

OFFICE OF ADMINISTRATIVE LAW

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DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: June 29, 2016
RE: Return of Rulemaking Materials
OAL Matter Number 2016-0516-02
OAL Matter Type Regular (S)

OAL hereby returns the rulemaking record your agency submitted for review regarding "Records."

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5).

Beginning January 1, 2013, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. **Section 11343(c)(1):** Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. **Section 11343(c)(2):** Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

Memorandum

To : Lindsey McNeill
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Date: June 27, 2016

From : Richard Bennion
Regulations Coordinator
Board Proceedings Division, MIC: 80

Subject : *OAL File No.* 2016-0516-02S
Regulation 1698. Records
Regulation 4901. Records

The Office of Administrative Law (OAL) is authorized to make the following substitutions and corrections in connection with the above-referenced rulemaking file:

1. Please replace the final text of Regulations 1698 and 4901 with the revised text of Regulations 1698 and 4901 attached to the email I sent to you.
2. Please replace the Final Statement of Reasons behind tab 1 with the attached revised Final Statement of Reasons in the email I have sent to you.
3. Please replace the Verification Page behind the Index tab with the attached Verification Page in the email I have sent you.

If you have any questions or comments, please notify me at (916) 445-2130 or email at Richard.Bennion@boe.ca.gov.

REB

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2016-0119-02	REGULATORY ACTION NUMBER 2016-0516-025	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	REGULATIONS 2016 MAY 16 P 2:31 OFFICE OF ADMINISTRATIVE LAW
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ENDORSED - FILED
 in the office of the Secretary of State
 of the State of California

JUN 28 2016

1:45PM

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2016 05-2	PUBLICATION DATE 1/29/2016

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Records	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1698, 4901
TITLE(S) 18	REPEAL

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs., title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE May 16, 2016
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 28 2016

Office of Administrative Law

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1698**

1698. Records.

(a) Definitions.

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

(2) "Electronic cash register" - a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data. This can include integrated point of sale systems.

(23) "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 Electronic record" - a collection of related information in an electronic, machine-sensible format. Machine-sensible Electronic 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, PDF files, or other media used in electronic imaging. Electronic records include records recorded and maintained by electronic cash registers.~~

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

(56) "Taxpayer" - every seller or retailer of tangible personal property in this state and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer, and every lessor and lessee of tangible personal property for use in this state.

(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 Sales and Use Tax Law and all records necessary for the proper completion of the sales and use 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.

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.

(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~~ electronic 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

(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, ~~or~~ microfiche, PDF files, or other media used in electronic imaging and may discard the original hardcopy 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 details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, ~~and~~ microfiche, PDF files, 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).

- 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 section 7054 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~~ electronic 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~~ electronic records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 4901**

4901. Records.

(a) Definitions.

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

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

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

(C) ~~Marine Invasive Species 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) Fee Collection Procedures Law, Revenue and Taxation Code sections 55001-55381 (see Reg. 3500);

(K) 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;~~

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

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

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

(1) A taxpayer shall maintain and make available for examination on request by the ~~b~~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:

(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~~Electronic 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, and 60604-60606, ~~Revenue and Taxation Code.~~

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

(1) General.

(A) ~~Machine-sensible~~Electronic records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the ~~machine-sensible~~electronic records can be identified and made available to the ~~b~~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 ~~b~~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~~electronic 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.

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~~electronic 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~~Electronic Records Maintenance Requirements

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

(2) The ~~b~~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~~Electronic Records.

(1) The manner in which the ~~b~~Board is provided access to ~~machine-sensible~~electronic 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 ~~b~~Board with the hardware, software, and personnel resources to access the ~~machine-sensible~~electronic records.

regulation to storage-only imaging media such as microfilm, microfiche, PDF files, 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, PDF files, 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 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.

For example, if a taxpayer has a point of sale system that overwrites data after a period of time less than four years, the taxpayer should transfer, maintain, and have available, all data that would have been overwritten or otherwise removed from the system for the required time periods indicated above.

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~~electronic 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 ~~h~~BBoard.

(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~~electronic 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 ~~h~~BBoard may conduct tests to establish the authenticity, readability, completeness, and integrity of the ~~machine-sensible~~electronic 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. Reference: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129, ~~30~~, 43502, 45852, 46602, 46603, 50153, 55302, 55363.5, 60604, 60605 and 60606, Revenue and Taxation Code.