

# **Regulation 1584**

## **Section 100**

Complete Rule Making File

*OAL Approval with Approved Text Regulation 1584*

*Index*

1. *Form 400 and Proposed Regulation 1584*
2. *Statement of Explanation*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 08/27/15*
- B. *Minutes, 09/16/15*
- C. *Reporters Transcript, 09/16/15*

RECEIVED

DEC 10 2015

by EXECUTIVE DIRECTOR'S OFFICE  
STATE BOARD OF EQUALIZATION

**State of California  
Office of Administrative Law**

**In re:**  
**Board of Equalization**

**Regulatory Action:**

**Title 18, California Code of Regulations**

**Adopt sections:**

**Amend sections: 1584**

**Repeal sections:**

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

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

**OAL Matter Number: 2015-1029-02**

**OAL Matter Type: Nonsubstantive (N)**

The State Board of Equalization proposed to amend subdivisions (b)(1) and (b)(2) of section 1584 of title 18 of the California Code of Regulations to revise the definition of "nominal amount" for membership fees from \$55 to \$60 beginning January 1, 2016 pursuant to the provisions contained in subdivision (b)(2) of section 1584 of title 18 of the California Code of Regulations and to make other related changes. This regulatory action was submitted to the Office of Administrative Law pursuant to section 100 of title 1 of the California Code of Regulations.

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

Date: December 8, 2015



Craig S. Tarpinning  
Assistant Chief Counsel

For: DEBRA M. CORNEZ  
Director

Original: Cynthia Bridges  
Copy: Richard Bennion

**OFFICE OF ADMINISTRATIVE LAW**

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



**DEBRA M. CORNEZ**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk  
DATE: December 8, 2015 ✓  
RE: Return of Rulemaking Materials  
OAL Matter Number 2015-1029-02  
OAL Matter Type Nonsubstantive (N)

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

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

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

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

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

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

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

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

**DO NOT DISCARD OR DESTROY THIS FILE**

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

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

Enclosures

**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# 2015-1026-01

BOARD OF EDUCATION

Special Ed., Individuals with Exceptional Needs — Eligibility Criteria

The State Board of Education amended subdivision (b)(10) of section 3030 of title 5 of the California Code of Regulations to add “phonological processing” to the description of basic psychological processes in order to comply with section 56334, which is to be added to the Education Code by Assembly Bill No. 1369 (Stats. 2015, ch. 647) on January 1, 2016. This regulatory action was submitted to the Office of Administrative Law pursuant to subdivision (a)(6) of section 100 of title 1 of the California Code of Regulations.

Title 5

AMEND: 3030(b)(10)

Filed 12/08/2015

Effective 01/01/2016

Agency Contact: Hillary Wirick (916) 319-0644

File# 2015-1029-02

BOARD OF EQUALIZATION

Membership Fees

The State Board of Equalization amended subdivisions (b)(1) and (b)(2) of section 1584 of title 18 of the California Code of Regulations to revise the definition of “nominal amount” for membership fees from \$55 to \$60 beginning January 1, 2016 pursuant to the provisions contained in subdivision (b)(2) of section 1584 of title 18 of the California Code of Regulations and to make other related changes. This regulatory action was submitted to the Office of Administrative Law pursuant to section 100 of title 1 of the California Code of Regulations.

Title 18

AMEND: 1584

Filed 12/08/2015

Agency Contact: Richard Bennion (916) 445-2130

File# 2015-1125-01

CALIFORNIA ALTERNATIVE ENERGY AND  
ADVANCED TRANSPORTATION FINANCING  
AUTHORITY

Residential Energy Efficiency Loan Assistance  
Program

The California Alternate Energy and Advanced Transportation Finance Authority submitted this second emergency readopt action to maintain the regulations adopted in OAL File No. 2015-0227-01E and subsequently readopted in OAL File No. 2015-0827-02EE. The emergency rulemaking adopted sections in Title 4 of the California Code of Regulations for the purpose of implementing the Residential Energy Efficiency Loan Assistance Program, approved by the California Public Utilities Commission under the 2013-2014 Energy Efficiency Pilot Program. This action establishes affordable financing to homeowners and small business owners undertaking emergency efficiency retrofit projects to meet the energy efficiency goals of California.

Title 4

ADOPT: 10091.1, 10091.2, 10091.3, 10091.4,  
10091.5, 10091.6, 10091.7, 10091.8, 10091.9,  
10091.10, 10091.11, 10091.12, 10091.13,  
10091.14, 10091.15

Filed 12/03/2015

Effective 12/07/2015

Agency Contact: Jennifer Gill (916) 653-3033

File# 2015-1110-01

CALIFORNIA DEPARTMENT OF TECHNOLOGY  
Conflict-of-Interest Code

This is a Conflict-of-Interest code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing only.

Title 2

REPEAL: 28010

Filed 12/03/2015

Effective 01/02/2016

Agency Contact: Brianne Kilbane (916) 323-7527

File# 2015-1027-03

CALIFORNIA HIGHWAY PATROL

Inhalation Hazard Shipment: Routes and Stops

The California Highway Patrol is amending 11 sections and adopting one section in Title 13 of the California Code of Regulations to update the locations of required inspection stops, inspection stops, and stopping places to be used by carriers of inhalation hazards along the designated inhalation hazard routes. The updates are mainly due to business closures or ownership changes.

# **Regulation 1584**

## **Section 100**

Index

1. *Form 400 and Proposed Rule 1584*
2. *Statement of Explanation*

NONSUBSTANTIVE

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2015-1029-02N	

For use by Office of Administrative Law (OAL) only

2015 OCT 29 A 9:19  
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED  
In the office of the Secretary of State  
of the State of California

DEC 08 2015

2:19 PM

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 <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Membership Fees.	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 1584
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"/> 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 January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input 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"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE October 28, 2015
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only  
ENDORSED APPROVED  
DEC 08 2015  
Office of Administrative Law

## Text of Proposed Changes to

### Title 18. Public Revenue

Regulation 1584. Membership Fees.

(a) Application of Tax.

(1) In General. . . . (unchanged).

(A) . . . (unchanged), or

(B) . . . (unchanged).

(2) . . . (unchanged).

(3) Incidental Sales. . . . (unchanged).

(4) Consumer Cooperatives. . . . (unchanged).

(b) Nominal Amount.

(1) For purposes of this regulation, beginning January 1, ~~2016~~~~2011~~, the term “nominal amount” means an amount totaling ~~\$6055~~ or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2011 through December 31, 2015, the term “nominal amount” for purposes of this regulation means an amount totaling \$55 or less per year. For periods from January 1, 2006 through December 31, 2010, the term “nominal amount” for purposes of this regulation means an amount totaling \$50 or less per year. For periods from January 1, 2001 through December 31, 2005, the term “nominal amount” for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term “nominal amount” for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2021~~~~2016~~ adjustment computation, the CCPI index on June 30, ~~2020~~~~2015~~, will be compared with the CCPI index on June 30, ~~2015~~~~2010~~. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2025~~~~2020~~ with the CCPI index on June 30, ~~2015~~~~2010~~.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, 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

Section 1584. *Membership Fees.*

**A. Factual Basis**

The State Board of Equalization (Board) originally adopted California Code of Regulations, title 18, section (Regulation) 1584, *Membership Fees*, in 1996 to prescribe the application of sales and use tax to membership fees retailers charge their customers to shop at membership club stores. As relevant here, Regulation 1584, subdivision (a)(1)(A) provides that “[m]embership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when . . . the retailer sells its products only to members and the membership fee exceeds a nominal amount.” And, Regulation 1584, subdivision (b) defines the term “nominal amount.”

When Regulation 1584 was first adopted in 1996, subdivision (b) defined the term “nominal amount” to mean “an amount totaling \$40 or less per year.” However, subdivision (b) also provided and continues to provide that “during September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount.” Therefore, the Board subsequently changed the definition for the term “nominal amount,” pursuant to California Code of Regulations, title 1, section (Rule) 100, in 2000, 2005, and 2010 to provide that a nominal amount means an “amount totaling \$45 or less per year,” effective January 1, 2001, a nominal amount means an “amount totaling \$50 or less per year,” effective January 1, 2006, and a nominal amount means an “amount totaling \$55 or less per year,” effective January 1, 2011, respectively, due to increases in the CCPI.

During the most recent five-year period, the CCPI changed from 227.1 in June 2010 (the most recent computation year that resulted in an adjusted nominal amount) to 250.4 in June 2015 (the current computation year). The Board has determined that this change resulted in a 10.26 percent increase in the CCPI,<sup>1</sup> and that a 10.26 percent increase in the CCPI automatically results in a \$5 increase<sup>2</sup> in the current \$55 or less per year nominal amount, effective the following January 1, so that term nominal amount means an amount totaling “\$60 or less per year,” effective January 1, 2016. Therefore, the Board proposes to revise the first sentence in Regulation 1584, subdivision (b)(1) to provide that “beginning January 1, 2016, the term ‘nominal amount’ means an amount totaling \$60 or less per year, subject to increase as provided

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<sup>1</sup> Note that 250.4 CCPI minus 227.1 CCPI equals 23.3 CCPI and 23.3 CCPI is 10.6 percent of 227.1 CCPI.

<sup>2</sup> Note that \$55 multiplied by 10.26 percent equals \$5.64, and that \$5.64 must be rounded down to \$5 per the formula in Regulation 1584, subdivision (b).

in subdivision (b)(2)” and add a new second sentence to subdivision (b)(1) to clarify that “For periods from January 1, 2010, through December 31, 2015, the term ‘nominal amount’ . . . means an amount totaling \$55 or less per year.” The Board also proposes to update the dates in the example set forth in the last two sentences in Regulation 1584, subdivision (b)(2), in order to provide guidance to the public and Board staff regarding the January 1, 2021, and January 1, 2026, nominal amount adjustment computations. The Board has determined that these changes are appropriate for processing under Rule 100 because they update the definition for the term “nominal amount” in Regulation 1584, subdivision (b)(1) in accordance with the regulation’s existing provisions and update the dates in the last two sentences of subdivision (b)(2) to make the example set forth therein applicable to the succeeding 2016 and 2021 nominal amount adjustment computations, and the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

## **B. Proposed Changes to Regulation 1584**

Proposed changes to Regulation 1584:

Regulation 1584. Membership Fees.

(a) Application of Tax.

(1) In General. . . . (unchanged).

(A) . . . (unchanged), or

(B) . . . (unchanged).

(2) . . . (unchanged).

(3) Incidental Sales. . . . (unchanged).

(4) Consumer Cooperatives. . . . (unchanged).

(b) Nominal Amount.

(1) For purposes of this regulation, beginning January 1, ~~2016~~2011, the term “nominal amount” means an amount totaling \$~~60~~55 or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2011 through December 31, 2015, the term “nominal amount” for purposes of this regulation means an amount totaling \$55 or less per year. For periods from January 1, 2006 through December 31, 2010, the term “nominal amount” for purposes of this regulation means an amount totaling \$50 or less per year. For periods from January 1, 2001 through December 31, 2005, the term “nominal amount” for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term “nominal amount” for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2021~~<sup>2016</sup> adjustment computation, the CCPI index on June 30, ~~2020~~<sup>2015</sup>, will be compared with the CCPI index on June 30, ~~2015~~<sup>2010</sup>. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2025~~<sup>2020</sup> with the CCPI index on June 30, ~~2015~~<sup>2010</sup>.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, Revenue and Taxation Code.

# Memorandum

**To** : Ms. Cynthia Bridges  
Executive Director (MIC 73)

**Date:** August 27, 2015

**From** : *RMF*  
Randy Ferris, Chief Counsel  
Legal Department (MIC 83)

**Subject** : **Board Meeting, September 16-17, 2015**  
**Item J - Chief Counsel's Rulemaking Calendar**  
**Regulation 1584, *Membership Fees***

We request your approval to place proposed changes to Sales and Use Tax Regulation 1584, *Membership Fees*, on the Chief Counsel's Rulemaking Calendar for the September 16-17, 2015, Board meeting. The proposed changes update the definition of the term "nominal amount" in accordance with the regulation's existing provisions.

Regulation 1584, subdivision (a)(1)(A) provides that "[m]embership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when . . . the retailer sells its products only to members and the membership fee exceeds a nominal amount." Subdivision (b) defines the term "nominal amount."

When Regulation 1584 was originally adopted in 1996, subdivision (b) defined the term "nominal amount" to mean "an amount totaling \$40 or less per year." However, subdivision (b) also provided that "during September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount." Subsequently, due to increases in the CCPI, the Board changed the definition for the term "nominal amount" in 2000, 2005 and 2010 to provide that a nominal amount means:

- an "amount totaling \$45 or less," effective January 1, 2001,
- an "amount totaling \$50 or less," effective January 1, 2006, and
- an "amount totaling \$55 or less," effective January 1, 2011, respectively.

The CCPI changed from 227.1 in June 2010 to 250.4 in June 2015. Board staff has determined that this change resulted in a 10.26 percent increase in the CCPI,<sup>1</sup> and that, as a result of the increase of more than 5 percent, the definition for "nominal amount" in

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<sup>1</sup> Note that 250.4 CCPI minus 227.1 CCPI equals 23.3 CCPI and 23.3 CCPI is 10.26 percent of 227.1 CCPI.

Regulation 1584 needs to be changed. Furthermore, Board staff has determined that a 10.26 percent increase in the CCPI requires a \$5 increase in the current "\$55 or less" nominal amount so that nominal amount means an "amount totaling \$60 or less per year," effective January 1, 2016.<sup>2</sup>

Staff will request the Board's authorization to make the changes to Sales and Use Tax Regulation 1584 under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The Rule 100 changes revise existing subdivision (b)(1) to include the new nominal amount of "\$60 or less," effective January 1, 2016, and clarify that the current nominal amount of "\$55 or less" is effective for the period January 1, 2011, through December 31, 2015. The Rule 100 changes also update the dates in the last two sentences in subdivision (b)(2) in order to provide guidance to the public and Board staff regarding the January 1, 2021, and January 1, 2026 "nominal amount" adjustment computations. The changes are appropriate for processing under Rule 100 because they update the regulation in accordance with its existing provisions and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached is a strikeout and underlined version of the regulation illustrating the proposed revisions.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-323-3091.

Recommendation by:

Approved:

  
Randy Ferris, Chief Counsel

  
Cynthia Bridges, Executive Director

Approved:

BOARD APPROVED

At the \_\_\_\_\_ Board Meeting

  
Lynn Bartolo, Acting Deputy Director  
Sales and Use Tax Department

\_\_\_\_\_  
Joann Richmond, Chief  
Board Proceedings Division

<sup>2</sup> Note that \$55 multiplied by 10.26 percent equals \$5.64, and that \$5.64 must be rounded down to \$5 per the formula in Regulation 1584, subdivision (b).

RF:kr

Attachments

cc: Ms. Lynn Bartolo (MIC 43)  
Ms. Joann Richmond (MIC 80)  
Mr. Robert Tucker (MIC 82)  
Ms. Susanne Buehler (MIC 92)  
Mr. Bradley M. Heller (MIC 82)  
Ms. Kirsten Stark (MIC 50)  
Ms. Kim Rios (MIC 50)

**Regulation1584  
Nominal Amount Calculation**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
	(1)	(2)	(3)	(4)	(5)
<b>Year</b>	<b>CCPI Index</b>	<b>CCPI % Change</b>	<b>Current Threshold</b>	<b>Adjusted Threshold</b>	<b>Adjusted Threshold (rounded to nearest \$5)</b>
1995	154.2			40.00	\$40.00
2000	174.0	12.840%	40.00	45.14	\$45.00
2005	201.3	15.690%	45.00	52.06	\$50.00
2010	227.1	12.817%	50.00	56.41	\$55.00
2015	250.4	10.260%	55.00	60.64	\$60.00
2020			60.00	60.00	
2025			0.00	0.00	
2030			0.00	0.00	
2035			0.00	0.00	
2040			0.00	0.00	
2045			0.00	0.00	
2050			0.00	0.00	
2055			0.00	0.00	
2060			0.00	0.00	
2065			0.00	0.00	
2070			0.00	0.00	

(1) The factor used is the California Consumer Price Index as determined by the FTB pursuant to RTC section 17041. The CCPI is available at the Department of Industrial Relations website at [www.dir.ca.gov](http://www.dir.ca.gov).

(2)  $\frac{\text{Current Year (A)} - \text{Prior Year (A)}}{\text{Prior Year (A)}}$

(3) Prior Year (E)  
The base nominal amount in 1995 was \$40.

(4)  $((B+1) * C)$

(5) Adjusted Threshold (D) rounded to nearest \$5.

**Notes**

\*\* In September every five years, beginning in 2000, the Sales and Use Tax Department Regulations Coordinator computes the nominal amount adjustment for Regulation 1584.

# Proposed Revisions to Regulation 1584

## Regulation 1584. MEMBERSHIP FEES.

### (a) APPLICATION OF TAX

(1) IN GENERAL. Membership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when either

(A) the retailer sells its products only to members and the membership fee exceeds a nominal amount,  
or

(B) regardless of the amount of the membership fee, the retailer sells its products for a lower price to a person who has paid the membership fee than to a person who has not paid the fee.

(2) The membership fees described in subdivision (a)(1)(A) or (a)(1)(B) are part of the gross receipts of the person selling tangible personal property to a member. It is immaterial that the person who sold the membership is not the person who sells the tangible personal property to a member. Any sale of a membership described in subdivision (a)(1)(A) or (a)(1)(B) is regarded as related to the retail sale by the retailer selling tangible personal property to a member, not by the person selling the membership, measured by the amounts received by the person selling the membership.

(3) INCIDENTAL SALES. Charges for memberships not related to anticipated retail transactions are not subject to tax. For example, when a country club or similar organization charges fees (dues) to members and provides substantial service benefits, e.g., the use of golfing, tennis and swimming facilities, the membership fees are not related to sales even though the organization may establish minimum meal and drink purchase requirements for its members.

(4) CONSUMER COOPERATIVES. Initial or periodic membership fees received by consumer cooperatives, as defined in sections 6011.1 and 6012.1 of the Revenue and Taxation Code, are not subject to tax.

### (b) NOMINAL AMOUNT.

(1) For purposes of this regulation, beginning January 1, ~~2016~~2014, the term "nominal amount" means an amount totaling ~~\$60~~55 or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2011 through December 31, 2015, the term "nominal amount" for purposes of this regulation means an amount totaling \$55 or less per year. For periods from January 1, 2006 through December 31, 2010, the term "nominal amount" for purposes of this regulation means an amount totaling \$50 or less per year. For periods from January 1, 2001 through December 31, 2005, the term "nominal amount" for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term "nominal amount" for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2021~~2016 adjustment computation, the CCPI index on June 30, ~~2020~~2015, will be compared with the CCPI index on June 30, ~~2015~~2010. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2025~~2020 with the CCPI index on June 30, ~~2015~~2010.

*Note:* Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012, and 6012.1 Revenue and Taxation Code.

**Wednesday, September 16, 2015**

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board approved authorization to make Rule 100 changes to Regulation 1533.1 as recommended by staff.

**Sales and Use Tax Regulations 1532, Teleproduction or Other Postproduction Service Equipment; 1533.1, Farm Equipment and Machinery; 1533.2, Diesel Fuel Used in Farming Activities or Food Processing; 1534, Timber Harvesting Equipment and Machinery; and, 1535, Racehorse Breeding Stock**

Bradley Heller, Tax Counsel, Tax & Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to amend the specified regulations to make them consistent with the expiration of the one-quarter percent tax imposed by Revenue and Taxation Code sections 6051.5 and 6201.5, operative January 1, 2016 ([Exhibit 9.9](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board approved authorization to make Rule 100 changes to Regulations 1532, 1533.1, 1533.2, 1534 and 1535 as recommended by staff.

**Sales and Use Tax Regulation 1584, Membership Fees**

Bradley Heller, Tax Counsel, Tax & Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to update the definition in Regulation 1584 of the term "nominal amount" in accordance with the regulation's existing provisions ([Exhibit 9.10](#)).

Action: Upon motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board approved authorization to make Rule 100 changes to Regulation 1584 as recommended by staff.

**ADMINISTRATIVE SESSION**

**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board made the following orders:

Action: Adopt the following resolution, extending its sincere and grateful appreciation to the retiree for her dedicated service to the State Board of Equalization and to the State of California, their congratulations to the retiree's well-earned retirement, and best wishes to her and her family for continued success, happiness and good health in the years to come ([Exhibit 9.11](#)).

Vickie Philips, Staff Information Systems Analyst, Technology Services  
Department, Headquarters

Action: Approve the Board Meeting Minutes of July 28, 2015 and August 11, 2015.

Action: Adopt proposed revisions to Compliance Policy and Procedures Manual (CPPM) Chapter 3, *Account Maintenance*; Chapter 7, *Collections*; and, Chapter 9, *Miscellaneous* ([Exhibit 9.12](#)).

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET  
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

SEPTEMBER 16, 2015

J RULEMAKING

SECTION 100 CHANGES

J4 SALES AND USE TAX REGULATION 1584

Reported by: Juli Price Jackson

No. CSR 5214

P R E S E N T

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For the Board  
of Equalization:

Jerome E. Horton  
Chairman

Sen. George Runner (Ret.)  
Vice-Chairman

Fiona Ma, CPA  
Member

Diane L. Harkey  
Member

Yvette Stowers  
Appearing for Betty T.  
Yee, State Controller  
(per Government Code  
Section 7.9)

Joann Richmond  
Chief, Board  
Proceedings Division

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For Staff:

Bradley Heller  
Tax Counsel IV  
Legal Department

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1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 SEPTEMBER 16, 2015

4 ---oOo---

5 MR. HORTON: Ms. Richmond?

6 MS. RICHMOND: Our next matter is item J4,  
7 Sales and Use Tax Regulation 1584, Membership Fees.

8 MR. HELLER: Well, again I'm Bradley Heller  
9 from the Board's Legal Department.

10 First I am here to report that staff has  
11 calculated that the California Consumer Price Index  
12 on June 30, 2015 was more than five percent higher  
13 than it was on June 30th, 2010 and, that as a  
14 result, term "nominal amount" in Sales Tax -- Sales  
15 and Use Tax Regulation 1584 will mean an amount  
16 totaling \$60 -- excuse me, totaling \$60 or less  
17 effective January 1, 2016, in accordance with the  
18 current terms of the regulation.

19 I'm also here to request that the Board  
20 vote to authorize Rule 100 changes to Regulation  
21 1584 to clarify that the term "nominal amount" means  
22 an amount totaling \$60 or less, effective January 1,  
23 2016.

24 MR. HORTON: Member Harkey moves to so  
25 authorize.

26 Congratulations to Costco.

27 Second to Member Stowers.

28 Without objection, Members, such will be

1 the order.

2 MR. RUNNER: We're all going to feel that.

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REPORTER'S CERTIFICATE.

State of California )  
 ) ss  
County of Sacramento )

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on SEPTEMBER 16, 2015 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 pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: SEPTEMBER 25, 2015

*Juli Price Jackson*

JULI PRICE JACKSON  
Hearing Reporter

