



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

August 2, 2013

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the August 13, 2013 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1705, *Relief of Liability*.

Action 1 on the Agenda concerns proposed amendments to Regulation 1705 to address the extension of section 6596 relief. 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 **August 13, 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 Kinist, 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)  
Mr. Scott Claremon (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)  
Ms. Lynn Whitaker (MIC:50)



**AGENDA — August 13, 2013 Business Taxes Committee Meeting**  
**Proposed Amendments to Regulation 1705, *Relief of Liability*, for the extension of section 6596 relief**

<p><b>Action 1 – Staff Recommendation</b></p>	<p><b><u>Regulation 1705. <i>Relief of Liability</i>.</u></b></p> <p>(a) <b>IN GENERAL.</b> A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:</p> <p>(1) Written advice given by the Board under the conditions set forth in subdivision (b) below, or</p> <p>(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or</p> <p>(3) Written advice given by the Board in a prior audit <del>of that person</del> under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.</p> <p>Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or <u>a person with shared accounting and common ownership with the audited person</u> or by a legal or statutory successor to <del>that person</del> those persons.</p> <p>The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction</p>
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**AGENDA — August 13, 2013 Business Taxes Committee Meeting**  
**Proposed Amendments to Regulation 1705, *Relief of Liability*, for the extension of section 6596 relief**

**Action 1 – Staff Recommendation**

regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

**(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.**

(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person's use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

- (A) The defined population of the purchases that will be included in the reporting method;
- (B) The percentage of purchases of the defined population that is subject to tax;
- (C) The length of time the writing shall remain in effect;
- (D) The definition of a significant or material change that will require rescinding the approved reporting

**AGENDA — August 13, 2013 Business Taxes Committee Meeting**  
**Proposed Amendments to Regulation 1705, *Relief of Liability*, for the extension of section 6596 relief**

<p><b>Action 1 – Staff Recommendation</b></p>	<p>method; and</p> <p>(E) Other conditions as required.</p> <p>The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.</p> <p>(c) <b>WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.</b> Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report: <u>by the audited person and any person with shared accounting and common ownership with the audited person</u>. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.</p> <p><u>For the purposes of this section a person is considered to have shared accounting and common ownership if the person:</u></p> <p><u>(1) Is engaged in the same line of business as the audited person,</u></p>
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**AGENDA — August 13, 2013 Business Taxes Committee Meeting**  
**Proposed Amendments to Regulation 1705, *Relief of Liability*, for the extension of section 6596 relief**

<p><b>Action 1 – Staff Recommendation</b></p>	<p><u>(2) Has common verifiable controlling ownership of 50% or greater ownership or a common majority shareholder with the audited person, and</u></p> <p><u>(3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:</u></p> <p style="padding-left: 40px;"><u>(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.</u></p> <p style="padding-left: 40px;"><u>(B) Shared accounting staff or an outside firm who maintain books and records and prepares sales and use tax returns</u></p> <p style="padding-left: 40px;"><u>(C) Shared accounting policies and procedures.</u></p> <p><u>These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.</u></p> <p><b>(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.</b> Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:</p> <p style="padding-left: 40px;">(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to</p>
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**AGENDA — August 13, 2013 Business Taxes Committee Meeting**  
**Proposed Amendments to Regulation 1705, *Relief of Liability*, for the extension of section 6596 relief**

<p><b>Action 1 – Staff Recommendation</b></p>	<p>his or her representative under the conditions set forth in subdivision (b) above; or</p> <p>(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.</p> <p><b>(e) TRADE OR INDUSTRY ASSOCIATIONS OR FRANCHISORS.</b> A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.</p> <p>For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.</p>
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Issue Paper Number 13-006



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

## Proposed Amendments to Regulation 1705, *Relief of Liability*, for the extension of Section 6596 relief

### I. Issue

Should the Board revise Regulation 1705, *Relief of Liability*, to extend to a person section 6596 relief for reliance on a prior audit of another person if they are in the same industry, have a common controlling ownership and shared accounting functions?

### II. Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize the publication of Regulation 1705, *Relief of Liability*, as proposed in Exhibit 2, to extend section 6596 relief from a liability to a person if the liability was the result of the person relying on erroneous advice provided from the prior audit of another person when:

1. The person seeking relief is engaged in the same line of business as the audited person.
2. The person seeking relief shares with the audited person common verifiable controlling ownership of 50% or greater or a common majority shareholder.
3. The person seeking relief has shared accounting functions with the audited person. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
  - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation exists.
  - A shared accounting staff or outside firm maintains books and records and prepares sales and use tax returns.
  - Shared accounting policies and procedures exist.

The requirements must be established as existing throughout the periods for which relief is sought. In addition, staff maintains that for the same reason these related parties would reasonably rely on the original advice, they would also reasonably be expected to rely on subsequent corrective advice from the Board. Accordingly, if a written rescission is provided to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to all parties that the prior written advice may no longer be relied upon.

### III. Other Alternative(s) Considered

Do not approve proposed Regulation 1705, *Relief of Liability*.

## IV. Background

Revenue and Taxation Code section 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the activity or transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the activity or transaction. Regulation 1705(c) states that, “[p]resentation of the person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report.”

Section 6596, subdivision (d) states that “[o]nly the person making the written request shall be entitled to rely on the board’s written advice to that person.” 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 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. Generally, taxpayers cannot obtain relief by relying on a written opinion given to another person, even if the transactions are similar. However, a person may rely on advice given to the person’s representative provided that the representative identifies the person for whom the advice is requested.

Regulation 1705, *Relief from Liability*, explains the provisions of section 6596 in more detail. The regulation has been amended twice to explain who can rely on the written advice given. In 1999, Regulation 1705 was amended to extend section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In 2009, the regulation was amended again to extend the relief to franchisees who relied on advice provided to their franchisor. For both, in order to obtain relief under section 6596, the members or franchisees must be identified in the association’s or franchisor’s request for advice, respectively. In addition, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.

At its October 2012 Board Meeting, the Board heard a Sales and Use Tax appeals case for Taxpayer/Business ABC (ABC). ABC argued that they followed the advice provided during the prior audit of Taxpayer/Business XYZ (XYZ). The claimant stated that ownership of XYZ was similar to ABC, and that the two companies engaged in the same type of business in the same industry and shared a common accounting department. Records revealed that XYZ owns more than 50% of ABC. Therefore, it was argued that advice provided to XYZ during the prior audit, was indirectly provided to ABC as well. Following the meeting, staff was asked to clarify Regulation 1705 and explain when written advice provided to a business could also be relied on by another business.

## V. Discussion

### Can relief due to reliance on erroneous advice be extended to another person?

Regulation 1705(e) extends relief to association members and franchisees in certain cases. Essentially, the association members and franchisees are considered persons who requested the advice. In that same vein, staff proposes that when a person presents its books and records during an audit, it shall be deemed to be a written request for the audit report by the audited person, as well as any person in the same industry with shared accounting functions and common ownership with the audited person. Under such circumstances, it could be argued that it would be unreasonable to have the same accounting staff, under the direction of a common controlling ownership, rely on written advice provided to the audited person

but not rely on that same advice for another person. Staff believes if the audited person and the related entity share these characteristics, as defined, then relief from the liability should apply accordingly.

The extension of relief may occur only when reliance was from a prior audit.

The proposed provisions would only apply to advice received during a prior audit. Therefore, the majority of the proposed revisions are made to subdivision (c) which is titled "*WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.*" Staff also recommends adding language to subdivision (a)(3) to clarify that written advice provided in a prior audit may be relied upon by these related persons as well as their legal or statutory successors.

No extension of 6596 relief for reliance on erroneous advice if initiated by a written request from a person.

Relief due to reliance on erroneous advice involving written requests submitted to the Board will not be extended to these related persons since the taxpayer would be initiating contact with the Board. Such contact by a taxpayer seeking advice would require them to list the other related existing entities in their requests for them to be considered for relief. This follows current language in Regulation 1705 addressing what associations and franchisors are required to do.

What are the criteria needed for relief to be extended?

A person seeking relief must operate within the same industry and have shared accounting functions and common controlling ownership with the person audited. Common controlling ownership is defined as common ownership of 50% or greater or a common majority shareholder in each entity involved. Centralized accounting functions are described in the proposed revisions and establish that an audited person must be actively involved in the related entity's day-to-day business affairs through that common ownership or management which dictates office policies. The requirements support the contention that it is reasonable that an audited person would rely on advice provided during the audit of their related entities.

At the first interested parties meeting, a participant questioned the statement, "[t]hese elements must be established as existing at the time the written advice was provided." The participant was concerned that this provision could exclude relief to a person that was not in business during the audit period of the audited person, but who met the requirements in all other respects. The issue was discussed at the meeting and staff has revised the regulation to read that the new requirements must be established as existing throughout the periods for which relief is sought.

Interested Parties Meeting and Comments

Staff held meetings with interested parties in April and May of this year to discuss the proposed regulation revisions. At the meetings, staff addressed written comments received prior to each meeting as well as verbal suggestions to add clarifying language and make minor grammatical edits. Staff incorporated the language suggested during the May 30, 2013 meeting and redistributed the proposed regulation with the new language to those who participated in the meeting. Staff did not receive any further comments after May 30, 2013.

## VI. Alternative 1 - Staff Recommendation

### A. Description of Alternative 1

Staff recommends that the Board approve and authorize the publication of Regulation 1705, *Relief of Liability*, as proposed in Exhibit 2, to extend section 6596 relief from a liability to a person if the liability was the result of the person relying on erroneous advice provided from the prior audit of another person. The person seeking relief must meet the following criteria:

1. The person seeking relief must be engaged in the same line of business as the audited person.
2. The person seeking relief must share with the audited person common verifiable controlling ownership of 50% or greater or a common majority shareholder.
3. The person seeking relief must have shared accounting functions with the audited person. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
  - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.
  - A shared accounting staff or outside firm which maintain books and records and prepares sales and use tax returns.
  - Shared accounting policies and procedures.

The new requirements must be established as existing throughout the periods for which relief is sought. In addition, staff maintains that for the same reason these related parties would reasonably rely on the original advice, they would also reasonably be expected to rely on subsequent corrective advice from the Board. Accordingly, if a written rescission is provided to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to all parties that the prior written advice may no longer be relied upon.

### B. Pros of Alternative 1

- Clarifies that section 6596 relief extends to taxpayers who would be reasonably expected to rely on the erroneous advice given during a prior audit.
- The requirement that the related person share common ownership with the audited person is specific and narrowly tailored.
- The proposed revisions are also limited to situations in which a person would reasonably be expected to rely on the erroneous advice by the provision that requires the elements to exist throughout the period for which relief is sought and that indicates that if the Board provides a written notification to the audited person or to any person with shared controlling ownership and advice may no longer be relied upon.

### C. Cons of Alternative 1

The requirements that the person be engaged in the same line of business and share accounting functions are narrow.

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

No statutory change is required. However, staff's recommendation does require adoption of a revised Regulation 1705, *Relief of Liability*.

### E. Operational Impact of Alternative 1

Staff will publish the proposed amendments to Regulation 1705 and thereby begin the formal rulemaking process. Staff will also notify taxpayers of the revised regulation through other outreach efforts.

**F. Administrative Impact of Alternative 1**

**1. Cost Impact**

The workload associated with publishing the regulation and engaging in other outreach efforts is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

**2. Revenue Impact**

Minimal. See Revenue Estimate (Exhibit 1).

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

While the overall impact is minimal, taxpayers seeking section 6596 relief would have to provide sufficient documentation to allow staff to determine if they are eligible to have the relief extended to them.

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

Implementation will begin 30 days following approval of the regulation by the State Office of Administrative Law.

**VII. Other Alternatives**

**A. Description of Alternative**

Do not approve proposed Regulation 1705, *Relief of Liability*.

**B. Pros of Alternative**

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

**C. Cons of Alternative**

Taxpayers who incur liabilities because of their reasonable reliance on erroneous prior audit advice to a person within the same industry that has shared accounting functions and a common controlling ownership will continue to be denied relief under section 6596.

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

None.

**E. Operational Impact of Alternative**

None.

**F. Administrative Impact of Alternative**

**1. Cost Impact**

None.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

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

None.

**H. Critical Time Frames of Alternative**

None.

**Preparer/Reviewer Information**

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

Current as of: July 24, 2013

REVENUE ESTIMATE

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION



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## Proposed Amendments to Regulation 1705, *Relief of Liability*, for the extension of Section 6596 relief

### I. Issue

Should the Board revise Regulation 1705, *Relief from Liability*, to clarify that a business is relieved from the liability to pay tax based on erroneous advice provided in a prior audit of a different registered person operating a business in the same industry, provided that the two businesses have common controlling ownership, as specified, and shared accounting functions such that the advice provided would reasonably be relied on by both businesses?

### II. Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize the publication of Regulation 1705, *Relief of Liability*, as proposed in Exhibit 2, to extend section 6596 relief from a liability to a person if the liability was the result of the person relying on erroneous advice provided from the prior audit of another person if the person seeking relief meets the following criteria:

1. The person seeking relief must be engaged in the same line of business as the audited person.
2. The person seeking relief must share with the audited person common verifiable controlling ownership of 50% or greater or a common majority shareholder.
3. The person seeking relief must have shared accounting functions with the audited person. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
  - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.
  - A shared accounting staff or outside firm which maintain books and records and prepares sales and use tax returns.
  - Shared accounting policies and procedures.

The new requirements must be established as existing throughout the periods for which relief is sought. In addition, staff maintains that for the same reason these related parties would reasonably rely on the original advice, they would also reasonably be expected to rely on subsequent corrective advice from the Board. Accordingly, if a written

rescission is provided to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to all parties that the prior written advice may no longer be relied upon.

### III. Other Alternative(s) Considered

Do not approve proposed amendment to Regulation 1705, *Relief of Liability*.

## Background, Methodology, and Assumptions

### Alternative 1 – Staff Recommendation

Staff recommendation will have a minimal impact on revenues because it is expected that only a small number of businesses currently excluded from section 6596 relief of liability will be extended relief. In addition, staff recommendation clarifies that section 6596 relief extends to taxpayers who would be reasonably expected to rely on the erroneous advice given during a prior audit. Staff recommendation further explains that the provisions that the related person share common ownership with the audited person are specific and narrowly tailored. Finally, staff asserts that the proposed revisions are also carefully limited to situations in which a person would reasonably be expected to rely on the erroneous advice by the provision that requires the elements to exist throughout the period for which relief is sought. Another limiting factor is the provision that if the Board provides a written notification to the audited person or to any person with shared controlling ownership and centralized accounting functions; it will serve as notification to all parties that the prior written advice may no longer be relied upon.

### Other Alternatives Considered

Alternative 2 – Do not amend Regulation 1705, *Relief of Liability*.

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

## Revenue Summary

Alternative 1 – staff recommendation will have a minimal impact on revenue.

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

Current as of July 24, 2013.

## **REGULATION 1705. RELIEF FROM LIABILITY.**

*Reference:* Section 6596, Revenue and Taxation Code.

**(a) IN GENERAL.** A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) Written advice given by the Board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the Board in a prior audit under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to those persons.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

**(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.**

(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person's use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

- (A) The defined population of the purchases that will be included in the reporting method;
- (B) The percentage of purchases of the defined population that is subject to tax;
- (C) The length of time the writing shall remain in effect;
- (D) The definition of a significant or material change that will require rescinding the approved reporting method; and
- (E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report: by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or

transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

(1) Is engaged in the same line of business as the audited person,

(2) Has common verifiable controlling ownership of 50% or greater ownership or a common majority shareholder with the audited person, and

(3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.

(B) Shared accounting staff or an outside firm who maintain books and records and prepares sales and use tax returns

(C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS OR FRANCHISORS.** A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.

For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.