



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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State Controller

CYNTHIA BRIDGES  
Executive Director

November 8, 2013

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the November 19, 2013 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1699, *Permits*.

Action 1 on the Agenda concerns proposed amendments to Regulation 1699 addressing the Board's authority to issue and revoke new seller's permits of persons who have outstanding final liability. Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m.** on **November 19, 2013** in Room 121 at the address shown above.

Sincerely,

Jeffrey L. McGuire, Deputy Director  
Sales and Use Tax Department

JLM: map

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District  
Honorable Michelle Steel, Vice Chair, Third District  
Honorable Betty T. Yee, Member, First District (MIC 71)  
Senator George Runner (Ret.), Member, Second District (via email)  
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Mr. David Hunter, Board Member's Office, Fourth District  
Mr. Neil Shah, Board Member's Office, Third District  
Mr. Tim Treichelt, Board Member's Office, Third District  
Mr. Alan LoFaso, Board Member's Office, First District  
Ms. Mengjun He, Board Member's Office, First District  
Mr. Sean Wallentine, Board Member's Office, Second District  
Mr. James Kuhl, Board Member's Office, Second District  
Mr. Lee Williams, Board Member's Office, Second District  
Mr. Alan Giorgi, Board Member's Office, Second District  
Ms. Lynne Kinst, Board Member's Office, Second District  
Ms. Natasha Ralston Ratcliff, State Controller's Office  
Ms. Cynthia Bridges (MIC 73)  
Mr. Randy Ferris (MIC 83)  
Mr. Robert Tucker (MIC 82)  
Mr. Bradley Heller (MIC 82)  
Ms. Erin Dendorfer (MIC 82)  
Mr. Lawrence Mendel (MIC 82)  
Ms. Susanne Buehler (MIC 92)  
Mr. Bradley Miller (MIC 92)  
Ms. Kirsten Stark (MIC 50)  
Mr. Clifford Oakes (MIC 50)  
Mr. Michael Patno (MIC 50)  
Mr. Robert Wilke (MIC 50)



**AGENDA — November 19, 2013 Business Taxes Committee Meeting**  
**Proposed Amendments to Regulation 1699, *Permits***  
**Issuance and Revocation of Seller’s Permits Involving Persons with Outstanding Final Liabilities**

<p><b>Action 1 – Staff Recommendation</b></p>	<p><i>(The proposed new subdivision and lettering of subsequent subdivisions due to changes in Regulation 1699 have been provided. Other subdivisions of the regulation and the Appendix are not being provided.)</i></p> <p><b>Regulation 1699, <i>Permits</i>.</b></p> <p>Reference: Sections 6066, 6067, 6070, <u>6070.5</u>, 6071.1, 6072, 6073, 6075 and 6225, Revenue and Taxation Code.</p> <p><b><u>(g) NON-ISSUANCE OR REVOCATION OF A SELLER’S PERMIT.</u></b></p> <p><u>(1) The Board may refuse to issue a seller’s permit to any person submitting an application for a seller’s permit if the person has an outstanding final liability with the Board for any amount under the Sales and Use Tax Law. The Board may also refuse to issue a seller’s permit if the person applying for it is not a natural person and is being controlled by a person with an outstanding final liability for any amount under the Sales and Use Tax Law.</u></p> <p><u>(2) Natural Person - A “natural person” is a living human.</u></p> <p><u>(3) Control and Controlling - For the purposes of this section and as defined in Section 22971 of the Business and Professions Code, the Board defines the words “control” and "controlling" to mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person. Evidence that a person controls or is controlling another person may include, but is not limited to, the ownership of voting securities, by contract, other than a commercial contract for goods or nonmanagement services, or as otherwise provided below; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of that person. It shall be a rebuttable presumption that a person has the power to control another person if any of the following apply:</u></p> <p style="margin-left: 40px;"><u>(A) A person holds 25 percent or more of any class of the voting securities issued by a person; or</u></p> <p style="margin-left: 40px;"><u>(B) A person is a general partner in a partnership, a managing member of a limited liability company, or president or director of a closely held corporation; or</u></p> <p style="margin-left: 40px;"><u>(C) A person with an outstanding final liability as described in paragraph (g)(1) transfers the</u></p>
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**AGENDA — November 19, 2013 Business Taxes Committee Meeting**  
**Proposed Amendments to Regulation 1699, *Permits***  
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	<p><u>business to a non-natural person in a sale that was not at arm's length. A sale is presumed to be not at arm's length if it is between and among relatives (by blood or marriage, which relationships include, but are not limited to, spouses, parents, children and siblings). A transfer is among relatives if the person with the outstanding final liability is either a natural person who is a relative of the person or persons controlling the non-natural person acquiring the business; or is a non-natural person controlled by a relative or relatives of the person or persons controlling the non-natural person acquiring the business.</u></p> <p><u>(4) A final liability will not be deemed to be outstanding for the purposes of this part if the person with the outstanding liability as described in paragraph (g)(1) has entered into a payment plan pursuant to Revenue and Taxation Code section 6832 and remains in full compliance with it.</u></p> <p style="padding-left: 40px;"><u>(A) If the person submitting an application for a seller's permit has entered into a payment plan as provided in paragraph (g)(4) and fails to comply with the terms of the payment plan, the Board may seek revocation of the seller's permit obtained by the person pursuant to this section.</u></p> <p><u>(5) The Board shall consider offers in compromise when determining whether to issue a seller's permit. If a seller's permit is conditioned on an offer in compromise being entered into, then a final liability will not be deemed outstanding for the purposes of this part, if the offer in compromise has been accepted by the Board and the person has paid the amount in full or remains in full compliance with the compromise plan.</u></p> <p style="padding-left: 40px;"><u>(A) If the person submitting an application for a seller's permit has entered into an offer in compromise as provided in paragraph (g)(5) and fails to comply with the terms of the offer in compromise, the Board may seek revocation of the seller's permit obtained by the person pursuant to this section.</u></p> <p><u>(6) Whenever any person is denied a permit pursuant to this section, the Board shall give the person written notice of the denial. Any person denied a permit pursuant to this section may make a request for reconsideration by the Board, if submitted in writing within 30 days of the denial. A timely submitted written request for reconsideration shall afford the person a hearing in a manner that is consistent with a hearing provided for by Section 6070. If a request for reconsideration is not filed within the 30-day period, the denial becomes final.</u></p>
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**AGENDA — November 19, 2013 Business Taxes Committee Meeting**  
**Proposed Amendments to Regulation 1699, *Permits***  
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**(gh) DUE DATE OF RETURNS—CLOSEOUT OF ACCOUNT ON YEARLY REPORTING BASIS.** Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the yearly period, a closing return shall be filed with the Board on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.

**(hi) BUYING COMPANIES—GENERAL.**

(1) DEFINITION. For the purpose of this regulation, a buying company is a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services, for the other entity. It is presumed that the buying company is formed for the operational reasons of the entity which owns or controls it or to which it is otherwise related. A buying company formed, however, for the sole purpose of purchasing tangible personal property ex-tax for resale to the entity which owns or controls it or to which it is otherwise related in order to re-direct local sales tax from the location(s) of the vendor(s) to the location of the buying company shall not be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall not be issued a seller's permit. Sales of tangible personal property to third parties will be regarded as having been made by the entity owning, controlling, or otherwise related to the buying company. A buying company that is not formed for the sole purpose of so re-directing local sales tax shall be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall be issued a seller's permit and shall be regarded as the seller of tangible personal property it sells or leases.

(2) ELEMENTS. A buying company is not formed for the sole purpose of re-directing local sales tax if it has one or more of the following elements:

- (A) Adds a markup to its cost of goods sold in an amount sufficient to cover its operating and overhead expenses.
- (B) Issues an invoice or otherwise accounts for the transaction.

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	<p>The absence of any of these elements is not indicative of a sole purpose to redirect local sales tax.</p> <p><b>(i) WEB SITES.</b> The location of a computer server on which a web site resides may not be issued a seller's permit for sales tax purposes except when the retailer has a proprietary interest in the server and the activities at that location otherwise qualify for a seller's permit under this regulation.</p> <p><b>(j) USE TAX PERMIT - QUALIFIED PURCHASERS.</b> Except for the purchase of a vehicle, vessel, or aircraft, a person who meets all of the following conditions is required to register and report and pay use tax directly to the Board:</p> <ol style="list-style-type: none"><li>(1) The person is not required to hold a seller's permit.</li><li>(2) The person is not required to be registered pursuant to Revenue and Taxation Code section 6226.</li><li>(3) The person is not a holder of a use tax direct payment permit as described in Revenue and Taxation Code section 7051.3.</li><li>(4) The person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.</li><li>(5) The person is not otherwise registered with the board to report use tax.</li></ol> <p>The return must show the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, for which the qualified purchaser did not pay tax to a retailer required to collect the tax or a retailer the qualified purchaser reasonably believed was required to collect the tax. Notwithstanding Revenue and Taxation Code sections 6451, 6452, 6452.1, and 6455, the returns for the 2009 calendar year and subsequent years shall be filed with the Board, together with a remittance of the amount of the tax due, on or before April 15 of the succeeding calendar year.</p>
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Issue Paper Number 13-008



BOARD OF EQUALIZATION  
**KEY AGENCY ISSUE**

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

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## **Proposed Amendments to Regulation 1699, *Permits* Issuance and Revocation of Seller's Permits Involving Persons with Outstanding Final Liabilities**

### **I. Issue**

Should the Board revise Regulation 1699, *Permits*, to clarify Revenue and Taxation Code (RTC) section 6070.5, as enacted by Assembly Bill 1307 (AB 1307) (Stats. 2011. Ch. 734), which gives the Board the authority to either refuse to issue or revoke a seller's permit under certain conditions?

### **II. Alternative 1 - Staff Recommendation**

Staff recommends that the Board approve and authorize the publication of Regulation 1699, *Permits*, with the proposed revisions, see Exhibit 2. The suggested changes clarify that the Board may refuse to issue a seller's permit to a person if they have an outstanding final liability. In addition, the Board may refuse to issue a seller's permit to a non-natural person if a person with an outstanding final liability controls the non-natural person. Furthermore, if the Board refuses to issue a seller's permit, a person may file a timely written request for reconsideration. A person may also request to enter into a payment plan or an offer in compromise. If the payment plan is approved, a seller's permit could be issued. However, the Board will have the authority to revoke the seller's permit if the person fails to meet the terms of the payment agreement entered into to obtain a new seller's permit.

### **III. Alternative 2 - Other Alternative Considered**

Do not approve proposed amendments to Regulation 1699, *Permits*.

Issue Paper Number 13-008

## IV. Background

If a taxpayer fails to comply with any provision of the Sales and Use Tax Law, such as a failure to remit payment of tax, the Board can take action to revoke their seller's permit in accordance with RTC section 6070. That section also states that the Board shall not issue a new permit until it is satisfied the taxpayer will comply with the law. Therefore, if the Board revokes a seller's permit, the taxpayer may not be issued a new permit until the Board is satisfied the person will observe the Sales and Use Tax Laws.

Prior to January 1, 2012, the effective date of section 6070.5, if a taxpayer had an outstanding liability with the Board and closed their permit before it was revoked, the Board could not refuse to issue another seller's permit to that taxpayer. Therefore, a taxpayer who failed to properly remit taxes but voluntarily closed out their permit before a revocation occurs could apply for a new permit from the Board. Since the Board did not revoke the original permit, it lacked the authority to refuse issuance of a new permit. The only recourse for the Board was to require the posting of a security deposit for the new permit.

Board staff also encountered taxpayers with outstanding final liabilities applying for new seller's permits as a different person. This occurs when the Board revokes a person's seller's permit due to non-compliance and that former permit holder then applies for a new permit as a different type of entity. In scenarios like this, where the Board revoked the original permit held by a sole proprietor and that sole proprietor created a corporation and applied for a permit under that corporation, the Board lacked the authority to refuse to issue a seller's permit to the corporation.

### RTC section 6070.5

RTC section 6070.5(a) states the following:

*The board may refuse to issue a permit to any person submitting an application for a permit as required in Section 6066 if the person desiring to engage in or conduct business as a seller within this state has an outstanding final liability with the board for any amount due under this part.*

With the creation of section 6070.5, the Board now has the authority to refuse to issue a seller's permit to any person who has an outstanding final liability involving sales and use tax and has not entered into a payment plan. (See Exhibit 3 for the complete text of section 6070.5.)

Section 6070.5(b) states the following:

*In addition to the provisions of subdivision (a), the board may also refuse to issue a permit if the person desiring to engage in or conduct business as a seller within this state is not a natural person or individual and any person controlling the person desiring to engage in or conduct business as a seller within this state has an outstanding final liability with the board as provided in subdivision (a). For the purposes of this section, "controlling" has the same meaning as defined in Section 22971 of the Business and Professions Code.*

This subdivision allows the Board to also refuse to issue a seller's permit to a non-natural person if a person with an outstanding final liability controls the non-natural person applying for the permit. Section 6005 defines a person as any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee

**FORMAL ISSUE PAPER****Issue Paper Number 13-008**

for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit. A non-natural person reflects all the section 6005 definitions for a person except the term individual. Business and Professions Code section 22971, cited in the statute, provides in relevant part:

*(d)(1) “control” or “controlling” means possession, direct or indirect, of the power:*

*(A) To vote 25 percent or more of any class of the voting securities issued by a person.*

*(B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, other than a commercial contract for goods or nonmanagement services, or as otherwise provided; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of that person.*

*(2) For purposes of subparagraph (B) of paragraph (1), a person who, directly or indirectly, owns, controls, holds, with the power to vote, or holds proxies representing 10 percent or more of the then outstanding voting securities issued by another person, is presumed to control that other person.*

*(3) For purposes of this division, the board may determine whether a person in fact controls another person.*

Subdivisions (c), (d) and (f) of section 6070.5 address outstanding final liabilities and the Board’s authority to issue and revoke a seller’s permit. Subdivision (c) states that *a liability will not be deemed to be outstanding if the person has entered into an installment payment agreement pursuant to Section 6832 for any liability and is in full compliance with the terms of the installment agreement.* The seller’s permit obtained in conjunction with a person entering into an installment payment agreement may be revoked by the Board, per subdivision (d) if the person fails to comply with the terms of the payment plan. An outstanding final liability is also addressed in subdivision (f), which states the Board *shall consider offers in compromise when determining whether to issue a seller's permit.*

Section 6070.5(e) pertains to how the Board will notify a person who was denied a new seller’s permit and the action a taxpayer may take to contest that decision. Subdivision (e) states that the Board *shall give to the person written notice of the denial.* The notice could be delivered via mail or by other means deemed appropriate by the Board, which may include electronic transmission. A person who is denied the new seller’s permit may seek reconsideration by the Board through a written request submitted within 30 days of the date of the notice of denial. The Board shall afford the person submitting a timely written request for reconsideration a hearing in a manner that is consistent with a hearing provided for by section 6070. If a person does not file a request within the 30-day period, the denial becomes final at the end of the 30-day period.

## **V. Discussion**

### Who may the Board refuse to issue a seller’s permit to?

Staff’s proposed revisions to Regulation 1699 specify that the Board may refuse to issue a seller’s permit to any person submitting an application for a seller’s permit if the person has an outstanding final liability with the Board for any amount under the Sales and Use Tax Law. The proposed revisions also specify that the Board may refuse to issue a seller’s permit if the person applying for it is not a natural person and is being controlled by a person with an outstanding final liability for any amount under the Sales and Use Tax Law.

**FORMAL ISSUE PAPER****Issue Paper Number 13-008**Terms used in Section 6070.5 to be clarified in regulation amendments.

For proposed amendments to Regulation 1699, the phrase “natural person” means a living human, while the other terms used to define a “person” in section 6005 are examples of what is not a natural person. Staff’s proposed revisions define the terms “control” and “controlling” to clarify when a non-natural person applying for a seller’s permit is considered under the control of another person. Staff incorporated verbiage used within the Cigarette and Tobacco Licensing Act Regulations that pertain to “arm’s length” transactions to be consistent with other Board approved definitions. Proposed subdivision (g)(3)(C) states that the presumption of control would apply to transfers of a business with an outstanding final liability to a non-natural person, if such a transfer was a non-arm’s length transaction. A transaction is presumed to be non-arm’s length if it is between and among relatives, be it by blood or marriage. Staff amendments, which include definitions for terms used in section 6070.5, are for the purpose of developing a consistent approach to identifying whether a person seeking a seller’s permit is free from an outstanding final liability.

What can a person do to prevent or contest a Board denial or revocation of a seller’s permit?

AB 1307 was sponsored by the Board of Equalization and intended to provide an additional incentive for taxpayers to pay their outstanding Sales and Use Tax liabilities and enhance the agency’s collection of those liabilities. Staff’s proposed revisions will clarify that a new seller’s permit could be issued to a person with an outstanding final liability if an approved payment arrangement is entered into. Section 6070.5 describes such an arrangement as an installment payment agreement pursuant to section 6832. Another approach which resolves the outstanding final liability issue is an offer in compromise. If a payment agreement is approved, the liability would no longer be considered outstanding for the purposes of section 6070.5 and the issuance of a seller’s permit would be permissible. The proposed revisions in Regulation 1699(g)(6), also states that if a person is issued a seller’s permit on condition that they enter into a payment arrangement but then fails to satisfy the conditions of the agreement, the Board is authorized to start the revocation process of the permit.

To ensure fair treatment of taxpayers, any person that is denied a seller’s permit due to an outstanding final liability will be given written notice and granted a hearing regarding the matter, provided that the taxpayer filed a timely written request for reconsideration. The hearings will take place at the district office similar to revocation hearings. The proposed revisions are in line with existing procedures taxpayers may undertake when the Board begins revocation proceedings of seller’s permits.

Interested Parties Meetings

The first interested parties meeting was held in July 2013 with questions pertaining to the nature of and the responsibility for an outstanding final liability. A participant asked: if an outstanding final liability was the result of a close-out audit, disallowed exempt sale or due to an “honest mistake,” would that be sufficient for the Board to refuse to issue a seller’s permit? Staff stated that section 6070.5 does not list the types of non-compliance issues resulting in an outstanding final liability, but rather, a person having an outstanding final liability for any amount due under Sales and Use Tax Law may be refused a seller’s permit. Therefore, staff explained that if a person receives a Notice of Determination for understated sales or use tax and after the appropriate appeals have been exhausted, the amount due which is not paid is considered a final outstanding liability. A final liability also exists for self-reported liabilities that are unpaid.

**FORMAL ISSUE PAPER****Issue Paper Number 13-008**

Furthermore, if a final outstanding liability existed, an interested party wanted to know who would it “follow” and prevent from obtaining a seller’s permit. The question was in reference to existing non-natural persons, specifically corporations with outstanding final liabilities. The participant wanted to know what the implications are for corporate officers who sought seller’s permits as a different entity. They were concerned the corporate officers could be denied a seller’s permit if they controlled (as defined in the proposed revisions) the corporation that had the outstanding final liability. Staff responded, if the corporation has an outstanding final liability, the officers in control are not affected, unless a “responsible person” determination, as defined by RTC section 6829, was issued to the officer(s) for the business’ unpaid liabilities.

Staff also noted at the meetings that the statute is permissive and that proposed revisions regarding outstanding final liabilities are a factor considered in the non-issuance of a seller’s permit by the Board. Section 6070.5 gives the Board the authority not to issue seller’s permits. However, the statute does not require the Board to refuse to issue a seller’s permit to a person with an outstanding final liability.

A second interested parties meeting was held in September 2013 and questions explored the prospect of temporary permits being issued to an individual. The participant wanted to know whether the Board could issue a temporary permit during the appeals process, which they believe could take an extensive amount of time. Their argument was that the California economy could be harmed by not allowing businesses to operate if the Board’s refusal to issue seller’s permits was based on inaccurate information or just a bad decision. Staff’s response to the questions was that section 6070.5 does not provide for a temporary permit process. The statute also does not allow for revocation of a seller’s permit except for when a person does not fulfill the terms of the installment payment agreement they entered into in order to obtain a seller’s permit. Therefore, staff concluded that submitting a timely written request for reconsideration to their district office is a person’s option to contest the Board’s denial of a permit. A person with an outstanding final liability may also enter into a payment agreement to obtain a new seller’s permit. Staff stated that through policy, the district offices will be asked to expedite these matters to reduce the time a person would have to wait to address their seller’s permit issues.

At the September meeting, staff explained the revision made to a portion of Regulation 1699(g)(3) regarding the definition of the term control. It was revised to clarify that “ownership of voting securities” or a “contract” are examples of when a person may be deemed to control another. Staff incorporated the language and disseminated the revised regulation on September 5, 2013 to those who participated in the meeting. Staff did not receive any comments by the deadline of September 19, 2013.

## **VI. Alternative 1 - Staff Recommendation**

### **A. Description of Alternative 1**

Staff recommends that the Board approve and authorize the publication of Regulation 1699, *Permits*, to clarify RTC section 6070.5 as follows:

- The Board may refuse to issue a seller’s permit if the person applying for it has an outstanding final liability.
- The Board may refuse to issue a seller’s permit to a non-natural person if a person who controls the non-natural person has an outstanding final liability.
- A final liability will not be deemed outstanding for the purpose of RTC section 6070.5 if a person enters into an approved payment plan.
- If a person enters into a payment plan in order to obtain a seller’s permit, that permit may be revoked if the person fails to comply with terms of the payment plan agreement.

**Issue Paper Number 13-008**

- A person may file a written request for reconsideration if the Board refuses to issue that person a seller's permit.

**B. Pros of Alternative 1**

- Clarifies that section 6070.5 authorizes the Board to refuse to issue seller's permits to persons who have outstanding final liabilities and to non-natural persons who are controlled by a person with an outstanding final liability.
- The proposed revisions include definitions for terms used within the statute and regulation to provide additional clarification.
- Amendments to the regulation outline actions a person may take to contest a Board refusal to issue a seller's permit to them.
- Protects the state's interest by authorizing the Board to revoke a permit of a person, if that person fails to meet the requirements of a payment plan that was entered into to obtain a seller's permit.

**C. Cons of Alternative 1**

None.

**D. Statutory or Regulatory Change for Alternative 1**

No statutory change is required. However, staff's recommendation requires the adoption of a revised Regulation 1699, *Permits*.

**E. Operational Impact of Alternative 1**

Staff will publish the proposed amendments to Regulation 1699 and thereby begin the formal rulemaking process.

**F. Administrative Impact of Alternative 1**

**1. Cost Impact**

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

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact of Alternative 1**

While the overall impact is minimal, taxpayers seeking a new seller's permit will need to address their outstanding final liabilities if the Board determines one exists. Taxpayers will need to get approval on payment plans as well as submit timely written requests for reconsideration.

**H. Critical Time Frames of Alternative 1**

None.

**VII. Other Alternative**

**A. Description of Alternative 2**

Do not approve proposed amendments to Regulation 1699, *Permits*.

**Issue Paper Number 13-008**

**B. Pros of Alternative 2**

The Board would not incur the workload associated with processing and publicizing a revised regulation.

**C. Cons of Alternative 2**

Section 6070.5 would not be clarified and the authority it allows the Board in regard to the issuance and revocation of seller's permits.

**D. Statutory or Regulatory Change for Alternative 2**

None.

**E. Operational Impact of Alternative 2**

None.

**F. Administrative Impact of Alternative 2**

**1. Cost Impact**

None.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact of Alternative 2**

None.

**H. Critical Time Frames of Alternative 2**

None.

**Preparer/Reviewer Information**

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

Current as of: October 29, 2013

REVENUE ESTIMATE

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION



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**Proposed Amendments to Regulation 1699, *Permits*  
Issuance and Revocation of Seller's Permits Involving Persons with  
Outstanding Final Liabilities**

**I. Issue**

Should the Board revise Regulation 1699, *Permits*, to clarify Revenue and Taxation Code (RTC) section 6070.5, as enacted by Assembly Bill 1307 (AB 1307) (Stats. 2011. Ch. 734), which gives the Board the authority to either refuse to issue or revoke a seller's permit under certain conditions?

**Alternative 1 - Staff Recommendation**

Staff recommends that the Board approve and authorize the publication of Regulation 1699, *Permits*, with the proposed revisions. The suggested changes clarify that the Board may refuse to issue a seller's permit to a person if they have an outstanding final liability. In addition, the Board may refuse to issue a seller's permit to a non-natural person if a person with an outstanding final liability controls the non-natural person. Furthermore, if the Board refuses to issue a seller's permit, a person may file a timely written request for reconsideration. A person may also request to enter into a payment plan or an offer in compromise. If approved, the final liability will no longer be considered outstanding for the purposes of RTC 6070.5 and a seller's permit could be issued. However, the Board would have the authority to revoke the seller's permit if the person fails to meet the terms of the payment agreement entered into to obtain a new seller's permit.

**II. Alternative 2 - Other Alternative Considered**

Do not approve proposed amendments to Regulation 1699, *Permits*.

## Background, Methodology, and Assumptions

### Alternative 1 – Staff Recommendation

There is nothing in the staff recommendation that would impact revenue. The staff recommendation clarifies that section 6070.5 authorizes the Board to refuse to issue seller's permits to persons who have outstanding final liabilities and to non-natural persons who are controlled by a person with an outstanding final liability.

### Alternative 2 - Other Alternative Considered

Alternative 2 – Do not approve proposed amendments to Regulation 1699, *Permits*.

There is nothing in alternative 2 that would impact sales and use tax revenue.

## Revenue Summary

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

Alternative 2 – alternative 2 does not have a revenue impact.

## Preparation

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

Current as of October 31, 2013.

## Sales And Use Tax Regulations

### ARTICLE 18. ADMINISTRATION—MISCELLANEOUS REGULATION 1699

#### REGULATION 1699. PERMITS.

*Reference:* Sections 6066, 6067, 6070, [6070.5](#), 6071.1, 6072, 6073, 6075 and 6225, Revenue and Taxation Code.

**(a) SELLER'S PERMIT IN GENERAL—NUMBER OF PERMITS REQUIRED.** Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a seller's permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example, a seller's permit is required for a branch sales office at which orders are customarily taken or contracts negotiated, whether or not merchandise is stocked there.

No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held; but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale. However, permits are required for warehouses or other places at which merchandise is stored and from which retail sales of such merchandise negotiated out of state are delivered or fulfilled.

If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one seller's permit is required. For example, a service station operator having a restaurant in addition to the station on the same premises requires only one seller's permit for both activities.

**(b) PERSONS SELLING IN INTERSTATE COMMERCE OR TO UNITED STATES GOVERNMENT.** A seller's permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a seller's permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) are made to the United States or instrumentalities thereof.

**(c) PERSONS SELLING FEED.** Effective April 1, 1996, a seller's permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life

of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

If a seller of hay is also the grower of the hay, this exemption shall apply only if either:

1. The hay is produced for sale only to beef cattle feedlots or dairies, or
2. The hay is sold exclusively through a farmer-owned cooperative.

**(d) CONCESSIONAIRES.** For the purposes of this regulation, the term concessionaire is defined as an independent retailer who is authorized, through contract with, or permission of, another retail business enterprise (the prime retailer), to operate within the perimeter of the prime retailer's own retail business premises, which to all intents and purposes appear to be wholly under the control of that prime retailer, and to make retail sales that to the general public might reasonably be believed to be the transactions of the prime retailer. Some indicators that a retailer is *not* operating as a concessionaire are that he or she:

- Appears to the public to be a business separate and autonomous from the prime retailer. Examples of businesses that may appear to be separate and autonomous, while operating within the prime retailer's premises, are those with signs posted on the premises naming each of such businesses, those with separate cash registers, and those with their own receipts or invoices printed with their business name.
- Maintains separate business records, particularly with respect to sales.
- Establishes his or her own selling prices.
- Makes business decisions independently, such as hiring employees or purchasing inventory and supplies.
- Registers as a separate business with other regulatory agencies, such as an agency issuing business licenses, the Employment Development Department, and/or the Secretary of State.
- Deposits funds into a separate account.

In cases where a retailer is not operating as a concessionaire, the prime retailer is not liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a seller's permit for the location of the prime

retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the Board. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

- The seller's permit number of the concessionaire
- The location for which the permit is issued (must show the concessionaire's location within the perimeter of the prime retailer's location)
- Signature of the concessionaire
- Date

While any statement, taken timely, in good faith and containing all of these essential elements will relieve a prime retailer of his or her liability for the unreported sales or use taxes of a concessionaire, a suggested format of an acceptable statement is provided as Appendix A to this regulation. While not required, it is suggested that the statement from the concessionaire contain language to clarify which party will be responsible for reporting and remitting the sales and/or use tax due on his or her retail sales.

In instances where the lessor, or grantor of permission to occupy space, is not a retailer himself or herself, he or she is not liable for any sales or use taxes owed by his or her lessee or grantee. In instances where an independent retailer leases space from another retailer, or occupies space by virtue of the granting of permission by another retailer, but does not operate his or her business within the perimeter of the lessor's or grantor's own retail business, such an independent retailer is not a concessionaire within the meaning of this regulation. In this case, the lessor or grantor is not liable for any sales or use taxes owed by the lessee or grantee.

In the event the retailer fails to make a return and remit the amount of tax due with respect to operations of the concessions, the concessionaires must secure permits and file returns together with remittances of the amount of tax due.

**(e) AGENTS.** If agents make sales on behalf of a principal and do not have a fixed place of business, but travel from house to house or from town to town, it is unnecessary that a seller's permit be obtained for each agent if the principal obtains a permit for each place of business located in California. If, however, the principal does not obtain a permit for each place of business located in California, it is necessary for each agent to obtain a seller's permit.

**(f) INACTIVE PERMITS.** A seller's permit may only be held by a person actively engaged in business as a seller of tangible personal property. The Board may revoke a seller's permit where it finds that the person holding the permit is not actively engaged in business as a seller of tangible personal property.

(1) Any person who holds a seller's permit but is not actively engaged in business as a seller of tangible personal property shall promptly surrender the permit by notifying the Board to cancel it.

(2) Except as explained in paragraph (3) of this subdivision, a person holding a seller's permit will be held liable for any taxes, interest, and penalties incurred, through the date on which the Board is notified to cancel the permit, by any other person who, with the permit holder's actual or constructive knowledge, uses the permit in any way. For example, a permit holder may be held liable for tax, interest, and penalty actually incurred by his or her transferee where the transferee displays the permit in his or her place of business, or uses the permit number on a resale certificate, or files sales and use tax returns under the permit number. The permit holder has the burden of establishing that the Board received notice to cancel the permit.

**(A)** The seller's permit holder may notify the Board by delivering the actual seller's permit to the Board with the clear request that the permit be canceled. Where the reason for cancellation is that the permit holder transferred the business, the permit holder should identify the name and address of the transferee at the time the permit is surrendered to the Board. The permit holder may also notify the Board by delivering a written statement or email to the Board that the permit holder has transferred or otherwise ceased the business, or will do so at a specified time, and requesting that the permit be canceled. The statement should identify the name and address of the transferee, if any. The permit holder may also provide this notice to the Board orally, but it will be presumed that such notice was not provided unless the Board's records reflect that the permit holder clearly notified the Board of the cessation or transfer of the business for which the permit was held.

**(B)** The Board will also be regarded as having received notice of cancellation of the seller's permit, and the permit holder will be excused from liability for the tax, interest, and penalty incurred by another person using the permit, as of the date the Board receives actual notice of transfer of the business for which the permit was issued. It will be presumed such notice was not received by the Board unless the Board's records reflect that the Board received a clear notice of the cessation or transfer of the business for which the permit was held. For example, the Board's receipt of an application for a seller's permit from the transferee constitutes sufficient notice if it contains adequate information to show that the

application pertains to the same business for which the permit was held. Notice to another state agency of a transfer or cessation of a business does not constitute notice to the Board. Rather, the Board must itself receive actual notice of the transfer or cessation of business.

(3) Where the seller's permit holder does not establish that the Board received actual notice of the transfer of the business for which the permit was held and is thus liable for the taxes, interest, and penalties incurred by another person using that permit, that liability is limited to the quarter in which the business was transferred and the three subsequent quarters, and shall not include any penalties imposed on the other person for fraud or intent to evade the tax. However, these limitations (liability only for the quarter in which the business was transferred and the three subsequent quarters and no fraud or intent to evade penalty) do not apply where, after the transfer of the business, 80 percent or more of the real or ultimate ownership of that business is held by the permit holder. For these purposes, stockholders, bondholders, partners, or other persons holding an ownership interest in an entity are regarded as having the "real or ultimate ownership" of that entity.

**(g) -NON-ISSUANCE OR REVOCATION OF A SELLER'S PERMIT**

(1) The Board may refuse to issue a seller's permit to any person submitting an application for a seller's permit if the person has an outstanding final liability with the Board for any amount under the Sales and Use Tax Law. The Board may also refuse to issue a seller's permit if the person applying for it is not a natural person and is being controlled by a person with an outstanding final liability for any amount under the Sales and Use Tax Law.

(2) Natural Person - A "natural person" is a living human.

(3) Control and Controlling - For the purposes of this section and as defined in Section 22971 of the Business and Professions Code, the Board defines the words "control" and "controlling" to mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person. Evidence that a person controls or is controlling another person may include, but is not limited to, the ownership of voting securities, by contract, other than a commercial contract for goods or non-management services, or as otherwise provided below; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of that person. It shall be a rebuttable presumption that a person has the power to control another person if any of the following apply:

(A) A person holds 25 percent or more of any class of the voting securities issued by a person; or

(B) A person is a general partner in a partnership, a managing member of a limited liability company, or president or director of a closely held corporation; or

(C) A person with an outstanding final liability as described in paragraph (g)(1) transfers the business to a non-natural person in a sale that was not at arm's length. A sale is presumed to be not at arm's length if it is between and among relatives (by blood or marriage, which relationships include, but are not limited to, spouses, parents, children and siblings). A transfer is among relatives if the person with the outstanding final liability is either a natural person who is a relative of the person or persons controlling the non-natural person acquiring the business; or is a non-natural person controlled by a relative or relatives of the person or persons controlling the non-natural person acquiring the business.

(4) A final liability will not be deemed to be outstanding for the purposes of this part if the person with the outstanding liability as described in paragraph (g)(1) has entered into a payment plan pursuant to Revenue and Taxation Code section 6832 and remains in full compliance with it.

(A) If the person submitting an application for a seller's permit has entered into a payment plan as provided in paragraph (g)(4) and fails to comply with the terms of the payment plan, the Board may seek revocation of the seller's permit obtained by the person pursuant to this section.

(5) The Board shall consider offers in compromise when determining whether to issue a seller's permit. If a seller's permit is conditioned on an offer in compromise being entered into, then a final liability will not be deemed outstanding for the purposes of this part, if the offer in compromise has been accepted by the Board and the person has paid the amount in full or remains in full compliance with the compromise plan.

(A) If the person submitting an application for a seller's permit has entered into an offer in compromise as provided in paragraph (g)(5) and fails to comply with the terms of the offer in compromise, the Board may seek revocation of the seller's permit obtained by the person pursuant to this section.

(6) Whenever any person is denied a permit pursuant to this section, the Board shall give the person written notice of the denial. Any person denied a permit pursuant to this section may make a request for reconsideration by the Board, if submitted in writing within 30 days of the denial. A timely submitted written request for reconsideration shall afford the person

a hearing in a manner that is consistent with a hearing provided for by Section 6070. If a request for reconsideration is not filed within the 30-day period, the denial becomes final.

**(gh) DUE DATE OF RETURNS—CLOSEOUT OF ACCOUNT ON YEARLY REPORTING**

**BASIS.** Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the yearly period, a closing return shall be filed with the Board on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.

**(ih) BUYING COMPANIES—GENERAL.**

(1) DEFINITION. For the purpose of this regulation, a buying company is a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services, for the other entity. It is presumed that the buying company is formed for the operational reasons of the entity which owns or controls it or to which it is otherwise related. A buying company formed, however, for the sole purpose of purchasing tangible personal property ex-tax for resale to the entity which owns or controls it or to which it is otherwise related in order to re-direct local sales tax from the location(s) of the vendor(s) to the location of the buying company shall not be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall not be issued a seller's permit. Sales of tangible personal property to third parties will be regarded as having been made by the entity owning, controlling, or otherwise related to the buying company. A buying company that is not formed for the sole purpose of so re-directing local sales tax shall be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall be issued a seller's permit and shall be regarded as the seller of tangible personal property it sells or leases.

(2) ELEMENTS. A buying company is not formed for the sole purpose of re-directing local sales tax if it has one or more of the following elements:

**(A)** Adds a markup to its cost of goods sold in an amount sufficient to cover its operating and overhead expenses.

**(B)** Issues an invoice or otherwise accounts for the transaction.

The absence of any of these elements is not indicative of a sole purpose to redirect local sales tax.

**(j) WEB SITES.** The location of a computer server on which a web site resides may not be issued a seller's permit for sales tax purposes except when the retailer has a proprietary interest in the server and the activities at that location otherwise qualify for a seller's permit under this regulation.

**(k) USE TAX PERMIT - QUALIFIED PURCHASERS.** Except for the purchase of a vehicle, vessel, or aircraft, a person who meets all of the following conditions is required to register and report and pay use tax directly to the Board:

(1) The person is not required to hold a seller's permit.

(2) The person is not required to be registered pursuant to Revenue and Taxation Code section 6226.

(3) The person is not a holder of a use tax direct payment permit as described in Revenue and Taxation Code section 7051.3.

(4) The person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.

(5) The person is not otherwise registered with the board to report use tax.

The return must show the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, for which the qualified purchaser did not pay tax to a retailer required to collect the tax or a retailer the qualified purchaser reasonably believed was required to collect the tax. Notwithstanding Revenue and Taxation Code sections 6451, 6452, 6452.1, and 6455, the returns for the 2009 calendar year and subsequent years shall be filed with the Board, together with a remittance of the amount of the tax due, on or before April 15 of the succeeding calendar year.

*[Appendix A was omitted for ease of review]*

6070.5. **Authorization to refuse issuance of permit.** (a) The board may refuse to issue a permit to any person submitting an application for a permit as required in Section 6066 if the person desiring to engage in or conduct business as a seller within this state has an outstanding final liability with the board for any amount due under this part.

(b) In addition to the provisions of subdivision (a), the board may also refuse to issue a permit if the person desiring to engage in or conduct business as a seller within this state is not a natural person or individual and any person controlling the person desiring to engage in or conduct business as a seller within this state has an outstanding final liability with the board as provided in subdivision (a). For the purposes of this section, "controlling" has the same meaning as defined in Section 22971 of the Business and Professions Code.

(c) For purposes of this section, a liability will not be deemed to be outstanding if the person has entered into an installment payment agreement pursuant to Section 6832 for any liability and is in full compliance with the terms of the installment payment agreement.

(d) If the person submitting an application for a seller's permit has entered into an installment payment agreement as provided in subdivision (c) and fails to comply with the terms of the installment payment agreement, the board may seek revocation of the seller's permit obtained by the person pursuant to this section.

(e) (1) Whenever any person desiring to engage in or conduct business as a seller within this state is denied a permit pursuant to this section, the board shall give to the person written notice of the denial. The notice of the denial may be served personally, by mail, or by other means deemed appropriate by the board. If served by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the person at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice at the United States Postal Service, or a mailbox, subpost office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of the delivery. Delivery of notice by other means deemed appropriate by the board may include, but is not limited to, electronic transmission. Personal service or delivery by other means deemed appropriate by the board to a corporation may be made by delivery of a notice to any person listed on the application as an officer.

(2) Any person who is denied a seller's permit pursuant to this section may request reconsideration of the board's denial of the permit. This request shall be submitted in writing within 30 days of the date of the notice of denial. Timely submission of a written request for

reconsideration shall afford the person a hearing in a manner that is consistent with a hearing provided for by Section 6070. If a request for reconsideration is not filed within the 30-day period, the denial becomes final at the end of the 30-day period.

(f) The board shall consider offers in compromise when determining whether to issue a seller's permit.

**History.—Added by Stats. 2011, Ch. 734 (AB 1307), in effect January 1, 2012.**