

Rulemaking File Index  
Title 18. Public Revenue  
Sales and Use Tax  
Proposed Regulation *Veteran Itinerant Vendor*,

1. *Original Petition from Mr. William M. Connell*

2. *Notice to OAL*

- Form 400 and notice, July 25, 2008
- Notice
- CA Regulatory Notice Register 2008, Volume No. 30-Z

3. *Chief Counsel Memo, Item J1 July 8, 2008*

The following items are exhibited:

- Chief Counsel Memo dated June 25, 2008
- Text of Proposed regulation
- Government Code 11340.7
- AB 3009, February 22, 2008
- Email from William Connell, June 2, 2008
- Attachment to Mr. Connells email

4. *Public Comment Received 6/24/08*

The following items are exhibited:

- Letter to Bill Leonard dated 6/24/08 from Salud Carbajal, First District Supervisor, County of Santa Barbara
- AB3009 Fact Sheet
- Email dated 2/24/08 from Keith S. Perkins, President, Vietnam Veterans of America, Inc.
- Exhibit A, Chapter CCXXXIV approved March 24, 1893

5. *Public Comment from Mr. William M. Connell dated June 26, 2008*

6. *Exhibit A received 07/07/08*

- Chapter CCXXXIV, Approved March 24, 1893
- Chapter 399, Article 3, Itinerant Vendors, 1937
- Six Points from Mr. William M. Connell to Board of Equalization
- Assembly Bill 1952, February 13, 2008
- Letter Dated July 6, 2008 From Mr. William M. Connell
- AB 1952 Berg

7. *Reporter's Transcript Chief Counsel Matters, Item J1, July 8, 2008*

8. *Chief Counsel Memo, Item J1 December 17, 2009*

The following items are exhibited:

  - Chief Counsel Memo dated November 26, 2008
  - Attachments Item J1, December 17, 2008
9. *Reply to Chief Counsel Memo Dated November 26, 2008 by Mr. William M. Connell*
10. *Reporter's Transcript Chief Counsel Matters, Item J1, December 17, 2008*
11. *Opinion Request for Attorney General from Chief Counsel, March 16, 2009*
12. *Opinion No. 09-402 from Department of Justice, July 19, 2010*
13. *Letter to Mr. William M. Connell from Todd Gilman, dated August 26, 2010*
14. *Denial Letter from Robert Tucker, September 10, 2010*
15. *Notice to OAL*
  - Form 400 and notice, September 24, 2010
  - Notice
  - CA Regulatory Notice Register 2010, Volume No. 39-Z
16. *Letter to Mr. William M. Connell from Laureen Simpson, dated September 30, 2010*
  - CA Regulatory Notice Register 2010, Volume No. 39-Z

Regulation for (Qualified Itinerant Veteran Vendors) as Consumers of Goods, Wares or Merchandise (owned by the Veteran him/her). Contained in Business & Professions Code 16100, 16100.5, **16102**.

The statutory reference that supports the regulatory provision that is being suggested is contained in the March 12, 1872 and the March 24, 1893 enactment that recognizes that "every soldier, sailor or marine of the United States shall have the right to hawk, peddle and vend any goods, wares or merchandise that he/she owns.....without payment of any license, tax, or fee whatsoever, weather municipal, county or State. Business & Professions code 16102 has been upheld in California Supreme Court in "*Brooks vs. Santa Clara*", 1987 a Published case 191 CAL. APP. 3<sup>rd</sup> 750; 236 CAL Rptr. 509; 1987 CAL. App. However the State Board of Equalizations has failed to abide by the PLAIN MEANING of the enactment and this has resulted in an "*illegal taking*" from the Veteran. This proposed regulation, to include the Veteran as the consumer instead of the retailer, as stated in section (a) below, this would clarify SBOE's apparent confusion of the issue.

Upon presentation of AB 3009 to the Assembly Revenue & Taxation Committee, on May 12, 2008 where SBOE employees were present; the Assembly committee chairman stated "why has this not been handled at the SBOE level?" The chairman also inquired of any published cases. The SBOE employees were mistaken by not providing the chairman with the proper answer of "*Brooks vs. County of Santa Clara, 1987*". This mirrors the exact position I have held for years; and is the reason for my request for this petition. I do not understand why the SBOE refuses to acknowledge that *Brooks vs. County of Santa Clara* was NOT overturned and that they continue to ignore a high court case that is on point, and the failure to bring this published case to the attention of the Revenue & Taxation Committee Chairman.

This petition is to request the following regulation as outlined below, be adopted by the SBOE for clarification of existing State Statute and that the SBOE follow the PLAIN MEANING of the existing enactment.

- (a) **GENERALLY.** Except as provided in subdivision (e), a qualified itinerant Veteran vendor is a consumer of, and shall not be considered a retailer of any goods, ware, or merchandise that he/she owns and offers for sale.
- (b) **DEFINITIONS.** For the purpose of selling any goods, wares or merchandise by itinerant means only. Itinerant Vendor Veteran
- (c) A qualified Itinerant Veteran vendor means a soldier, sailor, airman, or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service.
- (d) "Permanent place of business" means any building or other permanently affixed structure that is used in whole or part for sales of goods, wares, and merchandise that the veteran owns.
- (e) This section shall not apply to the sale or use of spirituous, malt, vinous or any other intoxicating beverage.

**REQUIRED DOCUMENTATION:** When the Board determines it is necessary for efficient administration of the Sales and Use Tax Law, a qualified itinerant Veteran vendor shall be considered a consumer of any goods, wares, or merchandise that he/she owns, then sells when he/she has obtained a certificate from the Board. Documentation required for Veteran to obtain the certificate shall include proof of release from active duty under honorable conditions, or his/her honorable discharge from the United States military service, or a certified copy thereof.

- (1) SWAP MEETS, FLEA MARKETS, OR SPECIAL EVENTS. The operator of the event as provided in Revenue and Taxation Code 6073, is required to obtain written evidence that each seller holds a valid seller's permit, the itinerant Veteran vendor is required to submit certification from the Board that he/she is tax exempt.
- (2) CATERING TRUCKS. When operating out of a facility pursuant to Health and Safety Code section 114295, the qualified itinerant Veteran vendor will provide a tax exemption certification from the Board to address as provided in Revenue and Taxation Code section 6074 regarding sales to catering truck operators.

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on  
reverse)

For use by Secretary of State only

STD. 400 (REV. 01-08)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2008-0710-03	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
<b>RECEIVED FOR FILING PUBLICATION DATE</b>  <b>JUL 10 2008 JUL 25 2008</b>  <b>Office of Administrative Law</b>		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 Veteran Itinerant Vendor		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE July 25, 2008
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input checked="" type="checkbox"/> Other		4. AGENCY CONTACT PERSON Rick Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-2597
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

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

1a. SUBJECT OF REGULATION(S)		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT		
	AMEND		
	REPEAL		
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) Richard.Bennion@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	DATE
TYPED NAME AND TITLE OF SIGNATORY	

## TITLE 18. STATE BOARD OF EQUALIZATION

### NOTICE OF DECISION AS REQUIRED BY GOVERNMENT CODE SECTION 11340.7

On June 20, 2008, the California State Board of Equalization received a petition from Mr. William M. Connell requesting that the Board adopt a Regulation to Designate Qualified Veteran Itinerant Vendors as Consumers of Tangible Personal Property.

Mr. Connell petitioned the Board to adopt a new regulation providing that an itinerant vendor, who is a qualified United States veteran, is the consumer, not the retailer, of goods that the veteran sells.

The Board's authority to adopt regulations interpreting and implementing the Sales and Use Tax Law is found in Revenue and Taxation Code section 7051.

The Board scheduled this matter for hearing on the Chief Counsel Matters agenda at its July 8, 2008 Board meeting. At its July 8, 2008 meeting, the Board voted to continue the petition to October 1-3, 2008 Board meeting. That decision was based on the Board's conclusion that the petition's intent could be satisfied by two bills, AB 1952, and AB 3009, currently being considered by the California Legislature.

A hardcopy of the petition may be requested by contacting Mr. Rick Bennion, P.O. Box 942879, 450 N Street, MIC: 80, Sacramento, CA 94279-0080; Telephone (916) 445-2130; Fax (916) 324-3984; E-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov).

Questions regarding this matter should be directed to Tax Counsel Carla Caruso, Telephone (916) 324-2816, Fax (916) 323-3387, or E-mail [Carla.Caruso@boe.ca.gov](mailto:Carla.Caruso@boe.ca.gov).

on the draft reports during a 45-day comment period. The Office will also hold a public workshop on September 11, 2008, at the Elihu Harris Building, 1515 Clay Street, Oakland, 94612, Room 11, 10 a.m.–12 noon, or until business is concluded. OEHHA follows the requirements set forth in Health and Safety Code Sections 57003(a) and 116365 for conducting the workshop and receiving public input.

The workshop is provided to encourage a dialogue between OEHHA scientists and the public, to discuss the scientific basis of the proposed PHGs, and to receive comments. Following the workshop, OEHHA will evaluate all the comments received, revise the documents as appropriate, and make them available for another 30-day comment period. After any subsequent revisions, the final documents will be posted on our Web site along with responses to the major comments from the public at the workshop and during the public review and scientific comment periods.

Oral and written comments received at the workshop will be considered during the revision of the draft technical support documents. Written comments must be received at the OEHHA address below by 5:00 p.m. on September 11, 2008, to be considered during this revision period for the documents.

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996 (codified at Health and Safety Code, section 116270 et seq.), requires OEHHA to develop PHGs based exclusively on public health considerations (Health and Safety Code section 116365(c)). PHGs published by OEHHA are considered by the California Department of Health Services in setting drinking water standards (Maximum Contaminant Levels, or MCLs) as required by Health and Safety Code section 116365(a–b).

If you would like to receive further information on this announcement or have questions, please contact our office at (510) 622–3170 or the address below.

Mr. Michael Baes ([mbaes@oehha.ca.gov](mailto:mbaes@oehha.ca.gov))  
Pesticide and Environmental Toxicology Branch  
Office of Environmental Health Hazard Assessment  
California Environmental Protection Agency  
1515 Clay St., 16th floor  
Oakland, California 94612

Attention: PHG Project

## RULEMAKING PETITION DECISIONS

### BOARD OF EQUALIZATION

#### NOTICE OF DECISION AS REQUIRED BY GOVERNMENT CODE SECTION 11340.7

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### BOARD OF PAROLE HEARINGS

Date: June 20, 2008

To: Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814–4339

ATTN: Melvin Fong

Subject: RESPONSE OF BOARD OF PAROLE  
HEARINGS TO PETITION TO  
AMEND REGULATIONS

## Memorandum

To: Honorable Judy Chu, Ph.D., Chair  
Honorable Betty T. Yee, Vice-Chairwoman  
Honorable Bill Leonard  
Honorable Michelle Steel  
Honorable John Chiang

Date: June 25, 2008

From: Kristine Cazadd  
Chief Counsel 

Subject: **July 8, 2008, Chief Counsel's Calendar – Petition to Adopt a Regulation to Designate Qualified Veteran Itinerant Vendors as Consumers of Tangible Personal Property**

### **Background**

On June 13, 2008, Mr. William Connell submitted a petition pursuant to Government Code section 11340.6, requesting the Board to adopt a regulation specifying that a qualified veteran itinerant vendor is a consumer of any goods he or she offers for sale. Copies of the petition, a letter from petitioner to State Senator Mark Ridley-Thomas, an e-mail from petitioner to State Assembly Member Charles Calderon, petitioner's "Statement of Principle (Special Exemption [f]rom Tax[-]Related Burdens)," Assembly Bill 3009 (2007-2008 Reg. Sess.) and Government Code section 11340.7 are attached. According to the petition, Business and Professions Code section 16102 and *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750, establish an exemption from sales and use tax for sales by a veteran-vendor of any goods he or she owns.

On June 4, 2008, petitioner filed a Complaint for Refund of Sales and Use Tax (Complaint) in Sacramento County Superior Court. That same day, the Complaint was served on the Board. The Complaint alleges that Business and Professions Code section 16102 exempts plaintiff (petitioner) from paying sales and use tax on his sales of food and beverages from his vending cart.

The Board has consistently taken the position that Business and Professions Code section 16102's exemption from the imposition of taxes or fees associated with county licenses to engage in the business of selling tangible personal property does not create an exemption under the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) nor the Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.). (See, e.g., Sales and Use Tax Annotation 410.0900 (6/22/95).) This position is consistent with that of the Legislative Counsel in its opinions dated October 28, 1998 (Ops. Cal. Leg. Counsel, No. 14321, Business License Tax Exemption: Disabled Veterans), and August 17, 2006 (Ops. Cal. Leg. Counsel, No. 0611388, Veteran Business Licensing). Moreover, this position was confirmed by the Los Angeles County Superior Court (Case No. BC316467), which dismissed petitioner's lawsuit against the Board on this very issue, on the ground that the complaint did not state facts

sufficient to constitute a cause of action. Thus, the Board, the Legislative Counsel, and the Los Angeles County Superior Court concur that there is currently no veteran's exemption that applies to petitioner's liabilities under the Sales and Use Tax Law or the Uniform Local Sales and Use Tax Law.

Furthermore, *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750, the case cited by petitioner, does not support his contention that Business and Professions Code section 16102 exempts his sales as a United States veteran from sales and use tax. *Brooks* held that a veteran's vending machine business, which was exempt from county license fees for hawking, vending, and peddling by virtue of Business and Professions Code section 16102, was also exempt from health license and permit fees imposed by the county under Health and Safety Code section 510. That case neither involves nor addresses sales and use taxes. Thus, *Brooks* does not establish a veteran's exemption from sales or use tax for retail sales of tangible personal property. We note that Board staff has historically considered *Brooks* in reaching the conclusion that there is no veteran's exemption applicable to petitioner's liabilities under the Sales and Use Tax Law or the Uniform Local Sales and Use Tax Law.

Lastly, the Board has sponsored legislation during the current legislative session in an effort to address petitioner's situation. Assembly Bill 3009 (copy attached), which failed passage in the Assembly Revenue and Taxation Committee, generally provided that a United States veteran, as specified, shall be regarded as a consumer, rather than a retailer, of food products and non-alcoholic beverages that he or she sells, provided that, for the purposes of selling these items, the veteran has no employees and no permanent place of business, as defined. Assembly Bill 3009 was not supported by petitioner because he believes that a currently existing statute, Business and Professions Code section 16102, authorizes exemption from sales and use tax of all sales by qualified veteran itinerant vendors. The language in this proposed regulation reflects petitioner's position, and is therefore distinguishable from the Board-sponsored legislation.

### **Grounds for the Petition**

The grounds advanced in the petition are as follows:

1. Business and Professions Code section 16102 specifies that qualified United States veterans have the right to sell goods, wares and merchandise that he or she owns without the payment of "any" taxes and fees.
2. *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750, has "upheld" Business and Professions Code section 16102.

### **Options for Board Action**

Pursuant to Government Code section 11340.7 (copy attached), upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation, the Board shall:

1. Deny each petition, in whole or in part, indicating in writing why the Board has reached its decision on the merits of the petition; or
2. Initiate the rulemaking process and schedule the matter for public hearing in accordance with the rulemaking provisions of the Administrative Procedure Act. (Gov. Code, § 11346 et seq.)

If the Board schedules the matter for public hearing, it may, prior to setting the public hearing date and authorizing publication of the notice of hearing, hold public discussion of the proposal. (Gov. Code, § 11346.45.) For example, the Board may refer the matter to the Business Taxes Committee for the full or abbreviated version of that process.

Furthermore, the Board may grant any other relief or take any other such action it may determine to be warranted by the petition. (Gov. Code, § 11340.7, subd. (b).)

The decision of the Board regarding the petition is required to be in writing and to include the reasons therefore. The decision must be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register. (Gov. Code, § 11340.7, subd. (d).)

#### **Staff Recommendation**

Because Business and Professions Code section 16102 does not constitute an exemption under the Sales and Use Tax Law, and because the legislation (specifying that qualified veteran itinerant vendors be declared consumers of food products and non-alcoholic beverages that they sell) has failed, staff recommends that the petition be denied.

#### **Additional Information**

Staff is available to provide additional information and to render whatever assistance the Board may require in making its decision. If you have any questions on these matters, please contact Assistant Chief Counsel Randy Ferris at (916) 261-2976.

APPROVED: \_\_\_\_\_

  
Ramon Hirsig  
Executive Director

KEC/ef

#### **Attachments**

J:/ChiefCounsel/Finals/WilliamConnell.doc

J:/Bus/Finals/MCCAI/WilliamConnell.doc

cc: Mr. Ramon Hirsig (MIC:73)  
Ms. Randie Henry (MIC:43)  
Mr. Randy Ferris (MIC:82)  
Ms. Carla Caruso (MIC:82)

Regulation for (Qualified Itinerant Veteran Vendors) as Consumers of Goods, Wares or Merchandise (owned by the Veteran him/her). Contained in Business & Professions Code 16100, 16100.5, **16102**.

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This petition is to request the following regulation as outlined below, be adopted by the SBOE for clarification of existing State Statute and that the SBOE follow the PLAIN MEANING of the existing enactment.

- (a) **GENERALLY.** Except as provided in subdivision (e), a qualified itinerant Veteran vendor is a consumer of, and shall not be considered a retailer of any goods, ware, or merchandise that he/she owns and offers for sale.
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- (c) A qualified Itinerant Veteran vendor means a soldier, sailor, airman, or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service.
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**REQUIRED DOCUMENTATION:** When the Board determines it is necessary for efficient administration of the Sales and Use Tax Law, a qualified itinerant Veteran vendor shall be considered a consumer of any goods, wares, or merchandise that he/she owns, then sells when he/she has obtained a certificate from the Board. Documentation required for Veteran to obtain the certificate shall include proof of release from active duty under honorable conditions, or his/her honorable discharge from the United States military service, or a certified copy thereof.

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evidence that each seller holds a valid seller's permit, the itinerant Veteran vendor is required to submit certification from the Board that he/she is tax exempt.

- (2) CATERING TRUCKS. When operating out of a facility pursuant to Health and Safety Code section 114295, the qualified itinerant Veteran vendor will provide a tax exemption certification from the Board to address as provided in Revenue and Taxation Code section 6074 regarding sales to catering truck operators.

**GOV §11340.7 .** (a) Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall notify the petitioner in writing of the receipt and shall within 30 days deny the petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of that article.

(b) A state agency may grant or deny the petition in part, and may grant any other relief or take any other action as it may determine to be warranted by the petition and shall notify the petitioner in writing of this action.

(c) Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved. The agency's reconsideration of any matter relating to a petition shall be subject to subdivision (a).

(d) Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be in writing and shall be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. The decision shall identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency.

AMENDED IN ASSEMBLY MAY 5, 2008

AMENDED IN ASSEMBLY APRIL 7, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3009**

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**Introduced by Assembly Member Brownley**  
***(Principal coauthor: Assembly Member Levine)***

February 22, 2008

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An act to add Section 6018.3 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 3009, as amended, Brownley. Sales and use taxes: consumers: itinerant vendors.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or on the storage, use, or other consumption in this state of, tangible personal property. That law, with certain exceptions, defines a retailer as a seller who makes any retail sale of tangible personal property and as a person who makes more than 2 retail sales of tangible personal property during any 12-month period.

This bill would, for purposes of the Sales and Use Tax Law, specify that a qualified itinerant vendor, as defined, is a consumer, and not a retailer, of food products and nonalcoholic beverages he or she sells.

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

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 6018.3 is added to the Revenue and  
2 Taxation Code, to read:

3 6018.3. (a) A qualified itinerant vendor is a consumer of, and  
4 shall not be considered a retailer of, food products and nonalcoholic  
5 beverages that he or she sells.

6 (b) For purposes of this section, a person is a "qualified itinerant  
7 vendor" when all of the following apply:

8 (1) The person was a member of the United States Armed  
9 Forces, who received an honorable discharge or a release from  
10 active duty under honorable conditions.

11 (2) For the purposes of selling food products and beverages, the  
12 person is a sole proprietor with no employees.

13 (3) The person has no permanent place of business in this state.

14 (c) For purposes of this section, "permanent place of business"  
15 means any building or other permanently affixed structure,  
16 including a residence, that is used in whole or in part for the  
17 purpose of making sales of, or taking orders and arranging for  
18 shipment of, food products and beverages. *For purposes of this*  
19 *section, "permanent place of business" does not include any*  
20 *building or other permanently affixed structure, including a*  
21 *residence, used for the storage of food and nonalcoholic beverages*  
22 *or for the cleaning and storage of equipment used in the*  
23 *preparation and vending of food and nonalcoholic beverages.*

24 (d) This section shall not apply to either of the following:

25 (1) A person engaged in the business of serving meals, food, or  
26 drinks to a customer at a location owned, rented, or otherwise  
27 supplied by the customer.

28 (2) A person operating a vending machine.

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



Print - Close Window

**Date:** Mon, 2 Jun 2008 08:17:46 -0700 (PDT)  
**From:** "Linda Renee Fenton" <fentonlr@yahoo.com>  
**Subject:** Veterans Tax Exemption Enactment of March 24, 1893  
**To:** assemblymember.calderon@assembly.ca.gov

AB 3009 Brownley

Sir, thank you very much for allowing me to speak to your committee on May 12, 2008 regarding AB 3009 by Brownley. You inquired if there were any published cases. It seems the SBOE employees do not wish to acknowledge that there is a published case "on point." *Brooks vs. County of Santa Clara, 1987*. I did not want to interrupt or correct anyone during your meeting. However, I believe it is most important that we are clear about the true facts. The attached file was send to the SBOE this morning. Thank you for all your hard work and concern for our veterans. Reply requested.

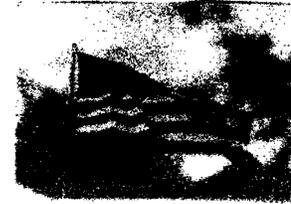
William M. Connell

**Attachments**

Files:

 **Petition\_for\_Regulation\_060208.doc** (33k) [Preview]

**STATEMENT OF PRINCIPLE**  
(Special Exemption From Tax Related Burdens)



On March 24, 1893, the State of California adopted an Act (the "ACT"), Exhibit A, that recognized that "... every soldier, sailor or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle and vend any goods ....without payment of any license, tax, or fee whatsoever...." (emphasis added)\*.

By including the word, "whatsoever", the clear legislative intent was to remove ALL tax related burdens from this limited group of former military people.

Under the provisions of *California Code of Civil Procedure Section 1859 (Enacted 1872)*, Exhibit B, the intention of the legislature must be followed if at all possible.

However, subsequent, to the adoption of the ACT, other tax related acts were passed which did not specifically exempt this limited group from their provisions, and CONTRARY TO THE CLEAR INTENT OF THE LEGISLATURE, tax related burdens have been place on these former military people.

It is the position of this STATEMENT OF PRINCIPLE that, in the interests of justice and in keeping with the provisions of Section 1859 of the Code of Civil Procedure, the legislative intent of the ACT should be carried out and that all provisions of any law, state or local, that contradicts the clear intent of the ACT be modified so as to exempt this limited group from any state or local tax related burdens.

Specifically this STATEMENT OF PRINCIPLE is directed to the need to clarify Section 6051 (et seq.) of the Revenue and Taxation Code, copy attached as Exhibit C, to make it clear that the former military people who come within the provisions of the ACT are exempt from the requirements of collecting sales tax.

***Request is hereby made that the proper parties take necessary and proper action to modify Section 6051 of the Revenue and Taxation Code and its related provisions to comply with the intent of the legislature and the ACT by specifically exempting the former military people who come within the provisions of the ACT from the requirements of collecting sales tax.***

Respectfully submitted,

*William M Connell*

William Connell,  
US Army Veteran

\*A copy of Section 16102 of the Business and Professions Code that relates to this matter is attached as Exhibit D.

**SALUD CARBAJAL**  
First District Supervisor

**JEREMY TITTLE**  
Executive Staff Assistant

**MARY ELLEN WYLIE**  
Administrative Assistant

**ERIC FRIEDMAN**  
Administrative Assistant



**BOARD OF SUPERVISORS**  
105 East Anapamu Street  
Santa Barbara, California 93101

TELEPHONE: (805) 568-2186  
FAX: (805) 568-2534

E-mail:  
supervisorcarbajal@sbcbsol.org

**COUNTY OF SANTA BARBARA**

June 24, 2008

Honorable Bill Leonard  
400 Capitol Mall  
Suite 2340  
Sacramento, CA 95814

Dear Mr. Leonard,

I am writing on behalf of Mr. William Connell, an honorably discharged and disabled veteran, who is requesting a veteran's tax exemption pursuant to California Public Code Section 16102, which he and other veterans argue has not been accurately interpreted.

For over fifteen years, Mr. Connell has owned and operated the "Surf Dog" hot dog stand. Pursuant to section 16102 of the Business and Professions Code, he has sought an exemption from paying business license taxes, as well as any sales taxes and property taxes associated with this business. Section 16102 reads "Every soldier, sailor or marine of the United States who has received an honorable discharge...may hawk, peddle and vend any goods...without payment of any license, tax or fee whatsoever, whether municipal, county or State." Unfortunately, there is disagreement over whether the insertion of a comma after the word "license" includes an exemption for sales tax and property tax or refers strictly to business license taxes.

I have worked personally with Mr. Connell on this issue since the early 1990's. After reviewing the history and facts of this matter, I concur and support Mr. Connell in his conclusion that he, and other qualified veterans, should be entitled to an exemption from both sales and property tax in addition to any license taxes. I respectfully request that administrative action be taken to remedy this matter and provide Mr. Connell, and other veterans, sales tax and property tax exemptions pursuant to section 16102 of the Business and Professions Code.

As a veteran myself, I urge you to be proactive in resolving this situation.

I appreciate your consideration of this matter.

Sincerely,

Salud Carbajal  
First District Supervisor

cc: Congresswoman Lois Capps  
Senator Tom McClintock  
Assembly member Pedro Nava

Printed on Recycled Paper

## FACT SHEET

### BUSINESS & PROFESSION CODE

16100, 16100.5, 16102

#### Summary:

A copy of the 1893 enactment of The Veterans Tax Exemption Act is attached. ( AB 74.) It was to serve the public purpose. To allow the returning Veteran to (conduct) transact his/her business "without being required to pay." As held by our high courts in **Brooks vs. Santa Clara 1987**. Rather than be on relief, welfare or unemployment the Veteran was given the right to hawk, peddle or vend any goods wares or merchandise owned by him/her without payment of any license, tax, or fee whatsoever, whether municipal, county, or State. This is a patriotically inspired tax exemption. The Veteran was to be issued license, and under the consequences of fine and imprisonment the tax collector was to leave the Veteran alone. "Owned by him" clearly put the consumer status on the Veteran. These sister codes 16100, 16100.5 and **16102** were to prevent misinterpretation "redundancy." **NO WHERE IN LAW, DOES IT STATE "Business License Fee Waiver!!"**

#### Background:

Chapter CCXXXIV, (Enacted March 24, 1893). In our state's history the first veteran's tax exemption enactment was in 1855. Directly after the Bradley Burns Tax Act, the three words "owned by him" were inserted by amendment; these three words clearly put the "consumer status" on the Veteran. In 2003 an Assembly Bill by Dennis Mountjoy was put forth, under number 2, "Purpose;" a change in the text to eliminate the commas between the words "license" and "tax" and "fee". I defeated this bill. Once again, in 2006 an Assembly bill by Mimi Walters using the "vail" of helping all active duty personnel was put forth. I again defeated this bill because the honorable discharged veteran had to earn this personal privilege. This veteran's tax exemption act was meant for employment opportunities after military service. The Veteran is "exempt from any License, Tax, or fee whatsoever, whether municipal, county or State."

#### Solution:

Honor the Veterans Tax Exemption Act as written. This Veterans benefit was to allow the veteran a chance to make a living so that he/she could pay the income tax. PLAIN MEANING of a tax exemption act must be followed.

Absurd consequences have taken place, by the SBOE not honoring the plain meaning of the act, which has resulted in an illegal taking and has put me on welfare. The SBOE has taken money from my bank accounts without a clear and honest hearing. The SBOE tax attorneys have put forth lies, misinformation and openly false statements. As part of the solution I demand all of my monies returned to me and my brother and sister veterans, likewise.

AB 3009, by Brownley and AB 1952 by Berg do little to address the needs of our returning veterans. We have thousands of returning veterans unemployed. **Honor the Veterans Tax Exemption Act as written. Plain Meaning.**

**AB 3009 by Brownley is a "start." However, the existing Veterans Tax Exemption Act states "any goods, wares or merchandise," not just food and beverages.**

Request is made to include all honorably discharged itinerant vendors, as contained in **AB 1952 by Berg**. Do not cheapen this earned personal privilege. All of you should do right by the Veteran.



VIETNAM VETERANS OF AMERICA, INC.  
CHAPTER 218  
POST OFFICE BOX 2241  
SANTA BARBARA, CALIF. 93120

February 24, 2008

To Whom It May Concern:

I am writing on behalf of the members of Vietnam Veterans of America Chapter 218 Santa Barbara. While we are not sufficiently versed in the legal issues to make recommendations or render opinions regarding matters of law, we do stand squarely behind the long and tireless efforts of our member William Connell who has been trying to clarify a California provision benefiting those California citizens who have honorably performed for their country military service in foreign conflicts.

It is our understanding - in its simplest format - that Mr. Connell is seeking legislative affirmative clarification that the subject long standing law did grant to such veterans the opportunity to sell items at retail, from a non-permanent business location, and that subject law exempted these returning veterans from charging, collecting or reporting sales tax on such items, and that the law further did exempt the veteran from the payment of local, city or State license, taxes (income tax excluded) or fees.

As we are given to understand it, the law was passed to simplify for the veteran returning to civilian life the commencement of earning a living through the establishment of a simple retail business. These privileges were to be extended to the veteran as an expression of gratitude for his or her service. This seems like a small benefit for the State of California to grant in recognition of the service and sacrifice of those veterans who have honorably and selflessly served their country in times of conflict.

It is further our understanding that Mr. Connell's objectives include assuring that this provision of California law covers veterans of all conflicts, be they Korea, Vietnam, Persian Gulf, Somalia, Afghanistan, or a host of others. This clarification certainly seems to be in order. The recognition of honorable military service in time of conflict should be afforded to any such veteran regardless of his generation.

We urge those with power and authority in this matter to take the necessary action to see to it that this benefit from the State be clarified and/or passed so that subject veterans choosing to do so may avail themselves of such privileges.

Thank you very much and thanks to Mr. Connell for his efforts.

Sincerely,

Keith S. Perkins, President

## CHAPTER CCXXXIV

*An Act to establish a uniform system of county and township governments.*

*(Approved March 24, 1893.)*

*The People of the State of California, represented in Senate and Assembly, do enact as follows:*

27. To license, for purposes of regulation and revenue, all and every kind of business not – prohibited by law, and transacted and carried on in such county, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; *provided*, that every honorably discharged soldier, sailor, or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle, and vend any goods, wares, or merchandise, except spirituous, malt, vinous, or other intoxicating liquor, without payment of any license, tax, or fee whatsoever, whether municipal, county, or State; and the Board of Supervisors shall issue to such soldier, sailor, or marine without cost, a license therefore. A certificate of disability by a surgeon of the United States Army or Navy shall be sufficient proof of such disability, and a certificate of honorable discharge from the United States Army or Navy, or an exemplified copy thereof, shall be sufficient proof of such service and honorable discharge, and upon presentation a license shall be issued as aforesaid.

916-324-3984

4<sup>05</sup> pm

June 26, 2008

Ms Olson

Assembly member Brownley AB 3009  
has hundreds of signatures supporting  
a legislative or administrative fix (Regulation)  
Please include those in my support of  
proposed regulations. - ~~Eric~~

The following letters to also  
be included in my July 8, hearing  
as well as a comment after the  
hearings.

Thank you

William M Connelley

## **VETERANS COORDINATING COUNCIL**

112 West Cabrillo Boulevard  
Santa Barbara, California 93101  
(805) 568 0020

June 26, 2008

State Board of Equalization  
Sacramento, CA 95814

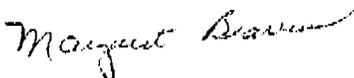
To Whom It May Concern:

The Veterans Coordinating Council of Santa Barbara, consisting of 10 veteran service organizations, fully support a new regulation that was received by the Board on June 13, 2008 by one of our members, William M. Connell.

Please follow the plain meaning of BP 16102.

We support any and all effort to support the returning veteran.

VETERANS COORDINATING COUNCIL.

  
Margaret Beavers  
Secretary

**VETERANS COORDINATING COUNCIL**  
 Margaret Beavers **BOARD OF DIRECTORS**  
**2007 – 2008**

**Chairman:**

**Bernard Martinez**  
 112 West Cabrillo Blvd.  
 Santa Barbara, CA 93117

**Amvets**  
**Geronimo Gonzalez**  
 112 West Cabrillo Blvd  
 Santa Barbara, Ca 93101  
 967-1513

**Vice-Chairman:**

**Gerald Stromm**  
 204 Forest Drive  
 Goleta, CA 93117  
 Tel: 968-6269

**Disabled American Veterans**  
**Ellery Price**  
 2907 State Street  
 Santa Barbara, CA 93105  
 252-2384

**Secretary/Treasurer:**

**Margaret Beavers**  
 394 San Domingo Drive  
 Santa Barbara, CA 93111  
 Tel: 568-0020

**Korean War Veterans**  
**Santos Escobar**  
 1730 Villa Avenue  
 Santa Barbara, CA 93105  
 Tel: 682-2231

**Chaplain:**

**Armando Vasquez**  
 112 W. Cabrillo Blvd.  
 Santa Barbara, CA 93101

**Marine Corps League**  
**Jerry Burserrek**  
 Santa Barbara, CA  
 964-1262

**Judge Advocate**

**Robert Forties**  
 2421 Calle Soria  
 Santa Barbara, CA 93109

**Military Order of the Purple Heart**  
**Bernard Martinez**  
 112 West Cabrillo Blvd.  
 Santa Barbara, CA 93101

**American Legion Post # 49**  
**Bob Terry**  
 P. O. Box 482  
 Goleta, CA 93116  
 968-3079

**Military Order of World War**  
**Eliazabeth Truesdai**  
 5050 Baseline Avenue  
 Santa Ynez, CA 93101

**American Legion Auxiliary #49**  
**Beverly Ochoa**  
 112 West Cabrillo Blvd.  
 Santa Barbara, CA  
 568-0020

**Veterans of Foreign Wars**  
**Robert Forties, 1<sup>st</sup> Sgt Ret,**  
 2421 Calle Roria  
 Santa Barabar, CA 9310

**Vietnam Veterans of America**  
**Bill Stewart**  
 1617 Las Canoas Road  
 Santa Barbara, CA 93105  
 963-1863

## CHAPTER CCXXXIV

*An Act to establish a uniform system of county and township governments.*

*(Approved March 24, 1893.)*

*The People of the State of California, represented in Senate and Assembly, do enact as follows:*

27. To license, for purposes of regulation and revenue, all and every kind of business not – prohibited by law, and transacted and carried on in such county, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; *provided*, that every honorably discharged soldier, sailor, or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle, and vend any goods, wares, or merchandise, except spirituous, malt, vinous, or other intoxicating liquor, without payment of any license, tax, or fee whatsoever, whether municipal, county, or State; and the Board of Supervisors shall issue to such soldier, sailor, or marine without cost, a license therefore. A certificate of disability by a surgeon of the United States Army or Navy shall be sufficient proof of such disability, and a certificate of honorable discharge from the United States Army or Navy, or an exemplified copy thereof, shall be sufficient proof of such service and honorable discharge, and upon presentation a license shall be issued as aforesaid.

### **Exhibit A**

Item J1

Public Comment 7/07/08

07/08/08

## Article 3. Itinerant Vendors.

4060. No person as principal or agent shall conduct as an itinerant vendor within this State the business of selling or in any manner disposing of drugs, nostrums, ointments or any appliances for the treatment of disease, deformities or injuries without previously obtaining a license to do so under the provisions of this article.

Itinerant  
vendors

4061. Within the meaning of this article, itinerant vendors include all persons who carry on the business described in section 4060 by passing from house to house or place to place, or by haranguing the people of the public streets or in public places or in stores, shops or other places to which the public is invited or attracted, or use the various customary devices for attracting crowds to or into such places and therewith recommending their wares, and offering them for sale. Nothing in this article applies to persons holding a permit issued by the Board of Pharmacy to general dealers in rural districts  
(Amended by Ch. 666, Stats. 1937.)

"Itinerant  
vendors"  
defined

## [ORIGINAL SECTION.]

4061. Within the meaning of this article, itinerant vendors include all persons who carry on the business described in section 4060 by passing from house to house, or by haranguing the people on the public streets or in public places, or use the various customary devices for attracting crowds and therewith recommending their wares, and offering them for sale.

4062. Subject to the provisions of section 4061, nothing contained in this article prevents manufacturing pharmaceutical firms from placing their products on the market through their agents and managers.

Manufactur-  
ing firms

4063. A license fee of twenty-five dollars is hereby levied upon all such itinerant vendors doing business in this State.

Annual li-  
cense fee

The tax fee shall be paid on or before the first day of January of each year to the Board of Pharmacy in the Department of Professional and Vocational Standards, for the use and benefit of the State of California, and shall constitute a special fund for the enforcement of this entire chapter.

For each license issued or renewed after the first day of January, the fee shall be reduced one-fourth for each three months' period which has elapsed since this date.

Any person who fails to pay the license fee within thirty days after it has become due shall be liable to a penalty of twenty-five dollars.

(Amended by Ch. 666, Stats. 1937.)

## [ORIGINAL SECTION.]

4063. A license fee of one hundred dollars is hereby levied upon all itinerant vendors doing business in this State. The tax shall be paid to the State Board of Pharmacy in the Department of Professional and Vocational Standards, for the use and benefit of the State of California, and shall constitute a special fund for the enforcement of this entire chapter.

4064. Nothing in this article prevents the collection of any tax or license that may be imposed by any county or municipal

Local li-  
cense fees

authority and nothing in this article repeals or modifies the provisions of Chapter 297 of the Statutes of 1905, relating to Civil War Veterans.

Stats 1905,  
p 307.

Application  
for license.

4065. Before any license is issued, each applicant for one shall apply to the Board of Pharmacy for an application. After it has been properly filled out, it shall be filed with the board and the proper fee shall be paid.

(Amended by Ch. 666, Stats. 1937.)

[ORIGINAL SECTION.]

4065. Before any license is issued, each applicant for one shall apply to the Board of Pharmacy for an application. After it has been properly filled out, it shall be filed with the board and the proper fee shall be paid.

Issuance of  
license

4066. Upon the receipt of the correct fee from any person desiring to conduct a business under this article within this State, the secretary of the Board of Pharmacy shall issue a license to him to carry on such business within this State until the first day of January of the year next ensuing.

(Amended by Ch. 666, Stats. 1937.)

[ORIGINAL SECTION.]

4066. Upon the receipt of the fee from any person desiring to conduct a business under this article within this State, the secretary of the Board of Pharmacy shall issue a license to him to carry on such business within this State for the term of one year next ensuing.

Transfer of  
license

4067. The license shall be transferable as to its unexpired portion upon written notice to the board giving the name and address of the transferee. The notice shall be accompanied by a transfer fee of one dollar.

Upon receipt of the notice and fee, the transferee shall succeed to the unexpired portion of the privileges granted by the license.

(Amended by Ch. 666, Stats. 1937.)

[ORIGINAL SECTION.]

4067. The Board of Pharmacy may allow the license to be transferred during the life thereof on such terms as it deems proper.

4068. (Repealed by Ch. 666, Stats. 1937.)

[ORIGINAL SECTION.]

4068. Within fifteen days after receipt of written request from the secretary of the board, any person, dealer, firm or corporation doing business under this article by or through any agent, dealer, representative, firm or corporation, shall furnish the board, in writing, with the name and address of each and every agent, dealer or representative handling or dealing in his or its products or preparations coming under this article. The failure to furnish this information is a misdemeanor and upon conviction thereof is punishable as provided in section 4071.

4069. (Repealed by Ch. 666, Stats. 1937.)

[ORIGINAL SECTION.]

4069. This information shall be available only for the purpose of ascertaining if such person or persons have a license as required by this article. No officer, employee or representative of the board of pharmacy shall divulge any information obtained from any person, dealer, firm or corporation, or from any agent or representative except solely for the purpose of enforcement of this article.

1. The Veterans tax exemption pre dates Sales and Use tax law.
2. The Tax Exemption is an earned personal privilege of the honorably discharged Veteran.
3. Currently 18.7% of returning Veterans are on relief, unemployment or welfare.
4. Please take note of the failed (2003 session Assembly Bill) by Dennis Mountjoy under #2 purposes, to remove the commas."
5. Please take note of the failed 2006 session Assembly Bill by Mimi Walters to remove the word State.
6. Absurd consequences have taken place by the SBOE not honoring the "plain meaning" of (AB 74), - the Veterans Tax Exemption Act.

These are the 6 points in your letter to the State Board of Equalization for an Administrative fix. If you could write a very supportive letter and email or fax it off to the board. I have a July 8<sup>th</sup> hearing in Sacramento. Thank you for your help.

*William M. Connell*

William M. Connell

AMENDED IN SENATE JUNE 16, 2008

AMENDED IN ASSEMBLY APRIL 10, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1952**

---

**Introduced by Assembly Member Berg  
(Coauthor: Assembly Member Maze)**

February 13, 2008

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An act to ~~amend Section 16001.5 of~~ *add Section 16001.7* to the Business and Professions Code, relating to business licensing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1952, as amended, Berg. Business licensing: exemptions: veterans.

Under existing law, every person who was honorably discharged or honorably relieved from the military, naval, or air service of the United States who served ~~during specified times on or after June 27, 1950, and prior to February 1, 1955, or on or after August 5, 1964,~~ who is physically unable to obtain a livelihood by manual labor, and who is a resident of the state, is entitled to obtain a license to distribute circulars and sell any goods, other than alcoholic beverages, without payment of applicable license taxes or fees.

~~This bill would remove the requirement that these persons be physically unable to obtain a livelihood by manual labor provide that every person who is honorably discharged or honorably relieved from the military, naval, or air service of the United States and is a resident of this state, is entitled to obtain a license to distribute circulars and sell any goods, other than alcoholic beverages, without payment of applicable license taxes or fees.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 16001.7 is added to the Business and  
2 Professions Code, to read:

3 16001.7. Every person who is honorably discharged or  
4 honorably relieved from the military, naval, or air service of the  
5 United States and who is a resident of this state, may distribute  
6 circulars, and hawk, peddle and vend any goods, wares, or  
7 merchandise owned by him or her, except spiritous, malt, or vinous,  
8 or other intoxicating liquor, without payment of any business  
9 license fee, whether municipal, county, or state, and the legislative  
10 body shall issue to that person, without cost, a license therefor.

11 SECTION 1. Section 16001.5 of the Business and Professions  
12 Code is amended to read:

13 ~~16001.5. Every person who was honorably discharged or~~  
14 ~~honorably relieved from the military, naval, or air service of the~~  
15 ~~United States who served on or after June 27, 1950, and prior to~~  
16 ~~February 1, 1955, or on or after August 5, 1964, and prior to a~~  
17 ~~future date to be established by the Legislature, and who is a~~  
18 ~~resident of this state, may distribute circulars, and hawk, peddle,~~  
19 ~~and vend any goods, wares, or merchandise owned by him or her,~~  
20 ~~except spirituous, malt, or vinous, or other intoxicating liquor,~~  
21 ~~without payment of any license tax or fee whatsoever, whether~~  
22 ~~municipal, county, or state, and the legislative body shall issue to~~  
23 ~~that person, without cost, a license therefor.~~

July 6, 2008

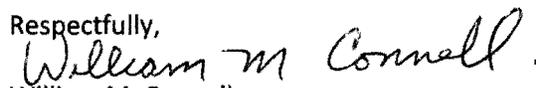
California State Senate  
Appropriations Committee  
Economic Development Committee  
Consultant – Maureen Ortiz  
Consultant – Sieglinde Johnson  
Chief Consultant – Bill Gage  
Chief Consultant Bob Franzoia

AB 1952, Berg

The Veterans Tax Exemption Act, to serve the public purpose to address employment for our returned Veterans, honorably discharged, was enacted early in our Statehood. The Veterans Tax Exemption Act of March 1893 makes clear that the Veteran was to be issued license and the tax collector was to list the Veteran Itinerant Vendor as tax exempt. The clear language of the act contains the intent that the Veteran was to be left alone once forms and affidavits were filed with the license-tax collector of any city, county and State. These Veteran tax exemption forms and affidavits were to be provided to the Veteran by the SBOE of the State. Under penalty of fine and imprisonment, the tax collector was to not seek, nor extract any monitorial payment whether city, county or State from the situated Veteran in the conduct of his/her business of hawking, peddling or vending by itinerant means. (Held by "**Brooks vs. Santa Clara, 1987**").

Nowhere is law, has the Veteran Tax Exemption ever been described as a business license waiver – nowhere! In "**Brooks**", (a patriotically inspired exemption!), I call your attention to Berg AB 1952, "existing law" – these comments are incomplete, inaccurate, and openly false. Please provide your committee's with clear and accurate information as it relates to existing statute; plain meaning of the Veterans 1892 tax exemption act.

Respectfully,

  
William M. Connell

## FACT SHEET

# BUSINESS & PROFESSION CODE 16100, 16100.5, 16102

### Summary:

A copy of the 1893 enactment of The Veterans Tax Exemption Act is attached. ( AB 74.) It was to serve the public purpose. To allow the returning Veteran to (conduct) transact his/her business "without being required to pay." As held by our high courts in *Brooks vs. Santa Clara 1987*. Rather than be on relief, welfare or unemployment the Veteran was given the right to hawk, peddle or vend any goods wares or merchandise owned by him/her without payment of any license, tax, or fee whatsoever, whether municipal, county, or State. This is a patriotically inspired tax exemption.

The Veteran was to be issued license, and under the consequences of fine and imprisonment the tax collector was to leave the Veteran alone. "Owned by him" clearly put the consumer status on the Veteran. These sister codes 16100, 16100.5 and **16102** were to prevent misinterpretation "redundancy." **NO WHERE IN LAW, DOES IT STATE "Business License Fee Waiver!!"**

### Background:

Chapter CCXXXIV, (Enacted March 24, 1893). In our state's history the first veteran's tax exemption enactment was in 1855. Directly after the Bradley Burns Tax Act, the three words "owned by him" were inserted by amendment; these three words clearly put the "consumer status" on the Veteran. In 2003 an Assembly Bill by Dennis Mountjoy was put forth, under number 2, "Purpose;" a change in the text to eliminate the commas between the words "license" and "tax" and "fee". I defeated this bill. Once again, in 2006 an Assembly bill by Mimi Walters using the "vail" of helping all active duty personnel was put forth. I again defeated this bill because the honorable discharged veteran had to earn this personal privilege. This veteran's tax exemption act was meant for employment opportunities after military service. The Veteran is "exempt from any License, Tax, or fee whatsoever, whether municipal, county or State."

### Solution:

Honor the Veterans Tax Exemption Act as written. This Veterans benefit was to allow the veteran a chance to make a living so that he/she could pay the income tax. PLAIN MEANING of a tax exemption act must be followed.

Absurd consequences have taken place, by the SBOE not honoring the plain meaning of the act, which has resulted in an illegal taking and has put me on welfare. The SBOE has taken money from my bank accounts without a clear and honest hearing. The SBOE tax attorneys have put forth lies, misinformation and openly false statements. As part of the solution I demand all of my monies returned to me and my brother and sister veterans, likewise.

AB 3009, by Brownley and AB 1952 by Berg do little to address the needs of our returning veterans. We have thousands of returning veterans unemployed. **Honor the Veterans Tax Exemption Act as written. Plain Meaning.**

**AB 3009 by Brownley is a "start."** However, the existing Veterans Tax Exemption Act states "**any goods, wares or merchandise," not just *food and beverages*.** Request is made to include all honorably discharged itinerant vendors, as contained in **AB 1952 by Berg**. Do not cheapen this earned personal privilege. All of you should do right by the Veteran.

## AB 3009 Brownley

## AB 1952 Berg

An Assembly bill by Dennis Mountjoy in the 2003 session, and an Assembly bill by Mimi Walters in the 2006 session, on Business & Professions code 16100, 16100.5, **16102** were both defeated by me.

The High court decision of 6 pages, read it carefully. PLAIN MEANING! (**Brooks vs. Santa Clara 1987**). **No where in law is it stated a "Business License fee waiver!"**

Directly after the Bradly Burns tax bill 16102 was amended to include these 3 most important words: **"Owned by him"**. **This put the consumer status on the Veteran**. Please read the existing law. **"Any license, tax or fee whatsoever."** Please note in the 1893 Enactment, there are commas after the word license and after the word tax! This makes clear that the words "tax" and "fee" **do not modify the word "license"**. This law, 1893 Enactment was reviewed by the Revenue and Taxation Committee. Reconsideration of the Bill was granted the Assembly member from Alameda. It was returned word for word, comma for comma, completely **unchanged**. A unanimous vote followed and it was signed into law on March 24, 1893. A (waiver) of the business license fee *does nothing* to bring the Veteran any tax relief.

To issue license, a piece of paper, does not get the returning honorably discharged veteran off of unemployment, welfare or relief. The monetary extraction normally associated with hawking, peddling, or vending by the Enactment, that the veteran is exempted from, does. "Consumer status." The situated veteran is not considered the retailer, he is considered the consumer of the products he/she owns.

This law; a copy of the 1893 Enactment is enclosed, was meant and intended to do one thing. To completely remove the veteran from the revenue stream. The veteran was to be issued a license and then, after his tax exemption affidavit was submitted to the license-tax collector of any city, county, State, municipality, or village in California. The veteran was to be issued license and under penalty of imprisonment and fine the tax collector was to leave the veteran alone. This affidavit was to be issued by the State Board of Equalization. In the March 24<sup>th</sup>, 1893 Enactment, please note the word "transacted", this goes directly to the Sales and Use taxes.

**This veterans tax exemption act was intended to allow the veteran to "conduct his business without being required to pay" (Any license, tax or fee whatsoever, whether city, county or State.)** This is held in Brooks vs. Santa Clara, 1987, by our high court.

To serve the **Public purpose** (the cost of supporting the veteran and his family who would be on welfare, relief or unemployment at a considerable cost to the taxpayers), this veterans tax exemption act was to remove the veteran from the public relief rolls, unemployment rolls and welfare so that the veteran would be able to pay California Income Tax.

I wish to personally address the Assembly Revenue & Taxation Committee on May 12<sup>th</sup> on AB 3009 Brownley, also the Assembly Appropriations Committee on May 14<sup>th</sup> on AB 1952 by Berg.

William M. Connell  
US Army, Europe  
Member, American Legion  
Member Vietnam Veterans Post 218  
Member Navy League  
Member Veterans United For Truth

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

JULY 8, 2008

ITEM J1

CHIEF COUNSEL MATTERS

RULEMAKING

Reported by: Beverly D. Toms

CSR No. 1662

P R E S E N T

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For the Board  
of Equalization:

Judy Chu  
Chairwoman

Betty Yee  
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:

Carla Caruso  
Tax Counsel

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Sacramento, California  
July 8, 2008

---oOO---

DR. CHU: Okay, item J1, Chief Counsel Matters.  
Petition to adopt a regulation for veteran itinerant  
vendors.

MR. LEONARD: You're on this side this time.

MR. CONNELL: I figured you'd have my name on  
the chair.

MR. LEONARD: We should.

DR. CHU: Okay. Can we have a staff report?

MS. CARUSO: Mr. Connell has petitioned the  
Board to adopt a new regulation providing that an  
itinerant vendor who is a qualified United States  
veteran is the consumer, not the retailer, of goods that  
the veteran sells.

The Board currently lacks statutory authority  
to specify that veterans be declared consumers rather  
than retailers of goods they sell. The Board has  
consistently taken the position that Business and  
Professions Code Section 16102's exemption from the  
imposition of taxes or fees associated with County  
licensees to engage in the business of selling tangible  
personal property does not create an exemption from the  
Sales and Use Tax Law.

Similarly, the Court of Appeals in the case of  
Brooks v. County of Santa Clara does not involve or

1 address Sales or Use Taxes and thus does not establish a  
2 veterans exemption from Sales or Use Tax for retail  
3 sales of tangible personal property.

4 Additionally, neither Section 16102 nor the  
5 Brooks opinion provides authority for the Board to treat  
6 veterans as the consumers of tangible personal property  
7 they sell at retail.

8 DR. CHU: Okay. We have one speaker. Mr.  
9 William Connell.

10 MR. CONNELL: Good afternoon. I completely  
11 disagree with everything she just said.

12 Background. From the very beginning the  
13 background. I've been here since 1993. Secondly,  
14 Brooks versus Santa Clara examines the Business and  
15 Professions Code. Examines it. It goes into it.

16 What the veteran is entitled to is listed in  
17 there. The revenue stream of the period that we are  
18 talking about was the license tax. The Veterans Tax  
19 Exemption Act predates Revenue and Taxation Code 6001  
20 and 7200. Brooks confirms that the tax and fee  
21 exemption was the intention of the Legislators of the  
22 period. Brooks -- in Brooks is a perfectly placed  
23 exemption from any fee or tax. It is a patriotically  
24 inspired exemption. It is an earned personal privilege.

25 Annotation 410-0900 has no weight in law.  
26 None. It was made up by the tax lawyers when they knew  
27 they had a big problem with the veteran. Made up.

28 It states here it was confirmed by the Los

1 Angeles County Superior Court that it doesn't create an  
2 exemption. This is where the misconduct came in, when I  
3 was told to sue after my first Board hearing as I had  
4 another administrative remedy.

5           Once I sued the first time, it was dismissed.  
6 When I went back to sue again they said, "Oh, you can't  
7 sue the second time, you've already sued us."

8           It's okay. What the law that we're looking  
9 at -- it's three laws, 16100, 16100.5, 16100.102. The  
10 reason the three laws is to prevent misinterpretation.  
11 The redundancy. It's a backup. One for cities, one for  
12 counties, one for cities and counties. Part of it is a  
13 physical disability. Part of it is a serving during  
14 conflict.

15           Well, there's another State Assembly bill  
16 that's going to be passed right on -- right on the  
17 precipice at this point, Assembly Bill 1952. It  
18 eliminates the words "any." It eliminates the word  
19 "whatsoever." It eliminates the word "tax." And it  
20 goes specifically to the business license, exactly what  
21 they have always told you that 16102 means and 16100 and  
22 16100.5.

23           MS. OLSON: Time has expired.

24           MR. CONNELL: I'll just --

25           DR. CHU: Could you just finish your sentence.

26           MR. CONNELL: I'll just finish this sentence  
27 out.

28           If they're going to put an Assembly Bill in

1 that deals with a license, then what do the other three  
2 mean? They mean the plain meaning that was enacted,  
3 plain meaning of the enactment.

4 DR. CHU: Okay.

5 Questions, comments? Ms. Yee.

6 MS. YEE: Thank you, Madam Chair.

7 DR. CHU: And then Mr. Leonard.

8 MR. LEONARD: Yes, thank you.

9 MS. YEE: My office has been engaged with -- in  
10 conversations with Mr. Connell and I think there are a  
11 lot of moving parts surrounding this issue, and I want  
12 to see if I can try to summarize what I believe they  
13 are.

14 First of all, this -- this issue has been  
15 before this Board and this Board sponsored a bill that's  
16 still pending in the Legislature, AB 3009 by Assembly  
17 Member Brownley. And I want to take issue with how that  
18 bill was characterized in the staff report.

19 It did not fail passage, it is sitting on  
20 suspense. The legislative session is not adjourned yet,  
21 so -- but as I've stated to Mr. Connell, I believe  
22 that's the best approach in terms of actually looking at  
23 amending this Sales and Use Tax law. And that gives us  
24 the authority to look at how we treat itinerant vendors  
25 who are -- who are veterans.

26 Having said that, AB 1952, which was brought to  
27 our attention by Assembly Member Berg, I have a little  
28 bit of a different take on the bill in terms of what the

1 intent of the bill is, but I've been assured by  
2 Mr. Connell that in discussions he's had with  
3 Legislative Counsel that there seems to be an emerging  
4 interpretation of what the effect of that bill would be.  
5 And I guess what I'd like to do with this petition  
6 that's before us today, which I don't believe provides  
7 this Board with any authority to move forward on a  
8 regulation, is to hold this petition in abeyance until  
9 we can ascertain the final disposition of both AB 3009  
10 and AB 1952.

11 Mr. Connell also indicated that Legislative  
12 Counsel may be amenable to revisiting its prior legal  
13 opinion, Legislative Counsel opinion, as relates to the  
14 issue of tax liability -- Sales and Use Tax tax  
15 liability with -- in light of the effects of the Berg  
16 bill, AB 1952.

17 So, I feel like we're -- we've got a lot of  
18 things in the air, Mr. Connell, and I really want to --  
19 I personally really want to help you resolve this. But  
20 I don't think the petition is ripe before us.

21 As I've mentioned to you, the B & P Code, I  
22 don't believe, is really the opening that we need to  
23 give us the underpinning or authority to move forward  
24 with the regulation. But having said that, I'd like to  
25 see what happens with 1952, how Leg. Counsel may or may  
26 not be changing its view with respect to the Sales and  
27 Use Tax relative to that bill.

28 But more importantly, I would really like to

1 re-engage -- have our staff re-engage and this Board  
2 re-engage on trying to get AB 3009 through. And I  
3 understand you've done a little bit of work today with  
4 respect to the Senate, trying to make some overture to  
5 the Assembly to get the bill over to the other house.

6 So, in light of all those activities I would  
7 ask my colleagues to essentially withhold action on this  
8 petition and put it in abeyance until we are able to see  
9 what the outcome of the pending legislation is.

10 MS. MANDEL: I wasn't following on -- when you  
11 talked about Leg. Counsel and AB 1952, are you saying --  
12 are they looking at it again now or are they -- or is it  
13 if AB 1952 passes that -- I wasn't clear. And -- and  
14 maybe you had the conversation with him, Mr. Connell,  
15 so --

16 DR. CHU: He did, yeah.

17 MR. CONNELL: What I --

18 DR. CHU: Mr. Connell.

19 MR. CONNELL: What I was led to -- to mean is  
20 once AB 1893 -- 189--

21 MS. MANDEL: 1952.

22 MR. CONNELL: -- 1952 is put in there, the  
23 position of the Sales and Use Tax staff where I was  
24 going to receive a free license, where the license fee  
25 was to be waived. Okay.

26 Once that law would be specific for the  
27 business license with the elimination of the words  
28 "any," "tax," "whatsoever," then the other three laws,

1 what would they mean? They would mean the plain  
2 meaning.

3 So, in other words, they would --

4 MS. MANDEL: So -- so it --

5 MR. CONNELL: They would clarify, exactly.

6 So --

7 MS. MANDEL: So, if -- if -- if this Berg bill  
8 were enacted that's what they're talking about?

9 MR. CONNELL: I believe so.

10 MS. MANDEL: Or that that's when the Leg.  
11 Counsel --

12 MR. CONNELL: I've been -- I've been dealing  
13 with different Chiefs of Staff.

14 MS. MANDEL: Right.

15 MR. CONNELL: We were in the Legislative  
16 Counsel. There were things that I've been trying to  
17 take care of in a very limited amount of time up here.  
18 And --

19 MS. MANDEL: Yeah, I just was trying to  
20 follow --

21 MS. YEE: Yeah.

22 MR. CONNELL: That --

23 MS. MANDEL: -- comment.

24 MR. CONNELL: That's more or less trying -- as  
25 clear as I can be.

26 MS. MANDEL: Okay, thanks.

27 MR. CONNELL: I have two more questions or  
28 comments.

1 DR. CHU: Oh. If we could go to Mr. Leonard.

2 MR. CONNELL: Oh, I'm sorry.

3 MR. LEONARD: Thank you, Dr. Chu.

4 I'm -- I respectfully disagree with our Legal  
5 Department and I think the issue is the -- how do you --  
6 how do you apply the Business and Profession Code that  
7 clearly is a broad exemption to qualified veterans;  
8 whether it applies to a -- a State tax adopted 30 -- 40  
9 years after its enactment or not.

10 And I -- I now conclude, even though I kind of  
11 first sort of leaned your way, that it -- it does, that  
12 that exemption does apply to our Sales Tax programs and  
13 that this regulation is -- is an implementation of that  
14 statute.

15 Legally, I can't imagine anybody challenging us  
16 if we were to adopt it, Members. Politically, it's the  
17 right thing to do for the same motivations that the  
18 Legislature undertook when they enacted this statute the  
19 century before last, how can we describe it.

20 So -- but Ms. Yee's point is intriguing. If --  
21 if we could -- would you be open, Ms. Yee, to  
22 calendaring it in October that we would know by then the  
23 Legislature's action and the Governor's action, so we --  
24 and it would be on the calendar so Mr. Connell could  
25 make his plans to return and -- and -- and whatever work  
26 he wanted to do to -- with Board Members or with his  
27 support groups, to talking to Board Members between now  
28 and then so that it's not only put over, but it's to a

1 time certain? We'd have that.

2 I could -- in other words, I wouldn't push for  
3 a motion today. I would accede to your request to -- to  
4 do -- do exactly that because I admit it's cloudy. I  
5 mean, it took me a long time to try to figure out how  
6 you -- how you apply this and what -- Riley Stewart  
7 probably never thought of it in 1933. So, in terms of  
8 Legislative intent, it never arose. So, it becomes kind  
9 of the legal interpretation. But if it's in a different  
10 code section it just strikes me it's parallel to -- to  
11 Justice Kennedy's mistake. He just made a recent  
12 Supreme Court case that there's a section of the law out  
13 there that nobody talked and thought -- sought to bring  
14 before the Court.

15 And this is likewise. I don't think it was  
16 brought before any of the Sales and Tax -- Sales and Use  
17 Tax people in the 1930s or the Board of Equalization  
18 that was given the task of implementing this new tax at  
19 that time. It just wasn't thought of. And if it was  
20 brought up or raised by any veteran at the time, they  
21 were -- they were a lot less persistent than  
22 Mr. Connell, so it was just dismissed.

23 In looking at it now, it should have been  
24 raised, so there is a bit of a cloud. And I think if it  
25 had been raised, I'm convinced that it would have been  
26 real clear that the -- the B and P code would have --  
27 would have been made to be compatible with the Sales and  
28 Use Tax code in favor of the disabled veteran street

1     hawker. I think it would have been put in with -- as a  
2     consent amendment on that. It just wasn't brought up.

3             If we can do it now with our friends in the  
4     Legislature to make it clear for all time to come and --  
5     and can't reversed by this Board, I'd -- I'd certainly  
6     be open to that. But I would -- I'd hope that they  
7     would -- they would do the right thing and do that and  
8     then we would follow that guidance. If not, I would ask  
9     to come back in October and work with you, Ms. Yee, and  
10    my colleagues on the Board to see if we can convince our  
11    Legal Department friends that I'm right this time.

12            MS. YEE: Mr. Leonard, I -- I have no problem  
13    making that request of the Chair. I think certainly by  
14    October we'll know where all these pieces -- all these  
15    pieces have landed.

16            I just also want to be clear that 1952 in and  
17    of itself I still don't believe kind of gets us kind of  
18    the foundation we need to pursue a regulation that Mr.  
19    Connell has at least been working day and night to have  
20    conversations with Legislative Counsel. And to the  
21    extent that the bill -- what the effect of the bill is,  
22    is to isolate the license fee exemption --

23            MR. CONNELL: Yes.

24            MS. YEE: -- then it calls into question, you  
25    know, kind of what about the tax part.

26            MR. CONNELL: If -- if the --

27            MS. YEE: It actually calls into question other  
28    fees and tax. But -- and we'll have to just figure out

1 how to resolve that, but at least Legislative Counsel I  
2 think had expressed some interest in at least revisiting  
3 the request for a legal opinion that it had received  
4 years back relative to the Sales and Use Tax exemption  
5 in light of this bill.

6 DR. CHU: Yes, Mr. Ferris.

7 MR. FERRIS: And hopefully if they do revisit  
8 it they would also analyze the Use Tax collection  
9 issue --

10 MS. YEE: Right.

11 MR. FERRIS: -- that is also kind of lurking  
12 behind all of this.

13 MS. YEE: Yeah. And what I'd like to do is  
14 maybe perhaps give the Legislature, certainly the staff  
15 there, through Mr. Connell, some guidance about the  
16 specific questions that we'd like them to address  
17 because I do think -- yeah, other -- there are other  
18 issues.

19 DR. CHU: Okay. Mr. Connell.

20 MR. CONNELL: Very briefly. In this Board --  
21 Board Proceedings hearings and all, I believe and I  
22 still steadfastly hold that there were untrustworthy  
23 and misleading information put -- put forth in both of  
24 my hearings. They said it was mis -- miswritten, there  
25 weren't supposed to be commas in there. They also said  
26 that this most important case, Brooks versus Santa  
27 Clara, was overturned.

28 Not one Board Member, multiple Board Members as

1 well as the attorney. I'd like someone to look into  
2 that forensically. Both of my hearings. I would like  
3 if there are grounds to have them overturned, I'd like  
4 them just to be voided. I -- I think that I really  
5 caught a really tough break by not being sharp enough or  
6 at that point I was a neophyte -- but there were a lot  
7 of things that weren't said that were incorrect and  
8 misleading to other Boards.

9 So, I -- I'd like you to, if possible, look  
10 into that and it even says here, page 2, that the Board  
11 staff has historically considered Brooks. Okay. I  
12 don't think so. The reason I don't think so is two  
13 sentences before it Brooks held that a veteran vending  
14 machine business -- I will leave you alone forever if  
15 someone one can show me in Brooks versus Santa Clara  
16 where a vending machine business was put in. I'll leave  
17 you alone. I -- I don't -- I don't -- somebody show me  
18 where a vending machine business of Mr. Brooks. Please.

19 Please read the -- that tells me they don't  
20 read the -- the law. That's what it tells me. Under no  
21 circumstances was the Brooks case ever about a vending  
22 machine. Ever. It was about a little guy operating out  
23 of a truck just like me. No machines. No fixed places  
24 of business. Itinerant means.

25 The information you guys got from your Chief  
26 here of Staff is incomplete, is inaccurate. Once again,  
27 and it just -- it just galls me. I -- I wouldn't -- I  
28 wouldn't have slept well tonight unless I said that.

1 DR. CHU: Okay.

2 MR. CONNELL: You're not getting the right  
3 information. One last thing, there's over 440 support  
4 signatures. Okay. I was told that I didn't support  
5 3009. There's 440 reasons why that, which is in this  
6 report, is also incorrect.

7 DR. CHU: Okay. Thank you, Mr. Connell.  
8 And -- Ms. Yee, do you have a motion?

9 MS. YEE: Yeah. I'll move to postpone action  
10 on this petition until the October Board meeting --  
11 Sacramento Board meeting.

12 MS. MANDEL: That October Sacramento is  
13 beginning of the month, I believe. Is that right?

14 MS. YEE: I think --

15 MS. OLSON: It's the 1st through 3rd.

16 MS. MANDEL: Just so -- for your information.

17 MS. YEE: We should have a pretty good sense by  
18 then. By the end of September we'll know.

19 MS. MANDEL: Okay.

20 MS. YEE: Okay. And the -- just kind of --

21 MR. LEONARD: I think the Governor's deadline  
22 to act is September 30th --

23 MS. YEE: 30th, all right.

24 MR. LEONARD: -- in the even numbered year.

25 MS. YEE: But I also want to just maybe  
26 direct -- I'd like to renew my request and maybe direct  
27 the legislative staff of the Board to just check in with  
28 the Veterans Committee, particularly in the Senate,

1 because they are interested in having AB 3009 over in  
2 their house. So, whatever we can do to shake that bill  
3 loose. It is a Board-sponsored bill. So, I'd love to  
4 have a little bit more activity on trying to get that  
5 bill out of Assembly Rev. and Tax.

6 DR. CHU: Okay. So that's a motion. Is there  
7 a second?

8 MR. LEONARD: I'll second that.

9 DR. CHU: Okay. Motion by Ms. Yee, second by  
10 Mr. Leonard to postpone this matter until the October  
11 meeting.

12 And without objection then that is adopted.

13 Okay.

14 MR. CONNELL: I'll see you in October.

15 DR. CHU: Okay. Thank you very much.

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## Memorandum

To: Honorable Judy Chu, Ph.D., Chair  
Honorable Betty T. Yee, Vice-Chairwoman  
Honorable Bill Leonard  
Honorable Michelle Steel  
Honorable John Chiang

Date: November 26, 2008

From: Kristine Cazadd  
Chief Counsel 

Subject: **December 17, 2008, Chief Counsel's Calendar – Petition to Adopt a Regulation to Designate Qualified Veteran Itinerant Vendors as Consumers of Tangible Personal Property**

### Background

On June 13, 2008, Mr. William Connell submitted a petition pursuant to Government Code section 11340.6, requesting the Board to adopt a regulation specifying that a qualified veteran itinerant vendor is a consumer of any goods he or she offers for sale. Copies of the petition, a letter from petitioner to State Senator Mark Ridley-Thomas, an e-mail from petitioner to State Assembly Member Charles Calderon, petitioner's "Statement of Principle (Special Exemption [f]rom Tax[-]Related Burdens)," and Government Code sections 11340.6 and 11340.7 are attached. According to the petition, Business and Professions Code section 16102 and *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750, establish an exemption from sales and use tax for sales by a veteran-vendor of any goods he or she owns.

On June 4, 2008, petitioner filed a Complaint for Refund of Sales and Use Tax (Complaint) in Sacramento County Superior Court (Superior Court). That same day, the Complaint was served on the Board. The Complaint alleges that Business and Professions Code section 16102 exempts plaintiff (petitioner) from paying sales and use tax on his sales of food and beverages from his vending cart. On September 4, 2008, the Superior Court entered the Order and Judgment of Dismissal of the Complaint. The Notice of Entry of Judgment was served by mail on September 24, 2008.

On July 8, 2008, this petition first came before the Board. Due to proposed Board-sponsored legislation concerning qualified veteran itinerant vendors, as discussed below, the Board deferred consideration of the petition until its October 1, 2008, meeting in Sacramento. Subsequently, at petitioner's request, the matter was deferred for consideration at the Board's December 2008 meeting.

The Board has consistently taken the position that Business and Professions Code section 16102's exemption from the imposition of taxes or fees associated with county licenses to engage in the business of selling tangible personal property does not create an exemption under the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) nor the Uniform Local Sales and

Use Tax Law (Rev. & Tax. Code, § 7200 et seq.). (See, e.g., Sales and Use Tax Annotation 410.0900 (6/22/95).) This position is consistent with that of the Legislative Counsel in its opinions dated October 28, 1998 (Ops. Cal. Leg. Counsel, No. 14321, Business License Tax Exemption: Disabled Veterans), and August 17, 2006 (Ops. Cal. Leg. Counsel, No. 0611388, Veteran Business Licensing). Moreover, this position was confirmed by the Los Angeles County Superior Court (Case No. BC316467), which dismissed petitioner's lawsuit against the Board on this very issue, on the ground that the complaint did not state facts sufficient to constitute a cause of action. Thus, the Board, the Legislative Counsel, and the Los Angeles County Superior Court concur that there is currently no veteran's exemption that applies to petitioner's liabilities under the Sales and Use Tax Law or the Uniform Local Sales and Use Tax Law.

Furthermore, *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750, the case cited by petitioner, does not support his contention that Business and Professions Code section 16102 exempts his sales as a United States veteran from sales and use tax. *Brooks* held that a veteran's nut vending business, which was exempt from county license fees for hawking, vending, and peddling by virtue of Business and Professions Code section 16102, was also exempt from health license and permit fees imposed by the county under Health and Safety Code section 510. That case neither involves nor addresses sales and use taxes. Thus, *Brooks* does not establish a veteran's exemption from sales or use tax for retail sales of tangible personal property. We note that Board staff has historically considered *Brooks* in reaching the conclusion that there is no veteran's exemption applicable to petitioner's liabilities under the Sales and Use Tax Law or the Uniform Local Sales and Use Tax Law.

Lastly, the Board sponsored legislation during the 2008 legislative session in an effort to address petitioner's situation. Assembly Bill 3009, which was referred to the suspense file in the Assembly Revenue and Taxation Committee, generally provided that a United States veteran, as specified, shall be regarded as a consumer, rather than a retailer, of food products that he or she sells, provided that, for the purposes of selling these items, the veteran has no employees and no permanent place of business, as defined. A proposal to sponsor similar legislation will be before the Board at the Legislative Committee meeting scheduled for December 16, 2008.

### **Grounds for the Petition**

The grounds advanced in the petition are as follows:

1. Business and Professions Code section 16102 specifies that qualified United States veterans have the right to sell goods, wares and merchandise that he or she owns without the payment of "any" taxes and fees.
2. *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750, has "upheld" Business and Professions Code section 16102.

### **Options for Board Action**

Pursuant to Government Code section 11340.7 (copy attached), upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation, the Board shall:

1. Deny each petition, in whole or in part, indicating in writing why the Board has reached its decision on the merits of the petition; or

2. Initiate the rulemaking process and schedule the matter for public hearing in accordance with the rulemaking provisions of the Administrative Procedure Act. (Gov. Code, § 11346 et seq.)

If the Board schedules the matter for public hearing, it may, prior to setting the public hearing date and authorizing publication of the notice of hearing, hold public discussion of the proposal. (Gov. Code, § 11346.45.) For example, the Board may refer the matter to the Business Taxes Committee for the full or abbreviated version of that process.

Furthermore, the Board may grant any other relief or take any other such action it may determine to be warranted by the petition. (Gov. Code, § 11340.7, subd. (b).)

The decision of the Board regarding the petition is required to be in writing and to include the reasons therefore. The decision must be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register. (Gov. Code, § 11340.7, subd. (d).)

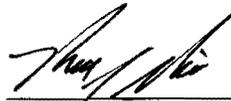
### **Staff Recommendation**

Because the Board currently lacks statutory authority to specify that veterans be declared consumers, rather than retailers, of tangible personal property that they sell, staff recommends that the petition be denied.

### **Additional Information**

Staff is available to provide additional information and to render whatever assistance the Board may require in making its decision. If you have any questions on these matters, please contact Assistant Chief Counsel Randy Ferris at (916) 261-2976.

APPROVED: \_\_\_\_\_



Ramon J. Hirsig  
Executive Director

KEC:ef

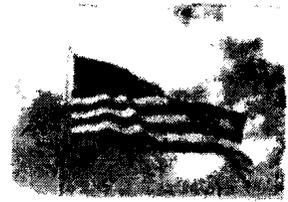
### **Attachments**

J:/Chief Counsel/Finals/WilliamConnell 12-08Memo.doc

J:/Business/Use/Final/MCCAI/WilliamConnell 12-08Memo.doc

cc: Mr. Ramon Hirsig (MIC:73)  
Ms. Randie Henry (MIC:43)  
Mr. Randy Ferris (MIC:82)  
Ms. Carla Caruso (MIC:82)

# ATTACHMENTS



**STATEMENT OF PRINCIPLE**  
**(Special Exemption From Tax Related Burdens)**

On March 24, 1893, the State of California adopted an Act (the "ACT"). Exhibit A, that recognized that "... every soldier, sailor or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle and vend any goods ... without payment of any license, tax, or fee whatsoever." (emphasis added)\*.

By including the word, "whatsoever", the clear legislative intent was to remove ALL tax related burdens from this limited group of former military people.

Under the provisions of California Code of Civil Procedure Section 1859 (Enacted 1872), Exhibit B, the intention of the legislature must be followed if at all possible.

However, subsequent, to the adoption of the ACT, other tax related acts were passed which did not specifically exempt this limited group from their provisions, and CONTRARY TO THE CLEAR INTENT OF THE LEGISLATURE, tax related burdens have been placed on these former military people.

It is the position of this STATEMENT OF PRINCIPLE that, in the interests of justice and in keeping with the provisions of Section 1859 of the Code of Civil Procedure, the legislative intent of the ACT should be carried out and that all provisions of any law, state or local, that contradicts the clear intent of the ACT be modified so as to exempt this limited group from any state or local tax related burdens.

Specifically this STATEMENT OF PRINCIPLE is directed to the need to clarify Section 6051 (et seq.) of the Revenue and Taxation Code, copy attached as Exhibit C, to make it clear that the former military people who come within the provisions of the ACT are exempt from the requirements of collecting sales tax.

***Request is hereby made that the proper parties take necessary and proper action to modify Section 6051 of the Revenue and Taxation Code and its related provisions to comply with the intent of the legislature and the ACT by specifically exempting the former military people who come within the provisions of the ACT from the requirements of collecting sales tax.***

Respectfully submitted,

*William M Connell*

William M Connell,  
U.S. Army Veteran

\*A copy of Section 16102 of the Business and Professions Code that relates to this matter is attached as Exhibit D.

Regulation for (Qualified Itinerant Veteran Vendors) as Consumers of Goods, Wares or Merchandise (owned by the Veteran him/her). Contained in Business & Professions Code 16100, 16100.5, 16102.

The statutory reference that supports the regulatory provision that is being suggested is contained in the March 12, 1872 and the March 24, 1893 enactment that recognizes that "every soldier, sailor or marine of the United States shall have the right to hawk, peddle and vend any goods, wares or merchandise that he/she owns.....without payment of any license, tax, or fee whatsoever, weather municipal, county or State. Business & Professions code 16102 has been upheld in California Supreme Court in "*Brooks vs. Santa Clara*", 1987 a Published case 191 CAL. APP. 3<sup>rd</sup> 750; 236 CAL Rptr. 509; 1987 CAL. App. However the State Board of Equalizations has failed to abide by the PLAIN MEANING of the enactment and this has resulted in an "*illegal taking*" from the Veteran. This proposed regulation, to include the Veteran as the consumer instead of the retailer, as stated in section (a) below, this would clarify SBOE's apparent confusion of the issue.

Upon presentation of AB 3009 to the Assembly Revenue & Taxation Committee, on May 12, 2008 where SBOE employees were present; the Assembly committee chairman stated "why has this not been handled at the SBOE level?" The chairman also inquired of any published cases. The SBOE employees were mistaken by not providing the chairman with the proper answer of "*Brooks vs. County of Santa Clara, 1987*". This mirrors the exact position I have held for years; and is the reason for my request for this petition. I do not understand why the SBOE refuses to acknowledge that *Brooks vs. County of Santa Clara* was NOT overturned and that they continue to ignore a high court case that is on point, and the failure to bring this published case to the attention of the Revenue & Taxation Committee Chairman.

This petition is to request the following regulation as outlined below, be adopted by the SBOE for clarification of existing State Statute and that the SBOE follow the PLAIN MEANING of the existing enactment.

- (a) **GENERALLY.** Except as provided in subdivision (e), a qualified itinerant Veteran vendor is a consumer of, and shall not be considered a retailer of any goods, ware, or merchandise that he/she owns and offers for sale.
- (b) **DEFINITIONS.** For the purpose of selling any goods, wares or merchandise by itinerant means only. Itinerant Vendor Veteran
- (c) A qualified Itinerant Veteran vendor means a soldier, sailor, airman, or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service.
- (d) "Permanent place of business" means any building or other permanently affixed structure that is used in whole or part for sales of goods, wares, and merchandise that the veteran owns.
- (e) This section shall not apply to the sale or use of spirituous, malt, vinous or any other intoxicating beverage.

**REQUIRED DOCUMENTATION:** When the Board determines it is necessary for efficient administration of the Sales and Use Tax Law, a qualified itinerant Veteran vendor shall be considered a consumer of any goods, wares, or merchandise that he/she owns, then sells when he/she has obtained a certificate from the Board. Documentation required for Veteran to obtain the certificate shall include proof of release from active duty under honorable conditions, or his/her honorable discharge from the United States military service, or a certified copy thereof.

- (1) **SWAP MEETS, FLEA MARKETS, OR SPECIAL EVENTS.** The operator of the event as provided in Revenue and Taxation Code 6073, is required to obtain written evidence that each seller holds a valid seller's permit, the itinerant Veteran vendor is required to submit certification from the Board that he/she is tax exempt.
- (2) **CATERING TRUCKS.** When operating out of a facility pursuant to Health and Safety Code section 114295, the qualified itinerant Veteran vendor will provide a tax exemption certification from the Board to address as provided in Revenue and Taxation Code section 6074 regarding sales to catering truck operators.

June 13, 2008

Senator Mark Ridley-Thomas, Chair  
State of California, All Officers, All Elected Officials

I call your attention to AB 1952 by Berg

Nowhere in statute or in any high court ruling *Brooks vs. Santa Clara, 1987* or in any regulation is section B & P Code 16100, 16100.5, **16102** mentioned or described as a business license waiver. I request you review the March 12<sup>th</sup>, 1872 ACT and the March 24<sup>th</sup>, 1893 ACT. "Any license, tax, or fee whatsoever whether city, county or State."

18.7% of returning Veterans on welfare, relief or unemployment! It is a good idea to extend this tax exemption to every Veteran. However, it should be noted that this grave error, of referring to this ACT as a business license waiver is a major mistake and not supported by the PLAIN MEANING of the enactment. I believe a stand- alone statute would allow all Veterans this tax exemption status. Do not amend the unique and specific tax language that is contained in the current enactment. The *Brooks vs. Santa Clara, 1987*, 191 Cal.App.3d 750, a high court ruling confirms this statute 16102 in its totality where the statute was given full force and effect and is binding to all courts of this state by the California Court of Appeals.

By all means help all the Veterans but never ignore the public purpose or the intent of the original enactment. The enclosed Regulation to the SBOE would go a long way to clear up any misinterpretations of existing statute of 16102.

Respectfully,

William M. Connell

**YAHOO! MAIL**  
Classic

Print - Close Window

**Date:** Mon, 2 Jun 2008 08:17:46 -0700 (PDT)  
**From:** "Linda Renee Fenton" <fentonlr@yahoo.com>  
**Subject:** Veterans Tax Exemption Enactment of March 24, 1893  
**To:** assemblymember.calderon@assembly.ca.gov

**AB 3009 Brownley**

Sir, thank you very much for allowing me to speak to your committee on May 12, 2008 regarding AB 3009 by Brownley. You inquired if there were any published cases. It seems the SBOE employees do not wish to acknowledge that there is a published case "on point." **Brooks vs. County of Santa Clara, 1987**. I did not want to interrupt or correct anyone during your meeting. However, I believe it is most important that we are clear about the true facts. The attached file was send to the SBOE this morning. Thank you for all your hard work and concern for our veterans. Reply requested.

William M. Connell

**Attachments**

Files:

 [Petition\\_for\\_Regulation\\_060208.doc](#) (33k) [Preview]

**GOV. § 11340.6 .** Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346). This petition shall state the following clearly and concisely:

(a) The substance or nature of the regulation, amendment, or repeal requested.

(b) The reason for the request.

(c) Reference to the authority of the state agency to take the action requested.

**GOV. § 11340.7 .** (a) Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall notify the petitioner in writing of the receipt and shall within 30 days deny the petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of that article.

(b) A state agency may grant or deny the petition in part, and may grant any other relief or take any other action as it may determine to be warranted by the petition and shall notify the petitioner in writing of this action.

(c) Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved. The agency's reconsideration of any matter relating to a petition shall be subject to subdivision (a).

(d) Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be in writing and shall be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. The decision shall identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency.

Here is my reply to the November 26, 2008 memorandum from Kristine Cazadd to all SBOE Board Members.

The Board has consistently taken the position that Business and Professions Code, Section 16102 does not create an exemption under Sales and Use Tax law (Rev & Tax Code & 6001 et seq), nor the Uniform Local Sales and Use Tax law (Rev & Tax Code & 7100 et seq) by statute. The Veterans Tax Exemption predates both 6001 et seq and 7200 et seq. The Veterans Exemption Act was already in law for over 40 years! The Board has consistently been in error. This is because the Sales and Use Tax Chief Counsel Kristine Cazadd has not read the law as written. This Chief Counsel Cazadd has been gilded by untrustworthy, misleading and openly false information put forth by her predecessor Assistant Chief Counsel, Gary Jugum. Who also did not read the law as written yet chose to read the law without the proper punctuation marks; the comma between the words *license* and *tax*, and the comma between *tax* and *fee*. See Veterans Tax Exemption Law of 1872/1893. Mr. Jugum misleads the Board by stating the court concluded that the insertion of the comma was inadvertent. This is a false statement. Mr. Jugum also stated "it is obvious that the comma was inadvertently added to section 16102 and that the word license in all of these statutes including section 16102, is intended to modify the words *tax* and *fee*." This is an openly false statement. Current Business and Profession Code 16102. (*Brooks vs. Santa Clara*). In Brooks the Petition for review by the Supreme Court was denied July, 20, 1987. Brooks was **not** over turned as stated in my board hearings. I also was not allowed to call witnesses at my board hearings.

### **BACKGROUND** (District)

The Taxpayer, William Connell has been pursuing this exemption for a period of time. The District file contents revealed a letter written by the taxpayer dated October 4, 1995. In it the taxpayer states "I now formally request my Veterans Exemption and a refund of all monies due me." *This is a formal Claim for Refund.*

The Board's sole response is contained in a compliance activity report dated Oct. 4, 1995 in which the taxpayer was only directed to put a legal request in writing. NO RESPONSE was given to the Claim. Deputy Director Jim Speed memo of February 4, 1998 (Consumer Status Preferred).

On Page 2 of Kristine Cozad's memorandum "Grounds for the Petition" – This is once again misleading and incomplete. (Current Law – B & P Code 16100, 16100.5, 16102.) The grounds for petition are as follows.

1. Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise **OWNED BY HIM** without payment of any license, tax or fee whatsoever, whether municipal, county or State; and the Board of Supervisors shall issue to such soldier, sailor or marine, without cost a license therefore.
2. In the high court case, *Brooks v County of Santa Clara (1987) 191 Cal. App. 3D 750.*, "upon independent analysis the court agreed," "Patently the thrust of section 16102 is not to exempt veterans from local regulation, but rather to

enable specified veterans to engage in specified kinds of business without being required to **pay**." We conclude that the language, content, and history of 16102 all support the trial courts conclusions. We cannot rewrite the statutes; contentions that the Veterans Exemption should be narrower must be addressed to the Legislature rather than to the courts. Recent research has found that twice B & P Code 16102 as unsuccessfully proposed to be amended by the following two bills: (1) Assembly Bill 893 of 2003 introduced by Assembly member Mountjoy; and (2) Assembly Bill 1869 of 2006 introduced by Assembly member Walters. Both of these efforts were put forth at the direction of some very unpatriotic employees of the State.

The state cannot avoid the plain meaning of 16102, which is that a qualified Veteran is entitled to engage in the described business "without payment of any license, tax or fee whatsoever, whether municipal, county or State." Whether regarded as a "county fee" or a "State fee," the fee in question comes squarely within the plain language of section 16102.

This past year a new stand alone statute was added to B & P Code. This 16000.7 is for a business license waiver. Removed from that new law is the unique and specific tax language of 16100, 16100.5 and 16102. By adding this new law and by leaving the other 3 enactments wholly unchanged with all tax language intact; this clarifies that the Veteran is tax exempt.

The Board, of the basis of 16100, 16100,5 and 16102 does have the statutory authority, by regulation to specify that Veterans so situated be declared consumers rather than retailers of the tangible personal property they own and sell.

Respectfully,

William M. Connell  
Member Post 48, American Legion Santa Barbara  
Member Vietnam Veterans, Post 218, Santa Barbara  
Navy League, Santa Barbara Chapter  
US Army, Europe, 1974, 1975, 1976

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

DECEMBER 17, 2008

CHIEF COUNSEL MATTERS

RULEMAKING

ITEM J1

PETITION TO ADOPT A REGULATION TO  
DESIGNATED QUALIFIED VETERAN ITINERANT  
VENDORS AS CONSUMERS OF TANGIBLE PERSONAL PROPERTY

Reported by: Juli Price Jackson

No. CSR 5214

1 P R E S E N T

2

3 For the Board  
of Equalization:

Judy Chu  
Chair

4

5

Betty T. Yee  
Vice-Chair

6

7

Bill Leonard  
Member

8

Michelle Steel  
Member

9

10

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

11

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13

Diane G. Olson  
Chief, Board  
Proceedings Division

14

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1 450 NSTREET  
2 SACRAMENTO, CALIFORNIA  
3 DECEMBER 17, 2008

10:42

4 ---oOo---  
5 AM DR. CHU: So, now let's go to J1, under Chief  
6 Counsel matters, rulemaking. And this is on the  
7 petition to adopt a regulation to designate qualified

AM 8 veteran itinerant vendors as consumers of tangible  
property.

11 MS. CARUSO: Okay. This petition to adopt a  
12 new regulation is back before the Board for your  
13 consideration.

14 Mr. Connell has petitioned the Board to adopt a  
15 regulation that would designate qualified veteran  
16 itinerant vendors as consumers of tangible personal  
17 property.

18 Because the Board currently lacks authority to  
19 specify that veterans be declared consumers rather than  
20 retailers of tangible personal property that they sell,  
10:58 21 staff recommends that the petition be denied.  
AM 22 However, we understand that Board Members are  
23 working with legislative staff to develop a legislative  
24 proposal to address Mr. Connell's concerns.

25 DR. CHU: Okay, very good.

26 And we have one speaker and that is William  
27 Connell.

28 ////

1 WILLIAM CONNELL

2 ---o0o---

3 MR. CONNELL: Good morning again, ladies and  
4 gentlemen. Thank you very much for listening to me once  
5 again.

10:59 6 I have few things I want to submit to you.  
AM 7 Most importantly is a section of the high court case as  
8 we've always wrestled with the intent of the enactment  
9 that I've always brought forth, the intent -- very  
10 clear.

11 If we could -- this is the high court, if we  
12 conclude the legislators intended to exempt qualified  
13 veterans from any fee or tax for doing a specified kind  
10:59 14 of business, then the Business and Professions Code is  
AM 15 an entirely appropriate place for such a provision to  
16 appear.

17 I believe you do have the power to put a  
18 regulation into effect. I believe that an annotation  
19 that was put forth in front of me and twenty or thirty  
20 other taxpaying veterans was openly false, misleading  
11:00 21 and, quite frankly, very dirty pool.  
AM 22 It was plain and simple that it was  
23 inaccurate -- this 410-0900. There is a fee involved in  
24 your sales and use tax permits. It's measured  
25 quarterly. I have to pay.

26 I have a State Supreme Court case that was  
27 independently analyzed, unlike what the staff has put

1 incomplete. This starts in 1993, doesn't start in 2008.

2 I have in 1997, from your District office, one  
3 of the many, many hearings I've been to, the claim for

11:01 4 based on refund Section 16102 of the Business and  
AM 5 Professions Code which provides a blanket exemption for  
6 veterans from any license, tax or fee. This is the --  
7 this is the State's own language. It is a blanket that  
8 you give the returning veteran. It helps us to try a  
9 very small type of a business.

10 You have in front of you also the Veterans

11:01 11 United for Truth Incorporated. Also during the course  
AM 12 of all of my appeals, lemonade, water and iced tea has  
13 always been part of my staple on my hot dog stand. I  
14 was told flat out, "Mr. Connell, you receive all that  
15 tax money back."

16 I haven't seen a penny of it. There's been  
17 skulduggery afoot.

18 MS. OLSON: Time has expired.

19 MR. CONNELL: Sorry?

20 DR. CHU: Your time has expired.

21 MR. CONNELL: I don't know --

22 DR. CHU: Can you just summarize, maybe with a

11:02 23 sentence?  
AM 24 MR. CONNELL: One of the things I want to do  
25 before I leave here today is I know there is an awful  
26 lot of dynamics going on. I want that annotation,  
27 410.0900 eviscerated. It's misleading. It's openly  
28 false and it's been used against every veteran who's

1 come before this Board. This is not an accurate  
2 statement.

11:03 3 This annotation -- there's -- you have a bunch  
AM 4 of different things you can do today. The key thing I  
5 want you to do is to eviscerate this annotation. It's  
6 untrue. It's misleading and it's just not so.

7 DR. CHU: Okay, thank you.

8 MR. CONNELL: I appreciate your time and any  
9 discussion I'm --

10 DR. CHU: Thank you.

11 MR. CONNELL: -- willing to discuss anything.

12 MS. YEE: Madam Chair?

13 DR. CHU: Ms. Yee?

14 MS. YEE: Thank you, Madam Chair.

11:03 15 Mr. Connell, you have a petition formerly  
AM 16 before us and I wanted to see if I could make a  
17 suggestion with respect -- to respond to it.

18 You see, this wasn't signed by you but we have  
19 a letter here delivered from Veterans United For Truth.

20 MR. CONNELL: Yes, ma'am.

21 MS. YEE: Okay, which actually proposed  
22 something intriguing that I hadn't thought about, but I  
23 know each time you come before us the fundamental

11:03 24 disagreement that we have is really -- certainly the  
AM 25 majority of my colleagues here on the Board have -- is  
26 the belief that we lack the authority to really move  
27 forward and make the change you are proposing in your  
28 petition.

1           And what I'd like to do -- and I appreciate  
2 your cooperation in terms of our legislative efforts --  
3 but I can think of nothing better than to perhaps look  
11:04 4 at forwarding this issue of whether we have authority to  
AM 5 actually propose a rule that would accomplish what you  
6 are suggesting -- pose the question of our authority,  
7 whether we have that or not to the Attorney General's  
8 office.

9           It's suggested in this letter from United --  
10 Veterans United For Truth, but, frankly, I don't know  
11 that any of us here at the Board have any notion of what  
12 the intent was under the Acts of 1872 and 1893.

11:04 13           As you've pointed out in your prior testimony  
AM 14 the Business and Professions Code, the exemption for  
15 business taxes predated the enactment of the sales and  
16 use tax law and --

17           MR. CONNELL: Both of them.

18           MS. YEE: I do think that perhaps having some  
19 independent look at some of these issues, more --  
20 primarily for getting an answer as to whether this Board

11:05 21 has the authority to move forward with adopting a rule  
AM 22 to accomplish what you're suggesting would make some  
23 sense.

24           And, so, in that regard, what I'd like to do,  
25 Members, is to propose that we direct staff, perhaps  
26 under the signature of either Mr. Hirsig or Ms. Cazadd,  
27 to actually submit an opinion request to the Attorney  
28 General with a request the consider any potential

1 sources of authority this Board may have, including some  
2 of the things you cited, Mr. Connell, the Brooks  
11:05 3 decision, the history and intent of the current veterans  
AM 4 exemption statutes, the original 1872 and 1893 acts and  
5 any representations that have been made by the  
6 California Department of Veterans Affairs as it relates  
7 to tax exemptions. Because I think they've had a  
8 history of providing some guidance in this area to  
9 veterans.

10 What I then would like to do is to have the  
11 staff report back to the Board with the results of the  
12 request for an Attorney General's opinion. And if the  
13 opinion indicates this Board does have authority to  
14 promulgate a regulation, we certainly would like to see  
15 a draft regulation prepared by the staff for our

11:06 16 consideration.  
AM 17 If the response back from the Attorney General  
18 is -- if the A. G. opines that the Board lacks  
19 authority, then this petition would be deemed denied.

20 MR. CONNELL: May I comment?

21 DR. CHU: Yes, please?

22 MR. CONNELL: First hearing, I put forth  
23 exactly the same I am putting forth now. I was told to

11:06 24 sue.  
AM 25 Then I was told I couldn't sue because I hadn't  
26 expired my administrative remedies -- that was the A. G.  
27 who was my opposition.

28 The second lawsuit, the A. G. was my

1 opposition.

2 The third lawsuit, the A. G. was my opposition.

11:07 3 I don't know how we can get a clear and concise  
AM 4 interpretation of what power you have.

5 I know that the legislative committee on

6 Assembly bill 74, this very bill, passed this on word

7 for word, syllable for syllable, comma for comma,

8 without any change. It's to benefit the veteran. It is

9 a revenue neutral exemption. As a matter of fact, you

11:07 10 guys are going to make a couple of million dollars by  
AM 11 taking a ago whole bunch of veterans off of welfare.

12 Now, your -- it seems that it's so snowballed

13 at this point and so diluted in such a manner, it's a

14 very simple solution. There's a reading of the

15 enactment. You read it. There is multiple commas. It

11:08 16 is for the revenue, the revenue stream. The revenue  
AM 17 stream of the period was the license tax.

18 Over the course of so much time I've been told

19 that no, the commas shouldn't have been there, the

20 commas were inadvertent. That's a lie. There's been so

21 many different things put forth that it has my head, as

22 a single human being, spinning.

23 I have ten boxes of paperwork over the last

11:09 24 fifteen years. I'm just trying to get a single answer  
AM 25 to a single question.

26 Why won't the State of California honor the

27 Veterans Tax Exemption Act as written? They said it

28 only means a license. This past year an additional

11:09 1 statute was put in, 16.000.7. That was specific to the  
AM 2 license. Okay, it's a license. It's a license waiver.  
3 If that -- and that eliminated all of the  
4 unique and specific tax language contained in 16100,  
5 16100.5 and 16102. If this new law says that the  
6 veteran is entitled to a license, and it has all of the

11:09 7 tax language taken out, and the last three that I just  
AM 8 mentioned -- 100, 100.2 and 100.5 -- all of the tax  
9 language is in. If one means the license, the others  
10 must mean the tax -- must mean the monetary exaction.  
11 It is to relieve me of the tax burden of either  
12 collecting the tax, formulating the tax.

11:10 13 And this is done for a very, very strong  
AM 14 reason. A military man coming back from combat might  
15 have a little bit of mental problems, might have a digit  
16 or two missing. He might want to sell a balloon for 75  
17 cents he sells it in the County at 7.75 percent. He  
18 sells three balloons. He sells it in the city for 8.2  
19 percent tax. He sells it then in another city that has

11:10 20 9 percent tax. He sold nine balloons. Can any of you  
AM 21 tell me how much tax he has to pay?  
22 DR. CHU: Okay. So, I'm taking it that --  
23 because you're getting into the contents of the issue  
24 again.

25 MR. CONNELL: Exactly, and I don't --

26 DR. CHU: But, in reality, Ms. Yee actually  
27 asked you a question as to whether you would be willing  
28 to postpone this petition until we get an answer on

1 the -- from the Attorney General?

2 I think this is a great idea because actually,  
3 these are two separate issues. You talked about these  
4 lawsuits, but the question of whether those lawsuits

11:11 5 prevail is different from the question of whether we are  
AM 6 allowed by regulation to change this.

7 MS. YEE: Yeah, if we have authority to do  
8 this.

9 And I think, as a matter of clarification,  
10 Madam Chair, I'm not even suggesting postponing action  
11 on the petition, but that the action of the petition be  
12 that we have the staff forward an opinion request to the  
13 A. G., with the additional considerations that I  
14 articulated earlier.

15 And whatever the response back from the A. G.  
11:11 16 will be will dictate the outcome of the petition. So,  
AM 17 if the A. G. should opine that we don't have authority,  
18 then this petition is deemed denied.

19 Obviously, if he opines that we do, then I'd  
20 love to see a draft regulation back before us.

21 MR. LEONARD: Dr. Chu?

22 DR. CHU: Yeah, Mr. Leonard?

23 MR. LEONARD: I know Ms. Yee has worked really  
24 hard and wrangled on this thing, so, I'm -- the cold  
25 water I'm splashing --

26 MS. YEE: It's a start.

27 MR. LEONARD: My experience with A. G. opinion

1           And by saying we haven't done anything yet, but  
2 we're thinking about doing something, they'll say,  
3 "Until you do something, don't call us."

4           And it's kind of like our opinion letters that  
5 if you're not going to name the taxpayer, you can't take  
6 it to the bank. And there is good reason for it and  
7 they have got a workload and all that.

8           The way to accomplish your purpose, though, is  
11:12 9 for us to adopt the first step of this regulation  
AM 10 proposal today, which requires us to cite our authority  
11 to adopt it as part of the regulatory process. In fact,  
12 we have to prove it eventually, if it gets down to the  
13 line, to the Office of Administrative Law, that we do  
14 have the authority.

15           I would -- I think -- I would incorporate your  
16 suggestion into the motion to begin the regulatory  
17 process that we invite the Attorney General to review  
11:13 18 our citation of authority that we put forward in the  
AM 19 regulatory process and that the Attorney General's  
20 opinion letter becomes part of the whatever -- the  
21 interested parties meeting or the next step in the  
22 regulatory process or even a public hearing that we --  
23 that we have it read into the record at that point.

24           Because I agree with you. I believe that we  
25 have the authority. But -- and I disagree with  
26 Ms. Caruso, but I also know that it's quite confusing  
27 because the legislature in the '30s, when they enacted

1 Professions Code.

2 So, the question is, does it wipe out the Code?  
3 Or do you somehow merge and accommodate the -- the  
4 possible conflicts?

5 I believe the latter. I could -- I respect an  
6 opinion of the former, although because it's two  
7 different codes, I think it's fails the usual legal test  
8 that the later law prevails. I don't think that later  
11:14 9 law wiped out this law at all.

AM 10 But if we -- if we propose the regulation to  
11 give this modest exemption for these people and we cite  
12 the B. and P. Code as our authority to do so because  
13 it's a tax that's under our purview, that we then invite  
14 all parties, and particularly the Attorney General, to  
15 give us the benefit.

16 So, we come back at the next stage, which is  
17 the public hearing stage or maybe an interested parties

11:14 18 stage, I'm not sure how we're doing this when proposed,  
AM 19 and we then can get that information from the Attorney  
20 General, should he wish to weigh in on it. My guess is  
21 they're likely not to because there is a whole  
22 regulatory process. So, I'd hate for all of us to  
23 suspend all that we're doing waiting for a letter that's  
24 never going arrive or waiting for a letter that when we  
25 get it is a quite short letter saying, "I have no  
26 opinion on the subject."

27 MS. YEE: Madam Chair?

28 DR. CHU: Yes?

1 MS. YEE: Thank you, Mr. Leonard. And I  
2 appreciate your approach.

11:15 3 And I think my thinking is similar in terms of  
AM 4 kind of a multi prong strategy, although my multi prong  
5 strategy is really trying to get the Attorney General to  
6 weigh in up front, because I do -- I mean, on the other  
7 side of the authority question, I don't believe this  
8 Board has authority.

9 But the other prong of the strategy would be to  
10 continue to pursue legislation. And we're making some  
11 headway, at least with respect to getting members of the  
11:15 12 legislature to understand the problem and the issue.  
AM 13 What I would hope in our communication with the  
14 Attorney General's office that we can highlight why he  
15 ought to be paying some attention to this matter is  
16 there have been some representations, albeit probably  
17 not the clearest, by our State Department of Veterans  
18 Affairs with respect to these tax exemptions as benefits  
19 for veterans.

20 And to the extent has been that kind of  
21 representation, I would hope that there could be some  
22 clarity put forth on what that means.

23 I don't think the Department of Veterans  
11:16 24 Affairs is in any position to explain what those  
AM 25 exemptions are, but certainly if it's being represented  
26 that this is a benefit for veterans, we all ought to be  
27 on the same page.

28 DR. CHU: Okay. So, what -- if we change the

1 petition as you suggested, so that we get an answer on  
2 the authority issue --

11:16 3 MS. YEE: Uh-huh, actually, my motion would be  
AM 4 to -- and I am just looking at our -- I guess, our  
5 options with respect to how to respond to petitions  
6 under the Government Code section, but I would say my  
7 motion would be to direct staff to submit an opinion  
8 request to the Attorney General with a request to  
9 consider any potential sources of authority, including  
10 the Brooks decision, the history and intent of the  
11 current veterans exemption statutes and the original

11:17 12 1872 and 1893 Acts and any representations made by the  
AM 13 California Department of Veterans Affairs, and also  
14 direct staff to report back to the Board with the  
15 results of the request to the A. G.'s office.

16 And if the opinion indicates the Board -- this  
17 Board has authority to promulgate a regulation, to then  
18 present us with a draft regulation for consideration.

19 If the A. G. opines that we lack authority to  
20 promulgate a regulation, this petition is deemed denied.

21 So, it's little bit of a -- that the action on  
22 the petition is actually going to be contingent on the

11:18 23 response back from the Attorney General's office.  
AM 24 DR. CHU: Okay. So, is that a motion?  
25 MS. YEE: Yes.

26 DR. CHU: Then I'll second that motion.

27 MR. LEONARD: Well --

28 DR. CHU: Yes, Mr. Leonard?

1 MR. LEONARD: I guess I need a counsel opinion  
2 here.

3 I thought our options today were to approve the  
4 regulation as proposed, to deny it as proposed or to  
5 refer it to an interested parties process.

11:18 6 I'm not sure this motion as phrased is in  
AM 7 order.

8 MS. YEE: I'm citing Government Code Section  
9 11340.7, subdivision b, under which the Board may grant  
10 any other relief or take any other such action that they  
11 determine to be warranted by the petition.

12 If that's what -- that's --

13 MS. MANDEL: The nodding from Legal, is what?

14 MR. TUCKER: That's correct.

15 MS. MANDEL: For our reporter, thanks.

16 MS. CARUSO: Yes.

17 MS. MANDEL: Thank you.

11:18 18 DR. CHU: Well, could you expound on that?  
AM 19 So, we have the authority to change the  
20 petition?

21 MR. TUCKER: Yes, the Board has the authority  
22 to act as it sees under these circumstances and to  
23 change the petition as Ms. Yee proposed.

24 MS. MANDEL: Well --

25 MR. TUCKER: Not to change --

26 MS. MANDEL: Taking action on the petition is  
27 whatever action on the petition the Board deems  
28 appropriate.

1 MR. TUCKER: Appropriate, yes.

2 MS. MANDEL: Oftentimes the Board may send

3 something to the interested parties, but this is an

11:19 4 action -- the Government Code says any other action and  
AM 5 that's what her motion is.

6 MR. TUCKER: That is correct.

7 MR. LEONARD: The motion lacks a closure in

8 that if we get letter from the A. G. that says no, then

9 the petition by this motion is automatically denied

10 without any other Board intervention or process and I'm

11 am not sure you want that.

11:19 12 That's what I'm suggesting, interested parties  
AM 13 pending receipt of these opinions might be what you're  
14 after.

15 I still don't like it, so, I'm -- I am trying

16 to help you. Maybe I shouldn't.

17 The way you're saying motion is -- who decides

18 that the Attorney General letter says it's no and,

19 therefore, denied?

20 Is it the Board in public hears the response,

11:20 21 so, there's another public hearing on the regulation?

AM 22 How do we counter to this should the motion be adopted?

23 MS. YEE: Mr. Leonard, my motion incorporates

24 in the event the A. G. opines that we do not have

25 authority -- this Board has no authority to promulgate

26 such a regulation, that this petition would be deemed

27 denied.

28 You're suggesting that we have another public

1 hearing on this?

2 MR. LEONARD: Well, by the way your notion says  
3 we never come back in public on this again, on the  
4 regulation.

5 MS. YEE: Not on this particular petition.

11:20 6 MS. MANDEL: Are -- if it's a -- if it's a  
AM 7 formal A. G. opinion, those become -- those are public  
8 documents.

9 MR. LEONARD: Correct.

10 MS. MANDEL: So, I don't -- I mean, the A. G.  
11 may --

12 MS. CAZADD: Yes, if it's -- Kris Cazadd, Chief  
13 Counsel.

14 Yes, if it's a formal opinion, it is public. I  
15 presume it would be in this situation.

16 As I understand it, Ms. Yee, your motion  
17 included reporting back to the Board on the response of  
18 the Attorney General?

19 MS. YEE: Yes.

11:21 20 MS. CAZADD: So, while that would not be a  
AM 21 formal public hearing, Mr. Leonard, it would be the  
22 Attorney General's disposition on this question.

23 And, therefore, there's an opportunity for  
24 discussion. It does become public, but the  
25 pre-condition is that if the Attorney General denies the  
26 fact that the Board has authority to do this, then that  
27 is the position and the Board will agree with that.

1 the lawyers in the room, what's the fastest the Attorney  
2 General has ever issued a written opinion?

3 MS. CAZADD: I don't know that we can --

4 MR. LEONARD: Same year rule?

5 MS. CAZADD: -- because this -- the Solicitor  
6 General will probably review our request in this  
7 situation since it does involve another State agency.

11:22 8 And where there are two State agencies involved, there  
AM 9 is always a possibility of a conflict. So, they  
10 will -- my estimate is they will probably weigh in on  
11 this very quickly, decide how to handle it and get back  
12 to us, at least procedurally, on how they will address  
13 it and how long that will take.

14 So, we will be able to report back to you in  
15 that regard.

16 MR. LEONARD: What's your best guess of a time  
17 frame to get and opinion? What would be the year on the

11:22 18 letter?  
AM 19

MS. CAZADD: It's -- opinions are --  
20 MS. MANDEL: They may dependent on --

21 MR. LEONARD: My point is --

22 MS. MANDEL: -- whether they --

23 MR. LEONARD: -- the effect of this is to delay  
24 it for a very long period of time. It will be too late  
25 to effect whatever we decide do in the legislative  
26 session in 2009.

27 MS. YEE: I am moving with the legislation  
28 regardless.

1 MR. LEONARD: Okay.

2 MS. YEE: I mean, this -- I am not stopping  
3 here.

4 MR. LEONARD: Okay.

5 MS. YEE: I'm not -- there's not going to be  
6 any void of action while the A. G. is putting its

11:23 7 opinion together.

AM 8 MS. CAZADD: And it is our experience that when  
9 an issue like this is raised to the attention of the  
10 Solicitor General, it does -- there is a relatively  
11 quick response. It becomes a priority for them.

12 MR. LEONARD: Can you define "relatively quick"  
13 in terms of the Gregorian calendar?

14 We're not talking nanoseconds, are we?

15 DR. CHU: Okay, there is a motion and a second  
16 and I'll call for the vote.

17 MS. OLSON: Madam Chair?

11:23 18 DR. CHU: Aye.

AM 19 MS. OLSON: Mr. Leonard?  
20 MR. LEONARD: No.

21 MS. OLSON: Ms. Steel?

22 MS. STEEL: Aye.

23 MS. OLSON: Ms. Yee?

24 MS. YEE: Aye.

25 MS. OLSON: Ms. Mandel?

26 MS. MANDEL: Aye.

27 MS. OLSON: Motion carries.

28 DR. CHU: Thank you, the motion is adopted.

1 MR. CONNELL: Thank you very much.

2 One last -- this annotation 410.0900 that I

11:24 3 think is completely false, is there going to be any  
AM 4 action on that that we might be able to rescind that?  
5 Because they're going to be basing that A. G.'s  
6 opinion on prior Board information that they have gotten  
7 terrible information on.

8 DR. CHU: Was that part of the petition?

9 MS. YEE: It was not, but perhaps -- are you  
10 familiar with that?

11 MS. CAZADD: There is a procedure in our rules  
12 for requesting the withdrawal of and annotation.

13 So, certainly Mr. Connell or his

11:24 14 representatives could do that. And we will follow that  
AM 15 process.

16 MR. LEONARD: Did you take this as such a  
17 request now?

18 MS. CAZADD: I absolutely can, yes.

19 MR. LEONARD: It should be reviewed in light of  
20 all this because I know the A. G.'s going for --

21 MS. CAZADD: The A. G. --

22 MR. LEONARD: -- all of our research.

23 MS. CAZADD: -- yes, the A. G. will ask for  
24 everything we've written on the subject. So, we also  
25 submit it to them for consideration.

26 MR. LEONARD: Well -- and notify them that  
27 it's -- it's undergoing a review and we'll get the  
28 review to them as quickly as possible, I assume?

1 MS. CAZADD: Yes, that is true.

2 MR. LEONARD: Thank you.

3 DR. CHU: Okay.

11:25 4 MS. MANDEL: Then -- and they understand what  
AM 5 annotations are, presumably.

6 MS. CAZADD: Yes.

7 MR. CONNELL: Is there anything else that I  
8 have to do at this point?

9 DR. CHU: Well, you certainly could work with  
10 Ms. Yee's office on the legislation.

11 MR. CONNELL: I have thousands of signatures  
12 that I have submitted already with the Brown Lee Act. I  
13 can do a lot more than a lot of people think I can do.

11:26 14 So, I will work as hard as I can.

AM 15 There's one other thing, I know you guys aren't  
16 allowed to accept gifts unless they're under a certain

17 amount. These are Support the Troop little magnets that  
18 could be put on a bulletin board, on the rear bumper of  
19 your car.

11:26 20 I'm going to leave them with the gentleman,  
AM 21 Mr. Bennion, out front. I have one for each of you and  
22 one for Todd Gilman also -- who I haven't seen while I'm  
23 here.

24 DR. CHU: Okay, thank you.

25 Maybe you could give it to Ms. Olson here and  
26 she can give it to us then?

27 MR. LEONARD: Thank you much.

28 MS. YEE: Thank you Mr. Connell.

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DR. CHU: Thank you, Mr. Connell.

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REPORTER'S CERTIFICATE

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County of Sacramento    )

I, JULI PRICE JACKSON Hearing Reporter for the California State Board of Equalization certify that on DECEMBER 17, 2008 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 24 constitute a complete and accurate transcription of the shorthand writing.

Dated: January 16, 2009

\_\_\_\_\_  
JULI PRICE JACKSON  
Hearing Reporter



STATE BOARD OF EQUALIZATION

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JOHN CHIANG  
State Controller

RAMON J. HIRSIG  
Executive Director

March 16, 2009

Ms. Susan Lee  
Supervising Deputy Attorney General  
Opinion Unit  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102

**Re: Opinion Request  
Interpretation of Business and Professions Code section 16102**

Dear Ms. Lee:

On December 17, 2008, the Board of Equalization (Board) authorized this opinion request to the California Attorney General. As discussed more fully below, it has been the Board's historic understanding that Business and Professions Code section (Section) 16102, which pertains to the selling activities of certain veterans, does not create a general exemption under the Sales and Use Tax Law (see Rev. & Tax. Code, § 6001 et seq.). Consequently, the Board has further understood that Section 16102 does not authorize the Board to promulgate a regulation regarding the requirements for establishing when a particular transaction would avoid the application of tax pursuant to such an exemption. As a result of its December 17, 2008, action, the Board seeks general guidance regarding whether its historical understanding (i.e., that Section 16102 does not create an exemption under the Sales and Use Tax Law) is correct. Further, regardless of whether the Attorney General's Office concludes that the Board's historic understanding is correct, the Board seeks specific guidance as to whether, in the alternative, Section 16102 authorizes the Board to promulgate a regulation designating qualified veteran itinerant vendors as consumers of tangible personal property they offer for sale, which would have the practical result of excluding their retail sales from the imposition of either the sales tax or the use tax.<sup>1</sup>

This request has arisen because a veteran itinerant vendor, Mr. William Connell, has petitioned the Board to adopt a regulation designating qualified veteran itinerant vendors as consumers of the tangible personal property they offer for sale. As explained further below, Mr. Connell's petition represents an alternative to his longstanding contention that Section 16102

<sup>1</sup> In the absence of securing a waiver from Mr. Connell, we note that his personal information must remain confidential in the context of any opinion provided to the Board.

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**MAR 17 2009**

creates a general exemption. In support of his petition, Mr. Connell submitted three documents: his "Statement of Principle (Special Exemption [f]rom Tax[-]Related Burdens)," his letter to State Senator Mark Ridley-Thomas, and his e-mail to State Assembly Member Charles Calderon. My memorandum dated November 26, 2008, to the Board members, captioned "December 17, 2008, Chief Counsel's Calendar – Petition to Adopt a Regulation to Designate Qualified Veteran Itinerant Vendors as Consumers of Tangible Personal Property" (Memorandum) sets forth Mr. Connell's petition, his supporting materials, and the Legal Department's analysis of his petition. This Memorandum is included as Enclosure 1. (Mr. Connell's petition and each of the three supporting documents identified above are attachments to the Memorandum.) Mr. Connell's response to the Memorandum is included as Enclosure 2. In addition, Mr. Connell has stated that the Board's historical failure to adopt his interpretation of Section 16102 is a disloyal affront to all veterans and the country they serve. Mr. Connell's e-mail is included as Enclosure 3.

As a starting point, Section 16102 provides that "[e]very soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor."

As indicated above, as a matter of historical record, the Board has been consistent in its understanding that Section 16102's exemption from the imposition of taxes and fees associated with county licenses does not create a general exemption under the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.), nor the Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.). A memorandum dated May 8, 2007, from the Board's Legal Department to Mr. Todd Gilman, Chief, Taxpayers' Rights and Equal Opportunity Division, sets forth an analysis of the legislative history and case law potentially relevant to Section 16102. This memorandum, which is included as Enclosure 4, is provided only for background purposes, and the Board is not advocating that any weight be given by the Attorney General Office to the analysis in the memorandum.

Mr. Connell has also objected to the existence of Sales and Use Tax Annotation 410.0900 (6/22/95), which also reflects the Board's historical understanding of Section 16201's effect on the Sales and Use Tax Law. As stated in my letter to Mr. Connell dated February 6, 2009, this annotation is being depublished to facilitate the fairest possible consideration of Mr. Connell's viewpoint by the Attorney General's Office. This moribund annotation is included as Enclosure 5, and the letter that is the back-up to this moribund annotation is included as Enclosure 6. My February 6, 2009, letter explaining the reason for depublishing this annotation is included as Enclosure 7. Again, the information regarding the moribund annotation is provided only for background purposes, and no weight should be given to the previous existence of this annotation by the Attorney General's Office.

We note that the Board's historical understanding is consistent with that of the Legislative Counsel in its opinions dated October 28, 1998 (Ops. Cal. Leg. Counsel, No. 14321, Business License Tax Exemption: Disabled Veterans), and August 17, 2006 (Ops. Cal. Leg. Counsel, No. 0611388, Veteran Business Licensing). These Legislative Counsel opinions are included as Enclosures 8 and 9, respectively. In addition, *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750, in dicta, also appears to be consistent with the Board's historical understanding. (The *Brooks* opinion is included as an attachment to the May 8, 2007,

memorandum included as Enclosure 4.) As before, this information is provided only for background purposes. The Board is not advocating that any particular weight be given by the Attorney General's Office to these potential authorities.

Moreover, it has come to the Board's attention that information provided by another government agency, the California Department of Veterans Affairs (CDVA), indicates that CDVA may have a conflicting understanding of the effect of Section 16102 on the sales and use tax obligations of veteran vendors, which has created confusion in the veteran community regarding the tax compliance obligations of veterans who operate businesses in California. Specifically, the CDVA's Web site (<http://www.cdva.ca.gov/VetService/Overview.aspx>) lists a "California Veterans Benefits Overview." An entry on this list, entitled "Business License, Tax and Fee Waiver," describes the "the benefit" as "[w]aiver of municipal, county and state business license fees, taxes and fees, for veterans who hawk, peddle or vend any goods, wares or merchandise owned by the veteran, except spirituous, malt, vinous or other intoxicating liquor, including sales from a fixed location." A printout of the relevant CDVA Web pages is included as Enclosure 10. This information from CDVA's Web site supports the position of veteran vendors, like Mr. Connell, that their sales are not subject to tax.

Mr. Connell has consistently stated that Section 16102 should be interpreted to effectuate its plain meaning. He believes that the comma between the words "license" and "tax" in Section 16102 ("... without payment of any license, tax or fee whatsoever, whether municipal, county or State, . . .") is of critical importance. Mr. Connell has stated that the plain meaning of Section 16102, with the comma, is that no state, county, or municipal tax shall be collected from any person meeting the eligibility criteria and conducting sales as specified. Mr. Connell has also stated that use of the word "whatsoever" in Section 16102 evidences the Legislature's clear intent to remove all tax-related burdens from the veterans specified in the statute. Mr. Connell has cited California Code of Civil Procedure section 1859 for the proposition that the intention of the Legislature must be followed if at all possible. Included as Enclosure 11 are copies of Mr. Connell's numerous submissions to the Board's Taxpayers' Rights Advocate Office (TRAO), dated from October 1995 until February 2009, articulating his position concerning Section 16102.

In view of the conflict outlined above, and especially in light of the opposing position apparently taken by our sister agency, the CDVA, the Board requests guidance as to the correct interpretation of Section 16102 and the Board's authority to adopt the type of regulatory change sought by Mr. Connell. In other words, is the Board's historical understanding that Section 16102 does not create a general sales and use tax exemption correct, and, in any case, does the Board nevertheless have the authority to promulgate a regulation designating qualified veteran itinerant vendors as consumers of the tangible personal property they offer for sale?

In closing, as stated above, the Board would like to emphasize that it is not advocating that the Attorney General's Office give any weight to the Board's historical understanding of the effect of Section 16102 on the Sales and Use Tax Law. The Board makes this opinion request to

receive guidance that is completely unaffected by any deference that could potentially be given to the Board's historical understanding. Please contact Mr. Robert Tucker at (916) 322-2976 if you have any questions regarding this matter.

Very truly yours,



Kristine Cazadd  
Chief Counsel  
Board of Equalization

KC:CC:cme

J:/Chief Counsel/Finals/

J:/Bus/Use/Final/Caruso/CCA/AG Opn req Connell

Enclosures

cc: (w/o Enclosures)

Mr. Ramon Hirsig	(MIC:73)
Ms. Diane Olson	(MIC: 80)
Mr. Randy Ferris	(MIC:82)
Mr. Robert Tucker	(MIC:82)
Ms. Carla Caruso	(MIC:82)
Mr. William Connell	



**EDMUND G. BROWN JR.**  
**Attorney General**

*State of California*  
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July 19, 2010

Kristine Cazadd  
Chief Counsel  
State Board of Equalization  
P. O. Box 942879  
Sacramento, CA 94279-0082

Re: Opinion No. 09-402

Dear Ms. Cazadd:

Enclosed is our Opinion No. 09-402 issued in response to your request of March 16, 2009.

Sincerely,

  
SUSAN DUNCAN LEE  
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

SDL:pkf

Enclosure

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

EDMUND G. BROWN JR.  
Attorney General

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OPINION	:	No. 09-402
of	:	July 19, 2010
EDMUND G. BROWN JR.	:	
Attorney General	:	
DANIEL G. STONE	:	
Deputy Attorney General	:	

---

THE CALIFORNIA STATE BOARD OF EQUALIZATION has requested an opinion on the following questions:

1. Does Business and Professions Code section 16102, pertaining to the selling activities of certain military veterans, create a general exemption from taxes under the Sales and Use Tax Law?
2. Does the Board of Equalization have authority to promulgate a regulation designating qualified veteran itinerant vendors as consumers of the tangible personal property they offer for sale?

## CONCLUSIONS

1. Business and Professions Code section 16102 exempts qualified veterans from any fees or taxes that must ordinarily be paid to obtain business licenses to engage in the selling activities enumerated in that provision. Section 16102 does not establish a general exemption from taxes and has no effect upon state or local sales and use taxes.

2. The Board of Equalization lacks authority to promulgate a regulation designating qualified veteran itinerant vendors as consumers of the tangible personal property they offer for sale.

## ANALYSIS

We are asked to determine whether a statute permitting honorably discharged military veterans to engage in certain activities “without payment of any license, tax or fee whatsoever, whether municipal, county or State,”<sup>1</sup> operates to exempt these veterans from payment of any sales and use taxes that would otherwise attach to their sales transactions conducted under the statute. Secondly, we are asked whether the State Board of Equalization may, for taxation purposes, designate a qualified veteran who is engaged in these enumerated activities—namely, the “hawk[ing], peddl[ing] and vend[ing]” of “any goods, wares or merchandise owned by him”<sup>2</sup>—as a “consumer” of the tangible personal property offered for sale.

### **Question One: The Scope of the Exemption**

The focus of the first question is section 16102 of the Business and Professions Code, which provides:

Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor.

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<sup>1</sup> Bus. & Prof. Code § 16102.

<sup>2</sup> *Id.*

This provision has been on the books since 1941 and has been amended only once, also in 1941. Its predecessor provision, former Political Code section 3366, was enacted in 1901.<sup>3</sup>

In exploring the meaning and effect of section 16102, we apply well established principles of statutory construction. Our fundamental aim “is to determine the Legislature’s intent so as to effectuate the law’s purpose.”<sup>4</sup> We begin our analysis by examining the words used by the Legislature, giving them their usual and ordinary meaning.<sup>5</sup> Further, “[w]e do not construe statutory language in isolation, but rather as a thread in the fabric of the entire statutory scheme of which it is a part.”<sup>6</sup>

Here, we think that the plain language of section 16102 provides sufficient clarity and guidance to answer the question presented. Broken down into its component parts, the statute first describes the persons eligible for the exemption as “[e]very soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service.” It then lists the activities covered by the exemption: a qualified veteran “may hawk, peddle and vend any goods, wares or merchandise owned by him” (with the exception of alcoholic beverages). Next, it describes which of the costs associated with these activities is excused, namely, the “payment of any license, tax or fee whatsoever.” And, finally, the statute affirmatively directs counties to provide each qualified veteran with the tangible object and benefit of this exemption; thus, “the board of supervisors *shall issue* to such soldier, sailor or marine, *without cost, a license therefor*”—that is, a valid current license permitting the

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<sup>3</sup> 1901 Stat. ch. 188, § 1; 1941 Stat. ch. 61, § 1; 1941 Stat. ch. 646, § 2. See *Brooks v. Co. of Santa Clara*, 191 Cal. App. 3d 750, 755 (1987) (discussing genesis of statute). In 1929, the Legislature enacted Political Code section 4041.14 (1929 Stat. ch. 755, § 15), which is “surfactually redundant of section 3366” but limited to counties, and which was also a predecessor to sections 16100 through 16103. (*Brooks*, 191 Cal. App. 3d at 755-756.)

<sup>4</sup> *People v. Murphy*, 25 Cal. 4th 136, 142 (2001) (citations omitted).

<sup>5</sup> *Garcia v. McCutchen*, 16 Cal. 4th 469, 476 (1997); *Kimmel v. Goland*, 51 Cal. 3d 202, 208-209 (1990).

<sup>6</sup> *Dept. of Alcoh. Bev. Control v. Alcoh. Bev. Control Appeals Bd.*, 40 Cal. 4th 1, 11 (2006); see *Carrisales v. Dept. of Corrects.*, 21 Cal. 4th 1132, 1135 (1999); *Calif. Teachers Assn. v. Governing Bd. of Rialto Unified Sch. Dist.*, 14 Cal. 4th 627, 642 (1997).

bearer to engage in the enumerated activities.<sup>7</sup>

The statute makes no mention of “sales taxes” or of “use taxes” or of any other government-imposed costs or fees or requirements that might apply.<sup>8</sup> Rather, the sole focus and the exclusive purpose of this provision, by its own terms, is to provide qualified veterans with cost-free *licenses to engage* in the specified vending, peddling, and hawking of the described goods, wares, or merchandise. And a “license,” in turn, is generally understood to mean permission, and the certificate or document evidencing that permission, to engage in conduct that would otherwise not be permitted.<sup>9</sup> State and local sales and use taxes, in contrast, are typically levied on *transactions* that occur *in the course* of a business, and are usually calculated as a percentage of the gross receipts from, or the sale price of, such transactions.<sup>10</sup>

Moreover, a look at section 16102’s surrounding provisions—that is, an examination of “the entire statutory scheme of which [section 16102] is a part”<sup>11</sup>—strongly reinforces our conclusion that this exemption pertains only to licensing fees and not to any broader array of taxes, fees, or other charges. Section 16102 is found in Part 1 of Division 7 of the Business and Professions Code, which is entitled “Licensing for Revenue and Regulation,”<sup>12</sup> and the provision immediately preceding it (section 16101, also enacted in 1941) authorizes county boards of supervisors *to license* hawkers, itinerant peddlers, and itinerant vendors.<sup>13</sup> The other neighboring provisions also have

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<sup>7</sup> Bus. & Prof. Code § 16102 (emphasis added).

<sup>8</sup> The state Sales and Use Tax Law is set forth in Revenue & Taxation Code sections 6001 through 7176, while the Bradley-Burns Uniform Local Sales and Use Tax Law is found in sections 7200 through 7212. It should be noted that the Sales and Use Tax Law includes an entire chapter devoted to exemptions. (See Rev. & Tax. Code §§ 6351-6423.)

<sup>9</sup> See *Black’s Law Dictionary* 938 (8th ed. 2004), defining “license” as:

... 1. A permission, usu. revocable, to commit some act that would otherwise be unlawful .... 2. The certificate or document evidencing such permission.

<sup>10</sup> See Rev. & Tax. Code §§ 6051 (state sales tax as percent of gross sale receipts); 6201 (state use tax as percent of sales price); 7202(a) (local sales tax as percent of gross sale receipts); 7203 (local use tax as percent of sales price).

<sup>11</sup> *Dept. of Alcoh. Bev. Control*, 40 Cal. 4th at 11.

<sup>12</sup> Bus. & Prof. Code §§ 16000-16545.

<sup>13</sup> Bus. & Prof. Code § 16101 provides:

licensing matters as their only subject.<sup>14</sup>

Our interpretation of section 16102 is also consistent with the Court of Appeal's understanding of that provision, as set forth in *Brooks v. County of Santa Clara*:

Patently the thrust of section 16102 is not to exempt veterans from local *regulation*, but rather to enable specified veterans to engage in specified kinds of business without being required to *pay*. The last several words of the section make clear the Legislature's assumption that the veteran must have a license, but also its intent that he or she should receive it "without cost," consistent with the antecedent provision that the veteran should be permitted to do business "without payment of any license, tax or fee whatsoever...."<sup>15</sup>

We reached the same understanding in our own previous discussion of section 16102:

... For the purpose of revenue, the boards of supervisors may license individuals acting as hawkers, itinerant peddlers or itinerant vendors. (Bus. & Prof. Code, sec. 16101.) Section 16102, *supra*, which specifies *the exemption of ex-soldiers from county license fees*, reads as follows:

[Quotation of statute omitted].

From the clear language of this section it follows that if the ex-serviceman is seeking a license to hawk, peddle and vend goods, wares

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The boards of supervisors in their respective counties may for the purpose of revenue license individuals acting as hawkers, itinerant peddlers or itinerant vendors, other than merchants having a fixed place of business in the county, their employees, and farmers selling farm products produced by them.

<sup>14</sup> See, e.g., Bus. & Prof. Code § 16000 (permitting incorporated cities to "license any kind of business not prohibited by law"); §§ 16000.5-16000.7 and 16100.5-16100.7 (prohibiting licensing requirements and license fees for café musicians and for certain federally chartered veterans' organizations); § 16001 (providing no-cost licenses to disabled veterans of specified wars for certain hawking, peddling, and vending, and for distributing circulars); §§ 16002 and 16103 (prohibiting collection of license fees from commercial travelers engaged in wholesale dealings); and § 16104 (setting maximum license fees for sheep businesses).

<sup>15</sup> 191 Cal. App. 3d at 755-756.

or merchandise owned by him, he is entitled to its issuance by the board of supervisors without charge; otherwise, in the absence of any additional exemptions covering other activities, he is subject to the license fee exacted of all who wish to engage in that business or occupation.<sup>16</sup>

Despite these precedents, and notwithstanding the narrow subject matter of the surrounding statutory scheme, some interested parties hold the view that section 16102 should be read to establish a comprehensive immunity from any and all forms of taxes or fees that might apply to the enumerated businesses, including any applicable sales or use taxes. In advancing this argument, they rely principally on the wayward comma that appears in the statute's phrase "without payment of any license, tax or fee whatsoever," and on the Legislature's use of the term "whatsoever" in that phrase. For several reasons, however, we find this interpretation unpersuasive.

First, we note that the *Brooks* court specifically addressed and rejected the suggestion that this odd comma in section 16102 should be accorded any meaning, instructing us to disregard it as accidental:

These provisions have been part of the veterans' exemption since 1901. The anomalous comma between the words "license" and "tax" appears to us to be insignificant: There was no comma in the phrase in the 1901 enactment, and we assume that insertion of the comma in section 4041.14, as enacted in 1929, was inadvertent.<sup>17</sup>

Second, we think that the proffered construction would necessitate our giving the

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<sup>16</sup> 3 Ops.Cal.Atty.Gen. 195, 196 (1944) (emphasis added). *See also* 14 Ops.Cal.Atty.Gen. 226, 226-227 (1949) (describing nearly identical provision relating to cities and to disabled veterans):

The provisions of section 16001 may briefly be summarized as providing for the issuance of licenses by the legislative bodies of incorporated cities to specified veterans who are physically unable to obtain a livelihood by manual labor and who desire to either distribute circulars [or] peddle merchandise (other than intoxicants) owned by them. It is specifically provided that the licenses "shall issue" to such veterans "without cost" and that the veterans may engage in the aforesaid activities "without payment of any license tax or fee whatsoever, whether municipal, county or State."

<sup>17</sup> *Brooks*, 191 Cal. App. 3d at 756.

word “license” a very unusual and unlikely usage in this context, ignoring its distinction from the words “tax” and “fee” which follow it. When used as nouns, as they are here, “tax” and “fee” connote imposed costs or charges.<sup>18</sup> In contrast, the term “license,” when used as a noun, means permission to do something, or the certificate evidencing that permission;<sup>19</sup> it would be strange to the point of absurdity for the Legislature to say that a veteran may vend goods “without payment of a license” for that privilege. Rather, we believe that “license,” as it is used here, must be understood to be *an adjective* modifying the nouns “tax” and “fee” to clarify the *kinds of costs* that are excused.<sup>20</sup>

Taking section 16102 in the context of the entire statutory scheme, as we must, we see that its whole purpose is to provide veterans with permission to engage in specific enterprises—namely, to peddle, hawk, and vend certain goods, wares, or merchandise—without incurring any of the licensing costs associated with entry into those occupations, and that the exemption operates regardless of whether those entry costs are labeled “fees,” or “taxes” (or “licenses”). But section 16102 does not purport even to address, much less to waive taxes on, any ensuing transactions that may occur once the veteran has obtained his or her cost-free license and has begun conducting business in the designated occupation.

Third, we advert again to section 16001, which provides a parallel exemption, with respect to city licensing costs, for disabled veterans of specified wars. There is no comma in section 16001’s otherwise identical phrase—“without payment of any license tax or fee whatsoever”—a phrase which has been construed as referring to two specific kinds of costs: license taxes and license fees.<sup>21</sup> We agree with the *Brooks* court that

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<sup>18</sup> See *Black’s Law Dictionary* at 1496 (defining “tax” as “[a] monetary charge imposed by the government”) and 647 (defining “fee” as “[a] charge for labor or services”).

<sup>19</sup> See *id.* at 938; see also *Webster’s 3d New Internat. Dict.* 1304 (2002) (defining “license” as “permission to act . . .”).

<sup>20</sup> Furthermore, if the Legislature had intended this phrase to be read as a series of three like concepts, that intent could have been signaled by inserting *another* comma, often called a “serial comma,” between “tax” and “or,” to separate the penultimate from the ultimate in a list. (See, e.g., Strunk & White, *The Elements of Style* (4th ed., 2000) at 2, “Elementary Rules of Usage,” Rule 2 (“In a series of three or more terms with a single conjunction, use a comma after each term except the last”).) Although use of the serial comma is not universally embraced, the absence of a serial comma in section 16102 lends further support to our reading of “license” as an adjective rather than a serial noun.

<sup>21</sup> See 2008 Stat. ch. 455, (Legislative Counsel’s Digest describing existing law as entitling every qualified disabled veteran “to obtain a license to distribute circulars and

section 16102 should be interpreted as conveying the same meaning, and that its aberrant comma should be regarded as a mere typographical error. No one has suggested to us any reason why the Legislature would have provided a narrower exemption or a less generous benefit for disabled veterans than for the able-bodied, and we can conceive of none.<sup>22</sup>

Fourth, we observe that our treatment of “license” as an adjective for “tax” and “fee” finds support in the common usage of these terms. The terms “license fee” and “license tax” appear frequently in cases and statutes, and are routinely treated as synonyms describing the cost of acquiring a license.<sup>23</sup>

And, finally, we see nothing in the term “whatsoever” to support a more expansive interpretation of section 16102. “Whatsoever” fits logically within the construction that we, the courts, and the Legislature have given to the exemption, reinforcing the Legislature’s intention to exempt any and all costs and charges for business licenses.

For these reasons, we conclude that the sole purpose and effect of Business and Professions Code section 16102 is to exempt qualified veterans from fees or taxes ordinarily paid to obtain licenses to engage in the occupations listed, and to ensure that such licenses be provided to qualified veterans without cost. Section 16102 does not establish a general exemption from taxes, and it has no effect upon taxes levied pursuant

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sell any goods, other than alcoholic beverages, without payment of applicable license taxes or fees.”). *See also* 23 Ops.Cal.Atty.Gen. 149, 150 (1954).

<sup>22</sup> In 2008, the Legislature added Business and Professions Code section 16001.7, which exempts “honorably discharged or honorably relieved” U.S. military veterans from “any *business license fee*, whether municipal, county, or state,” (emphasis added) for the enumerated occupations without any requirement that the veterans be disabled. This provision was enacted to “reconcile[] the issue of physical disability between city and county fee waivers for honorably discharged veterans.” (Bill Analysis, Assembly 1952, Sen. Comm. On Business, Professions, and Economic Development, p. 2 (June 16, 2008).) We think that this very recent choice of the term “business license fee” in section 16001.7 demonstrates that the Legislature, too, construes section 16102’s exemption as extending only to the cost of obtaining a license.

<sup>23</sup> *E.g.*, Bus. & Prof. Code § 16104 (“No license requiring a *fee* greater than 3 cents (\$0.03) per head shall be imposed ... nor shall any such *license tax* be applicable ...”) (emphasis added). *See Black’s Law Dictionary* at 940 (defining “license fee” as “A monetary charge imposed by a governmental authority for the privilege of pursuing a particular occupation, business, or activity. ... Also termed *license tax*.”).

to the state Sales and Use Tax Law<sup>24</sup> or the Bradley-Burns Uniform Local Sales and Use Tax Law.<sup>25</sup>

### **Question Two: Designating Qualified Veteran Itinerant Vendors as Consumers**

The State Board of Equalization was created in 1879 by a constitutional amendment, primarily to ensure that county property tax assessment practices were consistent throughout the state.<sup>26</sup> The Board's responsibilities have expanded over time, and currently include administration of a variety of state taxation programs, including sales and use taxes, property taxes, special taxes, and tax appeals.<sup>27</sup> The Board may adopt regulations to facilitate its fulfillment of these responsibilities.<sup>28</sup>

The Board's rulemaking authority, however, is limited to interpreting and clarifying matters within its jurisdiction as defined by statutes and the Constitution. It

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<sup>24</sup> Rev. & Tax. Code §§ 6001-7176.

<sup>25</sup> Rev. & Tax. Code §§ 7200-7212.

<sup>26</sup> See Cal. Const. art. XIII, §§ 17-19. See also, e.g., Govt. Code §§ 15602 *et seq.*

<sup>27</sup> See <http://www.boe.ca.gov/about.htm>. See also Rev. & Tax Code § 401.5. In *Hahn v. State Bd. of Equalization*, 73 Cal. App. 4th 985, 990 n. 4 (1999), the Board's functions were described as follows:

The Board of Equalization was created in 1879, and originally charged with the responsibility for ensuring that county property tax assessment practices were equal and uniform throughout the state. That charge has been expanded over the years and, among other things, the Board now administers California's property tax programs. (<http://www.boe.ca.gov/about.htm>.) To that end, subdivisions (c) and (e) of section 15606 of the Government Code direct the Board to “[p]rescribe rules and regulations to govern ... assessors when assessing” and to “[p]repare and issue instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation. ...” Section 15607 of the Government Code directs the Board to “summon assessors to meet with it or its duly authorized representatives at least once annually ... to study or discuss problems of administration of assessment and taxation laws and to promote uniformity of procedure in tax matters throughout the state.”

<sup>28</sup> See Govt. Code §§ 15606(c), 15606(f), 15606(g), 15606.5.

has no power to create taxes or to carve out new exemptions. Rather, any regulations that it promulgates must fall within the authority and discretion it derives from either the Constitution itself or from specific statutory directives enacted by the Legislature.<sup>29</sup>

In Question 2, the Board asks whether it may, pursuant to section 16102 and at the urging of certain veteran itinerant vendors, promulgate a regulation designating such qualified vendors as “consumers” of the tangible personal property they offer for sale, thereby establishing a new tax exemption for that subset of vendors. We conclude that the Board may not promulgate such a regulation. Section 16102 is the only provision proffered by the veterans as a basis for the requested regulation, and, in our view, that statute provides no authority for the Board to act in this manner. Given our construction of section 16102 as limited to license fees and license taxes, it follows that the Board could not rely on that statute to create or to implement exemptions or waivers of other kinds of taxes.

In summary, we conclude in response to Question 1 that Business and Professions Code section 16102 exempts qualified veterans from any fees or taxes that must ordinarily be paid to obtain business licenses to engage in the activities enumerated therein. Section 16102 does not establish a general exemption from taxes and has no effect upon state or local sales and use taxes. We conclude in response to Question 2 that the Board of Equalization lacks authority to promulgate a regulation designating qualified veteran itinerant vendors as consumers of the tangible personal property they offer for sale.

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<sup>29</sup> See *Carmel Valley Fire Protec. Dist. v. State of Calif.*, 25 Cal. 4th 287, 299-300 (2001); *Agnew v. State Bd. of Equalization*, 21 Cal. 4th 310, 321 (1999); *Ontario Community Found., Inc. v. State Bd. of Equalization*, 35 Cal. 3d 811, 816-817 (1984); *Co. of San Diego v. Bowen*, 166 Cal. App. 4th 501, 508 (2008). See also Govt. Code §§ 11342.1, 11342.2.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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State Controller

BARBARA ALBY  
Acting Member  
Second District, Sacramento

RAMON J. HIRSIG  
Executive Director

August 26, 2010

Mr. William Connell  
4311 Verana Drive  
Carpinteria, CA 93013

Dear Mr. Connell:

This letter is in response to the request made by Board of Equalization (BOE) Chairwoman Betty Yee at the June 15, 2010 Taxpayers' Bill of Rights Hearings to provide you with information about benefits available to honorably discharged veterans and to offer assistance regarding your claim to the California Victim Compensation and Government Claims Board. In addition, the Chairwoman's office recently forwarded to me an inquiry from you. You asked about the status of the petition you filed on June 13, 2008 which sought to have the Board adopt a regulation to designate qualified veteran itinerant vendors as consumers of tangible personal property.

I will address each of these matters separately.

*Assistance for California's Veterans*

Enclosed is a copy of a June 3, 2010 news release from the Office of the Governor that describes Governor Schwarzenegger's launching of *Operation Welcome Home*, "a first-in-the-nation, statewide campaign to connect every returning veteran with the services they need to transition successfully from the battlefield to the home front." This program is designed to be a one-stop-shop, coordinating services provided by government agencies, non-governmental entities, and volunteer organizations, and allowing veterans easy access to benefits and services including assistance in employment, job training, unemployment benefits, education, housing, health care, U.S. Department of Veterans Affairs benefits, and support for families.

*Operation Welcome Home* is administered by the California Department of Veterans Affairs (CalVet), and the program is described on its website, [www.veterans.ca.gov/calvetcorps.shtml](http://www.veterans.ca.gov/calvetcorps.shtml), as breaking down the silos of government that hinder the successful transition of veterans back into California's communities. The CalVet website also references the California Veterans Corps, or CalVet Corps, a new veteran outreach effort targeting newly discharged veterans. CalVet Corps aims to link the 30,000 soldiers who return to California each year with veterans who can help them adjust to civilian life. More than 300 veterans have been hired as part of this \$20 million project.

In an effort to provide educational opportunities for veterans, the University of California has partnered with the Governor, the California State University, California Community Colleges, and the California Department of Veterans Affairs to implement the California Veterans Education Opportunity Partnership. The partnership brings together the higher education, veterans, and military communities to make the transition from military service to college a seamless one. For more information, please see [www.universityofcalifornia.edu/veterans](http://www.universityofcalifornia.edu/veterans).

The United States Department of Veteran's Affairs offers a Vocational Rehabilitation and Employment (VR&E) VetSuccess Program – see [www.vba.va.gov/bln/vre/index.htm](http://www.vba.va.gov/bln/vre/index.htm). Services available from the VR&E VetSuccess Program to veterans with service-connected disabilities include comprehensive rehabilitation evaluation, vocational counseling, employment services, assistance finding and keeping a job, on-the-job training, post-secondary training, supportive rehabilitation services, and independent living services for veterans unable to work.

***Claim to California Victim Compensation and Government Claims Board***

On July 27, 2010, my office received from the Chairwoman's office: your two-page claim form draft dated February 19, 2010; your \$25.00 check #3675 dated February 19, 2010 payable to the State of California; your one-page explanation for the late filing; a copy of a May 1, 2007 letter to you from Legislative Counsel Margaret S. Shedd; and a stamped envelope addressed to the California Victim Compensation and Government Claims Board (Cal. VCGCB).

As requested by Chairwoman Yee, I have reviewed the above documents. I am returning them to you with the following suggestions.

- Due to the passage of time since you drafted the claim and wrote your check for the amount of the filing fee, you may wish to re-write the claim with a current date and replace the check before submitting them to the Cal. VCGCB. Enclosed is a blank claim form with instructions (VCGCB-GC-002 Rev. 8/04) for your convenience.
- You may want to have your claim proofread before submitting it to avoid spelling errors.
- The "yes" box should be checked on Line 13 of the form after the question "If YES [i.e. was the incident more than six months ago?], did you attach a separate sheet with an explanation for the late filing?" In addition, you may wish to update your explanation, which states in part, "The last unaccepted offer from the A.G. Deputy J. Bowers came *this week – 2-10*."
- Your one-page explanation for the late filing includes the statement, "Please note May 1, 2007 letter from Margaret S. Shedd. My claim of exemption is void *[sic]!*" Ms. Shedd's letter that you attached contains the following paragraph. You highlighted the portion of the text shown in bold below.

"As you know, at the Board's Business Taxpayers' Bill of Rights (TBOR) hearing on March 20, 2007, in response to your presentation, the Board directed Todd Gilman, Chief of the Board's Taxpayers' Rights and Equal Opportunity Division, to work with the Board's Legal Department and other Board departments to prepare a report regarding: (1) **the number of veterans who would be affected if the exemption you seek were acknowledged as valid by the Board;** and (2) an analysis of *In re Gilstrap* (1915) 171 Cal. 108, a case you mentioned during your remarks at the March 20, 2007, TBOR hearing, other relevant case law and statutory authorities, and the legislative history of Section 16102, including its statutory predecessors. Mr. Gilman has indicated that the requested report will be presented for the Board's consideration and discussion at the Board's June 1, 2007, meeting in Sacramento."

Your purpose in attaching a copy of Ms. Shedd's letter to your explanation for the late filing is unclear. In addition, the inclusion of a reference to my June 1, 2007 report to the Board may lead the Cal. VCGCB to request that you provide a copy of the report. For your reference, my report can be found on the BOE website at [www.boe.ca.gov/meetings/pdf/Item\\_P1.2.a\\_06-01-07.pdf](http://www.boe.ca.gov/meetings/pdf/Item_P1.2.a_06-01-07.pdf). My presentation of the report and the Board discussion can be heard on the June 1, 2007 Board hearing webcast at [www.visualwebcaster.com/event.asp?id=39940](http://www.visualwebcaster.com/event.asp?id=39940) (starting at 02:08:25).

***Status of Petition for Regulatory Action***

**Background.** On June 13, 2008 you submitted a petition to the Board pursuant to Government (Gov.) Code section 11340.6 requesting that the Board adopt a new regulation. You proposed that the new regulation provide that an itinerant vendor who is a qualified United States veteran is the consumer, not the retailer, of goods that the veteran sells. Gov. Code section 11340.7 requires that, upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation, the Board shall either: (1) Deny the petition, in whole or in part, indicating in writing why the Board has reached its decision on the merits of the petition; or (2) Initiate the rulemaking process and schedule the matter for public hearing in accordance with the rulemaking provisions of the Administrative Procedure Act. (Gov. Code section 11346 et seq.) The decision of the Board regarding the petition is required to be in writing and to include the reasons for the decision. The decision must be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register.

**History.** This matter was heard at the Board's July 8, 2008 meeting, at which time the Board voted to continue the petition to a later meeting based on the Board's conclusion that the petition's intent could be satisfied by two bills, AB 1952 and AB 3009, then being considered by the California legislature. This matter was again heard on December 17, 2008. 12/17/08 Board minutes indicate:

"Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board directed staff to submit an opinion request to the Attorney General's office raising the question as to who has rulemaking authority over matters such as this; citing the Brooks decision, history and intent of the current veterans statu[t]e, the 1872 and 1893 acts, and any representations that have been made by the Department of Veterans Affairs as it relates to tax exemptions. Once a response is received, staff will report back to the Board with the opinion of the Attorney General's office. Should the Attorney General's office state that the Board has rulemaking authority, the Board would like staff to prepare and present a draft regulation. If the Attorney General's office denies that the Board has authority, then this petition would be deemed denied. . . ."

The BOE requested a legal opinion from the Attorney General on March 16, 2009.

**Status:** Enclosed is a copy of California Attorney General's Opinion No. 09-402, dated July 19, 2010. The Attorney General's Office responded to the following questions:

1. "Does Business and Professions Code section 16102, pertaining to the selling activities of certain military veterans, create a general exemption from taxes under the Sales and Use Tax Law?"
2. "Does the Board of Equalization have authority to promulgate a regulation designating qualified veteran itinerant vendors as consumers of the tangible personal property they offer for sale?"

Opinion No. 09-402 concludes on page 10 as follows:

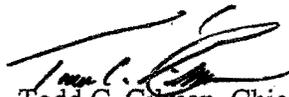
"In summary, we conclude in response to Question 1 that Business and Professions Code section 16102 exempts qualified veterans from any fees or taxes that must ordinarily be paid to obtain business licenses to engage in those enumerated activities. Section 16102 does not establish a general exemption from taxes and has no effect upon state or local sales and use taxes. We conclude in response to Question 2 that the Board of Equalization lacks authority to promulgate a regulation designating qualified veteran itinerant vendors as consumers of the tangible personal property they offer for sale."

It should be noted that the Attorney General's opinion does not address recently enacted Revenue and Taxation Code section 6018.3 (signed by the Governor on 10/11/09 and effective 4/1/10), which provides a limited term exemption for veterans that are qualified itinerant vendors.

I understand that adoption of the formal Board decision on your petition may be scheduled for an upcoming Board meeting. Please check the public agenda notice at [www.boe.ca.gov](http://www.boe.ca.gov).

I hope this information is helpful. Please let me know if the Taxpayers' Rights Advocate Office can provide any further assistance to you. If you have any questions about Attorney General Opinion 09-402, please contact the Office of the Attorney General. If you have additional questions about your petition for regulatory action, please address them to BOE Chief Counsel Kristine Cazadd.

Sincerely,



Todd C. Gilman, Chief  
Taxpayers' Rights and  
Equal Employment Opportunity Division

TCG:ls

TBOR Hearings/2010/Follow-up Assignments/Connell 082610.doc

Enclosures: Governor's Office press release, 6/3/10  
Government Claims Program Information and Claim Form  
Connell CVCGCB claim draft dated 2/19/10, check #3675, stamped envelope  
7/19/10 letter from Attorney General's Office, Opinion No. 09-402

cc (without enclosures):

Honorable Betty T. Yee, Chairwoman  
Honorable Jerome E. Horton, Vice Chair  
Ms. Barbara Alby, Acting Member, Second District  
Honorable Michelle Steel, Member, Third District  
Honorable John Chiang, State Controller  
Ms. Marcy Jo Mandel, Deputy State Controller  
Mr. Alan LoFaso, Board Member's Office, First District  
Ms. Maria Delgado, Board Member's Office, First District  
Ms. Shari Mannering, Board Member's Office, First District  
Mr. Doug Anderson, Board Member's Office, Fourth District  
Ms. Regina Evans, Board Member's Office, Fourth District  
Ms. Elan Chinn, Board Member's Office, Fourth District  
Ms. Karen Anderson, Board Member's Office, Fourth District  
Ms. Cynthia Suero, Board Member's Office, Fourth District  
Ms. Mai Harvill, Board Member's Office, Second District

Ms. Margaret Pennington, Board Member's Office, Second District  
Mr. Lee Williams, Board Member's Office, Second District  
Ms. Susan Blake, Board Member's Office, Second District  
Mr. Eric T. Reslock, Board Member's Office, Second District  
Ms. Darci King, Board Member's Office, Second District  
Mr. William C. Cardoza, Board Member's Office, Second District  
Mr. Louis Barnett, Board Member's Office, Third District  
Mr. Neil Shah, Board Member's Office, Third District  
Ms. Elizabeth Maeng, Board Member's Office, Third District  
Ms. NaTasha Ralston, State Controller's Office  
Mr. Ramon J. Hirsig (MIC 73)  
Ms. Kristine Cazadd (MIC 83)  
Ms. Margaret S. Shedd (MIC 66)  
Ms. Jean Ograd (MIC 82)  
Mr. Randy Ferris (MIC 82)  
Ms. Randie L. Henry (MIC 43)  
Ms. Diane Olson (MIC 80)  
Mr. Stephen Rudd (MIC 46)  
Ms. Freda Orendt (MIC 47)  
Mr. Jeffrey L. McGuire (MIC 92)  
Mr. Kevin Hanks (MIC 49)  
Mr. Robert Tucker (MIC 82)  
Ms. Laureen Simpson (MIC 70)



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

50 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082  
916-323-3107 • FAX 916-323-3387  
[www.boe.ca.gov](http://www.boe.ca.gov)

BETTY T. YEE  
First District, San Francisco

MICHELLE STEEL  
Third District, Rolling Hills Estates

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

BARBARA ALBY  
Acting Member  
Second District, Sacramento

RAMON J. HIRSIG  
Executive Director

September 10, 2010

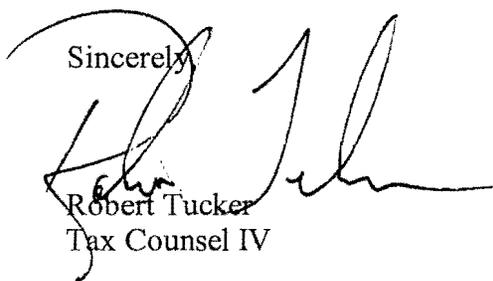
Mr. William Connell  
4311 Verana Drive  
Carpinteria, CA 93013

Re: 2008 Petition to Adopt a Regulation to Designate Qualified Veteran Itinerant  
Vendors as consumers of Tangible Personal Property

Dear Mr. Connell:

As you know, in response to your above-referenced petition for rulemaking, the State Board of Equalization (Board) sought an opinion from the Attorney General's office with respect to the Board's authority to adopt a regulation designating qualified veteran itinerant vendors as consumers of tangible personal property. Enclosed is copy of the opinion the Board recently received from the Attorney General, which explains that the Board does not have the authority to adopt the regulation you seek. As a result, unfortunately, the Board can take no further action with regard to your petition. If you have any questions or concerns, please feel free to contact me at (916) 323-3107.

Sincerely,



Robert Tucker  
Tax Counsel IV

RT/yg

J:/Bus/Use/Finals/Tucker/Denial/10-326.doc

Encl.

cc: Mr. Todd Gilman (MIC:70)  
Ms. Diane Olson (MIC:80)

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2010-094-01</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE  SEP 14 '10      SEP 24 '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 Qualified Veteran Itinerant Vendors		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE September 24, 2010
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input checked="" type="checkbox"/> Other		4. AGENCY CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

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

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

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 §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 type="checkbox"/> Effective 30th day after filing with Secretary of State | <input type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> \$100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) _____ |
|--|--|--|--|

## 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

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

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
-------------------	------------------	-----------------------	---------------------------

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

For use by Office of Administrative Law (OAL) only

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

## TITLE 18. STATE BOARD OF EQUALIZATION

### NOTICE OF DECISION AS REQUIRED BY GOVERNMENT CODE SECTION 11340.7

Re: Petition to Adopt a Regulation to Designate Qualified Veteran Itinerant Vendors as Consumers of Tangible Personal Property

Pursuant to Government Code section 11340.7, the State Board of Equalization (Board) is providing notice of the Board's action to the Office of Administrative Law for publication in the California Regulatory Notice Register regarding the June 13, 2008, petition submitted by Mr. William Connell.

The petition requested that the Board adopt a new sales and use tax regulation (see Cal. Code Regs., tit. 18, § 1500 et seq.) specifying that a qualified veteran itinerant vendor is the consumer of any goods he or she offers for sale. The petition asserted that the Board was authorized to adopt the new regulation based upon the provisions of Business and Professions Code section 16102 and the decision in *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750, rather than the provisions of the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.).

The Board considered the petition during its July 8, 2008, Board meeting. Board staff was directed to work "with the Senate Veteran's Committee to get AB 3009 [Assembly Bill No. 3009 (2007-2008 Reg. Sess.)] out of [the] Revenue and Taxation suspense file" (2008 Minutes of the Board, at p. 194) because it "would, for purposes of the Sales and Use Tax Law, specify that a qualified itinerant vendor, as defined, is a consumer, and not a retailer, of food products and nonalcoholic beverages he or she sells" (Legislative Counsel's Digest regarding AB 3009). The Board also unanimously "ordered that the petition be held in abeyance until the outcome of [the] pending legislation." (2008 Minutes of the Board, at p. 194.)

On November 30, 2008, AB 3009 left the committee with a recommendation that the Legislature take no further action, and AB 3009 was never enacted. The Board considered the petition, again, during the December 17, 2008, Board meeting and:

[T]he Board directed staff to submit an opinion request to the Attorney General's office raising the question as to who has rulemaking authority over matters such as this; citing the Brooks decision, history and intent of the current veterans statute, the 1872 and 1893 acts, and any representations that have been made by the Department of Veterans Affairs as it relates to tax exemptions. (2008 Minutes of the Board, at p. 362.)

The Board also voted on the petition and ordered that:

Should the Attorney General's office state that the Board has rulemaking authority, the Board would like staff to prepare and present a draft regulation. If the Attorney General's office denies that the Board has authority, then this petition would be deemed denied. (2008 Minutes of the Board, at p. 362.)

As a result, the Board's Legal Department wrote to the Attorney General's Office to request the specified guidance and received Attorney General Opinion No. 09-402 (93 Ops.Cal.Atty.Gen. 70 (July 19, 2010)), a copy of which is enclosed. In the opinion, the Attorney General concluded that:

- "Business and Professions Code section 16102 exempts qualified veterans from any fees or taxes that must ordinarily be paid to obtain business licenses to engage in those enumerated activities. Section 16102 does not establish a general exemption from taxes and has no effect on state and local sales and use taxes"; and
- "The Board of Equalization lacks authority [under Business and Professions Code section 16102] to promulgate a regulation designating qualified veteran itinerant vendors as consumers of the tangible personal property they offer for sale."

Pursuant to the Board's December 17, 2008, order, as a result of the recent opinion from the Attorney General holding that the Business and Professions Code section 16102 does not provide the Board the authority to adopt the regulation requested, the June 13, 2008, petition is denied.

Interested persons may obtain a copy of the petition by contacting Mr. Richard Bennion by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Richard Bennion, P.O. Box 942879, MIC: 80, Sacramento, CA 94279-0001.

Ms. Cynthia Oshita  
 Office of Environmental Health Hazard Assessment  
 Street Address: 1001 I Street, 19<sup>th</sup> floor  
 Sacramento, California 95814  
 Mailing Address: P.O. Box 4010  
 Sacramento, California 95812-4010  
 Fax No.: (916) 323-8803  
 Telephone: (916) 445-6900

**Please provide hard-copy comments in triplicate. In order to be considered, comments must be received at OEHHA by 5:00 p.m. Wednesday, October 13, 2010.**

**RULEMAKING PETITION  
 DECISION**

**TITLE 18. STATE BOARD OF  
 EQUALIZATION**

**NOTICE OF DECISION AS REQUIRED BY  
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Interested persons may obtain a copy of the petition by contacting Mr. Richard Bennion by telephone at

(916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boc.ca.gov, or by mail at State Board of Equalization, Attn: Richard Bennion, P.O. Box 942879, MIC: 80, Sacramento, CA 94279-0001.

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH SECRETARY OF STATE**

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

File# 2010-0729-01  
**AIR RESOURCES BOARD**  
 Indoor Air Cleaning Devices 2009

This action extends the impending deadline for labeling the packaging of indoor air cleaners by 18 months; updates the ANSI/UL standard incorporated by reference for evaluation of ozone from such devices by including three new Certification Requirement Decisions published by UL; adds four ANSI/UL standards for evaluating the electrical safety of multi-function devices that clean indoor air; and provides for the electrical safety evaluation of such devices by nationally recognized testing laboratories under a broader range of federally established testing programs.

Title 17  
 California Code of Regulations  
 AMEND: 94801, 94804, 94805, 94806  
 Filed 09/09/2010  
 Effective 10/09/2010  
 Agency Contact: Trini Balcazar (916) 445-9564

File# 2010-0903-04  
**BOARD OF EDUCATION**  
 Parent Empowerment

This rulemaking action adopts emergency regulations to implement Senate Bill 4, Chapter 3, 5th Extraordinary Session of 2010. This Senate Bill and these emergency regulations establish the parent empowerment process whereby parents of students who are or will be enrolled in 75 schools, which are subject to federal corrective action plans, are not making adequate yearly progress, and have Academic Performance In-

dex scores below 800, the right to petition for the implementation of specified school reform interventions. The rulemaking, among other things, specifies the requirements for these petitions and the petition process.

Title 5  
 California Code of Regulations  
 ADOPT: 4800, 4801, 4802, 4803, 4804, 4805, 4806, 4807  
 Filed 09/13/2010  
 Effective 09/13/2010  
 Agency Contact: Connie Diaz (916) 319-0584

File# 2010-0802-01  
**CALIFORNIA HORSE RACING BOARD**  
 Designated Races

This rulemaking action amends section 1766 of Title 4 of the California Code of Regulations to specify that jockeys or drivers who violate one of the provisions of section 1766 while suspended will complete their terms of suspension on an equivalent race day of the week following the day on which the jockey or driver violated one of the provisions of this section.

Title 4  
 California Code of Regulations  
 AMEND: 1766  
 Filed 09/09/2010  
 Effective 10/09/2010  
 Agency Contact: Harold Coburn (916) 263-6397

File# 2010-0830-02  
**CALIFORNIA SCHOOL FINANCE AUTHORITY**  
 Charter School Facilities Program

This rulemaking amends several sections within Title 4 to conform to SB 592, Statutes of 2009 by no longer requiring the school district to hold title to the project facilities.

Title 4  
 California Code of Regulations  
 AMEND: 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162, 10164  
 Filed 09/09/2010  
 Effective 09/09/2010  
 Agency Contact:  
 Katrina Johantgen (213) 620-2305

File# 2010-0805-02  
**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**  
 CTCAC Regulations Implementing the Federal and State LIHTC Laws

These regulations concern the American Jobs and Closing Tax Loopholes Act of 2010, including terms and conditions of awarding grants. These regulations



STATE BOARD OF EQUALIZATION

TAXPAYERS' RIGHTS ADVOCATE OFFICE MIC: 70  
450 N STREET, SACRAMENTO, CALIFORNIA 95814-0070  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0070  
916-445-0218 • FAX 916-323-3319  
TOLL-FREE 888-324-2798  
www.boe.ca.gov

BETTY T. YEE  
First District, San Francisco

MICHELLE STEEL  
Third District, Rolling Hills Estates

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

BARBARA ALBY  
Acting Member  
Second District, Sacramento

RAMON J. HIRSIG  
Executive Director

September 30, 2010

Mr. William Connell  
All American Surf Dog  
4311 Verano Drive  
Carpinteria, CA 93013

Dear Mr. Connell:

This is to follow up on our telephone conversation of September 29, 2010. You asked to be informed as to when the Board will be meeting to make a final decision on your June 13, 2008 petition to adopt a regulation to designate qualified veteran itinerant vendors as consumers of tangible personal property.

In Mr. Todd Gilman's August 26, 2010 letter to you, he mentioned the possibility that the adoption of the formal Board decision on your petition may be scheduled for an upcoming Board meeting. I explained to you that, subsequent to August 26, this office was informed that no further action will be taken by the Board on this matter. Based on the actions of the Board on December 17, 2008 (see Board minutes quoted in Mr. Gilman's letter), your petition was deemed denied based on the Attorney General's decision that the Board does not have the authority to promulgate the regulation you requested.

As I mentioned in our conversation, the formal decision on your petition has been published in the California Regulatory Notice Register. The notice appeared on September 24, 2010 in Register 2010, No. 39-Z ([www.oal.ca.gov/res/docs/pdf/notice/39z-2010.pdf](http://www.oal.ca.gov/res/docs/pdf/notice/39z-2010.pdf)). As you requested, I am enclosing a copy of the State Board of Equalization's Notice of Decision as Required by Government Code Section 11340.7. The enclosed document contains the table of contents of the Register and the BOE's Notice on pages 1540-1541.

If you have additional questions regarding this matter, you may contact Ms. Diane Olson, Chief, Board Proceedings Division, at (916) 322-2270.

Sincerely,

Laureen Simpson  
Lead Technical Advisor  
Taxpayers' Rights Advocate Office

Enclosure

cc (with enclosure):

Ms. Kristine Cazadd, MIC 83

Mr. Todd Gilman, MIC 70

Ms. Diane Olson, MIC 80

Mr. Robert Tucker, MIC 82



# California Regulatory Notice Register

REGISTER 2010, NO. 39-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

SEPTEMBER 24, 2010

## PROPOSED ACTION ON REGULATIONS

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### TITLE 7. BOARD OF PILOT COMMISSIONERS

*Medical Examinations — Notice File No. Z2010-0913-02* ..... 1530

### TITLE 13. DEPARTMENT OF MOTOR VEHICLES

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### TITLE 16. DEPARTMENT OF CONSUMER AFFAIRS

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### DEPARTMENT OF FISH AND GAME

*CESA Consistency Determination Request for Road 80 Widening Project, Tulare County (2080-2010-048-04)* ..... 1538

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OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

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## RULEMAKING PETITION DECISION

BOARD OF EQUALIZATION

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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Ms. Cynthia Oshita  
 Office of Environmental Health Hazard Assessment  
 Street Address: 1001 I Street, 19<sup>th</sup> floor  
 Sacramento, California 95814  
 Mailing Address: P.O. Box 4010  
 Sacramento, California 95812-4010  
 Fax No.: (916) 323-8803  
 Telephone: (916) 445-6900

Please provide hard-copy comments in triplicate. In order to be considered, comments must be received at OEHHA by 5:00 p.m. Wednesday, October 13, 2010.

**RULEMAKING PETITION  
 DECISION**

**TITLE 18. STATE BOARD OF  
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**NOTICE OF DECISION AS REQUIRED BY  
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The Board also voted on the petition and ordered that:

Should the Attorney General[']s office state that the Board has rulemaking authority, the Board would like staff to prepare and present a draft regulation. If the Attorney General[']s office denies that the Board has authority, then this petition would be deemed denied. (2008 Minutes of the Board, at p. 362.)

As a result, the Board's Legal Department wrote to the Attorney General's Office to request the specified guidance and received Attorney General Opinion No. 09-402 (93 Ops. Cal. Atty. Gen. 70 (July 19, 2010)), a copy of which is enclosed. In the opinion, the Attorney General concluded that:

- "Business and Professions Code section 16102 exempts qualified veterans from any fees or taxes that must ordinarily be paid to obtain business licenses to engage in those enumerated activities. Section 16102 does not establish a general exemption from taxes and has no effect on state and local sales and use taxes"; and
- "The Board of Equalization lacks authority [under Business and Professions Code section 16102] to promulgate a regulation designating qualified veteran itinerant vendors as consumers of the tangible personal property they offer for sale."

Pursuant to the Board's December 17, 2008, order, as a result of the recent opinion from the Attorney General holding that the Business and Professions Code section 16102 does not provide the Board the authority to adopt the regulation requested, the June 13, 2008, petition is denied.

Interested persons may obtain a copy of the petition by contacting Mr. Richard Bennion 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: Richard Bennion, P.O. Box 942879, MIC: 80, Sacramento, CA 94279-0001.

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH SECRETARY OF STATE**

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

File# 2010-0729-01  
 AIR RESOURCES BOARD  
 Indoor Air Cleaning Devices 2009

This action extends the impending deadline for labeling the packaging of indoor air cleaners by 18 months; updates the ANSI/UL standard incorporated by reference for evaluation of ozone from such devices by including three new Certification Requirement Decisions published by UL; adds four ANSI/UL standards for evaluating the electrical safety of multi-function devices that clean indoor air; and provides for the electrical safety evaluation of such devices by nationally recognized testing laboratories under a broader range of federally established testing programs.

Title 17  
 California Code of Regulations  
 AMEND: 94801, 94804, 94805, 94806  
 Filed 09/09/2010  
 Effective 10/09/2010  
 Agency Contact: Trini Balcazar (916) 445-9564

File# 2010-0903-04  
 BOARD OF EDUCATION  
 Parent Empowerment

This rulemaking action adopts emergency regulations to implement Senate Bill 4, Chapter 3, 5th Extraordinary Session of 2010. This Senate Bill and these emergency regulations establish the parent empowerment process whereby parents of students who are or will be enrolled in 75 schools, which are subject to federal corrective action plans, are not making adequate yearly progress, and have Academic Performance In-

dex scores below 800, the right to petition for the implementation of specified school reform interventions. The rulemaking, among other things, specifies the requirements for these petitions and the petition process.

Title 5  
 California Code of Regulations  
 ADOPT: 4800, 4801, 4802, 4803, 4804, 4805, 4806, 4807  
 Filed 09/13/2010  
 Effective 09/13/2010  
 Agency Contact: Connie Diaz (916) 319-0584

File# 2010-0802-01  
 CALIFORNIA HORSE RACING BOARD  
 Designated Races

This rulemaking action amends section 1766 of Title 4 of the California Code of Regulations to specify that jockeys or drivers who violate one of the provisions of section 1766 while suspended will complete their terms of suspension on an equivalent race day of the week following the day on which the jockey or driver violated one of the provisions of this section.

Title 4  
 California Code of Regulations  
 AMEND: 1766  
 Filed 09/09/2010  
 Effective 10/09/2010  
 Agency Contact: Harold Coburn (916) 263-6397

File# 2010-0830-02  
 CALIFORNIA SCHOOL FINANCE AUTHORITY  
 Charter School Facilities Program

This rulemaking amends several sections within Title 4 to conform to SB 592, Statutes of 2009 by no longer requiring the school district to hold title to the project facilities.

Title 4  
 California Code of Regulations  
 AMEND: 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162, 10164  
 Filed 09/09/2010  
 Effective 09/09/2010  
 Agency Contact:  
 Katrina Johantgen (213) 620-2305

File# 2010-0805-02  
 CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE  
 CTCAC Regulations Implementing the Federal and State LIHTC Laws

These regulations concern the American Jobs and Closing Tax Loopholes Act of 2010, including terms and conditions of awarding grants. These regulations