

Regulations 1699

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1699

Index

1. *Form 400 and Proposed Regulation 1699*
2. *Addendum to Statement of Explanation*
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Other Documents Relied upon

- A. *Chief Counsel Memo Dated 01/05/10*
- B. *Approved Minutes, 01/27/10*
- C. *BOE "Section 100 Change" Recommendation*
- D. *Reporters Transcript, 01/27/10*

NON-SUBSTANTIVE

STD. 400 (REV. 01-09)

NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 200-0202-CIN	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		
NOTICE		REGULATIONS

ENDORSED FILED
IN THE OFFICE OF

2010 MAR 17 PM 1:22

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

2010 FEB -2 AM 8:16
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

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 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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Permits	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 1699
	REPEAL
TITLE(S) 18	

3. TYPE OF FILING

<input 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 checked="" 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 Resubmittal of disapproved or withdrawn nonemergency filing (Gov.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 type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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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 Rick 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>Diane G. Olson</i>	DATE February 2, 2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 17 2010

Office of Administrative Law

Final Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1699. Permits.

(a) Seller's Permit In General -Number of Permits Required. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a seller's permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example: A seller's permit is required for a branch sales office at which orders are customarily taken or contracts negotiated, whether or not merchandise is stocked there.

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

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

(b) Persons Selling in Interstate Commerce or to United States Government. A seller's permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a seller's permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) are made to the United States or instrumentalities thereof.

(c) Persons Selling Feed. Effective April 1, 1996, a seller's permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

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

1. The hay is produced for sale only to beef cattle feedlots or dairies, or

2. The hay is sold exclusively through a farmer-owned cooperative.

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

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

In cases where a retailer is not operating as a concessionaire, the prime retailer is *not* liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a seller's permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the Board. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

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

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

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

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

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

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

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

(A) The seller's permit holder may notify the Board by delivering the actual seller's permit to the Board with the clear request that the permit be canceled. Where the reason for cancellation is that the permit holder transferred the business, the permit holder

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

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

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

(g) Due Date of Returns -Closeout of Account on Yearly Reporting Basis. . . . (unchanged).

(h) Buying Companies –General. . . . (unchanged).

(i) Web Sites. . . . (unchanged).

(j) Use Tax Permit - Qualified Purchasers. Except for the purchase of a vehicle, vessel, or aircraft, a person who meets all of the following conditions is required to register and report and pay use tax directly to the Board:

- (1) The person is not required to hold a seller's permit.
- (2) The person is not required to be registered pursuant to Revenue and Taxation Code section 6226.
- (3) The person is not a holder of a use tax direct payment permit as described in Revenue and Taxation Code section 7051.3.
- (4) The person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.
- (5) The person is not otherwise registered with the board to report use tax.

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

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6066, 6067, 6070, 6071.1, 6072, 6073, 6075 and ~~6225~~675, Revenue and Taxation Code.

**State of California
Office of Administrative Law**

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1699

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**

OAL File No. 2010-0202-01 N

The Board of Equalization submitted this action as one without regulatory effect, pursuant to title 1, California Code of Regulations, section 100, to amend title 18, California Code of Regulations, section 1699 by adding permit and use tax reporting requirements for qualified purchasers in accordance with Revenue and Taxation Code section 6225 (Ch. 16, Stats. 2009, 4th Ex. Sess. (AB 18)). Amendments also include nonsubstantive clarifying amendments for seller's permits, technical amendments, and addition of several reference citations.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

Date: 3/17/2010



Richard L. Smith
Staff Counsel

For: SUSAN LAPSLEY
Director

Original: Ramon Hirsig
Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



SUSAN LAPSLEY
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk 
DATE: 3/19/2010
RE: Return of Approved Rulemaking Materials
OAL File No. 2010-0202-01N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2010-0202-01N regarding Permits).

If this is an approved file, 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 file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

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 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 : Richard Smith
Attorney
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

2010 MAR 17 AM 10: 25

Date: March 17, 2010

OFFICE OF
ADMINISTRATIVE LAW

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

Subject : *OAL File No. 2010-0202-01N*
Regulation 1699, Permits

This memo is to provide you authorization to replace the Form 400 text with the revised text sent to you on March 16, 2010.

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

REB

ble value. Further, the posting of restatements to the CBA Web site is a matter of policy, not regulation.

2. Posting a Restatement Chart Would be Duplicative.

Publicly traded companies are required to report restatements to the Securities and Exchange Commission, where they are posted to the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR). The primary purpose of EDGAR is to increase the efficiency and fairness of the securities market for the benefit of investors, corporations, and the economy by accelerating the receipt, acceptance, dissemination, and analysis of time-sensitive corporate information filed with the agency. Everyone has access to EDGAR, and may utilize the search engine as needed before making the decision to invest in a public company. Further, publicly traded companies are required to post restatements to their Web site, where they can be viewed by potential investors.

3. Proposed Regulation is Not a Standard of General Application.

The proposed regulation does not establish any standard that implements, interprets, or makes specific the law enforced by the Board. It seeks to establish a CBA policy to post all restatements to its Web site, without vetting which, if any, restatements would be of a material value to the general public. Although the petitioner provides a list of restatements, no evidence or documentation is provided outlining actual harm to the California public via any of the restated financial reports. The proposed regulation does not appear to be standard of general application.

DECISION

For all the reasons stated above, the rulemaking petition submitted by Mr. Carl Olson is hereby denied.

/s/
Patti Bowers
Executive Officer
California Board of Accountancy

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by

contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2010-0201-02
BOARD OF CHIROPRACTIC EXAMINERS
Chiropractic Specialties

This regulatory action establishes that for purposes of the Department of Industrial Relations' Qualified Medical Evaluator Eligibility regulation (Division of Workers' Compensation, Title 8, California Code of Regulations, section 12), the Board of Chiropractic Examiners recognizes only those specialty boards that are recognized by the American Chiropractic Association (ACA) or the International Chiropractors Association (ICA).

Title 16
California Code of Regulations
ADOPT: 311.1
Filed 03/16/2010
Effective 04/15/2010
Agency Contact:
Dixie Van Allen (916) 263-5329

File# 2010-0201-03
BOARD OF EQUALIZATION
Hearings Recorded

The Board of Equalization submitted this action as one without regulatory effect, pursuant to title 1, California Code of Regulations, section 100(a)(4), to amend title 18, California Code of Regulations, section 312(a), by updating a cross-reference to Code of Civil Procedure section 2025(l)(2) to Code of Civil Procedure section 2025.340, consistent with the renumbering of the cross-referenced Code of Civil Procedure section in A.B. 3081 (Stats. 2004, ch. 182).

Title 18
California Code of Regulations
AMEND: 312(a)
Filed 03/16/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0202-01
BOARD OF EQUALIZATION
Permits

The Board of Equalization submitted this action as one without regulatory effect, pursuant to title 1, California Code of Regulations, section 100, to amend title 18, California Code of Regulations, section 1699 by adding permit and use tax reporting requirements for qualified purchasers in accordance with Revenue and Taxation Code section 6225 (Ch. 16, Stats. 2009, 4th Ex. Sess. (AB 18)). Amendments also include nonsub-

CALIFORNIA REGULATORY NOTICE REGISTER 2010, VOLUME NO. 13-Z

stantive clarifying amendments for seller's permits, technical amendments, and addition of several reference citations.

Title 18
California Code of Regulations
AMEND: 1699
Filed 03/17/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0201-01
BOARD OF EQUALIZATION
Property Transferred or Sold by Certain Nonprofit Organizations

This Section 100 Change Without Regulatory Effect codifies in a new subsection (i) the provisions of Revenue and Taxation Code section 6018.9 (A.B. 1486 (Chap. 538, Stats. 2009)). The statutory provisions codified in regulation here "provide that a membership organization, as described in Section 501(c) of the Internal Revenue Code, is the consumer, and not a retailer, of tangible personal property meeting certain requirements that it provides to its members, so that the retail sale subject to tax is the sale of tangible personal property to the membership organization" until January 1, 2015.

Title 18
California Code of Regulations
AMEND: 1597
Filed 03/16/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0129-01
CALIFORNIA GAMBLING CONTROL
COMMISSION

Assistance to Bingo Players with Disabilities

This is the certification of compliance for regulations first adopted as emergency regulations on May 18, 2009, to oblige operators of bingo games to provide specified kinds of assistance to players with disabilities.

Title 4
California Code of Regulations
ADOPT: 12482
Filed 03/15/2010
Agency Contact: James Allen (916) 263-4024

File# 2010-0311-01
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This regulatory action expands the quarantine area for the Light Brown Apple Moth (LBAM) (*Epiphyas postvittana*) in the following counties: Marin, Sonoma

and San Luis Obispo. This regulatory action adds a new quarantine area in the Stockton area of San Joaquin County and a new area in the Woodland area of Yolo County.

Title 3
California Code of Regulations
AMEND: 3434(b)
Filed 03/15/2010
Effective 03/15/2010
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2010-0301-02
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This regulatory action expands the quarantine area for the Light Brown Apple Moth (LBAM) (*Epiphyas postvittana*) in the following counties: Contra Costa, Marin, Monterey, Napa, Solano, Sonoma, Los Angeles, and San Luis Obispo. It also establishes a new quarantine area of approximately 25 square miles in the Kenwood area of Sonoma county.

Title 3
California Code of Regulations
AMEND: 3434(b)
Filed 03/10/2010
Effective 03/10/2010
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2010-0218-04
DEPARTMENT OF FOOD AND AGRICULTURE
Oriental Fruit Fly Interior Quarantine

This regulatory action establishes approximately 84 square miles in the La Verne area of Los Angeles County as a quarantine area for the Oriental fruit fly ("*Bactrocera dorsalis*").

Title 3
California Code of Regulations
AMEND: 3423(b)
Filed 03/17/2010
Effective 03/17/2010
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2010-0126-02
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Eradication Area

Department of Food and Agriculture filed this timely certificate of compliance action to make permanent the amendment to title 3, California Code of Regulations, sec. 3591.20(a) adopted as an emergency in OAL File Nos. 2009-0617-05 E and 2009-1214-02EE. The amendment added San Joaquin County as an additional

regulations. On March 18, 2010, OAL notified the Board that OAL disapproved this regulatory action for failure to comply with specified standards and procedures of the California Administrative Procedure Act ("APA"). This Decision of Disapproval explains the reasons for OAL's action.

DECISION

The rulemaking was disapproved for the following reasons: failure to meet the clarity standard of Government Code section 11349.1; incorrect procedure; failure to make changes to the regulations available to the public for comments as required by Government Code section 11346.8; failure to comply with the requirements of title 1, CCR, section 20 concerning incorporation by reference; and for miscellaneous omissions and errors in the accompanying text and documentation.

Due to the scope of the issues discussed below, OAL reserves the right to conduct a complete APA review for compliance with the substantive standards and procedural requirements of the APA in the event that the Board resubmits this rulemaking to OAL for review. All APA issues must be resolved prior to OAL approval of any resubmission.

Date: March 24, 2010

/s/
Peggy J. Gibson
Staff Counsel

FOR: SUSAN LAPSLEY
Director

Original: Richard DeCuir
Copy: Donna Kantner

<p>SUMMARY OF REGULATORY ACTIONS</p>

**REGULATIONS FILED WITH
SECRETARY OF STATE**

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File# 2010-0202-01
BOARD OF EQUALIZATION
Permits

The Board of Equalization submitted this action as one without regulatory effect, pursuant to title 1, California Code of Regulations, section 100, to amend title 18, California Code of Regulations, section 1699 by adding permit and use tax reporting requirements for qualified purchasers in accordance with Revenue and Taxation Code section 6225 (Ch. 16, Stats. 2009, 4th Ex. Sess. (AB 18)). Amendments also include nonsubstantive clarifying amendments for seller's permits, technical amendments, and addition of several reference citations.

Title 18
California Code of Regulations
AMEND: 1699
Filed 03/17/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0317-01
CALIFORNIA FILM COMMISSION
California Film and Television Tax Credit Program

This rulemaking action adds eight sections to Title 10 of the California Code of Regulations to implement the California Film and Television Tax Credit Program. The rulemaking specifies a tax credit application process and the content of the application. It specifies eligibility for the tax credit and the kinds of production and wage expenditures that qualify. It specifies the tax credit certificate issuance process. It also defines a number of terms and incorporates by reference eight forms and one set of audit instructions necessary to implementing the program.

Title 10
California Code of Regulations
ADOPT: 5500, 5501, 5502, 5503, 5504, 5505, 5506, 5507
Filed 03/18/2010
Effective 03/18/2010
Agency Contact: Terri Toohey (916) 768-5638

File# 2010-0218-04
DEPARTMENT OF FOOD AND AGRICULTURE
Oriental Fruit Fly Interior Quarantine

This regulatory action establishes approximately 84 square miles in the La Verne area of Los Angeles County as a quarantine area for the Oriental fruit fly ("Bactrocera dorsalis").

Regulation 1699

Section 100

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2. *Addendum to Statement of Explanation*
3. *Statement of Explanation*
4. *Assembly Bill No. 1486*

NOT SUBSTANTIVE

STD. 400 (REV. 01-09)

NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-0202-01N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		
2010 FEB -2 AM 8:15 OFFICE OF ADMINISTRATIVE LAW		
NOTICE		REGULATIONS
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization		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 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	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Permits	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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 1699
TITLE(S) 18	REPEAL
3. TYPE OF FILING	
<input 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"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
	<input type="checkbox"/> File & Print
	<input type="checkbox"/> Other (Specify) _____
	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input type="checkbox"/> Print Only
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 type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State
	<input checked="" 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"/> Other (Specify) _____	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Rick Bennion	TELEPHONE NUMBER (916) 445-2130
	FAX NUMBER (Optional) (916) 324-3984
	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov

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>Diane G. Olson</i>	DATE February 2, 2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

Final Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1699. Permits.

(a) Seller's Permit In General -Number of Permits Required. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a seller's permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:, Aa seller's permit is required for a branch sales office at which orders are customarily taken or contracts negotiated, whether or not merchandise is stocked there.

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

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

(b) Persons Selling in Interstate Commerce or to United States Government. A seller's permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a seller's permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) are made to the United States or instrumentalities thereof.

(c) Persons Selling Feed. Effective April 1, 1996, a seller's permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

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

1. The hay is produced for sale only to beef cattle feedlots or dairies, or

2. The hay is sold exclusively through a farmer-owned cooperative.

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

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

In cases where a retailer is not operating as a concessionaire, the prime retailer is *not* liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a seller's permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the Board. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

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

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

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

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

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

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

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

(A) The seller's permit holder may notify the Board by delivering the actual seller's permit to the Board with the clear request that the permit be canceled. Where the reason for cancellation is that the permit holder transferred the business, the permit holder

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

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

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

(g) Due Date of Returns -Closeout of Account on Yearly Reporting Basis. . . .
(unchanged).

(h) Buying Companies –General. . . . (unchanged).

(i) Web Sites. . . . (unchanged).

(j) Use Tax Permit - Qualified Purchasers. Except for the purchase of a vehicle, vessel, or aircraft, a person who meets all of the following conditions is required to register and report and pay use tax directly to the Board:

- (1) The person is not required to hold a seller's permit.
- (2) The person is not required to be registered pursuant to Revenue and Taxation Code section 6226.
- (3) The person is not a holder of a use tax direct payment permit as described in Revenue and Taxation Code section 7051.3.
- (4) The person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.
- (5) The person is not otherwise registered with the board to report use tax.

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

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6066, 6067, 6070, 6071.1, 6072, 6073, 6075 and ~~6225075~~, Revenue and Taxation Code.

Addendum to
Statement of Explanation for
Changes to Title 18. Public Revenue

Regulation 1699, *Permits*

I. Formatting Issues

The Board has revised the proposed text of the Rule 100 (Cal. Code Regs., tit. 1, § 100) changes to Regulation 1699 to conform to the format used in the text printed in Barclays California Code of Regulations. As a result, all of the subdivisions and paragraphs are now aligned to the left and begin with a one-half inch indent, with the exception of the bullets in subdivision (d). The bullets are each indented one-half of an inch and then all of the text in the bullets is indented three quarters of an inch. In addition, the text of Regulation 1699, subdivision (a), has been revised so that it only contains three paragraphs, instead of five; the first paragraph ends with a sentence that begins with the phrase “For example, a seller’s permit”; and the third paragraph ends with a sentence that begins with the phrase “For example, a service station” (See attached Final Text of Proposed Changes.)

II. Reference to Regulation 1685

The Board has decided to delete the reference to Regulation 1685 from the original text of the Rule 100 changes adding Regulation 1699, subdivision (j)(3), as indicated in the attached Final Text of Proposed Changes, because the reference is not necessary.

III. Retroactivity

The Board does not believe that the proposed Rule 100 changes adding subdivision (j) to Regulation 1699 have a retroactive effect, and, in fact, the Board does not believe they have any regulatory effect at all.

Revenue and Taxation Code section (section) 6452, subdivision (b), requires every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax (consumer) and who has not paid the use tax due to a retailer required to collect the tax, to file a use tax return. And, section 6454 requires consumers to remit their use taxes with their returns.

Prior to the enactment of section 6225, the Board exercised its discretion, under section 6455, to require consumers to report their use taxes to the Board on an annual, calendar-year basis, and file their returns by January 31 of the year following the close of each annual reporting period,¹ unless the consumers elected, pursuant to section 6452.1, to report their use taxes on timely income tax returns filed with the Franchise Tax Board (FTB) by April 15. This means that prior to the enactment of section 6225 a consumer would have been required to report use tax for calendar year 2009 on a use tax return filed with the Board by January 31, 2010, or on an income tax return filed with the FTB by April 15, 2010.

The enactment of section 6225, created the statutorily designated sub-class of consumers referred to as “qualified purchasers,” effective January 1, 2010. It also required “qualified purchasers” to register with the Board, which they were not previously required to do, and required all “qualified purchasers” to file their annual use tax returns with the Board by April 15, instead of January 31. Therefore, as of January 1, 2010, section 6225 required “qualified purchasers” to register with the Board on a prospective basis. Section 6225 also extended the due date for filing qualified purchasers’ use tax returns for the calendar year 2009 from January 31, 2010, to April 15, 2010, and similarly extended the due dates of their subsequent years’ returns, on a prospective basis.

The Board believes that section 6225 cannot be interpreted to require “qualified purchasers” to register before it became effective nor effect the due dates of use tax returns for calendar years prior to 2009 because those returns would have already been due well before the effective date of section 6225. For example, use tax returns for calendar years 2007 and 2008, were due on January 31, 2008, and January 31, 2009, respectively. Therefore, the Board does not believe that the proposed Rule 100 changes adding Regulation 1699, subdivision (j), to incorporate the provisions of section 6225 have a retroactive effect, and the Board does not believe that subdivision (j) has any legal effect beyond that of section 6225.

Furthermore, section 7051 provides that:

The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

Therefore, the Board is authorized to adopt retroactive sales and use tax regulations and, for purposes of construction, the Board’s sales and use tax regulations are presumed to be retroactive, unless otherwise specified by the Board. As such, the Board believes that any retroactive effect the proposed Rule 100 changes may have, if any, is authorized by section 7051.

¹ See Board Publication 79b, *California Use Tax – For Purchases Made from Out-of-State Businesses*, and the use tax return, form BOE-401-DS REV. 2 (3-09), included therein.

IV. Reference Note

The Board has determined that the proposed Rule 100 changes to the reference note for Regulation 1699 may cite statutes that are not being interpreted, implemented, or made specific by Regulation 1699. Therefore, the Board has reviewed the citations and revised the proposed text of the reference note to cite:

- Section 6066 requiring sellers to apply for seller's permits;
- Section 6067 regarding the issuance and display of seller's permits;
- Section 6070 providing for the revocation of seller's permits;
- Section 6071.1 imposing liabilities on inactive permit holders who fail to surrender, and allow others to continue to use, their seller's permits;
- Section 6072 requiring that inactive permit holders surrender their permits forthwith;
- Section 6073 authorizing the Board to require that the operators of swap meets, flea markets, and special events at which tangible personal property are sold (concessionaires) verify that each person selling tangible personal property at their events holds a valid seller's permit;
- Section 6075 exempting specified persons selling feed from the seller's permit requirements; and
- Section 6225 imposing the new registration requirements on "qualified purchasers."

(See attached Final Text of Proposed Changes.) The Board has determined that each of these statutes is being implemented, interpreted, or made specific by the current language of Regulation 1699 or the proposed Rule 100 changes to Regulation 1699.

Final Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1699. Permits.

(a) Seller's Permit In General -Number of Permits Required. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a seller's permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:, Aa seller's permit is required for a branch sales office at which orders are customarily taken or contracts negotiated, whether or not merchandise is stocked there.

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

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

(b) Persons Selling in Interstate Commerce or to United States Government. A seller's permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a seller's permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) are made to the United States or instrumentalities thereof.

(c) Persons Selling Feed. Effective April 1, 1996, a seller's permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

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

1. The hay is produced for sale only to beef cattle feedlots or dairies, or

2. The hay is sold exclusively through a farmer-owned cooperative.

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

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

In cases where a retailer is not operating as a concessionaire, the prime retailer is *not* liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a seller's permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the Board. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

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

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

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

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

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

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

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

(A) The seller's permit holder may notify the Board by delivering the actual seller's permit to the Board with the clear request that the permit be canceled. Where the reason for cancellation is that the permit holder transferred the business, the permit holder

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

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

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

(g) Due Date of Returns -Closeout of Account on Yearly Reporting Basis. . . . (unchanged).

(h) Buying Companies –General. . . . (unchanged).

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(j) Use Tax Permit - Qualified Purchasers. Except for the purchase of a vehicle, vessel, or aircraft, a person who meets all of the following conditions is required to register and report and pay use tax directly to the Board:

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

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

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

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

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

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

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6066, 6067, 6070, 6071.1, 6072, 6073, 6075 and ~~6225~~675, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1699, *Permits*

A. Factual Basis

Statutes 2009, chapter 16 (Assem. Bill No. 18 (2009-10 4th Ex. Sess.)), section 1, added Revenue and Taxation Code section 6225, to “require a qualified purchaser, as defined, to register with the State Board of Equalization and to report and pay by April 15 the use tax owed for the previous calendar year.” (Legislative Counsel Digest.) Section 6225 expressly provides that:

6225.

(a) In order to facilitate the collection of use tax imposed by this part, a qualified purchaser shall register with the board on a form prescribed by the board and shall set forth the name under which the qualified purchaser transacts or intends to transact business, the location of the qualified purchaser's place or places of business, and other information as the board may require.

(b) Article 1 (commencing with Section 6451) of Chapter 5 of this part shall apply to a qualified purchaser, except that a return showing the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, and which was not paid to a retailer required to collect the tax or which was not paid to a retailer the qualified purchaser reasonably believed was required to collect the tax, shall be filed, together with a remittance of the amount of the tax due, with the board on or before April 15.

(c) A "qualified purchaser" means a person that meets all of the following conditions:

- (1) The person is not required to hold a seller's permit pursuant to this part.
- (2) The person is not required to be registered pursuant to Section 6226.
- (3) The person is not a holder of a use tax direct payment permit as described in Section 7051.3.
- (4) The person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.
- (5) The person is not otherwise registered with the board to report use tax.

(d) This section shall not apply to the purchase of a vehicle, vessel, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

Furthermore, the provisions of Revenue and Taxation Code section 6225 requiring qualified purchasers to report and pay use tax by April 15 of each year became effective on January 1,

2010, and apply to returns and taxes for the 2009 calendar year, which are due by April 15, 2010, and returns and taxes for subsequent years.

Therefore, the State Board of Equalization (Board) proposes to add subdivision (j) to California Code of Regulation, title 18, section (Regulation) 1699, *Permits*, to read as follows pursuant to California Code of Regulations, title 1, section (Rule) 100, to conform to the current provisions of Revenue and Taxation Code section 6225; and the Board proposes to amend subdivisions (a) through (f) of Regulation 1699 to clarify that these subdivisions are referring to “seller’s” permits. In addition, the Board proposes to add a citation to Revenue and Taxation Code section 6225 to Regulation 1699’s reference note and revise the reference note, which inadvertently cites Revenue and Taxation Code sections 6066 and 6075, instead of correctly citing Revenue and Taxation Code sections 6066 through 6075.

The changes to Regulation 1699 are appropriate for processing under Rule 100 because the changes are without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to bring Regulation 1699 into conformity with the current provisions of Revenue and Taxation Code section 6225 and correct the citations in Regulation 1699’s reference note.

B. Proposed Amendments

The Board proposes to amend Regulation 1699 to read as follows:

Regulation 1699. Permits.

(a) Seller’s Permit In General -Number of Permits Required. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a seller’s permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:

A seller’s permit is required for a branch sales office at which orders are customarily taken or contracts negotiated, whether or not merchandise is stocked there.

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

If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one seller’s permit is required. For example:

A service station operator having a restaurant in addition to the station on the same premises requires only one seller’s permit for both activities.

(b) Persons Selling in Interstate Commerce or to United States Government. A seller's permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a seller's permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) are made to the United States or instrumentalities thereof.

(c) Persons Selling Feed. Effective April 1, 1996, a seller's permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

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

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

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

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

In cases where a retailer is not operating as a concessionaire, the prime retailer is not liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while

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

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

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

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

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

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

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

(2) Except as explained in paragraph (3) of this subdivision, a person holding a seller's permit will be held liable for any taxes, interest, and penalties incurred, through the date on which the

Board is notified to cancel the permit, by any other person who, with the permit holder's actual or constructive knowledge, uses the permit in any way. For example, a permit holder may be held liable for tax, interest, and penalty actually incurred by his or her transferee where the transferee displays the permit in his or her place of business, or uses the permit number on a resale certificate, or files sales and use tax returns under the permit number. The permit holder has the burden of establishing that the Board received notice to cancel the permit.

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

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

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

(g) Due Date of Returns -Closeout of Account on Yearly Reporting Basis. . . . (unchanged).

(h) Buying Companies –General. . . . (unchanged).

(i) Web Sites. . . . (unchanged).

(j) Use Tax Permit –Qualified Purchasers.

Except for the purchase of a vehicle, vessel, or aircraft, a person who meets all of the following conditions is required to register and report and pay use tax directly to the Board:

- (1) The person is not required to hold a seller's permit.
- (2) The person is not required to be registered pursuant to Revenue and Taxation Code section 6226.
- (3) The person is not a holder of a use tax direct payment permit as described in Revenue and Taxation Code section 7051.3 and Regulation 1685.
- (4) The person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.
- (5) The person is not otherwise registered with the board to report use tax.

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

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6066–~~6075~~ and ~~6225075~~, Revenue and Taxation Code.

Assembly Bill No. 18

CHAPTER 16

An act to amend Section 18661 of, and to add Sections 6225 and 18664 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 28, 2009. Filed with
Secretary of State July 28, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 18, Committee on Budget. Taxation.

The Sales and Use Tax Law requires a person conducting business as a seller of tangible personal property in this state to obtain a permit from the State Board of Equalization for each place of business and also requires a person selling tangible personal property for storage, use, or other consumption in this state to register with the State Board of Equalization.

This bill would require a qualified purchaser, as defined, to register with the State Board of Equalization and to report and pay by April 15 the use tax owed for the previous calendar year, as provided. This bill would not apply to the purchase of a vehicle, vessel, or aircraft.

The Franchise Tax Board administers the Personal Income Tax Law and the Corporation Tax Law. Existing law authorizes persons that are required to withhold taxes from recipients of income to require the recipients of the income to provide that person with the recipient's name and address.

This bill would require the recipient of income to also provide the person paying the income with the recipient's social security number or other taxpayer identification number if requested by the person paying the income.

Existing law provides that the Franchise Tax Board may, by regulation, require any person to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due, as specified, and to transmit the amount withheld to the Franchise Tax Board at a designated time.

This bill would, in modified conformity with the federal income tax law, require backup withholding, as provided, at a rate of 7% on specified payments made on or after January 1, 2010, whenever such payments are subject to federal backup withholding.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on July 1, 2009.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on July 1, 2009, pursuant to the California Constitution.

The people of the State of California do enact as follows:

SECTION 1. Section 6225 is added to the Revenue and Taxation Code, to read:

6225. (a) In order to facilitate the collection of use tax imposed by this part, a qualified purchaser shall register with the board on a form prescribed by the board and shall set forth the name under which the qualified purchaser transacts or intends to transact business, the location of the qualified purchaser's place or places of business, and other information as the board may require.

(b) Article 1 (commencing with Section 6451) of Chapter 5 of this part shall apply to a qualified purchaser, except that a return showing the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, and which was not paid to a retailer required to collect the tax or which was not paid to a retailer the qualified purchaser reasonably believed was required to collect the tax, shall be filed, together with a remittance of the amount of the tax due, with the board on or before April 15.

(c) A "qualified purchaser" means a person that meets all of the following conditions:

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

(2) The person is not required to be registered pursuant to Section 6226.

(3) The person is not a holder of a use tax direct payment permit as described in Section 7051.3.

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

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

(d) This section shall not apply to the purchase of a vehicle, vessel, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

SEC. 2. Section 18661 of the Revenue and Taxation Code is amended to read:

18661. When necessary to make effective the provisions of this article or Article 4 (commencing with Section 18631), the name, address, social security number, or other taxpayer identification number of the recipient of income shall be furnished upon demand of the person paying the income.

SEC. 3. Section 18664 is added to the Revenue and Taxation Code, to read:

18664. (a) (1) Section 3406 of the Internal Revenue Code, relating to the backup withholding, shall apply, except as otherwise provided.

(2) For purposes of this section, the term "reportable payment," as defined in Section 3406(b) of the Internal Revenue Code, shall include payments of items of income as defined in Section 18662, and any regulations thereunder, with respect to rents, prizes and winnings, compensation for

services, including bonuses, and other fixed or determinable annual or periodic gains, profits, and income.

(3) This section shall not apply to either of the following:

(A) Payment of interest and dividends.

(B) Any release of loan funds made by a financial institution in the normal course of business.

(4) For the purposes of subparagraph (B) of paragraph (3), “financial institution” means any of the following:

(A) A depository institution, as defined in Section 1813(c) of Title 12 of the United States Code.

(B) An institution-affiliated party, as defined in Section 1813(u) of Title 12 of the United States Code.

(C) Any federal credit union or state credit union, as defined in Section 1752 of Title 12 of the United States Code, including an institution-affiliated party of a credit union, as defined in Section 1786(r) of Title 12 of the United States Code.

(b) The amount of tax to be withheld shall be computed by applying a rate of 7 percent to the reportable payment.

(c) Where withholding under both this section and other provisions of this article would otherwise be required, withholding shall only be required under this section.

(d) Any payer required to withhold tax pursuant to this section shall notify the payee of such withholding at a time and in a manner as may be prescribed in forms and instructions by the Franchise Tax Board.

(e) This section shall apply to payments made on or after January 1, 2010.

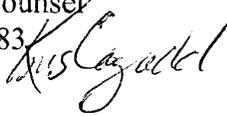
SEC. 4. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. This act addresses the fiscal emergency declared by the Governor by proclamation on July 1, 2009, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

Memorandum

To : Mr. Ramon J. Hirsig
Executive Director, MIC:73

Date: January 7, 2010

From : Kristine Cazadd, Chief Counsel
Legal Department, MIC:83 

Subject : Regulation 1699, *Permits*
Chief Counsel's Rulemaking Calendar
Board Meeting—January 27, 2010

Statutes 2009, chapter 16 (Assem. Bill No. 18 (2009-10 4th Ex. Sess.)), section 1, added Revenue and Taxation Code section 6225 to require "qualified purchasers" to register with the Board and report and pay the use tax owed for purchases made during the calendar year. To incorporate the new statutory provisions, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1699 on the Chief Counsel's Rulemaking Calendar on January 27, 2010, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. The revisions add a new subdivision (j), make clarifying changes to the text of Regulation 1699, subdivisions (a) through (f), and update Regulation 1699's reference note. The changes are appropriate for processing under Rule 100 because they make the regulation consistent with a statutory change and update the regulation's reference note.

Attached is the Statement of Explanation, which includes a detailed description of the proposed changes to Regulation 1699 and a strikeout and underlined version of the regulation.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 324-2657.

Recommendation by:

Approved:



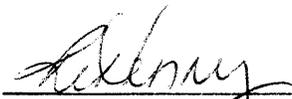
Kristine Cazadd, Chief Counsel



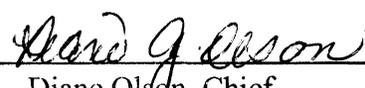
Ramon J. Hirsig, Executive Director

Approved:

BOARD APPROVED
At the 1-27-10 Board Meeting



Randie L. Henry, Deputy Director
Sales and Use Tax Department



Diane Olson, Chief
Board Proceedings Division

Attachments

cc: Ms. Randie L. Henry (MIC 43)
Ms. Diane Olson (MIC 80)
Mr. Randy Ferris (MIC 82)
Mr. Bradley M. Heller (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Hellmuth (MIC 50)
Ms. Cecilia Watkins (MIC 50)

Regulation 1699. PERMITS

Reference: Sections 6066-6075 and 6225-6225, Revenue and Taxation Code.

(a) SELLER'S PERMIT IN GENERAL – NUMBER OF PERMITS REQUIRED. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a seller's permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:

A seller's permit is required for a branch sales office at which orders are customarily taken or contracts negotiated, whether or not merchandise is stocked there.

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

If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one seller's permit is required. For example:

A service station operator having a restaurant in addition to the station on the same premises requires only one seller's permit for both activities.

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

(c) PERSONS SELLING FEED. Effective April 1, 1996, a seller's permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

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

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

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

- Appears to the public to be a business separate and autonomous from the prime retailer. Examples of businesses that may appear to be separate and autonomous, while operating within the prime retailer's premises, are those with signs posted on the premises naming each of such businesses, those with separate cash registers, and those with their own receipts or invoices printed with their business name.
- Maintains separate business records, particularly with respect to sales.
- Establishes his or her own selling prices.
- Makes business decisions independently, such as hiring employees or purchasing inventory and supplies.

Regulation 1699. (Cont.)

- Registers as a separate business with other regulatory agencies, such as an agency issuing business licenses, the Employment Development Department, and/or the Secretary of State.
- Deposits funds into a separate account.

In cases where a retailer is not operating as a concessionaire, the prime retailer is *not* liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a seller's permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the Board. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

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

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

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

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

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

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

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

(A) The seller's permit holder may notify the Board by delivering the actual seller's permit to the Board with the clear request that the permit be canceled. Where the reason for cancellation is that the permit holder transferred the business, the permit holder should identify the name and address of the transferee at the time the permit is surrendered to the Board. The permit holder may also notify the Board by delivering a written statement or email to the Board that the permit holder has transferred or otherwise ceased the business, or will do so at a specified time, and requesting that the permit be canceled. The statement should identify the name and address of the transferee, if any. The permit holder may also provide this notice to the Board orally, but it will be presumed that such notice was

Regulation 1699. (Cont.)

not provided unless the Board's records reflect that the permit holder clearly notified the Board of the cessation or transfer of the business for which the permit was held.

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

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

(g) DUE DATE OF RETURNS - CLOSEOUT OF ACCOUNT ON YEARLY REPORTING BASIS. Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the yearly period, a closing return shall be filed with the Board on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.

(h) BUYING COMPANIES - GENERAL.

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

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

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

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

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

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

Regulation 1699. (Cont.)

(i) USE TAX PERMIT - QUALIFIED PURCHASERS

Except for the purchase of a vehicle, vessel, or aircraft, a person who meets all of the following conditions is required to register and report and pay use tax directly to the Board:

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

(2) The person is not required to be registered pursuant to section 6226.

(3) The person is not a holder of a use tax direct payment permit as described in section 7051.3 and Regulation 1685.

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

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

The return must show the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, for which the qualified purchaser did not pay tax to a retailer required to collect the tax or a retailer the qualified purchaser reasonably believed was required to collect the tax.

Appendix A

Certification of Permit – Concessionaires

I certify that I operate an independent business at the premises of the following retailer and that I hold a valid seller's permit to operate at this location, as noted below. I further understand that I will be solely responsible for reporting all sales that I make on those premises and remitting all applicable sales and use taxes due to the Board of Equalization:

Name of retailer on whose premises I operate my business: _____

Location of premises: _____

I hereby certify that the foregoing information is accurate and true to the best of my knowledge:

Certifier's Signature: _____ Date: _____

Certifier's Printed Name: _____

Certifier's Seller's Permit Number: _____

Certifier's Business Name and Address:* _____

Certifier's Telephone Number: _____

*** Please Note:** The certifier *must* be registered to do business at the location of the retailer upon whose premises he or she is making retail sales.

CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1699, *Permits*

A. Factual Basis

Statutes 2009, chapter 16 (Assem. Bill No. 18 (2009-10 4th Ex. Sess.)), section 1, added Revenue and Taxation Code section 6225, to “require a qualified purchaser, as defined, to register with the State Board of Equalization and to report and pay by April 15 the use tax owed for the previous calendar year.” (Legislative Counsel Digest.) Section 6225 expressly provides that:

6225.

(a) In order to facilitate the collection of use tax imposed by this part, a qualified purchaser shall register with the board on a form prescribed by the board and shall set forth the name under which the qualified purchaser transacts or intends to transact business, the location of the qualified purchaser's place or places of business, and other information as the board may require.

(b) Article 1 (commencing with Section 6451) of Chapter 5 of this part shall apply to a qualified purchaser, except that a return showing the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, and which was not paid to a retailer required to collect the tax or which was not paid to a retailer the qualified purchaser reasonably believed was required to collect the tax, shall be filed, together with a remittance of the amount of the tax due, with the board on or before April 15.

(c) A "qualified purchaser" means a person that meets all of the following conditions:

- (1) The person is not required to hold a seller's permit pursuant to this part.
- (2) The person is not required to be registered pursuant to Section 6226.
- (3) The person is not a holder of a use tax direct payment permit as described in Section 7051.3.
- (4) The person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.
- (5) The person is not otherwise registered with the board to report use tax.

(d) This section shall not apply to the purchase of a vehicle, vessel, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

Therefore, the State Board of Equalization (Board) proposes to add subdivision (j) to California Code of Regulation, title 18, section (Regulation) 1699, *Permits*, to read as follows pursuant to

California Code of Regulations, title 1, section (Rule) 100, to conform to the current provisions of Revenue and Taxation Code section 6225; and the Board proposes to amend subdivisions (a) through (f) of Regulation 1699 to clarify that these subdivisions are referring to “seller’s” permits. In addition, the Board proposes to add a citation to Revenue and Taxation Code section 6225 to Regulation 1699’s reference note and revise the reference note, which inadvertently cites Revenue and Taxation Code sections 6066 and 6075, instead of correctly citing Revenue and Taxation Code sections 6066 through 6075.

The changes to Regulation 1699 are appropriate for processing under Rule 100 because the changes are without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to bring Regulation 1699 into conformity with the current provisions of Revenue and Taxation Code section 6225 and correct the citations in Regulation 1699’s reference note.

B. Proposed Amendments

The Board proposes to amend Regulation 1699 to read as follows:

Regulation 1699. Permits.

(a) Seller’s Permit In General -Number of Permits Required. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a seller’s permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:

A seller’s permit is required for a branch sales office at which orders are customarily taken or contracts negotiated, whether or not merchandise is stocked there.

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

If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one seller’s permit is required. For example:

A service station operator having a restaurant in addition to the station on the same premises requires only one seller’s permit for both activities.

(b) Persons Selling in Interstate Commerce or to United States Government. A seller’s permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a seller’s permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) are made to the

United States or instrumentalities thereof.

(c) Persons Selling Feed. Effective April 1, 1996, a seller's permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

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

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

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

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

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

following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

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

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

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

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

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

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

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

certificate, or files sales and use tax returns under the permit number. The permit holder has the burden of establishing that the Board received notice to cancel the permit.

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

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

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

(g) Due Date of Returns -Closeout of Account on Yearly Reporting Basis. . . . (unchanged).

(h) Buying Companies –General. . . . (unchanged).

(i) Web Sites. . . . (unchanged).

(j) Use Tax Permit –Qualified Purchasers.

Except for the purchase of a vehicle, vessel, or aircraft, a person who meets all of the following conditions is required to register and report and pay use tax directly to the Board:

- (1) The person is not required to hold a seller's permit.
- (2) The person is not required to be registered pursuant to section 6226.
- (3) The person is not a holder of a use tax direct payment permit as described in section 7051.3 and Regulation 1685.
- (4) The person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.
- (5) The person is not otherwise registered with the board to report use tax.

The return must show the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, for which the qualified purchaser did not pay tax to a retailer required to collect the tax or a retailer the qualified purchaser reasonably believed was required to collect the tax.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6066, ~~6075~~ and ~~6225~~~~075~~, Revenue and Taxation Code.

Wednesday January 27, 2010

Property Tax Rule 312, *Hearings Record*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete a Rule 100 change to Property Tax Rule 312 to update a reference to the Code of Civil Procedure. (Exhibit 1.4.)

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Property Tax Rule 312, *Hearings Record*, as recommended by staff.

Sales and Use Tax Regulation 1699, *Permits*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to Regulation 1699 to incorporate the provisions of newly enacted Revenue and Taxation Code section 6225 regarding the registration of qualified purchasers. (Exhibit 1.5.)

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Sales and Use Tax Regulation 1699, *Permits*, as recommended by staff.

Sales and Use Tax Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to Regulation 1597 to incorporate the provisions of newly enacted Revenue and Taxation Code section 6018.9 pertaining to the requirements for 501(c) organizations to be consumers of property transferred to their members. (Exhibit 1.6.)

Mr. Heller reported that in the description of this item, the Public Agenda Notice erroneously referenced "501(c)(3)" and should have referenced "501(c)" instead.

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Sales and Use Tax Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*, as recommended by staff.

BOARD OF EQUALIZATION
REGULATORY ACTION IN ACCORDANCE
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 1699

REASON FOR CHANGE (check those applicable)

- renumbering, reordering, or relocating regulatory provision
- deleting regulatory provision for which all statutory or constitutional authority has been repealed
- deleting regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a US District Court located in the State of California, the US Court of Appeals for the Ninth Circuit, or the US Supreme Court
- revising structure, syntax, cross-reference, grammar, or punctuation
- changing an "authority" or "reference" citation
- making consistent with changed California statute if (A) provision is inconsistent with and superseded by changed statute; and (B) Board has no discretion to adopt a change which differs in substance from this proposal

Therefore, I recommend that these amendments be submitted to OAL as a change without regulatory effect and without public hearing.

Prepared by Celia A. Matton Date 12/31/09

Approvals
Division Chief [Signature] for J. McGuire Date 12/31/2009

Deputy Director [Signature] Date 1-5-2010

Assistant Chief Counsel [Signature] Date 1/5/10

Chief Counsel [Signature] Date 1/6/10

Chief, Board Proceedings [Signature] Date 1/7/10

INSTRUCTIONS:

After approval, forward to next on list. In the event of disapproval, return to preparer.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

JANUARY 27, 2010

ITEM J3

CHIEF COUNSEL MATTERS

RULEMAKING

SECTION 100 CHANGES

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Board
of Equalization:

Betty Yee
Chair

Jerome E. Horton
Vice-Chair

Bill Leonard
Member

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Diane Olson
Chief, Board
Proceedings Division

Board of Equalization
Staff:

Bradley Heller
Legal Department

---oOo---

1 Sacramento, California

2 January 27, 2010

3 ----oOO----

4 MS. OLSON: Our next item is J3, Sales and Use
5 Tax Regulation 1699, Permits.

6 MR. HELLER: And, again, staff is requesting
7 the Board's authorization to complete Rule 100 changes
8 to Regulation 1699 in order to incorporate recent
9 amendments to -- or I should say the -- the addition of
10 Revenue and Taxation Code 6225 regarding the
11 registration and filing requirements for service
12 businesses.

13 MS. YEE: Okay.

14 MR. HORTON: Move adoption.

15 MS. YEE: Okay. Motion by Mr. Horton.

16 MS. MANDEL: Second.

17 MS. YEE: Second by Ms. Mandel.

18 Without objection that motion carries.

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REPORTER'S CERTIFICATE.

State of California)
) ss
County of Sacramento)

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on January 27, 2010 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding 3 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: February 4, 2010.

BEVERLY D. TOMS
Hearing Reporter