



November 10, 2015

Rick Bennion, Regulations Coordinator
State Board of Equalization
450 N Street
Sacramento, CA 94279-0080

Dear Mr. Bennion:

As Finance has noted previously, the Board of Equalization lacks the statutory authority to enact the proposed amendments to the sales tax exemption regulations. The statute is very clear in outlining the requirements for manufacturers to qualify for the exemption, and as the board acknowledged in the August meeting, these amendments would overstep the delegated authority. As the Office of Administrative Law (OAL) may not have been aware of the statutory constraints, we encourage you to check with them now so that the regulations may be withdrawn.

If the board continues the regulatory process rather than withdrawing the regulations, the package submitted does not comply with existing requirements. Specifically, the STD. 399 must be revised to include the fiscal impact, and the board would need to complete a Standardized Regulatory Impact Assessment (SRIA) to meet the major regulations requirements.

The argument that these amendments would have no revenue impact because they "would be consistent with the implementing statute" is insufficient. Even when legislation contemplates increased expenditures or revenue losses (tax expenditures), they must be reflected in the STD. 399. In addition, to the extent these regulations are further revised to resolve a statutory ambiguity to increase utilization of the exemption, the increase in the exemption over what would be expected under the current regulations would result in a revenue loss. Therefore, this revenue loss results in a fiscal impact. As the amendments would trigger a fiscal impact from the additional exemptions, a signature is also required from Finance on a STD. 399 before these regulations can be adopted. If OAL chooses to allow the board to proceed with these regulations, that STD. 399 must be forwarded to Finance for approval.

In addition, the proposed regulations meet the \$50 million economic impact threshold for major regulations. As a result, a SRIA is required before the regulations can be adopted or the rulemaking process finalized pursuant to the California Code of Regulations. The sales tax exemption amendments have the stated purpose of encouraging manufacturers to purchase additional equipment without paying sales tax. While the level of additional exemptions claimed under the proposed amendments is not clear, the board notes that in the current year the amount of qualified expenditures claimed was \$12 billion less than was anticipated when the legislation was adopted. If even a small fraction of this \$12 billion gap is closed by these amendments, the threshold of \$50 million of economic activity in one twelve-month period would be exceeded.

Mr. Rick Bennion
November 10, 2015
Page 2

As we have discussed, Government Code section 11346.3 and California Code of Regulations, title 1, sections 2002 and 2003 require an agency promulgating major regulations to prepare and submit a SRIA to the Department of Finance. The agency must summarize and respond to Finance's comments, and include them with the notice of proposed action filed with OAL. California Code of Regulations, title 1, section 2002(a)(1) requires that a SRIA be submitted to Finance not less than 60 days prior to the filing of a notice of proposed action with the OAL. Because this deadline has already passed, we will work to provide formal comments as soon as possible following receipt of a SRIA. The SRIA, a summary of Finance's comments, and the board response would then need to be circulated for public comment.

If these regulations are not withdrawn, we look forward to your prompt submittal of the required fiscal and economic impact documents.

Sincerely,

A handwritten signature in blue ink that reads "Kristin Shelton". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kristin Shelton
Program Budget Manager

cc: Ms. Panorea Avdis, Executive Director, Governor's Office on Business and Economic Development
Ms. Debra Cornez, Director, Office of Administrative Law
Ms. Cynthia Bridges, Executive Director, Board of Equalization
Mr. Bradley Heller, Board of Equalization