

**BOARD OF EQUALIZATION****BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE CLAUDE PARRISH, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: NOVEMBER 12, 2002, TIME: 9:30 AM

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**Action Items & Status Report Items****Agenda Item No: 1****Title: Proposal to establish “Administrative Regulations” section for various existing and new Special Taxes regulations****Issue/Topic:**

Should the Board add a new “Chapter 9.9, Special Taxes Administration,” containing Regulations 4901, Records, and 4902, Relief from Liability, to provide consistent guidance and clarification among all of the special tax programs in the Property and Special Taxes Department, as well as consistency with the same subjects under the Sales and Use Tax regulations? Should the Board add and amend existing regulations to cross-reference to the administrative regulations in the new Chapter 9.9?

**Committee Discussion:**Action 1, Consent Items

There was no discussion on this item.

Action 2, Authorization to Publish

There was no discussion on this item.

**Committee Action/Recommendation/Direction:**Action 1, Consent Items

The committee approved all consent items.

Action 2, Authorization to Publish

The Committee recommended that the Board authorize publication of the new, amended, and repealed regulations as adopted in the above action. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. Copies of the proposed new, amended, and repealed regulations are attached.

## Agenda Item No: 2

### Title: Proposed Audit Manual Chapter 11, Advertising Agencies, Graphic Artists, Printers, and Related Enterprises

#### Issue/Topic:

Should proposed Audit Manual Chapter 11, *Advertising Agencies, Graphic Artists, Printers, and Related Enterprises*, be incorporated into the Sales and Use Tax Department Audit Manual?

#### Committee Discussion:

##### Action 1, Consent Items

Staff presented revised language for Section 1103.35, *Specific Nontaxable Service Charges*, regarding “signage,” upon which staff and interested parties agree.

##### Action 1a, 75/25 Presumption (Lump-sum charge for conceptual services, finished art, and other property)

An interested party addressed the Committee requesting adoption of interested parties’ proposed language for Section 1103.15, Example 3. The speaker stated that this action would preserve the 75/25 presumption regarding sales of combined charges for conceptual services and finished art, as originally adopted by the Board Members in 1999. Even when the combined charge includes other property, such as business cards, the interested party stated that the 75/25 presumption should apply since the value of the business cards can be easily ascertained from the graphic artist’s records. The interested party recommends computing the value of the business cards on an actual basis and applying the 75/25 allocation to the remaining balance that represents the conceptual design services and finished art. The interested party indicated that this application would be easier for taxpayers for reporting purposes and for auditors when auditing these taxpayers.

Staff indicated that Regulation 1540 (b)(3) already addresses the application of tax to combined charges that include tangible personal property other than preliminary art and finished art, directing that the actual basis calculation method be used. Staff suggested that the charge for the business cards should be separately stated on the invoice, thereby allowing the 75/25 presumption to be applied to the combined charge that represents the conceptual services and finished art. Staff also indicated that Example 3 demonstrates to auditors when the 75/25 presumption would not apply since three other examples demonstrate when the 75/25 presumption does apply.

##### Action 2, Preliminary Art – Right to Permanent Possession

An interested party addressed the Committee, stating that the charge for preliminary art, to be transferred at the end of an agency/client agreement, should not be taxable if there is an option to purchase the tangible personal property at a later date, as illustrated in interested parties’ proposed language for Example 4 in Section 1103.10. Since the option to purchase is not a guaranteed transfer, the interested party indicated that the taxable measure should be the sale option price determined at the time the option is exercised.

Staff indicated that the “right to” permanent possession of preliminary art includes the “option” to purchase at a later date, since an option is the same as a right that can be exercised by the purchaser. Staff clarified that its Example 4 treats preliminary art as a taxable sale at the inception, since there is a right to permanent possession that is stated in the contract or master agreement. Staff also indicated that the language in Regulation 1540 explicitly includes the “right to” permanent possession as being equivalent to transferring title if specified pursuant to title clauses in contracts or master agreements.

Action 3, Commercial Photographers – Preliminary Art

There was no discussion of this item.

Action 4, Authorization to Publish

There was no discussion of this item.

**Committee Action/Recommendation/Direction:**

Action 1, Consent Items

The Committee approved all consent items as recommended by interested parties and staff.

Action 1a, 75/25 Presumption (Lump-sum charge for conceptual services, finished art, and other property)

The Committee directed staff to delete Example 3 from the proposed chapter.

Action 2, Preliminary Art – Right to Permanent Possession

The Committee approved the interested parties’ proposed Example 4 in Section 1103.10.

Action 3, Commercial Photographers – Preliminary Art

The Committee approved staff’s recommended language in Section 1105.05.

Action 4, Authorization to Publish

The Committee recommended that the Board authorize publication of proposed Audit Manual Chapter 11, *Advertising Agencies, Graphic Artists, Printers, and Related Enterprises*, as adopted in the above actions. There is no operative date since the proposed chapter represents current administrative policies and procedures. A copy of revised language for Section 1103.35, “Specific Nontaxable Service Charges – Signage,” is attached. Recent changes are indicated by double underline and strike-out text.

**Agenda Item No: 3**

**Title: Status Report on “Reservation Based Value” and proposed regulatory language in regard to sales by Indian retailers on Indian reservations (Regulation 1616(d)(3)).**

**Issue/Topic:**

At the September 12, 2002 discussion of Chief Counsel Matters – Rulemaking, the Board directed staff to work with interested parties and, at the next scheduled Business Taxes Committee meeting, bring forward amendments to the regulation to add exceptions to the

obligation of on-reservation Indian retailers to collect use tax on the sale of tangible personal property with reservation-based value.

### **Committee Discussion:**

Action 1, Collection of use tax by Indian retailers on sales to non-Indians and Indians not residing on a reservation in California

There was no discussion of this item.

Action 2, Authorization to Publish

There was no discussion of this item.

### **Committee Action/Recommendation/Direction:**

Action 1, Collection of use tax by Indian retailers on sales to non-Indians and Indians not residing on a reservation in California

The Committee recommended amending Regulation 1616(d)(3) to provide exceptions to the Indian retailer's obligation to collect use tax on on-reservation sales of tangible personal property under specified conditions.

Action 2, Authorization to Publish

The Committee recommended that the Board authorize publication of revised Regulation 1616(d), *Federal Areas – Indian Reservations*, as adopted in the above actions. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed regulation is attached.

Approved:                   /s/Claude Parrish                    
Honorable Claude Parrish, Committee Chair

                  /s/James E. Speed                    
James E. Speed, Executive Director

BOARD APPROVED

at the November 13, 2002 Board Meeting

                  /s/Deborah Pellegrini                    
Deborah Pellegrini, Chief  
Board Proceedings Division

MOTOR VEHICLE FUEL TAX LAW

**Regulation 1124. RELIEF FROM LIABILITY.**

Reference: Section 7657.1, Revenue and Taxation Code.

~~(a) IN GENERAL.~~ A person may be relieved from the liability for the payment of the motor vehicle fuel tax and aircraft jet fuel tax, 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: written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

~~(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 of that person 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 by a legal or statutory successor to that person.~~

~~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.~~

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

~~(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. 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 of the person 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.~~

~~(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.** 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.~~

Note: *Authority cited:* Section 8251 Revenue and Taxation Code

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AIRCRAFT JET FUEL TAX

**Regulation 1177. RECORDS OF AIRCRAFT JET FUEL DEALER.**

Reference: Sections 7385 to 7398, and 8301, Revenue and Taxation Code.

**(a) GENERAL.** An aircraft jet fuel dealer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

**(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), aircraft jet fuel dealers shall comply with the following requirements.

Aircraft jet fuel dealers shall maintain the following:

(1) A complete record of all sales or other dispositions of jet fuel including fuel used by ~~him~~ the aircraft jet fuel dealer.

(2) A record ~~must be kept~~ of inventories, purchases, and tank gaugings or meter readings of jet fuel. ~~Such records shall be made available for inspection by the board or its representatives and shall be retained by the vendor until authority for their destruction has been received from the board.~~

~~(b)~~ (3) SALES INVOICES ~~Sales Invoices.~~

**(A)** The aircraft jet fuel dealer ~~vendor~~ shall prepare a serially numbered paper or electronic invoice for each sale of jet fuel. A single invoice covering multiple deliveries of fuel to the same purchaser made during a period of time not to exceed a calendar month shall constitute an invoice for each sale.

**(B)** If a multiple delivery invoice includes both taxable and nontaxable sales, the invoice must show a segregation of the taxable and nontaxable gallonage sold.

**(C)** A copy of the invoice shall be delivered to the purchaser, and a copy retained by the aircraft jet fuel dealer.

**(D)** A sales invoice shall contain the following information:

1. The name and address of the aircraft jet fuel dealer,
2. The name of the purchaser,
3. The date of the sale,

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4. The number of gallons sold, the price per gallon and the total amount of the sale, and

5. The amount of jet fuel tax, in the case of a taxable delivery. The tax need not be separately stated if the invoice bears the notation that the price includes tax.

Note: *Authority cited:* Section 8251, Revenue and Taxation Code.

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MOTOR VEHICLE FUEL TAX LAW

**Regulation 1178. RECORDS.**

Reference: Sections ~~7388, 7393~~, 7403.2, 7651, 7652.5, 7652.7, 8253, 8301, 8302 and 8303, Revenue and Taxation Code.

**(a) DEFINITIONS.**

(1) ~~“Database Management System” means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.~~

(2) ~~“Electronic data interchange” or “EDI technology” means the computer to computer exchange of business transactions in a standardized structured electronic format.~~

(3) ~~“Hardcopy” means any document, record, report or other data maintained in a paper format.~~

(4) ~~“Machine sensible record” means a collection of related information in an electronic format. Machine sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage only imaging system such as microfilm or microfiche.~~

(5) ~~“Taxpayer” means every highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, vessel operator and every person dealing in, removing, transporting, or storing motor vehicle fuel in this state. “Taxpayer” also means an aircraft jet fuel dealer.~~

**(b) GENERAL.** ~~(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representatives, all records in the manner set forth at California Code of Regulations, Title 18, Section 4901. necessary to determine the correct motor vehicle fuel tax or aircraft jet fuel tax liability and all records necessary for the proper completion of motor vehicle tax or jet fuel tax returns and reports. Such records include but are not limited to:~~

~~(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.~~

~~(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.~~

~~(C) Schedules or working papers used in connection with the preparation of tax returns and reports.~~

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~~(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 8253, 8301, 8302, and 8303.~~

~~(c) MACHINE-SENSIBLE RECORDS.~~

~~(1) GENERAL.~~

~~(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.~~

~~(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.~~

~~(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.~~

~~(2) Electronic Data Interchange Requirements.~~

~~(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., for resale), and shipping detail. Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.~~

~~(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and~~

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~~vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.~~

~~(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.~~

~~(4) Business Process Information.~~

~~(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.~~

~~(B) The taxpayer shall be capable of demonstrating:~~

- ~~1. the functions being performed as they relate to the flow of data through the system;~~
- ~~2. the internal controls used to ensure accurate and reliable processing and;~~
- ~~3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.~~

~~(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:~~

- ~~1. record formats or layouts;~~
- ~~2. field definitions (including the meaning of all codes used to represent information);~~
- ~~3. file descriptions (e.g., data set name); and~~
- ~~4. detailed charts of accounts and account descriptions.~~

~~(d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS.~~

~~(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).~~

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~~(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.~~

~~**(e) ACCESS TO MACHINE SENSIBLE RECORDS.**~~

~~(1) The manner in which the Board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.~~

~~(2) Such access will be provided in one or more of the following manners:~~

~~(A) The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the machine-sensible records.~~

~~(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.~~

~~(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.~~

~~(D) The taxpayer and the Board may agree on other means of providing access to the machine-sensible records.~~

~~**(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.**~~

~~(1) In conjunction with meeting the requirements of subdivision (e), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (e). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.~~

~~(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.~~

~~**(g) HARDCOPY RECORDS.**~~

~~(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as~~

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~~required by existing law and regulations. Harcopy records may be retained on a record keeping medium as provided in subdivision (h).~~

~~(2) If harcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such harcopy records need not be created.~~

~~(3) Harcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with the regulation. Such details include those listed in subdivision (c)(2)(A).~~

~~(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.~~

~~**(h) ALTERNATIVE STORAGE MEDIA.**~~

~~(1) For purposes of storage and retention, taxpayer may convert harcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage only imaging media such as microfilm or microfiche and may discard the original harcopy documents, provide the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.~~

~~(2) Storage only imaging media such as microfilm and microfiche systems shall meet the following requirements:~~

~~(A) Documentation establishing the procedures for converting the harcopy documents to the storage only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.~~

~~(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).~~

~~(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage only imaging media.~~

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~~(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.~~

~~(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.~~

~~(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.~~

~~(i) RECORD RETENTION—TIME PERIOD. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.~~

~~(j) RECORD RETENTION LIMITATION AGREEMENTS.~~

~~(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.~~

~~(A) If a taxpayer seeks to limit its retention of machine-sensible records, the taxpayer may request a record retention limitation agreement which shall;~~

~~1. document understandings reached with the Board, which may include, but are not limited to, any one or more of the following issues:~~

- ~~a. the conversion of files created on an obsolete computer system;~~
- ~~b. restoration of lost or damaged files and the actions to be taken;~~
- ~~e. use of taxpayer computer resources, and~~

~~2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and~~

~~3. authorize variances, if any, from the normal provisions of this regulation.~~

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~~(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.~~

~~(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.~~

~~(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.~~

~~(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.~~

~~(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" pursuant to Revenue and Taxation Code Section 8253 and 8303.~~

~~(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.~~

~~(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.~~

~~(3) In addition to the record retention evaluation under subdivision (j)(2), the Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The Board shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.~~

~~**(k) FAILURE TO MAINTAIN RECORDS.** Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.~~

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(b) SPECIFIC APPLICATIONS. In addition to the record keeping requirements set forth in subdivision (a), suppliers shall comply with the following requirements.

A supplier shall maintain complete records of all rack removals, sales, imports and exempt dispositions including exemption certificates, self-consumed fuel, inventories, purchases, receipts, and tank gaugings or meter readings, of motor vehicle and any other fuel that is required to be accounted for on the supplier's return or report. Such records include but are not limited to:

- (1) Refinery Reports related to the production of motor vehicle fuel.
- (2) Inventory reconciliation by location.
- (3) Storage inventory reports.
- (4) List of storage locations.
- (5) Tax returns from other states to support export claims.
- (6) Cardlock statements.
- (7) Calculations or formulas to support off-highway exempt usage.
- (8) First Taxpayer Reports.

Note: *Authority cited:* Section 8251, Revenue and Taxation Code

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UNDERGROUND STORAGE TANK MAINTENANCE FEE LAW  
**Proposed new Chapter 1.5. Underground Storage Tank Maintenance Fee.**

Move existing Sections 1201-1271 into new Chapter 1.5.

**Regulation 1248. RELIEF FROM LIABILITY.**

Reference: Section 50112.5, Revenue and Taxation Code.

~~(a) In General.~~ A person may be relieved from the liability for the payment of the fee, including any penalties and interest added to those fees, 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: written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

~~(1) written advice given by the board under the conditions set forth in subdivision (b) below, or~~

~~(2) written advice given by the board in a prior audit of that person 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 by a legal or statutory successor to that person.~~

~~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.~~

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~~(b) Advice Provided in a Written Communication. 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.~~

~~(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. 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 of the person 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.~~

Note: *Authority cited:* Section 50152, Revenue and Taxation Code; and Section 25299.42, Health and Safety Code.

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

UNDERGROUND STORAGE TANK MAINTENANCE FEE LAW

**Regulation 1271. RECORDS.**

Reference: Sections 50109 and 50153, Revenue and Taxation Code.

**(a) Definitions:**

- (1) ~~"Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.~~
- (2) ~~"Electronic data interchange" or "EDI technology" means the computer to computer exchange of business transactions in a standardized structured electronic format.~~
- (3) ~~"Hardcopy" means any document, record, report or other data maintained in a paper format.~~
- (4) ~~"Machine sensible record" means a collection of related information in an electronic format. Machine sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage only imaging system such as microfilm or microfiche.~~
- (5) ~~"Fee payer" means any person liable for the payment of a fee imposed by Section 25299.41 of the Health and Safety Code.~~

**(b) GENERAL.** ~~(1) A fee payer shall maintain and make available for examination on request by the board or its authorized representatives, all records in the manner set forth at California Code of Regulations, Title 18, Section 4901 necessary to determine the correct underground storage tank maintenance fee liability and all records necessary for the proper completion of underground storage tank maintenance fee returns. Such records include but are not limited to:~~

~~(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.~~

~~(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.~~

~~(C) Schedules or working papers used in connection with the preparation of fee returns.~~

~~(2) Machine sensible records are considered records under Revenue and Taxation Code Section 50153.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(c) Machine-Sensible Records~~

~~(1) General.~~

~~(A) Machine-Sensible records used to establish fee compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A fee payer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.~~

~~(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.~~

~~(C) Fee payers are not required to construct machine-sensible records other than those created in the ordinary course of business. A fee payer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for fee purposes.~~

~~(2) Electronic Data Interchange Requirements.~~

~~(A) Where a fee payer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of fee, indication of fee status (e.g., for resale), and shipping detail. Codes may be used to identify some or all of the data elements, provided the fee payer maintains a method which allows the board to interpret the coded information.~~

~~(B) The fee payer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a fee payer using EDI technology receives electronic invoices from its suppliers. The fee payer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the fee payer must also retain other records, such as its vendor master file and product code description lists, and make them available to the board. In this example, the fee payer need not retain its EDI transaction for fee purposes.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.~~

~~(4) Business Process Information.~~

~~(A) Upon request of the board, the fee payer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the fee documents prepared by the fee payer and the measures employed to ensure the integrity of the records.~~

~~(B) The fee payer shall be capable of demonstrating:~~

- ~~1. the functions being performed as they relate to the flow of data through the system;~~
- ~~2. the internal controls used to ensure accurate and reliable processing and;~~
- ~~3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.~~

~~(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:~~

- ~~1. record formats or layouts;~~
- ~~2. field definitions (including the meaning of all codes used to represent information);~~
- ~~3. file descriptions (e.g., data set name); and~~
- ~~4. detailed charts of accounts and account descriptions.~~

~~(d) Machine-Sensible Records Maintenance Requirements.~~

~~(1) The fee payer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).~~

~~(2) The Board recommends but does not require that fee payers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(e) Access to Machine-Sensible Records.~~

~~(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a fee payer's facts and circumstances through consultation with the fee payer.~~

~~(2) Such access will be provided in one or more of the following manners:~~

~~(A) The fee payer may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.~~

~~(B) The fee payer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.~~

~~(C) The fee payer may convert the machine-sensible records to a standard record format specified by the board, including copies of files, on magnetic medium that is agreed to by the board.~~

~~(D) The fee payer and the board may agree on other means of providing access to the machine-sensible records.~~

~~(f) Fee payer Responsibility and Discretionary Authority.~~

~~(1) In conjunction with meeting the requirements of subdivision (e), a fee payer may create files solely for the use of the board. For example, if a data base management system is used, it is consistent with this regulation for the fee payer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (e). The fee payer should document the process that created the separate file to show the relationship between that file and the original records.~~

~~(2) A fee payer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the fee payer of its responsibilities under this regulation.~~

~~(g) Hardecopy Records.~~

~~(1) Except as specifically provided, fee payers are not relieved of the responsibility to retain hardecopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardecopy records may be retained on a record keeping medium as provided in subdivision (h).~~

~~(2) If hardecopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the fee payer uses electronic data interchange technology), such hardecopy records need not be created.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(3) Hardecopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct fee liability relating to the transaction are subsequently received and retained by the fee payer in accordance with the regulation. Such details include those listed in subdivision (c)(2)(A).~~

~~(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.~~

~~(h) Alternative Storage Media.~~

~~(1) For purposes of storage and retention, fee payer may convert hardecopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardecopy documents, provide the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.~~

~~(2) Storage-only imaging media such as microfilm and microfiche systems shall meet the following requirements.~~

~~(A) Documentation establishing the procedures for converting the hardecopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.~~

~~(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).~~

~~(C) Upon request by the board, a fee payer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.~~

~~(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.~~

~~(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.~~

~~(i) Record Retention—Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.~~

~~(j) Record Retention Limitation Agreements:~~

~~(1) The board has the authority to enter into or revoke a record retention limitation agreement with the fee payer to modify or waive any of the specific requirements in this regulation. A fee payer's request for an agreement must specify which records (if any) the fee payer proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The fee payer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.~~

~~(A) If a fee payer seeks to limit its retention of machine-sensible records, the fee payer may request a record retention limitation agreement, which shall:~~

~~1. document understandings reached with the board, which may include, but are not limited to, any one or more of the following issues:~~

~~a. the conversion of files created on an obsolete computer system;~~

~~b. restoration of lost or damaged files and the actions to be taken;~~

~~e. use of fee payer computer resources; and~~

~~2. specifically identify which of the fee payer's records the Board determines are not necessary for retention and which the fee payer may discard, and~~

~~3. authorize variances, if any, from the normal provisions of this regulation.~~

~~(B) The board shall consider a fee payer's request for a record retention limitation agreement and notify the fee payer of the actions to be taken.~~

~~(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the fee payer of the responsibility to keep adequate and complete records supporting entries shown on any fee or information return.~~

~~(2) A fee payer's record retention practices shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the fee payer's relevant data processing and accounting systems with respect to EDP systems,~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

including systems using EDI technology.

~~(A) The board shall notify the fee payer of the results of any evaluation, including acceptance or disapproval of any proposals made by the fee payer (e.g., to discard certain records) or any changes considered necessary to bring the fee payer's practices into compliance with this regulation.~~

~~(B) Since the evaluation of a fee payer's record retention practices is not directly related to the determination of fee reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" pursuant to Revenue and Taxation Code Section 50153.~~

~~(C) Unless otherwise specified, an agreement shall not apply to accounting and fee systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or fee system shall be retained by the fee payer in accordance with this regulation until a new evaluation is conducted by the board.~~

~~(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the fee payer's signing of a record retention limitation agreement, acquires or is acquired by the fee payer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.~~

~~(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The board shall notify the fee payer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.~~

~~(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the fee and may result in penalties or other appropriate administrative action.~~

**(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), owners of underground storage tanks shall comply with the following requirements.

An owner of underground storage tanks shall maintain complete records of all tanks owned and all purchases of petroleum products placed into underground storage tanks. Such records include but are not limited to:

(1) Federal Income Tax Return Depreciation Schedules or fixed asset and improvement listing.

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

- (2) Property Tax Statements.
- (3) Underground storage tank installation records.
- (4) Lease agreements.
- (5) Petroleum products purchase invoices.
- (6) Copy of local agency permit and application for permit filed with the local agency.

Note: *Authority cited:* Section 50152, Revenue and Taxation Code.

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

USE FUEL TAX LAW

**Regulation 1332. RECORDS.**

Reference: Sections 8732, 8752, 9253 and 9254, Revenue and Taxation Code.

**(a) GENERAL.** A taxpayer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

**Definitions.**

- ~~(1) "Database Management System" — a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.~~
- ~~(2) "Electronic data interchange" or "EDI technology" — the computer to computer exchange of business transactions in a standardized structured electronic format.~~
- ~~(3) "Hardcopy" — any document, record, report or other data maintained in a paper format.~~
- ~~(4) "Machine sensible record" — a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.~~
- ~~(5) "Taxpayer" — Every user and every vendor.~~

~~**(b) General.**~~

~~(1) A taxpayer shall maintain and make available for examination on request by the board or its authorized representative, all records necessary to determine the correct tax liability under the Use Fuel Tax Law and all records necessary for the proper completion of the use fuel tax return. Such records include but are not limited to:~~

~~(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.~~

~~(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.~~

~~(C) Schedules or working papers used in connection with the preparation of tax returns.~~

~~(2) Machine-sensible records are considered records under Revenue and Taxation Code Section 9253 and 9254.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(c) Machine-Sensible Records.~~

~~(1) General.~~

~~(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.~~

~~(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.~~

~~(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.~~

~~(2) Electronic Data Interchange Requirements.~~

~~(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., for exempts sales), and shipping detail. Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the board to interpret the coded information.~~

~~(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.~~

~~(4) Business Process Information.~~

~~(A) Upon request of the board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.~~

~~(B) The taxpayer shall be capable of demonstrating:~~

- ~~1. the functions being performed as they relate to the flow of data through the system;~~
- ~~2. the internal controls used to ensure accurate and reliable processing and;~~
- ~~3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.~~

~~(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:~~

- ~~1. record formats or layouts;~~
- ~~2. filed definitions (including the meaning of all codes used to represent information);~~
- ~~3. file descriptions (e.g., data set name); and~~
- ~~4. detailed charts of accounts and account descriptions.~~

~~(d) Machine-Sensible Records Maintenance Requirements.~~

~~(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).~~

~~(2) The board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(e) Access to Machine-Sensible Records.~~

~~(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.~~

~~(2) Such access will be provided in one or more the following manners:~~

~~(A) The taxpayer may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.~~

~~(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.~~

~~(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.~~

~~(D) The taxpayer and the board may agree on other means of providing access to the machine-sensible records.~~

~~(f) Taxpayer Responsibility and Discretionary Authority.~~

~~(1) In conjunction with meeting the requirements of subdivision (e), a taxpayer may create files solely for the use of the board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (e). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.~~

~~(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.~~

~~(g) Hardecopy Records.~~

~~(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardecopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardecopy records may be retained on a record-keeping medium as provided in subdivision (h).~~

~~(2) If hardecopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardecopy records need not be created.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(3) Hardecopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with the regulation. Such details include those listed in subdivision (c)(2)(A).~~

~~(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.~~

~~(h) Alternative Storage Media.~~

~~(1) For purposes of storage and retention, taxpayers may convert hardecopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardecopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.~~

~~(2) Storage-only imaging such as microfilm and microfiche systems shall meet the following requirements.~~

~~(A) Documentation establishing the procedures for converting the hardecopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.~~

~~(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).~~

~~(C) Upon request by the board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.~~

~~(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.~~

~~(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.~~

~~(i) Record Retention—Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.~~

~~(j) Record Retention Limitation Agreements:~~

~~(1) The board has the authority to enter into or revoke a retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.~~

~~(A) If a taxpayer seeks to limit its retention of machine-sensible records, the taxpayer may request a record retention limitation agreement, which shall:~~

~~1. document understandings reached with the board, which may include, but are not limited to, any one or more of the following issues:~~

~~a. the conversion of files created on an obsolete computer system;~~

~~b. restoration of lost or damaged files and the actions to be taken;~~

~~e. use of taxpayer computer resources, and~~

~~2. specifically identify which of the taxpayer's records the board determines are not necessary for retention and which the taxpayer may discard, and~~

~~3. authorize variances, if any, from the normal provisions of this regulation.~~

~~(B) The board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.~~

~~(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.~~

~~(2) A taxpayer's record retention practices shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems,~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

including systems using EDI technology.

~~(A) The board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.~~

~~(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 9254 of the Revenue and Taxation Code.~~

~~(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the board.~~

~~(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.~~

~~(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.~~

~~(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.~~

~~**(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), vendors and users of use fuel shall comply with the following requirements.~~

~~(1) **VENDOR'S RECORDS.** A vendor shall maintain complete records of all sales or other dispositions including self-consumed fuel, inventories, purchases, receipts, and tank gaugings or meter readings, of liquefied petroleum gas, and any other fuel the use of which is subject to the use fuel tax.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

(2) **VENDOR'S SALES INVOICES.** The vendor shall prepare a serially numbered invoice for each sale of fuel whether the fuel is sold for use in motor vehicles or for other uses. A single invoice covering multiple deliveries of fuel made during a period of time not to exceed a calendar month shall constitute an invoice for each sale. If the multiple delivery invoice includes tax-exempt deliveries either into a bulk storage facility or into fuel tanks of motor vehicles with respect to which the vendor is excused from collecting the tax as provided in Regulations 1319 and 1320, and deliveries into fuel tanks of motor vehicles upon which the tax is required to be collected, the invoice shall contain or be accompanied by a statement showing separately the deliveries and gallonage upon which the tax is collected and the tax-exempt deliveries and gallonage. The invoice shall be delivered to the purchaser, and a copy thereof shall be retained by the vendor.

A sales invoice shall contain the following information:

(A) The name and address of the vendor.

~~(B) The name of the purchaser with respect to:~~

~~1. A charge or credit sale.~~

~~2. A cash sale when the quantity of fuel sold is 25 or more gallons or units.~~

~~(C)~~ The date of sale.

~~(D)~~ C The number of gallons or units of fuel sold, the price per gallon or unit and the total amount of the sale.

~~(E)~~ D The amount of the use fuel tax collected, if delivery is into a fuel tank of a motor vehicle; however, the amount of the tax collected need not be separately stated if the invoice bears the notation that the price includes the tax.

~~(F)~~ E For single deliveries of less than 250 gallons or units, the type of receptacle, other than a fuel tank of a motor vehicle, into which the vendor delivered fuel without collecting the use fuel tax (e.g., storage tank, crawler tractor, drum, stationary generator). On machine-prepared invoices, reasonable code designations will be acceptable in lieu of such description.

The sales invoice shall upon payment by the purchaser constitute a receipt for the amount of use fuel tax included therein collected by the vendor.

(3) **USER'S RECORDS.** Users of fuel subject to the tax shall obtain from the vendor of the fuel and retain in their files an invoice for each delivery of such fuel into the fuel tank or tanks of each vehicle operated by them and for each delivery into their bulk storage tank or tanks. These invoices shall set forth the information specified in subsection ~~(4)~~(2)

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(b)(2) of this regulation and shall be filed or identified in a systematic manner so that they may readily be traced into their purchase or expense records and into their returns to the board.

Users should keep as part of their records a detail of figures upon which are based the totals set forth on their returns to the board. When fuel is placed into the fuel tank of a qualified motor vehicle, either the user or the vendor should indentify on the invoice the qualified motor vehicle into which the fuel was placed. All individual invoices supporting charge accounts which include purchases of fuel shall be retained by the user in such manner as to enable the representatives of the board to establish the identity of all the merchandise or service included in the total charge and the specific gallonage of fuel purchased.

In addition to the records prescribed above, a lessor of a vehicle who is a user as defined under Regulation 1304(d) (18 CCR 1304(d) shall maintain records of each trip or the mileage the vehicle is operated by the lessee.

Note: *Authority cited:* Section 9251, Revenue and Taxation Code.

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USE FUEL TAX LAW

**Regulation 1335. RELIEF FROM LIABILITY.**

Reference: Sections ~~8805, 8877, 8878~~ and 8879, Revenue and Taxation Code.

~~(a) In General.~~ A person may be relieved from the liability for the payment of the use fuel tax, including any penalties and interest added to those use fuel 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: written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

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

~~(2) written advice given by the Board in a prior audit of that person 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 by a legal or statutory successor to that person.~~

~~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. 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~~

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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.

~~(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. 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 purpose 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 of the person 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.~~

Note: *Authority cited:* Section 9251, Revenue and Taxation Code.

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DIESEL FUEL TAX LAW

**Regulation 1422. RELIEF FROM LIABILITY.**

Reference: Section 60210 Revenue and Taxation Code.

~~(a) IN GENERAL.~~ A person may be relieved from the liability for the payment of the diesel fuel tax, 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: written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

~~(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 of that person under the conditions set forth in subdivision (e) 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 (e) below, may be relied upon by the person audited or by a legal or statutory successor to that person.~~

~~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 (e) below.~~

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

~~(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. 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 of the person 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.~~

~~(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.** 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.~~

Note: *Authority cited:* Section 60601 Revenue and Taxation Code

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DIESEL FUEL TAX LAW

**Regulation 1470. RECORDS.**

References: Sections 60044, 60107, 60201, 60202, 60204, 60204.5, 60205, 60205.5, 60206, 60603, 60604, 60605 and 60606, Revenue and Taxation Code.

**(a) Definitions:**

- (1) ~~"Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.~~
- (2) ~~"Electronic data interchange" or "EDI technology" means the computer to computer exchange of business transactions in a standardized structured electronic format.~~
- (3) ~~"Hardcopy" means any document, record, report or other data maintained in a paper format.~~
- (4) ~~"Machine sensible record" means a collection of related information in an electronic format. Machine sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage only imaging system such as microfilm or microfiche.~~
- (5) ~~"Taxpayer" means Every interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/fueler, pipeline operator, train operator, vessel operator, and every person dealing in, removing, transporting, or storing diesel fuel in this state.~~

**(b) GENERAL.** ~~(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representatives, all records in the manner set forth at California Code of Regulations, Title 18, Section 4901. necessary to determine the correct diesel fuel tax liability and all records necessary for the proper completion of diesel fuel tax returns. Such records include but are not limited to:~~

- ~~(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.~~
- ~~(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.~~
- ~~(C) Schedules or working papers used in connection with the preparation of tax returns and reports.~~

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~~(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 60604, 60605, and 60606.~~

~~(c) Machine-Sensible Records.~~

~~(1) General.~~

~~(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.~~

~~(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.~~

~~(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.~~

~~(2) Electronic Data Interchange Requirements.~~

~~(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., for resale), and shipping detail. Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.~~

~~(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other~~

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records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

~~(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.~~

~~(4) Business Process Information.~~

~~(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.~~

~~(B) The taxpayer shall be capable of demonstrating:~~

- ~~1. the functions being performed as they relate to the flow of data through the system;~~
- ~~2. the internal controls used to ensure accurate and reliable processing and;~~
- ~~3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.~~

~~(C) The following specific documentation is required for machine-sensible records retained pursuant to this regulation:~~

- ~~1. record formats or layouts;~~
- ~~2. filed definitions (including the meaning of all codes used to represent information);~~
- ~~3. file descriptions (e.g., data set name); and~~
- ~~4. detailed charts of accounts and account descriptions.~~

~~(d) Machine-Sensible Records Maintenance Requirements.~~

~~(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).~~

~~(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance~~

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~~and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.~~

~~(e) Access to Machine-Sensible Records.~~

~~(1) The manner in which the Board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.~~

~~(2) Such access will be provided in one or more of the following manners:~~

~~(A) The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the machine-sensible records.~~

~~(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.~~

~~(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.~~

~~(D) The taxpayer and the Board may agree on other means of providing access to the machine-sensible records.~~

~~(f) Taxpayer Responsibility and Discretionary Authority.~~

~~(1) In conjunction with meeting the requirements of subdivision (e), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (e). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.~~

~~(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.~~

~~(g) Hardecopy Records.~~

~~(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardecopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardecopy records may be retained on a record-keeping medium as provided in subdivision (h).~~

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~~(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.~~

~~(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with the regulation. Such details include those listed in subdivision (c)(2)(A).~~

~~(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.~~

~~(h) Alternative Storage Media.~~

~~(1) For purposes of storage and retention, taxpayer may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage only imaging media such as microfilm or microfiche and may discard the original hardcopy documents, provide the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.~~

~~(2) Storage only imaging media such as microfilm and microfiche systems shall meet the following requirements.~~

~~(A) Documentation establishing the procedures for converting the hardcopy documents to the storage only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.~~

~~(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).~~

~~(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage only imaging media.~~

~~(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the~~

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~~quality of a group of letters or numerals being recognizable as words or complete numbers.~~

~~(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.~~

~~(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.~~

~~(i) Record Retention -- Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.~~

~~(j) Record Retention Limitation Agreements.~~

~~(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.~~

~~(A) If a taxpayer seeks to limit its retention of machine-sensible records, the taxpayer may request a record retention limitation agreement, which shall;~~

~~1. document understandings reached with the Board, which may include, but are not limited to, any one or more of the following issues:~~

~~a. the conversion of files created on an obsolete computer system;~~

~~b. restoration of lost or damaged files and the actions to be taken;~~

~~e. use of taxpayer computer resources, and~~

~~2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and~~

~~3. authorize variances, if any, from the normal provisions of this regulation.~~

~~(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.~~

~~(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and~~

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~~complete records supporting entries shown on any tax or information return.~~

~~(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.~~

~~(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.~~

~~(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" pursuant to Revenue and Taxation Code Section 60606.~~

~~(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.~~

~~(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.~~

~~(3) In addition to the record retention evaluation under subdivision (j)(2), the Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The Board shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.~~

~~(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.~~

~~(4) **(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), suppliers, ultimate vendors, retail vendors, and users shall comply with the following requirements.~~

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(1) SUPPLIER'S RECORDS. A supplier shall maintain complete records of all rack removals, sales, imports, and exempt dispositions including exemption certificates, self-consumed diesel fuel, inventories, purchases, receipts, and tank gaugings or meter readings, of diesel and any other fuel that is required to be accounted for on the supplier's return or report. Such records include but are not limited to:

- (A) Refinery Reports related to the production of diesel fuel.
- (B) Inventory reconciliation by location.
- (C) Storage inventory reports.
- (D) List of storage locations.
- (E) Tax returns from other states to support export claims.
- (F) Cardlock statements.
- (G) Calculations or formulas to support off-highway exempt usage.
- (H) First Taxpayer Reports.
- (I) Support for claimed Supplier bad debts.

(+ 2) ULTIMATE VENDOR'S RECORDS. An ultimate vendor shall maintain complete records of all sales, exports, or other dispositions of tax-paid diesel fuel for which a claim for refund is being made, including exemption certificates, self-consumed fuel, inventories, purchases, receipts, and tank gaugings or meter readings, of diesel fuel and any other fuel the use of which is subject to the diesel fuel tax accounted for on the ultimate vendor's claim for refund. Such records may include but are not limited to:

- (A) Purchase invoices for undyed tax-paid diesel fuel.
- (B) Purchase invoices for dyed ex-tax diesel fuel.
- (C) Delivery tickets for diesel fuel exported.
- (D) Tax returns from other states to support diesel fuel export claims.
- (E) Copies of United States Government purchase orders or United States Government credit card receipts.
- (F) Cardlock statements.

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(G) Calculations or formulas to support off-highway exempt usage of diesel fuel.

~~(2)~~ (3) ULTIMATE VENDOR'S SALES INVOICES. The ultimate vendor shall prepare a serially numbered invoice for each sale of diesel fuel ~~whether the fuel is sold for use in motor vehicles or for other uses.~~ A single invoice or a single cardlock statement covering multiple deliveries of diesel fuel made during a period of time not to exceed a calendar month shall constitute an invoice for each sale. If the multiple delivery invoice or cardlock statement includes both tax-exempt deliveries with respect to which the ultimate vendor is excused from collecting the tax; and deliveries upon which the tax is required to be collected, the invoice or cardlock statement shall contain or be accompanied by a statement showing separately the deliveries and gallonage upon which the tax is collected and the tax-exempt deliveries and gallonage. The invoice or cardlock statement shall be delivered to the purchaser, and a copy thereof shall be retained by the ultimate vendor.

A sales invoice or cardlock statement shall contain the following information:

(A) The name and address of the ultimate vendor.

(B) The name of the purchaser, ~~with respect to:~~

(C) The date of sale.

(D) The number of gallons of diesel fuel sold, the price per gallon and the total amount of the sale.

(E) The amount of the diesel fuel tax collected, however, the amount of the tax collected need not be separately stated if the invoice bears the notation that the price includes the tax.

(F) A statement that there is no evidence of dye in the undyed diesel fuel included in the invoice or cardlock statement.

(G) The dyed diesel fuel notice for dyed diesel fuel included in the invoice or cardlock statement.

~~(3)~~ (4) RECEIPT FOR TAX PAID TO A RETAIL VENDOR. The sales invoice shall upon payment by the purchaser constitute a receipt for the amount of diesel fuel tax included therein collected by the retail vendor.

The sales invoice shall contain the information in (A), (B), (C) and (D). The sales invoice or similar document shall also include the information in (E) and (F).

(A) The name and address of the retail vendor.

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(B) The date of sale.

(C) The number of gallons of diesel fuel sold, the price per gallon and the total amount of the sale.

(D) The amount of the diesel fuel tax collected, however, the amount of the tax collected need not be separately stated if the invoice bears the notation that the price includes the tax.

(E) A statement that there is no evidence of dye in the undyed diesel fuel included in the invoice.

(F) The dyed diesel fuel notice for dyed diesel fuel included in the invoice.

(4 ~~5~~) USER'S RECORDS. The user shall maintain complete records of self-consumed diesel fuel, inventories, purchases, receipts, and tank gaugings or meter readings, of diesel fuel and any other fuel the use of which is subject to the diesel fuel tax. Records shall also support any calculations or formulas used to claim exempt percentages of exempt usage of diesel fuel.

(~~5~~ 6) USER'S INVOICES. Users of diesel fuel subject to the tax shall obtain from the retail vendor of the diesel fuel and retain in their files an invoice for each delivery of such diesel fuel into the fuel tank or tanks of each vehicle operated by them and for each delivery into their bulk storage tank or tanks. These invoices shall set forth the information specified in subsection ~~(4)(2)~~ (b)(4) of this regulation and shall be filed or identified in a systematic manner so that they may readily be traced into their purchase or expense records and into their tax returns or claims for refund to the Board.

Users should keep as part of their records a detail of figures upon which are based the totals set forth on their tax returns or claims for refund to the Board. When diesel fuel is placed into the fuel tank of a qualified motor vehicle, either the user or the retail vendor should identify on the invoice the qualified motor vehicle into which the diesel fuel was placed. All individual invoices supporting charge accounts which include purchases of diesel fuel shall be retained by the user in such manner as to enable the representatives of the Board to establish the identity of all the merchandise or service included in the total charge and the specific gallonage of diesel fuel purchased.

Note: *Authority cited:* Section 60601, Revenue and Taxation Code.

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

OIL SPILL PREVENTION AND RESPONSE FEES

**Regulation 2250. RELIEF FROM LIABILITY.**

Reference: Section 46158, Revenue and Taxation Code.

~~(a) In General:~~ A person may be relieved from the liability for the payment of the oil spill response fee and/or the oil spill prevention and administration fee including any penalties and interest added to those fees, 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: written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

~~(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 of that person 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 by a legal or statutory successor to that person.~~

~~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.~~

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~~(b) Advice Provided in a Written Communication. 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.~~

~~(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. 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 of the person 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.~~

~~(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. 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.~~

Note: *Authority cited:* Section 15606(a), Government Code; and Section 46601, Revenue and Taxation Code.

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OIL SPILL PREVENTION AND RESPONSE FEES

**Regulation 2255. RECORDS.**

References: Sections 46602 and 46603, Revenue and Taxation Code.

~~(a) Definitions.~~ **GENERAL.** A feepayer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

~~(1) "Database Management System"—a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.~~

~~(2) "Electronic data interchange" or "EDI technology"—the computer to computer exchange of business transactions in a standardized structured electronic format.~~

~~(3) "Hardcopy"—any document, record, report or other data maintained in a paper format.~~

~~(4) "Machine sensible record"—a collection of related information in an electronic format. Machine sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage only imaging system such as microfilm or microfiche.~~

~~(5) "Feepayer" means any person liable for the payment of the fee imposed by either Section 8670.40 or Section 8670.48 of the Government Code.~~

~~(b) General.~~

~~(1) A feepayer shall maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct oil spill response fee liability and oil spill prevention and administration fee liability, and all records necessary for the proper completion of oil spill response fee returns and oil spill prevention and administration returns. Such records include but are not limited to:~~

~~(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.~~

~~(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.~~

~~(C) Schedules or working papers used in connection with the preparation of fee returns.~~

~~(2) Machine sensible records are considered records under Revenue and Taxation Code Sections 46602 and 46603.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(c) Machine-Sensible Records.~~

~~(1) General.~~

~~(A) Machine-sensible records used to establish fee compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A feepayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.~~

~~(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interechange (ASCII) flat file.~~

~~(C) FeePAYERS are not required to construct machine-sensible records other than those created in the ordinary course of business. A feepayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for fee purposes.~~

~~(2) Electronic Data Interchange Requirements.~~

~~(A) Where a feepayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of fee, indication of fee status (e.g., not subject to the fee), and shipping detail. Codes may be used to identify some or all of the data elements, provided the feepayer maintains a method which allows the board to interpret the coded information.~~

~~(B) The feepayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a feepayer using EDI technology receives electronic invoices from its suppliers. The feepayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the feepayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the board. In this example, the feepayer need not retain its EDI transaction for fee purposes.~~

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~~(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.~~

~~(4) Business Process Information.~~

~~(A) Upon request of the board, the feepayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the fee documents prepared by the feepayer and the measures employed to ensure the integrity of the records.~~

~~(B) The feepayer shall be capable of demonstrating:~~

- ~~1. the functions being performed as they relate to the flow of data through the system;~~
- ~~2. the internal controls used to ensure accurate and reliable processing and;~~
- ~~3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.~~

~~(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:~~

- ~~1. record formats or layouts;~~
- ~~2. field definitions (including the meaning of all codes used to represent information);~~
- ~~3. file descriptions (e.g., data set name); and~~
- ~~4. detailed charts of accounts and account descriptions.~~

~~(d) Machine-Sensible Records Maintenance Requirements.~~

~~(1) The feepayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).~~

~~(2) The board recommends but does not require that feepayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.~~

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~~(e) Access to Machine-Sensible Records.~~

~~(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a feepayer's facts and circumstances through consultation with the feepayer.~~

~~(2) Such access will be provided in one or more of the following manners:~~

~~(A) The feepayer may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.~~

~~(B) The feepayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.~~

~~(C) The feepayer may convert the machine-sensible records to a standard record format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.~~

~~(D) The feepayer and the board may agree on other means of providing access to the machine-sensible records.~~

~~(f) Feepayer Responsibility and Discretionary Authority.~~

~~(1) In conjunction with meeting the requirements of subdivision (e), a feepayer may create files solely for the use of the board. For example, if a data base management system is used, it is consistent with this regulation for the feepayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (e). The feepayer should document the process that created the separate file to show the relationship between that file and the original records.~~

~~(2) A feepayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the feepayer of its responsibilities under this regulation.~~

~~(g) Hardecopy Records.~~

~~(1) Except as specifically provided, feepayers are not relieved of the responsibility to retain hardecopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardecopy records may be retained on a record-keeping medium as provided in subdivision (h).~~

~~(2) If hardecopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the feepayer uses electronic data interchange technology), such hardecopy records need not be created.~~

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~~(3) Hardecopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct fee liability relating to the transaction are subsequently received and retained by the feepayer in accordance with the regulation. Such details include those listed in subdivision (c)(2)(A).~~

~~(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.~~

~~(h) Alternative Storage Media.~~

~~(1) For purposes of storage and retention, feepayer may convert hardecopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardecopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.~~

~~(2) Storage-only imaging media such as microfilm and microfiche systems shall meet the following requirements.~~

~~(A) Documentation establishing the procedures for converting the hardecopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.~~

~~(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).~~

~~(C) Upon request by the board, a feepayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.~~

~~(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.~~

~~(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.~~

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~~(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.~~

~~(i) Record Retention—Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.~~

~~(j) Record Retention Limitation Agreements:~~

~~(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the feepayer to modify or waive any of the specific requirements in this regulation. A feepayer's request for an agreement must specify which records (if any) the feepayer proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The feepayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.~~

~~(A) If a feepayer seeks to limit its retention of machine-sensible records, the feepayer may request a record retention limitation agreement which shall;~~

~~1. document understandings reached with the board, which may include, but is not limited to, any one or more of the following issues:~~

~~a. the conversion of files created on an obsolete computer system;~~

~~b. restoration of lost or damaged files and the actions to be taken;~~

~~e. use of feepayer computer resources, and~~

~~2. specifically identify which of the feepayer's records the board determines are not necessary for retention and which the feepayer may discard, and~~

~~3. authorize variances, if any, from the normal provisions of this regulation.~~

~~(B) The board shall consider a feepayer's request for a record retention limitation agreement and notify the feepayer of the actions to be taken.~~

~~(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the feepayer of the responsibility to keep adequate and complete records supporting entries shown on any fee or information return.~~

~~(2) A feepayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the feepayer's relevant data processing and accounting systems with respect to EDP systems,~~

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~~including systems using EDI technology.~~

~~(A) The board shall notify the feepayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the feepayer (e.g., to discard certain records) or any changes considered necessary to bring the feepayer's practices into compliance with this regulation.~~

~~(B) Since the evaluation of a feepayer's record retention practices is not directly related to the determination of fee reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" pursuant to Revenue and Taxation Code Section 46603.~~

~~(C) Unless otherwise specified, an agreement shall not apply to accounting and fee systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or fee system shall be retained by the feepayer in accordance with this regulation until a new evaluation is conducted by the board.~~

~~(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the feepayer's signing of a record retention limitation agreement, acquires or is acquired by the feepayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.~~

~~(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The board shall notify the feepayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.~~

~~(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the fee and may result in penalties or other appropriate administrative action.~~

~~(4) **(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), feePAYERS shall comply with the following requirements.~~

In general, a person who is liable for payment of the oil spill response fee and/or the oil spill prevention and administration fee, would be expected to maintain some or all of the following records, as applicable:

(1) Books of account pertaining to crude oil (including condensate and natural gasoline) and petroleum products received at a marine terminal (including third-party

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terminals) or transported by pipeline across, under or through the marine waters of this state.

- (2) Shipping and discharge records.
- (3) Records evidencing ownership at the landside flange of crude oil or petroleum products received at marine terminals.
- (4) Records identifying all marine terminal/shipping dock locations owned or operated within the state.
- (5) Records identifying third party locations where crude oil or petroleum products are received and documentation or certification that the third-party terminal operator remitted the fee on the crude oil and petroleum products where applicable.
- (6) Third-party independent inspectors reports (e.g. Saybolt and Caleb Brett reports), where available, showing loading in the state of crude oil at marine terminals or discharge in the state of crude oil and other petroleum products at marine terminals/shipping docks.
- (7) Refinery records showing the receipt of crude oil used for processing.
- (8) Marine terminal records identifying the point of origin of crude oil and petroleum products received.
- (9) Records from production platforms operated in this state accounting for all crude oil and any other product extracted on the platform and their distribution.
- (10) Copies of all returns filed with the Board and related schedules used to prepare the returns.

Note: *Authority cited:* Section 15606(a), Government Code; and Section 46601, Revenue and Taxation Code.

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

ENERGY RESOURCES SURCHARGE LAW

**Regulation 2303. Relief From Liability.**

Reference: Section 40104, Revenue and Taxation Code.

A person may be relieved from the liability for the payment of the energy resources surcharge, including any penalties and interest added to the surcharge, 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 written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

Note: Authority cited: Section 40171, Revenue and Taxation Code.

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ENERGY RESOURCES SURCHARGE LAW

**Regulation 2343. Records.**

Reference: Sections 40172, ~~and~~ 40173, 40174, and 40175, Revenue and Taxation Code.

**(a) GENERAL.** A taxpayer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

**(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), a taxpayer shall comply with the following requirements.

Every electric utility engaged in generating, purchasing, transmitting, distributing, consuming, or selling electrical energy in this state shall keep and maintain adequate and complete records showing:

(1) The electrical energy generated, purchased, transmitted, distributed, consumed, and sold in this state.

(2) Meter readings and other records as may be necessary for the accurate determination of the kilowatt-hours of electrical energy generated, purchased, consumed, or sold in this state. For sales or use measured by a basis other than metering, the records shall show the other measurement and the method of computing the kilowatt-hours of electrical energy so sold or used.

(3) All deductions allowed by law and claimed in filing returns, except for the electrical energy used or lost in generation, transmission, and/or distribution.

(4) The methods and amounts used in computing its reports of estimates of future availability, generation, sales, and consumption of electrical energy.

Note: Authority cited: Section 40171, Revenue and Taxation Code.

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Regulation 2344. Microfilm Records

~~Microfilm reproductions of general books of account are not acceptable in lieu of original records. However, microfilm reproductions of supporting records of details may be maintained providing the following conditions are met:~~

~~(1) Appropriate facilities are provided for preservation of the films for periods required.~~

~~(2) Microfilm rolls are indexed, cross-referenced, labeled, to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.~~

~~(3) The taxpayer agrees to provide transcriptions of any information contained on microfilm which may be required for purposes of verification of surcharge liability.~~

~~(4) Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and copying the records.~~

~~A posting reference must be on each invoice. Credit memoranda must carry a reference to the documents evidencing the original transaction. Documents necessary to support claimed exemptions from surcharge liability must be maintained in an order by which they readily can be related to the transactions for which exemption is sought.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~Regulation 2345. Records Prepared by Automated Data Processing Systems~~

~~An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's surcharge liability.~~

~~(1) Recorded or Reconstructible Data. ADP records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.~~

~~(2) General and Subsidiary Books of Account. A general ledger, with source references, will be written out to coincide with financial reports for surcharge reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be written out periodically.~~

~~(3) Supporting Documents and Audit Trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Board upon request. The system should be so designed that supporting documents are readily available.~~

~~(4) Program Documentation. A description of the ADP portion of the accounting system should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate (A) the application being performed, (B) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures), and (C) the controls used to insure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~Regulation 2346. Records Retention.~~

~~All records pertaining to transactions involving energy resources surcharge liability must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.~~

~~All records must be made available for examination on request by the Board or its authorized representatives.~~

~~Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the surcharge and may result in penalties or other appropriate administrative action.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

EMERGENCY TELEPHONE USERS SURCHARGE LAW

**Regulation 2431. Records.**

Reference: Section 41056, Revenue and Taxation Code.

**(a) GENERAL.** A service supplier shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

**(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), service suppliers shall comply with the following requirements.

Every service supplier liable for payment of the emergency telephone users surcharge which it collects from service users shall keep complete and accurate records showing:

- (1) Totals for intrastate telephone communication in this state billed to service users.
- (2) All exemptions allowed by law.
- (3) Amounts of Emergency Telephone Users Surcharge Collected.

~~These records must include the normal books of account ordinarily kept by a service supplier furnishing intrastate telephone communication services, together with documents of original entry supporting the entries in the books of account, as well as copies of the tax returns and reports and all schedules or working papers used in connection with the preparation of the tax returns and reports.~~

~~(b) Microfilm Records. Microfilm reproductions of general books of account are not acceptable in lieu of original records. However, microfilm reproductions of supporting records of billing details may be maintained providing the following conditions are met:~~

- ~~(1) Appropriate facilities are provided for preservation of the films for periods required.~~
- ~~(2) Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listings of documents included, and are systematically filed.~~
- ~~(3) The service supplier agrees to provide transcription of any information contained on microfilm which may be required for purposes of verification of surcharge liability.~~
- ~~(4) Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and copying the records.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~A posting reference must be on each service order. Credit memoranda must carry a reference to the original billing date of the surcharge. Documents necessary to support claimed exemptions from surcharge liability must be maintained in an order by which they readily can be related to the reason for which exemption is sought.~~

~~(c) Records Prepared by Automated Data Processing Systems. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's surcharge liability.~~

~~(1) Recorded or Reconstructible Data. ADP records must provide an opportunity to trace any service user's telephone billings back to the original source or forward to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.~~

~~(2) General and Subsidiary Books of Account. A general ledger, with source references, will be written out to coincide with financial reports for surcharge reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be written out periodically.~~

~~(3) Supporting Documents and Audit Trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the board upon request. The system should be so designed that supporting documents are readily available.~~

~~(4) Program Documentation. A description of the ADP portion of the accounting system should be available.~~

~~The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:~~

~~(A) The application being performed.~~

~~(B) The procedures employed in each application (which, for example, might be supported by flow charts, block diagrams, or other satisfactory descriptions of the input or output procedures).~~

~~(C) The controls used to insure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.~~

~~(d) Records Retention. All records pertaining to transactions involving emergency telephone users surcharge liability must be preserved for a period of not less than four years from the due date of the returns supported by such records unless the State Board of~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~Equalization authorizes in writing their destruction within a lesser period.~~

~~(e) Examination of Records. All records must be made available for examination upon proper notification to the service supplier by the board or its authorized representative at all reasonable times.~~

~~(f) Failure to Maintain Records. Failure to maintain and keep complete and adequate records will be considered evidence of negligence or intent to evade the surcharge and may result in penalties or other appropriate administrative action.~~

Note: Authority cited: Section 41128, Revenue and Taxation Code.

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EMERGENCY TELEPHONE USERS SURCHARGE LAW

**Regulation 2432. Relief From Liability.**

Reference: Section 41098, Revenue and Taxation Code.

~~(a) In General.~~ A person may be relieved from the liability for the payment of the Emergency Telephone Users Surcharge, including any penalties and interest added to the surcharge, 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: written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

~~(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 of that person 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 by a legal or statutory successor to that person.~~

~~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.~~

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~~(b) Advice Provided In a Prior Communication. 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.~~

~~(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. 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 of the person 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.~~

~~(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 or 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. A trade or industry association seeking 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.~~

Note: *Authority cited:* Section 41128, Revenue and Taxation Code.

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ALCOHOLIC BEVERAGE TAX LAW

**Regulation 2500. Records.**

Reference: Sections 32452, and 32453, Revenue and Taxation Code.

A taxpayer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

~~(a) DEFINITIONS.~~

- ~~(1) "Database Management System" — a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.~~
- ~~(2) "Electronic data interchange" or EDI technology" — the computer to computer exchange of business transactions in a standardized structured electronic format.~~
- ~~(3) "Hardecopy" — any document, record, report, or other data maintained in a paper format.~~
- ~~(4) " Machine sensible record" — a collection of related information in an electronic format. — Machine sensible records do not include hardecopy records that are created or recorded on paper or stored in or by a storage only imaging system such as microfilm or microfiche.~~
- ~~(5) "Taxpayer" — includes and means any person liable for the payment of tax or reporting requirement specified under the Alcoholic Beverage Tax Law, Part 14, Division 2, Revenue and Taxation Code (Sections 32001-32557).~~

~~(b) GENERAL~~

- ~~(1) A taxpayer shall maintain and make available for examination on request by the board or its authorized representative, all records necessary to determine the correct tax liability under the Alcoholic Beverage Tax Law and all records necessary for the proper completion of the return. Such records include but are not limited to:~~
  - ~~(A) Normal books of account ordinarily maintain by an average prudent businessperson engaged in the activity in question.~~
  - ~~(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.~~
  - ~~(C) Schedules or working papers used in connection with the preparation of tax returns.~~

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~~(2) Machine-sensible records are considered records under Revenue and Taxation Sections 32452 and 32453.~~

~~(c) MACHINE SENSIBLE RECORDS.~~

~~(1) General~~

~~(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.~~

~~(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g. Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.~~

~~(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.~~

~~(2) Electronic Data Interchange Requirements~~

~~(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in a acceptable paper record. For example, the retained records should contain such information as vendor name, invoice data, product description, quantity purchased, and price. Codes may be used to identify some or all of the data elements provided the taxpayer maintains a method which allows the board to interpret the coded information.~~

~~(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example a taxpayer, using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e. they contain only codes for that information), the taxpayer must also retain other~~

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records, such as its vendor master file and product code description lists and make them available to the board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

~~(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system shall be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.~~

~~(4) Business Process Information~~

~~(A) Upon request of the board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.~~

~~(B) The taxpayer shall be capable of demonstrating:~~

~~(1) the functions being performed as they relate to the flow of data through the system;~~

~~(2) the internal controls used to ensure accurate and reliable processing, and;~~

~~(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.~~

~~(C) The following specific documentation is required for machine-sensible records retained pursuant to this regulation:~~

~~(1) record formats or layouts;~~

~~(2) field definitions (including meaning of all codes used to represent information);~~

~~(3) file descriptions (e.g. data set name); and~~

~~(4) detailed charts of accounts and account descriptions.~~

~~(d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS.~~

~~(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).~~

~~(2) The board recommends but does not require that taxpayers refer to the National archives and Records Administration's (NARA) standards for guidance on the~~

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~~maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.~~

~~(e) ACCESS TO MACHINE-SENSIBLE RECORDS.~~

~~(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation between the board and the taxpayer.~~

~~(2) Such access will be provided in one or more of the following manners:~~

~~(A) The taxpayer may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.~~

~~(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.~~

~~(C) The taxpayer may convert the machine-sensible records to a standard records format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.~~

~~(D) The taxpayer and the board may agree on the means of providing access to the machine-sensible records.~~

~~(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.~~

~~(1) In conjunction with meeting the requirements of subdivision (e), a taxpayer may create files solely for the use of the board. For example, if a database management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of subdivision (e). In this case, the taxpayer shall document the process that created the separate file to show the relationship between that file and the original records.~~

~~(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.~~

~~(g) HARDCOPY RECORDS.~~

~~(1) Except as specifically provided, a taxpayer is not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required~~

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~~by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).~~

~~(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.~~

~~(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).~~

~~(4) Computer printouts that are created for validation, control or other temporary purpose need not be retained.~~

~~(h) ALTERNATIVE STORAGE MEDIA.~~

~~(1) For purposes of storage and retention, a taxpayer may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, microfiche or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of subdivision (h) are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, and credit memoranda.~~

~~(2) Storage-only imaging media such a microfilm, microfiche or other media used in electronic imaging systems shall meet the following requirements.~~

~~(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.~~

~~(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).~~

~~(C) Upon request by the board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.~~

~~(D) When displayed on such equipment or reproduced on paper, the documents exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the~~

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~~quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.~~

~~(E) All data on storage only imaging media must be maintained and arranged in a manner that permits the location of any particular record.~~

~~(F) There is no substantial evidence that the storage only imaging medium lacks authenticity or integrity.~~

~~(i) RECORD RETENTION TIME PERIOD. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.~~

~~(j) RECORD RETENTION LIMITATION AGREEMENTS.~~

~~(1) The board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superceded by a duly approved record retention limitation agreement.~~

~~(A) If a taxpayer seeks to limit its retention of machine sensible records, it may request a record retention limitation agreement which shall;~~

~~1. document understandings reached with the board, which may include, but are not limited to, any one or more of the following issues:~~

~~a. the conversion of files created on an obsolete computer system;~~

~~b. restoration of lost or damaged files and the actions to be taken;~~

~~c. use of taxpayer computer resources, and~~

~~2. specifically identify which of the taxpayer's records the board determines are not necessary for retention and which it may discard, and~~

~~3. authorize variances, if any, from the normal provisions of this regulation.~~

~~(B) The board shall consider a request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.~~

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~~(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete supporting entries shown on any tax information return.~~

~~(2) A taxpayer's record retention practice shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.~~

~~(A) The board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.~~

~~(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 32453 of the Revenue and Taxation Code.~~

~~(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the licensee in accordance with this regulation until a new evaluation is conducted by the board.~~

~~(D) Unless otherwise specified, an agreement made under subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.~~

~~(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.~~

~~(k) FAILURE TO MAINTAIN RECORDS. Failure to maintain and keep complete and accurate records may be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.~~

Note: *Authority cited:* Section 32451, Revenue and Taxation Code.

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ALCOHOLIC BEVERAGE TAX LAW

**Regulation 2570. Relief From Liability.**

Reference: Section 32257, Revenue and Taxation Code.

~~(a) IN GENERAL.~~ A person may be relieved from the liability for the payment of alcoholic beverage 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: written advice given by the board as described in California Code of Regulations, Title 18, Section 4902

~~(1) Written advise given by the board under the conditions set forth in subdivision (b) below; or~~

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

~~(3) Written advise given by the board in a prior audit of that person under the conditions set forth in subdivision (e) 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 advise 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 advise from the board which was received during a prior audit of the person under the conditions set forth in subdivision (e) below, may be relied upon by the person audited or by a legal or statutory successor to that person.~~

~~The term "written advise" includes advise that was incorrect at the time it was issued as well as advise 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 advise may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulation or the date of 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 advise 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 advise provided in a written communication under subdivision (b) below and written advise provided in a prior audit of the person under subdivision (c) below.~~

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~~(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the board provided to the person in a written communication 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 advise is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advise was requested.~~

~~(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 written request for the audit report. If a prior audit report of a 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 advise 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 advise contained in a prior audit of the person 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 advise was erroneous.~~

~~(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 af act 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. 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.~~

Note: *Authority cited:* Section 32451, Revenue and Taxation Code.

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HAZARDOUS SUBSTANCES TAX LAW

**Regulation 3020. Records.**

Reference: Section 43502, Revenue and Taxation Code.

**(a) GENERAL.** A taxpayer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

**(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), taxpayers shall comply with the following requirements.

(1) HAZARDOUS SUBSTANCE TAX. A taxpayer shall keep complete records, including but not limited to:

(A) Uniform Hazardous Waste Manifests.

(B) Transporter billings or invoices.

(C) Weight tickets.

(D) Waste profile analysis reports.

(2) ENVIRONMENTAL FEE. A taxpayer shall keep complete records, including but not limited to:

(A) Payroll reports and all other documents listing employees, wages, and hours worked.

(B) Employment agreements or contracts.

(3) OCCUPATIONAL LEAD POISONING PREVENTION FEE. A taxpayer shall keep complete records, including but not limited to:

(A) Fee waiver requests and Department of Health Services responses.

(B) Payroll reports and all other documents listing employee names, wages paid, and hours worked.

Note: Authority cited: Section 43501, Revenue and Taxation Code.

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HAZARDOUS SUBSTANCES TAX LAW

**Regulation 3021. Relief From Liability.**

Reference: Section 43159, Revenue and Taxation Code.

A person may be relieved from the liability for the payment of the taxes or fees required to be collected pursuant to the Hazardous Substances Tax Law, Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, including any penalties and interest added to the taxes or fees, 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 written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

The fees and taxes collected pursuant to the Hazardous Substances Tax Law include the Hazardous Substance Taxes (Disposal Fee, Environmental Fee, Facility Fee, Generator Fee and Activity Fee), Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee.

Note: Authority cited: Section 43501, Revenue and Taxation Code.

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INTEGRATED WASTE MANAGEMENT FEE LAW  
Proposed Chapter 8.3. Integrated Waste Management Fee Law.

**Regulation 3301. Records.**

Reference: Section 45852, Revenue and Taxation Code.

**(a) GENERAL.** A fee payer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901. Notwithstanding the record keeping requirements of the Integrated Waste Management Board set forth at California Code of Regulations, Title 14, Section 17414, for fee collection purpose the fee payer shall retain and preserve records for a period of not less than four years except as provided in Section 4901.

**(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), fee payers shall comply with the following requirements. A fee payer shall keep complete records, including but not limited to:

(1) Weight tickets or other source documents recording amounts of waste entering the landfill.

(2) Documentation supporting the validity of volumetric conversion factors used as an alternative to actual weight to report waste tonnage.

(3) Reports to other local and state agencies of waste tonnage disposed.

Note: Authority cited: Section 45851, Revenue and Taxation Code.

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INTEGRATED WASTE MANAGEMENT FEE LAW

**Regulation 3302. Relief From Liability.**

Reference: Section 45157, Revenue and Taxation Code.

A person may be relieved from the liability for the payment of the integrated waste management fee, including any penalties and interest added to those fees, 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 written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

Note: Authority cited: Section 45851, Revenue and Taxation Code.

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

FEE COLLECTION PROCEDURES LAW  
**Proposed Chapter 8.5. Fee Collection Procedures Law.**

**Regulation 3501. Records.**

Reference: Section 55302 Revenue and Taxation Code.

**(a) GENERAL.** A feepayer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

**(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), feepayers subject to the Ballast Water Management Fee shall keep records documenting ballast water loading and discharge, ship schedules, ports of call and routes taken.

Note: Authority cited: Section 55301, Revenue and Taxation Code.

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

FEE COLLECTION PROCEDURES LAW

**Regulation 3502. Relief From Liability.**

Reference: Section 55045, Revenue and Taxation Code.

A person may be relieved from the liability for the payment of the taxes or fees required to be collected pursuant to the Fee Collection Procedures Law, Part 30, (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, including any penalties and interest added to the taxes or fees, 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 written advice given by the board described in California Code of Regulations, Title 18, Section 4902.

The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Ballast Water Management Fee, and Natural Gas Surcharge.

Note: Authority cited: Section 55301, Revenue and Taxation Code.

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CIGARETTE AND TOBACCO PRODUCTS TAX LAW

**Regulation 4026. RECORDS.**

Reference: Sections 30453 and 30454, Revenue and Taxation Code.

(a) GENERAL. Every distributor, every wholesaler, and every manufacturer, of cigarettes and tobacco products, shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

(b) SPECIFIC APPLICATIONS. In addition to the record keeping requirements set forth in subdivision (a), every cigarette manufacturer and every tobacco products manufacturer shall comply with the following requirements:

Every cigarette manufacturer or tobacco products manufacturer dealing in, transporting, storing or warehousing cigarettes or tobacco products in this state or otherwise engaged in business in this state as a distributor shall keep and maintain at his or her place of business in this state, or at the warehouses or storage places from which cigarettes or tobacco products are released or delivered by the manufacturer, a record of all releases or deliveries of cigarettes or tobacco products from each storage place or warehouse in this state and shall keep and maintain either within the state or at the manufacturer's home office, a record of all the manufacturer's shipments of cigarettes or tobacco products from points outside this state to points within this state. Such records shall be made available at any time during normal business hours to the board or its authorized representatives for examination upon request.

~~(a) Definitions.~~

- ~~(1) "Database Management System"—a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.~~
- ~~(2) "Electronic data interchange" or "EDI technology"—the computer to computer exchange of business transactions in a standardized structured electronic format.~~
- ~~(3) "Hardcopy"—any document, record, report, or other data maintained in a paper format.~~
- ~~(4) "Machine-sensible record"—a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

~~(5) "Distributor" includes:~~

~~(A) Every person who, after 4 o'clock a.m. on July 1, 1959, and within the meaning of the term "distribution" as defined in the Revenue and Taxation Code, distributes cigarettes.~~

~~(B) Every person who, on or after 12:01 a.m. on January 1, 1989, and within the meaning of the term "distribution" as defined in the Revenue and Taxation Code, distributes tobacco products.~~

~~(C) Every person who sells or accepts orders for cigarettes or tobacco products which are to be transported from a point outside this state to a consumer within this state.~~

~~(6) "Wholesaler" includes:~~

~~(A) Any person, other than a licensed distributor, who engages in this state in making sales for resale of cigarettes that are contained in packages to which are affixed stamps or meter impressions.~~

~~(B) Any person, other than a licensed distributor, who engages in this state in making sales for resale of tobacco products on which the tax imposed in Section 30123 has been paid.~~

~~(b) General.~~

~~(1) A distributor or wholesaler shall maintain and make available for examination on request by the board or its authorized representative, all records necessary to determine the correct tax liability under the Cigarette and Tobacco Products Tax Law and all records necessary for the proper completion of the return. Such records include but are not limited to:~~

~~(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.~~

~~(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.~~

~~(C) Schedules or working papers used in connection with the preparation of tax returns.~~

~~(2) Machine sensible records are considered records under Revenue and Taxation Code Sections 30453 and 30454.~~

~~(c) Machine Sensible Records.~~

~~(1) General.~~

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

- ~~(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A distributor or wholesaler has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.~~
- ~~(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.~~
- ~~(C) Distributors and wholesalers are not required to construct machine-sensible records other than those created in the ordinary course of business. A distributor or wholesaler who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.~~
- ~~(2) Electronic Data Interchange Requirements.~~
- ~~(A) Where a distributor or wholesaler uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. The retained records shall contain such information as vendor name, invoice date, product description, quantity purchased, and price. Codes may be used to identify some or all of the data elements, provided the distributor or wholesaler maintains a method which allows the board to interpret the coded information.~~
- ~~(B) The distributor or wholesaler may capture the information necessary to satisfy subdivision (c) (2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example a distributor or wholesaler, using EDI technology receives electronic invoices from its suppliers. The distributor or wholesaler decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the distributor or wholesaler must also retain other records, such as its vendor master file and product code description lists, and make them available to the board. In this example, the distributor or wholesaler need not retain its EDI transaction for tax purposes.~~
- ~~(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system shall be similar to that of a manual~~

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~~accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.~~

~~(4) Business Process Information.~~

~~(A) Upon request of the board, the distributor or wholesaler shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the distributor or wholesaler and the measures employed to ensure the integrity of the records.~~

~~(B) The distributor or wholesaler shall be capable of demonstrating:~~

- ~~1. the functions being performed as they relate to the flow of data through the system;~~
- ~~2. the internal controls used to ensure accurate and reliable processing, and;~~
- ~~3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.~~

~~(C) The following specific documentation is required for machine-sensible records retained pursuant to this regulation:~~

- ~~1. record formats or layouts;~~
- ~~2. field definitions (including the meaning of all codes used to represent information);~~
- ~~3. file descriptions (e.g., data set name); and~~
- ~~4. detailed charts of accounts and account descriptions.~~

~~(d) Machine-Sensible Records Maintenance Requirements.~~

~~(1) The distributor's or wholesaler's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).~~

~~(2) The board recommends but does not require that distributors and wholesalers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.~~

~~(e) Access To Machine-Sensible Records.~~

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- (1) ~~The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a distributor's or wholesaler's facts and circumstances through consultation between the board and the distributor or wholesaler.~~
  
- (2) ~~Such access will be provided in one or more the following manners:~~
  - (A) ~~The distributor or wholesaler may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.~~
  
  - (B) ~~The distributor or wholesaler may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.~~
  
  - (C) ~~The distributor or wholesaler may convert the machine-sensible records to a standard records format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.~~
  
  - (D) ~~The distributor or wholesaler and the board may agree on other means of providing access to the machine-sensible records.~~
  
- (f) ~~Distributor or Wholesaler Responsibility and Discretionary Authority.~~
  - (1) ~~In conjunction with meeting the requirements of subdivision (c), a distributor or wholesaler may create files solely for the use of the board. For example, if a data base management system is used, it is consistent with this regulation for the distributor or wholesaler to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). In this case, distributor or wholesaler shall document the process that created the separate file to show the relationship between that file and the original records.~~
  
  - (2) ~~A distributor or wholesaler may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the distributor or wholesaler of its responsibilities under this regulation.~~
  
- (g) ~~Hardecopy Records.~~
  - (1) ~~Except as specifically provided, a distributor or wholesaler is not relieved of the responsibility to retain hardecopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardecopy records may be retained on a record keeping medium as provided in subdivision (h).~~
  
  - (2) ~~If hardecopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the distributor or wholesaler uses electronic data interchange technology), such hardecopy records need not be created.~~

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- ~~(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the distributor or wholesaler in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).~~
- ~~(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.~~
- ~~(h) Alternative Storage Media.~~
  - ~~(1) For purposes of storage and retention, a distributor or wholesaler may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardcopy documents, provided the conditions of subdivision (h) are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, and credit memoranda.~~
  - ~~(2) Storage-only imaging media such as microfilm or microfiche systems shall meet the following requirements.~~
    - ~~(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.~~
    - ~~(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).~~
    - ~~(C) Upon request by the board, a distributor or wholesaler must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.~~
    - ~~(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.~~

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~~(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.~~

~~(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.~~

~~(i) Record Retention Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.~~

~~(j) Record Retention Limitation Agreements.~~

~~(1) The board has the authority to enter into or revoke a record retention limitation agreement with the distributor or wholesaler to modify or waive any of the specific requirements in this regulation. A distributor's or wholesaler's request for an agreement must specify which records (if any) the distributor or wholesaler proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The distributor or wholesaler shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.~~

~~(A) If a distributor or wholesaler seeks to limit its retention of machine-sensible records, it may request a record retention limitation agreement which shall;~~

~~1. document understandings reached with the board, which may include, but are not limited to, any one or more of the following issues:~~

~~a. the conversion of files created on an obsolete computer system;~~

~~b. restoration of lost or damaged files and the actions to be taken;~~

~~e. use of distributor or wholesaler computer resources, and~~

~~2. specifically identify which of the distributor's or wholesaler's records the board determines are not necessary for retention and which it may discard, and~~

~~3. authorize variances, if any, from the normal provisions of this regulation.~~

~~(B) The board shall consider a request for a record retention limitation agreement and notify the distributor or wholesaler of the actions to be taken.~~

~~(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the distributor or wholesaler of the responsibility to keep adequate and complete records supporting entries shown on any tax information return.~~

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- ~~(2) A distributor's and wholesaler's record retention practice shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the distributor's or wholesaler's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.~~
- ~~(A) The board shall notify the distributor or wholesaler of the results of any evaluation, including acceptance or disapproval of any proposals made by the distributor or wholesaler (e.g., to discard certain records) or any changes considered necessary to bring the distributor's or wholesaler's practices into compliance with this regulation.~~
- ~~(B) Since the evaluation of a distributor's or wholesaler's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 30454 of the Revenue and Taxation Code.~~
- ~~(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the distributor and wholesaler in accordance with this regulation until a new evaluation is conducted by the board.~~
- ~~(D) Unless otherwise specified, an agreement made under subdivision (j)(1) shall not apply to any person, company, corporation, or organization that, subsequent to the distributor's or wholesaler's signing of a record retention limitation agreement, acquires or is acquired by the distributor or wholesaler. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.~~
- ~~(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The state shall notify the distributor or wholesaler of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.~~
- ~~(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records may be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.~~

Note: Authority cited: Section 30451, Revenue and Taxation Code

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CIGARETTE AND TOBACCO PRODUCTS TAX LAW

**Regulation 4027. Manufacturer's ~~Records and~~ Monthly Report.**

Reference: Sections 30453 and 30454, Revenue and Taxation Code.

~~(a) Every cigarette manufacturer or tobacco products manufacturer dealing in, transporting, storing or warehousing cigarettes or tobacco products in this state or otherwise engaged in business in this state as a distributor shall keep and maintain at his place of business in this state, or at the warehouses or storage places from which cigarettes or tobacco products are released or delivered by the manufacturer, a record of all releases or deliveries of cigarettes or tobacco products from each storage place or warehouse in this state and shall keep and maintain either within the state or at the manufacturer's home office a record of all the manufacturer's shipments of cigarettes or tobacco products from points outside this state to points within this state. Such records shall be made available at any time during normal business hours to the board or its authorized representatives for examination upon request. The records shall show the information necessary to be included in the reports required by paragraph (b) of this section.~~

~~(a)~~ (b) Each cigarette or tobacco products manufacturer described in paragraph ~~(a)~~ above shall file with the board by the 20th day of each calendar month a certified report with respect to all releases and deliveries of cigarettes or tobacco products in this state and all shipments of cigarettes or tobacco products from a point outside this state to a point within this state made or authorized by the manufacturer during the preceding calendar month. The releases, deliveries and shipments for each purchaser shall be grouped together in the report. The report shall be on Board of Equalization Form BOE-501-MC entitled "Manufacturer's Report of Cigarettes Released from Storage in California or Shipped into California" or Board of Equalization Form BOE-501-MT entitled "Manufacturer's Report of Tobacco Products Released from Storage in California or Shipped into California" and shall show the following information with respect to each release, delivery or shipment:

- (1) the date of the release, delivery or shipment;
- (2) the location from which the release, delivery or shipment was made;
- (3) the name and address of the purchaser;
- (4) the address of the place to which the cigarettes or tobacco products were shipped, released or consigned;
- (5) the number of cigarettes or type, quantity and wholesale cost of tobacco products released, delivered or shipped;

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(6) the invoice or document number and date thereof representing the release, delivery or shipment;

(7) if released to a licensed distributor, the license number of such distributor; and

(8) in the case of a cancellation of any release, delivery or shipment, information indicating the transaction was cancelled.

The above information need not be supplied with respect to cigarettes or tobacco products which are non-tax-paid under the provisions of chapter 52 of the Internal Revenue Act of 1954, as amended, and are released, delivered or shipped in internal revenue bond or customs control.

(~~b~~ e) In lieu of the monthly reports required by paragraph (~~a~~ ~~b~~) of this section, a manufacturer may arrange with the board to supply the required information by supplying data processing media or other data in such manner and in such format as is satisfactory to the board.

Note: Authority cited: Section 30451, Revenue and Taxation Code.

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CIGARETTE AND TOBACCO PRODUCTS TAX LAW

**Regulation 4105. Relief From Liability.**

Reference: Section 30284, Revenue and Taxation Code.

A person may be relieved from the liability for the payment of the Cigarette and Tobacco Products Tax, including any penalties and interest added to the tax, 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 written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

Note: Authority cited: Section 30451, Revenue and Taxation Code.

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Special Taxes Administration  
**Proposed Chapter 9.9. Special Taxes Administration—Miscellaneous.**

**Regulation 4901. RECORDS.**

References: Sections 8301-8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172-40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604-60606, Revenue and Taxation Code.

**(a) DEFINITIONS.**

(1) “Applicable Tax Laws” means any of the following:

(A) Aircraft Jet Fuel Tax, Revenue and Taxation Code Sections 7385-7398, 7486-8406;

(B) Alcoholic Beverage Tax, Revenue and Taxation Code Sections 32001-32557;

(C) Ballast Water Management Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;

(D) California Tire Fee, Public Resources Code Sections 42860-42895; Revenue and Taxation Code Sections 55001-55381;

(E) Childhood Lead Poisoning Prevention Fee, Health and Safety Code Section 105310; Revenue and Taxation Code Sections 43001-43651;

(F) Cigarette and Tobacco Products Tax, Revenue and Taxation Code Sections 30001-30481;

(G) Diesel Fuel Tax, Revenue and Taxation Code Sections 60001-60709;

(H) Emergency Telephone Users Surcharge, Revenue and Taxation Code Sections 41001-41176;

(I) Energy Resources Surcharge, Revenue and Taxation Code Sections 40001-40216;

(J) Hazardous Substances Tax, Health and Safety Code Sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7; Revenue and Taxation Code Sections 43001-43651;

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(K) Integrated Waste Management Fee, Public Resources Code Sections 40000-48008; Revenue and Taxation Code Sections 45001-45984;

(L) Motor Vehicle Fuel Tax, Revenue and Taxation Code Sections 7301-8526;

(M) Natural Gas Surcharge, Public Utilities Code Sections 890-900; Revenue and Taxation Code Sections 55001-55381;

(N) Occupational Lead Poisoning Prevention Fee, Health and Safety Code Section 105190; Revenue and Taxation Code Sections 43001-43651;

(O) Oil Spill Response, Prevention, and Administration Fees, Revenue and Taxation Code Sections 46001-46751;

(P) Underground Storage Tank Maintenance Fee, Revenue and Taxation Code Sections 50101-50162;

(Q) Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355.

(2) "Database Management System" -- a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(3) "Electronic data interchange" or "EDI technology" -- the computer to computer exchange of business transactions in a standardized structured electronic format.

(4) "Hardcopy" -- any document, record, report or other data maintained in a paper format.

(5) "Machine-sensible record" -- a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

(6) "Taxpayer" includes "fee payer" and means any person liable for the payment of a tax or a fee specified under any of the applicable tax laws.

(7) "Tax" includes "fee" and means any amount of tax or fee specified under any of the applicable tax laws.

**(b) GENERAL.**

(1) A taxpayer shall maintain and make available for examination on request by the board or its authorized representative, all records necessary to determine the correct tax liability under the applicable tax laws and all records necessary for the proper completion of the required tax return or report. Such records include but are not limited to:

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(A) Books of account or other similar summary information ordinarily maintained by the taxpayer as required by law or practice or otherwise in the possession of the taxpayer or third party at the direction or request of the taxpayer.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns and reports.

(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 8301-8306, 9253, 9254, 30453, 30454, 32551, 32453, 40172-40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604-60606, Revenue and Taxation Code.

**(c) MACHINE-SENSIBLE RECORDS.**

(1) GENERAL.

(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format which the board has the technological capability to use, such as Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., exempt), and shipping detail. Codes may be used to identify some or all of the data

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elements, provided the taxpayer maintains a method which allows the board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) BUSINESS PROCESS INFORMATION.

(A) Upon request of the board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:

1. record formats or layouts;

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2. field definitions (including the meaning of all codes used to represent information);

3. file descriptions (e.g., data set name); and

4. detailed charts of accounts and account descriptions.

**(d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS**

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

**(e) ACCESS TO MACHINE-SENSIBLE RECORDS.**

(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.

(D) The taxpayer and the board may agree on other means of providing access to the machine-sensible records.

**(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.**

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the board. For example, if a data base management system

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is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

**(g) HARDCOPY RECORDS.**

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

**(h) ALTERNATIVE STORAGE MEDIA.**

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, microfiche or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of subdivision (h) are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, microfiche or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on

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request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) RECORD RETENTION – TIME PERIOD. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

**(j) RECORD RETENTION LIMITATION AGREEMENTS.**

(1) The board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of machine-sensible records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the board, which may include, but is not limited to, any one or more of the following issues:

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- a. the conversion of files created on an obsolete computer system;
- b. restoration of lost or damaged files and the actions to be taken;
- c. use of taxpayer computer resources, and

2. specifically identify which of the taxpayer's records the board determines are not necessary for retention and which the taxpayer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under the applicable tax law.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation

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(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

**(k) FAILURE TO MAINTAIN RECORDS.** Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.

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Special Taxes Administration

**Regulation 4902. RELIEF FROM LIABILITY.**

References: Sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, Revenue and Taxation Code.

(a) GENERAL. A person may be relieved from the liability for the payment of tax, defined in section 4901(a)(7), imposed pursuant to applicable tax laws, defined in section 4901(a)(1), including any penalties and interest added to the tax, 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 of that person 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 by a legal or statutory successor to that person.

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.

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

**(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. 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 of the person 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.

**(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.

(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.** 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.

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, and 60601, Revenue and Taxation Code.

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**Proposed Audit Manual Chapter 11, Advertising Agencies, Graphic Artists, Printers and  
Related Enterprises**

**Revised Text for "Signage" Paragraphs in  
Section 1103.35, Specific Nontaxable Service Charges  
November 8, 2002**

**Signage.** Environmental graphic design is the planning, design, and documentation ~~for the placement of signs and sign systems, including~~ directional signs systems, architectural and site identification signs, interpretive displays and exhibits, regulation and information signs, maps and directories, and decorative architectural and streetscape graphics. Charges for single copies of the master set of blueprints, diagrams and instruction for signage produced as a result of environmental graphic design services are not taxable. If services are provided for the subsequent revisions of the master set, charges for single copies of the revised master sets are not taxable. Charges for additional copies of the initial or revised master set are taxable.

~~Billboard art, and billboard displays, and designs that specify how signs are to be fabricated~~ are not considered to be environmental graphic design and charges for such services are taxable.

**For Example:** MegaFun Amusements is developing a new theme park. As part of the process, Megafun contracts with EnviroSign, Inc. to design and determine the type and placement of directional, instructional, and other types of signs required for the facility. Examples of the signs being designed and placed include, but are not limited to, exit signs, designation of fire alarms, identification of men's and ladies' rooms, disabled access signs, ride marquees, and exterior signs directing visitors to parking or delivery areas. After reviewing a site plan and blueprints of the facility, EnviroSign provides MegaFun with another blueprints that shows designs, fabrication techniques, specifications and the placement of the various types of signs. The sign types are identified by a code that is keyed to a matrix provided along with the blueprints. The matrix includes a description of the sign type and, in some cases, the text that will appear on the sign along with a designation of the font or typeface to be used. Tax does not apply to the charges for the services leading to the creation of the initial blueprints and matrix nor to the charges for the creation of the initial copies of revised blueprints or matrix. Tax will apply to charges for any additional copies of the blueprints and matrix.

**Regulation 1616. FEDERAL AREAS.**

**(a) IN GENERAL.** Tax applies to the sale or use of tangible personal property upon Federal areas to the same extent that it applies with respect to sale or use elsewhere within this state.

**(b) ALCOHOLIC BEVERAGES.** Manufacturers, wholesalers and rectifiers who deliver or cause to be delivered alcoholic beverages to persons on Federal reservations, shall pay the state retailer sales tax on the selling price of such alcoholic beverages so delivered, except when such deliveries are made to persons or organizations which are instrumentalities of the Federal Government or persons or organizations which purchase for resale.

Sales to officers' and non-commissioned officers' clubs and messes may be made without sales tax when the purchasing organizations have been authorized, under appropriate regulations and control instructions, duly prescribed and issued, to sell alcoholic beverages to authorized purchasers.<sup>1</sup>

**(c) SALES THROUGH VENDING MACHINES.** Sales through vending machines located on Army, Navy, or Air Force installations are taxable unless the sales are made by operators who lease the machines to exchanges of the Army, Air Force, Navy, or Marine Corps, or other instrumentalities of the United States, including Post Restaurants and Navy Civilian Cafeteria Associations, which acquire title to and sell the merchandise through the machines to authorized purchasers.

For the exemption to apply, the contracts between the operators and the United States instrumentalities and the conduct of the parties must make it clear that the instrumentalities acquire title to the merchandise and sell it through machines leased from the operators to authorized purchasers.

<sup>1</sup>The following is a summary of the pertinent regulations which have been issued:

(a) **General.** Air Force Regulation 34-57, issued under date of February 9, 1968, Army Regulation 210-65, issued under date of May 4, 1966, and Navy General Order No. 15, issued under date of May 5, 1965, authorize the sale and possession of alcoholic beverages at bases and installations subject to certain enumerated restrictions.

(b) **Air Force.** Air Force Regulation 34-57, Paragraph 5, permits commissioned officers' and noncommissioned officers' open messes, subject to regulations established by commanders of major air commands to sell alcoholic beverages to authorized purchasers at bars and cocktail lounges, and provides that commanders will issue detailed control instructions. Paragraph 8 and 9 require commanders of major air commands to issue regulations relative to package liquor sales and to procurement of alcoholic beverages, respectively.

(c) **Army.** Army Regulation 210-65, Paragraph 9, provides that major commanders are authorized to permit at installations or activities within their respective commands the dispensing of alcoholic beverages by the drink or bottle. Paragraph 11 of AR 210-65 provides that when authorized by major commanders as prescribed in Paragraph 9, AR 210-65, officers' and non-commissioned officers' open messes may, subject to regulations prescribed by the commanding officer of the installation or activity concerned, dispense alcoholic beverages by the drink, and operate a package store.

(d) **Navy.** Navy General Order No. 15 provides that commanding officers may permit, subject to detailed alcoholic beverage control instructions, the sales of packaged alcoholic beverages by officers' and noncommissioned officers' clubs and messes and the sale and consumption of alcoholic beverages by the drink in such clubs and messes.

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**(d) INDIAN RESERVATIONS.**

(1) IN GENERAL. Except as provided in this regulation, tax applies to the sale or use of tangible personal property upon Indian reservations to the same extent that it applies with respect to sale or use elsewhere within this state.

(2) DEFINITIONS. For purposes of this regulation “Indian” means any person of Indian descent who is entitled to receive services as an Indian from the United States Department of the Interior. Indian organizations are entitled to the same exemption as are Indians. “Indian organization” includes Indian tribes and tribal organizations and also includes partnerships all of whose members are Indians. The term includes corporations organized under tribal authority and wholly owned by Indians. The term excludes other corporations, including other corporations wholly owned by Indians. “Reservation” includes reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian.

**(3) SALES BY ON-RESERVATION RETAILERS.****(A) Sales by Indians.**

1. Sales by Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers negotiated at places of business located on Indian reservations if the purchaser resides on a reservation and if the property is delivered to the purchaser on a reservation. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by Indians to non-Indians and Indians who do not reside on a reservation. Sales tax does not apply to sales of tangible personal property by Indian retailers made to non-Indians and Indians who do not reside on a reservation when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on the reservation. Except as exempted below, or as expressly preempted by federal statute, regulation or policy, Indian retailers are required to collect use tax from such purchasers and must register with the Board for that purpose:

a. Indian retailers selling meals, food or beverages at eating and drinking establishments are not required to collect use tax on the sale of meals, food or beverages that are sold for consumption on an Indian reservation;

b. Indian retailers are not required to collect use tax on the sale of tangible personal property sold on a reservation, without regard to the origin of such tangible personal property, if the tangible personal property is intended for use in on-reservation gaming activities, or to advertise or promote patronage of a tribal gaming facility through the display of the facility’s or the tribe’s name, logo or other identifying information;

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c. Indian tribes/Indian retailers are not required to collect use tax on the sale of tangible personal property sold on a reservation if the property a) is made from raw materials produced on the reservation, b) reflects or illustrates tribal history, culture or tradition, c) is intended for use in an on-reservation activity, or d) is not generally available for purchase outside of a reservation.

**(B) Sales by non-Indians.**

1. Sales by non-Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by retailers when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on a reservation. The sale is exempt whether the retailer is a federally licensed Indian trader or is not so licensed. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by non-Indians to non-Indians and Indians who do not reside on a reservation. Either sales tax or use tax applies to sales of tangible personal property by non-Indian retailers to non-Indians and Indians who do not reside on a reservation.

**(C) Resale Certificates.** Persons making sales for resale of tangible personal property to retailers conducting business on an Indian reservation should obtain resale certificates from their purchasers. If the purchaser does not have a permit and all the purchaser's sales are exempt under paragraph (d)(3)(A) of this regulation, the purchaser should make an appropriate notation to that effect on the certificate in lieu of a seller's permit number (see Regulation 1668, "Resale Certificates").

**(4) SALES BY OFF-RESERVATION RETAILERS.**

**(A) Sales Tax - In General.** Sales tax does not apply to sales of tangible personal property made to Indians negotiated at places of business located outside Indian reservations if the property is delivered to the purchaser and ownership to the property transfers to the purchaser on the reservation. Generally ownership to property transfers upon delivery if delivery is made by facilities of the retailer and ownership transfers upon shipment if delivery is made by mail or carrier. Except as otherwise expressly provided herein, the sales tax applies if the property is delivered off the reservation or if the ownership to the property transfers to the purchaser off the reservation.

**(B) Sales Tax - Permanent Improvements - In General.** Sales tax does not apply to a sale to an Indian of tangible personal property (including a trailer coach) to be permanently attached by the purchaser upon the reservation to realty as an improvement if the property is delivered to the Indian on the reservation. A trailer coach will be regarded as having been permanently attached if it is not registered with the Department of Motor Vehicles. Sellers of property to be permanently attached to realty as an improvement should secure exemption certificates from their purchasers (see Regulation 1667, "Exemption Certificates").

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**(C) Sales Tax - Permanent Improvements - Construction Contractors.**

1. Indian contractors. Sales tax does not apply to sales of materials to Indian contractors if the property is delivered to the contractor on a reservation. Sales tax does not apply to sales of fixtures furnished and installed by Indian contractors on Indian reservations. The term “materials” and “fixtures” as used in this paragraph and the following paragraph are as defined in Regulation 1521 “Construction Contractors.”

2. Non-Indian contractors. Sales tax applies to sales of materials to non-Indian contractors notwithstanding the delivery of the materials on the reservation and the permanent attachment of the materials to realty. Sales tax does not apply to sales of fixtures furnished and installed by non-Indian contractors on Indian reservations.

**(D) Use Tax - In General.** Except as provided in paragraphs (d)(4)(E) and (d)(4)(F) of this regulation, use tax applies to the use in this state by an Indian purchaser of tangible personal property purchased from an off-reservation retailer for use in this state.

**(E) Use Tax - Exemption.** Use tax does not apply to the use of tangible personal property (including vehicles, vessels, and aircraft) purchased by an Indian from an off-reservation retailer and delivered to the purchaser on a reservation unless, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

**(F) Leases.** Neither sales nor use tax applies to leases otherwise taxable as continuing sales or continuing purchases as respects any period of time the leased property is situated on an Indian reservation when the lease is to an Indian who resides upon the reservation. In the absence of evidence to the contrary, it shall be assumed that the use of the property by the lessee occurs on the reservation if the lessor delivers the property to the lessee on the reservation. Tax applies to the use of leased vehicles registered with the Department of Motor Vehicles to the extent that the vehicles are used off the reservation.

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