



STATE BOARD OF EQUALIZATION

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Interim Executive Director

September 23, 2011

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

**Proposed to Amendments to California Code of Regulations, Title 18, Section 1807,
Petitions for Reallocation of Local Tax, and
**Section 1828, *Petitions for Distribution or Redistribution of*
*Transactions and Use Tax*****

NOTICE IS HEREBY GIVEN

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, sections (Regulations) 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. Regulation 1807 prescribes the procedures the Board follows when reviewing a request or inquiry (petition) from a jurisdiction, other than a submission under RTC section 6066.3, for investigation of suspected misallocation of local sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.). Regulation 1828 prescribes similar procedures the Board follows when reviewing a district's petition for investigation of suspected improper distribution or nondistribution of district transactions (sales) and use tax under the Transactions and Use Tax Law (RTC § 7251 et seq.). The proposed amendments to Regulations 1807 and 1828 improve the review processes by: (1) allowing a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allowing a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allowing a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) requiring the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department

within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) requiring a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorizing appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically granting opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. The proposed amendments to Regulations 1807 and 1828 also clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates. The amendments are not retroactive.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on November 15-17, 2011. 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 November 15, 16, or 17, 2011. 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 Regulations 1807 and 1828.

AUTHORITY

Regulations 1807 and 1828: RTC section 7051.

REFERENCE

Regulation 1807: RTC sections 7209 and 7223.

Regulation 1828: RTC section 7270.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7201), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited

against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC § 7209) and Regulation 1807 prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law. The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC § 7269) and Regulation 1828 prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts'

petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; and (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in

2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Kelhs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website. Therefore, at the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011. The objective of the proposed amendments is to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 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 STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1807 and 1828 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 Regulations 1807 and 1828 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 ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulation 1807 and 1828 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.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 1807 and 1828 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 this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, 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 9:30 a.m. on November 15, 2011, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 1807 and 1828 during the November 15-17, 2011, 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 Regulations 1807 and 1828. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS

The Board has prepared underlined and strikeout versions of the text of Regulations 1807 and 1828 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. 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 to Regulations 1807 and 1828, and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

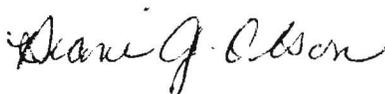
**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE
SECTION 11346.8**

The Board may adopt the proposed amendments to Regulations 1807 and 1828 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 to the proposed amendments to Regulation 1807 or Regulation 1828, the Board will make the full text of the resulting 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 amendments 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 Regulations 1807 and 1828, 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,



Diane G. Olson, Chief
Board Proceedings Division

DGO:reb

Initial Statement of Reasons

Adoption of Proposed Amendments to California Code of Regulations, Title 18, Section 1807, *Petitions for Reallocation of Local Tax, and* **Section 1828, *Petitions for Distribution or Redistribution of* *Transactions and Use Tax***

SPECIFIC PURPOSE AND NECESSITY

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code (RTC) § 7200 et seq.), and all of California's counties have adopted ordinances under the terms of this law. (RTC § 7201.) Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the State Board of Equalization (Board) to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC § 7209) and California Code of Regulations, title 18, section (Regulation) 1807, *Petitions for Reallocation of Local Tax*, prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law (RTC §7251 et seq.). The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC §7269) and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Klehs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed

his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website.

At the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board agreed with Board staff, Mr. Klehs, the HdL Companies, and MuniServices, LLC that the amendments to Regulations 1807 and 1828 set forth in staff's revised recommendation improved the review processes prescribed by both regulations and that the amendments were reasonably necessary for the specific purpose of improving the Board's administration of local sales and use taxes and district transactions and use taxes. Therefore, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 11-004, the Informal Issue Paper dated August 10, 2011, the exhibits to the formal issue paper and informal issue paper, and comments made during the Board's discussion of the formal issue paper and informal issue paper during its April 26, 2011, and August 23, 2011, Business Taxes Committee meetings, respectively, in deciding to propose the amendments to Regulations 1807 and 1828 described above.

ALTERNATIVES CONSIDERED

The Board considered four alternatives to the proposed amendments to Regulations 1807 and 1828 during its April 26, 2011, Business Taxes Committee meeting, which are described in detail in Formal Issue Paper 11-004. Alternative 1 was recommended by Board staff, alternative 2 was recommended by Mr. Klehs and supported by the HdL Companies, and alternatives 3 and 4 were recommended by MuniServices, LLC.

All four alternatives recommended that Regulations 1807 and 1828 be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written

objection to a notification of misallocation; (2) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (3) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (4) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Therefore, all of these amendments were included in staff's revised recommendation in the Informal Issue Paper dated August 10, 2011, and the Board voted to propose these amendments to Regulations 1807 and 1828 at the conclusion of its August 23, 2011, Business Taxes Committee meeting.

Alternative 1 recommended that the Board amend Regulations 1807 and 1828 to allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 90 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within six months after receiving a timely written object to its original decision. Alternatives 2 recommend that the Board amend Regulations 1807 and 1828 to require the Allocation Group to consider an objection to its original decision on a petition and issue a supplemental decision on the petition within 90 days. Alternatives 3 and 4 recommended that the Board amend the regulations to require that the Allocation Group complete any supplemental investigation within 90 days after the Allocation Group receives an objection to its original decision on a petition and then meet and confer with the parties. Alternatives 3 and 4 also recommended that the amendments to both regulations allow a jurisdiction or district to request, any time after the parties meet and confer, that the Allocation Group issue its supplemental decision on a petition within 30 days after receiving such request and based upon the information in the Allocation Group's possession. The similar procedures embodied in the four alternatives regarding the issuance of supplemental decisions were combined into staff's revised recommendation in the Informal Issue Paper dated August 10, 2011, that both regulations be amended to allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written object to its original decision. The interested parties subsequently concurred with staff's revised recommendation, except that MuniServices, LLC, recommend that staff change 60 days to 30 days. The Board voted to propose the amendments to Regulations 1807 and 1828 set forth in staff's revised recommendation because, in some cases, the Allocation Group does need 60 days to prepare its supplemental decisions.

Alternative 1 also recommended that the Board amend the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to clarify that the 2002 versions of the regulations were repealed and new versions of the regulations were adopted in 2008, clarify the effect of the adoption of the 2008 regulations on petitions

filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the regulations apply to procedures occurring after their effective dates and are not retroactive. Alternative 3 recommended that the Board adopt Regulations 1807.1 and 1828.1 containing the provisions of Regulations 1807 and 1828 as recommended to be amended in alternative 3, and amend Regulations 1807 and 1828 so that they cease to be operative when Regulations 1807.1 and 1828.1 become operative in order to make it clear that the provisions of new Regulations 1807.1 and 1828.1 are not retroactive. Alternative 4 simply recommended amending Regulations 1807 and 1828 to provide that the 2011 amendments have no retroactive effect. In its revised recommendation in the Informal Issue Paper dated August 10, 2011, Board staff continued to recommend that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be clarified as originally recommended by staff in alternative 1. However, MuniServices, LLC, recommend that the transition rules be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. The Board voted to propose to amend the transition rules in the manner recommended by staff because the Board agreed that staff's recommended amendments were consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations, and the Board determined that staff's recommended amendments clarified the regulations' existing transition rules without creating unnecessary confusion.

Alternative 2 also recommended that the Board amend Regulations 1807 and 1828 to: (1) limit the time the Allocation Group has to prepare a second supplement decision after it receives an objection to its original supplemental decision; (2) require the Appeals Division to schedule an appeals conference within six months after receiving a petition file from the Allocation Group, and require the Appeals Division to schedule an appeals conference within 90 days after the Board receives an objection to a second supplemental decision; (3) reduce the additional time the Board's Chief Counsel can grant the Appeals Division to prepare its Decision and Recommendation (D&R) regarding a petition to 30 days; (4) eliminate the procedures for the parties to a petition to request that the Appeals Division reconsider its D&R and issue a Supplemental D&R; and (5) require the Board to issue a notice of hearing within 90 days after a party to a petition files a timely request for a Board hearing. The Board did not vote on whether to propose any of these amendments because they were no longer being recommended by Mr. Klehs or the HdL Companies at the time of the Board's August 23, 2011, Business Taxes Committee meeting.

Alternatives 3 and 4 also recommended that the Board amend Regulations 1807 and 1828 to: (1) impose a 270-day limit on the Allocation Group's initial investigation of a petition, require the Allocation Group to meet and confer with the petitioner regarding the status of its investigation if it has not issued a decision on the petition within that period, and allow the petitioner to request that the Allocation Group issue its decision within 30 days after it has met and conferred with the petitioner without regard to the status of the investigation; (2) prohibit an appeals conference holder from accepting post-conference submissions outside of the 30-day periods provided in the regulation, except upon the agreement of all the parties to a petition; and (3) require a party to a petition to provide a justification as to why that party is presenting new evidence to the Board prior to a Board

hearing that was not previously provided during the Appeals Conference process, and require the Board to rule on the admissibility of the new evidence based upon such justification, at least 75 days prior to the Board hearing. The Board did not vote on whether to propose any of these amendments because they were no longer being recommended by MuniServices, LLC, at the time of the Board's August 23, 2011, Business Taxes Committee meeting.

No reasonable alternative to the proposed amendments to Regulations 1807 and 1828 has been brought to the Board's attention that would be as effective in carrying out the purposes for which the amendments are proposed and that would lessen any adverse impact on small business, if any, from the proposed regulatory action and the Board has not rejected any such alternative.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant adverse economic impact on business, including small business.

The proposed regulation may affect small business.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1807,
*Petitions for Reallocation of Local Tax***

Regulation 1807. Petitions for Reallocation of Local Tax.

(a) Definitions.

(1) Local Tax. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) Jurisdiction. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) Petition. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the

Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected Jurisdiction. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) Notified Jurisdiction. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) Review by Allocation Group.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the

Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(89) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(910) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the

Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be

accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference, ~~or 30 days with sufficient justification~~, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) Limitation Period for Redistributions. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Application to Section 6066.3 Inquiries.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~¶~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) ~~All such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 7209 and 7223, Revenue and Taxation Code.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1828,
*Petitions for Distribution or Redistribution of Transactions and Use Tax***

Regulation 1828. Petitions for Distribution or Redistribution of Transactions and Use Tax.

(a) Definitions.

(1) District Tax. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) District. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) Petition. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of

extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected District. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.

(7) Notified District. "Notified district" is a district that has been notified as a substantially affected district.

(b) Review by Allocation Group.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will

be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its

investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(89) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(910) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the

Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 15~~30~~ days after the appeals conference, ~~or 30 days with sufficient justification~~, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the

requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) Limitation Period for Redistributions.

For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~¶~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date it becomes effective under Section 11343.4 of the Government Code (thirty days after it ~~has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) ~~All such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 7270, Revenue and Taxation Code.

Regulation History

Type of Regulation: Sales and Use Tax

Regulations: 1807 and 1828

Title: 1807, *Petitions for Reallocation of Local Tax*,
and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Preparation: Brad Heller

Legal Contact: Brad Heller

Board proposes to amend Regulation 1807, *Petitions for Reallocation of Local Tax*, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, to clarify the Board's review of local sales and use tax and district transactions and use tax petitions.

History of Proposed Regulation:

November 15-17, 2011	Public Hearing
September 23, 2011	OAL publication date; 45-day public comment period begins; Interested Parties mailing
September 13, 2011	Notice to OAL
August 23, 2011	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA