Regulation 1642
Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1642

Index

1. *Form 400 and Proposed Regulation 1642*
2. *Statement of Explanation*
3. RTC Section 6055
4. RTC Section 6203.5
5. AB 242
6. AB 2688

Other Documents Relied upon

A. *Chief Counsel Memo Dated 07/25/13*

B. *Minutes, 08/13/13*

C. *Reporters Transcript, 08/13/13*

cc: Jeff McGuire

RECEIVED

DEC 12 2013

by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

State of California
Office of Administrative Law

In re:	**NOTICE OF APPROVAL OF CHANGES WITHOUT REGULATORY EFFECT**
Board of Equalization	
Regulatory Action:	**California Code of Regulations, Title 1, Section 100**
Title 187, California Code of Regulations	
Adopt sections: **Amend sections: 1642** **Repeal sections:**	**OAL File No. 2013-1104-01 N**

This change without regulatory effect amends one section of the California Code of Regulations. This amendment is due to AB 242 (Stats. 2011, c. 272) that repealed the provisions that required that a retailer and lender file a proper election prior to making a claim for a bad debt deduction or refund with the Board of Equalization (BOE). AB 242 instead requires that the election be prepared, signed, and retained by the retailer and lender. Further, AB 2688 (Stats. 2012, c. 362) removed the requirement that the election be prepared, signed and retained prior to claiming a bad debt deduction or refund. This change without regulatory effect removes the requirement for the election to be filed with the BOE prior to claiming the deduction or refund.

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

Date: 12/9/2013

Peggy J. Gibson
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NONSUBSTANTIVE

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2013-1104-01N	

For use by Office of Administrative Law (OAL) only

NOTICE

REGULATIONS

ENDORSED FILED
IN THE OFFICE OF
2013 DEC -9 PM 3:18

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)
Bad Debts	

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
1642

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)
Rick 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
November 1, 2013

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

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 09 2013

Office of Administrative Law

Text of Proposed Changes to

Title 18. Public Revenue

1642. Bad Debts.

(a) In General. A retailer is relieved from liability for sales tax (section 6055 of the Revenue and Taxation Code) or from liability to collect use tax (section 6203.5 of the Revenue and Taxation Code) insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes (which include circumstances where the retailer's income is reported on a related person's income tax return and the bad debt is charged off on that return) or, if the retailer is not required to file income tax returns and the retailer's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles. A retailer may claim a bad debt deduction provided that the sales tax, or amount of use tax, was actually paid to the state.

This deduction should be taken on the return filed for the period in which the amount was found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles.

Failure to take the deduction on the proper return will not in itself prevent the allowance of a refund measured by an amount for which a retailer could have taken a timely deduction provided a claim for refund is filed with the ~~b~~Board within the limitation periods specified in section 6902 of the Revenue Taxation Code.

(b) Amount Subject to Deduction.

(1) . . . (unchanged).

(2) . . . (unchanged).

(c) Reporting. . . . (unchanged).

(d) Worthless Account Subsequently Collected. . . . (unchanged).

(e) Records. . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

(8) . . . (unchanged).

(f) Allowable Methods of Computing Loss.

(1) . . . (unchanged).

(2) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(g) Bad Debt Losses Other Than Repossessions. . . . (unchanged).

(h) Special Situations.

(1) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(A) . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

7. . . . (unchanged).

8. . . . (unchanged).

(B) . . . (unchanged).

(i) Bad Debts Incurred in Connection with Accounts Held by Lenders. . . . (unchanged).

(1) Lender Defined. A "lender" for purposes of this regulation is defined as any of the following:

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) A person who is either an affiliated corporation (or affiliated entity electing to be taxed as a corporation) under section 1504 of Title 26 of the United States Code or an assignee of a person described in subdivision (i)(1)(A) or (i)(1)(B). A person is a "lender" under this subdivision (i)(1)(C) only if an election is ~~filed~~prepared and retained under subdivision (i)(4).

(2) Conditions to Claiming Deduction or Refund. With respect to an account held by a lender without recourse, a deduction or refund may be claimed for bad debt losses on the account only if all of the following conditions are met:

(A) ~~No~~A deduction or refund was not previously claimed or allowed on any portion of the account.

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) The retailer and the lender ~~file~~prepare and retain an election ~~with the Board~~, signed by both parties, which contains the elements specified in subdivision (i)(3) and ~~which~~ designates ~~either the retailer or the lender as the person~~which party is entitled to claim any deduction or refund under this regulation for tax previously paid by the retailer measured by the amount of the account found to be worthless and charged off. ~~No deduction or refund can be claimed until this election is filed with the Board.~~

(3) Election Between Retailer and Lender.

(A) In order for the retailer or the lender to claim a deduction or refund for bad debt losses from an account held by the lender without recourse, the retailer and the lender must ~~file~~prepare and retain an election ~~with the Board~~ designating which of them may claim such deduction or refund. The election may be in any form, including an existing contract between the retailer and the lender, so as long as the election contains the following elements:

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

7. . . . (unchanged).

8. A statement that the 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 ~~is filed with the Board~~.

9. The date of the election and the signatures of the retailer and the lender, or their authorized representatives. ~~If a copy of the signed election is filed with the Board rather than the original, t~~The person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures. An election may be signed in counterparts~~, and its filing would be regarded as perfected as of the filing of the second signed counterpart,~~ provided each counterpart is identical except for the signature and date of the signature. ~~If copies of the signed counterparts are filed with the Board, t~~The person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures ~~not filed with the Board~~.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes a lender with respect to those accounts for which the lender is the person entitled to the bad debt deduction or claim pursuant to an election ~~filed~~ under this subdivision (i)(3).

(4) Election Between Lender and Affiliated Entity or Other Assignee.

(A) If a person who is a lender under subdivision (i)(1)(A) or (i)(1)(B) and who has the right to claim any deduction or refund for bad debts the lender charges off on the account

wishes to assign to a person who is its affiliated entity under section 1504 of Title 26 of the United States Code or to some other assignee the right to claim any deduction or refund for the amount of bad debts charged off on the account, the lender and the affiliated entity or other assignee must ~~file~~prepare and retain an election signed by both parties~~with the Board prior to the affiliated entity's or other assignee's claiming of any deduction or refund~~. The election ~~filed with the Board~~ may be in any form, but must include all the following elements:

1. . . . (unchanged).

2. A copy of the election between the retailer and the lender under which the lender has the right to any (and all) deductions or refunds as a result of any bad debt losses charged off by the lender on the account(s). If that election has not yet been prepared~~filed with the Board~~, then that election must be prepared~~filed~~ along with the election between the lender and its affiliated entity or other assignee. ~~If t~~The elections with the original signatures ~~was retained by the lender rather than filing it with the Board, that election must either be filed with the Board or~~must be retained by the affiliated entity or other assignee.

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

7. . . . (unchanged).

8. . . . (unchanged).

9. A statement that the election may not be amended or revoked unless a new election, signed by both parties, is prepared and retained by the lender and the affiliated entity or other assignee ~~is filed with the Board~~.

10. The date of the election and the signatures of the lender and the affiliated entity or other assignee, or their authorized representatives. ~~If a copy of the signed election is filed with the Board rather than the original, t~~The person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures. An election may be signed in counterparts~~, and its filing would be regarded as perfected as of the filing of the second signed counterpart,~~ provided each counterpart is identical except for the signature and date of the signature. ~~If copies of the signed counterparts are filed with the Board, t~~The person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures ~~not filed with the Board~~.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes an entity affiliated with a lender under section 1504 of Title 26 of the United States Code, or other assignee, with respect to those accounts for which the affiliated entity or other assignee is the person entitled to the bad debt deduction or claim pursuant to an election ~~filed~~ under this subdivision (i)(4).

(5) Registration, Returns, Claims for Deduction and Refunds, and Payment of Tax.

(A) A retailer who has the right to claim deductions or refunds for bad debts charged off by a lender on an account held by that lender pursuant to an election ~~filed~~ under subdivision (i)(3) shall claim those deductions or refunds under the provisions of this regulation in the same manner as if the retailer held the account itself.

(B) Without regard to whether a lender holds a seller's permit for its own sales of tangible personal property, a lender who has the right to claim deductions or refunds for bad debts charged off on accounts pursuant to an election ~~filed~~ under subdivision (i)(3) and, if applicable, subdivision (i)(4), shall register with the Board for a Certificate of Registration - Lender no later than the date on which it first claims such a deduction or refund.

(C) A lender who has the right to claim deductions or refunds for bad debts charged off pursuant to an election ~~filed~~ under subdivision (i)(3) and, if applicable, subdivision (i)(4), is entitled to the same amount of deduction or refund, calculated in the same manner under the provisions of this regulation, as if the lender were the retailer who had sold the tangible personal property for which the retailer had reported and paid tax. If the lender has provided the name, address, and seller's permit number of the retailer responsible for paying the tax, in determining whether to grant the lender's claim for deduction or refund, the Board shall regard the retailer as having paid the applicable tax due unless the Board establishes otherwise. (Regardless of the Board's action on the lender's claim for deduction or refund, a retailer who failed to pay the applicable tax due remains liable for that tax.)

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) The filing by a lender of a claim for deduction or refund for bad debts on accounts covered by this subdivision (i) is not valid if an election pursuant to subdivision (i)(3) and, if applicable, an election pursuant to subdivision (i)(4), <u>is not prepared and retained that is signed by both parties</u>~~has not been filed with the Board~~. ~~If a lender files a claim for deduction or refund and the applicable election(s) is filed thereafter, the claim for deduction or refund will be regarded as having been filed on the date of the filing of the election(s).~~

(G) . . . (unchanged).

(H) . . . (unchanged).

Note: Authority cited: 7051, Revenue and Taxation Code. Reference: Sections 6055 and 6203.5, Revenue and Taxation Code.

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# 2013–1112–01
BOARD OF EDUCATION
Criteria and Standards for School District Budgets and Interim Reports

This regulatory action amends the Criteria and Standards for School District Budgets and Interim Reports. The standards and criteria are exempt from the Administrative Procedure Act pursuant to Education Code section 33131 and are submitted for filing with the Secretary of State and printing only.

Title 5
California Code of Regulations
AMEND: 15440, 15444, 15445, 15446, 15447, 15448, 15450, 15451, 15453, 15455, 15456, 15460, 15461, 15463, 15464, 15467, 15468, 15469, 15471, 15471.2, 15472, 15473, 15474, 15475, 15480, 15483, 15484, 15485, 15486, 15490, 15493
Filed 12/04/2013
Effective 12/04/2013
Agency Contact: Debra Thacker (916) 319–0642

File# 2013–1104–01
BOARD OF EQUALIZATION
Bad Debts

This change without regulatory effect amends one section of the California Code of Regulations. This amendment is due to AB 242 (Stats. 2011, c. 272) that repealed the provisions that required that a retailer and lender file a proper election prior to making a claim for a bad debt deduction or refund with the Board of Equalization (BOE). AB 242 instead requires that the election be prepared, signed, and retained by the retailer and lender. Further, AB 2688 (Stats. 2012, c. 362) removed the requirement that the election be prepared, signed and retained prior to claiming a bad debt deduction or refund. This change without regulatory effect removes the requirement for the election to be filed with the BOE prior to claiming the deduction or refund.

Title 187
California Code of Regulations
AMEND: 1642
Filed 12/09/2013
Effective
Agency Contact:
Richard E. Bennion (916) 445–2130

File# 2013–1018–01
CALIFORNIA GAMBLING CONTROL COMMISSION
Governor's Reorganization Plan No. 2 of 2012 — Cleanup

This action by the California Gambling Control Commission (Commission) makes changes without regulatory effect to specified sections in Title 4 of the California Code of Regulations in connection with the Governor's Reorganization Plan No. 2 of 2012, and subsequent clean up bills Stats.2013, c. 32 (SB 76) and Stats.2013, c. 353 (SB 820). The proposed amendments include changes to Department of Justice, Bureau of Gambling Control (Bureau) forms BGC–618 and BGC–620.

Title 4
California Code of Regulations
AMEND: 12200.20, 12220.20, 12480, 12482, 12500, 12505, 12508 REPEAL: 12488
Filed 12/04/2013
Agency Contact: James Allen (916) 263–4024

File# 2013–1125–06
DENTAL BOARD OF CALIFORNIA
Notice of Licensure by the Dental Board

This action without regulatory effect amends the Notice to Consumers of Licensure.

Title 16
California Code of Regulations
AMEND: 1065
Filed 12/04/2013
Agency Contact: Sarah Wallace (916) 263–2187

File# 2013–1024–02
DEPARTMENT OF CORRECTIONS AND REHABILITATION
Inmate Religious Property

The California Department of Corrections and Rehabilitation submitted this timely certificate of compliance to make permanent the emergency regulations adopted in OAL file no. 2013–0206–01EON and readopted in OAL file no. 2013–0718–01EE. This rulemaking removes religious property items from the Authorized Personal Property Schedule and places them in a new Religious Personal Property Matrix, which is a separate list of allowable religious personal property items.

Regulation 1642
Section 100

Index

1. *Form 400 and Proposed Regulation 1642*

2. *Statement of Explanation*

3. RTC Section 6055

4. RTC Section 6203.5

5. AB 242

6. AB 2688

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NONSUBSTANTIVE

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2013-1104-01N	

For use by Office of Administrative Law (OAL) only

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		

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1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
Bad Debts	

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
1642

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))
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- ☐ 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)
Rick 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

DATE
November 1, 2013

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

Text of Proposed Changes to

Title 18. Public Revenue

1642. Bad Debts.

(a) In General. A retailer is relieved from liability for sales tax (section 6055 of the Revenue and Taxation Code) or from liability to collect use tax (section 6203.5 of the Revenue and Taxation Code) insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes (which include circumstances where the retailer's income is reported on a related person's income tax return and the bad debt is charged off on that return) or, if the retailer is not required to file income tax returns and the retailer's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles. A retailer may claim a bad debt deduction provided that the sales tax, or amount of use tax, was actually paid to the state.

This deduction should be taken on the return filed for the period in which the amount was found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles.

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(b) Amount Subject to Deduction.

(1) . . . (unchanged).

(2) . . . (unchanged).

(c) Reporting. . . . (unchanged).

(d) Worthless Account Subsequently Collected. . . . (unchanged).

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(1) . . . (unchanged).

(2) . . . (unchanged).

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(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

(8) . . . (unchanged).

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(1) . . . (unchanged).

(2) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(g) Bad Debt Losses Other Than Repossessions. . . . (unchanged).

(h) Special Situations.

(1) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(A) . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

7. . . . (unchanged).

8. . . . (unchanged).

(B) . . . (unchanged).

(i) Bad Debts Incurred in Connection with Accounts Held by Lenders. . . . (unchanged).

(1) Lender Defined. A "lender" for purposes of this regulation is defined as any of the following:

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) A person who is either an affiliated corporation (or affiliated entity electing to be taxed as a corporation) under section 1504 of Title 26 of the United States Code or an assignee of a person described in subdivision (i)(1)(A) or (i)(1)(B). A person is a "lender" under this subdivision (i)(1)(C) only if an election is ~~filed~~prepared and retained under subdivision (i)(4).

(2) Conditions to Claiming Deduction or Refund. With respect to an account held by a lender without recourse, a deduction or refund may be claimed for bad debt losses on the account only if all of the following conditions are met:

(A) ~~No~~A deduction or refund was not previously claimed or allowed on any portion of the account.

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) The retailer and the lender ~~file~~prepare and retain an election ~~with the Board~~, signed by both parties, which contains the elements specified in subdivision (i)(3) and ~~which~~ designates ~~either the retailer or the lender as the person~~which party is entitled to claim any deduction or refund under this regulation for tax previously paid by the retailer measured by the amount of the account found to be worthless and charged off. ~~No deduction or refund can be claimed until this election is filed with the Board.~~

(3) Election Between Retailer and Lender.

(A) In order for the retailer or the lender to claim a deduction or refund for bad debt losses from an account held by the lender without recourse, the retailer and the lender must ~~file~~prepare and retain an election ~~with the Board~~ designating which of them may claim such deduction or refund. The election may be in any form, including an existing contract between the retailer and the lender, so as long as the election contains the following elements:

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

7. . . . (unchanged).

8. A statement that the 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 ~~is filed with the Board~~.

9. The date of the election and the signatures of the retailer and the lender, or their authorized representatives. ~~If a copy of the signed election is filed with the Board rather than the original, t~~The person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures. An election may be signed in counterparts~~, and its filing would be regarded as perfected as of the filing of the second signed counterpart,~~ provided each counterpart is identical except for the signature and date of the signature. ~~If copies of the signed counterparts are filed with the Board, t~~The person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures ~~not filed with the Board~~.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes a lender with respect to those accounts for which the lender is the person entitled to the bad debt deduction or claim pursuant to an election ~~filed~~ under this subdivision (i)(3).

(4) Election Between Lender and Affiliated Entity or Other Assignee.

(A) If a person who is a lender under subdivision (i)(1)(A) or (i)(1)(B) and who has the right to claim any deduction or refund for bad debts the lender charges off on the account

wishes to assign to a person who is its affiliated entity under section 1504 of Title 26 of the United States Code or to some other assignee the right to claim any deduction or refund for the amount of bad debts charged off on the account, the lender and the affiliated entity or other assignee must ~~file~~prepare and retain an election signed by both parties~~with the Board prior to the affiliated entity's or other assignee's claiming of any deduction or refund~~. The election ~~filed with the Board~~ may be in any form, but must include all the following elements:

1. . . . (unchanged).

2. A copy of the election between the retailer and the lender under which the lender has the right to any (and all) deductions or refunds as a result of any bad debt losses charged off by the lender on the account(s). If that election has not yet been prepared~~filed with the Board~~, then that election must be prepared~~filed~~ along with the election between the lender and its affiliated entity or other assignee. ~~If t~~The elections with the original signatures ~~was retained by the lender rather than filing it with the Board, that election must either be filed with the Board or~~must be retained by the affiliated entity or other assignee.

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

7. . . . (unchanged).

8. . . . (unchanged).

9. A statement that the election may not be amended or revoked unless a new election, signed by both parties, is prepared and retained by the lender and the affiliated entity or other assignee~~ is filed with the Board~~.

10. The date of the election and the signatures of the lender and the affiliated entity or other assignee, or their authorized representatives. ~~If a copy of the signed election is filed with the Board rather than the original, t~~The person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures. An election may be signed in counterparts~~, and its filing would be regarded as perfected as of the filing of the second signed counterpart,~~ provided each counterpart is identical except for the signature and date of the signature. ~~If copies of the signed counterparts are filed with the Board, t~~The person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures~~ not filed with the Board~~.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes an entity affiliated with a lender under section 1504 of Title 26 of the United States Code, or other assignee, with respect to those accounts for which the affiliated entity or other assignee is the person entitled to the bad debt deduction or claim pursuant to an election ~~filed~~ under this subdivision (i)(4).

(5) Registration, Returns, Claims for Deduction and Refunds, and Payment of Tax.

(A) A retailer who has the right to claim deductions or refunds for bad debts charged off by a lender on an account held by that lender pursuant to an election ~~filed~~ under subdivision (i)(3) shall claim those deductions or refunds under the provisions of this regulation in the same manner as if the retailer held the account itself.

(B) Without regard to whether a lender holds a seller's permit for its own sales of tangible personal property, a lender who has the right to claim deductions or refunds for bad debts charged off on accounts pursuant to an election ~~filed~~ under subdivision (i)(3) and, if applicable, subdivision (i)(4), shall register with the Board for a Certificate of Registration - Lender no later than the date on which it first claims such a deduction or refund.

(C) A lender who has the right to claim deductions or refunds for bad debts charged off pursuant to an election ~~filed~~ under subdivision (i)(3) and, if applicable, subdivision (i)(4), is entitled to the same amount of deduction or refund, calculated in the same manner under the provisions of this regulation, as if the lender were the retailer who had sold the tangible personal property for which the retailer had reported and paid tax. If the lender has provided the name, address, and seller's permit number of the retailer responsible for paying the tax, in determining whether to grant the lender's claim for deduction or refund, the Board shall regard the retailer as having paid the applicable tax due unless the Board establishes otherwise. (Regardless of the Board's action on the lender's claim for deduction or refund, a retailer who failed to pay the applicable tax due remains liable for that tax.)

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) The filing by a lender of a claim for deduction or refund for bad debts on accounts covered by this subdivision (i) is not valid if an election pursuant to subdivision (i)(3) and, if applicable, an election pursuant to subdivision (i)(4), <u>is not prepared and retained that is signed by both parties</u>~~has not been filed with the Board~~. ~~If a lender files a claim for deduction or refund and the applicable election(s) is filed thereafter, the claim for deduction or refund will be regarded as having been filed on the date of the filing of the election(s).~~

(G) . . . (unchanged).

(H) . . . (unchanged).

Note: Authority cited: 7051, Revenue and Taxation Code. Reference: Sections 6055 and 6203.5, 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 1642, Bad Debts

A. Factual Basis

1. Relevant Background Information

Revenue and Taxation Code (RTC) sections 6055, subdivision (a), and 6203.5, subdivision (a), provide that a retailer is to be relieved of liability for sales or use tax when the measure of tax is represented by accounts receivable that are held by the retailer, but which have been found to be worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. In addition, RTC sections 6055, subdivision (a), and 6203.5, subdivision (a), allow a retailer who has reported and paid sales or use tax on an account that was subsequently found worthless and charged off (as described above) to claim a deduction for the tax paid on the worthless account, in accordance with regulations prescribed by the State Board of Equalization (Board).

RTC sections 6055, subdivision (b)(1), and 6203.5, subdivision (b)(1), provide that a retailer or lender that makes a proper election, under RTC sections 6055, subdivision (b)(4), and 6203.5, subdivision (b)(4), respectively, may claim a deduction or refund for tax the retailer reported and paid on an account held by the lender, which has been charged of as worthless (as described above). In addition, RTC sections 6055, subdivision (b)(3), and 6203.5, subdivision (b)(3), both provide as follows:

> (3) For purposes of this subdivision, the term "lender" means any of the following:
> (A) Any person that holds a retail account which that person purchased directly from a retailer who reported the tax.
> (B) Any person that holds a retail account pursuant to that person's contract directly with the retailer that reported the tax.
> (C) Any person that 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).

Therefore, RTC sections 6055, subdivision (b), and 6203.5, subdivision (b), respectively provide for a person that is an affiliated entity or assignee of a lender holding a retail account described in RTC sections 6055, subdivision (b)(3)(A) or (B), or 6203.5, subdivision (b)(3)(A) or (B), which has been charged of as worthless (as described above), to be treated as a "lender" for purposes of claiming a deduction or refund for tax the retailer reported and paid on the retail account, if a proper election is made under RTC sections 6055, subdivision (b)(4), or 6203.5, subdivision (b)(4).

California Code of Regulations, title 18, section (Regulation) 1642, *Bad Debts*, implements, interprets, and makes specific RTC sections 6055 and 6203.5. As relevant here, subdivision (a) of Regulation 1642 prescribes the general requirements for a retailer to be relieved of liability for sales and use tax under RTC sections 6055, subdivision (a), and 6203.5, subdivision (a). Subdivision (a) of Regulation 1642 also explains that if a retailer has reported and paid sales or use tax on an account that was subsequently found worthless and charged off (as described above), then the retailer may claim a bad debt deduction for the tax paid on the worthless account, in accordance with RTC section 6055, subdivision (a), or section 6203.5, subdivision (a), on the retailer's sales and use tax return filed for the period in which the account was found worthless and charged off. And, Regulation 1642, subdivision (a) explains further that if the retailer does not timely claim a bad debt deduction for tax paid on such an account, then the retailer may file a claim for refund for the tax, subject to the applicable statute of limitations.

Further, as relevant here, subdivision (i) of Regulation 1642 implements, interprets, and makes specific RTC sections 6055, subdivision (b), and 6203.5, subdivision (b). Regulation 1642, subdivision (i)(1), incorporates the definition of "lender" set forth in RTC sections 6055, subdivision (b)(3), and 6203.5, subdivision (b)(3), and makes the definition more specific by clarifying that an election must be filed, in accordance with Regulation 1642, subdivision (i)(4), to designate an affiliated entity or other assignee of a lender as the person (or lender) who may claim a bad debt deduction or credit with regard to an account held by the assigning lender, which has been charged of as worthless (as described above). Regulation 1642, subdivision (i)(2) implements, interprets, and makes specific the general requirements imposed by RTC sections 6055, subdivision (b)(1), and 6203.5, subdivision (b)(1), for claiming a bad debt deduction or refund for tax paid by a retailer on an account held by a lender and clarifies that an election must be filed, in accordance with Regulation 1642, subdivision (i)(3), to designate the retailer or the lender as the person entitled to claim a bad debt deduction or credit with regard to an account held by the lender. Regulation 1642, subdivision (i)(3), prescribes the requirements for a retailer and lender to make a proper election, under RTC sections 6055, subdivision (b)(4), and 6203.5, subdivision (b)(4), to designate either the retailer or the lender as the person who may claim a bad debt deduction or refund for tax the retailer reported and paid on an account held by the lender, which has been charged off as worthless (as described above). Regulation 1642, subdivision (i)(4), prescribes the requirements for a lender to make a proper election to assign the right to claim a bad debt deduction or refund to an affiliated entity or other assignee, under RTC sections 6055, subdivision (b)(3)(C) and (4), and 6203.5, subdivision (b)(3)(C) and (4). And, the requirements for making a proper election to assign the right to claim a bad debt deduction or refund to an affiliated entity or other assignee, under Regulation 1642, subdivision (i)(4), are consistent with the requirements for a retailer and lender to make a proper election to designate either the retailer or the lender as the person who may claim a bad debt deduction or refund, under Regulation 1642, subdivision (i)(3).

Furthermore, as relevant here, Regulation 1642, subdivision (i)(5)(A), (B), (C), and (F), respectively provide that, under the provisions of Regulation 1642, subdivision (i):

- A retailer may claim a bad debt deduction or refund for an account held by a lender "in the same manner as if the retailer held the account";
- A lender must register for "a Certificate of Registration – Lender" by the date the lender claims a bad debt deduction or refund for tax paid by a retailer;

- A lender entitled to claim a bad debt deduction or refund for tax paid by a retailer is "entitled to the same amount of deduction or refund . . . as if the lender were the retailer"; and
- A lender's claim for a bad debt deduction or refund, including a claim filed by an affiliated entity or other assignee of a lender, is not valid until a proper election has been made, under Regulation 1642, subdivision (i)(3), to designate the lender as the person with the right to claim the deduction or refund and, if applicable, a proper election has been made, under Regulation 1642, subdivision (i)(4) to assign the right to claim the deduction or credit to the affiliated entity or other assignee making the claim.

2. Recent Amendments to RTC sections 6055 and 6203.5

Prior to January 1, 2012, a retailer or lender could only claim a bad debt deduction or refund for accounts receivable held by the lender if, "prior" to making such claim, the retailer and the lender "filed" an election with the Board, signed by both parties, designating which party was entitled to claim the deduction or refund for the portion of the accounts receivable which was written off as worthless (as described above). This was because RTC sections 6055, subdivision (b)(4), and 6203.5, subdivision (b)(4), both expressly provided as follows:

> Prior to claiming any deduction or refund under this subdivision, the retailer who reported the tax and the lender shall file an election with the board, 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 filed with the board.

Therefore, Regulation 1642, subdivision (i)(2) currently requires that a retailer and a lender "file" a proper election with the Board, under Regulation 1642, subdivision (i)(3), designating which is entitled to claim a bad debt deduction or refund for tax paid by the retailer on an account held by the lender, which has been charged off as worthless (as described above), "before" the retailer or lender can actually claim the bad debt deduction or refund for the tax paid on the account. And, Regulation 1642, subdivision (i)(4), currently requires a lender and an affiliated entity or other assignee to "file" a proper election with the Board designating the affiliated entity or other assignee as the person entitled to claim a bad debt deduction or refund for tax paid on an account held by the lender "prior" to the affiliated entity or other assignee actually claiming a deduction or refund for the tax paid on the account.

However, sections 3 and 4 of Assembly Bill No. (AB) 242 (Stats. 2011, ch. 272) amended RTC sections 6055, subdivision (b)(4), and 6203.5, subdivision (b)(4), respectively, to remove the requirement that an election be *filed* with the Board, and instead require that an election be prepared, signed, and retained prior to claiming a bad debt deduction or refund, effective January 1, 2012. Then, sections 2 and 3 of AB 2688 (Stats. 2012, ch. 362) amended RTC sections 6055, subdivision (b)(4), and 6203.5, subdivision (b)(4), respectively, to remove the requirement that an election be prepared, signed, and retained *prior* to claiming a bad debt deduction or refund, effective January 1, 2013. As a result, RTC sections 6055, subdivision (b)(4), and 6203.5, subdivision (b)(4), currently provide that:

> For purposes of this section, a "proper election" shall be established when the retailer that reported the tax and the lender prepare and retain an election form,

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.

3. Proposed Changes to Regulation 1642 to Make it Consistent with the Recent Amendments to RTC sections 6055 and 6203.5

In order to make Regulation 1642, subdivision (i), consistent with the amendments made to RTC sections 6055, subdivision (b)(4), and 6203.5, subdivision (b)(4), by AB 242 and AB 2688 (discussed above), the Board proposes to:

- Change the word "filed" to the phrase "prepared and retained" in Regulation 1642, subdivision (i)(1)(C);
- Change the first sentence in Regulation 1642, subdivision (i)(2)(E) and delete the second sentence in Regulation 1642, subdivision (i)(2)(E) so that subdivision (i)(2)(E) requires a retailer and a lender to "prepare and retain an election, signed by both parties," instead of requiring a retailer and lender to "file an election with the Board";
- Change the first sentence in Regulation 1642, subdivision (i)(3)(A) so that subdivision (i)(3)(A) requires a retailer and a lender to "prepare and retain an election," instead of requiring a retailer and lender to "file an election with the Board";
- Change Regulation 1642, subdivision (i)(3)(A)8 so that subdivision (i)(3)(A)8 provides that an election by a retailer and lender may not be amended or revoked, unless a new "election, signed by both parties, is prepared and retained by the retailer and lender," instead of providing that such an election may not be amended or revoked unless a new "election signed by both the retailer and the lender is filed with the Board";
- Change the second sentence in Regulation 1642, subdivision (i)(3)(A)9 so that subdivision (i)(3)(A)9 does not indicate that an election must be filed with the Board and simply requires that "[T]he person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures";
- Change the last two sentences in Regulation 1642, subdivision (i)(3)(A)9 so that subdivision (i)(3)(A)9 does not indicate that an election signed in counterparts is required to be filed with the Board and simply requires that "[T]he person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures";
- Delete the word "filed" from Regulation 1642, subdivision (i)(3)(B);
- Change the first sentence in Regulation 1642, subdivision (i)(4)(A) to require that a lender and affiliated entity or other assignee "prepare and retain an election signed by both parties," rather than require that a lender and an affiliated entity or other assignee "file an election with the Board prior to the affiliated entity's or other assignee's claiming of any deduction or refund";
- Delete "filed with the Board" from the second sentence in Regulation 1642, subdivision (i)(4)(A);
- Change Regulation 1642, subdivision (i)(4)(A)2 to make it consistent with the changes made to Regulation 1642, subdivision (i)(3)(A) (discussed above) by clarifying that when an "election has not yet been prepared" under subdivision (i)(3)(A), then the election between the retailer and the lender, under subdivision (i)(3)(A), must be "prepared" along with the election between the lender and affiliated entity or other assignee, and also

clarifying that the "elections" with the original "signatures" only need to be retained by the affiliated entity or assignee, not filed with the Board;

- Change Regulation 1642, subdivision (i)(4)(A)9 to make it consistent with the changes made to Regulation 1642, subdivision (i)(3)(A)8 (discussed above) regarding amending and revoking a lender's election;
- Change Regulation 1642, subdivision (i)(4)(A)10 to make it consistent with all of the changes made to Regulation 1642, subdivision (i)(3)(A)9 (discussed above) to clarify that lenders' elections, including elections signed in counterparts, do not no need to be filed with the Board and simply require that the person with the right under an election to claim a bad debt deduction or refund must retain the election or counterparts with the original signatures;
- Delete the word "filed" from Regulation 1642, subdivision (i)(4)(B), and (5)(A) through (C); and
- Change Regulation 1642, subdivision (i)(5)(F) to further clarify that an election between a retailer and a lender under Regulation 1642, subdivision (i)(3) and an election between a lender and an affiliated entity or other assignee under Regulation 1642, subdivision (i)(4) does not need to be filed with the Board, but that a lender's claim for a bad debt deduction or refund is not valid if an election pursuant to subdivision (i)(3) and, if applicable, an election pursuant to subdivision (i)(4), "is not prepared and retained that is signed by both parties."

The Board has determined that the proposed changes to Regulation 1642, subdivision (i) (described above) are appropriate for processing under California Code of Regulations, title 1, section (Rule) 100 because they make subdivision (i) fully consistent with the amendments made to RTC sections 6055, subdivision (b)(4), and 6203.5, subdivision (b)(4), by AB 242 and AB 2688, the Board does not have discretion to continue to require lenders' elections to be filed with the Board prior to a lender claiming a bad debt deduction or refund after the amendments made to RTC sections 6055, subdivision (b)(4), and 6203.5, subdivision (b)(4), by AB 242 and AB 2688, and the changes to subdivision (i) do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

4. Additional Proposed Grammatical Changes to Regulation 1642

In addition, the Board is proposing to make a minor grammatical change to Regulation 1642, subdivision (a) to capitalize the first letter in the word "board" to make it consistent with the other references to the "Board" throughout the regulation. The Board is proposing to make grammatical changes to rephrase Regulation 1642, subdivision (i)(2)(A), without changing its meaning. Currently, the subdivision provides that a deduction or refund may be claimed for bad debt losses on an account only if "No deduction or refund was previously claimed on any portion of the account." The proposed changes replace the word "No" with the word "A" and insert the word "not" between the words "was" and "previously" so that subdivision (i)(2)(A) provides that a deduction or refund may be claimed for bad debt losses on an account only if "A deduction or refund was not previously claimed or allowed on any portion of the account." And, the Board is proposing to make three minor grammatical changes to the first sentence in Regulation 1642, subdivision (i)(2)(E) to: (1) delete the second word "which" from between the words "and" and "designates"; (2) replace the phrase designates "either the retailer or lender as the person" entitled to claim any deduction or refund with the phrase designates "which party is" entitled to

claim any deduction or refund; and (3) insert the word "the" between the words "by" and "amount."

The Board has determined that the additional grammatical changes to Regulation 1642, subdivisions (a) and (i)(2)(A) and (E) (described above) are appropriate for processing under Rule 100 because they make the regulation grammatically correct 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 1642, subdivisions (a) and (i).

TEXT OF PROPOSED CHANGES

1642. Bad Debts.

(a) In General. A retailer is relieved from liability for sales tax (section 6055 of the Revenue and Taxation Code) or from liability to collect use tax (section 6203.5 of the Revenue and Taxation Code) insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes (which include circumstances where the retailer's income is reported on a related person's income tax return and the bad debt is charged off on that return) or, if the retailer is not required to file income tax returns and the retailer's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles. A retailer may claim a bad debt deduction provided that the sales tax, or amount of use tax, was actually paid to the state.

This deduction should be taken on the return filed for the period in which the amount was found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles.

Failure to take the deduction on the proper return will not in itself prevent the allowance of a refund measured by an amount for which a retailer could have taken a timely deduction provided a claim for refund is filed with the ~~b~~Board within the limitation periods specified in section 6902 of the Revenue Taxation Code.

(b) Amount Subject to Deduction.

(1) . . . (unchanged).

(2) . . . (unchanged).

(c) Reporting. . . . (unchanged).

(d) Worthless Account Subsequently Collected. . . . (unchanged).

(e) Records. . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

(8) . . . (unchanged).

(f) Allowable Methods of Computing Loss.

(1) . . . (unchanged).

(2) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(g) Bad Debt Losses Other Than Repossessions. . . . (unchanged).

(h) Special Situations.

(1) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(A) . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

7. . . . (unchanged).

8. . . . (unchanged).

(B) . . . (unchanged).

(i) Bad Debts Incurred in Connection with Accounts Held by Lenders. . . . (unchanged).

(1) Lender Defined. A "lender" for purposes of this regulation is defined as any of the following:

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) A person who is either an affiliated corporation (or affiliated entity electing to be taxed as a corporation) under section 1504 of Title 26 of the United States Code or an assignee of a person described in subdivision (i)(1)(A) or (i)(1)(B). A person is a "lender" under this subdivision (i)(1)(C) only if an election is ~~filed~~prepared and retained under subdivision (i)(4).

(2) Conditions to Claiming Deduction or Refund. With respect to an account held by a lender without recourse, a deduction or refund may be claimed for bad debt losses on the account only if all of the following conditions are met:

(A) ~~No~~A deduction or refund was not previously claimed or allowed on any portion of the account.

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged).

(E) The retailer and the lender ~~file~~prepare and retain an election ~~with the Board~~, signed by both parties, which contains the elements specified in subdivision (i)(3) and ~~which~~

designates ~~either the retailer or the lender as the person~~which party is entitled to claim any deduction or refund under this regulation for tax previously paid by the retailer measured by the amount of the account found to be worthless and charged off. ~~No deduction or refund can be claimed until this election is filed with the Board.~~

(3) Election Between Retailer and Lender.

(A) In order for the retailer or the lender to claim a deduction or refund for bad debt losses from an account held by the lender without recourse, the retailer and the lender must ~~file~~prepare and retain an election ~~with the Board~~ designating which of them may claim such deduction or refund. The election may be in any form, including an existing contract between the retailer and the lender, so as long as the election contains the following elements:

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

7. . . . (unchanged).

8. A statement that the 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 ~~is filed with the Board~~.

9. The date of the election and the signatures of the retailer and the lender, or their authorized representatives. ~~If a copy of the signed election is filed with the Board rather than the original, t~~The person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures. An election may be signed in counterparts~~, and its filing would be regarded as perfected as of the filing of the second signed counterpart,~~ provided each counterpart is identical except for the signature and date of the signature. ~~If copies of the signed counterparts are filed with the Board, t~~The person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures ~~not filed with the Board~~.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes a lender with respect to those accounts for which the lender is the person entitled to the bad debt deduction or claim pursuant to an election ~~filed~~ under this subdivision (i)(3).

(4) Election Between Lender and Affiliated Entity or Other Assignee.

(A) If a person who is a lender under subdivision (i)(1)(A) or (i)(1)(B) and who has the right to claim any deduction or refund for bad debts the lender charges off on the account wishes to assign to a person who is its affiliated entity under section 1504 of Title 26 of the United States Code or to some other assignee the right to claim any deduction or refund for the amount of bad debts charged off on the account, the lender and the affiliated entity or other assignee must ~~file~~prepare and retain an election signed by both parties~~with the Board prior to the affiliated entity's or other assignee's claiming of any deduction or refund~~. The election ~~filed with the Board~~ may be in any form, but must include all the following elements:

1. . . . (unchanged).

2. A copy of the election between the retailer and the lender under which the lender has the right to any (and all) deductions or refunds as a result of any bad debt losses charged off by the lender on the account(s). If that election has not yet been prepared~~filed with the Board~~, then that election must be prepared~~filed~~ along with the election between the lender and its affiliated entity or other assignee. ~~If t~~The elections with the original signatures ~~was retained by the lender rather than filing it with the Board, that election must either be filed with the Board or~~must be retained by the affiliated entity or other assignee.

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

6. . . . (unchanged).

7. . . . (unchanged).

8. . . . (unchanged).

9. A statement that the election may not be amended or revoked unless a new election, signed by both parties, is prepared and retained by the lender and the affiliated entity or other assignee~~ is filed with the Board~~.

10. The date of the election and the signatures of the lender and the affiliated entity or other assignee, or their authorized representatives. ~~If a copy of the signed election is filed with the Board rather than the original, t~~The person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures. An election may be signed in counterparts~~, and its filing would be regarded as perfected as of the filing of the second signed counterpart,~~ provided each counterpart is identical except for the signature and date of the signature. ~~If copies of the signed counterparts are filed with the Board, t~~The person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures~~ not filed with the Board~~.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes an entity affiliated with a lender under section 1504 of Title 26 of the United States Code, or other assignee, with respect to those accounts for which the affiliated entity or other assignee is the person entitled to the bad debt deduction or claim pursuant to an election ~~filed~~ under this subdivision (i)(4).

(5) Registration, Returns, Claims for Deduction and Refunds, and Payment of Tax.

(A) A retailer who has the right to claim deductions or refunds for bad debts charged off by a lender on an account held by that lender pursuant to an election ~~filed~~ under subdivision (i)(3) shall claim those deductions or refunds under the provisions of this regulation in the same manner as if the retailer held the account itself.

(B) Without regard to whether a lender holds a seller's permit for its own sales of tangible personal property, a lender who has the right to claim deductions or refunds for bad debts charged off on accounts pursuant to an election ~~filed~~ under subdivision (i)(3) and, if applicable, subdivision (i)(4), shall register with the Board for a Certificate of Registration - Lender no later than the date on which it first claims such a deduction or refund.

(C) A lender who has the right to claim deductions or refunds for bad debts charged off pursuant to an election ~~filed~~ under subdivision (i)(3) and, if applicable, subdivision (i)(4), is entitled to the same amount of deduction or refund, calculated in the same manner under the provisions of this regulation, as if the lender were the retailer who had sold the tangible personal property for which the retailer had reported and paid tax. If the lender has provided the name, address, and seller's permit number of the retailer responsible for paying the tax, in determining whether to grant the lender's claim for deduction or refund, the Board shall regard the retailer as having paid the applicable tax due unless the Board establishes otherwise. (Regardless of the Board's action on the lender's claim for deduction or refund, a retailer who failed to pay the applicable tax due remains liable for that tax.)

(D) . . . (unchanged).

(E) . . . (unchanged).

(F) The filing by a lender of a claim for deduction or refund for bad debts on accounts covered by this subdivision (i) is not valid if an election pursuant to subdivision (i)(3) and, if applicable, an election pursuant to subdivision (i)(4), <u>is not prepared and retained that is signed by both parties</u>~~has not been filed with the Board~~. ~~If a lender files a claim for deduction or refund and the applicable election(s) is filed thereafter, the claim for deduction or refund will be regarded as having been filed on the date of the filing of the election(s).~~

(G) . . . (unchanged).

(H) . . . (unchanged).

Note: Authority cited: 7051, Revenue and Taxation Code. Reference: Sections 6055 and 6203.5, Revenue and Taxation Code.

Assembly Bill No. 599

CHAPTER 600

An act to amend Sections 6055 and 6203.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 23, 2000. Filed with Secretary of State September 24, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 599, Lowenthal. Sales and use taxes: worthless accounts.

The Sales and Use Tax Law provides that a retailer is relieved from liability for sales or use tax where the measure of the tax is represented by accounts that have been found to be worthless and charged off, as specified. Existing law also provides that a retailer may take as a deduction the amount found to be worthless and charged off, if the retailer has previously paid the tax.

This bill would provide, in the case of accounts held by a lender, that a retailer or lender would be entitled to a deduction or refund of the sales or use tax previously reported and paid by the retailer if certain conditions are met.

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

SECTION 1. 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) No deduction was 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 file an election with the board, 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 filed with the board.

SEC. 2. 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) No deduction was 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 file an election with the board, 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 filed with the board.

O

Assembly Bill No. 599

CHAPTER 600

An act to amend Sections 6055 and 6203.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 23, 2000. Filed with Secretary of State September 24, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 599, Lowenthal. Sales and use taxes: worthless accounts.

The Sales and Use Tax Law provides that a retailer is relieved from liability for sales or use tax where the measure of the tax is represented by accounts that have been found to be worthless and charged off, as specified. Existing law also provides that a retailer may take as a deduction the amount found to be worthless and charged off, if the retailer has previously paid the tax.

This bill would provide, in the case of accounts held by a lender, that a retailer or lender would be entitled to a deduction or refund of the sales or use tax previously reported and paid by the retailer if certain conditions are met.

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

SECTION 1. 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) No deduction was 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 file an election with the board, 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 filed with the board.

SEC. 2. 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) No deduction was 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 file an election with the board, 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 filed with the board.

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.

O

Assembly Bill No. 2688

CHAPTER 362

An act to amend Sections 1154, 6055, and 6203.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 17, 2012. Filed with Secretary of State September 17, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2688, Committee on Revenue and Taxation. Property taxes: sales and use taxes.

Existing law requires the personal property of an air carrier to be taxed at its fair market value, and the California Constitution requires property subject to ad valorem property taxation to be assessed in the county in which it is situated. Existing law requires air taxis which are operated in scheduled air taxi operations to be assessed pursuant to a specified formula, and requires all other air taxis to be assessed in the same manner as personal property, as provided. Existing law defines "air taxi" for purposes of these provisions to mean an aircraft used by an air carrier which does not utilize aircraft having a maximum passenger capacity, as provided, and which does not hold a specified certificate or other economic authority, as provided.

The bill would revise the definition of "air taxi," as provided.

Existing sales and use tax laws authorize a deduction or refund of tax in the case of worthless and written-off accounts held by a retailer or lender under specified circumstances, which include establishing a proper election by filing an election with the State Board of Equalization before claiming the deduction or refund.

This bill would instead require the proper election to be established by the retailer and lender preparing and retaining an election form that would not need to be prepared or retained prior to claiming any deduction or refund.

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

SECTION 1. Section 1154 of the Revenue and Taxation Code is amended to read:

1154. (a) As used in this section, "air taxi" means aircraft used by an air carrier which does not utilize aircraft having a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds in air transportation and which holds a certificate of public convenience and necessity or other economic authority issued by the United States Department of Transportation, or its successor.

(b) Air taxis which are operated in scheduled air taxi operations are not subject to the provisions of Part 10 (commencing with Section 5301) of this division and shall be assessed in accordance with the allocation formula set forth in Section 1152.

(c) All other air taxis shall be assessed in the county where the aircraft is habitually situated in the same manner and at the same ratio as other personal property in the county subject to general property taxation. Such aircraft shall be taxed at the same rate and in the same manner as all other property on the unsecured roll.

SEC. 2. 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 that 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 that holds a retail account which that person purchased directly from a retailer who reported the tax.

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

(C) Any person that 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) For purposes of this section, a "proper election" shall be established when the retailer that reported the tax and the lender prepare and retain an election form, 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. 3. 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 that 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 that holds a retail account which that person purchased directly from a retailer who reported the tax.

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

(C) Any person that 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) For purposes of this section, a "proper election" shall be established when the retailer that reported the tax and the lender prepare and retain an election form, 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.

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State of California | Board of Equalization

Memorandum

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

Date: July 25, 2013

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

Subject : **Board Meeting, August 13, 2013**
Item J - Chief Counsel's Rulemaking Calendar
Regulation 1642, *Bad Debts*

We request your approval to place proposed changes to Sales and Use Tax Regulation 1642, *Bad Debts*, on the Chief Counsel's Rulemaking Calendar for the August 13, 2013, Board meeting. The proposed changes incorporate and make the regulation consistent with amendments to Revenue and Taxation Code (RTC) sections 6055 and 6203.5 made by Assembly Bill No. (AB) 242 (Stats. 2011, ch. 727) and AB 2688 (Stats. 2012, ch. 362).

RTC sections 6055 and 6203.5 allow a retailer to be relieved of liability for the sales or use tax when the measure of tax is represented by accounts receivable that are held by the retailer, which have been found to be worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. These sections also allow a retailer or lender to claim a deduction or refund for tax the retailer has previously reported or paid on the portion of accounts receivable, held by the lender, which is written off as worthless. However, before the enactment of AB 242, a retailer or lender could only claim a deduction or refund for accounts receivable held by the lender if, prior to making such claim, the retailer and the lender filed an election form with the Board, signed by both parties, designating which party was entitled to claim the deduction or refund for the portion of the accounts receivable which is written off as worthless.

AB 242 amended RTC sections 6055 and 6203.5 to remove the requirement that the election form be filed with the Board, and instead required that the lender and retailer prepare, sign, and retain the election form prior to claiming the deduction or refund.

AB 2688 amended RTC sections 6055 and 6203.5 to remove the requirement that an election form be prepared, signed, and retained by the lender and the retailer *prior* to claiming a deduction or refund.

We will request the Board's authorization to make the changes to Sales and Use Tax Regulation 1642 to incorporate and make the regulation consistent with the amendments to RTC sections 6055 and 6203.5 made by AB 242 and AB 2688 and make minor grammatical

edits under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The changes are appropriate for processing under Rule 100 because they make the regulation consistent with the statutory changes made by AB 242 and AB 2688, make other minor grammatical edits, 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.

Approved:

Susanne Buehler for Jeffrey McGuire

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

Approved:

Cynthia Bridges

Cynthia Bridges, Executive Director

BOARD APPROVED
At the 8/13/13 Board Meeting

Joann Richmond

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
Mr. Clifford Oakes MIC:50
Ms. Kim Rios MIC: 50

Text of Proposed Changes to
California Code of Regulations, Title 18, Section 1642

Regulation 1642. BAD DEBTS

Reference: Sections 6055 and 6203.5, Revenue and Taxation Code.

(a) IN GENERAL. A retailer is relieved from liability for sales tax (section 6055 of the Revenue and Taxation Code) or from liability to collect use tax (section 6203.5 of the Revenue and Taxation Code) insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes (which include circumstances where the retailer's income is reported on a related person's income tax return and the bad debt is charged off on that return) or, if the retailer is not required to file income tax returns and the retailer's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles. A retailer may claim a bad debt deduction provided that the sales tax, or amount of use tax, was actually paid to the state.

This deduction should be taken on the return filed for the period in which the amount was found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles.

Failure to take the deduction on the proper return will not in itself prevent the allowance of a refund measured by an amount for which a retailer could have taken a timely deduction provided a claim for refund is filed with the ~~b~~Board within the limitation periods specified in section 6902 of the Revenue and Taxation Code.

(b) AMOUNT SUBJECT TO DEDUCTION.

(1) TAXABLE RECEIPTS. If the amount of an account found to be worthless and charged off is comprised in part of nontaxable receipts such as interest, insurance, repair, or installation labor and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only with respect to the unpaid amount upon which tax has been paid. In determining that amount, all payments and credits to the account may be applied ratably against the various elements comprising the amount the purchaser contracted to pay (pro rata method), may be applied as provided in the contract of sale (contract method), or may be applied by another method which reasonably determines the amount of the taxable receipts (alternative method). When claiming a bad debt deduction or refund using an alternative method, the retailer must include a clear explanation of that method along with the claiming of the deduction or refund. After having applied payments and credits using one method and claiming a deduction or refund based on such method, a retailer shall not thereafter reapply the payments or credits using another method with respect to such losses previously claimed.

(2) EXPENSES OF COLLECTION. No deduction is allowable for expenses incurred by the retailer in attempting to enforce collection of any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(c) REPORTING. All retailers must report sales tax liability on an accrual basis. Bad debt deductions will not be disallowed solely for the reason that a retailer is on a cash reporting basis for income tax purposes.

(d) WORTHLESS ACCOUNT SUBSEQUENTLY COLLECTED. If any account found worthless and charged off is thereafter collected by the retailer, in whole or in part, the taxable percentage of the amount so collected shall be included in the first return filed after such collection and tax shall be paid on such amount with the return. The same percentage of the account which the retailer claimed as an allowable bad debt deduction or refund shall be used to determine the taxable percentage of the recovery. The taxable percentage of any amounts received from a third party for the sale of an account after the retailer has found them to be worthless and has claimed a bad debt deduction or refund are regarded as amounts subsequently collected for purposes of this provision, and the retailer must include such amounts in the first return filed after receipt of such amounts and pay tax thereon.

(e) RECORDS. In support of deductions or claims for refund for bad debts, retailers must maintain adequate and complete records showing:

(1) Date of original sale.
(2) Name and address of purchaser.
(3) Amount purchaser contracted to pay.
(4) Amount on which retailer paid tax.
(5) The jurisdiction(s) where the local taxes and, when applicable, district taxes were allocated.
(6) All payments or other credits applied to account of purchaser.
(7) Evidence that the uncollectible portion of gross receipts on which tax was paid actually has been legally charged off as a bad debt for income tax purposes (whether or not the income tax return has yet been filed) or, if the retailer is not required to file income tax returns and the retailer's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles.

(8) The taxable percentage of the amount charged off as a bad debt properly allocable to the amount on which the retailer reported and paid tax. (See Appendix 1.)

(f) ALLOWABLE METHODS OF COMPUTING LOSS.

(1) IN GENERAL. When there is a repossession, a bad debt deduction is allowable only to the extent that the retailer sustains a net loss of gross receipts upon which tax has been paid. This will be when the amount of all payments and credits allocated to the purchase price of the merchandise, including the wholesale value of the repossessed article, is less than that price. If the pro rata method is used to apply payments, a retailer incurs an allowable bad debt deduction if the wholesale value of the repossessed merchandise is less than the net contract balance (after excluding unearned insurance and finance charges) at the date of repossession. If the contract method is used to apply payments, a retailer incurs an allowable bad debt deduction if the wholesale value of the repossessed merchandise is less than the net contract balance at the date of repossession. An alternative method of computing a bad debt loss may be used subject to approval by the Board.

(2) METHOD OF COMPUTING LOSS - PRO RATA METHOD.

(A) LOSS PER RECORDS. The loss per records is the bad debt loss the retailer writes off for income tax purposes. An estimate of bad debt losses based in part upon the history of the business or industry averages, may not be used to claim bad debt deductions or refunds for sales and use tax purposes.

(B) TAXABLE PORTION OF LOSS PER RECORDS. Only that portion of a bad debt loss attributable to the amount on which the retailer paid tax may be used to claim a bad debt deduction or refund for sales and use tax purposes. Even an account with all sales subject to tax may include some amounts on which tax was not paid, such as the tax or tax reimbursement charged to the consumer which is included in the account balance. The percentage of loss on which tax was paid for an account which is secured by the merchandise purchased, or which represents a single purchase of a significant amount, should be calculated on an actual basis. The percentage of loss on which tax was paid for accounts involving a large volume of small transactions may be calculated based on an analysis of the composition of the accounts receivable. All accounts of the retailer for which this calculation is made should use the same method of applying payments for the calculation (e.g., use FIFO for all accounts or use LIFO for all accounts). Examples using the pro rata method are attached as Appendices 1 and 2.

(3) METHOD OF COMPUTING LOSS CONTRACT METHOD. The allowable bad debt deduction is calculated by subtracting all payments and credits from the purchase price of the merchandise pursuant to the method of applying payments set forth in the applicable contract(s) with the customer and, to the extent the contract is silent on the method of applying payments, the loan accounting systems used by the retailer in the ordinary course of business, and from that amount subtracting the proceeds of the sale of any repossessed merchandise in accordance with (4) below.

(4) DETERMINING THE WHOLESALE VALUE OF REPOSSESSED MERCHANDISE. The wholesale value of repossessed merchandise must be determined in order to calculate the allowable bad debt deduction, if any, for the account. When the retailer sells the repossessed merchandise to a reseller in an arm's length transaction, the amount the retailer receives for the sale, less the direct cost of reconditioning the property prior to that sale and direct auction expenses paid to a third party, is the wholesale value. Otherwise, other sources must be used to determine the wholesale value. In the case of automobiles, industry-recognized price guides are generally the best source of such information. Adjustments should be made to the published wholesale prices in those instances where the automobile is in other than average condition.

Establishing the wholesale value of other types of repossessed merchandise, such as jewelry, furniture, appliances, etc., presents a more difficult problem if the retailer does not sell the merchandise to a reseller in an arm's length transaction. Each case must be considered on its own merits. Generally, if the retailer places the repossessed property into resale inventory, the retailer should use the amount at which the merchandise is recorded in resale inventory as its wholesale value. This amount should not, however, include any costs of repossessing, reconditioning, or other expense to put the merchandise in saleable condition.

(5) CONSOLIDATION OF NUMEROUS REPOSSESSED ITEMS. Retailers who have several repossessions each reporting period will find it convenient and time saving to consolidate the pertinent data. When this is done, only one calculation for each set of transactions need be made to compute the allowable deduction. The consolidations may be made by using 15-column working paper with one column for each of the elements required to compute the deduction (see Appendix 2).

Only those repossessions on which a loss is incurred should be scheduled. The retailer may quickly determine whether a particular transaction should be scheduled by comparing the net payoff with the wholesale value of the merchandise. If the net payoff is greater, a loss has been suffered and the transaction should be scheduled.

(g) BAD DEBT LOSSES OTHER THAN REPOSSESSIONS. Allowable bad debt deductions or refunds also may arise from sales made on an open account or on an unsecured installment basis. The deduction or refund should be computed in substantially the same manner as those involving repossessions (i.e., by prorating all

payments or credits between the sales price of the merchandise on which the retailer paid tax and the nontaxable charges or by applying all payments and credits as provided in the contract of sale and, if the contract is silent, the loan accounting systems used by the retailer in the ordinary course of business). No deduction or claim for refund will be allowed in any period subsequent to the period in which a bad debt deduction is taken based on a method of calculating the bad debt deduction different from that originally used in calculating the bad debt deduction.

(h) SPECIAL SITUATIONS.

(1) BAD DEBT DEDUCTIONS FOR PERSONS OTHER THAN THE RETAILER OR LENDER.

(A) A successor who pays full consideration for receivables acquired from the predecessor is entitled to a bad debt deduction to the same extent that the predecessor would have been entitled had the predecessor continued the business. A "successor" for purposes of this provision is one who is required by Revenue and Taxation Code section 6811 to withhold sufficient of the purchase price of the subject business to cover amounts due from the seller of the business under the Sales and Use Tax Law. A predecessor may not claim a bad debt deduction for any transaction or account for which a successor is entitled to a bad debt deduction under this provision.

(B) Except as provided in subdivision (h)(1)(A) and subdivision (i), a purchaser of receivables cannot claim a bad debt deduction or refund for accounts which are not collected.

(C) A retailer who sells receivables with recourse so that the retailer will bear any bad debt loss on them is entitled to a bad debt deduction to the same extent as if the receivables had not been sold. The fact that a retailer sells receivables at a discount, however, with or without recourse, does not in itself entitle the retailer to a bad debt deduction to the extent of the discount.

(2) BAD DEBTS OF CONSTRUCTION CONTRACTORS.
A construction contractor who is a consumer of materials or fixtures, or both, under Sales and Use Tax Regulation 1521 cannot claim a bad debt deduction or refund with respect to such materials or fixtures. A United States construction contractor as defined in subdivision (a)(3) of Regulation 1521 is always the consumer of both materials and fixtures, and thus can never claim a bad debt deduction or refund with respect to such materials or fixtures. A construction contractor, other than a United States construction contractor, is generally the consumer of materials, and thus may claim a bad debt deduction with respect to materials only when the contractor is regarded as selling those materials under subdivision (b)(2)(A)2. of Regulation 1521. A construction contractor, other than a United States construction contractor, is the retailer of fixtures and thus may claim a bad debt deduction or refund with respect to its retail sales of such fixtures. A construction contractor incurring a bad debt loss for which it is entitled to a bad debt deduction or refund as just explained must claim the deduction or refund in the same manner as those resulting from other types of taxable retail sales of tangible personal property.

(3) ENTITY AFFILIATED WITH RETAILER. The provisions of this subdivision (h)(3) apply only with respect to bad debt losses incurred on accounts created as a result of retail sales of tangible personal property for which the retailer remitted California sales or use tax on or after January 1, 2000.

(A) If a retailer wishes to assign to a person who is its affiliated entity under section 1504 of Title 26 of the United States Code the right to claim a deduction or refund for the amount of bad debts for which the retailer is otherwise entitled to a deduction or refund, the retailer and the affiliated entity must file an election with the Board prior to the affiliated entity's claiming of any deduction or refund. This election filed with the Board must include all the following elements:

1. The name, address, and seller's permit number of the retailer who reported or will report the tax; and the name, address, and seller's permit number of the affiliated entity of the retailer to whom the assignment is made.

2. A statement clearly specifying that the affiliated entity is entitled to any (and all) deductions or refunds as a result of any bad debt losses charged off on the account(s) covered by the election and the effective date of that election, and a statement that the retailer relinquishes all claims to such deductions or refunds.

3. A list of accounts to which the election pertains.

4. The agreement of the retailer to furnish any and all documentation required by the Board to support the claiming of deductions or refunds by the affiliated entity.

5. The acknowledgement by both the retailer and its affiliated entity that the Board may disclose relevant confidential information to all parties involved in order to support and confirm any deductions or refunds claimed.

6. A statement that the election may not be amended or revoked unless a new election signed by both the retailer and its affiliated entity is filed with the Board.

7. The acknowledgement by the affiliated entity that it cannot further assign the right to claim a deduction or refund for bad debts charged off on the account.

8. The dated signatures of the retailer and its affiliated entity, or their authorized representatives. If a copy of the signed election is filed with the Board rather than the original, the affiliated entity must retain the election with the original signatures.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes an entity affiliated with a retailer under section 1504 of Title 26 of the United States Code with respect to those accounts for which the affiliated entity is the person entitled to the bad debt deduction or claim pursuant to an election filed under this subdivision (h)(3).

(i) BAD DEBTS INCURRED IN CONNECTION WITH ACCOUNTS HELD BY LENDERS. The provisions of this subdivision (i) apply only with respect to bad debt losses incurred on accounts created as a result of retail sales of tangible personal property for which the retailer remitted California sales or use tax on or after January 1, 2000.

(1) LENDER DEFINED. A "lender" for purposes of this regulation is defined as any of the following:

(A) A person who holds an account which that person purchased without recourse directly from a retailer who reported California sales or use tax with respect to the sales of tangible personal property for which credit was extended under the retail account.

(B) A person who holds an account without recourse pursuant to that person's contract directly with a retailer who reported California sales or use tax with respect to the sales of tangible personal property for which credit was extended under the retail account.

(C) A person who is either an affiliated corporation (or affiliated entity electing to be taxed as a corporation) under section 1504 of Title 26 of the United States Code or an assignee of a person described in subdivision (i)(1)(A) or (i)(1)(B). A person is a "lender" under this subdivision (i)(1)(C) only if an election is ~~filed~~prepared and retained under subdivision (i)(4).

(2) CONDITIONS TO CLAIMING DEDUCTION OR REFUND. With respect to an account held by a lender without recourse, a deduction or refund may be claimed for bad debt losses on the account only if all of the following conditions are met:

(A) ~~No~~A deduction or refund was not previously claimed or allowed on any portion of the account.

(B) The account has been found worthless and charged off by the lender for income tax purposes (which include circumstances where the lender's income is reported on a related person's income tax return and the bad debt is charged off on that return) or, if the lender is not required to file income tax returns and the lender's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles.

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

(D) The account is for sales for which the retailer remitted California sales or use tax on or after January 1, 2000.

(E) The retailer and the lender ~~file~~prepare and retain an election ~~with the Board~~, signed by both parties, which contains the elements specified in subdivision (i)(3) and ~~which~~ designates ~~either the retailer or the lender as the person~~which party is entitled to claim any deduction or refund under this regulation for tax previously paid by the retailer measured by the amount of the account found to be worthless and charged off. ~~No deduction or refund can be claimed until this election is filed with the Board.~~

(3) ELECTION BETWEEN RETAILER AND LENDER.

(A) In order for the retailer or the lender to claim a deduction or refund for bad debt losses from an account held by the lender without recourse, the retailer and the lender must ~~file~~prepare and retain an election ~~with the Board~~designating which of them may claim such deduction or refund. The election may be in any form, including an existing contract between the retailer and the lender, so as long as the election contains the following elements:

1. The name, address, and seller's permit number of the retailer who reported or will report the tax and the name, address, and seller's permit number, if any, of the lender to whom the account(s) is assigned.

2. An agreement that the retailer relinquishes all rights to the account to the lender.

3. A statement clearly specifying whether the retailer or the lender is entitled to claim any (and all) deductions or refunds as a result of any bad debt losses charged off by the lender for the account(s) covered by the election,

the effective date of that election, and a statement that the other party relinquishes all rights to claiming such deductions or refunds.

4. A list of accounts to which the election pertains. If the election is a blanket election for all accounts assigned without recourse by the retailer to the lender or all accounts held by the lender without recourse pursuant to the lender's contract directly with the retailer, the election must so state.

5. The agreement of both the retailer and the lender to furnish any and all documentation requested by the Board to support the deductions or refunds claimed.

6. The acknowledgement by both the retailer and the lender that the Board may disclose relevant confidential information to all parties involved in order to support and confirm any deductions or refunds claimed.

7. If the lender is the person entitled to claim any deduction or refund for bad debts on the account, the Certificate of Registration – Lender account number of the lender. If the lender does not yet hold such a registration, the agreement of the lender that it will apply for the Certificate of Registration – Lender no later than on the date the lender first claims a deduction or refund for bad debts charged off on the account.

8. A statement that the 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~~ is filed with the Board~~.

9. The date of the election and the signatures of the retailer and the lender, or their authorized representatives. ~~If a copy of the signed election is filed with the Board rather than the original, t~~The person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures. An election may be signed in counterparts~~, and its filing would be regarded as perfected as of the filing of the second signed counterpart,~~ provided each counterpart is identical except for the signature and date of the signature. ~~If copies of the signed counterparts are filed with the Board, t~~The person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures~~ not filed with the Board~~.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes a lender with respect to those accounts for which the lender is the person entitled to the bad debt deduction or claim pursuant to an election ~~filed~~ under this subdivision (i)(3).

(4) ELECTION BETWEEN LENDER AND AFFILIATED ENTITY OR OTHER ASSIGNEE.

(A) If a person who is a lender under subdivision (i)(1)(A) or (i)(1)(B) and who has the right to claim any deduction or refund for bad debts the lender charges off on the account wishes to assign to a person who is its affiliated entity under section 1504 of Title 26 of the United States Code or to some other assignee the right to claim any deduction or refund for the amount of bad debts charged off on the account, the lender and the affiliated entity or other assignee must ~~file~~prepare and retain an election signed by both parties~~with the Board prior to the affiliated entity's or other assignee's claiming of any deduction or refund~~. The election ~~filed with the Board~~ may be in any form, but must include all the following elements:

1. The name, address, and seller's permit number of the retailer who reported or will report the tax; the name, address, seller's permit number, if any, and Certificate of Registration – Lender account number, if any, of the lender under subdivision (i)(1)(A) or (i)(1)(B) making the assignment; and the name, address, seller's permit number, if any, and Certificate of Registration – Lender account number, if any, of the person to whom the assignment is made under subdivision (i)(1)(C).

2. A copy of the election between the retailer and the lender under which the lender has the right to any (and all) deductions or refunds as a result of any bad debt losses charged off by the lender on the account(s). If that election has not yet been prepared~~filed with the Board~~, then that election must be ~~filed~~prepared along with the election between the lender and its affiliated entity or other assignee. ~~If t~~The elections with the original signatures ~~was retained by the lender rather than filing it with the Board, that election must either be filed with the Board or~~must be retained by the affiliated entity or other assignee.

3. A statement clearly specifying that the affiliated entity or other assignee is entitled to any (and all) deductions or refunds as a result of any bad debt losses charged off on the account(s) covered by the election and the effective date of that election, and a statement that the lender under subdivision (i)(1)(A) or (i)(1)(B) relinquishes all claims to such deductions or refunds.

4. A list of accounts to which the election pertains. If the election is a blanket election for all accounts held by the lender, the election must so state.

5. The agreement of the lender to furnish any and all documentation required by the Board to support the claiming of deductions or refunds by the affiliated entity or other assignee.

6. The acknowledgement by both the lender and its affiliated entity or other assignee that the Board may disclose relevant confidential information to all parties involved in order to support and confirm any deductions or refunds claimed.

7. If the affiliated entity or other assignee does not yet hold a Certificate of Registration - Lender, the agreement that it will apply for that certificate no later than on the date it first claims a deduction or refund for bad debts charged off on the account.

8. The acknowledgement by the affiliated entity or other assignee that it cannot further assign the right to claim a deduction or refund for bad debts charged off on the account.

9. A statement that the election may not be amended or revoked unless a new election, signed by both parties, is prepared and retained by ~~both~~ the lender and the affiliated entity or assignee ~~is filed with the Board~~.

10. The date of the election and the signatures of the lender and the affiliated entity or other assignee, or their authorized representatives. ~~If a copy of the signed election is filed with the Board rather than the original, t~~The person with the right under the election to claim the bad debt deduction or refund must retain the election with the original signatures. An election may be signed in counterparts~~, and its filing would be regarded as perfected as of the filing of the second signed counterpart,~~ provided each counterpart is identical except for the signature and date of the signature. ~~If copies of the signed counterparts are filed with the Board, t~~The person with the right under the election to the bad debt deduction or refund must retain all counterparts with the original signatures ~~not filed with the Board~~.

(B) The term "retailer" as used in this regulation (except as used in subdivisions (h) and (i)) includes an entity affiliated with a lender under section 1504 of Title 26 of the United States Code, or other assignee, with respect to those accounts for which the affiliated entity or other assignee is the person entitled to the bad debt deduction or claim pursuant to an election ~~filed~~ under this subdivision (i)(4).

(5) REGISTRATION, RETURNS, CLAIMS FOR DEDUCTION AND REFUNDS, AND PAYMENT OF TAX.

(A) A retailer who has the right to claim deductions or refunds for bad debts charged off by a lender on an account held by that lender pursuant to an election ~~filed~~ under subdivision (i)(3) shall claim those deductions or refunds under the provisions of this regulation in the same manner as if the retailer held the account itself.

(B) Without regard to whether a lender holds a seller's permit for its own sales of tangible personal property, a lender who has the right to claim deductions or refunds for bad debts charged off on accounts pursuant to an election ~~filed~~ under subdivision (i)(3) and, if applicable, subdivision (i)(4), shall register with the Board for a Certificate of Registration – Lender no later than the date on which it first claims such a deduction or refund.

(C) A lender who has the right to claim deductions or refunds for bad debts charged off pursuant to an election ~~filed~~ under subdivision (i)(3) and, if applicable, subdivision (i)(4), is entitled to the same amount of deduction or refund, calculated in the same manner under the provisions of this regulation, as if the lender were the retailer who had sold the tangible personal property for which the retailer had reported and paid tax. If the lender has provided the name, address, and seller's permit number of the retailer responsible for paying the tax, in determining whether to grant the lender's claim for deduction or refund, the Board shall regard the retailer as having paid the applicable tax due unless the Board establishes otherwise. (Regardless of the Board's action on the lender's claim for deduction or refund, a retailer who failed to pay the applicable tax due remains liable for that tax.)

(D) A lender who claims a deduction or refund for bad debts charged off shall be liable for tax on the taxable percentage of worthless accounts subsequently collected under subdivision (d), including amounts received for the sale of accounts for which the lender has claimed a bad debt deduction or refund.

(E) A lender who has a seller's permit for its own sales of tangible personal property may not commingle the claiming of its deductions pursuant to an election under subdivision (i)(3) and, if applicable, subdivision (i)(4), with any bad debt deductions related to its own sales of tangible personal property but must instead report such deductions on a separate return or schedule in the form specified by the Board. If the lender files a schedule attached to its sales and use tax return, it may apply the amount of its deduction calculated on that separate schedule against its liability for sales and use tax. To the extent that the deduction is not fully exhausted when applied to the lender's own sales and use tax liability, the lender may file a claim for refund.

(F) The filing by a lender of a claim for deduction or refund for bad debts on accounts covered by this subdivision (i) is not valid if an election pursuant to subdivision (i)(3) and, if applicable, an election pursuant to subdivision (i)(4), ~~has not been~~ is not prepared and retained that is signed by both parties. ~~filed with the Board. If a lender files a claim for deduction or refund and the applicable election(s) is filed thereafter, the claim for deduction or refund will be regarded as having been filed on the date of the filing of the election(s).~~

(G) A lender holding a Certificate of Registration – Lender shall file a return in a form specified by the Board to report the taxable percentage of recoveries and claim losses on accounts covered by an election pursuant to

subdivision (i)(3) and, if applicable, an election pursuant to subdivision (i)(4). This return shall be filed on a quarterly basis unless otherwise specified by the Board. The return shall include the taxable percentage of the amount of any recoveries for which the lender is liable for tax under subdivision (i)(5)(D). The lender may offset the amount of tax for which it would otherwise be entitled to a bad debt refund for the reporting period against the amount of tax for which it is liable for the taxable percentage of recoveries received during that same reporting period. The lender must file a return without regard to whether the lender received any net recoveries of previously claimed bad debts in the filing period. If the lender files a return under a seller's permit it holds for its own sales of tangible personal property, the lender must file a separate schedule to report the taxable percentage of its bad debt recoveries and losses on accounts covered by an election pursuant to subdivision (i)(3) and, if applicable, an election pursuant to subdivision (i)(4), in a form specified by the Board, as an attachment to the lender's sales and use tax return rather than filing a separate return for such recoveries and losses.

(H) A lender claiming a deduction or refund for bad debts, or reporting tax on recoveries for accounts for which it previously claimed a bad debt deduction or refund, must properly allocate the local and district taxes. If the transactions were approved by the lender on a transaction-by-transaction basis or the lender has the necessary information to do so, local and district taxes should be allocated on an actual basis. The lender may allocate local and district taxes related to all other accounts on an appropriate basis subject to approval by the Board.

Appendix 1

EXAMPLE OF COMPUTING ALLOWABLE BAD DEBT DEDUCTION FOR A REPOSSESSED VEHICLE USING PRO RATA METHOD

I. Step One. Compute the Repossession Loss Per Records

a.	Retail sales price		$12,000	
b.			230	
	Taxable fees (i.e., doc/smog)			
c.			12,230	(a+b)
	Total amount subject to tax			
d.	Sales tax (6%)	734		(c*.06)
e.	License fees	240		
f.		0		
	Other non-taxables			
g.			974	(d+e+f)
	Total non-taxable charges			
h.	*Total sales price*		13,204	(c+g)
i.	Down payment		2,000	
j.			11,204	(h-i)
	Balance on contract			
k.	Finance charges/accrued interest		3,000	
l.			14,204	(j+k)
	Total contract value			
m.	Payments received on contract		2,100	
n.			12,104	(l-m)
	Balance on date of repossession			
o.	Unearned finance charges		2,750	
p.			9,354	(n-o)
	Net contract balance			
q.	Value of repossession		6,000	
r.			$ 3,354	
	Repossession loss per records			

II. Step Two. Compute the Taxable Percentage of Loss.

This is done by dividing the total amount subject to tax (line c) by the total sales price (line h).

12,230 / 13,204 = 92.62%.

III. Step Three. Compute the Allowable Deduction.

This is done by multiplying the taxable percentage of loss (step Two) by the repossession loss per records (step One).

92.62% * 3,354 = *$3,106.47*

Appendix 2

CONSOLIDATION OF ALLOWABLE BAD DEBT DEDUCTION FOR MULTIPLE REPOSSESSED VEHICLES USING PRO RATA METHOD

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)
Date of Repos-session	Car #	Sales Price of Mdse[A]	Sales Tax (6%)	License Fee	Insurance (Net)[B]	Total Sales Price	Down Payment	Balance to Finance	Finance Charges (Net)[C]	Net Contract Balance	Payments	Value of Repos-session	Repos-session Loss Per Records
			[C*.06]			[C...F]		[G-H]		[I+J]			[K-L-M]
09-30-00	507	$ 9,000	$ 540	$160	$200	$ 9,900	$2,000	$ 7,900	$ 400	$ 8,300	$1,900	$ 5,000	$1,400
10-27-00	521	8,000	480	140	160	8,780	1,700	7,080	350	7,430	1,650	4,400	1,380
11-04-00	540	6,000	360	110	120	6,590	1,300	5,290	260	5,550	1,250	3,300	1,000
12-09-00	575	5,000	300	90	100	5,490	1,100	4,390	200	4,590	1,000	2,700	890
Totals		$28,000	$1,680	$500	$580	$30,760	$6,100	$24,660	$1,210	$25,870	$5,800	$15,400	$4,670
		(1)				(2)							(3)

Computation of the Taxable Percentage of Loss:

$28,000(1) / $30,760(2) = 91.03%

Computation of Allowable Deduction:

91.03% x $4,670(3) = $4,251

[A] Includes taxable amounts, such as doc and smog fees.

[B] Original insurance charge less rebate of unearned premium.

[C] Total finance charges per contract less unearned charges.

Tuesday, August 13, 2013

CHIEF COUNSEL MATTERS

RULEMAKING

Second Readoption of Emergency Regulation 2000, *Retailer Reimbursement Retention*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for second readoption of emergency Regulation 2000 to maintain the status quo while the Board considers the adoption of a permanent regulation (Exhibit 8.3).

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board readopted emergency Regulation 2000 as recommended by staff.

Section 100 Changes

Proposed Amendments to Regulation 1642, *Bad Debts*

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 make the regulation consistent with amendments to Revenue and Taxation Code sections 6055 and 6203.5 (Exhibit 8.4).

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 authorization to make Rule 100 changes to Regulation 1642, *Bad Debts,* as recommended by staff.

PUBLIC HEARING

Proposed Adoption of Sales and Use Tax Regulation 1566.1, *Auto Auctions and Auto Dismantlers (Continued)*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of a new regulation to implement, interpret, and make specific the presumption established by Revenue and Taxation Code section 6092.5 (see Exhibit 8.1).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted Regulation 1566.1, *Auto Auctions and Auto Dismantlers,* as recommended by staff.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

AUGUST 13, 2013

ITEM J CHIEF COUNSEL MATTERS

SECTION 100 CHANGES

J2 PROPOSED AMENDMENTS TO REGULATION 1642, BAD DEBTS

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

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 Board of Equalization Staff: Bradley Heller
18 Legal Department

19

20 ---oOo---

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22

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24

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26

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28

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 AUGUST 13, 2013
4 ---oOo---
5 MS. RICHMOND: Our next item is a Section
6 100 change; J2, Proposed Amendments to Regulation
7 1642, Bad Debts.
8 MR. HORTON: Mr. Heller.
9 MR. HELLER: Thank you.
10 I'm here to request that the Board
11 authorize staff to complete Rule 100 changes to
12 Regulation 1642, bad debts, to make the regulation
13 consistent with recent amendments to the Revenue and
14 Taxation Code that were sponsored by the Board.
15 MS. YEE: Move approval.
16 MR. HORTON: Move approval by Member Yee,
17 second by Member Steel.
18 Without objection, Members, such will be
19 the order.
20 ---oOo---
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1 REPORTER'S CERTIFICATE

2

3 State of California)

4) ss

5 County of Sacramento)

6

7 I, KATHLEEN SKIDGEL, Hearing Reporter for

8 the California State Board of Equalization certify

9 that on August 13, 2013 I recorded verbatim, in

10 shorthand, to the best of my ability, the

11 proceedings in the above-entitled hearing; that I

12 transcribed the shorthand writing into typewriting;

13 and that the preceding pages 1 through 3 constitute

14 a complete and accurate transcription of the

15 shorthand writing.

16

17 Dated: August 27, 2013

18

19 Kathleen Skidgel

20

21 KATHLEEN SKIDGEL, CSR #9039

22 Hearing Reporter

23

24

25

26

27

28