Regulation 1620
Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1620

Index

1. *Form 400 and Proposed Regulation 1620*
2. *Statement of Explanation*
3. SB 1330 (pages 346-348)
4. AB1547
5. AB 242

Other Documents Relied upon

A. *Chief Counsel Memo Dated 11/29/12*

B. *Draft Minutes, 12/19/12*

C. *Reporters Transcript, 12/19/12*

State of California
Office of Administrative Law

In re: **Board of Equalization**	**NOTICE OF APPROVAL OF CHANGES WITHOUT REGULATORY EFFECT**
Regulatory Action: **Title 18, California Code of Regulations**	**California Code of Regulations, Title 1, Section 100**
Adopt sections: **Amend sections: 1620** **Repeal sections:**	**OAL File No. 2013-0131-01 N**

This change without regulatory effect conforms the provisions of Title 18 California Code of Regulations section 1620 to changes made in the governing statute (Revenue and Taxation Code section 6248) by Assembly Bill 1547, Chapter 545 of 2009, Senate Bill 1330, Chapter 328 of 2010, and Assembly Bill 242, Chapter 727 of 2011.

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

Date: 3/11/2013

Dale P. Mentink
Senior Staff Counsel

For: DEBRA M. CORNEZ
Director

Original: Kristine Cazadd
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: 3/12/2013
RE: Return of Approved Rulemaking Materials
OAL File No. 2013-0131-01N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-0131-01N regarding Interstate and Foreign Commerce).

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 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 applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain 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 once OAL posts the Internet Web site link to the full text of the regulation that is received from the state agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: 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).

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
Debra M. Cornez
Director

/s/
Kathleen Eddy
Senior Counsel

Copy: Dr. Jeffrey Beard
Tim Lockwood

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# 2013–0131–01
BOARD OF EQUALIZATION
Interstate and Foreign Commerce

This change without regulatory effect conforms the provisions of Title 18 California Code of Regulations section 1620 to changes made in the governing statute (Revenue and Taxation Code section 6248) by Assembly Bill 1547, Chapter 545 of 2009, Senate Bill 1330, Chapter 328 of 2010, and Assembly Bill 242, Chapter 727 of 2011.

Title 18
California Code of Regulations
AMEND: 1620
Filed 03/11/2013
Agency Contact:
Richard E. Bennion (916) 445–2130

File# 2013–0122–02
BOARD OF FORESTRY AND FIRE PROTECTION
Defensible Space Regulations, 2012

This rulemaking action repeals and adds sections to Title 14 of the California Code of Regulations to implement section 4291 of the Public Resources Code by specifying rules for the creation of fire–defensible space around buildings and structures within State Responsibility Areas. More specifically, the rulemaking action specifies differing rules for vegetation clearance and maintenance in zones within a circumference of 30 feet from a building or structure and within a circumference of 30 to 100 feet around a building or structure. The Office of Administrative Law (OAL) has approved the repeal of existing section 1299 and the adoption of sections 1299.01, 1299.02, 1299.03, 1299.03(a), 1299.03(b)(1) and most of the document incorporated by reference therein, 1299.03(b)(2)(B), 1299.03(b)(2)(C), 1299.03(c), 1299.04, and 1299.05. OAL disapproves the adoption of section 1299.03(b)(2)(A) and a portion of the document incorporated by reference by section 1299.03(b)(1) for failure to meet the clarity standard of the Administrative Procedure Act. Government Code sections 11349.1(a)(3) and 11349(c) and Title 1 California Code of Regulations section 16.

Pursuant to Government Code section 11349.4, the Board of Forestry and Fire Protection may resubmit to OAL for review proposed section 1299.03(b)(2)(A) within 120 days of receipt of the Decision of Disapproval from the OAL.

Title 14
California Code of Regulations
ADOPT: 1299.01, 1299.02, 1299.03, 1299.03(a), 1299.03(b)(1) and most of the document incorporated therein by reference, 1299.03(b)(2)(B), 1299.03(b)(2)(C), 1299.03(c), 1299.04, 1299.05
REPEAL: 1299
Filed 03/06/2013
Effective 07/01/2013
Agency Contact: Eric Huff (916) 653–8031

File# 2013–0122–03
BOARD OF FORESTRY AND FIRE PROTECTION
State Responsibility Area Fire Prevention Benefit Fees, 2012

This rulemaking action makes permanent the emergency regulations which implement Assembly Bill X1 29, Chapter 8 of 2011. The regulations define necessary terms for the assessment of fire prevention activity fees on habitable structures located in State Responsibility Areas. The regulations also specify, among other things, an appeal process which property owners may use to challenge assessed fees, and a fee reduction for habitable structures located in both a State Responsibility Area and a local fire protection district.

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**.

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

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

NONSUBSTANTIVE

NOTICE PUBLICATION/REGULATION SUBMISSION (See instructions on reverse)

STD. 400 (REV. 01-2013)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2013-0131-01N	

For use by Office of Administrative Law (OAL) only

2013 JAN 31 AM 9:37

OFFICE OF ADMINISTRATIVE LAW

NOTICE | REGULATIONS

ENDORSED FILED IN THE OFFICE OF

2013 MAR 11 PM 1:36

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	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
☐ Notice re Proposed Regulatory Action ☐ Other			

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
Interstate and Foreign Commerce	

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 1620
TITLE(S) 18	REPEAL

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ 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.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☐ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify) _____
- ☒ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ 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)

- ☐ Effective January 1, April 1, July 1, or October 1 (Gov Code §11343.4(a))
- ☐ Effective on filing with Secretary of State
- ☒ §100 Changes Without Regulatory Effect
- ☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Richard E. Bennion	(916) 445-2130	(916) 324-3984	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	DATE
Joann Richmond	January 28, 2013

TYPED NAME AND TITLE OF SIGNATORY
Joann Richmond, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 11 2013

Office of Administrative Law

Text of Proposed Changes to

Title 18. Public Revenue

1620. Interstate and Foreign Commerce.

(a) Sales Tax.

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

(2) Sales Following Movement of Property Into State From Point Outside State.

(A) From Other States - When Sales Tax Applies. . . . (unchanged).

(B) From Other States - When Sales Tax Does Not Apply. . . . (unchanged).

(C) Imports. . . . (unchanged).

(3) Sales Preceding Movement of Goods From Within State to Points Outside State.

(A) To Other States - When Sales Tax Applies. . . . (unchanged).

(B) Shipments Outside the State - When Sales Tax Does Not Apply. . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

(C) Exports.

1. When Sales Tax Applies. . . . (unchanged).

2. When Sales Tax Does Not Apply. . . . (unchanged):

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).:

Example 1. . . . (unchanged).Sale of fuel oil delivered into the hold of a vessel provided by the purchaser. The fuel is to be unloaded at the foreign destination.

Example 2. . . . (unchanged).Sale of jewelry delivered aboard a scheduled airline with a scheduled departure to a foreign destination.

Example 3. . . . (unchanged).

Example 4. . . . (unchanged).

Example 5. . . . (unchanged).

Example 6. . . . (unchanged).

(D) Proof of Exemption. . . . (unchanged).

(E) Particular Applications.

1. Property Mailed to Persons in the Armed Forces. . . . (unchanged).

2. Property for Defense Purposes Delivered to Offices of the United States. . . . (unchanged).

3. Airplanes Delivered to Agencies of the United States. . . . (unchanged).

4. Repairers. . . . (unchanged).

(b) Use Tax.

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

(2) Exceptions.

(A) . . . (unchanged).

(B) Interstate and Foreign Commerce.

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

2. Intermodal Cargo Containers. . . . (unchanged):

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

(C) . . . (unchanged).

(D) Hand-Carried from a Foreign Country.

1. . . . (unchanged).

2. . . . (unchanged).

(3) Purchase for Use in this State. . . . (unchanged).

(4) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 90-Day Test (Prior to October 2, 2004, and from July 1, 2007, through September 30, 2008). . . . (unchanged).

(A) Physically Located Outside California. . . . (unchanged).

(B) Used in Interstate or Foreign Commerce.

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

(5) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 12-Month Test (From October 2, 2004, through June 30, 2007, and after September 30, 2008).

(A) Purchased for Use in California. Except as provided in subdivision (b)(5)(D) below, the provisions of subdivision (b)(5) apply from October 2, 2004, through June 30, 2007, and after September 30, 2008. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel, or aircraft is in California. When a vehicle, vessel, or aircraft is purchased outside of California, is first functionally used outside of California, and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle, vessel, or aircraft was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

1. The vehicle, vessel, or aircraft was purchased by a California resident as defined in section 516 of the Vehicle Code, as that section now reads or is hereinafter amended. For purposes of subdivision (b)(5), a closely held corporation or limited liability company shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in section 516 of the Vehicle Code.

2. In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

3. In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

4. If purchased by a nonresident of California, the~~The~~ vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(B) Evidence Rebutting Presumption. . . . (unchanged).

(C) Used in Interstate or Foreign Commerce.

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

(D) Repair, Retrofit, or Modification of Vessels or Aircraft.

~~1.~~ Notwithstanding subdivision (b)(5)(A) above, aircraft or vessels, the purchase and use of which are subject to the 12-month test described in subdivision (b)(5), that are brought into this state exclusively for the purpose of repair, retrofit, or modification, shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the Board and is licensed to do business by the city, county, or city and county in which it is located if the city, county, or city and county so requires, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or manufacturer's maintenance facility.

~~2. Subdivision (b)(5)(D)1. does not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel are logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel does not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.~~

(E) Binding Purchase Contract. . . . (unchanged).

(6) Purchase for Use in This State - Locomotives - 90-Day Test. . . . (unchanged):

(A) Physically Located Outside California. . . . (unchanged).

(B) Used in Interstate or Foreign Commerce. . . . (unchanged).

(7) Examples of Interstate and Foreign Commerce. . . . (unchanged):

Example 1. . . . (unchanged).

Example 2. . . . (unchanged).

Example 3. . . . (unchanged).

Example 4. . . . (unchanged).

Example 5. . . . (unchanged).

Example 6. . . . (unchanged).

Example 7. . . . (unchanged).

Example 8. . . . (unchanged).

Example 9. . . . (unchanged).

Example 10. . . . (unchanged).

Example 11. . . . (unchanged).

Example 12. . . . (unchanged).

Example 13. . . . (unchanged).

(8) Imports. . . . (unchanged).

(9) "Storage" and "Use" - Exclusions. . . . (unchanged):

Example 1. . . . (unchanged).

Example 2. . . . (unchanged).

Example 3. . . . (unchanged).

Example 4. . . . (unchanged).

(c) Rail Freight Cars. . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6006, 6008, 6009.1, 6051, 6201, 6247, 6248, 6352, 6366.2, 6368.5, 6387, 6396 and 6405, Revenue and Taxation Code.

In addition, there are three bills that made it necessary to initiate these Rule 100 changes. I have attached copies of AB 1547 (2009) and AB 242 (2011), and SB 1330 is available at the following link. I did not attach SB 1330 because the bill is over 400 pages long and I printed pages 1, 2, 359, and 360 of the bill for the rulemaking file because they are the only pages relevant to these Rule 100 changes: http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1301-1350/sb_1330_bill_20100927_chaptered.pdf

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
Debra M. Cornez
Director

/s/
Kathleen Eddy
Senior Counsel

Copy: Dr. Jeffrey Beard
Tim Lockwood

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# 2013–0131–01
BOARD OF EQUALIZATION
Interstate and Foreign Commerce

This change without regulatory effect conforms the provisions of Title 18 California Code of Regulations section 1620 to changes made in the governing statute (Revenue and Taxation Code section 6248) by Assembly Bill 1547, Chapter 545 of 2009, Senate Bill 1330, Chapter 328 of 2010, and Assembly Bill 242, Chapter 727 of 2011.

Title 18
California Code of Regulations
AMEND: 1620
Filed 03/11/2013
Agency Contact:
Richard E. Bennion (916) 445–2130

File# 2013–0122–02
BOARD OF FORESTRY AND FIRE PROTECTION
Defensible Space Regulations, 2012

This rulemaking action repeals and adds sections to Title 14 of the California Code of Regulations to implement section 4291 of the Public Resources Code by specifying rules for the creation of fire–defensible space around buildings and structures within State Responsibility Areas. More specifically, the rulemaking action specifies differing rules for vegetation clearance and maintenance in zones within a circumference of 30 feet from a building or structure and within a circumference of 30 to 100 feet around a building or structure. The Office of Administrative Law (OAL) has approved the repeal of existing section 1299 and the adoption of sections 1299.01, 1299.02, 1299.03, 1299.03(a), 1299.03(b)(1) and most of the document incorporated by reference therein, 1299.03(b)(2)(B), 1299.03(b)(2)(C), 1299.03(c), 1299.04, and 1299.05. OAL disapproves the adoption of section 1299.03(b)(2)(A) and a portion of the document incorporated by reference by section 1299.03(b)(1) for failure to meet the clarity standard of the Administrative Procedure Act. Government Code sections 11349.1(a)(3) and 11349(c) and Title 1 California Code of Regulations section 16.

Pursuant to Government Code section 11349.4, the Board of Forestry and Fire Protection may resubmit to OAL for review proposed section 1299.03(b)(2)(A) within 120 days of receipt of the Decision of Disapproval from the OAL.

Title 14
California Code of Regulations
ADOPT: 1299.01, 1299.02, 1299.03, 1299.03(a), 1299.03(b)(1) and most of the document incorporated therein by reference, 1299.03(b)(2)(B), 1299.03(b)(2)(C), 1299.03(c), 1299.04, 1299.05
REPEAL: 1299
Filed 03/06/2013
Effective 07/01/2013
Agency Contact: Eric Huff (916) 653–8031

File# 2013–0122–03
BOARD OF FORESTRY AND FIRE PROTECTION
State Responsibility Area Fire Prevention Benefit Fees, 2012

This rulemaking action makes permanent the emergency regulations which implement Assembly Bill X1 29, Chapter 8 of 2011. The regulations define necessary terms for the assessment of fire prevention activity fees on habitable structures located in State Responsibility Areas. The regulations also specify, among other things, an appeal process which property owners may use to challenge assessed fees, and a fee reduction for habitable structures located in both a State Responsibility Area and a local fire protection district.

Regulation 1620
Section 100

Index

1. *Form 400 and Proposed Regulation 1620*

2. *Statement of Explanation*

3. SB 1330 (pages 346-348)

4. AB1547

5. AB 242

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

NONSUBSTANTIVE

(See instructions on reverse)

STD. 400 (REV. 01-2013)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2013-0131-01N	

For use by Office of Administrative Law (OAL) only

2013 JAN 31 AM 9:34

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	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
☐ Notice re Proposed Regulatory Action ☐ Other			

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Interstate and Foreign Commerce

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
1620

REPEAL

TITLE(S)
18

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ 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.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☐ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify)
- ☒ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ 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)

- ☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- ☐ Effective on filing with Secretary of State
- ☒ §100 Changes Without Regulatory Effect
- ☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Richard E. Bennion	(916) 445-2130	(916) 324-3984	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.**

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Joann Richmond

DATE
January 28, 2013

TYPED NAME AND TITLE OF SIGNATORY
Joann Richmond, Chief, Board Proceedings Division

Text of Proposed Changes to

Title 18. Public Revenue

1620. Interstate and Foreign Commerce.

(a) Sales Tax.

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

(2) Sales Following Movement of Property Into State From Point Outside State.

(A) From Other States - When Sales Tax Applies. . . . (unchanged).

(B) From Other States - When Sales Tax Does Not Apply. . . . (unchanged).

(C) Imports. . . . (unchanged).

(3) Sales Preceding Movement of Goods From Within State to Points Outside State.

(A) To Other States - When Sales Tax Applies. . . . (unchanged).

(B) Shipments Outside the State - When Sales Tax Does Not Apply. . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

(C) Exports.

1. When Sales Tax Applies. . . . (unchanged).

2. When Sales Tax Does Not Apply. . . . (unchanged):

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).:

Example 1. . . . (unchanged).Sale of fuel oil delivered into the hold of a vessel provided by the purchaser. The fuel is to be unloaded at the foreign destination.

Example 2. . . . (unchanged).Sale of jewelry delivered aboard a scheduled airline with a scheduled departure to a foreign destination.

Example 3. . . . (unchanged).

Example 4. . . . (unchanged).

Example 5. . . . (unchanged).

Example 6. . . . (unchanged).

(D) Proof of Exemption. . . . (unchanged).

(E) Particular Applications.

1. Property Mailed to Persons in the Armed Forces. . . . (unchanged).

2. Property for Defense Purposes Delivered to Offices of the United States. . . . (unchanged).

3. Airplanes Delivered to Agencies of the United States. . . . (unchanged).

4. Repairers. . . . (unchanged).

(b) Use Tax.

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

(2) Exceptions.

(A) . . . (unchanged).

(B) Interstate and Foreign Commerce.

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

2. Intermodal Cargo Containers. . . . (unchanged):

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

(C) . . . (unchanged).

(D) Hand-Carried from a Foreign Country.

1. . . . (unchanged).

2. . . . (unchanged).

(3) Purchase for Use in this State. . . . (unchanged).

(4) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 90-Day Test (Prior to October 2, 2004, and from July 1, 2007, through September 30, 2008). . . . (unchanged).

(A) Physically Located Outside California. . . . (unchanged).

(B) Used in Interstate or Foreign Commerce.

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

(5) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 12-Month Test (From October 2, 2004, through June 30, 2007, and after September 30, 2008).

(A) Purchased for Use in California. Except as provided in subdivision (b)(5)(D) below, the provisions of subdivision (b)(5) apply from October 2, 2004, through June 30, 2007, and after September 30, 2008. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel, or aircraft is in California. When a vehicle, vessel, or aircraft is purchased outside of California, is first functionally used outside of California, and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle, vessel, or aircraft was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

1. The vehicle, vessel, or aircraft was purchased by a California resident as defined in section 516 of the Vehicle Code, as that section now reads or is hereinafter amended. For purposes of subdivision (b)(5), a closely held corporation or limited liability company shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in section 516 of the Vehicle Code.

2. In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

3. In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

4. If purchased by a nonresident of California, the~~The~~ vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(B) Evidence Rebutting Presumption. . . . (unchanged).

(C) Used in Interstate or Foreign Commerce.

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

(D) Repair, Retrofit, or Modification of Vessels or Aircraft.

~~1.~~ Notwithstanding subdivision (b)(5)(A) above, aircraft or vessels, the purchase and use of which are subject to the 12-month test described in subdivision (b)(5), that are brought into this state exclusively for the purpose of repair, retrofit, or modification, shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the Board and is licensed to do business by the city, county, or city and county in which it is located if the city, county, or city and county so requires, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or manufacturer's maintenance facility.

~~2. Subdivision (b)(5)(D)1. does not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel are logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel does not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.~~

(E) Binding Purchase Contract. . . . (unchanged).

(6) Purchase for Use in This State - Locomotives - 90-Day Test. . . . (unchanged):

(A) Physically Located Outside California. . . . (unchanged).

(B) Used in Interstate or Foreign Commerce. . . . (unchanged).

(7) Examples of Interstate and Foreign Commerce. . . . (unchanged):

Example 1. . . . (unchanged).

Example 2. . . . (unchanged).

Example 3. . . . (unchanged).

Example 4. . . . (unchanged).

Example 5. . . . (unchanged).

Example 6. . . . (unchanged).

Example 7. . . . (unchanged).

Example 8. . . . (unchanged).

Example 9. . . . (unchanged).

Example 10. . . . (unchanged).

Example 11. . . . (unchanged).

Example 12. . . . (unchanged).

Example 13. . . . (unchanged).

(8) Imports. . . . (unchanged).

(9) "Storage" and "Use" - Exclusions. . . . (unchanged):

Example 1. . . . (unchanged).

Example 2. . . . (unchanged).

Example 3. . . . (unchanged).

Example 4. . . . (unchanged).

(c) Rail Freight Cars. . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6006, 6008, 6009.1, 6051, 6201, 6247, 6248, 6352, 6366.2, 6368.5, 6387, 6396 and 6405, Revenue and Taxation Code.

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

Statement of Explanation

Title 18. Public Revenues

Regulation 1620, Interstate and Foreign Commerce

A. Factual Basis

Revenue and Taxation Code (RTC) section 6248, subdivision (a) establishes a rebuttable presumption that California use tax applies to the storage, use, or other consumption of a vehicle, vessel, or aircraft purchased outside of California, but brought into California within 12 months after its purchase, and the rebuttable presumption is incorporated into subdivision (b)(5) of California Code of Regulations, title 18, section (Regulation) 1620, *Interstate and Foreign Commerce*.

RTC section 6248, subdivision (a)(l) and (4) provides that the rebuttable presumption applies when the "vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code," and when the "vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership"; and these provisions are incorporated into Regulation 1620, subdivision (b)(5)(A)1 and 4, respectively. In 2009, the Legislature enacted Assembly Bill No. (AB) 1547 (Stats. 2009, ch. 545), and section 2 of AB 1547 added a second sentence to RTC section 6248, subdivision (a)(1) to further provided that "For purposes of this section, a closely held corporation or *limited liability corporation* shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code." (Italics added.) Section 2 of AB 1547 also added the phrase "If purchased by a nonresident of California" to the beginning of section 6248, subdivision (a)(4), to clarify that the rebuttable presumption applies if a vehicle, vessel, or aircraft is "purchased by a nonresident of California" and "used or stored in this state more than one-half of the time during the first 12 months of ownership." Then, in 2010, the Legislature enacted Senate Bill No. (SB) 1330 (Stats. 2010, ch. 328), and section 213 of SB 1330 replaced the reference to "limited liability corporation" with a reference to "limited liability company" in the second sentence of section 6248, subdivision (a)(1) (where indicated in italics above) to correct a typographical error. Therefore, the State Board of Equalization (Board) proposes to change Regulation 1620, subdivision (b)(5)(A)1 and 4 to conform to the amendments made to RTC section 6248, subdivision (a)(1) and (4) by AB 1547 and SB 1330 under California Code of Regulations, title 1, section (Rule) 100.

In addition, RTC section 6248, subdivision (e), contains an exception from the rebuttable presumption (described above) for aircraft and vessels brought into California for repair, retrofit, and modification, which is incorporated into Regulation 1620, subdivision (b)(5)(D), and AB 1547 clarified the exception from the rebuttable presumption. The bill clarified that the exception only applies to aircraft and vessels brought into the state "exclusively" for repair, retrofit, or modification. The bill clarified that the exception only applies to vessels if the services are "performed by a repair facility that holds an appropriate permit issued by the Board

and is licensed to do business by the county in which it is located," and the exclusion only applies to aircraft if the services are "performed by a repair station certified by the Federal Aviation Administration or manufacturer's maintenance facility." The bill also deleted RTC section 6248, subdivision (e)(2), which previously limited the airtime and sailing time that could be logged on an aircraft or vessel that qualifies for the exception from the rebuttable presumption. Furthermore, the Legislature enacted AB 242 (Stats. 2011, ch. 727) in 2011 and AB 242 amended RTC section 6248, subdivision (e) to clarify the exception for vessels brought into the state exclusively for repair, retrofit, and modification. AB 242 clarified that the repair facility performing the services must be licensed to do business by "the city, county, or city and" county in which it is located "if the city, county, or city and county so requires." Therefore, the Board proposes to change Regulation 1620, subdivision (b)(5)(D) to conform to the amendments made to RTC section 6248, subdivision (e) by AB 1547 and AB 242 under Rule 100.

The proposed changes to Regulation 1620, subdivision (b)(5)(A) and (D) are appropriate for processing under Rule 100 because they make the regulation consistent with the changes made to RTC section 6248 by AB 1547, SB 1330, and AB 242, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes

Rule 100 changes are proposed to Regulation 1620, subdivision (b)(5)(A) and (D).

TEXT OF PROPOSED CHANGES

1620. Interstate and Foreign Commerce.

(a) Sales Tax.

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

(2) Sales Following Movement of Property Into State From Point Outside State.

(A) From Other States - When Sales Tax Applies. . . . (unchanged).

(B) From Other States - When Sales Tax Does Not Apply. . . . (unchanged).

(C) Imports. . . . (unchanged).

(3) Sales Preceding Movement of Goods From Within State to Points Outside State.

(A) To Other States - When Sales Tax Applies. . . . (unchanged).

(B) Shipments Outside the State - When Sales Tax Does Not Apply. . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

(C) Exports.

1. When Sales Tax Applies. . . . (unchanged).

2. When Sales Tax Does Not Apply. . . . (unchanged):

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).:

Example 1. . . . (unchanged).Sale of fuel oil delivered into the hold of a vessel provided by the purchaser. The fuel is to be unloaded at the foreign destination.

Example 2. . . . (unchanged).Sale of jewelry delivered aboard a scheduled airline with a scheduled departure to a foreign destination.

Example 3. . . . (unchanged).

Example 4. . . . (unchanged).

Example 5. . . . (unchanged).

Example 6. . . . (unchanged).

(D) Proof of Exemption. . . . (unchanged).

(E) Particular Applications.

1. Property Mailed to Persons in the Armed Forces. . . . (unchanged).

2. Property for Defense Purposes Delivered to Offices of the United States. . . . (unchanged).

3. Airplanes Delivered to Agencies of the United States. . . . (unchanged).

4. Repairers. . . . (unchanged).

(b) Use Tax.

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

(2) Exceptions.

(A) . . . (unchanged).

(B) Interstate and Foreign Commerce.

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

2. Intermodal Cargo Containers. . . . (unchanged):

a. . . . (unchanged).

b. . . . (unchanged).

c. . . . (unchanged).

(C) . . . (unchanged).

(D) Hand-Carried from a Foreign Country.

1. . . . (unchanged).

2. . . . (unchanged).

(3) Purchase for Use in this State. . . . (unchanged).

(4) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 90-Day Test (Prior to October 2, 2004, and from July 1, 2007, through September 30, 2008). . . . (unchanged).

(A) Physically Located Outside California. . . . (unchanged).

(B) Used in Interstate or Foreign Commerce.

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

(5) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 12-Month Test (From October 2, 2004, through June 30, 2007, and after September 30, 2008).

(A) Purchased for Use in California. Except as provided in subdivision (b)(5)(D) below, the provisions of subdivision (b)(5) apply from October 2, 2004, through June 30, 2007, and after September 30, 2008. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel, or aircraft is in California. When a vehicle, vessel, or aircraft is purchased outside of California, is first functionally used outside of California, and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle, vessel, or aircraft was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

1. The vehicle, vessel, or aircraft was purchased by a California resident as defined in section 516 of the Vehicle Code, as that section now reads or is hereinafter amended.

For purposes of subdivision (b)(5), a closely held corporation or limited liability company shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in section 516 of the Vehicle Code.

2. In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

3. In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

4. If purchased by a nonresident of California, the~~The~~ vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(B) Evidence Rebutting Presumption. . . . (unchanged).

(C) Used in Interstate or Foreign Commerce.

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

(D) Repair, Retrofit, or Modification of Vessels or Aircraft.

~~1.~~Notwithstanding subdivision (b)(5)(A) above, aircraft or vessels, the purchase and use of which are subject to the 12-month test described in subdivision (b)(5), that are brought into this state exclusively for the purpose of repair, retrofit, or modification, shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the Board and is licensed to do business by the city, county, or city and county in which it is located if the city, county, or city and county so requires, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or manufacturer's maintenance facility.

~~2. Subdivision (b)(5)(D)1. does not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel are logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel does not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.~~

(E) Binding Purchase Contract. . . . (unchanged).

(6) Purchase for Use in This State - Locomotives - 90-Day Test. . . . (unchanged):

(A) Physically Located Outside California. . . . (unchanged).

(B) Used in Interstate or Foreign Commerce. . . . (unchanged).

(7) Examples of Interstate and Foreign Commerce. . . . (unchanged):

Example 1. . . . (unchanged).

Example 2. . . . (unchanged).

Example 3. . . . (unchanged).

Example 4. . . . (unchanged).

Example 5. . . . (unchanged).

Example 6. . . . (unchanged).

Example 7. . . . (unchanged).

Example 8. . . . (unchanged).

Example 9. . . . (unchanged).

Example 10. . . . (unchanged).

Example 11. . . . (unchanged).

Example 12. . . . (unchanged).

Example 13. . . . (unchanged).

(8) Imports. . . . (unchanged).

(9) "Storage" and "Use" - Exclusions. . . . (unchanged):

Example 1. . . . (unchanged).

Example 2. . . . (unchanged).

Example 3. . . . (unchanged).

Example 4. . . . (unchanged).

(c) Rail Freight Cars. . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6006, 6008, 6009.1, 6051, 6201, 6247, 6248, 6352, 6366.2, 6368.5, 6387, 6396 and 6405, Revenue and Taxation Code.

person in altering new or used clothing, provided that both of the following apply:

(1) That person operates a location or locations as a pickup and delivery point for garment cleaning, or provides spotting and pressing services on the premises but not garment cleaning, or operates a garment cleaning or dyeing plant on the premises.

(2) Seventy-five percent or more of that person's total gross receipts represent charges for garment cleaning or dyeing services.

(b) Sales tax shall not apply to the charges for alterations specified in subdivision (a). However, that person is a retailer of any other tangible personal property sold to consumers in the regular course of business and sales tax shall apply to the gross receipts from those sales.

(c) For the purpose of this section:

(1) "Cleaning" means wet cleaning and drycleaning.

(2) "Wet cleaning" means the process of cleaning a garment by immersion in water, or by applying manually or by any mechanical device, water, or any detergent and water, or by spraying or brushing the garment with water or water and any detergent, or water vapor, or steam, and includes self-service or coin-operated equipment in whole or in part.

(3) "Drycleaning" means the process of cleaning or renovating wearing apparel, feathers, furs, hats, fabrics, household items, or textiles by immersion and agitation, spraying, vaporization, or immersion only, in a volatile, commercially moisture-free solvent or by the use of a volatile or inflammable product, applied either manually or by means of a mechanical appliance and including self-service or coin-operated equipment in whole or in part.

(4) "Dyeing" means the process of coloring wearing apparel, feathers, furs, hats, fabrics, or textiles by the use of aniline dyes, mordants, or acids, with or without steam, excluding, however, the use of any dye or combination of dyes which is directly soluble or dispersible in water and which does not require chemical alteration of its structure for application, where that dye or combination of dyes is applied to cotton, viscose rayon, or cuprammonium rayon other than wearing apparel.

(5) "Spotting" means the process of removing spots or stains or localized areas of soil from a garment, either before or after, and with or without drycleaning or wet cleaning, by brushing, spraying, or other means of manual or mechanical application, other than immersion, with water, detergents, and volatile or inflammable solvents, chemicals, or any, or all of them.

(6) "Pressing" means the process of restoring the garment to the original shape, dimensions, or contour thereof, or to those in which the same was received from the customer, or as directed by the customer, and the removal of wrinkles, stresses, bulges, and impressions, imprint marks and shine, from a garment by the application of pressure, heat, moisture, water vapor, or steam, or all of them, whether applied manually, or by any mechanical means.

SEC. 213. Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) There shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state on or after the effective date of this section, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occurs:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code. For purposes of this section, a closely held corporation or limited liability company shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) If purchased by a nonresident of California, the vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section shall not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) Notwithstanding subdivision (a), any aircraft or vessel brought into this state exclusively for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the board and is licensed to do business by the county in which it is located, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or a manufacturer's maintenance facility.

(f) The presumption set forth in subdivision (a) may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty

or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

SEC. 214. Section 6363.4 of the Revenue and Taxation Code is amended to read:

6363.4. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, tangible personal property sold by a thrift store located on a military installation and operated by a designated entity that, in partnership with the United States Department of Defense, provides financial, educational, and other assistance to members of the Armed Forces of the United States, eligible family members, and survivors that are in need.

(b) For purposes of this section, "designated entity" means a military welfare society described in Section 1033 of Chapter 53 of Part II of Subtitle A of Title 10 of the United States Code.

(c) This section shall remain in effect only until January 1, 2014.

SEC. 215. Section 7104 of the Revenue and Taxation Code is amended to read:

7104. (a) The Transportation Investment Fund (hereafter the fund) is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the fund are continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(b) All of the following shall occur on a quarterly basis:

(1) The State Board of Equalization, in consultation with the Department of Finance, shall estimate the amount that is transferred to the General Fund under subdivision (b) of Section 7102 that is attributable to revenue collected for the sale, storage, use, or other consumption in this state of motor vehicle fuel, as defined in Section 7326.

(2) The State Board of Equalization shall inform the Controller, in writing, of the amount estimated under paragraph (1).

(3) Commencing with the 2003–04 fiscal year, the Controller shall transfer the amount estimated under paragraph (1) from the General Fund to the fund.

(c) For each quarter during the period commencing on July 1, 2003, and ending on June 30, 2008, the Controller shall make all of the following transfers and apportionments from the funds identified for transfer under paragraph (2) of subdivision (b) in the following order:

(1) To the Traffic Congestion Relief Fund created in the State Treasury by Section 14556.5 of the Government Code, the sum of one hundred sixty-nine million five hundred thousand dollars ($169,500,000), except that the transfer for the final quarter shall be ninety-three million four hundred thousand dollars ($93,400,000), for a total transfer of three billion three hundred thirteen million nine hundred thousand dollars ($3,313,900,000).

(2) To the Public Transportation Account, a trust fund in the State Transportation Fund, 20 percent of the amount remaining after the transfer

Assembly Bill No. 1547

CHAPTER 545

An act to amend Sections 6069, 6248, 7339, 60003, 60501, and 60508 of, to add Sections 7339.1, 55041.1, and 60003.1 to, and to repeal Sections 60508.1, 60508.2, 60508.4, and 60509 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1547, Committee on Revenue and Taxation. State Board of Equalization: taxes and fees.

(1) The Sales and Use Tax Law requires a seller whose permit has been previously suspended or revoked to pay the State Board of Equalization a fee of $50 for the renewal or issuance of a permit.

This bill would increase that fee to $100.

(2) The Sales and Use Tax Law imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Under existing law, there is a presumption that a vehicle, vessel, or aircraft bought outside of this state that is brought into this state within 12 months from the date of its purchase, was purchased from a retailer for storage, use, or other consumption in this state, under specified circumstances, including the circumstance where the vehicle, vessel, or aircraft was purchased by a California resident. Existing law provides an exception if an aircraft or vessel is brought into this state for the purpose of repair, retrofit, or modification.

This bill would provide that a closely held corporation or a limited liability company is considered a California resident for purposes of this law if 50% or more of the shares or membership interests are held by shareholders or members who are California residents. This bill would also provide that an aircraft or vessel must be brought into this state exclusively for repair, retrofit, or modification, and in the case of a vessel, that work must be performed by a licensed repair facility, as specified, and in the case of an aircraft, that work must be performed by a certified repair station or a manufacturer's maintenance facility, as specified, for the exception to apply.

(3) The Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law define the term "terminal" for purposes of those laws.

This bill would expand the definition of "terminal" to include a fuel production facility, as provided, and would define "fuel production facility" for purposes of those laws.

(4) The Diesel Fuel Tax Law imposes a tax upon the removal, entry, sale, delivery, or specified use of diesel fuel, at the rate of $0.18 per gallon, and provides for a refund of the amount of that tax for, among other things, diesel fuel sold to any consulate officer or consulate employee under specified circumstances, and fuel sold for use by the United States and its agencies and instrumentalities. That law allows a supplier to file a claim for refund to be reimbursed and repaid the amount of the tax paid on diesel fuel as if the supplier sold the fuel directly to the consulate officer or consulate employee under specified circumstances and further allows a supplier to take a credit on its return in lieu of a refund. That law also allows a person to file a claim for refund to be reimbursed and repaid the amount of tax paid on diesel fuel as if the person sold the fuel directly to the United States and its agencies and instrumentalities under specified circumstances.

This bill would allow a supplier to file a claim for refund, or take a credit on its return in lieu of a refund, even if the supplier did not make the direct sale of diesel fuel to the consulate officer or consulate employee, or to the United States and its agencies and instrumentalities, as provided. This bill would also make other changes to conform the Diesel Fuel Tax Law with the Motor Vehicle Fuel Tax Law.

(5) The Fee Collection Procedures Law provides for the administration and collection of various fee programs by the State Board of Equalization.

This bill would allow the board to require the payment of amount due and the filing of the returns for periods other than the period or periods set forth in the tax and fee laws administered under the Fee Collection Procedures Law.

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

SECTION 1. Section 6069 of the Revenue and Taxation Code is amended to read:

6069. A seller whose permit has been previously suspended or revoked shall pay the board a fee of one hundred dollars ($100) for the renewal or issuance of a permit.

SEC. 2. Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) There shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state on or after the effective date of this section, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occurs:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code. For purposes of this section, a closely held corporation or limited liability corporation shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) If purchased by a nonresident of California, the vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section shall not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) Notwithstanding subdivision (a), any aircraft or vessel brought into this state exclusively for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the board and is licensed to do business by the county in which it is located, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or a manufacturer's maintenance facility.

(f) The presumption set forth in subdivision (a) may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

SEC. 3. Section 7339 of the Revenue and Taxation Code is amended to read:

7339. "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by pipeline or vessel, and from which motor vehicle fuel may be removed at a rack. "Terminal" includes a fuel production facility where motor vehicle fuel is produced and stored and from which motor vehicle fuel may be removed at a rack.

SEC. 4. Section 7339.1 is added to the Revenue and Taxation Code, to read:

7339.1. "Fuel production facility" means a facility, other than a refinery, in which motor vehicle fuel is produced.

SEC. 5. Section 55041.1 is added to the Revenue and Taxation Code, to read:

55041.1. The board may require the payment of the amount due and the filing of returns for periods other than the period or periods set forth in the tax and fee laws administered under this part.

SEC. 6. Section 60003 of the Revenue and Taxation Code is amended to read:

60003. "Terminal" means a diesel fuel storage and distribution facility that is supplied by pipeline or vessel, and from which diesel fuel may be removed at a rack. "Terminal" includes a fuel production facility where diesel fuel is produced and stored and from which diesel fuel may be removed at a rack.

SEC. 7. Section 60003.1 is added to the Revenue and Taxation Code, to read:

60003.1. "Fuel production facility" means a facility, other than a refinery, in which diesel fuel is produced.

SEC. 8. Section 60501 of the Revenue and Taxation Code is amended to read:

60501. Persons who have paid a tax for diesel fuel lost, sold, or removed as provided in paragraph (4) of subdivision (a), or used in a nontaxable use, other than on a farm for farming purposes or in an exempt bus operation, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax.

(a) A claim for refund with respect to diesel fuel is allowed under this section only if all of the following apply:

(1) Tax was imposed on the diesel fuel to which the claim relates.

(2) The claimant bought or produced the diesel fuel and did not sell or resell it in this state except as provided in paragraph (4).

(3) The claimant has filed a timely claim for refund that contains the information required under subdivision (b) and the claim is supported by the original invoice or original invoice facsimile retained in an alternative storage media showing the purchase. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(4) The diesel fuel was any of the following:

(A) Used for purposes other than operating motor vehicles upon the public highways of the state.

(B) Exported for use outside of this state. Diesel fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the diesel fuel becomes subject to tax as an import under the laws of the destination state.

(C) Used in any construction equipment that is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(D) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture and with respect to the use of the highway the claimant pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, the United States Department of Agriculture.

(E) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency when operated by it over any highway constructed and maintained by the United States or any department or agency thereof within a military reservation in this state. If the motor vehicle is operated both over the highway and over a public highway outside the military reservation in a continuous trip the tax shall not be refunded as to that portion of the diesel fuel used to operate the vehicle over the public highway outside the military reservation.

Nothing contained in this section shall be construed as a refund of the tax for the use of diesel fuel in any motor vehicle operated upon a public highway within a military reservation, which highway is constructed or maintained by this state or any political subdivision thereof.

As used in this section, "military reservation" includes any establishment of the United States Government or any agency thereof used by the Armed Forces of the United States for military, air, or naval operations, including research projects.

(F) Sold by a supplier and which was sold to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (6) of subdivision (a) of Section 60100 if the supplier had sold the diesel fuel directly to the consulate officer or consulate employee.

(G) Lost in the ordinary course of handling, transportation, or storage.

(H) (i) Sold by a person to the United States and its agencies and instrumentalities under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(ii) Sold by a supplier and which was sold by credit card to the United States and its agencies and instrumentalities under circumstances which would have entitled the supplier to an exemption under Section 60100 if the supplier had sold the diesel fuel directly to the United States and its agencies and instrumentalities.

(I) Sold by a person to a train operator for use in a diesel-powered train or for other off-highway use under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(J) Removed from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.

(b) Each claim for refund under this section shall contain the following information with respect to all of the diesel fuel covered by the claim:

(1) The name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(2) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(3) A statement, which may appear on the invoice, original invoice facsimile, or similar document, by the person that sold the diesel fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(4) The total amount of diesel fuel covered by the claim.

(5) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (4) of subdivision (a).

(6) If the diesel fuel covered by the claim was exported, a statement that the claimant has the proof of exportation.

(c) Each claim for refund under this section shall be made on a form prescribed by the board and shall be filed for a calendar year. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars ($750) is refundable under this section with respect to diesel fuel used or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the board may require the filing of claims for refund for other than yearly periods.

SEC. 9. Section 60508 of the Revenue and Taxation Code is amended to read:

60508. In lieu of the collection and refund of the tax on tax-paid diesel fuel exported, removed, sold, or used by a supplier in a manner that would entitle the supplier to claim a refund under this article, credit may be given the supplier upon the supplier's tax return and the determination of the amount of the supplier's tax shall be in accordance with any rules and regulations the board may prescribe.

SEC. 10. Section 60508.1 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 60508.2 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 60508.4 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 60509 of the Revenue and Taxation Code is repealed.

O

Assembly Bill No. 242

CHAPTER 727

An act to amend Sections 1793.2 and 1793.25 of the Civil Code, and to amend Sections 6055, 6203.5, 6248, 6353, 6356.5, 6356.6, 6358.5, 7096, 7101, 8351, and 30474 of, and to add Sections 7157, 8407, 17131.10, 17131.12, 17134.1, 30483, and 60709 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 9, 2011. Filed with Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 242, Committee on Revenue and Taxation. Taxation.

(1) Existing law requires the State Board of Equalization to reimburse a manufacturer for an amount equal to the sales tax which the manufacturer pays to or for the buyer when providing a replacement vehicle or making restitution pursuant to the Song-Beverly Consumer Warranty Act, subject to satisfactory proof, as specified.

This bill would require the board to reimburse a manufacturer for an amount equal to the use tax which the manufacturer pays to or for the buyer or lessee when providing a replacement vehicle or making restitution pursuant to the Song-Beverly Consumer Warranty Act, subject to satisfactory proof, as specified.

This bill would make other conforming changes, and would also state that the above provisions of the bill are declaratory of existing law.

(2) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, measured by sales price.

The Sales and Use Tax Law allows a retailer to be relieved from liability for sales or use tax when the measure of the tax is represented by accounts that have been found to be worthless and charged off for income tax purposes. Retailers who sell their accounts receivables, or lenders who purchase them, are entitled to a refund or a deduction for the taxes paid to the board on that portion of the accounts receivable that is written off as worthless. In these circumstances, existing law requires the retailer and the lender, prior to claiming any deduction or refund, to file an election form with the board, signed by both parties, designating which party is entitled to claim the deduction or refund.

This bill would remove the requirement that the election form be filed with the board and would instead require the election form to be retained by the retailer and the lender.

(3) Under the Sales and Use Tax Law, there is a presumption that a vehicle, vessel, or aircraft shipped or brought into this state within 12 months from the date of its purchase was acquired for storage, use, or other consumption in this state and is subject to the use tax if specified conditions are met. Under existing law, this presumption does not apply if a vessel was brought into the state exclusively for the purpose of repair, retrofit, or modification performed in a permitted facility that is licensed to do business in the county in which it is located.

This bill would, for purposes of the exclusion from this presumption, also allow the repair, retrofit, or modification to be performed in a permitted facility that is licensed to do business in the city or city and county in which it is located, if the city or city and county so requires, or performed in a permitted facility in a county in which it is not required to be licensed.

The Bradley-Burns Uniform Local Sales and Use Tax authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts to impose transactions and use taxes in accordance with the Transactions and Use Tax Law which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws. Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, an appropriation is not made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

(4) The Sales and Use Tax Law provides various exemptions from the taxes imposed by those laws, including partial exemptions for the sale of, or the storage, use, or other consumption of, liquefied petroleum gas, farm equipment and machinery, timber harvesting equipment and machinery, and racehorse breeding stock, when purchased for use for specified activities by a qualified person, as defined. Existing law provides that those exemptions became effective September 1, 2001, unless the State Board of Equalization determined that implementation by that date was not feasible, in which case the board was required to report to the Legislature regarding the reason for delayed implementation and to implement the exemption no later than October 1, 2001. The State Board of Equalization adopted regulations implementing these exemptions, which were operative September 1, 2001.

This bill would delete the provisions relating to an authorization for a delayed implementation in 2001 of these exemptions.

(5) Existing law requires the State Board of Equalization to administer the Sales and Use Tax Law and authorizes the board to undertake collection action on delinquent accounts, including issuing a levy or notice to withhold. A taxpayer may file a claim with the board for reimbursement of bank charges or any other reasonable 3rd-party check charge fees incurred by the taxpayer as a direct result of an erroneous levy or notice to withhold by the board.

This bill would additionally authorize a taxpayer to file a reimbursement claim with the board for bank charges and other reasonable 3rd-party check charge fees incurred as a direct result of an erroneous processing action or erroneous collection action by the board.

(6) Existing law authorizes the State Board of Equalization and the Controller's office to use specified collection tools with respect to delinquent accounts and liabilities.

This bill would authorize the board and the Controller's office to collect restitution orders under specified laws, and a specified penalty, awarded to the state by a court in criminal proceedings, in the same manner as tax liabilities.

(7) The Personal Income Tax Law and the Bank and Corporation Tax Law, among other things, allow various exclusions, deductions, and credit in modified conformity to federal income tax laws.

This bill would provide additional modified conformity to specified provisions of the federal Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 relating to simple cafeteria plans for small businesses, health care benefits of Indian tribe members, and student loan repayment programs.

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

SECTION 1. Section 1793.2 of the Civil Code is amended to read:

1793.2. (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

(1) (A) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of those warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of the warranties.

(B) As a means of complying with this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work. However, the rates fixed by those contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, do not preclude a good faith discount that is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph may not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to Section 1793.5.

(3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(b) Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or its representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) The buyer shall deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of that notice of nonconformity, the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when a buyer cannot return them for any of the above reasons shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

(d) (1) Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(2) If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution

in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

(A) In the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to the vehicle replaced. The replacement vehicle shall be accompanied by all express and implied warranties that normally accompany new motor vehicles of that specific kind. The manufacturer also shall pay for, or to, the buyer the amount of any sales or use tax, license fees, registration fees, and other official fees which the buyer is obligated to pay in connection with the replacement, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(B) In the case of restitution, the manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including any collateral charges such as sales or use tax, license fees, registration fees, and other official fees, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(C) When the manufacturer replaces the new motor vehicle pursuant to subparagraph (A), the buyer shall only be liable to pay the manufacturer an amount directly attributable to use by the buyer of the replaced vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. When restitution is made pursuant to subparagraph (B), the amount to be paid by the manufacturer to the buyer may be reduced by the manufacturer by that amount directly attributable to use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount directly attributable to use by the buyer shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, by a fraction having as its denominator 120,000 and having as its numerator the number of miles traveled by the new motor vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. Nothing in this paragraph shall in any way limit the rights or remedies available to the buyer under any other law.

(D) Pursuant to Section 1795.4, a buyer of a new motor vehicle shall also include a lessee of a new motor vehicle.

(e) (1) If the goods cannot practicably be serviced or repaired by the manufacturer or its representative to conform to the applicable express warranties because of the method of installation or because the goods have

become so affixed to real property as to become a part thereof, the manufacturer shall either replace and install the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, including installation costs, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(2) With respect to claims arising out of deficiencies in the construction of a new residential dwelling, paragraph (1) shall not apply to either of the following:

(A) A product that is not a manufactured product, as defined in subdivision (g) of Section 896.

(B) A claim against a person or entity that is not the manufacturer that originally made the express warranty for that manufactured product.

SEC. 2. Section 1793.25 of the Civil Code is amended to read:

1793.25. (a) Notwithstanding Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, the State Board of Equalization shall reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax or use tax which the manufacturer pays to or for the buyer or lessee when providing a replacement vehicle pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 1793.2 or includes in making restitution to the buyer or lessee pursuant to subparagraph (B) of paragraph (2) of subdivision (d) of Section 1793.2, when the manufacturer provides satisfactory proof that it has complied with subdivision (c) of Section 1793.23, and satisfactory proof is provided for one of the following:

(1) The retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale of that motor vehicle.

(2) The buyer of the motor vehicle has paid the use tax on the sales price for the storage, use, or other consumption of that motor vehicle in this state.

(3) The lessee of the motor vehicle has paid the use tax on the rentals payable from the lease of that motor vehicle.

(b) The State Board of Equalization may adopt rules and regulations to carry out, facilitate compliance with, or prevent circumvention or evasion of, this section.

(c) This section shall not change the application of the sales and use tax to the gross receipts, the rentals payable, and the sales price from the sale, lease, and the storage, use, or other consumption, in this state of tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(d) The manufacturer's claim for reimbursement and the State Board of Equalization's approval or denial of the claim shall be subject to the provisions of Article 1 (commencing with Section 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code, except Sections 6907 and 6908, insofar as those provisions are not inconsistent with this section.

(e) For purposes of this section, the amount of use tax that the State Board of Equalization is required to reimburse the manufacturer shall be limited

to the amount of use tax the manufacturer is required to pay to or for the lessee pursuant to Section 1793.2.

SEC. 3. Section 6055 of the Revenue and Taxation Code is amended to read:

6055. (a) A retailer is relieved from liability for sales tax that became due and payable, insofar as the measure of the tax is represented by accounts that have been found to be worthless and charged off for income tax purposes by the retailer or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A retailer that has previously paid the tax may, under rules and regulations prescribed by the board, take as a deduction the amount found worthless and charged off by the retailer. If these accounts are thereafter in whole or in part collected by the retailer, the amount collected shall be included in the first return filed after the collection and the tax shall be paid with the return. For purposes of this subdivision, the term "retailer" shall include any entity affiliated with the retailer under Section 1504 of Title 26 of the United States Code.

(b) (1) In the case of accounts held by a lender, a retailer or lender who makes a proper election under paragraph (4) shall be entitled to a deduction or refund of the tax that the retailer has previously reported and paid if all of the following conditions are met:

(A) A deduction was not previously claimed or allowed on any portion of the accounts.

(B) The accounts have been found worthless and written off by the lender in accordance with the requirements of subdivision (a).

(C) The contract between the retailer and the lender contains an irrevocable relinquishment of all rights to the account from the retailer to the lender.

(D) The retailer remitted the tax on or after January 1, 2000.

(E) The party electing to claim the deduction or refund under paragraph (4) files a claim in a manner prescribed by the board.

(2) If the retailer or the lender thereafter collects in whole or in part any accounts, one of the following shall apply:

(A) If the retailer is entitled to the deduction or refund under the election specified in paragraph (4), the retailer shall include the amount collected in its first return filed after the collection and pay tax on that amount with the return.

(B) If the lender is entitled to the deduction or refund under the election specified in paragraph (4), the lender shall pay the tax to the board in accordance with Section 6451.

(3) For purposes of this subdivision, the term "lender" means any of the following:

(A) Any person who holds a retail account which that person purchased directly from a retailer who reported the tax.

(B) Any person who holds a retail account pursuant to that person's contract directly with the retailer who reported the tax.

(C) Any person who is either an affiliated entity, under Section 1504 of Title 26 of the United States Code, of a person described in subparagraph (A) or (B), or an assignee of a person described in subparagraph (A) or (B).

(4) Prior to claiming any deduction or refund under this subdivision, the retailer who reported the tax and the lender shall prepare and retain an election, signed by both parties, designating which party is entitled to claim the deduction or refund. This election may not be amended or revoked unless a new election, signed by both parties, is prepared and retained by the retailer and the lender.

SEC. 4. Section 6203.5 of the Revenue and Taxation Code is amended to read:

6203.5. (a) A retailer is relieved from liability to collect use tax that became due and payable, insofar as the measure of the tax is represented by accounts that have been found to be worthless and charged off for income tax purposes by the retailer or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A retailer that has previously paid the amount of the tax may, under rules and regulations prescribed by the board, take as a deduction the amount found worthless and charged off by the retailer. If these accounts are thereafter in whole or in part collected by the retailer, the amount collected shall be included in the first return filed after the collection and the amount of the tax shall be paid with the return. For purposes of this subdivision, the term "retailer" shall include any entity affiliated with the retailer under Section 1504 of Title 26 of the United States Code.

(b) (1) In the case of accounts held by a lender, a retailer or lender who makes a proper election under paragraph (4) shall be entitled to a deduction or refund of the tax that the retailer has previously reported and paid if all of the following conditions are met:

(A) A deduction was not previously claimed or allowed on any portion of the accounts.

(B) The accounts have been found worthless and written off by the lender in accordance with the requirements of subdivision (a).

(C) The contract between the retailer and the lender contains an irrevocable relinquishment of all rights to the account from the retailer to the lender.

(D) The retailer remitted the tax on or after January 1, 2000.

(E) The party electing to claim the deduction or refund under paragraph (4) files a claim in a manner prescribed by the board.

(2) If the retailer or the lender thereafter collects in whole or in part any accounts, one of the following shall apply:

(A) If the retailer is entitled to the deduction or refund under the election specified in paragraph (4), the retailer shall include the amount collected in its first return filed after the collection and pay tax on that amount with the return.

(B) If the lender is entitled to the deduction or refund under the election specified in paragraph (4), the lender shall pay the tax to the board in accordance with Section 6451.

(3) For purposes of this subdivision, the term "lender" means any of the following:

(A) Any person who holds a retail account which that person purchased directly from a retailer who reported the tax.

(B) Any person who holds a retail account pursuant to that person's contract directly with the retailer who reported the tax.

(C) Any person who is either an affiliated entity, under Section 1504 of Title 26 of the United States Code, of a person described in subparagraph (A) or (B), or an assignee of a person described in subparagraph (A) or (B).

(4) Prior to claiming any deduction or refund under this subdivision, the retailer who reported the tax and the lender shall prepare and retain an election, signed by both parties, designating which party is entitled to claim the deduction or refund. This election may not be amended or revoked unless a new election, signed by both parties, is prepared and retained by the retailer and the lender.

SEC. 5. Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) There shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state on or after the effective date of this section, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occurs:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code. For purposes of this section, a closely held corporation or limited liability company shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) If purchased by a nonresident of California, the vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section shall not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is either

purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) Notwithstanding subdivision (a), any aircraft or vessel brought into this state exclusively for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the board and is licensed to do business by the city, county, or city and county in which it is located if the city, county, or city and county so requires, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or a manufacturer's maintenance facility.

(f) The presumption set forth in subdivision (a) may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

SEC. 6. Section 6353 of the Revenue and Taxation Code is amended to read:

6353. There are exempted from the taxes imposed by this part the gross receipts derived from the sales, furnishing, or service of and the storage, use, or other consumption in this state of, all of the following:

(a) Gas, electricity, and water, including steam and geothermal steam, brines, and heat, when delivered to consumers through mains, lines, or pipes.

(b) (1) Liquefied petroleum gas, delivered to a qualified residence by the seller, that is sold for household use in the qualified residence, or liquefied petroleum gas that is purchased for use by a qualified person to be used in producing and harvesting agricultural products; provided, in either case, the liquefied petroleum gas is delivered into a tank with a storage capacity for liquefied petroleum gas that is equal to or greater than 30 gallons. This subdivision may not be construed to provide any exemption from any tax levied by a city, county, or city and county pursuant to Section 7284.3, or any successor to that section.

(2) For purposes of this subdivision:

(A) "Qualified residence" means a primary residence, not serviced by gas mains and pipes.

(B) "Qualified person" means any person engaged in a line of business described in Codes 0111 to 0291, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 Edition, and any other person that assists that person in the lines of business described in this paragraph in producing and harvesting agricultural products.

(c) Water, when sold to an individual in bulk quantities of 50 gallons or more, for general household use in his or her residence if the residence is located in an area not serviced by mains, lines, or pipes.

(d) Exhaust steam, waste steam, heat, or resultant energy, produced in connection with cogeneration technology, as defined in Section 25134 of the Public Resources Code.

(e) The exemptions provided by subdivision (b) shall be effective starting September 1, 2001.

SEC. 7. Section 6356.5 of the Revenue and Taxation Code is amended to read:

6356.5. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage and use of, or other consumption in this state of, farm equipment and machinery, and the parts thereof, purchased for use by a qualified person to be used primarily in producing and harvesting agricultural products.

(b) For purposes of this section, both of the following shall apply:

(1) "Qualified person" means any person engaged in a line of business described in Codes 0111 to 0291, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 Edition, and any other person that uses farm equipment and machinery to assist this person in the lines of business described in this paragraph in producing and harvesting agricultural products.

(2) "Farm equipment and machinery" means implements of husbandry, as defined in Section 411.

(c) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section does not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) Notwithstanding subdivision (a), the exemption established by this section does not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(d) The exemption provided by this section shall be effective starting September 1, 2001.

SEC. 8. Section 6356.6 of the Revenue and Taxation Code is amended to read:

6356.6. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage and use of, or other consumption in this state of, equipment and machinery designed primarily for off-road use in commercial timber harvesting operations, and the parts thereof, that is purchased for use by a qualified person to be used primarily in harvesting timber.

(b) The State Board of Equalization may adopt emergency regulations to specify equipment and machinery exempted by this section, and may revise those regulations from time to time.

(c) For purposes of this section, "qualified person" means any person engaged in commercial timber harvesting.

(d) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section does not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) Notwithstanding subdivision (a), the exemption established by this section does not apply with respect to any tax levied pursuant to Section 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(e) The exemption provided by this section shall be effective starting September 1, 2001.

SEC. 9. Section 6358.5 of the Revenue and Taxation Code is amended to read:

6358.5. (a) (1) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, any racehorse breeding stock.

(2) For purposes of this section "racehorse breeding stock" means a horse that is capable of reproduction and for which the purchaser states that it is the purchaser's sole intent to use the horse for breeding purposes.

(b) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section does not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) The exemption established by this section does not apply with respect to any tax levied pursuant to either Section 6051.2 or 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(c) The exemption provided by this section shall be effective starting September 1, 2001.

SEC. 10. Section 7096 of the Revenue and Taxation Code is amended to read:

7096. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in the form as may be prescribed by the board.

In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 11. Section 7101 of the Revenue and Taxation Code is amended to read:

7101. All fees, taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state under this part, and restitution orders or any other amounts otherwise authorized by law to be collected by the board, or any other amounts imposed by a court of competent jurisdiction to be paid to the board shall, except as provided in Section 6452.1, be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Retail Sales Tax Fund.

SEC. 12. Section 7157 is added to the Revenue and Taxation Code, to read:

7157. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due and payable to the board may be collected by the board in any manner provided by law for collection of a delinquent sales and use tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of California on the date that amount is established on the records of the board.

(b) Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7285) shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 7 (commencing with Section 6901), a refund or credit shall not be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the board.

(e) Amounts authorized to be collected pursuant to this section shall not be subject to any statute of limitations set forth in Chapter 6 (commencing with Section 6701).

(f) Notwithstanding Section 6738 or Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a notice of state tax lien. The board may record or extend a recorded notice of state tax lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due and payable to the board before, on, or after January 1, 2012.

SEC. 13. Section 8351 of the Revenue and Taxation Code is amended to read:

8351. The Controller shall transmit all money received by him or her in payment of taxes, interest, and penalties due under this part, and restitution orders or any other amounts otherwise authorized by law to be collected by the Controller, or any other amounts imposed by a court of competent jurisdiction to be paid to the Controller, to the State Treasurer who shall deposit it in the State Treasury and credit it to the Motor Vehicle Fuel Fund, which is continued in existence as the Motor Vehicle Fuel Account in the Transportation Tax Fund, which fund is hereby created. All fees paid and accepted for issuance or reinstatement of licenses under this part shall be deposited by the board in the State Treasury to the credit of the same account.

Any reference in any law or regulation to the Motor Vehicle Fuel Fund shall be deemed to refer to the Motor Vehicle Fuel Account in the Transportation Tax Fund.

SEC. 14. Section 8407 is added to the Revenue and Taxation Code, to read:

8407. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due to the State of California and payable to the Controller may be collected by the Controller in any manner provided by law for collection of a delinquent motor vehicle fuel tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and

payable to the State of California on the date that amount is established on the records of the board.

(b) This part shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 7 (commencing with Section 8101), no refund or credit may be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the board.

(e) Amounts authorized to be collected pursuant to this section are not subject to any statute of limitations set forth in Chapter 6 (commencing with Section 7851).

(f) Notwithstanding Section 7872 or Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a notice of state tax lien. The Controller may record or extend a recorded notice of state tax lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due to the State of California and payable to the Controller before, on, or after January 1, 2012.

SEC. 15. Section 17131.10 is added to the Revenue and Taxation Code, to read:

17131.10. (a) For taxable years beginning on or after January 1, 2011, Section 125(j) of the Internal Revenue Code, relating to simple cafeteria plans for small businesses, as added by Section 9022 of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

(b) For taxable years beginning on or after January 1, 2014, Section 125(f) of the Internal Revenue Code, relating to qualified benefits defined, as amended by Section 1515 of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

SEC. 16. Section 17131.12 is added to the Revenue and Taxation Code, to read:

17131.12. (a) Section 139D of the Internal Revenue Code, relating to Indian health care benefits, as added by Section 9021 of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

(b) This section shall apply to benefits and coverage provided after March 23, 2010.

(c) This section shall not be construed to create an inference with respect to the exclusion from gross income of either of the following:

(1) Benefits provided by an Indian tribe or tribal organization that are not within the scope of this section.

(2) Benefits provided prior to the effective date of the act adding this section.

SEC. 17. Section 17134.1 is added to the Revenue and Taxation Code, to read:

17134.1. For taxable years beginning on or after January 1, 2010, Section 108(f)(4) of the Internal Revenue Code, relating to payments under the National Health Service Corps loan repayment program and certain state loan repayment programs, as amended by Section 10908 of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

SEC. 18. Section 30474 of the Revenue and Taxation Code is amended to read:

30474. (a) Any person who knowingly possesses, or keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any package of cigarettes to which there is not affixed the stamp or meter impression required to be affixed under this part, when those cigarettes have been obtained from any source whatever, is guilty of a misdemeanor and shall for each offense be fined an amount not to exceed twenty-five thousand dollars ($25,000), or be imprisoned for a period not to exceed one year in the county jail, or, at the discretion of the court, be subject to both fine and imprisonment in the county jail.

(b) In addition to the fine or sentence, or both, each person convicted under this section shall pay one hundred dollars ($100) for each carton of 200 cigarettes, or portion thereof, if that person knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this section, as determined by the court. The court shall direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the board. The board may collect the penalty due pursuant to this section in the manner prescribed in Section 30483.

(c) This section shall not apply to a licensed distributor that possesses, keeps, stores, or retains cigarettes before the necessary stamp or meter impression is affixed.

SEC. 19. Section 30483 is added to the Revenue and Taxation Code, to read:

30483. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due and payable to the board may be collected by the board in any manner provided by law for collection of a delinquent cigarette and tobacco products tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of

Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of California on the date that amount is established on the records of the board.

(b) This part shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 6 (commencing with Section 30361), a refund or credit shall not be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the board.

(e) Amounts authorized to be collected pursuant to this section shall not be subject to any statute of limitations set forth in Chapter 5 (commencing with Section 30301).

(f) Notwithstanding Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a notice of state tax lien. The board may record or extend a recorded notice of state tax lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due and payable to the board before, on, or after January 1, 2012.

SEC. 20. Section 60709 is added to the Revenue and Taxation Code, to read:

60709. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due and payable to the board may be collected by the board in any manner provided by law for collection of a delinquent diesel fuel tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of California on the date that amount is established on the records of the board.

(b) Part 31 (commencing with Section 60001) shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been

incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 8 (commencing with Section 60501), a refund or credit shall not be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the board.

(e) Amounts authorized to be collected pursuant to this section are not subject to any statute of limitations set forth in Chapter 7 (commencing with Section 60401).

(f) Notwithstanding Sections 60441 to 60445, inclusive, or Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a notice of state tax lien. The board may record or extend a recorded notice of state tax lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due and payable to the board before, on, or after January 1, 2012.

SEC. 21. Sections 1 and 2 of this act are declaratory of existing law.

SEC. 22. Notwithstanding Section 2230 of the Revenue and Taxation Code, an appropriation is not made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

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State of California | Board of Equalization

Memorandum

To : Ms. Cynthia Bridges
Executive Director, MIC: 73

Date: November 29, 2012

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

Subject : **Board Meeting, December 18-20, 2012**
Item J - Chief Counsel's Rulemaking Calendar
Regulation 1620, *Interstate and Foreign Commerce*

We request your approval to place proposed changes to Sales and Use Tax Regulation 1620, *Interstate and Foreign Commerce*, on the Chief Counsel's Rulemaking Calendar for the December 18 to 20, 2012, Board meeting. The proposed changes incorporate amendments made to Revenue and Taxation Code (RTC) section 6248 by Assembly Bill No. (AB) 1547 (Stats. 2009, ch. 545), Senate Bill No. (SB) 1330 (Stats. 2010, ch. 328), and AB 242 (Stats. 2011, ch. 727).

RTC section 6248 establishes a rebuttable presumption that use tax applies to the storage, use, or other consumption of a vehicle, vessel, or aircraft purchased outside of California, but brought into California within 12 months after its purchase. Section 6248, subdivision (a)(1) provides that the rebuttable presumption applies when the "vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code"; and AB 1547 amended subdivision (a)(1) to provide that the definition of "California resident" includes "a closely held corporation or limited liability [company][1] . . . if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code." AB 1547 also added the phrase "If purchased by a nonresident of California" to the beginning of section 6248, subdivision (a)(4), to clarify that the rebuttable presumption applies if a vehicle, vessel, or aircraft is "purchased by a nonresident of California" and "used or stored in this state more than one-half of the time during the first 12 months of ownership."

In addition AB 1547 clarified the exception from the rebuttable presumption for aircraft and vessels brought into California for repair, retrofit, and modification provided in RTC section 6248, subdivision (e). The bill clarified that the exception only applies to aircraft and vessels brought into the state "exclusively" for repair, retrofit, or modification. The bill clarified that the exception only applies to vessels if the services are "performed by a repair facility that holds an appropriate permit issued by the Board and is licensed to do business by the county in which it is located," and the exclusion only applies to aircraft if the services are

[1] Section 213 of SB 1330 corrected a typographical error in the language added to subdivision (a)(1) by AB 1547 by replacing the word "corporation" with the word "company" where indicated in brackets.

"performed by a repair station certified by the Federal Aviation Administration or manufacturer's maintenance facility." The bill also deleted RTC section 6248, subdivision (e)(2), which previously limited the airtime and sailing time that could be logged on an aircraft or vessel that qualifies for the exception from the rebuttable presumption.

Finally, AB 242 amended RTC section 6248, subdivision (e) to make a technical clarification to the exception for vessels brought into the state exclusively for repair, retrofit, and modification. The bill clarified that the repair facility performing the services must be licensed to do business by "the city, county, or city and" county in which it is located "if the city, county, or city and county so requires."

Paragraphs (A) and (D) of Regulation 1620, subdivision (b)(5) respectively incorporate the rebuttable presumption and exception from the rebuttable presumption established by RTC section 6248, subdivisions (a) and (e). Board staff will request the Board's authorization to make changes to Regulation 1620, subdivision (b)(5)(A) and (D) under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process, to incorporate the current provisions of RTC sections 6248, subdivisions (a), and (e). The changes are appropriate for processing under Rule 100 because they make the regulation consistent with the changes made to RTC section 6248 by AB 1547, SB 1330, and AB 242, 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 changes.

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

Recommendation by:

Randy Ferris, Chief Counsel

Approved:

Cynthia Bridges, Executive Director

Approved:

Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

BOARD APPROVED
At the 12/19/12 Board Meeting

Joann Richmond, Chief
Board Proceedings Division

Attachments

cc: Mr. Jeffrey L. McGuire 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

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1620. Interstate and Foreign Commerce.

(a) Sales Tax.

(1) In General. When a sale occurs in this state, the sales tax, if otherwise applicable, is not rendered inapplicable solely because the sale follows a movement of the property into this state from a point beyond its borders, or precedes a movement of the property from within this state to a point outside its borders. Such movements prevent application of the tax only when conditions exist under which the taxing of the sale, or the gross receipts derived therefrom, is prohibited by the United States Constitution or there exists a statutory exemption. If title to the property sold passes to the purchaser at a point outside this state, or if for any other reason the sale occurs outside this state, the sales tax does not apply, regardless of the extent of the retailer's participation in California in relation to the transaction. The retailer has the burden of proving facts establishing his right to exemption.

(2) Sales Following Movement of Property Into State From Point Outside State.

(A) From Other States - When Sales Tax Applies. Sales tax applies when the order for the property is sent by the purchaser to, or delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this state, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business and the sale occurs in this state. The term "other place of business" as used herein includes the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the retailer's functions in this state. It is immaterial that the contract of sale requires or contemplates that the goods will be shipped to the purchaser from a point outside the state. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the tax.

(B) From Other States - When Sales Tax Does Not Apply. Sales tax does not apply when the order is sent by the purchaser directly to the retailer at a point outside this state, or to an agent of the retailer in this state, and the property is shipped to the purchaser, pursuant to the contract of sale, from a point outside this state directly to the purchaser in this state, or to the retailer's agent in this state for delivery to the purchaser in this state, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent of the retailer having any connection with such branch, office, outlet, or place of business.

(C) Imports. Sales tax applies to sales of property imported into this state from another country when the sale occurs after the process of importation has ceased, regardless of whether the property is in its original package, if the transaction is otherwise subject to sales tax under subdivision (a)(2)(A) of this regulation.

(3) Sales Preceding Movement of Goods From Within State to Points Outside State.

Text of Proposed Changes to

Title 18. Public Revenue

(A) To Other States - When Sales Tax Applies. Except as otherwise provided in (B) below, sales tax applies when the property is delivered to the purchaser or the purchaser's representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property to a point outside this state, and whether or not the property is actually so transported. It is immaterial that the contract of sale may have called for the shipment by the retailer of the property to a point outside this state, or that the property was made to specifications for out-of-state jobs, that prices were quoted including transportation charges to out-of-state points, or that the goods are delivered to the purchaser in this state via a route a portion of which is outside this state. Regardless of the documentary evidence held by the retailer (see (3)(D) below) to show delivery of the property was made to a carrier for shipment to a point outside the state, tax will apply if the property is diverted in transit to the purchaser or his representative in this state, or for any other reason it is not delivered outside this state.

(B) Shipments Outside the State - When Sales Tax Does Not Apply. Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

1. Facilities operated by the retailer or

2. Delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term "carrier" means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term "forwarding agent" means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a "carrier" or "forwarding agent" within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state. (This subsection is effective on and after September 19, 1970, with respect to deliveries in California to carriers, etc., hired by the purchasers for shipment to points outside this state that are not in another state or foreign country, e.g., to points in the Pacific Ocean.)

(C) Exports.

1. When Sales Tax Applies. Except for certain new motor vehicles delivered to a foreign country pursuant to paragraph (b)(2)(D) of Regulation 1610 (18 CCR 1610), sales tax applies when the property is delivered in this state to the purchaser or the purchaser's representative prior to an irrevocable commitment of the property into the process of exportation. It is immaterial that the disclosed or undisclosed intention of the purchaser is to ship or deliver the property to a foreign country or that the property is actually transported to a foreign country.

Sales of property such as fuel oil and other items consumed during a voyage to a foreign country are not exempt even though they are transported out of, and are not returned to this country. It is immaterial that the ship to which the property is delivered is of foreign registry.

2. When Sales Tax Does Not Apply. Sales tax does not apply when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer to the foreign county. To be exempt as an export the property must be intended for a destination in a foreign country, it must be irrevocably committed to the exportation process at the time of sale, and must actually be delivered to the foreign country prior to any use of the property. Movement of the property into the process of exportation does not begin until the property has been shipped, or entered with a common carrier for transportation to another country, or has been started upon a continuous route or journey which constitutes the final and certain movement of the property to its foreign destination.

There has been an irrevocable commitment of the property to the exportation process when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer in a continuous route or journey to the foreign country by means of:

a. Facilities operated by the retailer,

b. A carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property for export, or arranging for its export, or

c. A ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property in a continuous journey to the foreign country, title to and control of the property passing to the purchaser upon delivery. Delivery by the retailer of property into a facility furnished by the purchaser constitutes an irrevocable commitment of the property into the exportation process only in those instances where the means of transportation and character of the property shipped provide certainty that the property is headed for its foreign destination and will not be diverted for domestic use. The following are examples of deliveries by the retailer into facilities furnished by the purchaser which demonstrate an irrevocable commitment of the property into the exportation process:

Example 1. Sale of fuel oil delivered into the hold of a vessel provided by the purchaser. The fuel is to be unloaded at the foreign destination.

Example 2. Sale of jewelry delivered aboard a scheduled airline with a scheduled departure to a foreign destination.

Example 3. Sale of equipment, designed specifically for use in the foreign destination, delivered to a foreign purchaser's aircraft. The foreign purchaser has filed a flight plan showing that the aircraft will be transporting the property on a continuous journey to its foreign destination.

The following are examples of sales which do not demonstrate sufficient indicia of an irrevocable commitment to the exportation process and do not qualify as exports:

Example 4. Sale of jewelry delivered to a foreign purchaser at the retailer's place of business or to the purchaser or his representative at the airport prior to boarding the plane. The tax applies even though the purchaser may hold tickets for the foreign destination.

Example 5. Sale of a television set delivered into the trunk of a passenger vehicle or into the storage area of a pickup truck.

Example 6. Sale of equipment delivered to a foreign purchaser's aircraft even though a flight plan had been filed showing that the aircraft was to be flown to a foreign destination. If the equipment sold had been altered or specifically designed for use in the foreign destination, then the combined factors of the character of the property and the means of transportation would provide certainty of export and the sale would qualify as an export as described in (3) above.

Export has not begun where property is transported from a point within this state to a warehouse or other collecting point in this state even though it is intended that the property then be transported, and in fact is transported, to another country. Nevertheless, sales of property are exempt if transported under the circumstances described in 2.b. above to a warehouse or other collecting point of a carrier, forwarding agent, export packer, customs broker, or other person engaged in the business of preparing property for export, or arranging for its export. Property is regarded as transported under the circumstances described in 2.b. above, when the property is sold to a purchaser for shipment abroad and is shipped or delivered to a point in this state to a person who is not the purchaser, whether or not that person is a legal entity related to the purchaser, who ships or delivers the property to a foreign destination as provided in paragraph (a)(3)(C)2.b. of this regulation.

(D) Proof of Exemption. Bills of lading or other documentary evidence of the delivery of the property to a carrier, customs broker, or forwarding agent for shipment outside this state must be retained by the retailer to support deductions taken under (B) above. Bills of lading, import documents of a foreign country or other documentary evidence of export must be obtained and retained by retailers to support deductions taken under (C) above.

(E) Particular Applications.

Text of Proposed Changes to

Title 18. Public Revenue

1. Property Mailed to Persons in the Armed Forces. Tax does not apply to sales of property which is mailed by the retailer, pursuant to the contract of sale, to persons in the armed forces at points outside the United States, notwithstanding the property is addressed in care of the postmaster at a point in this state and forwarded by him to the addressee.

When mail is addressed to Army Post Offices (A.P.O.'s) or to Fleet Post Offices (F.P.O.'s) in care of the postmaster, it will be presumed that it is forwarded outside California. The retailer must keep records showing the names and addresses as they appear on the mailed matter and should keep evidence that the mailing was done by him.

2. Property for Defense Purposes Delivered to Offices of the United States. Tax does not apply to sales of property shipped to a point outside this state pursuant to the contract of sale when the property is marked for export and delivered by retailer to the "contracting officer," "officer in charge," "port quartermaster," or other officer of the United States for transportation and delivery to the purchaser at such a point.

3. Airplanes Delivered to Agencies of the United States. Tax does not apply to sales of airplanes and parts and equipment for airplanes transported to a point outside this state pursuant to the contract of sale when such property is delivered to the United States Air Force or any other agency or instrumentality of the United States for transportation and delivery to the purchaser or someone designated by him at that point.

4. Repairers. When repairers of property in California, in fulfillment of their repair contracts with their customers, ship the repaired property to points outside this state by one of the methods set forth under (a)(3)(B) and (C) above, tax does not apply to the sale by the repairer of the repair parts and materials affixed to and becoming a component part of the repaired property so shipped.

(b) Use Tax.

(1) In General. Use tax applies to the use of any property purchased for storage, use or other consumption and stored, used, or consumed in this state, the sale of which is exempt from sales tax under this regulation.

(2) Exceptions.

(A) Use tax does not apply to the use of property held or stored in this state for sale in the regular course of business nor to the use of property held for the purposes designated in subparagraph (b)(9), below.

(B) Interstate and Foreign Commerce.

Text of Proposed Changes to

Title 18. Public Revenue

1. In General. Use tax does not apply to the use of property purchased for use and used in interstate or foreign commerce prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

2. Intermodal Cargo Containers. Intermodal cargo containers are containers that are used to transport freight during a continuous movement of that freight from the origin shipper to the destination receiver by the use of two or more of the following modes of transportation: railroad, vehicle, or vessel. The use of an intermodal cargo container in California is exempt from tax if the use meets the requirements of subdivision (b)(2)(B)1 of this regulation.

An intermodal cargo container is regarded as first used in interstate or foreign commerce prior to its entry into California if the container is loaded with freight outside California and then first enters California during a continuous movement of that freight from the origin shipper to the destination receiver. For purposes of the requirements set forth in subdivision (b)(2)(B)1 of this regulation, an intermodal cargo container is also regarded as first used in interstate or foreign commerce prior to its entry into California if all of the following conditions are satisfied:

a. The contract for the sale or lease of the intermodal cargo container requires that the container be used in interstate or foreign commerce and such sales contract or lease contract is entered into prior to the entry of the intermodal cargo container into California;

b. The purchaser or lessee transports the intermodal cargo container into California with the specific intent that such intermodal cargo container will then be loaded with freight for transport in a continuous movement to a destination outside California, whether or not the purchaser knows which particular freight will be loaded into the intermodal cargo container at the time the intermodal cargo container first enters California; and

c. The intermodal cargo container is, in fact, first loaded with freight for transport in a continuous movement to a destination outside California, and the intermodal cargo container is thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

(C) Use tax does not apply to the use of certain new motor vehicles purchased for subsequent delivery to a foreign country and so delivered pursuant to paragraph (b)(2)(D) of Regulation 1610 (18 CCR 1610).

(D) Hand-Carried from a Foreign Country.

1. Prior to January 1, 2008, use tax does not apply to the storage, use, or other consumption in this state of the first four hundred dollars ($400) of tangible personal

property purchased in a foreign country by an individual from a retailer and personally hand-carried into this state from the foreign country within any 30-day period. This subdivision shall not apply to property sent or shipped to this state.

2. On and after January 1, 2008, use tax does not apply to the storage, use, or other consumption in this state of the first eight hundred dollars ($800) of tangible personal property purchased in a foreign country by an individual from a retailer and personally hand-carried into this state from the foreign country within any 30-day period. This subdivision shall not apply to property sent or shipped to this state.

(3) Purchase for Use in this State. Property delivered outside of California to a purchaser known by the retailer to be a resident of California is regarded as having been purchased for use in this state unless a statement in writing, signed by the purchaser or the purchaser's authorized representative, that the property was purchased for use at a designated point or points outside this state is retained by the vendor.

Notwithstanding the filing of such a statement, property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. For purposes of this regulation, "functional use" means use for the purposes for which the property was designed. Except as provided in subdivision (b)(5) of this regulation, when property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. Except as provided in subdivision (b)(5) of this regulation, prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Except as provided in subdivision (b)(5) of this regulation, prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California.

(4) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 90-Day Test (Prior to October 2, 2004, and from July 1, 2007, through September 30, 2008). The provisions of subdivision (b)(4) apply prior to October 2, 2004, and from July 1, 2007, through September 30, 2008. A vehicle, vessel or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel or aircraft is in California. When the vehicle, vessel or aircraft is first functionally used outside of California, the vehicle, vessel or aircraft will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, exclusive of any time of shipment to California or time of storage for shipment to California, unless:

Text of Proposed Changes to

Title 18. Public Revenue

(A) Physically Located Outside California. Use tax will not apply if the vehicle, vessel or aircraft is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state.

(B) Used in Interstate or Foreign Commerce.

1. If the property is a vehicle, use tax will not apply if one-half or more of the miles traveled by the vehicle during the six-month period immediately following its entry into this state are commercial miles traveled in interstate or foreign commerce.

2. If the property is a vessel, use tax will not apply if one-half or more of the nautical miles traveled by the vessel during the six-month period immediately following its entry into the state are commercial miles traveled in interstate or foreign commerce.

3. If the property is an aircraft, use tax will not apply if one-half or more of the flight time traveled by the aircraft during the six-month period immediately following its entry into the state is commercial flight time traveled in interstate or foreign commerce. Such use will be accepted as proof of an intent that the property was not purchased for use in California. For purposes of subdivision (b)(4), the term "commercial" applies to business uses and excludes personal use. However, the term "commercial" is not limited to for-profit businesses.

(5) Purchase for Use in this State - Vehicles, Vessels, and Aircraft - 12-Month Test (From October 2, 2004, through June 30, 2007, and after September 30, 2008).

(A) Purchased for Use in California. Except as provided in subdivision (b)(5)(D) below, the provisions of subdivision (b)(5) apply from October 2, 2004, through June 30, 2007, and after September 30, 2008. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel, or aircraft is in California. When a vehicle, vessel, or aircraft is purchased outside of California, is first functionally used outside of California, and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle, vessel, or aircraft was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

1. The vehicle, vessel, or aircraft was purchased by a California resident as defined in section 516 of the Vehicle Code, as that section now reads or is hereinafter amended. <u>For purposes of subdivision (b)(5), a closely held corporation or limited liability company shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in section 516 of the Vehicle Code.</u>

2. In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

3. In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

4. If purchased by a nonresident of California, the~~The~~ vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(B) Evidence Rebutting Presumption. This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

Operative September 20, 2006, through June 30, 2007, and after September 30, 2008, in the case of a vehicle, this presumption also may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

(C) Used in Interstate or Foreign Commerce.

1. If the property is a vehicle, use tax will not apply if one-half or more of the miles traveled by the vehicle during the six-month period immediately following its entry into this state are commercial miles traveled in interstate or foreign commerce.

2. If the property is a vessel, use tax will not apply if one-half or more of the nautical miles traveled by the vessel during the six-month period immediately following its entry into the state are commercial miles traveled in interstate or foreign commerce.

3. If the property is an aircraft, use tax will not apply if one-half or more of the flight time traveled by the aircraft during the six-month period immediately following its entry into the state is commercial flight time traveled in interstate or foreign commerce.

Such use will be accepted as proof of an intent that the property was not purchased for use in California. For purposes of subdivision (b)(5)(C), the term "commercial"

applies to business uses and excludes personal use. However, the term "commercial" is not limited to for-profit businesses.

(D) Repair, Retrofit, or Modification of Vessels or Aircraft.

~~1.~~ Notwithstanding subdivision (b)(5)(A) above, aircraft or vessels, the purchase and use of which are subject to the 12-month test described in subdivision (b)(5), that are brought into this state exclusively for the purpose of repair, retrofit, or modification, shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the Board and is licensed to do business by the city, county, or city and county in which it is located if the city, county, or city and county so requires, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or manufacturer's maintenance facility.

~~2. Subdivision (b)(5)(D)1. does not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel are logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel does not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.~~

(E) Binding Purchase Contract. Subdivision (b)(5) does not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before October 1, 2004, or from July 1, 2007, through September 30, 2008.

(6) Purchase for Use in This State - Locomotives - 90-Day Test. A locomotive purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the locomotive is in California. When the locomotive is first functionally used outside of California, the locomotive will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, exclusive of any time of shipment to California or time of storage for shipment to California, unless:

(A) Physically Located Outside California. Use tax will not apply if the locomotive is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state.

(B) Used in Interstate or Foreign Commerce. Use tax will not apply to transactions involving locomotives if one-half or more of the miles traveled by the locomotive during the six-month period immediately following its entry into California are commercial miles traveled in interstate or foreign commerce.

Such use will be accepted as proof of an intent that the property was not purchased for use in California. For purposes of subdivision (b)(6), the term "commercial" applies to business uses and excludes personal use. However, the term "commercial" is not limited to for-profit businesses.

(7) Examples of Interstate and Foreign Commerce. Examples of what constitutes interstate or foreign commerce include, but are not limited to the following:

Example 1. A sightseeing tour bus group (charter) or regularly scheduled bus service (per capita) originates in California and travels to another state or country for a single day or several days, then returns to California where the charter or schedule terminates.

Example 2. A charter bus, vessel or aircraft deadheads under contract to another state, picks up the group and operates the charter without entering the state of California, drops the group in the other state, and deadheads back into the State of California. (The charter was quoted round trip.)

Example 3. A commercial vehicle deadheads to another state or country or transports property to another state or country and delivers that property within the other state or country or to another state or country. The vehicle then returns to California, either loaded or empty.

Example 4. A charter bus group tours under contract to another state or country for a day or several days, drops the passengers in the other state or country, and then deadheads back under contract to its terminal or next assignment.

Example 5. Property arriving in California via plane, train, or vessel from another state or country is picked up by a commercial vehicle, vessel or aircraft and transported to another state or country for a day or several days. The commercial vehicle, vessel or aircraft then returns to California, either loaded or empty.

Example 6. A sightseeing tour bus group (charter) arriving in California via plane, train, or ship from another state or country is picked up by bus and tours California for a number of days, goes to another state or country for a number of days, and then terminates service either in another state, country, or California.

Example 7. Property arriving in California via plane, train, or vessel from another state or country is picked up by a commercial vehicle, vessel or aircraft, which may be operating wholly within California, and transported for further distribution to one or more California locations or to locations in another state or country. The vehicle, vessel or aircraft then

returns empty to pick up another load arriving in California via plane, train, or vessel from another state or country.

Example 8. A commercial vehicle, vessel, aircraft, or regularly scheduled bus service operating wholly within California is picking up or feeding passengers or property arriving from, or destined to, a state or country other than California to another form of transportation be it plane, train, ship, or bus. (Example: an airport bus service or a bridge carrier for Amtrak.)

Example 9. Property is transported by a commercial vehicle, vessel, aircraft, or locomotive from another state or country to California or from California to another state or country. While engaged in this transportation, the commercial vehicle, vessel, aircraft, or locomotive also transports property from one point in California to another.

Example 10. A commercial vehicle, vessel, aircraft, or locomotive is dispatched from one location in California to another location in California to pick up property and transport it to another state or country.

Example 11. A commercial vehicle, vessel or aircraft, sightseeing tour bus group (charter), or regularly scheduled bus service operating in interstate or foreign commerce experiences a mechanical failure and is replaced by another vehicle, vessel or aircraft. The replacement vehicle, vessel or aircraft is also deemed to be operating in interstate or foreign commerce as a continuation of the original trip.

Example 12. A vehicle, vessel, aircraft, or locomotive transports persons or property for commercial purposes (a) from California to another state or country; (b) from another state or country to California; (c) entirely within California, but the vehicle, vessel, aircraft, or locomotive picks up persons or property arriving in California via train, bus, truck, vessel, or aircraft from another state or country and then transports the persons or property in a continuous route or journey to one or more California locations or to locations in another state or country.

Example 13. A vessel transports persons or property for commercial purposes (a) from a California port to a port in another state or country; or (b) from a port in another state or country to a port in California.

(8) Imports. Use tax applies with respect to purchases of property imported into this state from another country when the use occurs after the process of importation has ceased and when sales tax is not applicable, regardless of whether the property is in its original package.

(9) "Storage" and "Use" - Exclusions. "Storage" and "use" do not include the keeping, retaining or exercising any right or power over property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured, into, attached to, or incorporated into, other property to be transported outside the state and thereafter used solely outside the state.

The following examples are illustrative of the meaning of the exclusion:

Example 1. An engine installed in an aircraft which is flown directly out of the state for use thereafter solely outside the state qualifies for the exclusion. The use of the engine in the transporting process does not constitute a use for purposes of the exclusion. However, if any other use is made of the aircraft during removal from this state, such as carrying passengers or property, the exclusion does not apply.

Example 2. An engine installed in a truck which is transported by rail or air directly out of the state for use thereafter solely outside the state qualifies for the exclusion.

Example 3. An engine transported outside the state and installed on an aircraft which returns to the state does not qualify for the exclusion. It does not matter whether the use of the aircraft in California is exclusively interstate or intrastate commerce or both.

Example 4. An engine transported outside the state and installed on an aircraft which does not return to the state qualifies for the exclusion.

(c) Rail Freight Cars. Sales tax does not apply to the sale of, and the use tax does not apply to the storage, use or other consumption in this state of rail freight cars for use in interstate or foreign commerce.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6006, 6008, 6009.1, 6051, 6201, 6247, 6248, 6352, 6366.2, 6368.5, 6387, 6396 and 6405, Revenue and Taxation Code.

2012 MINUTES OF THE STATE BOARD OF EQUALIZATION

Wednesday, December 19, 2012

CHIEF COUNSEL MATTERS [J-M]

[J] RULEMAKING

J1 Sales and Use Tax Regulation 1620, *Interstate and Foreign Commerce*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to amend Sales and Use Tax Regulation 1620 to make the regulation consistent with statutory changes to Revenue and Taxation Code section 6248 (Exhibit 12.7).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the section 100 changes to Regulation 1620 as recommended by staff.

[M] OTHER CHIEF COUNSEL MATTERS

M1 Discussion and request for direction regarding the implementation of AB 2323

M1.1 Grant Thompson, Tax Counsel, Legal Department, made introductory remarks regarding staff's request for direction for implementing AB 2323, which effective January 1, 2013, requires the BOE to publish and make available on its Internet website a written formal opinion, a written memorandum opinion, or a written summary decision for each decision of the Board, as specified, in which the amount in controversy is $500,000 or more, within 120 days of the date upon which the Board rendered its decision, and to include specified information in the published opinion (Exhibit X.8).

1) Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, for purposes of determining the amount in controversy with respect to tax, the Board directed staff to only include disputed tax, as recommended by staff.
2) Upon motion of Ms. Mandel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, for purposes of determining the amount in controversy with respect to interest, the Board directed staff to only include interest that is expressly contested, as recommended by staff.
3) Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, for purposes of determining the amount in controversy with respect to penalties, the Board directed staff to only include penalties that are expressly contested, as recommended by staff.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

DECEMBER 19, 2012

ITEM J RULEMAKING

ITEM J1

SALES AND USE TAX REGULATION 1620,

INTERSTATE AND FOREIGN COMMERCE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

Electronically signed by Kathleen Skidgel (601-100-826-6264) 7f7376b8-85e6-4ad0-b6fa-31432cbdc1d4

1 P R E S E N T

2

3 For the Board of Equalization: Jerome E. Horton
Chairman

4

5 Michelle Steel
Vice-Chairwoman

6

7 Betty T. Yee
Member

8

9 George Runner
Member

10

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

14

Joann Richmond
15 Chief
Board Proceedings Division

16

17 For Staff: Bradley Heller
Tax Counsel IV

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 DECEMBER 19, 2012
4 ---oOo---
5 MS. RICHMOND: That takes us to Chief Counsel
6 matters.
7 Item J Rulemaking. J1, Sales and Use Tax
8 Regulation 1620, Interstate and Foreign Commerce.
9 MR. HORTON: Mr. Heller, would you please --
10 Heller, would you please introduce the issues in this
11 case.
12 MR. HELLER: Certainly.
13 Good morning, Chairman Horton and Members of
14 the Board. I'm Bradley Heller from the Board's Legal
15 Department, and I'm here to request your authorization
16 to complete Rule 100 changes to Regulation 1620,
17 interstate and Foreign Commerce.
18 The changes make the regulation consistent with
19 amendments made to Revenue and Taxation Code Section
20 6248 in 2009, 2010 and 2011.
21 MS. YEE: So moved.
22 MS. STEEL: Move.
23 MR. HORTON: Move to adopt staff recommendation
24 Member Yee. Second by Member Steel.
25 Without objection, Members, such will be the
26 order.
27 MR. HELLER: Thank you.
28 ---oOo---

1 REPORTER'S CERTIFICATE

2

3 State of California)

4) ss

5 County of Sacramento)

6

7 I, KATHLEEN SKIDGEL, Hearing Reporter for the

8 California State Board of Equalization certify that on

9 December 19, 2012 I recorded verbatim, in shorthand, to

10 the best of my ability, the proceedings in the

11 above-entitled hearing; that I transcribed the shorthand

12 writing into typewriting; and that the preceding pages 1

13 through 3 constitute a complete and accurate

14 transcription of the shorthand writing.

15

16 Dated: December 21, 2012

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18 Kathleen Skidgel

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20 KATHLEEN SKIDGEL, CSR #9039

21 Hearing Reporter

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Electronically signed by Kathleen Skidgel (601-100-826-6264) 7f7376b8-85e6-4ad0-b6fa-31432cbdc1d4