



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0092
1-916-324-1825 • FAX 1-916-322-4530
www.boe.ca.gov

SEN. GEORGE RUNNER (Ret.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

April 17, 2015

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for proposed amendments to Regulation 1505, *Morticians*, which will be presented at the Board's April 28, 2015 Business Taxes Committee meeting. The proposed amendments update the general information, tax rates, and examples.

Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m.** on **April 28, 2015** in Room 121 at the address shown above.

Sincerely,

Susanne Buehler, Chief
Tax Policy Division
Sales and Use Tax Department

SB:tmc

Enclosures

cc: (all with enclosures, via email and or hardcopy as requested)
Honorable Jerome E. Horton, Chairman, Third District
Senator George Runner (Ret.), Vice Chair, First District
Honorable Fiona Ma, CPA, Member, Second District
Honorable Diane L. Harkey, Member, Fourth District
Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers (MIC 73)

Mr. David Hunter, Board Member's Office, Third District
Ms. Shellie Hughes, Board Member's Office, Third District
Ms. Kari Hammond, Board Member's Office, Third District
Mr. Sean Wallentine, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, First District
Mr. Alan Giorgi, Board Member's Office, First District
Mr. Brian Wiggins, Board Member's Office, First District
Mr. Jim Kuhl, Board Member's Office, Second District
Ms. Kathryn Asprey, Board Member's Office, Second District
Mr. John Vigna, Board Member's Office, Second District
Mr. Tim Morland, Board Member's Office, Second District
Mr. Russell Lowery, Board Member's Office, Fourth District
Mr. Ted Matthies, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Fourth District
Ms. Lynne Kinst, Board Member's Office, Fourth District
Ms. Cynthia Bridges (MIC 73)
Mr. Randy Ferris (MIC 83)
Mr. David Gau (MIC 101)
Mr. Jeffrey L. McGuire (MIC 43)
Mr. Todd Gilman (MIC 70)
Mr. Wayne Mashihara (MIC 46)
Mr. Kevin Hanks (MIC 49)
Mr. Mark Durham (MIC 67)
Mr. Robert Tucker (MIC 82)
Mr. Jeff Vest (MIC 85)
Mr. Jeff Angeja (MIC 85)
Mr. David Levine (MIC 85)
Mr. Bradley Heller (MIC 82)
Mr. Lawrence Mendel (MIC 82)
Mr. John Thiella (MIC 73)
Ms. Monica Silva (MIC 82)
Ms. Kirsten Stark (MIC 50)
Mr. Clifford Oakes (MIC 50)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Ms. Laureen Simpson (MIC 70)
Ms. Karina Magana (MIC 46)
Mr. Bradley Miller (MIC 92)
Mr. Bill Benson (MIC 67)
Mr. Robert Wilke (MIC 50)
Ms. Tracy McCrite (MIC 50)

Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, *Morticians*

<p>Action 1 – Agreed Upon Items</p> <p>Agenda, pages 2-9.</p>	<p>Alternative 1</p> <p>Approve and authorize publication of proposed amendments to Regulation 1505 to update the general information, tax rates, and examples.</p> <p style="text-align: center;">OR</p> <p>Alternative 2</p> <p>Do not approve proposed amendments to Regulation 1505.</p>
--	--

Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, *Morticians*

Action Item	Staff and Industry's Proposed Regulatory Language
<p>Action 1 – Staff Recommendation</p>	<p align="center">REGULATION 1505, <u>MORTICIANS FUNERAL DIRECTORS</u></p> <p><i>Reference: Sections 6015 and 6381, Revenue and Taxation Code.</i></p> <p><u>(a) DEFINITIONS.</u></p> <p><u>(1) FUNERAL DIRECTOR. Any person or entity that is engaged in providing a burial service or services and may include, but is not limited to, funeral directors, undertakers, morticians, embalmers, or cemetery brokers.</u></p> <p><u>(2) BURIAL. Means all legal methods of disposing of the remains of a deceased person, including, but not limited to, interment, cremation, burial at sea, and medical school donation.</u></p> <p><u>(3) CASH ADVANCES. Funds paid out to third parties as a courtesy to the client for items that are part of the funeral service but not generally sold by the funeral director.</u></p> <p><u>(ab) IN GENERAL.</u></p> <p>(1) MORTICIAN<u>FUNERAL DIRECTORS</u> AS RETAILERS. Mortician<u>Funeral director</u>s are retailers of caskets, boxes, vaults, and clothing. They also are <u>also</u> retailers of any other tangible personal property <u>such as memorial books and digital video discs (DVDs)</u> furnished in connection with rendering their services if a separate charge is made for such property. Unless otherwise exempt, t<u>ax</u> applies to the sales price of all tangible personal property sold by mortician<u>funeral directors, unless otherwise exempt.*</u></p> <p>* On October 25, 1972, the board adopted an amendment to the regulation by which the 50 percent standard service reporting procedure in effect until October 18, 1970, and the 45 percent standard service reporting procedure in effect thereafter, are no longer allowable.</p>

**Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, *Morticians***

Action Item	Staff and Industry's Proposed Regulatory Language																										
	<p>(2) MORTICIAN<u>FUNERAL DIRECTORS</u> AS CONSUMERS. Mortician<u>Funeral directors</u> are consumers of acknowledgment cards, memorial folders, registration books, embalming fluid, cosmetics, eye caps, morgue supplies, car stickers, and prayer books, <u>memorial books, and DVDs</u> which are furnished by them in connection with services they render unless a separate charge is made for such property. Tax applies to the sales price to the mortician of all tangible personal property <u>sold to and</u> consumed by him<u>the funeral director</u>.</p> <p><u>(3) EXAMPLE OF APPLICATION OF TAX. In the example below, the burial package includes the basic services of the funeral director and staff, transfer of the decedent to the funeral home, embalming, dressing, cosmetology and placement of the decedent in a casket, facility and staff for ceremony, equipment and staff for committal service, on-line funeral notice, one visitation period, use of hearse, one “life-tribute” DVD, and a premium memorial box set. The client chose to purchase 10 additional DVDs for their family.</u></p> <p><u>Funeral director's invoice to client:</u></p> <table border="0"> <tr> <td><u>Maple Casket (t)</u></td> <td align="right"><u>2,895.00</u></td> </tr> <tr> <td><u>Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)</u></td> <td align="right"><u>250.00</u></td> </tr> <tr> <td><u>Total of Items Subject to Tax</u></td> <td align="right"><u>\$3,145.00</u></td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td><u>Traditional Chapel Burial Package</u></td> <td align="right"><u>\$4,945.00</u></td> </tr> <tr> <td><u>Fees for Cash Advance items:</u></td> <td></td> </tr> <tr> <td><u>County filing fee.....</u></td> <td align="right"><u>12.00</u></td> </tr> <tr> <td><u>Certified copy of Death Certificate</u></td> <td align="right"><u>21.00</u></td> </tr> <tr> <td><u>Organist</u></td> <td align="right"><u>225.00</u></td> </tr> <tr> <td><u>Total Fees</u></td> <td align="right"><u>\$258.00</u></td> </tr> <tr> <td><u>Total Nontaxable.....</u></td> <td align="right"><u>\$5,203.00</u></td> </tr> <tr> <td><u>Total Taxable.....</u></td> <td align="right"><u>\$3,145.00</u></td> </tr> <tr> <td><u>Sales Tax (\$3,145.00) x 8.25%</u></td> <td align="right"><u>259.46</u></td> </tr> </table>	<u>Maple Casket (t)</u>	<u>2,895.00</u>	<u>Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)</u>	<u>250.00</u>	<u>Total of Items Subject to Tax</u>	<u>\$3,145.00</u>	 		<u>Traditional Chapel Burial Package</u>	<u>\$4,945.00</u>	<u>Fees for Cash Advance items:</u>		<u>County filing fee.....</u>	<u>12.00</u>	<u>Certified copy of Death Certificate</u>	<u>21.00</u>	<u>Organist</u>	<u>225.00</u>	<u>Total Fees</u>	<u>\$258.00</u>	<u>Total Nontaxable.....</u>	<u>\$5,203.00</u>	<u>Total Taxable.....</u>	<u>\$3,145.00</u>	<u>Sales Tax (\$3,145.00) x 8.25%</u>	<u>259.46</u>
<u>Maple Casket (t)</u>	<u>2,895.00</u>																										
<u>Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)</u>	<u>250.00</u>																										
<u>Total of Items Subject to Tax</u>	<u>\$3,145.00</u>																										
<u>Traditional Chapel Burial Package</u>	<u>\$4,945.00</u>																										
<u>Fees for Cash Advance items:</u>																											
<u>County filing fee.....</u>	<u>12.00</u>																										
<u>Certified copy of Death Certificate</u>	<u>21.00</u>																										
<u>Organist</u>	<u>225.00</u>																										
<u>Total Fees</u>	<u>\$258.00</u>																										
<u>Total Nontaxable.....</u>	<u>\$5,203.00</u>																										
<u>Total Taxable.....</u>	<u>\$3,145.00</u>																										
<u>Sales Tax (\$3,145.00) x 8.25%</u>	<u>259.46</u>																										

**Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, Morticians**

Action Item	Staff and Industry's Proposed Regulatory Language
	<p><u>Grand Total</u> <u>\$8,607.46</u></p> <p><u>(t) = Tangible personal property</u></p> <p>(bc) APPLICATION OF TAX TO SPECIFIC TYPES OF TRANSACTIONS.</p> <p>(1) SALES IN INTERSTATE OR FOREIGN COMMERCE. The sale of a casket and other tangible personal property by a <u>morticianfuneral director</u>, which <u>ishe</u> <u>delivered</u>s or <u>shipped</u>s to an out-of-state point pursuant to the agreement of sale, is regarded as a sale in interstate or foreign commerce and is exempt from the tax. The facts that the death of the deceased occurred in this state, that the contracting parties are residents of this state, and that services are held in this state prior to the shipment, are immaterial.</p> <p><u>(2) CASH ADVANCES. Tax does not apply to cash advances for such items as cemetery charges, newspaper notices, railroadairplane tickets, ministerial fees, and flowers.</u></p> <p><u>(23) SALES TO THE UNITED STATESU.S. GOVERNMENT.</u> All or a portion of charges for funerals of veterans and other persons may be paid by the <u>United StatesU.S. Department of Veterans Administration Affairs</u> or by the Social Security Administration. <u>Effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans. MorticianFuneral directors</u> may take a deduction for sales to the <u>U,nited S,tates</u> Government when claims filed by them with federal agencies are paid directly to the <u>morticianfuneral directors</u> regardless of method of billing. If funeral charges are paid by another person, there is no tax exemption even though such person may receive reimbursement from a federal agency and even though the amount received as reimbursement is assigned or endorsed over to the <u>morticianfuneral director</u> as a credit against those charges.</p> <p>In computing the allowable exemption, the funeral allowance and the interment allowance must</p>

**Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, *Morticians***

Action Item	Staff and Industry's Proposed Regulatory Language																
	<p>be treated separately.</p> <p>(A) Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales of tangible personal property and charges for exempt services. None are to be allocated to accommodation cash advances. The only exception will be when a portion of a payment is clearly identified as applying to something for which a <u>morticianfuneral director</u> has made a specific charge.</p> <p>(B) Payments received directly from the <u>United StatesU.S. Department of Veterans Administration-Affairs</u> which are identified as interment allowances are to be prorated between sales of tangible personal property used in actual interment and charges or advances for services in connection with the interment. The only exception will be when a portion of the payment is clearly identified as applying to something pertaining to interment for which the <u>morticianfuneral director</u> has made a specific charge.</p> <p>(3) EXAMPLES OF APPLICATION OF AMOUNTS RECEIVED BY MORTICIANS DIRECTLY FROM A FEDERAL AGENCY. (Examples are at 6 percent rate.)</p> <table border="1" data-bbox="575 976 1222 1398"> <thead> <tr> <th colspan="2" data-bbox="575 976 1222 1029">Mortician's invoice to client:</th> </tr> <tr> <th data-bbox="575 1029 974 1083">Charges:</th> <th data-bbox="974 1029 1222 1083">Amount:</th> </tr> </thead> <tbody> <tr> <td data-bbox="575 1083 974 1136">Services</td> <td data-bbox="974 1083 1222 1136">\$400.00</td> </tr> <tr> <td data-bbox="575 1136 974 1190">Casket</td> <td data-bbox="974 1136 1222 1190">355.00</td> </tr> <tr> <td data-bbox="575 1190 974 1243">Vault</td> <td data-bbox="974 1190 1222 1243">200.00</td> </tr> <tr> <td data-bbox="575 1243 974 1297">Suit</td> <td data-bbox="974 1243 1222 1297">45.00</td> </tr> <tr> <td data-bbox="575 1297 974 1351">Subtotal</td> <td data-bbox="974 1297 1222 1351">\$1,000.00</td> </tr> <tr> <td data-bbox="575 1351 974 1398"></td> <td data-bbox="974 1351 1222 1398"></td> </tr> </tbody> </table>	Mortician's invoice to client:		Charges:	Amount:	Services	\$400.00	Casket	355.00	Vault	200.00	Suit	45.00	Subtotal	\$1,000.00		
Mortician's invoice to client:																	
Charges:	Amount:																
Services	\$400.00																
Casket	355.00																
Vault	200.00																
Suit	45.00																
Subtotal	\$1,000.00																

Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, *Morticians*

Action Item	Staff and Industry's Proposed Regulatory Language	
	Accommodation Cash Advances:	Amount:
	Cemetery Space and Opening	\$50.00
	Clergy	25.00
	Music	15.00
	Subtotal	\$90.00
	Total	\$1,090.00
	Sales Tax (6% of \$355, \$200 & \$45)	36.00
	Total	\$1,126.00
	Example 1. Funeral allowance only.	
	Cash received by the mortician directly from a federal agency as a funeral allowance, and not allocated by the United States Government to any specific portion of the above charges, was \$300. No interment allowance was received.	
Since \$600 of the \$1,000 charged the client (exclude the cash advances) was for tangible personal property, 60% of the amount received from the federal agency (60% of \$300 equals \$180) is considered a sale of such property to the United States Government and is exempt from sales tax.		
Computation of Tax:		
Total Charges	\$1,090.00	

**Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, *Morticians***

Action Item	Staff and Industry's Proposed Regulatory Language	
	<p align="center">Less: Accommodation Advances Exempt Services Sale to United States</p>	<p align="center">\$90.00 400.00 180.00 670.00</p>
	<p align="center">Taxable Sale</p>	<p align="center">\$420.00</p>
	<p align="center">Tax at 6%</p>	<p align="center">25.20</p>
	<p align="center">Taxable Sale Including Tax</p>	<p align="center">\$445.20</p>
	<p>Example 2. Funeral allowance and interment allowance received by mortician.</p> <p>Cash received by the mortician directly from a federal agency, and not allocated by the United States Government to any specific portion of the above charges, was \$300 as a funeral allowance and \$150 as an interment allowance.</p> <p>Since the total charges by the mortician related to interment were \$250 (vault \$200 plus cemetery space and opening \$50), and the charge for tangible personal property related to interment was \$200 (vault), 80% of the amount received from the federal agency as an interment allowance (80% of \$150 equals \$120) is considered a sale of such property to the United States Government and is exempt from sales tax.</p> <p>Since \$400 (casket \$355 and suit \$45) of the \$800 charged the client for the funeral (exclude the cash advances and the vault) was for tangible personal property, 50% of the amount received from the federal agency as a funeral allowance (50% of \$300 equals \$150) is considered a sale of such property to the United States Government and is exempt from sales tax.</p> <p align="center">Computation of</p>	

Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, Morticians

Action Item	Staff and Industry's Proposed Regulatory Language	
	Tax:	
	Total Charges	\$1,090.00
	Less:	
	Accommodation Advances	\$90.00
	Exempt Services	400.00
	Sale to United States Government (\$120 plus \$150)	270.00
	Taxable Sale	760.00
	Taxable Sale	\$330.00
Tax at 6%	19.80	
Taxable Sale Including Tax	\$349.80	
	<p>(4) ACCOMMODATION CASH ADVANCES. Tax does not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, ministerial fees and flowers.</p>	
	<p>(45) TAX-PAID PURCHASES RESOLD. A <u>morticianfuneral director</u> may claim a "tax-paid purchases resold" deduction if the <u>morticianfuneral director</u> reimbursed the vendor for tax which the vendor is required to pay to the state or has paid use tax with respect to the property and has resold the property prior to making any use of it.</p>	
	<p>(ed) "PRE-NEED" AGREEMENTS. Where a <u>morticianfuneral director</u>, cemetery association, or other person enters into an agreement with a customer to provide services upon the death of the customer, no sale occurs for sales and use tax purposes until the services are rendered.</p>	

Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, *Morticians*

Action Item	Staff and Industry's Proposed Regulatory Language
	<p>An amount designated as "sales tax" in the agreement will be considered an estimate of tax which may become due when the services are rendered. No sales tax should be paid to the board in connection with "pre-need" agreements until the services are rendered.</p> <p>Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6015 and 6381, Revenue and Taxation Code.</p>

Issue Paper Number 15-003



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

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

Proposed Amendments to Regulation 1505, *Morticians*

I. Issue

Whether the Board should amend Regulation 1505, *Morticians*, to update the general information, tax rates, and examples.

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize publication of the proposed amendments to Regulation 1505 as illustrated in Exhibit 2. Staff's proposed amendments update the title, general information, tax rates, examples, and adds new definitions for clarity.

III. Other Alternative Considered

Do not approve the proposed amendments to Regulation 1505.

IV. Background

Regulation 1505, which became effective August 1, 1933, provides guidelines for morticians regarding the proper application of tax. The regulation explains when morticians are retailers and when they are consumers. It provides guidance on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and "pre-need agreements."

The terminology used in the regulation is outdated, and the regulation does not reflect current goods and services available to clients. Furthermore, recent procedural changes which allow the U.S. Department of Veterans Affairs (VA) to pay death benefits directly to the surviving party make much of the current content no longer relevant.

V. Discussion

Definitions and Terminology

Staff proposes to change the name of the regulation from "Morticians" to "Funeral Directors" and update all references of "mortician" to "funeral director" throughout the regulation. The change from mortician to funeral director was suggested by interested parties and staff agrees this term is more indicative of the industry and the person responsible for reporting tax. Staff proposes to add a new subdivision (a) to include definitions for the terms "funeral director," "burial," and "cash advances" to the regulation. The proposed definitions will update the regulation and provide clarity regarding the terms as used throughout the regulation. With this proposed addition, the remainder of the regulation will be rearranged and

renumbered accordingly. The references to the regulation's subdivisions for the remainder of this paper are made to the proposed renumbered regulation.

Staff proposes to add language in (b)(1) explaining that specific items such as memorial books and DVDs are considered retail items when a separate charge is made for them. This addition clarifies the proper tax treatment of goods that are now more commonly available due to technological advances. Staff received a submission from Service Corporation International (SCI) requesting that similar specific language also be added to (b)(2) to make the treatment of these items as clear as possible. Staff proposes to add language in (b)(2) explaining that memorial books and DVDs furnished in connection with services rendered are considered consumed by the funeral director.

Sales to the U.S. Government

Regulation 1505(c)(3) currently states, in part "effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans." Beginning in fiscal year 2013, the VA annually increases the burial and plot allowances for deaths occurring after October 1, 2011, based on the Consumer Price Index for the preceding 12-month period. Accordingly, we are proposing to remove the language in the regulation that refers to a specific dollar amount. Including only general information about payments from federal agencies without references to dollar amounts eliminates the need to amend the regulation each time the VA changes their allowance amounts.

Examples

Effective July 7, 2014, the VA amended its regulations regarding payment of burial benefits in an effort to pay eligible survivors more quickly and efficiently. The changes authorize payments through automated systems directly to survivors for an eligible veteran's burial and funeral costs at the maximum amount authorized by law. With these new procedures, it is our understanding that funeral directors are rarely paid directly by the VA, and the examples in the current section (b)(3) that demonstrate how to prorate U.S. Government payments, are no longer relevant. These examples have been removed from the regulation.

Staff proposes to add a new subdivision (b)(3) "Example of Application of Tax" to the regulation. This section contains a sample funeral director's invoice demonstrating what a typical transaction may look like and how tax applies to the items on the invoice.

Other Amendments

Other proposed amendments to the regulation include the following:

- remove the footnote in subdivision (b)(1) that is no longer relevant,
- rearrange the last sentence of subdivision (b)(1) to make it grammatically correct,
- update gender specific terms to be gender neutral, and
- rename the "accommodation cash advances" section to reflect current industry terminology and move the section up within subdivision (c).

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends that the Board approve and authorize publication of the proposed amendments to Regulation 1505, as illustrated in Exhibit 2. Staff's proposed amendments update the title, general information, tax rates, examples, and adds new definitions for clarity.

B. Pros of Alternative 1

The proposed amendments clarify the terms used in the regulation and update the information and tax rates so that the regulation corresponds with current industry practices.

C. Cons of Alternative 1

None.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require adoption of amendments to Regulation 1505.

E. Operational Impact of Alternative 1

Staff will publish the proposed amendments to Regulation 1505 and begin the formal rulemaking process.

F. Administrative Impact of Alternative 1

1. Cost Impact

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

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

The proposed amendments do not change the application of tax; the changes are more informational in nature and help to make the regulation more relevant to current industry practices.

H. Critical Time Frames of Alternative 1

None.

VII. Other Alternatives

A. Description of Alternative 2

Do not amend Regulation 1505.

B. Pros of Alternative 2

The BOE will not incur the workload associated with revising the regulation.

FORMAL ISSUE PAPER 15-003

C. Cons of Alternative 2

The examples and information in the regulation would continue to be outdated and of little relevance to current industry practices, and will not reflect recent changes made by the VA.

D. Statutory or Regulatory Change for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

Without the regulatory amendment, the information and examples in the regulation are irrelevant to funeral directors.

H. Critical Time Frames of Alternative 2

None.

Preparer/Reviewer Information

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

Current as of: March 24, 2015

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



Proposed Amendments to Regulation 1505, Morticians

I. Issue

Whether the Board should amend Regulation 1505, Morticians, to update the general information, tax rates, and examples.

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize publication of the proposed amendments to Regulation 1505 as illustrated in Exhibit 2. Staff's proposed amendments update the general information, tax rates, examples, and adds new definitions for clarity.

III. Other Alternative(s) Considered

Do not approve proposed amendments to Regulation 1505.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the staff recommendation that would impact revenue. The proposed amendments clarify the terms used in the regulation and update the information and tax rates so that the regulation corresponds with current industry practices. The proposed amendments do not change the application of tax; the changes are more informational in nature and help to make the regulation more relevant to current industry practices.

Other Alternatives Considered

There is nothing in the other alternatives considered that would impact revenue. However, the examples and information in the regulation would continue to be outdated and of little relevance to the current industry practices, and will not reflect recent changes made by the Veterans Administration.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

The other alternative considered does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. This estimate has been reviewed by Mr. Mark Durham, Chief, Research and Statistics Section, Legislative and Research Division, and by Ms. Susanne Buehler, Chief, Tax Policy Division, Sales and Use Tax Department. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of April 7, 2015.

REGULATION 1505, MORTICIANS FUNERAL DIRECTORS

Reference: Sections 6015 and 6381, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) FUNERAL DIRECTOR. Any person or entity that is engaged in providing a burial service or services and may include, but is not limited to, funeral directors, undertakers, morticians, embalmers, or cemetery brokers.

(2) BURIAL. Means all legal methods of disposing of the remains of a deceased person, including, but not limited to, interment, cremation, burial at sea, and medical school donation.

(3) CASH ADVANCES. Funds paid out to third parties as a courtesy to the client for items that are part of the funeral service but not generally sold by the funeral director.

(ab) IN GENERAL.

(1) MORTICIAN FUNERAL DIRECTORS AS RETAILERS. Mortician Funeral directors are retailers of caskets, boxes, vaults, and clothing. They ~~also~~ are also retailers of any other tangible personal property such as memorial books and digital video discs (DVDs) furnished in connection with rendering their services if a separate charge is made for such property. ~~Unless otherwise exempt, tax~~ applies to the sales price of all tangible personal property sold by mortician funeral directors, unless otherwise exempt.*

~~* On October 25, 1972, the board adopted an amendment to the regulation by which the 50 percent standard service reporting procedure in effect until October 18, 1970, and the 45 percent standard service reporting procedure in effect thereafter, are no longer allowable.~~

(2) MORTICIAN FUNERAL DIRECTORS AS CONSUMERS. Mortician Funeral directors are consumers of acknowledgment cards, memorial folders, registration books, embalming fluid, cosmetics, eye caps, morgue supplies, car stickers, ~~and~~ prayer books, memorial books, and DVDs which are furnished by them in connection with services they render unless a separate charge is made for such property. Tax applies to the sales price ~~to the mortician~~ of all tangible personal property sold to and consumed by him the funeral director.

(3) EXAMPLE OF APPLICATION OF TAX. In the example below, the burial package includes the basic services of the funeral director and staff, transfer of the decedent to the funeral home, embalming, dressing, cosmetology and placement of the decedent in a casket, facility and staff for ceremony, equipment and staff for committal service, on-line funeral notice, one visitation period, use of hearse, one "life-tribute" DVD, and a premium memorial box set. The client chose to purchase 10 additional DVDs for their family.

Funeral director's invoice to client:

Maple Casket (t)	2,895.00
Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)	250.00
<u>Total of Items Subject to Tax</u>	<u>\$3,145.00</u>
 Traditional Chapel Burial Package	 \$4,945.00
<u>Fees for Cash Advance items:</u>	
County filing fee.....	12.00
Certified copy of Death Certificate	21.00
Organist	225.00
<u>Total Fees</u>	<u>\$258.00</u>
<u>Total Nontaxable.....</u>	<u>\$5,203.00</u>
<u>Total Taxable.....</u>	<u>\$3,145.00</u>
<u>Sales Tax (\$3,145.00) x 8.25%</u>	<u>259.46</u>
<u>Grand Total</u>	<u>\$8,607.46</u>

(t) = Tangible personal property

(bc) APPLICATION OF TAX TO SPECIFIC TYPES OF TRANSACTIONS.

(1) SALES IN INTERSTATE OR FOREIGN COMMERCE. The sale of a casket and other tangible personal property by a ~~mortician~~funeral director, which ~~is~~he delivereds or shippeds to an out-of-state point pursuant to the agreement of sale, is regarded as a sale in interstate or foreign commerce and is exempt from the tax. The facts that the death of the deceased occurred in this state, that the contracting parties are residents of this state, and that services are held in this state prior to the shipment, are immaterial.

(2) CASH ADVANCES. Tax does not apply to cash advances for such items as cemetery charges, newspaper notices, ~~railroad~~airplane tickets, ministerial fees, and flowers.

(23) SALES TO THE ~~UNITED STATES~~U.S. GOVERNMENT. All or a portion of charges for funerals of veterans and other persons may be paid by the ~~United States~~U.S. Department of Veterans Administration Affairs or by the Social Security Administration. ~~Effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans. Mortician~~Funeral directors may take a deduction for sales to the ~~U nited S tates~~ Government when claims filed by them with federal agencies are paid directly to the ~~mortician~~funeral directors regardless of method of billing. If funeral charges are paid by another person, there is no tax exemption even though such person may receive reimbursement from a federal agency and even though the amount received as reimbursement is assigned or endorsed over to the ~~mortician~~funeral director as a credit against those charges.

In computing the allowable exemption, the funeral allowance and the interment allowance must be treated separately.

(A) Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales of tangible personal property and charges for exempt services. None are to be allocated to accommodation cash advances. The only exception will be when a portion of a payment is clearly identified as applying to something for which a morticianfuneral director has made a specific charge.

(B) Payments received directly from the United StatesU.S. Department of Veterans Administration-Affairs which are identified as interment allowances are to be prorated between sales of tangible personal property used in actual interment and charges or advances for services in connection with the interment. The only exception will be when a portion of the payment is clearly identified as applying to something pertaining to interment for which the morticianfuneral director has made a specific charge.

~~(3) EXAMPLES OF APPLICATION OF AMOUNTS RECEIVED BY MORTICIANS DIRECTLY FROM A FEDERAL AGENCY. (Examples are at 6 percent rate.)~~

Mortician's invoice to client:	
Charges:	Amount:
Services	\$400.00
Casket	355.00
Vault	200.00
Suit	45.00
Subtotal	\$1,000.00
Accommodation Cash Advances:	Amount:
Cemetery Space and Opening	\$50.00
Clergy	25.00
Musie	15.00
Subtotal	\$90.00
Total	\$1,090.00
Sales Tax (6% of \$355, \$200 & \$45)	36.00
Total	\$1,126.00

~~Example 1. Funeral allowance only.~~

~~Cash received by the mortician directly from a federal agency as a funeral allowance, and not allocated by the United States Government to any specific portion of the above charges, was \$300. No interment allowance was received.~~

~~Since \$600 of the \$1,000 charged the client (exclude the cash advances) was for tangible personal property, 60% of the amount received from the federal agency (60% of \$300 equals \$180) is considered a sale of such property to the United States Government and is exempt from sales tax.~~

Computation of Tax:	
Total Charges	\$1,090.00
Less: Accommodation Advances	\$90.00
Exempt Services	400.00
Sale to United States	180.00
	670.00
Taxable Sale	\$420.00
Tax at 6%	25.20
Taxable Sale Including Tax	\$445.20

~~Example 2. Funeral allowance and interment allowance received by mortician.~~

~~Cash received by the mortician directly from a federal agency, and not allocated by the United States Government to any specific portion of the above charges, was \$300 as a funeral allowance and \$150 as an interment allowance.~~

~~Since the total charges by the mortician related to interment were \$250 (vault \$200 plus cemetery space and opening \$50), and the charge for tangible personal property related to interment was \$200 (vault), 80% of the amount received from the federal agency as an interment allowance (80% of \$150 equals \$120) is considered a sale of such property to the United States Government and is exempt from sales tax.~~

~~Since \$400 (casket \$355 and suit \$45) of the \$800 charged the client for the funeral (exclude the cash advances and the vault) was for tangible personal property, 50% of the amount received from the federal agency as a funeral allowance (50% of \$300 equals \$150) is considered a sale of such property to the United States Government and is exempt from sales tax.~~

Computation of Tax:	
Total Charges	\$1,090.00

Less: Accommodation Advances	\$90.00
Exempt Services	400.00
Sale to United States	270.00
Government (\$120 plus \$150)	760.00
Taxable Sale	\$330.00
Tax at 6%	19.80
Taxable Sale Including Tax	\$349.80

~~(4) ACCOMMODATION CASH ADVANCES. Tax does not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, ministerial fees and flowers.~~

~~(45) TAX-PAID PURCHASES RESOLD. A morticianfuneral director may claim a "tax-paid purchases resold" deduction if the morticianfuneral director reimbursed the vendor for tax which the vendor is required to pay to the state or has paid use tax with respect to the property and has resold the property prior to making any use of it.~~

~~(ed) "PRE-NEED" AGREEMENTS. Where a morticianfuneral director, cemetery association, or other person enters into an agreement with a customer to provide services upon the death of the customer, no sale occurs for sales and use tax purposes until the services are rendered.~~

An amount designated as "sales tax" in the agreement will be considered an estimate of tax which may become due when the services are rendered. No sales tax should be paid to the board in connection with "pre-need" agreements until the services are rendered.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6015 and 6381, Revenue and Taxation Code.



TAX DEPARTMENT

Sarah E. Adams, Sr. Managing Director, Tax Sarah.Adams@Sci-us.com

February 16, 2015

Susanne Buehler
Chief
Tax Policy Division
Sales and Use Tax Department
State Board of Equalization
450 North Street
Sacramento, CA 94279

Delivered via email to: Susanne.Buehler@boe.ca.gov

RE: Initial Discussion Paper on Regulation 1505, *Morticians*

Dear Chief Buehler:

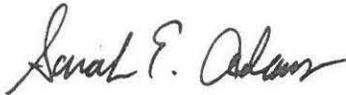
Thank you for the opportunity to provide comments on behalf of Service Corporation International in response to Initial Discussion Paper on Regulation 1505, *Morticians*. SCI California Funeral Services is the largest provider of death care services in California, operating 207 properties – 171 funeral establishments and 36 cemeteries throughout the State. Our Company is proud to offer our served families Making Everlasting Memories (MeM). The MeM service, an enhancement to the base funeral service, provides families with ways to honor, celebrate, and preserve the memory of a loved one. Currently, MeM packages include the creation of a digital video disc (DVD) to enhance the remembrances, memories and condolences of friends, acquaintances, and the bereaved family before and during the cremation and/or funeral gatherings. SCI California Funeral Services desires Regulation 1505 to be as clear as possible that the Mortician is the consumer of this DVD as part of the service and the DVD is not tangible property that is being sold to the purchaser.

The Discussion Paper proposes amending (b)(1) *MORTICIANS AS RETAILERS* to add memorial books and DVDs to products subject to the sales tax if they are separately stated from the services provided. Our Company agrees that a sales tax should be charged if a DVD(s) is sold in addition to the cost of the service. However, if the DVD or memorial book is included in the price of the service, a sales tax should not be levied as no transaction occurs. Therefore, we ask the Board of Equalization to consider the following amendment to (b)(2) *Morticians as Consumers*:

(b)(2) MORTICIANS AS CONSUMERS. Morticians are consumers of acknowledgement cards, memorial folders, registration books, embalming fluid, cosmetics, eye caps, morgue supplies, car stickers, prayer books, memorial books, and digital video discs (DVD) which are furnished by them in connection with services they render unless a separate charge is made for such property. Tax applies to the sales price to the mortician of all tangible personal property consumed by him.

With the acceptance of this amendment, our Company can continue providing the MeM service to our families and ensure they will not incur any unintentional costs in connection with their funeral service. Please feel free to contact me with any additional comments or questions via email at Sarah.Adams@sci-us.com or telephone at 713-525-5240. Thank you for your consideration of this amendment.

Sincerely,



Sarah Adams
Vice President of Tax
Service Corporation International