



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: MARCH 20, 2012, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

Title: Proposed amendments to Regulation 1618, *United States Government Supply Contracts*

Issue/Topic:

Request approval and authorization to publish proposed amendments to conform the regulation to changes in the Federal Acquisition Regulation (FAR).

Committee Discussion:

There was no discussion of this item.

Committee Action:

Upon motion by Mr. Horton, seconded by Ms. Mandel, without objection, the Committee approved and authorized for publication the proposed amendments to Regulation 1618.

The proposed amendments will not have an operative date. Implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed amendments is attached.

Agenda Item No: 2

Title: Proposed revisions to sections 901.000 through 906.000 of Compliance Policy and Procedures Manual Chapter 9, *Miscellaneous*

Issue/Topic:

Request approval of proposed procedure manual revisions regarding local and district tax reallocations.

Committee Discussion:

Action 1, Consent

There was no discussion of this item.

Committee Action:Action 1, Consent

Upon motion by Mr. Horton, seconded by Ms. Steel, the Committee unanimously approved the consent item.

Committee Discussion:Action 2, Requirement that designated person provides a copy of its contract with the jurisdiction (901.020, 901.030, 901.040, and 905.010)

Staff's recommendation provided that a copy of the contract between the jurisdiction and the representative must be provided before the representative is given access to BOE records. MuniServices, LLC's (MuniServices) recommendation did not include this requirement.

Interested parties explained that they have no objection to providing BOE with a copy of their contract, but they disagree that Revenue and Taxation Code section 7056 requires the contract be provided. Staff explained that while the statute does not specifically state the contract be provided, staff cannot ensure that the requirements of the statute have been met without reviewing the contract.

Committee Action:Action 2, Requirement that designated person provides a copy of its contract with the jurisdiction (901.020, 901.030, 901.040, and 905.010)

Upon motion by Ms. Mandel, seconded by Mr. Horton, the Committee unanimously approved staff's recommendation that a copy of the contract between the jurisdiction and the representative be provided before the representative is given access to BOE records.

Committee Discussion:Action 3, Threshold for processing fund transfers (905.020)

Staff proposed that the minimum threshold for processing fund transfers be raised from \$50 per quarter to \$250 per quarter. The HdL Companies (HdL) proposed that the threshold be set at \$100 per quarter, and MuniServices proposed that the threshold be set at \$50 per quarter or \$250 for the entire period in dispute, whichever is less.

Interested parties explained the staff proposal is an excessive increase over the current threshold and would be detrimental to jurisdictions, particularly small cities. They further explained that jurisdictions are BOE's customers and it is unfair to deny them local tax dollars because of staff's workload concerns. Staff explained that small reallocation adjustments require significant staff resources and that those resources would be better spent investigating petitions involving larger dollar amounts. Staff further explained that the staff proposal is consistent with other sales and use tax audit processing thresholds. Board Members discussed BOE's responsibility to ensure that jurisdictions receive funds they are entitled to, and that small errors should be corrected because they could increase to significant tax amounts over time. Board Members also expressed interest in learning staff workload impacts at the different thresholds and how staff believes local jurisdictions would benefit from the staff proposal.

Committee Action:Action 3, Threshold for processing fund transfers (905.020)

Upon motion by Mr. Runner, seconded by Ms. Mandel, the Committee unanimously approved the motion to move this action item over for further review and discussion.

Committee Discussion:Action 4, Timeframes to acknowledge submissions (905.030)

Staff proposed that the Allocation Group acknowledge submissions intended as petitions within 30 calendar days of receipt. MuniServices proposed the submissions be acknowledged within seven calendar days of receipt.

There was no discussion of this item.

Committee Action:Action 4, Timeframes to acknowledge submissions (905.030)

Upon motion by Mr. Runner, seconded by Mr. Horton, the Committee unanimously approved staff's recommendation to allow 30 calendar days for Allocation Group staff to acknowledge submissions intended as petitions.

Committee Discussion:Action 5, Documenting a Date of Knowledge (905.040)

Staff's recommendation explained when a Date of Knowledge is operationally documented by BOE staff. MuniServices' proposed language provided that staff must include the information required under Regulation 1807 that supports the probability of a misallocation and staff should contact the taxpayer to establish that there is a basis for questioning the reported allocation, unless circumstances do not warrant that contact.

Staff and interested parties agree that staff should meet the same standards when staff operationally documents a date of knowledge as jurisdictions must meet when they file a petition. MuniServices explained that they believe it is important the CPPM section reference the requirements of Regulation 1807, but agreed to drop their suggested language about staff contacting the taxpayer before operationally documenting a date of knowledge.

Committee Action:Action 5, Documenting a Date of Knowledge (905.040)

Upon motion by Mr. Runner, seconded by Mr. Horton, the Committee unanimously approved the motion to modify staff's proposed language to provide that to operationally document a date of knowledge, staff must provide sufficient factual data consistent with the definition of a petition in Regulation 1807.

Committee Discussion:Action 6, Allocation Group supervisor follow-up timeframes (905.050)

Staff proposed that the Allocation Group lead follow up on assignments aged 180-270 days and the Allocation Group supervisor follow up on assignments aged greater than 270 days. MuniServices proposed that the Allocation Group lead follow up at 90-180 days and the Allocation Group supervisor follow up after 180 days.

Interested parties explained they suggested their timeframes because they thought it would be better for the Allocation Group lead and supervisor to review a case prior to the first trigger provision in Regulation 1807 which allows a jurisdiction to request the Allocation Group issue their decision within 90 days. Staff explained that the staff suggested timeframes are intended to be outside time limits.

Committee Action:Action 6, Allocation Group supervisor follow-up timeframes (905.050)

Upon motion by Mr. Horton, seconded by Mr. Runner, the Committee unanimously approved staff's recommendation that the Allocation Group lead follow up on assignments aged 180-270 days and the Allocation Group supervisor follow up on assignments aged greater than 270 days.

Committee Discussion:Action 7, Informing jurisdictions prior to processing a large deallocation of local tax resulting from a refund or credit in an audit (907.000)

Staff proposed that staff inform jurisdictions when a pending refund or credit in an audit results in a deallocation of \$100,000 or more in local tax to a jurisdiction. MuniServices and HdL proposed that a jurisdiction be informed when a pending refund or credit in an audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction.

Interested parties explained that the lower threshold would help small cities plan better, because \$50,000 in local tax is significant to a small city. Mr. Runner stated that information provided to his office indicated that, using the refund cases brought before the Board in the last year, the \$50,000 threshold resulted in only 12 additional notifications than the \$100,000 threshold. Staff explained the work that needs to be done to determine if notification is necessary is a manual process and could be time intensive depending on the complexity of the transactions in the audit or claim for refund.

Committee Action:Action 7, Informing jurisdictions prior to processing a large deallocation of local tax resulting from a refund or credit in an audit (907.000)

Upon motion by Mr. Runner, seconded by Mr. Horton, the Committee unanimously approved HdL's and MuniServices recommendation to inform jurisdictions when a pending refund or credit in an audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction.

Agenda Item No: 3**Title: Technology Transfer Agreements****Issue/Topic:**

Study update and request for an interested parties process.

Committee Discussion:

Staff provided an update on actions taken by staff and the results of contact letters sent to prospective study participants.

Staff also requested approval for an interested parties process to determine whether Regulation 1507, *Technology Transfer Agreements*, should be amended to clarify when sales or purchases of software qualify as technology transfer agreements and how tax applies to sales of qualifying software media.

Interested parties indicated support for moving forward with the interested parties process.

Committee Action:

Upon motion by Mr. Runner, seconded by Mr. Horton, the Committee unanimously approved staff to begin the interested parties process to discuss Regulation 1507. Due to the sensitivity of the issue, Ms. Yee requested an update be provided to the Board after the first interested parties meeting.

/s/ Betty T. Yee

Honorable Betty T. Yee, Committee Chair

/s/ Kristine Cazadd

Kristine Cazadd, Executive Director

BOARD APPROVED

at the March 21, 2012 Board Meeting

/s/ Diane Olson

Diane Olson, Chief
Board Proceedings Division

Regulation 1618. United States Government Supply Contracts.

(a) Definitions.

(1) “United States Government supply contract” means a contract with the United States to furnish, or to fabricate and furnish, tangible personal property including ships, aircraft, ordnance, or equipment, whereby title to tangible personal property purchased for use in fulfilling the contract passes to the United States pursuant to the title provisions contained in the contract before the contractor uses the property to perform the function or act for which the property was designed or manufactured. The term “U.S. Government supply contract” does not include contracts to construct improvements on or to real property or to the purchase of tangible personal property for use in fulfilling such contracts.

(2) “Direct consumable supplies” means supplies, tools, or equipment consumed in the performance of a contract which are specifically identified to the contract and the actual cost of which is charged as a direct item of cost to the specific contract. ~~“Tools” as used in this definition does not include “special tooling” subject to the provisions of Federal Acquisition Regulation (FAR) 52.245-17 or any regulation(s) which succeeds FAR 52.245-17.~~ Effective June 14, 2007, “Tools” as used in this definition includes “special tooling” that was previously covered by Federal Acquisition Regulation (FAR) 52.245-17.

(3) “Overhead materials” means supplies consumed in the performance of a contract the cost of which is charged to an overhead expense account and then allocated to various contracts based on generally accepted accounting principles and consistent with government cost accounting standards.

(b) Application of Tax.

(1) Sales to U.S. Government supply contractors of tools, equipment, direct consumable supplies and overhead materials are sales for resale if the United States takes title pursuant to a United States government supply contract prior to any use of the property by the contractor to perform the function or act for which the property was designed or manufactured. Accordingly, tax does not apply to such sales even though the property does not become a component part of the tangible personal property furnished, fabricated, or manufactured by the contractor. If the contractor makes any use of the property to perform the function or act for which the property was designed or manufactured prior to the passage of title to the United States, tax applies to the sales to or to the use by the contractor.

(2) Whether title to direct consumable supplies ~~and or indirect consumable supplies (i.e., overhead materials)~~ passes to the United States under a United States government supply contract and the time at which title passes will be determined in accordance with the title provisions contained in the contract, if any. ~~In a case where the cost of~~

(A) For direct consumable supplies, which are charged direct to the United States government contract, title passes to the United States government pursuant to the title passage clause(s) associated with that specific contract.

~~(A)~~(B) ~~F~~—or indirect consumable supplies (i.e., overhead materials) which are charged to an expense account which is then allocated to various locations, cost centers or contracts, ~~some of which are engaged in other than United States government cost reimbursement contracts and/or fixed-price contracts with a progress payments clause,~~ it will be considered that title ~~did not~~ passed to the United States government prior to use of the property, and tax will not apply with respect to the purchase or use of the property charged to the expense account, ~~unless if~~ the item is specifically accounted for as being charged/allocated to a specific United States government supply contract, pursuant to the terms of which title passes to the United States prior to the use of the item. Property will be considered charged-allocated to a specific United States government supply contract when it is allocated pursuant to:

~~(1)~~— 1. A accounting standards promulgated by the Cost Accounting Standards Board (Office of Federal Procurement Policy, Office of Management and Budget), if applicable; otherwise,

~~(2)~~ 2. G generally accepted accounting principles that are equitable, consistently-applied, and appropriate to the particular circumstances.

Direct consumable supplies identified in subdivision (b)(2)(A) and indirect consumable supplies (i.e., overhead materials) which may be allocated in ~~this the~~ manner identified in subdivision (b)(2)(B) include, but are not limited to, property used to repair items of capital equipment when a portion of the contractor's use is properly allocable to its government supply contracts, notwithstanding the fact that title to the property being repaired remains with the contractor.

~~(2)~~(3) Special Tooling. Effective December 29, 1989 through June 13, 2007, title will generally not pass prior to use by the contractor for special tooling which is subject to the Special Tooling Clauses of Federal Acquisition Regulation (48 CFR) 52.245-17. Title to such special tooling will pass prior to use by the contractor only if the agreement between the contractor and the United States government contains a custom clause providing for title passage prior to use by the contractor. Therefore, sales of special tooling will generally be subject to tax.

Reference: Sections 6007 and 6381, Revenue and Taxation Code.

Aerospace Corp. v. St. Bd. of Equalization (1990) 218 Cal.App.3d 1300.