



STATE OF CALIFORNIA

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January 9, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1598.1, *Diesel Fuel Prepayment Exemption*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 1598.1, *Diesel Fuel Prepayment Exemption*. The proposed amendments will delete the third paragraph in Regulation 1598.1, subdivision (a)(4), so the definition of diesel fuel in the regulation is consistent with the current provisions of RTC section 60022, and revise Regulation 1598.1, subdivision (b), so that it provides the same general guidance about how to calculate the percentage referred to in subdivision (b)(4) of the regulation, but without referring to amounts entered on specific lines of sales and use tax returns. The amendments also replace the capital "A" with a lower case "a" at the beginning of the word "Article" in the appendix to Regulation 1598.1.

PUBLIC HEARING

The Board will conduct a meeting in Room 207 at 5901 Green Valley Circle, Culver City, California on February 24-26, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on February 24, 25, or 26, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1598.1.

AUTHORITY

RTC section 7051

REFERENCE

RTC sections 6357.1, 6480, 6480.1, 6480.3

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (RTC, § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § 1700, subd. (a)(1).)

RTC section 6480.1 provides, in part, that at any time the diesel fuel tax is imposed or would be imposed on any removal, entry, or sale in this state of diesel fuel, the supplier shall collect prepayment of retail sales tax from the person to whom the diesel fuel is sold. For purposes of the imposition of the prepayment of sales tax on diesel fuel, RTC section 6480, subdivision (c), provides that the term "diesel fuel" is defined pursuant to the Diesel Fuel Tax Law (commencing with RTC section 60001). In addition, RTC section 6480.9 provides an exemption from the sales tax prepayment requirement on certain sales of diesel fuel for agricultural purposes, and requires a person purchasing diesel fuel that is exempt from the sales tax prepayment requirements to issue an exemption certificate to the seller in accordance with any instructions or regulations prescribed by the Board.

The Board adopted Regulation 1598.1 in 2003. Regulation 1598.1 specifies the conditions under which the exemption provided in RTC section 6480.9 applies to the prepayment of sales tax on diesel fuel. Regulation 1598.1 also prescribes the exemption certificate required by RTC section 6480.9 and the appendix to Regulation 1598.1 contains an exemption certificate form, which may be used to claim the diesel fuel prepayment exemption.

In 2003, RTC section 60022, subdivision (c), expressly provided that "'Diesel fuel' does not include the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board." Subdivision (a)(4) of Regulation 1598.1 refers to RTC section 6480, subdivision (c) and RTC section 60022, and incorporates the definition of diesel fuel from RTC section 60022 (2003), including the provisions of section 60022, subdivision (c). However, on January 1, 2007, RTC section 60022 (2003) was repealed and replaced by new section 60022,

and new section 60022 does not contain the provisions that were formerly in subdivision (c) of section 60022 (2003).

Furthermore, subdivision (b) of Regulation 1598.1 lists a number of requirements that must be satisfied in order for the exemption provided in RTC section 6480.9 to apply to the prepayment of sales tax on diesel fuel sold to a retailer. As relevant here, subdivision (b)(4) of the regulation requires that “[d]uring the calendar year immediately preceding any purchases of diesel fuel, [the retailer] sold diesel fuel to diesel fuel consumers in which the gross receipts from such sales exceeded 25 percent of that retailer’s total taxable sales.” The last paragraph of subdivision (b) provides guidance about how to calculate the percentage referred to in subdivision (b)(4), and the guidance refers to amounts entered on specific lines of sales and use tax returns. However, when a taxpayer files its return via the Board’s online services, specific line numbers are not included.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1598.1

As a result of the January 1, 2007, repeal of the provisions formerly in RTC section 60022, subdivision (c), the definition of diesel fuel in Regulation 1598.1 is no longer consistent with the current provisions of RTC section 60022. Therefore, Board staff determined that it was necessary to amend Regulation 1598.1 so its definition of diesel fuel is based upon the current definition of the term diesel fuel contained in section 60022 of the Diesel Fuel Tax Law, as provided in RTC section 6480, subdivision (c).

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff prepared draft amendments deleting the third paragraph from the definition of diesel fuel in subdivision (a)(4) of Regulation 1598.1. BTC staff subsequently prepared a discussion paper, and provided the discussion paper and its draft amendments to Regulation 1598.1 to the interested parties. On July 15, 2014, BTC staff conducted an interested parties meeting to discuss the draft amendments.

Since BTC staff did not receive any inquiries or written comments regarding its draft amendments during or subsequent to the July 15, 2014, interested parties meeting and staff had no changes to its recommendation to amend Regulation 1598.1, BTC staff did not prepare a second discussion paper and cancelled the second interested parties meeting that was previously scheduled to discuss staff’s draft amendments. Staff also notified interested parties that comments could be submitted up to September 25, 2014, for consideration in the preparation of the Formal Issue Paper regarding the draft amendments. However, staff did not receive any other comments.

November 19, 2014 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 14-009 and distributed it to the Board Members for consideration at the Board’s November 19, 2014, BTC meeting. Formal Issue Paper 14-009

recommended that the Board approved and authorize publication of the amendments to Regulation 1598.1 (discussed above) to delete the third paragraph in Regulation 1598.1, subdivision (a)(4), so the regulation's definition of diesel fuel is consistent with the operative provisions of RTC section 60022. Formal Issue Paper 14-009 recommended that the Board revise the last paragraph in Regulation 1598.1, subdivision (b), so that it provides the same general guidance about how to calculate the percentage referred to in subdivision (b)(4) of the regulation, but without referring to amounts entered on specific lines of sales and use tax returns. Formal Issue Paper 14-009 also recommended that the Board replace the capital "A" with a lower case "a" at the beginning of the word "Article" in the appendix to Regulation 1598.1 to make the word consistent with the reference to "article" in subdivision (d)(1) of the regulation and consistent with the citation format prescribed in the California Style Manual.

During the November 19, 2014, meeting, the Board Members unanimously voted to propose the amendments to Regulation 1598.1 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1598.1 are necessary to have the effect and accomplish the objective of ensuring that the definition of diesel fuel in the regulation is consistent with the current definition of diesel fuel in the Diesel Fuel Tax Law, and ensuring that the regulation provides clear guidance to all taxpayers, including taxpayers who file returns via the Board's online services, about how to calculate the percentage referred to in subdivision (b)(4) of the regulation.

The Board also anticipates that the proposed amendments to Regulation 1598.1 will reduce confusion, promote fairness, and benefit sellers, retailers, Board staff, and the Board by providing a definition for the term diesel fuel that is consistent with the applicable statutory definition, and providing clear guidance about how to calculate the percentage referred to in subdivision (b)(4) of the regulation.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1598.1 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1598.1 is the only state regulation providing an exemption from the prepayment of sales tax on diesel fuel. The Board is aware that California Code of Regulations, title 18, section (Regulation) 1533.2, *Diesel Fuel Used in Farming Activities and Food Processing*, also defines the term "diesel fuel" and the Board is separately proposing to amend the definition for the term diesel fuel in Regulation 1533.2 so that it consistent with the current definition of the term diesel fuel in RTC section 60022 and the proposed amendments to the definition of the term diesel fuel in Regulation 1598.1. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1598.1 or the proposed amendments to Regulation 1598.1.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1598.1 will not impose a mandate on local agencies or school districts, including a mandate that is

required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulation 1598.1 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1598.1 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1598.1 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

The Board has determined that the proposed amendments to Regulation 1598.1 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1598.1 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1598.1 will not affect the benefits of Regulation 1598.1 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1598.1 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Kevin B. Smith, Tax Counsel III, by telephone at (916) 323-3152, by e-mail at Kevin.Smith@boe.ca.gov, or by mail at State Board of Equalization, Attn: Kevin B. Smith, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on February 24, 2015, , or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1598.1 during the February 24-26, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1598.1. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 1598.1 illustrating the express terms of the proposed amendments. The Board has also prepared an

initial statement of reasons for the adoption of the proposed amendments to Regulation 1598.1, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

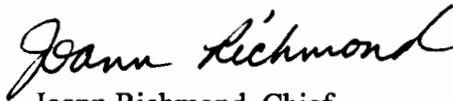
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1598.1 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1598.1, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION

BOARD APPROVED



At the February 24, 2015 Board Meeting


Joann Richmond, Chief
Board Proceedings Division

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Section 1598.1, *Diesel Fuel Prepayment Exemption***

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

Current Law

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (Rev. & Tax. Code (RTC), § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § 1700, subd. (a)(1).)

RTC section 6480.1 provides, in part, that at any time the diesel fuel tax is imposed or would be imposed on any removal, entry, or sale in this state of diesel fuel, the supplier shall collect prepayment of retail sales tax from the person to whom the diesel fuel is sold. For purposes of the imposition of the prepayment of sales tax on diesel fuel, RTC section 6480, subdivision (c), provides that the term "diesel fuel" is defined pursuant to the Diesel Fuel Tax Law (commencing with RTC section 60001). In addition, RTC section 6480.9 provides an exemption from the sales tax prepayment requirement on certain sales of diesel fuel for agricultural purposes, and requires a person purchasing diesel fuel that is exempt from the sales tax prepayment requirements to issue an exemption certificate to the seller in accordance with any instructions or regulations prescribed by the State Board of Equalization (Board).

The Board adopted California Code of Regulations, title 18, section (Regulation) 1598.1, *Diesel Fuel Prepayment Exemption*, in 2003. Regulation 1598.1 specifies the conditions under which the exemption provided in RTC section 6480.9 applies to the prepayment of sales tax on diesel fuel. Regulation 1598.1 also prescribes the exemption certificate required by RTC section 6480.9 and the appendix to Regulation 1598.1 contains an exemption certificate form, which may be used to claim the diesel fuel prepayment exemption.

In 2003, RTC section 60022, subdivisions (a) through (c),¹ expressly provided that:

(a) "Diesel fuel" means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and

¹ The provisions of RTC section 60022, as amended by section 2 of Statutes 2001, Second Extraordinary Session 2001-2002, chapter 8, were effective from October 3, 2001, until December 31, 2006.

commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

(b) "Diesel fuel" does not include kerosene.

(c) "Diesel fuel" does not include the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board.

Subdivision (a)(4) of Regulation 1598.1 refers to RTC section 6480, subdivision (c), and RTC section 60022, incorporates the definitions from RTC section 60022 (2003), for purposes of defining diesel fuel, and, expressly provides the following:

"Diesel fuel," for purposes of the imposition of the prepayment of sales tax, is defined in Revenue and Taxation Code section 6480(c) (by reference to Revenue and Taxation Code section 60022) and means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

Diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

Diesel fuel does not include the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board.

On January 1, 2007, RTC section 60022 was repealed and replaced by a new section 60022,² and the current provisions of RTC section 60022, subdivision (a), only provide that:

"Diesel fuel" means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle.

² The provisions of RTC section 60022, as added by section 3 of Statutes 2001, Second Extraordinary Session 2001-2002, chapter 8, and amended by section 17 of Statues 2003, chapter 605, became effect on January 1, 2007, and are still effective today.

However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

“Diesel fuel” does not include kerosene, gasoline, liquified petroleum gas, natural gas in liquid or gaseous form, or alcohol.

Therefore, to the extent that Regulation 1598.1, subdivision (a)(4), includes the language from RTC section 60022, subdivision (c), which was repealed on January 1, 2007, the definition of diesel fuel in Regulation 1598.1 is no longer consistent with the current law.

Furthermore, subdivision (b) of Regulation 1598.1 lists a number of requirements that must be satisfied in order for the exemption provided in RTC section 6480.9 to apply to the prepayment of sales tax on diesel fuel sold to a retailer. As relevant here, subdivision (b)(4) of the regulation requires that “[d]uring the calendar year immediately preceding any purchases of diesel fuel, [the retailer] sold diesel fuel to diesel fuel consumers in which the gross receipts from such sales exceeded 25 percent of that retailer’s total taxable sales.” The last paragraph of subdivision (b) provides guidance about how to calculate the percentage referred to in subdivision (b)(4), and the guidance refers to amounts entered on specific lines of sales and use tax returns. However, when a taxpayer files its return via the Board’s online services, specific line numbers are not included.

Proposed Amendments

Need for Consistency

The January 1, 2007, repeal of the provisions formerly in RTC section 60022, subdivision (c), created an issue (or problem within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)). This is because, as a result of the repeal of the provisions, the definition of diesel fuel in Regulation 1598.1 is no longer consistent with the definition of diesel fuel in the current provisions of RTC section 60022. Therefore, Board staff determined that it was necessary to amend Regulation 1598.1 so its definition of diesel fuel is based upon and consistent with the current definition of the term diesel fuel contained in section 60022 of the Diesel Fuel Tax Law, as provided in RTC section 6480, subdivision (c).

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff prepared draft amendments deleting the third paragraph from the definition of diesel fuel in subdivision (a)(4) of Regulation 1598.1. BTC staff subsequently prepared a discussion paper, and provided the discussion paper and its draft amendments to Regulation 1598.1 to the interested parties. On July 15, 2014, BTC staff conducted an interested parties meeting to discuss the draft amendments.

Since BTC staff did not receive any inquiries or written comments regarding its draft amendments during or subsequent to the July 15, 2014, interested parties meeting and staff had no changes to its recommendation to amend Regulation 1598.1, BTC staff did not prepare a second discussion paper and cancelled the second interested parties meeting that was previously

scheduled to discuss staff's draft amendments. Staff also notified interested parties that comments could be submitted up to September 25, 2014, for consideration in the preparation of the Formal Issue Paper regarding the draft amendments. However, staff did not receive any other comments.

November 19, 2014 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 14-009 and distributed it to the Board Members for consideration at the Board's November 19, 2014, BTC meeting. Formal Issue Paper 14-009 recommended that the Board approve and authorize publication of the amendments to Regulation 1598.1 (discussed above) to delete the third paragraph in Regulation 1598.1, subdivision (a)(4), so the regulation's definition of diesel fuel is consistent with the operative provisions of RTC section 60022. Formal Issue Paper 14-009 recommended that the Board revise the last paragraph in Regulation 1598.1, subdivision (b), so that it provides the same general guidance about how to calculate the percentage referred to in subdivision (b)(4) of the regulation, but without referring to amounts entered on specific lines of sales and use tax returns. Formal Issue Paper 14-009 also recommended that the Board replace the capital "A" with a lower case "a" at the beginning of the word "Article" in the appendix to Regulation 1598.1 to make the word consistent with the reference to "article" in subdivision (d)(1) of the regulation and consistent with the citation format prescribed in the California Style Manual.

During the November 19, 2014, meeting, the Board Members unanimously voted to propose the amendments to Regulation 1598.1 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1598.1 are reasonably necessary for the specific purpose of addressing the issue (or problem) created by the January 1, 2007, repeal of the statutory provisions formerly provided by RTC section 60022, subdivision (c), and ensuring that the regulation provides clear guidance to all taxpayers, including taxpayers who file returns via the Board's online services, about how to calculate the percentage referred to in subdivision (b)(4) of the regulation.

The Board also anticipates that the proposed amendments to Regulation 1598.1 will reduce confusion, promote fairness, and benefit sellers, retailers, Board staff, and the Board by providing a definition for the term diesel fuel that is consistent with the applicable statutory definition, and providing clear guidance about how to calculate the percentage referred to in subdivision (b)(4) of the regulation.

In addition, the Board has determined that the proposed amendments are not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to Regulation 1598.1 or the proposed amendments to Regulation 1598.1.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 14-009, the exhibits to the issue paper, and the comments made during the Board's discussion of the issue paper during its November 19, 2014, BTC meeting in deciding to propose the amendments to Regulation 1598.1 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1598.1 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1598.1 at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulation 1598.1 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The proposed amendments make the definition for the term diesel fuel in Regulation 1598.1 consistent with the definition of the term in section 60022 of the Diesel Fuel Tax Law, in accordance with RTC section 6840, subdivision (c), and provide the same general guidance about how to calculate the percentage referred to in subdivision (b)(4) of the regulation, but without referring to amounts entered on specific lines of sales and use tax returns. The proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Sales and Use Tax Law, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave, in the absence of the proposed regulatory action, or that would impact revenue. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and businesses. And, the Board has determined that the proposed amendments to Regulation 1598.1 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulation 1598.1 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulation 1598.1 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the

adoption of the proposed amendments to Regulation 1598.1 will not affect the benefits of Regulation 1598.1 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulation 1598.1 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1598.1 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598.1**

1598.1. Diesel Fuel Prepayment Exemption.

(a) Definitions.

(1) “Bulk deliveries” mean transfers of diesel fuel into storage tanks holding 500 gallons or more.

(2) “Cardlock, keylock, or other unattended mechanism” means an unattended, completely automated fueling station at which a purchaser obtains diesel fuel through use of a coded card or key and an access code. Charges for sales of diesel fuel to customers are usually consolidated at a central location and periodically invoiced to the purchaser.

(3) A “diesel fuel consumer” or “diesel fuel consumers” mean a person or persons that use diesel fuel in a manner that qualifies for the partial sales and use tax exemption set forth in Revenue and Taxation Code section 6357.1 and Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing.

(4) “Diesel fuel,” for purposes of the imposition of the prepayment of sales tax, is defined in Revenue and Taxation Code section 6480(c) (by reference to Revenue and Taxation Code section 60022) and means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

Diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

~~Diesel fuel does not include the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board.~~

(5) “Qualified retailer” means a person who meets the requirements of subdivisions (b)(1) through (b)(5).

(6) “Seller” means either the supplier or the wholesaler, as those terms are defined in Revenue and Taxation Code section 6480(c), that sells diesel fuel to a qualified retailer.

(7) “Total taxable sales” means the gross receipts from the sale of tangible personal property subject to tax, including sales of diesel fuel.

(b) Application of Tax. Commencing on and after October 9, 2002, a seller of diesel fuel is not required to collect the prepayment of sales tax on that percentage of diesel fuel specified in the

retailer's diesel fuel prepayment exemption certificate that is otherwise required by Revenue and Taxation Code section 6480.1, provided the diesel fuel is sold to a retailer who:

- (1) Will resell the diesel fuel in the ordinary course of business,
- (2) Issues a diesel fuel prepayment exemption certificate to the seller as set forth in subdivision (c),
- (3) Sells diesel fuel to a diesel fuel consumer,
- (4) During the calendar year immediately preceding any purchases of diesel fuel, sold diesel fuel to diesel fuel consumers in which the gross receipts from such sales exceeded 25 percent of that retailer's total taxable sales, and
- (5) Sold more than 50% of its diesel fuel through bulk deliveries or through a cardlock, keylock, or other unattended mechanism, or both.

For purposes of calculating the percentages set forth in subdivision (b)(4) above, the numerator shall be the sum total of amounts ~~entered on Form BOE 401GS line 10(e)(4) (Amount Ssubject to the partial state tax exemption for Ddiesel Ffuel Uused in Ffarming and Ffood Pprocessing Exemption)~~ for each return filed during the preceding calendar year and the denominator shall be the sum total of amounts ~~entered on line 14(a) (Transactions Ssubject to Ccounty Ttax)~~ for each return filed during the preceding calendar year.

(c) Prepayment Exemption Certificate.

(1) In General. A seller of diesel fuel who takes a diesel fuel prepayment exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified retailer, is relieved from the liability for the sales tax prepayment subject to the exemption under this regulation, or the duty of collecting the sales tax prepayment subject to exemption under this regulation. A diesel fuel prepayment exemption certificate will be considered timely if it is taken any time before the seller bills the qualified retailer for the diesel fuel, any time within the seller's normal billing or payment cycle, or any time at or prior to delivery of the diesel fuel to the qualified retailer. A diesel fuel prepayment exemption certificate which is not taken timely will not relieve the seller of the liability for the sales tax prepayment excluded by the exemption; however, the seller may present satisfactory evidence to the Board that the seller sold the diesel fuel to a qualified retailer. A diesel fuel prepayment exemption under this part shall not be allowed unless the seller claims the exemption on its sales and use tax return for the reporting period during which the transaction subject to the diesel fuel prepayment exemption occurred. The diesel fuel prepayment exemption certificate form set forth in the Appendix may be used to claim the diesel fuel prepayment exemption.

(2) Blanket Prepayment Exemption Certificate. In lieu of requiring a diesel fuel prepayment exemption certificate for each transaction, a qualified retailer may issue a blanket diesel fuel prepayment exemption certificate. The diesel fuel prepayment exemption certificate form set

forth in the Appendix may be used as a blanket diesel fuel prepayment exemption certificate. The diesel fuel prepayment exemption certificate in the Appendix may also be used as a specific diesel fuel prepayment exemption certificate if the qualified retailer provides the purchase order or sales invoice number and a precise description of the property being purchased. A blanket diesel fuel prepayment exemption certificate is only valid during the calendar year in which it is provided to the seller.

(3) Form of Prepayment Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the qualified retailer to the seller will be regarded as a diesel fuel prepayment exemption certificate with respect to the sale of diesel fuel if it contains all of the following essential elements:

(A) The signature of the qualified retailer, qualified retailer's employee, or authorized representative of the qualified retailer.

(B) The name, address and telephone number of the qualified retailer.

(C) The number of the seller's permit held by the qualified retailer.

(D) A statement setting forth the requirements of subdivisions (b)(1) through (b)(5).

(E) A statement of what percentage of total diesel fuel purchases will be resold to diesel fuel consumers.

(F) Date of execution of document.

(4) Retention and Availability of Prepayment Exemption Certificates. A seller must retain each diesel fuel prepayment exemption certificate received from a qualified retailer who purchases diesel fuel for resale to diesel fuel consumers for a period of not less than four years from the date on which the qualified retailer claims an exemption for sales tax prepayment based on the diesel fuel prepayment exemption certificate. The Board may require, within 45 days of the Board's request, sellers to provide the Board access to any and all diesel fuel prepayment exemption certificates, or copies thereof, accepted for the purposes of supporting the diesel fuel prepayment exemption.

(5) Good Faith. A seller will be presumed to have taken a diesel fuel prepayment exemption certificate in good faith in the absence of evidence to the contrary. However, a diesel fuel prepayment exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel will not be sold to a retailer who meets the requirements of subdivisions (b)(1) through (b)(5), will not otherwise be used by diesel fuel consumers, or that the percentage listed on the exemption certificate for sales tax prepayment is inaccurate. A blanket diesel fuel prepayment exemption certificate utilized for sales occurring in a subsequent calendar year in which the blanket diesel fuel prepayment exemption certificate was initially provided to the seller is not accepted in good faith for sales occurring in that subsequent calendar year.

(d) Retailer's Liability for the Payment of Tax.

(1) A qualified retailer providing a diesel fuel prepayment exemption certificate pursuant to subdivision (c) is liable for the taxes imposed by the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, and the tax that is imposed under Revenue and Taxation Code section 6051.2 or 6201.2, or under section 35 of article XIII of the California Constitution on the sale of diesel fuel to diesel fuel consumers.

(2) A qualified retailer providing a diesel fuel prepayment exemption certificate pursuant to subdivision (c) is liable for sales tax on any portion of the gross receipts derived from the sale of diesel fuel that is not sold to diesel fuel consumers.

(3) A qualified retailer that is liable for the tax under the provisions of subdivisions (d)(1) or (d)(2) shall report and pay that tax with the sales and use tax return filed for the reporting period during which the qualified retailer sells the diesel fuel.

(e) Improper Use of Prepayment Exemption Certificate. Any person who gives a diesel fuel prepayment exemption certificate pursuant to this regulation for the purpose of evading the prepayment of sales tax on sales of diesel fuel that he or she knows at the time of sale do not qualify for the diesel fuel prepayment exemption is guilty of a misdemeanor punishable as provided in Revenue and Taxation Code section 7153. In addition, such person shall be liable to the state for a penalty of one thousand dollars (\$1,000) for each diesel fuel prepayment exemption certificate issued for personal gain or to evade the prepayment of sales tax.

(f) Records. Adequate and complete records must be maintained by the seller and qualified retailer as evidence that the diesel fuel qualifies for the diesel fuel prepayment exemption.

(g) Operative Date. This regulation is operative as of October 9, 2002.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6357.1, 6480, 6480.1 and 6480.3, Revenue and Taxation Code.

**DIESEL FUEL PREPAYMENT EXEMPTION CERTIFICATE
SECTION 6480.3**

Please Note: This is an exemption only from the prepayment of sales tax required by Revenue and Taxation Code (RTC) section 6480.1. This exemption applies only to the prepayment of the sales tax on sales of diesel fuel that you purchase for resale to persons qualifying for the partial exemption from sales and use tax on the sale or use of diesel fuel pursuant to RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. You are not relieved of your obligation to report and pay sales tax on the non-exempt portion of your partially exempt diesel fuel sales or on other retail sales.

DIESEL FUEL SELLER'S NAME

DIESEL FUEL SELLER'S ADDRESS (Street, City, State, Zip Code)

I, the undersigned diesel fuel retailer, hereby certify that, of the diesel fuel purchased for resale from the above diesel fuel seller, I reasonably expect that _____ % will be sold to consumers engaged in farming activities or food processing who qualify for the diesel fuel partial exemption pursuant to RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. I further certify that:

1. During the calendar year immediately preceding my purchases of diesel fuel, I sold diesel fuel to consumers that qualified for the RTC section 6357.1 and Regulation 1533.2 partial sales and use tax exemption and that these sales were in excess of 25% of my total taxable sales; and,
2. More than 50% of my diesel fuel sales occur through deliveries into storage tanks of 500 gallons or more, or through a cardlock, keylock, or other unattended mechanism, or both.

By signing below, I acknowledge I am liable for the taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law or imposed by the Transactions and Use Tax Law, and for the taxes imposed under RTC section 6051.2 or 6201.2, or under section 35 of Article XIII of the California Constitution. I also acknowledge I am liable for all sales taxes on any portion of the gross receipts derived from the sale of diesel fuel not sold in a manner that qualifies for the partial exemption under RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. I further acknowledge that I am required to report and pay these taxes with the return for the reporting period in which I sell the diesel fuel.

I understand that any person who gives this diesel fuel prepayment exemption certificate for the purpose of evading the prepayment of sales tax on sales of diesel fuel that he or she knows at the time of purchase do not qualify for the diesel fuel prepayment exemption is guilty of a misdemeanor punishable as provided in RTC section 7153. I also understand that such person shall be liable to the state for a penalty of one thousand dollars (\$1,000) for each diesel fuel prepayment exemption certificate issued for personal gain or to evade the prepayment or payment of taxes.

Important: This diesel fuel prepayment exemption certificate constitutes a blanket diesel fuel prepayment exemption certificate for future purchases and is only valid during the calendar year in which it is provided to the diesel fuel seller unless the diesel fuel prepayment exemption certificate is otherwise specified as a specific diesel fuel prepayment exemption certificate. The diesel fuel seller shall require a retailer to provide a new blanket diesel fuel prepayment exemption certificate for any future purchases of diesel fuel in each subsequent calendar year. If this is a specific diesel fuel prepayment exemption certificate, provide the purchase order or sales invoice number in the following space:

RETAILER'S NAME OR COMPANY NAME	DATE
SIGNATURE (signature of the retailer, retailer's employee, or authorized representative of the retailer)	TELEPHONE NUMBER
TITLE	PERMIT NUMBER
ADDRESS (STREET, CITY, STATE, ZIP CODE)	CUSTOMER ACCOUNT NUMBER

Appendix

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1598.1

Title: *Diesel Fuel Prepayment Exemption*

Preparation: Kevin Smith

Legal Contact: Kevin Smith

The State Board of Equalization proposes to adopt amendments to revise the definition of diesel fuel in Sales and Use Tax Regulation 1598.1, *Diesel Fuel Prepayment Exemption*, to be consistent with the definition of diesel fuel in the Diesel Fuel Tax Law.

History of Proposed Regulation:

February 24-26, 2015	Public Hearing
January 9, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
December 24, 2014	Notice to OAL
November 19, 2014	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA