

# Memorandum

**To** : Ms. Cynthia Bridges  
Executive Director (MIC 73)

**Date:** August 27, 2015

**From** : *RMF*  
Randy Ferris, Chief Counsel  
Legal Department (MIC 83)

**Subject** : **Board Meeting, September 16-17, 2015**  
**Item J - Chief Counsel's Rulemaking Calendar**  
**Regulation 1584, *Membership Fees***

We request your approval to place proposed changes to Sales and Use Tax Regulation 1584, *Membership Fees*, on the Chief Counsel's Rulemaking Calendar for the September 16-17, 2015, Board meeting. The proposed changes update the definition of the term "nominal amount" in accordance with the regulation's existing provisions.

Regulation 1584, subdivision (a)(1)(A) provides that "[m]embership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when . . . the retailer sells its products only to members and the membership fee exceeds a nominal amount." Subdivision (b) defines the term "nominal amount."

When Regulation 1584 was originally adopted in 1996, subdivision (b) defined the term "nominal amount" to mean "an amount totaling \$40 or less per year." However, subdivision (b) also provided that "during September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount." Subsequently, due to increases in the CCPI, the Board changed the definition for the term "nominal amount" in 2000, 2005 and 2010 to provide that a nominal amount means:

- an "amount totaling \$45 or less," effective January 1, 2001,
- an "amount totaling \$50 or less," effective January 1, 2006, and
- an "amount totaling \$55 or less," effective January 1, 2011, respectively.

The CCPI changed from 227.1 in June 2010 to 250.4 in June 2015. Board staff has determined that this change resulted in a 10.26 percent increase in the CCPI,<sup>1</sup> and that, as a result of the increase of more than 5 percent, the definition for "nominal amount" in

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<sup>1</sup> Note that 250.4 CCPI minus 227.1 CCPI equals 23.3 CCPI and 23.3 CCPI is 10.26 percent of 227.1 CCPI.

Regulation 1584 needs to be changed. Furthermore, Board staff has determined that a 10.26 percent increase in the CCPI requires a \$5 increase in the current "\$55 or less" nominal amount so that nominal amount means an "amount totaling \$60 or less per year," effective January 1, 2016.<sup>2</sup>

Staff will request the Board's authorization to make the changes to Sales and Use Tax Regulation 1584 under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The Rule 100 changes revise existing subdivision (b)(1) to include the new nominal amount of "\$60 or less," effective January 1, 2016, and clarify that the current nominal amount of "\$55 or less" is effective for the period January 1, 2011, through December 31, 2015. The Rule 100 changes also update the dates in the last two sentences in subdivision (b)(2) in order to provide guidance to the public and Board staff regarding the January 1, 2021, and January 1, 2026 "nominal amount" adjustment computations. The changes are appropriate for processing under Rule 100 because they update the regulation in accordance with its existing provisions and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached is a strikeout and underlined version of the regulation illustrating the proposed revisions.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-323-3091.

Recommendation by:

Approved:

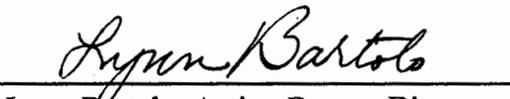
  
Randy Ferris, Chief Counsel

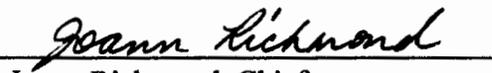
  
Cynthia Bridges, Executive Director

Approved:

BOARD APPROVED

At the 9-16-15 Board Meeting

  
Lynn Bartolo, Acting Deputy Director  
Sales and Use Tax Department

  
Joann Richmond, Chief  
Board Proceedings Division

<sup>2</sup> Note that \$55 multiplied by 10.26 percent equals \$5.64, and that \$5.64 must be rounded down to \$5 per the formula in Regulation 1584, subdivision (b).

RF:kr

**Attachments**

cc: Ms. Lynn Bartolo (MIC 43)  
Ms. Joann Richmond (MIC 80)  
Mr. Robert Tucker (MIC 82)  
Ms. Susanne Buehler (MIC 92)  
Mr. Bradley M. Heller (MIC 82)  
Ms. Kirsten Stark (MIC 50)  
Ms. Kim Rios (MIC 50)

## Proposed Revisions to Regulation 1584

### Regulation 1584. MEMBERSHIP FEES.

#### (a) APPLICATION OF TAX

(1) IN GENERAL. Membership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when either

(A) the retailer sells its products only to members and the membership fee exceeds a nominal amount,

or

(B) regardless of the amount of the membership fee, the retailer sells its products for a lower price to a person who has paid the membership fee than to a person who has not paid the fee.

(2) The membership fees described in subdivision (a)(1)(A) or (a)(1)(B) are part of the gross receipts of the person selling tangible personal property to a member. It is immaterial that the person who sold the membership is not the person who sells the tangible personal property to a member. Any sale of a membership described in subdivision (a)(1)(A) or (a)(1)(B) is regarded as related to the retail sale by the retailer selling tangible personal property to a member, not by the person selling the membership, measured by the amounts received by the person selling the membership.

(3) INCIDENTAL SALES. Charges for memberships not related to anticipated retail transactions are not subject to tax. For example, when a country club or similar organization charges fees (dues) to members and provides substantial service benefits, e.g., the use of golfing, tennis and swimming facilities, the membership fees are not related to sales even though the organization may establish minimum meal and drink purchase requirements for its members.

(4) CONSUMER COOPERATIVES. Initial or periodic membership fees received by consumer cooperatives, as defined in sections 6011.1 and 6012.1 of the Revenue and Taxation Code, are not subject to tax.

#### (b) NOMINAL AMOUNT.

(1) For purposes of this regulation, beginning January 1, ~~2016~~<sup>2014</sup>, the term "nominal amount" means an amount totaling ~~\$60~~<sup>\$55</sup> or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2011 through December 31, 2015, the term "nominal amount" for purposes of this regulation means an amount totaling \$55 or less per year. For periods from January 1, 2006 through December 31, 2010, the term "nominal amount" for purposes of this regulation means an amount totaling \$50 or less per year. For periods from January 1, 2001 through December 31, 2005, the term "nominal amount" for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term "nominal amount" for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2021~~<sup>2016</sup> adjustment computation, the CCPI index on June 30, ~~2020~~<sup>2015</sup>, will be compared with the CCPI index on June 30, ~~2015~~<sup>2010</sup>. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2025~~<sup>2020</sup> with the CCPI index on June 30, ~~2015~~<sup>2010</sup>.

*Note:* Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012, and 6012.1 Revenue and Taxation Code.

**Regulation 1584  
Nominal Amount Calculation**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
	(1)	(2)	(3)	(4)	(5)
<b>Year</b>	<b>CCPI Index</b>	<b>CCPI % Change</b>	<b>Current Threshold</b>	<b>Adjusted Threshold</b>	<b>Adjusted Threshold (rounded to nearest \$5)</b>
1995	154.2			40.00	\$40.00
2000	174.0	12.840%	40.00	45.14	\$45.00
2005	201.3	15.690%	45.00	52.06	\$50.00
2010	227.1	12.817%	50.00	56.41	\$55.00
2015	250.4	10.260%	55.00	60.64	\$60.00
2020			60.00	60.00	
2025			0.00	0.00	
2030			0.00	0.00	
2035			0.00	0.00	
2040			0.00	0.00	
2045			0.00	0.00	
2050			0.00	0.00	
2055			0.00	0.00	
2060			0.00	0.00	
2065			0.00	0.00	
2070			0.00	0.00	

(1) The factor used is the California Consumer Price Index as determined by the FTB pursuant to RTC section 17041. The CCPI is available at the Department of Industrial Relations website at [www.dir.ca.gov](http://www.dir.ca.gov).

(2)  $\frac{\text{Current Year (A)} - \text{Prior Year (A)}}{\text{Prior Year (A)}}$

(3) Prior Year (E)  
The base nominal amount in 1995 was \$40.

(4)  $((B+1) * C)$

(5) Adjusted Threshold (D) rounded to nearest \$5.

**Notes**

\*\* In September every five years, beginning in 2000, the Sales and Use Tax Department Regulations Coordinator computes the nominal amount adjustment for Regulation 1584.