



BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING MINUTES
HONORABLE BETTY T. YEE, COMMITTEE CHAIR
450 N STREET, SACRAMENTO
MEETING DATE: AUGUST 21, 2012, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

Title: Status Update on Interested Parties Process: Proposed Amendments to Regulation 1507, *Technology Transfer Agreements*

Issue/Topic:

Status update regarding the interested parties process with respect to Regulation 1507, *Technology Transfer Agreements*.

Committee Discussion:

Staff presented a status report on the interested parties process with respect to the issue of whether it is necessary to amend Regulation 1507, *Technology Transfer Agreements*, to clarify when sales or purchases of software on tangible storage media qualify as technology transfer agreements and how tax applies to software technology transfer agreements. Staff explained that after the distribution of the Initial Discussion Paper, a well-attended first interested parties meeting was held on July 17 in which there was a robust discussion of differing views.

Staff further explained that several written comments were submitted by interested parties which express overall disagreement with staff's analysis. Staff also received a late submission which outlines a proposal to amend Regulation 1507 to allow for the use of an optional percentage to determine the measure of tax on transfers of software on tangible storage media, as well as other considerations.

Lastly, staff mentioned that the Business Taxes Committee (BTC) calendar has been revised to provide an opportunity for all interested parties to review the proposal and submit additional comments. The revised schedule also allows staff time to analyze the proposal, including its effect on other regulations, and any additional comments that may be submitted. The revision reschedules the BTC meeting for this issue from November 13, 2012 to the January 2013 Board meeting dates.

Mr. Julian Decyk from Paul Hastings LLP addressed the Board and argued that the premise of the Initial Discussion Paper (IDP) was not a valid starting point for the interested parties process and that the IDP did not properly reflect the applicable statutes and court cases.

At the request of Ms. Yee, staff outlined the issues before the committee and explained that there are fundamental differences between staff and interested parties regarding how *Nortel* applies to the transfer of computer programs. Ms. Yee commented on the need for specific data to support any formula in a regulatory change and acknowledged the sensitivity related to pending litigation in a related case and the sensitivity of any information submitted by industry.

/s/ Betty T. Yee

Honorable Betty T. Yee, Committee Chair

/s/ Cynthia Bridges

Cynthia Bridges, Executive Director

BOARD APPROVED

at the August 22, 2012 Board Meeting

/s/ Joann Richmond

Joann Richmond, Chief
Board Proceedings Division