights, protections and benefits under the law as are granted to and imposed upon spouses, including the ability to qualify for relief under section 6456. (Fam. Code, §§ 297 and 297.5.)

The new relief statutes are comparable to section 6456. They were enacted in March 2007 (Stats. 2007, ch. 342) to authorize the Board to grant innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws to qualified spouses and registered domestic partners, under regulations prescribed by the Board, effective January 1, 2008. However, the Board has not adopted regulations to implement, interpret, and make specific the provisions of the new relief statutes.

Proposed Regulations

The Board proposes to adopt Regulation 4903, which is comparable to Regulation 1705.1, to prescribe the procedures and criteria for relieving an innocent spouse or

¹ Regulation 1705.1 is available at www.boe.ca.gov/pdf/reg1705-1.pdf.

registered domestic partner from liability under the applicable special tax and fee laws. Regulation 4903, subdivision (a), lists the general requirements that a spouse or registered domestic partner claiming relief must meet in order to be relieved from liability for the applicable special taxes and fees. Specifically, the claimant must establish that:

- The liability is attributable to the nonclaiming spouse or registered domestic partner;
- The claimant did not know of, and a reasonably prudent person in the claimant's circumstances would not have had reason to know of, the liability; and
- It would be inequitable to hold the claimant liable for the liability, taking into account whether the claimant significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 4903, subdivision (b), defines the term "benefitted," as it is used in the phrase "benefitted directly or indirectly." Regulation 4903, subdivision (c), defines the term "attribution," as it is used in the phrase "attributable to the nonclaiming spouse."

Regulation 4903, subdivision (d), provides that, if a spouse or registered domestic partner chooses to claim relief under the regulation, the request must be in writing and set forth the tax or fee account number, the period for which relief is requested, and the specific grounds on which the request for relief is based.

Regulation 4903, subdivision (e), clarifies the statute of limitations that applies to claims for relief from liability under the regulation, and subdivision (f) explains that refunds of taxes and fees are subject to the more specific statutory requirements provided by the relevant provisions in the applicable tax and fee laws. Regulation 4903, subdivision (g), clarifies that Regulation 4903 is retroactive to liabilities arising prior to January 1, 2008.

Regulation 4903, subdivision (h), explains that the Board may still relieve a claimant from liability if, taking into account all the facts and circumstances, it would be inequitable to hold the claimant liable for an amount attributable to an item for which relief is not available under subdivisions (a) through (d), described above. Subdivision (h) also sets forth the criteria for equitable relief and lists the non-exclusive factors the Board may consider in deciding whether to grant or deny equitable relief.

Regulation 4903, subdivision (i), provides that the Board must notify a nonclaiming spouse or registered domestic partner by mail when his or her spouse or registered domestic partner files a claim for relief from liability and include the basis for the claim.

Regulation 4903, subdivision (j), clarifies that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties, as are granted to and imposed upon spouses and thereby

makes all of the provisions applicable to spouses applicable to registered domestic partners.

The specific purpose of proposed Regulation 4903 is to specify the requirements for claiming and granting innocent spouse and other equitable relief from liabilities incurred under the applicable special tax and fee laws. Proposed Regulation 4903 is necessary to prescribe the requirements for claiming and granting innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under all the applicable special tax and fee laws. Therefore, the Board also proposes to adopt the cross-referencing regulations, which will be located in other chapters in title 18 that specifically apply to each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. Therefore, the specific purpose of the proposed cross-referencing regulations is to refer taxpayers to the operative provisions in Regulation 4903; and these cross-referencing regulations are necessary to ensure that taxpayers can easily locate Regulation 4903 in chapter 9.9, Special Taxes Administration-Miscellaneous.²

COMPARABLE FEDERAL REGULATIONS AND STATUTES

Portions of the new relief statutes are comparable to portions of section 6015 of title 26 of the United State Code (Internal Revenue Code) and portions of proposed Regulation 4903 are comparable to portions of sections 1.6015-1 through 1.6015-8 of title 26 (Internal Revenue) of the Code of Federal Regulations pertaining to innocent spouse relief and equitable relief. The comparable provisions in Regulation 4903 and the federal regulations do not differ significantly, however, Regulation 4903, subdivision (e), pertaining to the statute of limitations for submitting claims, is slightly more favorable to the claimant than the comparable federal provision. (See 26 U.S.C.S. § 6015(b)(1)(E); and 26 C.F.R. § 1.6015.5(b)(1).) The proposed cross-referencing regulations do not have comparable federal regulations.

The significant differences between the new relief statutes and Internal Revenue Code section 6015 and significant differences between Regulation 4903 and the relevant federal regulations are due to differences in California and federal law that are not related to innocent spouse relief and equitable relief. For example, federal law does not allow registered domestic partners to file joint federal returns and therefore registered domestic partners cannot receive federal innocent spouse or equitable relief; and California law provides its own procedures for appealing liabilities imposed under the applicable special tax and fee laws.

² The Board followed a consistent approach when it adopted Regulation 4902, *Relief from Liability*, and Regulations 1124, 1248, 1335, 1422, 2250, 2303, 2432, 2570, 3021, 3302, 3502, and 4105, *Relief from Liability*, which cross-reference Regulation 4902.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that proposed Regulation 4903 and the proposed cross-referencing regulations do not impose a mandate on local agencies or school districts that are 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 proposed Regulation 4903 and the proposed cross-referencing regulations will result in no direct or indirect cost or savings to any state agency, no costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or any other non-discretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The new relief statutes are comparable to section 6456. Proposed Regulation 4903 is consistent with the new relief statutes and Regulation 1705.1, which implements, interprets, and makes specific section 6456. Furthermore, the proposed cross-referencing regulations provide cross-references to Regulation 4903. Therefore, the Board has made an initial determination that proposed Regulation 4903 and the proposed cross-referencing regulations 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 proposed regulation 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. This is because the proposed regulations do not impose any fees.

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

The Board has determined that the adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of proposed Regulation 4903 and the proposed cross-referencing regulations will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Ms. Carolee D. Johnstone, Tax, Counsel III (Specialist), by telephone at (916) 323-7713, by e-mail at Carolee.Johnstone@boe.ca.gov, or by mail at State Board of Equalization, Attn: Carolee D. Johnstone, 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, Acting 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:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an Initial Statement of Reasons and an underscored version of proposed Regulation 4903 and the proposed cross-referencing regulations showing their express terms. These documents and all information on which the proposed regulations are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation 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

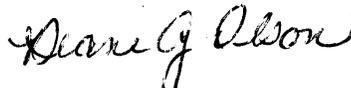
The Board may adopt proposed Regulation 4903 and the proposed cross-referencing regulations with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on

notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made to a proposed regulation, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts proposed Regulation 4903 and the proposed cross-referencing regulations, 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

Enclosures

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the March 23, 2010 Board Meeting



Diane G. Olson, Chief
Board Proceedings Division

Initial Statement of Reasons

Proposed Adoption of California Code of Regulations, Title 18, Sections

1004, Innocent Spouse or Registered Domestic Partner Relief from Liability
1032, Innocent Spouse or Registered Domestic Partner Relief from Liability
1124.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
1249, Innocent Spouse or Registered Domestic Partner Relief from Liability
1336, Innocent Spouse or Registered Domestic Partner Relief from Liability
1422.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
2251, Innocent Spouse or Registered Domestic Partner Relief from Liability
2303.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
2433, Innocent Spouse or Registered Domestic Partner Relief from Liability
2571, Innocent Spouse or Registered Domestic Partner Relief from Liability
3022, Innocent Spouse or Registered Domestic Partner Relief from Liability
3302.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
3502.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
4106, Innocent Spouse or Registered Domestic Partner Relief from Liability
4903, Innocent Spouse or Registered Domestic Partner Relief from Liability

SPECIFIC PURPOSE AND NECESSITY

Current Law

In 1993, Revenue and Taxation Code section (section) 6456 was enacted to authorize the Board to grant innocent spouse and other equitable relief from sales and use tax liabilities to qualified spouses, under regulations prescribed by the Board. (Stats. 1993, ch. 181.) In 1997, the Board adopted California Code of Regulations, title 18, section (Regulation) 1705.1¹ to implement, interpret, and make specific section 6456 with respect to sales and use tax liabilities. Then, in January 2007, the Board added subdivision (j) to Regulation 1705.1 to recognize that on and after January 1, 2005, registered domestic partners have the same rights, protections, and benefits under the law as are granted to and imposed upon spouses, including the ability to qualify for relief under section 6456. (Fam. Code, §§ 297 and 297.5.)

Sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 (for ease of expression, hereafter, collectively “new relief statutes”), which are comparable to section 6456, were enacted in March 2007 (Stats. 2007, ch. 342) to authorize the Board to grant innocent spouse and other equitable relief from liabilities imposed under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous

¹ Regulation 1705.1 is available at www.boe.ca.gov/pdf/reg1705-1.pdf.

Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, and Use Fuel Tax Law (for ease of expression, hereafter, collectively, “applicable special tax and fee laws”) to qualified spouses and registered domestic partners, under regulations prescribed by the Board, effective January 1, 2008. However, the Board has not adopted regulations to implement, interpret, and make specific the provisions of the new relief statutes.

Proposed Regulations

The Board proposes to adopt Regulation 4903, which is comparable to Regulation 1705.1, to prescribe the procedures and criteria for relieving an innocent spouse or registered domestic partner from liability under the applicable special tax and fee laws. Regulation 4903, subdivision (a), lists the general requirements that a spouse or registered domestic partner claiming relief must meet in order to be relieved from liability for the applicable special taxes and fees. Specifically, the claimant must establish that:

- The liability is attributable to the nonclaiming spouse or registered domestic partner;
- The claimant did not know of, and a reasonably prudent person in the claimant’s circumstances would not have had reason to know of, the liability; and
- It would be inequitable to hold the claimant liable for the liability, taking into account whether the claimant significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

Regulation 4903, subdivision (b), defines the term “benefitted,” as it is used in the phrase “benefitted directly or indirectly.” Regulation 4903, subdivision (c), defines the term “attribution,” as it is used in the phrase “attributable to the nonclaiming spouse.”

Regulation 4903, subdivision (d), provides that, if a spouse or registered domestic partner chooses to claim relief under the regulation, the request must be in writing and set forth the tax or fee account number, the period for which relief is requested, and the specific grounds on which the request for relief is based.

Regulation 4903, subdivision (e), clarifies the statute of limitations that applies to claims for relief from liability under the regulation, and subdivision (f) explains that refunds of taxes and fees are subject to the more specific statutory requirements provided by the relevant provisions in the applicable tax and fee laws. Regulation 4903, subdivision (g), clarifies that Regulation 4903 is retroactive to liabilities arising prior to January 1, 2008.

Regulation 4903, subdivision (h), explains that the Board may still relieve a claimant from liability if, taking into account all the facts and circumstances, it would be inequitable to hold the claimant liable for an amount attributable to an item for which relief is not available under subdivisions (a) through (d), described above. Subdivision (h) also sets forth the criteria for equitable relief and lists the non-exclusive factors the Board may consider in deciding whether to grant or deny equitable relief.

Regulation 4903, subdivision (i), provides that the Board must notify a nonclaiming spouse or registered domestic partner by mail when his or her spouse or registered domestic partner files a claim for relief from liability and include the basis for the claim.

Regulation 4903, subdivision (j), clarifies that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties, as are granted to and imposed upon spouses and thereby makes all of the provisions applicable to spouses applicable to registered domestic partners.

The specific purpose of proposed Regulation 4903 is to specify the requirements for claiming and granting innocent spouse and other equitable relief from liabilities incurred under the applicable special tax and fee laws. Proposed Regulation 4903 is necessary to prescribe the requirements for claiming and granting innocent spouse and other equitable relief from liabilities imposed under the applicable special tax and fee laws.

The Board proposes to add Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it will apply to liabilities incurred under all the applicable special tax and fee laws. Therefore, the Board also proposes to adopt cross-referencing Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability* (hereafter, collectively, "cross-referencing regulations"), which will be located in other chapters in title 18 that specifically apply to each of the applicable special tax and fee laws and direct taxpayers to the operative provisions in Regulation 4903. The Board proposes to adopt the cross-referencing regulations pursuant to the following statutory authorities in order to implement, interpret, and make specific the following statutes, in addition to Family Code sections 297, 297.5, and 308:

Regulation	Authority	Reference
Regulation 1004	Section 11651	Sections 11408.5 and 11551-11555
Regulation 1032	Section 38701	Sections 38454.5 and 38601-38607
Regulation 1124.1	Section 8251	Sections 7657.5 and 8101-8131

Regulation 1249	Section 50152	Sections 50112.6 and 50139-50142.2
Regulation 1336	Section 9251	Sections 8880 and 9151-9156
Regulation 1422.1	Section 60601	Sections 60210.5 and 60501-60512
Regulation 2251	Section 46601	Sections 46159 and 46501-46507
Regulation 2303.1	Section 40171	Sections 40105 and 40111-40117
Regulation 2433	Section 41128	Sections 41099 and 41100-41106
Regulation 2571	Section 32451	Sections 32258 and 32401-32407
Regulation 3022	Section 43501	Sections 43159.1, 43159.2, and 43451- 43456
Regulation 3302.1	Section 45851	Sections 45158 and 45651-45656
Regulation 3502.1	Section 55301	Sections 55045.1 and 55221-55226
Regulation 4106	Section 30451	Sections 30285 and 30361-30384

The specific purpose of the proposed cross-referencing regulations is to refer taxpayers to the operative provisions in Regulation 4903; and these cross-referencing regulations are necessary to ensure that taxpayers can easily locate Regulation 4903 in chapter 9.9, Special Taxes Administration-Miscellaneous.²

DOCUMENTS RELIED UPON

The Board relied upon a staff memorandum dated November 20, 2009, requesting Board authorization to begin the formal rulemaking process to add Regulation 4903 and the cross-referencing regulations to title 18 of the California Code of Regulations (November 20, 2009) and on comments from Board staff made during the Board's December 16, 2009, meeting in deciding to propose the adoption of Regulation 4903 and the cross-referencing regulations. The memorandum is available on the Board's Web site at www.boe.ca.gov/meetings/pdf/Item_J2__121509.pdf. The audio and video from the Board's December 16, 2009, meeting are available on the Board's Website at www.visualwebcaster.com/event.asp?id=53991.

ALTERNATIVES CONSIDERED

The Board considered whether it would be more appropriate to take no action as an alternative to adopting proposed Regulation 4903 and the cross-referencing regulations, during the Board's December 16, 2009, meeting. The Board decided to propose the adoption of Regulation 4903 and the cross-referencing regulations because the Board is required to do so by the new relief statutes added to the applicable special tax and fee laws effective January 1, 2008, and

² The Board followed a consistent approach when it adopted Regulation 4902, *Relief from Liability*, and Regulations 1124, 1248, 1335, 1422, 2250, 2303, 2432, 2570, 3021, 3302, 3502, and 4105, *Relief from Liability*, which cross-reference Regulation 4902.

the regulations are necessary to implement, interpret, and make specific those statutes.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The new relief statutes are comparable to section 6456. Proposed Regulation 4903 is consistent with the new relief statutes and Regulation 1705.1, which implements, interprets, and makes specific section 6456. Furthermore, the proposed cross-referencing regulations provide cross-references to Regulation 4903. Therefore, the Board has made an initial determination that proposed Regulation 4903 and the proposed cross-referencing regulations will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

**Proposed Text of California Code of Regulations,
Title 18, Sections**

1004, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1032, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1124.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1249, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1336, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
1422.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2251, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2303.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2433, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
2571, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3022, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3302.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
3502.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4106, *Innocent Spouse or Registered Domestic Partner Relief from Liability*
4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

1004. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the private railroad car tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 11651, Revenue and Taxation Code. Reference: Sections 11408.5 and 11551-11555, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1032. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the timber yield tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 38701, Revenue and Taxation Code. Reference: Sections 38454.5 and 38601-38607, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1124.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the motor vehicle fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7657.5 and 8101-8131, Revenue and Taxation Code; Sections 297, 297.5 and 308, Family Code.

1249. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the underground storage tank maintenance fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50112.6 and 50139-50142.2, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1336. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the use fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 9251, Revenue and Taxation Code. Reference: Sections 8880 and 9151-9156, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1422.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the diesel fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60210.5 and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2251. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the oil spill response, prevention, and administration fees, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 46601, Revenue and Taxation Code. Reference: Sections 46159 and 46501-46507, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2303.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the energy resources surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections 40105 and 40111-40117, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2433. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the emergency telephone users surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41099 and 41100-41106, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2571. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the alcoholic beverage tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 32451, Revenue and Taxation Code. Reference: Sections 32258 and 32401-32407, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3022. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the hazardous substances tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Sections 43159.1, 43159.2, and 43451-43456, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3302.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the integrated waste management fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Sections 45158 and 45651-45656, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3502.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for tax, fees, or surcharge under the fee collection procedures law, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 55045.1 and 55221-55226, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

4106. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the cigarette and tobacco products tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30285 and 30361-30384, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

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

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

(A) A liability is incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, or Use Fuel Tax Law;

(B) The liability is attributable to the nonclaiming spouse;

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

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

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

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

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

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

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

(d) WRITTEN REQUEST FOR RELIEF. To seek relief under these provisions, a claiming spouse may submit a written request for relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) STATUTE OF LIMITATIONS. These provisions shall apply to all calendar months, quarters, or years for claims made no later than one year after the board's first contact with the spouse making the claim.

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

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

whichever is later.

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

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

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

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

(1) Criteria for Equitable Relief.

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

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

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

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

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

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

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

(i) The board shall send notification by mail of the claim for relief from liability and the basis for that claim to the nonclaiming spouse.

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

Note: Authority cited: Sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.

Reference: Sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5, and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 4903

Title: **1004, Innocent Spouse or Registered Domestic Partner Relief from Liability**
1032, Innocent Spouse or Registered Domestic Partner Relief from Liability
1124.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
1249, Innocent Spouse or Registered Domestic Partner Relief from Liability
1336, Innocent Spouse or Registered Domestic Partner Relief from Liability
1422.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
2251, Innocent Spouse or Registered Domestic Partner Relief from Liability
2303.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
2433, Innocent Spouse or Registered Domestic Partner Relief from Liability
2571, Innocent Spouse or Registered Domestic Partner Relief from Liability
3022, Innocent Spouse or Registered Domestic Partner Relief from Liability
3302.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
3502.1, Innocent Spouse or Registered Domestic Partner Relief from Liability
4106, Innocent Spouse or Registered Domestic Partner Relief from Liability
4903, Innocent Spouse or Registered Domestic Partner Relief from Liability

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The regulatory action is necessary to specify the application of the applicable special tax and fee laws to claims for innocent spouse and other equitable relief and is a clarification of existing law

History of Proposed Regulation:

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Sponsor: NA
Support: NA
Oppose: NA