

Memorandum

To: Honorable Jerome E. Horton, Chairman
Senator George Runner, Vice Chair
Honorable Fiona Ma, CPA, Second District
Honorable Diane L. Harkey, Fourth District
Honorable Betty T. Yee, State Controller

Date: June 29, 2015

From: 
Randy Ferris
Chief Counsel

Subject : **Board Meeting, July 28-29, 2015**
Chief Counsel Report - Item M1
Delegation of Authority to Deputy Director, Sales and Use Tax Department – Relief from Liability – Tax, Interest, and Penalties

Recommendation

Staff recommends that the Board confirm and update the delegation of authority to the Deputy Director of the Sales and Use Tax Department or his/her functional successor, and his/her designee, to relieve a taxpayer of any tax, including any penalties and interest added thereto, as provided under Revenue and Taxation Code (RTC) section 6596 and California Code of Regulations, title 18, section (Regulation) 1705, *Relief from Liability*.

The proposed updated delegation of authority is attached.

Background

RTC section 6596, subdivision (a) provides that the Board has the authority to relieve a taxpayer of sales and use taxes, and any penalty or interest added thereto, if the Board finds that the person's failure to make a timely return or payment is because of the person's reasonable reliance on written advice from the Board. RTC section 6596, subdivision (d) provides that only the person making the written request is entitled to rely on the Board's written advice to that person.

RTC section 6596, subdivision (b) provides that a person's failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that all of the following conditions have been satisfied:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to sales and use tax, and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing, and stated whether or not the described activity or transaction is subject to tax, or stated the conditions under which the activity or transaction is subject to tax;

- In reasonable reliance on the Board’s written advice, the person did not charge sales tax reimbursement or collect use tax from his or her customers or pay a use tax on the described activity or transaction; and
- The liability for taxes due to the failure to make a timely return or payment applied to a particular activity or transaction that occurred before the Board rescinded or modified the written advice or the Board’s earlier written advice ceased to be valid due to a change in the law.

Regulation 1705 implements, interprets, and makes specific the provisions of RTC section 6596. In 2014, subdivisions (a) and (c) of Regulation 1705 were amended to clarify that the presentation of a person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report “by the audited person and any person with shared accounting and common ownership with the audited person.” Additions were also made to subdivision (c) to clearly prescribe the circumstances under which a person has “shared accounting and common ownership with an audited person” and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person’s audit report for RTC section 6596 relief.

The proposed delegation was therefore updated to account for the amendments that were recently made to Regulation 1705, and provides that the Deputy Director of the Sales and Use Tax Department or his/her functional successor, and his/her designee, may relieve a taxpayer of any tax, including any penalties and interest added thereto, imposed pursuant to the Sales and Use Tax Law, as provided by the provisions of RTC section 6596 and Regulation 1705.

Therefore, in order to account for the amendments made to Regulation 1705 and to more efficiently facilitate administration of the Board’s duties with respect to relieving a taxpayer of any tax, including any penalties and interest added thereto, we are seeking the updated delegation of authority to the Deputy Director of the Sales and Use Tax Department or his/her functional successor, and his/her designee.

Recommended by:


 Randy Ferris
 Chief Counsel

Approved by:


 Cynthia Bridges
 Executive Director

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the July 28, 2015 Board Meeting


 Joann Richmond, Chief
 Board Proceedings Division

RMF:KDW:hp

Attachment: Delegation of Authority – Relief from Liability – Tax, Interest, and Penalties

cc: Ms. Cynthia Bridges MIC: 73
 Ms. Amy Kelly MIC: 82
 Ms. Deborah Cooke Jackson MIC: 82
 Ms. Kimberly D. Willy MIC: 82

DRAFT

DELEGATION OF AUTHORITY – RELIEF FROM LIABILITY – TAX, INTEREST, AND PENALTIES

The Board hereby confirms its delegation of authority to the Deputy Director of the Sales and Use Tax Department or his/her functional successor, and his/her designee, to relieve a taxpayer of any tax, including any penalties and interest added thereto, imposed pursuant to the Sales and Use Tax Law, as provided under Revenue and Taxation Code section 6596 and California Code of Regulations, title 18, section 1705.

In any other cases, claims of relief based on reasonable reliance on written advice from the Board must be ruled upon by the Board Members.