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OFFICE OF ADMINISTRATIVE LAW

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



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: November 6, 2015
RE: Return of Rulemaking Materials
OAL Matter Number 2015-1007-01
OAL Matter Type Regular (S)

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

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

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

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

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

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

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

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

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

DO NOT DISCARD OR DESTROY THIS FILE

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

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

Enclosures

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-0622-02	REGULATORY ACTION NUMBER 2015-1007-01 S	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

<p>2015 OCT -7 A 10: 50</p> <p>OFFICE OF ADMINISTRATIVE LAW</p>	<p>NOTICE</p> <p>REGULATIONS</p>
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

NOV 03 2015
1:55 PM

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2015-272	PUBLICATION DATE 7/3/2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Morticians	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1505
TITLE(S) 18	REPEAL

3. TYPE OF FILING

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

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

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE October 5, 2015
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 03 2015

Office of Administrative Law

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1505**

1505. ~~Morticians~~Funeral Directors.

(a) Definitions.

(1) Funeral Director. "Funeral director" means any person or entity that is engaged in providing a burial service or services and may include, but is not limited to, funeral directors, undertakers, morticians, embalmers, or cemetery brokers.

(2) Burial. "Burial" means all legal methods of disposing of the remains of a deceased person, including, but not limited to, interment, cremation, burial at sea, and medical school donation.

(3) Cash Advances. "Cash advances" means funds paid out to third parties as a courtesy to the client for items that are part of the funeral service but not generally sold by the funeral director.

(ab) In General.

(1) ~~Morticians~~Funeral Directors as Retailers. ~~Morticians~~Funeral directors are retailers of caskets, boxes, vaults, and clothing. They ~~also~~ are also retailers of any other tangible personal property such as memorial books and digital video discs (DVDs) furnished in connection with rendering their services if a separate charge is made for such property. ~~Unless otherwise exempt, tax~~ applies to the sales price of all tangible personal property sold by ~~morticians~~funeral directors, unless otherwise exempt. [FN1]

(2) ~~Morticians~~Funeral Directors as Consumers. ~~Morticians~~Funeral directors are consumers of acknowledgment cards, memorial folders, registration books, embalming fluid, cosmetics, eye caps, morgue supplies, car stickers, ~~and~~ prayer books, memorial books, and DVDs which are furnished by them in connection with services they render unless a separate charge is made for such property. Tax applies to the sales price ~~to the mortician~~ of all tangible personal property sold to and consumed by ~~him~~the funeral director.

(3) Example of Application of Tax. In the example below, the burial package includes the basic services of the funeral director and staff, transfer of the decedent to the funeral home, embalming, dressing, cosmetology and placement of the decedent in a casket, facility and staff for ceremony, equipment and staff for committal service, on-line funeral notice, one visitation period, use of hearse, one "life-tribute" DVD, and a premium memorial box set. The client chose to purchase a maple casket and 10 additional DVDs for their family.

Funeral director's invoice to client:

<u>Maple Casket (t)</u>	<u>2,895.00</u>
<u>Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)</u>	<u>250.00</u>
<u>Total of Items Subject to Tax</u>	<u>\$3,145.00</u>

<u>Traditional Chapel Burial Package</u>	<u>\$4,945.00</u>
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Fees for Cash Advance items:

<u>County filing fee</u>	<u>12.00</u>
<u>Certified copy of Death Certificate</u>	<u>21.00</u>
<u>Organist</u>	<u>225.00</u>
<u>Total Fees</u>	<u>\$258.00</u>
<u>Total Nontaxable</u>	<u>\$5,203.00</u>
<u>Total Taxable</u>	<u>\$3,145.00</u>
<u>Sales Tax (\$3,145.00) x 8.25%</u>	<u>259.46</u>
<u>Grand Total</u>	<u>\$8,607.46</u>

(t) = Tangible personal property

(bc) Application of Tax to Specific Types of Transactions.

(1) Sales in Interstate or Foreign Commerce. The sale of a casket and other tangible personal property by a ~~mortician~~funeral director, which ~~he~~is delivered or shipped to an out-of-state point pursuant to the agreement of sale, is regarded as a sale in interstate or foreign commerce and is exempt from the tax. The facts that the death of the deceased occurred in this state, that the contracting parties are residents of this state, and that services are held in this state prior to the shipment, are immaterial.

(2) Cash Advances. Tax does not apply to cash advances for such items as cemetery charges, newspaper notices, airplane tickets, ministerial fees, and flowers.

(23) Sales to the United States (U.S.) Government. All or a portion of charges for funerals of veterans and other persons may be paid by the United States U.S. Department of Veterans Administration Affairs or by the Social Security Administration. Effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans. Morticians Funeral directors may take a deduction for sales to the United States U.S. Government when claims filed by them with federal agencies are paid directly to the ~~morticians~~funeral directors regardless of method of billing. If funeral charges are paid by another person, there is no tax exemption even though such person may receive reimbursement from a federal agency and even though the amount received as reimbursement is assigned or endorsed over to the ~~mortician~~funeral director as a credit against those charges.

In computing the allowable exemption, the funeral allowance and the interment allowance must be treated separately.

(A) Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales of tangible personal property and charges for exempt services. None are to be allocated to ~~accommodation~~ cash advances. The only exception will be when a portion of a payment is clearly identified as applying to something for which a ~~mortician~~funeral director has made a specific charge.

(B) Payments received directly from the ~~United States~~U.S. Department of Veterans Administration Affairs which are identified as interment allowances are to be prorated between sales of tangible personal property used in actual interment and charges or advances for services in connection with the interment. The only exception will be when a portion of the payment is clearly identified as applying to something pertaining to interment for which the ~~mortician~~funeral director has made a specific charge.

~~(3) Examples of Application of Amounts Received by Morticians Directly From a Federal Agency (Examples are at 6 percent rate):~~

Mortician's invoice to client:

Charges	
Services	\$ 400.00
Casket	355.00
Vault	200.00
Suit	<u>45.00</u>
Subtotal	<u>\$1,000.00</u>
Accommodation Cash Advances	
Cemetery Space and Opening	\$ 50.00
Clergy	25.00
Musie	<u>15.00</u>
Subtotal	<u>\$ 90.00</u>
Total	<u>\$1,090.00</u>
Sales Tax (6% of \$355, \$200 & \$45)	<u>36.00</u>
Total	<u>\$1,126.00</u>

~~Example 1. Funeral allowance only.~~

~~Cash received by the mortician directly from a federal agency as a funeral allowance, and not allocated by the United States Government to any specific portion of the above charges, was \$300. No interment allowance was received.~~

~~Since \$600 of the \$1,000 charged the client (exclude the cash advances) was for tangible personal property, 60% of the amount received from the federal agency (60% of \$300 equals \$180) is considered a sale of such property to the United States Government and is exempt from sales tax.~~

Computation of Tax:

Total Charges	\$1,090.00
Less: Accommodation Advances	\$ 90.00

Exempt Services	400.00	
Sale to United States	<u>180.00</u>	<u>670.00</u>
Taxable Sale		\$ 420.00
Tax at 6%		<u>25.20</u>
Taxable Sale Including Tax		<u>\$ 445.20</u>

Example 2. Funeral allowance and interment allowance received by mortician.

Cash received by the mortician directly from a federal agency, and not allocated by the United States Government to any specific portion of the above charges, was \$300 as a funeral allowance and \$150 as an interment allowance.

Since the total charges by the mortician related to interment were \$250 (vault \$200 plus cemetery space and opening \$50), and the charge for tangible personal property related to interment was \$200 (vault), 80% of the amount received from the federal agency as an interment allowance (80% of \$150 equals \$120) is considered a sale of such property to the United States Government and is exempt from sales tax.

Since \$400 (casket \$355 and suit \$45) of the \$800 charged the client for the funeral (exclude the cash advances and the vault) was for tangible personal property, 50% of the amount received from the federal agency as a funeral allowance (50% of \$300 equals \$150) is considered a sale of such property to the United States Government and is exempt from sales tax.

Computation of Tax:

Total Charges		\$1,090.00
Less: Accommodation Advances	\$ 90.00	
Exempt Services	400.00	
Sale to United States Government (\$120 plus \$150)	<u>270.00</u>	<u>760.00</u>
Taxable Sale		\$ 330.00
Tax at 6%		<u>19.80</u>
Taxable Sale Including Tax		<u>\$ 349.80</u>

(4) Accommodation Cash Advances. Tax does not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, ministerial fees and flowers.

(54) Tax-Paid Purchases Resold. A mortician funeral director may claim a "tax-paid purchases resold" deduction if the mortician funeral director reimbursed the vendor for tax which the vendor is required to pay to the state or has paid use tax with respect to the property and has resold the property prior to making any use of it.

(ed) "Pre-Need" Agreements. Where a ~~mortician~~funeral director, cemetery association or other person enters into an agreement with a customer to provide services upon the death of the customer, no sale occurs for sales and use tax purposes until the services are rendered.

An amount designated as "sales tax" in the agreement will be considered an estimate of tax which may become due when the services are rendered. No sales tax should be paid to the board in connection with "pre-need" agreements until the services are rendered.

{FN1}

— On October 25, 1972, the board adopted an amendment to the regulation by which the 50 percent standard service reporting procedure in effect until October 18, 1970, and the 45 percent standard service reporting procedure in effect thereafter, are no longer allowable.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6015 and 6381, 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# 2015-1007-01
 BOARD OF EQUALIZATION
 Morticians

This rulemaking action amends and updates section 1505 of Title 18 of the California Code of Regulations to conform to changes in the funeral services industry and in the way the United States Department of Veterans Affairs pays veteran interment allowances and to clarify when a funeral director is a retailer as opposed to consumer of tangible personal property for sales or use tax purposes. The action also amends section 1505 to update industry terminology, to correct grammar, and to provide gender neutrality.

Title 5
 AMEND: 1505
 Filed 11/03/2015
 Effective 01/01/2016
 Agency Contact: Richard Bennion (916) 445-2130

File# 2015-1014-06
 BOARD OF FORESTRY AND FIRE PROTECTION
 Protection of Habitable Structures Exemption, 2015

This rulemaking action makes permanent the emergency regulations implementing Assembly Bill 1867 (Chapter 804, Statutes of 2014). The action exempts persons engaged in the cutting or removal of trees which are between 150 and 300 feet of an approved and legally permitted habitable structure from certain requirements of the Forest Practices Act, including the plan preparation and submission requirements and the completion and stocking report requirements, in order to address fuel conditions which have been made worse by drought and tree mortality.

Title 14
 AMEND: 895.1, 1038, 1038.2
 Filed 11/03/2015
 Effective 01/01/2016
 Agency Contact: Thembi Borrás (916) 653-9633

File# 2015-0921-01
 CALIFORNIA POLLUTION CONTROL
 FINANCING AUTHORITY
 CPCFA — Electric Vehicle Charging Station Financing Program

This Certificate of Compliance by the California Pollution Control Financing Authority (“CPCFA”) makes permanent the prior emergency rulemaking action (OAL File No. 2015-0319-03E) that adopted five sections in title 4 of the California Code of Regulations. The Electric Vehicle Charging Station Financing Program (the “EVCS Financing Program”) was established through an interagency agreement between CPCFA and the California Energy Commission (the “Commission”). The regulations adopted through the emergency rulemaking and made permanent through this Certificate of Compliance concern the establishment and implementation of the EVCS Financing Program.

Title 4
 ADOPT: 8078.3, 8078.4, 8078.5, 8078.6, 8078.7
 Filed 11/02/2015
 Effective 11/02/2015
 Agency Contact: Ethan Wieser (916) 651-3712

File# 2015-1020-02
 DEPARTMENT OF FINANCE
 Conflict-of-Interest Code

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

Title 2
 AMEND: 37000
 Filed 11/04/2015
 Effective 12/04/2015
 Agency Contact: Jeanna Wimberly (916) 445-8918

File# 2015-1023-03
 DEPARTMENT OF FOOD AND AGRICULTURE
 Asian Citrus Psyllid Interior Quarantine

This emergency rulemaking action by the Department of Food and Agriculture expands the quarantine area for the Asian Citrus Psyllid (ACP) (*Diaphorina citri*) in the Bakersfield area of Kern County by approximately 83 square miles. This action also establishes a new ACP quarantine area of approximately 106 square miles in the Arvin area of Kern County.

Title 3
 AMEND: 3435(b)
 Filed 10/29/2015
 Effective 10/29/2015
 Agency Contact: Sara Khalid (916) 403-6625

Rulemaking File Index
Title 18. Public Revenue
Sales and Use Tax

Regulation 1505, *Morticians*

1. [Final Statement of Reasons](#)
2. [Updated informative digest](#)
3. [Business Tax Committee Minutes, April 28, 2015](#)
 - Minutes
 - Deputy Director memo dated April 17, 2015
 - BTC Agenda
 - Formal Issue Paper Number 15-003
 - Exhibit 1 Revenue Estimate
 - Exhibit 2 Text Regulation 1505
 - Exhibit 3 Email from SCI
4. [Reporter's Transcript Business Taxes Committee, April 28, 2015](#)
5. [Estimate of Cost or Savings, July 8, 2015](#)
6. [Economic and Fiscal Impact Statements, June 22, 2015](#)
7. [Notice of Publications](#)
 - Form 400 and Notice, Publication Date July 3, 2015
 - Email sent to Interested Parties, July 3, 2015
 - CA Regulatory Notice Register 2015, Volume No. 27-Z
8. [Notice to Interested Parties, July 3, 2015](#)

The following items are exhibited:

 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Regulation 1505
 - Regulation History
9. [Statement of Compliance](#)
10. [Reporter's Transcript, Item F1, September 16, 2015](#)
11. [Draft Minutes, December F1, September 16, 2015, and Exhibits](#)
 - Notice of Proposed Regulatory Action
 - Initial Statement of Reasons
 - Proposed Text of Regulation 1505
 - Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on October 5, 2015 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

October 5, 2015

A handwritten signature in black ink, appearing to read "Richard E. Bennion", written over a horizontal line.

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for the Adoption of the
Proposed Amendments to California Code of Regulations,
Title 18, Section 1505, *Morticians***

UPDATE OF INFORMATION IN THE INITIAL STATEMENT OF REASONS

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1505, *Morticians*, on September 16, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1505 without making any changes. The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on September 16, 2015, to comment on the proposed regulatory action.

The factual basis, specific purpose, and necessity for, the problems to be addressed by, and the anticipated benefits from the adoption of the proposed amendments to Regulation 1505 are the same as provided in the initial statement of reasons. The Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by the burial service industry.

The adoption of the proposed amendments to Regulation 1505 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1505 or the proposed amendments to Regulation 1505.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the proposed amendments to Regulation 1505 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available to the public for review prior to the close of the public comment period.

In addition the factual basis has not changed for the Board's initial determination that the proposed regulatory action will not have a significant adverse economic impact on business, the Board's determination that the proposed amendments to Regulation 1505 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, and the Board's economic impact assessment, which determined that the Board's proposed regulatory action:

- Will neither create nor eliminate jobs in the State of California;
- Nor result in the elimination of existing businesses;
- Nor create or expand business in the State of California; and
- Will not affect the benefits of Regulation 1505 to the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments to Regulation 1505 may affect small businesses.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Regulation 1505 does not impose a mandate on local agencies or school districts.

Public Comments

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on September 16, 2015, to comment on the proposed regulatory action.

Determinations Regarding Alternatives

By its motion on September 16, 2015, the Board determined that no alternative to the proposed amendments to Regulation 1505 would be more effective in carrying out the purposes for which the amendments are proposed, would be as effective and less burdensome to affected private persons than the adopted amendments, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or provisions of law.

The Board did not reject any reasonable alternative to the proposed amendments to Regulation 1505 that would lessen any adverse impact the proposed action may have on small business.

No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

Minor Corrections

Page 3 of the initial statement of reasons for the proposed amendments to Regulation 1505 contained a typographical error indicating that Formal Issue Paper 15-003 was distributed to the Board Members for consideration at the Board's "July" 28, 2015, Business Taxes Committee (BTC) meeting, when the formal issue paper was in fact distributed to the Board Members for consideration at the Board's "April" 28, 2015, BTC meeting as correctly indicated elsewhere in the initial statement of reasons and the transcript from the BTC meeting included in the rulemaking file.

Also, the Board made two minor corrections to the final text illustrating the proposed amendments to Regulation 1505, which did not change the proposed amendments. The Board added ~~strikeout~~ to note the deletion of an extra space between the words "also" and "are" in the second sentence in renumbered subdivision (b)(1), and the Board deleted the underline from a

space between the words “of” and “Veterans” in the first sentence in renumbered subdivision (c)(3), which is already included in the current text of the regulation.

In addition, the current text of the first sentence in Regulation 1505, subdivision (b)(2)(A), as previously adopted by the Board, provides that “Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales *of* tangible personal property and charges for exempt services.” (Italics added.) However, due to a typographical error, the word “of” has been replaced with the word “or” in the version of the sentence currently published on the Office of Administrative Law’s (OAL’s) Website, and the error on OAL’s Website was inadvertently reproduced in the text of the Board’s proposed amendments to renumbered subdivision (c)(2)(A). Therefore, the Board notified OAL regarding the error on its Website and asked OAL to correct the error. The Board also informed OAL that the Board would correct the error in the final text of the Board’s proposed amendments to Regulation 1505 so that the final text of the proposed amendments to Regulation 1505 correctly reflects the use of the word “of” in the current text of the regulation. And, the Board has replaced “or” with “of” in the final text of the proposed amendments to the first sentence in renumbered subdivision (c)(2)(A) to correct the error.

**Updated Informative Digest for the State Board of Equalization’s
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Section 1505, *Morticians***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1505, *Morticians*, on September 16, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1505 without making any changes.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on September 16, 2015, to comment on the proposed regulatory action. There have not been any changes to the applicable laws or the effect of, the objectives of, and anticipated benefits from the adoption of the proposed amendments to Regulation 1505 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

Summary of Existing Laws and Regulations

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (RTC, § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer’s gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Reg. 1700, subd. (a)(1).)

When sales tax does not apply, California use tax is imposed, measured by the sales price of property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) The use tax is imposed on the person actually storing, using, or otherwise consuming the property. (RTC, § 6202.)

The term “retail sale” means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term “seller” includes “every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.” (RTC, § 6014.) Also, the term “retailer” includes “[e]very seller who makes any retail sale or sales of tangible personal property” (RTC, § 6015, subd. (a)(1).)

Federal and California law limit the application of California’s sales and use taxes to transactions in interstate and foreign commerce. The Board adopted Regulation 1610, *Interstate and Foreign Commerce*, to generally prescribe the

application of California's sales and use taxes to transactions involving the movement of tangible personal property into and out of California.

Also, federal and California law limit the application of California's sales and use taxes to transactions involving the United States (U.S.) Government. (RTC, §§ 6352, 6381.) And, the Board adopted Regulation 1614, *Sales to the United States and Its Instrumentalities*, to generally prescribe the circumstances under which gross receipts from the sale of tangible personal property to the U.S. Government and the consumption of tangible personal property purchased by the U.S. Government are exempt from sales and use tax under federal and California law.

In addition, California law provides that, in accordance with regulations prescribed by the Board, a deduction may be taken if a retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for sales tax or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (RTC, § 6012). And, the Board adopted Regulation 1701, *Tax-Paid Purchases Resold*, to generally prescribe the circumstances under which a retailer may claim such a deduction.

Finally, the Board adopted Regulation 1505 to provide specific guidance to morticians regarding the proper application of sales and use tax. The regulation explains when morticians are retailers and when they are consumers of tangible personal property for sales and use tax purposes. It also provides guidance to morticians on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and "pre-need agreements." Regulation 1505's provisions initially became effective August 1, 1933, they were amended and renumbered as Regulation 1505 in 1970, and they have not been amended since 1980.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1505

Need for Clarification

Board staff determined that there were issues with Regulation 1505 because:

- The terminology used in the regulation is outdated;
- The regulation does not reflect the current goods and services provided by the burial service industry;
- There have been changes in the interment allowance provided by the U.S. Government, which is specifically referred to in the regulation; and
- It is no longer necessary for the regulation to provide detailed guidance and examples regarding the application of tax to amounts burial service providers receive directly from a federal agency because recent procedural changes allow the U.S. Department of Veterans Affairs (VA) to pay death

benefits directly to the surviving party, instead of the burial service provider.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1505 to address the issues described above and a discussion paper explain the draft amendments. Both were provided to interested parties.

As relevant here, the draft amendments added a new subdivision (a) to Regulation 1505 to define the terms "morticians" and "cash advances," and renumbered the regulation's current subdivisions. The draft amendments also added "memorial books and digital video discs" as examples of tangible personal property sold by morticians in renumbered subdivision (b)(1).

On January 27, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting, however, staff received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to change the title of the regulation from "Morticians" to "Funeral Director." Additionally, after the interested parties meeting, BTC staff received a letter dated February 16, 2015, from Sarah Adams, Vice President of Tax, Service Corporation International. The letter requested the Board consider an amendment to renumbered subdivision (b)(2) to include a reference to memorial books and DVDs that would mirror the BTC staff's draft amendments to renumbered subdivision (b)(1), which Board staff incorporated.

April 28, 2015 Business Taxes Committee Meeting

Subsequently, staff prepared Formal Issue Paper 15-003 and distributed it to the Board Members for consideration at the Board's [April¹] 28, 2015, BTC meeting. Formal Issue Paper 15-003 recommended that the Board propose to change the name of Regulation 1505 from "Morticians" to "Funeral Directors" and update all the references to "mortician" to refer to "funeral director" throughout the regulation. The change to the title of the regulation from "Morticians" to "Funeral Directors" was suggested by interested parties and BTC staff agreed this term is more indicative of the industry and the person responsible for reporting tax.

The formal issue paper recommended that the Board propose to add a new subdivision (a) to Regulation 1505, and renumber the regulation's current subdivisions. The formal issue paper recommended that new subdivision (a) include a definition for the new term "funeral director," and the term "burial," which is used in the definition of "funeral director," in order to update the

¹ The informative digest in the notice of proposed regulatory action contained a typographical error indicating the month of July instead of April.

regulation and provide clarity regarding the terms used throughout the regulation. The formal issue paper recommended that the Board propose to update the regulation to more succinctly refer to “cash advances,” instead of “accommodation cash advances.” The formal issue paper also recommended that the Board propose to include a definition for the term “cash advances” in subdivision (a) to provide additional clarity, add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to “cash advances,” renumber current subdivision (b)(2) as subdivision (c)(3), delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances, and renumber current subdivision (b)(5) as subdivision (c)(4).

The formal issue paper recommended that the Board propose to add language to renumbered subdivision (b)(1) and (2) to update the regulation and clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs. The formal issue paper recommended that the Board propose to rephrase the last sentence in renumbered subdivision (b)(1) to make it grammatically correct, and delete the footnote from renumbered subdivision (b)(1), which was intended to provide additional notice regarding a 1972 amendment to Regulation 1505, but is no longer relevant. The formal issue paper also recommended that the Board propose to add a new paragraph (3) to renumbered subdivision (b) to provide an updated and more helpful example of how tax applies to the items on a typical funeral director’s invoice using a current tax rate.

Additionally, the formal issue paper explained that Regulation 1505, subdivision (b)(2) currently states, in part, “[e]ffective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans.” However, the interment allowance provided by section 2303(b) of title 38 of the United States Code has been increased several times since Regulation 1505 was last amended, section 2303(b) currently provides that the interment allowance is \$700, and section 2303(c) now requires the VA to annually increase the interment allowance to reflect increases in the consumer price index. Accordingly, the formal issue paper recommended that the Board proposed to delete the language in renumbered subdivision (c)(3) that refers to a specific dollar amount for the interment allowance so there is no future need to amend the regulation each time the interment allowance changes. Also, the United States “Veterans Administration” was renamed the “Department of Veterans Affairs” since Regulation 1505 was last amended in 1980. So, the formal issue paper also recommended that the Board propose to update Regulation 1505 by adding “Government” to the end of the title of renumbered subdivision (c)(3), changing the references to the “United States” to “U.S.” in renumbered subdivision (c)(3), and revising the remaining references to the “Veterans Administration” to refer to the “Department of Veterans Affairs” in renumbered subdivision (c)(3).

Furthermore, effective, July 7, 2014, the VA amended its regulations regarding the payment of burial benefits to authorize payments of burial and funeral costs at the maximum amount authorized by law through automated systems directly to an eligible surviving spouse or any other eligible person. (38 C.F.R. §3.1702 (2014).) With these new federal procedures, there will rarely be a payment directly by the VA to a funeral director. Accordingly, the formal issue paper recommended that the Board propose to delete, as unnecessary, current subdivision (b)(3) of the regulation, which provides examples that demonstrate how to prorate U.S. Government payments.

Lastly, the formal issue paper recommended that the Board propose to make other minor changes to Regulation 1505 for grammar and gender neutrality.

At the conclusion of the Board's discussion of Formal Issue Paper 15-003 during the April 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1505 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1505 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues (or problems) referred to above.

The Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by the burial service industry. The Board has performed an evaluation of whether the proposed amendments to Regulation 1505 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1505 is the only state regulation that provides specific guidance to morticians regarding the proper application of sales and use tax, and none of the proposed amendments conflict with Regulations 1610, 1614, and 1701 referred to above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1505 or the proposed amendments to Regulation 1505.



BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING MINUTES
HONORABLE DIANE L. HARKEY, COMMITTEE CHAIR
450 N STREET, SACRAMENTO
MEETING DATE: APRIL 28, 2015, TIME: 10:00 A.M.

Action Items & Status Report Items

Agenda Item No: 1

Title: Proposed revisions to Regulation 1505, *Morticians*

Issue:

Whether the Board should amend Regulation 1505, *Morticians*, to update the title, general information, tax rates, examples, and add new definitions for clarity.

Committee Discussion:

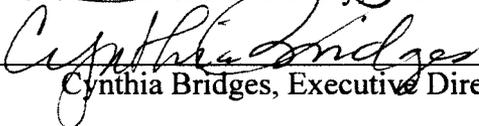
Staff introduced the issue. Staff answered Chairman Horton's question regarding treatment of tangible personal property sold or consumed by funeral directors.

Committee Action/Recommendation/Direction:

Upon motion by Chairman Horton, seconded by Ms. Ma, the Committee approved and authorized for publication the proposed regulatory amendments. There is no operative date, and implementation will take place after approval by the Office of Administrative Law. A copy of the proposed amendments to Regulation 1505 is attached.



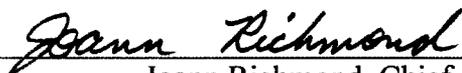
Honorable Diane L. Harkey, Committee Chair



Cynthia Bridges, Executive Director

BOARD APPROVED

at the April 29, 2015 Board Meeting



Joann Richmond, Chief
Board Proceedings Division

REGULATION 1505, MORTICIANS FUNERAL DIRECTORS

Reference: Sections 6015 and 6381, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) FUNERAL DIRECTOR. Any person or entity that is engaged in providing a burial service or services and may include, but is not limited to, funeral directors, undertakers, morticians, embalmers, or cemetery brokers.

(2) BURIAL. Means all legal methods of disposing of the remains of a deceased person, including, but not limited to, interment, cremation, burial at sea, and medical school donation.

(3) CASH ADVANCES. Funds paid out to third parties as a courtesy to the client for items that are part of the funeral service but not generally sold by the funeral director.

(ab) IN GENERAL.

(1) MORTICIAN FUNERAL DIRECTORS AS RETAILERS. ~~Mortician~~ Funeral directors are retailers of caskets, boxes, vaults, and clothing. They ~~also~~ are also retailers of any other tangible personal property such as memorial books and digital video discs (DVDs) furnished in connection with rendering their services if a separate charge is made for such property. ~~Unless otherwise exempt, tax~~ applies to the sales price of all tangible personal property sold by ~~mortician~~ funeral directors, unless otherwise exempt.*

* ~~On October 25, 1972, the board adopted an amendment to the regulation by which the 50 percent standard service reporting procedure in effect until October 18, 1970, and the 45 percent standard service reporting procedure in effect thereafter, are no longer allowable.~~

(2) MORTICIAN FUNERAL DIRECTORS AS CONSUMERS. ~~Mortician~~ Funeral directors are consumers of acknowledgment cards, memorial folders, registration books, embalming fluid, cosmetics, eye caps, morgue supplies, car stickers, ~~and~~ prayer books, memorial books, and DVDs which are furnished by them in connection with services they render unless a separate charge is made for such property. Tax applies to the sales price ~~to the mortician~~ of all tangible personal property sold to and consumed by him the funeral director.

(3) EXAMPLE OF APPLICATION OF TAX. In the example below, the burial package includes the basic services of the funeral director and staff, transfer of the decedent to the funeral home, embalming, dressing, cosmetology and placement of the decedent in a casket, facility and staff for ceremony, equipment and staff for committal service, on-line funeral notice, one visitation period, use of hearse, one "life-tribute" DVD, and a premium memorial box set. The client chose to purchase 10 additional DVDs for their family.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Funeral director's invoice to client:

<u>Maple Casket (t)</u>	<u>2,895.00</u>
<u>Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)</u>	<u>250.00</u>
<u>Total of Items Subject to Tax.....</u>	<u>\$3,145.00</u>
<u>Traditional Chapel Burial Package</u>	<u>\$4,945.00</u>
<u>Fees for Cash Advance items:</u>	
<u>County filing fee.....</u>	<u>12.00</u>
<u>Certified copy of Death Certificate</u>	<u>21.00</u>
<u>Organist.....</u>	<u>225.00</u>
<u>Total Fees</u>	<u>\$258.00</u>
<u>Total Nontaxable.....</u>	<u>\$5,203.00</u>
<u>Total Taxable.....</u>	<u>\$3,145.00</u>
<u>Sales Tax (\$3,145.00) x 8.25%.....</u>	<u>259.46</u>
<u>Grand Total</u>	<u>\$8,607.46</u>

(t) = Tangible personal property

(b)(c) APPLICATION OF TAX TO SPECIFIC TYPES OF TRANSACTIONS.

(1) SALES IN INTERSTATE OR FOREIGN COMMERCE. The sale of a casket and other tangible personal property by a ~~mortician~~ funeral director, which is ~~he~~ delivered or shipped to an out-of-state point pursuant to the agreement of sale, is regarded as a sale in interstate or foreign commerce and is exempt from the tax. The facts that the death of the deceased occurred in this state, that the contracting parties are residents of this state, and that services are held in this state prior to the shipment, are immaterial.

(2) CASH ADVANCES. Tax does not apply to cash advances for such items as cemetery charges, newspaper notices, ~~railroad~~ airplane tickets, ministerial fees, and flowers.

(23) SALES TO THE UNITED STATES ~~U.S. GOVERNMENT~~. All or a portion of charges for funerals of veterans and other persons may be paid by the ~~United States~~ U.S. Department of Veterans Administration Affairs or by the Social Security Administration. ~~Effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans.~~ ~~Mortician~~ Funeral directors may take a deduction for sales to the ~~U, nited S, tates~~ Government when claims filed by them with federal agencies are paid directly to the ~~mortician~~ funeral directors regardless of method of billing. If funeral charges are paid by another person, there is no tax exemption even though such person may receive reimbursement from a federal agency and even though the amount received as reimbursement is assigned or endorsed over to the ~~mortician~~ funeral director as a credit against those charges.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

In computing the allowable exemption, the funeral allowance and the interment allowance must be treated separately.

(A) Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales of tangible personal property and charges for exempt services. None are to be allocated to accommodation cash advances. The only exception will be when a portion of a payment is clearly identified as applying to something for which a ~~mortician~~funeral director has made a specific charge.

(B) Payments received directly from the ~~United States~~U.S. Department of Veterans Administration Affairs which are identified as interment allowances are to be prorated between sales of tangible personal property used in actual interment and charges or advances for services in connection with the interment. The only exception will be when a portion of the payment is clearly identified as applying to something pertaining to interment for which the ~~mortician~~funeral director has made a specific charge.

~~(3) EXAMPLES OF APPLICATION OF AMOUNTS RECEIVED BY MORTICIANS DIRECTLY FROM A FEDERAL AGENCY. (Examples are at 6 percent rate.)~~

~~Mortician's invoice to client:~~

Charges:	Amount:
Services	\$400.00
Casket	355.00
Vault	200.00
Suit	45.00
Subtotal	\$1,000.00

Accommodation Cash Advances:	Amount:
Cemetery Space and Opening	\$50.00
Clergy	25.00
Musie	15.00
Subtotal	\$90.00

Sales Tax (6% of \$355, \$200 & \$45)	36.00
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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

~~Example 1. Funeral allowance only.~~

~~Cash received by the mortician directly from a federal agency as a funeral allowance, and not allocated by the United States Government to any specific portion of the above charges, was \$300. No interment allowance was received.~~

~~Since \$600 of the \$1,000 charged the client (exclude the cash advances) was for tangible personal property, 60% of the amount received from the federal agency (60% of \$300 equals \$180) is considered a sale of such property to the United States Government and is exempt from sales tax.~~

Computation of Tax:

Total Charges	\$1,090.00
Less: Accommodation Advances	90.00
Exempt Services	400.00
Sale to United States	180.00
	670.00
Taxable Sale	\$420.00
Tax at 6%	25.20

~~Example 2. Funeral allowance and interment allowance received by mortician.~~

~~Cash received by the mortician directly from a federal agency, and not allocated by the United States Government to any specific portion of the above charges, was \$300 as a funeral allowance and \$150 as an interment allowance.~~

~~Since the total charges by the mortician related to interment were \$250 (vault \$200 plus cemetery space and opening \$50), and the charge for tangible personal property related to interment was \$200 (vault), 80% of the amount received from the federal agency as an interment allowance (80% of \$150 equals \$120) is considered a sale of such property to the United States Government and is exempt from sales tax.~~

~~Since \$400 (casket \$355 and suit \$45) of the \$800 charged the client for the funeral (exclude the cash advances and the vault) was for tangible personal property, 50% of the amount received from the federal agency as a funeral allowance (50% of \$300 equals \$150) is considered a sale of such property to the United States Government and is exempt from sales tax.~~

Computation of Tax:

Total Charges	\$1,090.00
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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Less: Accommodation Advances	\$90.00
Exempt Services	400.00
Sale to United States	270.00
Government (\$120 plus \$150)	760.00
Taxable Sale	\$330.00
Tax at 6%	19.80

~~(4) ACCOMMODATION CASH ADVANCES. Tax does not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, ministerial fees and flowers.~~

~~(45) TAX-PAID PURCHASES RESOLD. A morticianfuneral director may claim a "tax-paid purchases resold" deduction if the morticianfuneral director reimbursed the vendor for tax which the vendor is required to pay to the state or has paid use tax with respect to the property and has resold the property prior to making any use of it.~~

~~(ed) "PRE-NEED" AGREEMENTS. Where a morticianfuneral director, cemetery association, or other person enters into an agreement with a customer to provide services upon the death of the customer, no sale occurs for sales and use tax purposes until the services are rendered.~~

~~An amount designated as "sales tax" in the agreement will be considered an estimate of tax which may become due when the services are rendered. No sales tax should be paid to the board in connection with "pre-need" agreements until the services are rendered.~~

~~Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6015 and 6381, Revenue and Taxation Code.~~

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

April 17, 2015

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for proposed amendments to Regulation 1505, *Morticians*, which will be presented at the Board's April 28, 2015 Business Taxes Committee meeting. The proposed amendments update the general information, tax rates, and examples.

Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m.** on **April 28, 2015** in Room 121 at the address shown above.

Sincerely,

Susanne Buehler, Chief
Tax Policy Division
Sales and Use Tax Department

SB:tmc

Enclosures

cc: (all with enclosures, via email and or hardcopy as requested)
Honorable Jerome E. Horton, Chairman, Third District
Senator George Runner (Ret.), Vice Chair, First District
Honorable Fiona Ma, CPA, Member, Second District
Honorable Diane L. Harkey, Member, Fourth District
Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers (MIC 73)

Mr. David Hunter, Board Member's Office, Third District
Ms. Shellie Hughes, Board Member's Office, Third District
Ms. Kari Hammond, Board Member's Office, Third District
Mr. Sean Wallentine, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, First District
Mr. Alan Giorgi, Board Member's Office, First District
Mr. Brian Wiggins, Board Member's Office, First District
Mr. Jim Kuhl, Board Member's Office, Second District
Ms. Kathryn Asprey, Board Member's Office, Second District
Mr. John Vigna, Board Member's Office, Second District
Mr. Tim Morland, Board Member's Office, Second District
Mr. Russell Lowery, Board Member's Office, Fourth District
Mr. Ted Matthies, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Fourth District
Ms. Lynne Kinst, Board Member's Office, Fourth District
Ms. Cynthia Bridges (MIC 73)
Mr. Randy Ferris (MIC 83)
Mr. David Gau (MIC 101)
Mr. Jeffrey L. McGuire (MIC 43)
Mr. Todd Gilman (MIC 70)
Mr. Wayne Mashihara (MIC 46)
Mr. Kevin Hanks (MIC 49)
Mr. Mark Durham (MIC 67)
Mr. Robert Tucker (MIC 82)
Mr. Jeff Vest (MIC 85)
Mr. Jeff Angeja (MIC 85)
Mr. David Levine (MIC 85)
Mr. Bradley Heller (MIC 82)
Mr. Lawrence Mendel (MIC 82)
Mr. John Thiella (MIC 73)
Ms. Monica Silva (MIC 82)
Ms. Kirsten Stark (MIC 50)
Mr. Clifford Oakes (MIC 50)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Ms. Laureen Simpson (MIC 70)
Ms. Karina Magana (MIC 46)
Mr. Bradley Miller (MIC 92)
Mr. Bill Benson (MIC 67)
Mr. Robert Wilke (MIC 50)
Ms. Tracy McCrite (MIC 50)

Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, *Morticians*

<p>Action 1 – Agreed Upon Items</p> <p>Agenda, pages 2-9.</p>	<p>Alternative 1</p> <p>Approve and authorize publication of proposed amendments to Regulation 1505 to update the general information, tax rates, and examples.</p> <p style="text-align: center;">OR</p> <p>Alternative 2</p> <p>Do not approve proposed amendments to Regulation 1505.</p>
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**Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, Morticians**

Action Item	Staff and Industry's Proposed Regulatory Language
<p>Action 1 – Staff Recommendation</p>	<p align="center"><u>REGULATION 1505, MORTICIANS FUNERAL DIRECTORS</u></p> <p><i>Reference:</i> Sections 6015 and 6381, Revenue and Taxation Code.</p> <p><u>(a) DEFINITIONS.</u></p> <p>(1) <u>FUNERAL DIRECTOR.</u> Any person or entity that is engaged in providing a burial service or services and may include, but is not limited to, funeral directors, undertakers, morticians, embalmers, or cemetery brokers.</p> <p>(2) <u>BURIAL.</u> Means all legal methods of disposing of the remains of a deceased person, including, but not limited to, interment, cremation, burial at sea, and medical school donation.</p> <p>(3) <u>CASH ADVANCES.</u> Funds paid out to third parties as a courtesy to the client for items that are part of the funeral service but not generally sold by the funeral director.</p> <p><u>(a) IN GENERAL.</u></p> <p>(1) <u>MORTICIAN FUNERAL DIRECTORS AS RETAILERS.</u> Mortician Funeral directors are retailers of caskets, boxes, vaults, and clothing. They also are also retailers of any other tangible personal property such as memorial books and digital video discs (DVDs) furnished in connection with rendering their services if a separate charge is made for such property. Unless otherwise exempt, tax applies to the sales price of all tangible personal property sold by mortician funeral directors, unless otherwise exempt.*</p> <p>* On October 25, 1972, the board adopted an amendment to the regulation by which the 50 percent standard service reporting procedure in effect until October 18, 1970, and the 45 percent standard service reporting procedure in effect thereafter, are no longer allowable.</p>

**Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, Morticians**

Action Item	Staff and Industry's Proposed Regulatory Language																								
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**Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, Morticians**

Action Item	Staff and Industry's Proposed Regulatory Language
	<p>Grand Total \$8,607.46</p> <p><u>(1) = Tangible personal property</u></p> <p>(bc) APPLICATION OF TAX TO SPECIFIC TYPES OF TRANSACTIONS.</p> <p>(1) SALES IN INTERSTATE OR FOREIGN COMMERCE. The sale of a casket and other tangible personal property by a mortician<u>funeral director</u>, which is<u>is he delivered</u> or shipped<u>shippeds</u> to an out-of-state point pursuant to the agreement of sale, is regarded as a sale in interstate or foreign commerce and is exempt from the tax. The facts that the death of the deceased occurred in this state, that the contracting parties are residents of this state, and that services are held in this state prior to the shipment, are immaterial.</p> <p><u>(2) CASH ADVANCES.</u> Tax does not apply to cash advances for such items as cemetery charges, newspaper notices, railroad<u>airplane</u> tickets, ministerial fees, and flowers.</p> <p><u>(23) SALES TO THE UNITED STATES</u><u>U.S. GOVERNMENT.</u> All or a portion of charges for funerals of veterans and other persons may be paid by the United States<u>U.S. Department of Veterans Administration</u> Affairs or by the Social Security Administration. Effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans. Mortician<u>Funeral directors</u> may take a deduction for sales to the United States<u>United States</u> Government when claims filed by them with federal agencies are paid directly to the mortician<u>funeral directors</u> regardless of method of billing. If funeral charges are paid by another person, there is no tax exemption even though such person may receive reimbursement from a federal agency and even though the amount received as reimbursement is assigned or endorsed over to the mortician<u>funeral director</u> as a credit against those charges.</p> <p>In computing the allowable exemption, the funeral allowance and the interment allowance must</p>

**Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, *Morticians***

Action Item	Staff and Industry's Proposed Regulatory Language												
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**Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, Morticians**

Action Item	Staff and Industry's Proposed Regulatory Language	
	Accommodation Cash Advances:	Amount:
	Cemetery Space and Opening	\$50.00
	Clergy	25.00
	Musie	15.00
	Subtotal	\$90.00
	Total	\$1,000.00
	Sales Tax (6% of \$355, \$200 & \$45)	36.00
	Total	\$1,126.00
	<p>Example 1. Funeral allowance only.</p> <p>Cash received by the mortician directly from a federal agency as a funeral allowance, and not allocated by the United States Government to any specific portion of the above charges, was \$300. No interment allowance was received.</p> <p>Since \$600 of the \$1,000 charged the client (exclude the cash advances) was for tangible personal property, 60% of the amount received from the federal agency (60% of \$300 equals \$180) is considered a sale of such property to the United States Government and is exempt from sales tax.</p>	
	Computation of Tax:	
	Total Charges	\$1,090.00

**Agenda – April 28, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1505, Morticians**

Action Item	Staff and Industry's Proposed Regulatory Language																
	<table border="0" style="width: 100%;"> <tr> <td style="padding-left: 40px;">Less:</td> <td></td> </tr> <tr> <td style="padding-left: 60px;">Accommodation</td> <td style="text-align: right;">\$90.00</td> </tr> <tr> <td style="padding-left: 60px;">Advances</td> <td style="text-align: right;">400.00</td> </tr> <tr> <td style="padding-left: 60px;">Exempt Services</td> <td style="text-align: right;">180.00</td> </tr> <tr> <td style="padding-left: 60px;">Sale to United States</td> <td style="text-align: right;">670.00</td> </tr> <tr> <td style="padding-left: 60px;">Taxable Sale</td> <td style="text-align: right;">\$420.00</td> </tr> <tr> <td style="padding-left: 60px;">Tax at 6%</td> <td style="text-align: right;">25.20</td> </tr> <tr> <td style="padding-left: 60px;">Taxable Sale Including Tax</td> <td style="text-align: right;">\$445.20</td> </tr> </table> <p>Example 2. Funeral allowance and interment allowance received by mortician:</p> <p>Cash received by the mortician directly from a federal agency, and not allocated by the United States Government to any specific portion of the above charges, was \$300 as a funeral allowance and \$150 as an interment allowance.</p> <p>Since the total charges by the mortician related to interment were \$250 (vault \$200 plus cemetery space and opening \$50), and the charge for tangible personal property related to interment was \$200 (vault), 80% of the amount received from the federal agency as an interment allowance (80% of \$150 equals \$120) is considered a sale of such property to the United States Government and is exempt from sales tax.</p> <p>Since \$400 (casket \$355 and suit \$45) of the \$800 charged the client for the funeral (exclude the cash advances and the vault) was for tangible personal property, 50% of the amount received from the federal agency as a funeral allowance (50% of \$300 equals \$150) is considered a sale of such property to the United States Government and is exempt from sales tax.</p> <p align="center">Computation of</p>	Less:		Accommodation	\$90.00	Advances	400.00	Exempt Services	180.00	Sale to United States	670.00	Taxable Sale	\$420.00	Tax at 6%	25.20	Taxable Sale Including Tax	\$445.20
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renumbered accordingly. The references to the regulation's subdivisions for the remainder of this paper are made to the proposed renumbered regulation.

Staff proposes to add language in (b)(1) explaining that specific items such as memorial books and DVDs are considered retail items when a separate charge is made for them. This addition clarifies the proper tax treatment of goods that are now more commonly available due to technological advances. Staff received a submission from Service Corporation International (SCI) requesting that similar specific language also be added to (b)(2) to make the treatment of these items as clear as possible. Staff proposes to add language in (b)(2) explaining that memorial books and DVDs furnished in connection with services rendered are considered consumed by the funeral director.

Sales to the U.S. Government

Regulation 1505(c)(3) currently states, in part "effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans." Beginning in fiscal year 2013, the VA annually increases the burial and plot allowances for deaths occurring after October 1, 2011, based on the Consumer Price Index for the preceding 12-month period. Accordingly, we are proposing to remove the language in the regulation that refers to a specific dollar amount. Including only general information about payments from federal agencies without references to dollar amounts eliminates the need to amend the regulation each time the VA changes their allowance amounts.

Examples

Effective July 7, 2014, the VA amended its regulations regarding payment of burial benefits in an effort to pay eligible survivors more quickly and efficiently. The changes authorize payments through automated systems directly to survivors for an eligible veteran's burial and funeral costs at the maximum amount authorized by law. With these new procedures, it is our understanding that funeral directors are rarely paid directly by the VA, and the examples in the current section (b)(3) that demonstrate how to prorate U.S. Government payments, are no longer relevant. These examples have been removed from the regulation.

Staff proposes to add a new subdivision (b)(3) "Example of Application of Tax" to the regulation. This section contains a sample funeral director's invoice demonstrating what a typical transaction may look like and how tax applies to the items on the invoice.

Other Amendments

Other proposed amendments to the regulation include the following:

- remove the footnote in subdivision (b)(1) that is no longer relevant,
- rearrange the last sentence of subdivision (b)(1) to make it grammatically correct,
- update gender specific terms to be gender neutral, and
- rename the "accommodation cash advances" section to reflect current industry terminology and move the section up within subdivision (c).

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends that the Board approve and authorize publication of the proposed amendments to Regulation 1505, as illustrated in Exhibit 2. Staff's proposed amendments update the title, general information, tax rates, examples, and adds new definitions for clarity.

B. Pros of Alternative 1

The proposed amendments clarify the terms used in the regulation and update the information and tax rates so that the regulation corresponds with current industry practices.

C. Cons of Alternative 1

None.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require adoption of amendments to Regulation 1505.

E. Operational Impact of Alternative 1

Staff will publish the proposed amendments to Regulation 1505 and begin the formal rulemaking process.

F. Administrative Impact of Alternative 1

1. Cost Impact

The workload associated with publishing the regulation is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

The proposed amendments do not change the application of tax; the changes are more informational in nature and help to make the regulation more relevant to current industry practices.

H. Critical Time Frames of Alternative 1

None.

VII. Other Alternatives

A. Description of Alternative 2

Do not amend Regulation 1505.

B. Pros of Alternative 2

The BOE will not incur the workload associated with revising the regulation.

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C. Cons of Alternative 2

The examples and information in the regulation would continue to be outdated and of little relevance to current industry practices, and will not reflect recent changes made by the VA.

D. Statutory or Regulatory Change for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

Without the regulatory amendment, the information and examples in the regulation are irrelevant to funeral directors.

H. Critical Time Frames of Alternative 2

None.

Preparer/Reviewer Information

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: March 24, 2015

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



Proposed Amendments to Regulation 1505, Morticians

I. Issue

Whether the Board should amend Regulation 1505, Morticians, to update the general information, tax rates, and examples.

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize publication of the proposed amendments to Regulation 1505 as illustrated in Exhibit 2. Staff's proposed amendments update the general information, tax rates, examples, and adds new definitions for clarity.

III. Other Alternative(s) Considered

Do not approve proposed amendments to Regulation 1505.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the staff recommendation that would impact revenue. The proposed amendments clarify the terms used in the regulation and update the information and tax rates so that the regulation corresponds with current industry practices. The proposed amendments do not change the application of tax; the changes are more informational in nature and help to make the regulation more relevant to current industry practices.

Other Alternatives Considered

There is nothing in the other alternatives considered that would impact revenue. However, the examples and information in the regulation would continue to be outdated and of little relevance to the current industry practices, and will not reflect recent changes made by the Veterans Administration.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

The other alternative considered does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. This estimate has been reviewed by Mr. Mark Durham, Chief, Research and Statistics Section, Legislative and Research Division, and by Ms. Susanne Buehler, Chief, Tax Policy Division, Sales and Use Tax Department. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of April 7, 2015.

REGULATION 1505, MORTICIANS FUNERAL DIRECTORS

Reference: Sections 6015 and 6381, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) FUNERAL DIRECTOR. Any person or entity that is engaged in providing a burial service or services and may include, but is not limited to, funeral directors, undertakers, morticians, embalmers, or cemetery brokers.

(2) BURIAL. Means all legal methods of disposing of the remains of a deceased person, including, but not limited to, interment, cremation, burial at sea, and medical school donation.

(3) CASH ADVANCES. Funds paid out to third parties as a courtesy to the client for items that are part of the funeral service but not generally sold by the funeral director.

(ab) IN GENERAL.

(1) MORTICIAN FUNERAL DIRECTORS AS RETAILERS. Mortician funeral directors are retailers of caskets, boxes, vaults, and clothing. They also are also retailers of any other tangible personal property such as memorial books and digital video discs (DVDs) furnished in connection with rendering their services if a separate charge is made for such property. Unless otherwise exempt, tax applies to the sales price of all tangible personal property sold by mortician funeral directors, unless otherwise exempt.*

* On October 25, 1972, the board adopted an amendment to the regulation by which the 50 percent standard service reporting procedure in effect until October 18, 1970, and the 45 percent standard service reporting procedure in effect thereafter, are no longer allowable.

(2) MORTICIAN FUNERAL DIRECTORS AS CONSUMERS. Mortician funeral directors are consumers of acknowledgment cards, memorial folders, registration books, embalming fluid, cosmetics, eye caps, morgue supplies, car stickers, and prayer books, memorial books, and DVDs which are furnished by them in connection with services they render unless a separate charge is made for such property. Tax applies to the sales price to the mortician of all tangible personal property sold to and consumed by him the funeral director.

(3) EXAMPLE OF APPLICATION OF TAX. In the example below, the burial package includes the basic services of the funeral director and staff, transfer of the decedent to the funeral home, embalming, dressing, cosmetology and placement of the decedent in a casket, facility and staff for ceremony, equipment and staff for committal service, on-line funeral notice, one visitation period, use of hearse, one "life-tribute" DVD, and a premium memorial box set. The client chose to purchase 10 additional DVDs for their family.

Funeral director's invoice to client:

Maple Casket (t)	2,895.00
Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)	250.00
<u>Total of Items Subject to Tax</u>	<u>\$3,145.00</u>
 Traditional Chapel Burial Package	 \$4,945.00
<u>Fees for Cash Advance items:</u>	
County filing fee.....	12.00
Certified copy of Death Certificate	21.00
Organist	225.00
<u>Total Fees</u>	<u>\$258.00</u>
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<u>Grand Total</u>	<u>\$8,607.46</u>

(t) = Tangible personal property

(bc) APPLICATION OF TAX TO SPECIFIC TYPES OF TRANSACTIONS.

(1) SALES IN INTERSTATE OR FOREIGN COMMERCE. The sale of a casket and other tangible personal property by a ~~mortician~~funeral director, which is ~~he delivered~~s delivered or ~~shipped~~s shipped to an out-of-state point pursuant to the agreement of sale, is regarded as a sale in interstate or foreign commerce and is exempt from the tax. The facts that the death of the deceased occurred in this state, that the contracting parties are residents of this state, and that services are held in this state prior to the shipment, are immaterial.

(2) CASH ADVANCES. Tax does not apply to cash advances for such items as cemetery charges, newspaper notices, ~~railroad~~airplane tickets, ministerial fees, and flowers.

(3) SALES TO THE ~~UNITED STATES~~U.S. GOVERNMENT. All or a portion of charges for funerals of veterans and other persons may be paid by the ~~United States~~U.S. Department of Veterans Administration Affairs or by the Social Security Administration. Effective August 1, 1973, the ~~United States Veterans Administration~~ will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans. ~~Mortician~~Funeral directors may take a deduction for sales to the ~~United States~~ Government when claims filed by them with federal agencies are paid directly to the ~~mortician~~funeral directors regardless of method of billing. If funeral charges are paid by another person, there is no tax exemption even though such person may receive reimbursement from a federal agency and even though the amount received as reimbursement is assigned or endorsed over to the ~~mortician~~funeral director as a credit against those charges.

In computing the allowable exemption, the funeral allowance and the interment allowance must be treated separately.

(A) Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales of tangible personal property and charges for exempt services. None are to be allocated to accommodation cash advances. The only exception will be when a portion of a payment is clearly identified as applying to something for which a ~~mortician~~funeral director has made a specific charge.

(B) Payments received directly from the ~~United States~~U.S. Department of Veterans Administration Affairs which are identified as interment allowances are to be prorated between sales of tangible personal property used in actual interment and charges or advances for services in connection with the interment. The only exception will be when a portion of the payment is clearly identified as applying to something pertaining to interment for which the ~~mortician~~funeral director has made a specific charge.

~~(3) EXAMPLES OF APPLICATION OF AMOUNTS RECEIVED BY MORTICIANS DIRECTLY FROM A FEDERAL AGENCY. (Examples are at 6 percent rate.)~~

Mortician's invoice to client:	
Charges:	Amount:
Services	\$400.00
Casket	355.00
Vault	200.00
Suit	45.00
Subtotal	\$1,000.00
Accommodation Cash Advances:	
	Amount:
Cemetery Space and Opening	\$50.00
Clergy	25.00
Musie	15.00
Subtotal	\$90.00
Total	\$1,090.00
Sales Tax (6% of \$355, \$200 & \$45)	36.00
Total	\$1,126.00

Example 1. Funeral allowance only.

Cash received by the mortician directly from a federal agency as a funeral allowance, and not allocated by the United States Government to any specific portion of the above charges, was \$300. No interment allowance was received.

Since \$600 of the \$1,000 charged the client (exclude the cash advances) was for tangible personal property, 60% of the amount received from the federal agency (60% of \$300 equals \$180) is considered a sale of such property to the United States Government and is exempt from sales tax.

Computation of Tax:

Total Charges	\$1,090.00
Less: Accommodation Advances	\$90.00
Exempt Services	400.00
Sale to United States	180.00
	670.00
Taxable Sale	\$420.00
Tax at 6%	25.20

Example 2. Funeral allowance and interment allowance received by mortician.

Cash received by the mortician directly from a federal agency, and not allocated by the United States Government to any specific portion of the above charges, was \$300 as a funeral allowance and \$150 as an interment allowance.

Since the total charges by the mortician related to interment were \$250 (vault \$200 plus cemetery space and opening \$50), and the charge for tangible personal property related to interment was \$200 (vault), 80% of the amount received from the federal agency as an interment allowance (80% of \$150 equals \$120) is considered a sale of such property to the United States Government and is exempt from sales tax.

Since \$400 (casket \$355 and suit \$45) of the \$800 charged the client for the funeral (exclude the cash advances and the vault) was for tangible personal property, 50% of the amount received from the federal agency as a funeral allowance (50% of \$300 equals \$150) is considered a sale of such property to the United States Government and is exempt from sales tax.

Computation of Tax:

Total Charges	\$1,090.00
---------------	------------

Less: Accommodation Advances	\$90.00
Exempt Services	400.00
Sale to United States	270.00
Government (\$120 plus \$150)	760.00
Taxable Sale	\$330.00
Tax at 6%	19.80
Revenue Sale Includes Tax	\$349.80

(4) ACCOMMODATION CASH ADVANCES. Tax does not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, ministerial fees and flowers.

(45) TAX-PAID PURCHASES RESOLD. A mortician funeral director may claim a "tax-paid purchases resold" deduction if the mortician funeral director reimbursed the vendor for tax which the vendor is required to pay to the state or has paid use tax with respect to the property and has resold the property prior to making any use of it.

(ed) "PRE-NEED" AGREEMENTS. Where a mortician funeral director, cemetery association, or other person enters into an agreement with a customer to provide services upon the death of the customer, no sale occurs for sales and use tax purposes until the services are rendered.

An amount designated as "sales tax" in the agreement will be considered an estimate of tax which may become due when the services are rendered. No sales tax should be paid to the board in connection with "pre-need" agreements until the services are rendered.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6015 and 6381, Revenue and Taxation Code.



TAX DEPARTMENT

Sarah E. Adams, Sr. Managing Director, Tax Sarah.Adams@Sci-us.com

February 16, 2015

Susanne Buehler
Chief
Tax Policy Division
Sales and Use Tax Department
State Board of Equalization
450 North Street
Sacramento, CA 94279

Delivered via email to: Susanne.Buehler@boe.ca.govRE: Initial Discussion Paper on Regulation 1505, *Morticians*

Dear Chief Buehler:

Thank you for the opportunity to provide comments on behalf of Service Corporation International in response to Initial Discussion Paper on Regulation 1505, *Morticians*. SCI California Funeral Services is the largest provider of death care services in California, operating 207 properties – 171 funeral establishments and 36 cemeteries throughout the State. Our Company is proud to offer our served families Making Everlasting Memories (MeM). The MeM service, an enhancement to the base funeral service, provides families with ways to honor, celebrate, and preserve the memory of a loved one. Currently, MeM packages include the creation of a digital video disc (DVD) to enhance the remembrances, memories and condolences of friends, acquaintances, and the bereaved family before and during the cremation and/or funeral gatherings. SCI California Funeral Services desires Regulation 1505 to be as clear as possible that the Mortician is the consumer of this DVD as part of the service and the DVD is not tangible property that is being sold to the purchaser.

The Discussion Paper proposes amending *(b)(1) MORTICIANS AS RETAILERS* to add memorial books and DVDs to products subject to the sales tax if they are separately stated from the services provided. Our Company agrees that a sales tax should be charged if a DVD('s) is sold in addition to the cost of the service. However, if the DVD or memorial book is included in the price of the service, a sales tax should not be levied as no transaction occurs. Therefore, we ask the Board of Equalization to consider the following amendment to *(b)(2) Morticians as Consumers*:

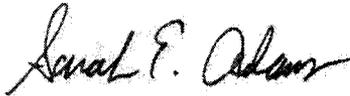
SCI MANAGEMENT

1929 ALLEN PARKWAY, HOUSTON, TX 77019
(o) 713.525.5240 (fax) 713.525.5596

(b)(2) MORTICIANS AS CONSUMERS. Morticians are consumers of acknowledgement cards, memorial folders, registration books, embalming fluid, cosmetics, eye caps, morgue supplies, car stickers, prayer books, memorial books, and digital video discs (DVD) which are furnished by them in connection with services they render unless a separate charge is made for such property. Tax applies to the sales price to the mortician of all tangible personal property consumed by him.

With the acceptance of this amendment, our Company can continue providing the MeM service to our families and ensure they will not incur any unintentional costs in connection with their funeral service. Please feel free to contact me with any additional comments or questions via email at Sarah.Adams@sci-us.com or telephone at 713-525-5240. Thank you for your consideration of this amendment.

Sincerely,



Sarah Adams
Vice President of Tax
Service Corporation International

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

APRIL 28, 2015

BUSINESS TAXES COMMITTEE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board
of Equalization:

Diane L. Harkey
Chair

Jerome E. Horton
Member

Sen. George Runner (Ret.)
Member

Fiona Ma, CPA
Member

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

Joann Richmond
Chief
Board Proceedings
Division

For the Board of
Equalization Staff:

Susanne Buehler
Chief, Tax Policy
Division
Sales and Use Tax
Department

Monica Silva
Tax Counsel III
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 APRIL 28, 2015

4 ---oOo---

5 MS. RICHMOND: Our next item on this
6 morning's agenda -- or, excuse me, this afternoon's
7 agenda is the Business Taxes Committee. Ms. Harkey
8 is the Chair of that committee.

9 Ms. Harkey.

10 MS. HARKEY: Thank you. I call the
11 meeting -- Business Taxes Committee meeting to
12 order.

13 The first item is a very grave item on the
14 agenda, Regulation 1505, Morticians.

15 Staff, would you proceed? Thank you.

16 MS. BUEHLER: Good afternoon. I am Susanne
17 Buehler with the Sales and Use Tax Department. With
18 me today is Ms. Monica Silva from our Legal
19 Department.

20 We have one agenda item for your
21 consideration this morning. Staff requests your
22 approval and authorization to publish proposed
23 amendments to Sales and Use Tax Regulation 1505,
24 Morticians. The proposed amendments update the
25 regulation to reflect current industry practices and
26 include changes to general information, tax rates,
27 examples, and the additions of new definitions for
28 clarity.

1 We'd be happy to answer any questions you
2 may have on this topic.

3 MS. HARKEY: Thank you.

4 Members, are there any public speakers?
5 Any Member comments?

6 MR. HORTON: Madam Chair, if I may.

7 MS. HARKEY: Yes.

8 MR. HORTON: The description of the items,
9 those are the items that they can sell, or did I --

10 MS. BUEHLER: Are -- are you referring to
11 the DVDs, sir?

12 MR. HORTON: The DVD -- well, the example,
13 just in general, providing examples in the --

14 MS. BUEHLER: For example, some of them do
15 provide DVDs of, uh, either the ceremony or other
16 activities surrounding the funeral services. And
17 when that's included in the price, that's exempt.
18 When they have other sales of them, separately
19 stated, they are taxable.

20 MR. HORTON: Okay. All right.

21 MS. HARKEY: It can be a package deal.

22 MR. HORTON: Yeah. Well --

23 Okay. I'm going to leave this one alone.
24 Thank you very much. Appreciate it.

25 MS. HARKEY: Any other questions, comments
26 from the Members?

27 Okay. Do I have a motion?

28 MR. HORTON: So moved.

1 MS. HARKEY: Second?

2 MS. MA: Second.

3 MS. HARKEY: Second. Motion by Chairman --

4 Chairman Horton. Second by Fiona Ma, Ms. Ma.

5 And is there any objection?

6 Okay. Passes without objection.

7 Thank you very much.

8 MS. BUEHLER: Thank you.

9 MS. HARKEY: If there are no further
10 comments, that concludes the Business Tax Committee
11 for the day.

12 ----oOo----

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on April 28, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 5 constitute a complete and accurate transcription of the shorthand writing.

Dated: May 4, 2015

Kathleen Skidgel

KATHLEEN SKIDGEL

Hearing Reporter



**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

Proposed Amendment of Sales and Use Tax Regulation 1505, *Morticians*

STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

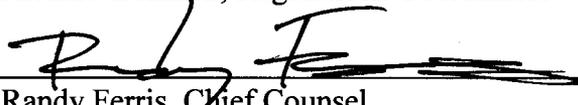
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement
Prepared by  Date 7-8-15
Richard Bennion, Regulations Coordinator

Approved by  Date 7/8/15
Randy Ferris, Chief Counsel

If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6615 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME The Board of Equalization	CONTACT PERSON Richard E. Bennion	EMAIL ADDRESS rbennion@boe.ca.gov	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1505, Morticians			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts business and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance
- g. Impacts individuals
- h. None of the above (Explain below):

Please see the attached .

***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***

2. The _____ (Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- Below \$10 million
- Between \$10 and \$25 million
- Between \$25 and \$50 million
- Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ _____

4. Will this regulation directly impact housing costs? YES NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? YES NO

Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES NO

***If YES, complete E2. and E3
If NO, skip to E4***

Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- a. Funding provided in _____
Budget Act of _____ or Chapter _____, Statutes of _____

- b. Funding will be requested in the Governor's Budget Act of _____
Fiscal Year: _____

- 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- a. Implements the Federal mandate contained in _____
- b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____
Date of Election: _____

- d. Issued only in response to a specific request from affected local entity(s).
Local entity(s) affected: _____

- e. Will be fully financed from the fees, revenue, etc. from: _____
Authorized by Section: _____ of the _____ Code;

- f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- 3. Annual Savings. (approximate)
\$ _____

- 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

P. FISCAL EFFECT ON STATE GOVERNMENT Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

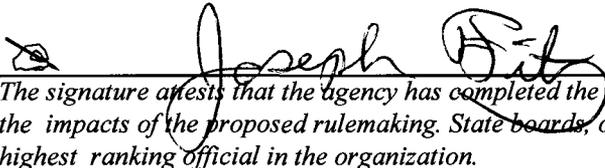
2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE



DATE

June 22, 2015

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

June 22, 2015

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

Exempt under SAM section 6615

DATE

Attachment to Economic and Fiscal Impact
Statement (STD. 399 (Rev. 12/2013)) for the Proposed Amendments to
California Code of Regulations, Title 18, Section 1505,
Morticians

As explained in more detail in the initial statement of reasons, California Code of Regulations, title 18, section (Regulation) 1505, *Morticians* provides specific guidance to morticians regarding the proper application of California sales and use tax. The regulation explains when morticians are retailers and when they are consumers of tangible personal property for tax purposes. It provides guidance to morticians on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and “pre-need agreements.”

The proposed amendments to Regulation 1505:

- Change the name of the regulation from “Morticians” to “Funeral Directors;”
- Update all of the references to “mortician” to refer to “funeral director” throughout the regulation;
- Add a new subdivision (a) to the regulation to include definitions for the terms “funeral director,” “burial,” and “cash advances;”
- Renumber the regulation’s current subdivisions;
- Add language to renumbered subdivision (b)(1) and (2) to clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs;
- Delete the outdated footnote from the end of renumbered subdivision (b)(1);
- Delete current subdivision (b)(3) from the regulation, which contains outdated examples of how to prorate amounts received directly from a federal agency, and add a new subdivision (b)(3) with an updated example of how tax applies to items on a funeral director’s invoice using a current tax rate;
- Delete outdated language from renumbered subdivision (c)(3) relating to specific payment amounts by the United States Government;
- Add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to “cash advances,” and delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances; and
- Make other minor changes for grammar and gender neutrality.

The proposed amendments clarify the terms used in the regulation, update the guidance currently provided in the regulation so that the regulation corresponds with current industry practice, and provide a current example of how tax applies to a typical transaction using a current tax rate. The proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Sales and Use Tax Law (RTC, § 6001 et seq.) or Regulation 1505, and there is nothing in the proposed amendments that would impact revenue. Therefore, the Board has determined that the proposed amendments are consistent with existing law and that there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave in the absence of the proposed amendments. The Board

estimates that the proposed amendments will not have a measurable economic impact on the individuals and business. The Board has determined that the proposed amendments to Regulation 1505 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period. And, the Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by the burial service industry.

Therefore, based upon the foregoing information and all of the information in the rulemaking file, the Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action, and the Board has determined that the proposed amendments to Regulation 1505:

- Will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states;
- Will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California;
- Will not have a significant effect on housing costs;
- Will result in no direct or indirect cost or savings to any state agency, and will result in no cost or savings in federal funding to the State of California;
- Will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies; and
- Will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

Finally, Regulation 1505 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulation 1505 will not affect the benefits of Regulation 1505 to the health and welfare of California residents, worker safety, or the state's environment.

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 (Z-2015-0622-02), REGULATORY ACTION NUMBER, EMERGENCY NUMBER

For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

JUN 22 '15 JUL 03 '15

Office of Administrative Law

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE (Morticians), TITLE(S) (18), FIRST SECTION AFFECTED (1505), 2. REQUESTED PUBLICATION DATE (July 3, 2015), 3. NOTICE TYPE, 4. AGENCY CONTACT PERSON (Richard E. Bennion), TELEPHONE NUMBER ((916) 445-2130), FAX NUMBER ((916) 324-3984), OAL USE ONLY, ACTION ON PROPOSED NOTICE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

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

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.), TITLE(S), ADOPT, AMEND, REPEAL

3. TYPE OF FILING: Regular Rulemaking, Resubmittal of disapproved or withdrawn nonemergency filing, Emergency, Certificate of Compliance, Emergency Readopt, File & Print, Other, Changes Without Regulatory Effect, 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, Effective on filing with Secretary of State, 5100 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, Fair Political Practices Commission, State Fire Marshal, Other (Specify)

7. CONTACT PERSON, TELEPHONE NUMBER, FAX NUMBER (Optional), E-MAIL ADDRESS (Optional)

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, TYPED NAME AND TITLE OF SIGNATORY

TITLE 18. BOARD OF EQUALIZATION

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1505, *Morticians*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1505, *Morticians*. The proposed amendments rename the regulation from “Morticians” to “Funeral Directors” and update all the references to “mortician” to refer to “funeral director” throughout the regulation. The proposed amendments add a new subdivision (a) to include definitions for the terms “funeral director,” “burial,” and “cash advances,” and renumber the regulation’s current subdivisions. The proposed amendments add language to renumbered subdivision (b)(1) and (2) to clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs, and delete the outdated footnote from renumbered subdivision (b)(1). The proposed amendments add a new subdivision (b)(3), which provides an example of how tax applies to the items on a funeral director’s invoice using a current tax rate. The proposed amendments add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to “cash advances,” and delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances. The proposed amendments update renumbered subdivision (c)(3) and delete outdated language from renumbered subdivision (c)(3) relating to the specific amount of the veterans’ interment allowance paid by the United States Government. The proposed amendments delete the outdated examples in current subdivision (b)(3). The proposed amendments also make other minor changes for grammar and gender neutrality.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on September 15-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on September 15-17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1505.

AUTHORITY

RTC section 7051

REFERENCE

RTC sections 6015 and 6381

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (RTC, § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Reg. 1700, subd. (a)(1).)

When sales tax does not apply, California use tax is imposed, measured by the sales price of property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) The use tax is imposed on the person actually storing, using, or otherwise consuming the property. (RTC, § 6202.)

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) Also, the term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property . . ." (RTC, § 6015, subd. (a)(1).)

Federal and California law limit the application of California's sales and use taxes to transactions in interstate and foreign commerce. The Board adopted Regulation 1610, *Interstate and Foreign Commerce*, to generally prescribe the application of California's sales and use taxes to transactions involving the movement of tangible personal property into and out of California.

Also, federal and California law limit the application of California's sales and use taxes to transactions involving the United States (U.S.) Government. (RTC, §§ 6352, 6381.) And, the Board adopted Regulation 1614, *Sales to the United States and Its Instrumentalities*, to generally prescribe the circumstances under which gross receipts from the sale of tangible personal property to the U.S. Government and the consumption of tangible personal property purchased by the U.S. Government are exempt from sales and use tax under federal and California law.

In addition, California law provides that, in accordance with regulations prescribed by the Board, a deduction may be taken if a retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for sales tax or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (RTC, § 6012). And, the Board adopted Regulation 1701, *Tax-Paid Purchases Resold*, to generally prescribe the circumstances under which a retailer may claim such a deduction.

Finally, the Board adopted Regulation 1505 to provide specific guidance to morticians regarding the proper application of sales and use tax. The regulation explains when morticians are retailers and when they are consumers of tangible personal property for sales and use tax purposes. It also provides guidance to morticians on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and “pre-need agreements.” Regulation 1505’s provisions initially became effective August 1, 1933, they were amended and renumbered as Regulation 1505 in 1970, and they have not been amended since 1980.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1505

Need for Clarification

Board staff determined that there were issues with Regulation 1505 because:

- The terminology used in the regulation is outdated;
- The regulation does not reflect the current goods and services provided by the burial service industry;
- There have been changes in the interment allowance provided by the U.S. Government, which is specifically referred to in the regulation; and
- It is no longer necessary for the regulation to provide detailed guidance and examples regarding the application of tax to amounts burial service providers receive directly from a federal agency because recent procedural changes allow the U.S. Department of Veterans Affairs (VA) to pay death benefits directly to the surviving party, instead of the burial service provider.

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1505 to address the issues described above and a discussion paper explain the draft amendments. Both were provided to interested parties.

As relevant here, the draft amendments added a new subdivision (a) to Regulation 1505 to define the terms “morticians” and “cash advances,” and renumbered the regulation’s current subdivisions. The draft amendments also added “memorial books and digital video discs” as examples of tangible personal property sold by morticians in renumbered subdivision (b)(1).

On January 27, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting, however, staff received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to change the title of the regulation from "Morticians" to "Funeral Director." Additionally, after the interested parties meeting, BTC staff received a letter dated February 16, 2015, from Sarah Adams, Vice President of Tax, Service Corporation International. The letter requested the Board consider an amendment to renumbered subdivision (b)(2) to include a reference to memorial books and DVDs that would mirror the BTC staff's draft amendments to renumbered subdivision (b)(1), which Board staff incorporated.

April 28, 2015 Business Taxes Committee Meeting

Subsequently, staff prepared Formal Issue Paper 15-003 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15-003 recommended that the Board propose to change the name of Regulation 1505 from "Morticians" to "Funeral Directors" and update all the references to "mortician" to refer to "funeral director" throughout the regulation. The change to the title of the regulation from "Morticians" to "Funeral Directors" was suggested by interested parties and BTC staff agreed this term is more indicative of the industry and the person responsible for reporting tax.

The formal issue paper recommended that the Board propose to add a new subdivision (a) to Regulation 1505, and renumber the regulation's current subdivisions. The formal issue paper recommended that new subdivision (a) include a definition for the new term "funeral director," and the term "burial," which is used in the definition of "funeral director," in order to update the regulation and provide clarity regarding the terms used throughout the regulation. The formal issue paper recommended that the Board propose to update the regulation to more succinctly refer to "cash advances," instead of "accommodation cash advances." The formal issue paper also recommended that the Board propose to include a definition for the term "cash advances" in subdivision (a) to provide additional clarity, add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to "cash advances," renumber current subdivision (b)(2) as subdivision (c)(3), delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances, and renumber current subdivision (b)(5) as subdivision (c)(4).

The formal issue paper recommended that the Board propose to add language to renumbered subdivision (b)(1) and (2) to update the regulation and clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs. The formal issue paper recommended that the Board propose to rephrase the last sentence in renumbered subdivision (b)(1) to make it grammatically correct, and delete the footnote from renumbered subdivision (b)(1), which was intended to provide additional notice regarding a 1972 amendment to Regulation 1505, but is no longer relevant. The formal issue paper also recommended that the Board propose to add a new

paragraph (3) to renumbered subdivision (b) to provide an updated and more helpful example of how tax applies to the items on a typical funeral director's invoice using a current tax rate.

Additionally, the formal issue paper explained that Regulation 1505, subdivision (b)(2) currently states, in part, "[e]ffective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans." However, the interment allowance provided by section 2303(b) of title 38 of the United States Code has been increased several times since Regulation 1505 was last amended, section 2303(b) currently provides that the interment allowance is \$700, and section 2303(c) now requires the VA to annually increase the interment allowance to reflect increases in the consumer price index. Accordingly, the formal issue paper recommended that the Board proposed to delete the language in renumbered subdivision (c)(3) that refers to a specific dollar amount for the interment allowance so there is no future need to amend the regulation each time the interment allowance changes. Also, the United States "Veterans Administration" was renamed the "Department of Veterans Affairs" since Regulation 1505 was last amended in 1980. So, the formal issue paper also recommended that the Board propose to update Regulation 1505 by adding "Government" to the end of the title of renumbered subdivision (c)(3), changing the references to the "United States" to "U.S." in renumbered subdivision (c)(3), and revising the remaining references to the "Veterans Administration" to refer to the "Department of Veterans Affairs" in renumbered subdivision (c)(3).

Furthermore, effective, July 7, 2014, the VA amended its regulations regarding the payment of burial benefits to authorize payments of burial and funeral costs at the maximum amount authorized by law through automated systems directly to an eligible surviving spouse or any other eligible person. (38 C.F.R. §3.1702 (2014).) With these new federal procedures, there will rarely be a payment directly by the VA to a funeral director. Accordingly, the formal issue paper recommended that the Board propose to delete, as unnecessary, current subdivision (b)(3) of the regulation, which provides examples that demonstrate how to prorate U.S. Government payments.

Lastly, the formal issue paper recommended that the Board propose to make other minor changes to Regulation 1505 for grammar and gender neutrality.

At the conclusion of the Board's discussion of Formal Issue Paper 15-003 during the April 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1505 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1505 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues (or problems) referred to above.

The Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by

the burial service industry. The Board has performed an evaluation of whether the proposed amendments to Regulation 1505 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1505 is the only state regulation that provides specific guidance to morticians regarding the proper application of sales and use tax, and none of the proposed amendments conflict with Regulations 1610, 1614, and 1701 referred to above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1505 or the proposed amendments to Regulation 1505.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1505 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1505 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulation 1505 result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1505 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1505 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulation 1505 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1505 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1505 will not affect the benefits of Regulation 1505 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1505 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Monica Gonzalez Silva, Tax Counsel III, by telephone at (916) 323-3138, by e-mail at Monica.Silva@boe.ca.gov, or by mail at State Board of Equalization, Attn: Monica Gonzalez Silva, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on September 15, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1505 during the September 15-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1505. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikethrough version of the text of Regulation 1505 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1505, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1505 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1505, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, July 03, 2015 8:00 AM
To: Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Armenta, Christopher; Asprey, Kathryn E; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; Block, Susan; BOE-Board Meeting Material; Bridges, Cynthia; Brown, Michele C; Chung, Sophia (Legal); Cruz, Giovan; Davis, Toya P.; Dixon, Camille; Duran, David; Durham, Mark; Epolite, Anthony (Legal); Ferris, Randy (Legal); Folchi, Gino; Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Grant, Micah; Hamilton, Tabitha; Harrison, Michelle; Harvill, Mai; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Hite, Jay; Holmes, Dana; Hughes, Shellie L; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kuhl, James; Lambert, Gary; Lambert, Robert (Legal); Lee, Chris; Levine, David H. (Legal); Lopez, Claudia; Lowery, Russell; Matsumoto, Sid; Matthies, Ted; McElhinney, Andrew; McGuire, Jeff; Miller, Brad; Moon, Richard (Legal); Nienow, Trecia (Legal); Oakes, Clifford; Pielsticker, Michele; Ralston Ratcliff, Natasha; Renati, Lisa; Richmond, Joann; Riley, Denise (Legal); Salazar, Ramon; Sarcos, Eric; Schultz, Glenna; Silva, Monica (Legal); Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vandrick, Tanya; Vena, Emily (Legal); Wallentine, Sean; Whitaker, Lynn; White, Sharon; Wiggins, Brian; Williams, Lee; Zivkovich, Robert; Zumaeta, Jaclyn
Subject: State Board of Equalization - Announcement of Regulatory Change 1505

The State Board of Equalization proposes to adopt amendments to Regulation 1505, *Morticians*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California on September 15-17, 2015.

The proposed amendments update the name of Regulation 1505 and update the information, tax rates, and examples in Regulation 1505.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/reg_1505_2015.htm.

Questions regarding the substance of the proposed amendments should be directed to Ms. Monica Silva, Tax Counsel III, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Monica.Silva@boe.ca.gov, telephone (916) 323-3138, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

Please do not reply to this message.

Board Proceedings Division, MIC:80
Rick Bennion
Regulations Coordinator
Phone (916) 445-2130
Fax (916) 324-3984
Richard.Bennion@boe.ca.gov

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
<Legal.Regulations@BOE.CA.GOV>
Sent: Friday, July 03, 2015 9:24 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
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The State Board of Equalization proposes to adopt amendments to Regulation 1505, *Morticians*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California on September 15-17, 2015.

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You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Jennifer Almanza, Associate
Government Program Analyst
Address: Board of Vocational Nursing and
Psychiatric Technicians
2535 Capitol Oaks Drive,
Suite 205
Sacramento, CA 95833
Telephone: (916) 263-7845
FAX No.: (916) 263-7859
E-Mail Address: Almanza.Jennifer@dca.ca.gov

The back-up contact person is:

Name: Cheryl Anderson, Supervising
Nursing Education Consultant
Address: Board of Vocational Nursing and
Psychiatric Technicians
2535 Capitol Oaks Drive,
Suite 205
Sacramento, CA 95833
Telephone: (916) 263-7843
FAX No.: (916) 263-7866
E-Mail Address: Cheryl.Anderson@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.bvnpt.ca.gov.

TITLE 18. BOARD OF EQUALIZATION

**The State Board of Equalization Proposes to
Adopt Amendments to
California Code of Regulations, Title 18,
Section 1505, *Morticians***

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AUTHORITY

RTC section 7051.

REFERENCE

RTC sections 6015 and 6381.

INFORMATIVE DIGEST/POLICY STATEMENT
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Also, federal and California law limit the application of California's sales and use taxes to transactions involving the United States (U.S.) Government. (RTC, §§ 6352, 6381.) And, the Board adopted Regulation 1614, *Sales to the United States and Its Instrumentalities*, to generally prescribe the circumstances under which gross receipts from the sale of tangible personal property to the U.S. Government and the consumption of tangible personal property purchased by the U.S. Government are exempt from sales and use tax under federal and California law.

In addition, California law provides that, in accordance with regulations prescribed by the Board, a deduction may be taken if a retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for sales tax or has paid the use tax with

respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (RTC, § 6012.) And, the Board adopted Regulation 1701, *Tax-Paid Purchases Resold*, to generally prescribe the circumstances under which a retailer may claim such a deduction.

Finally, the Board adopted Regulation 1505 to provide specific guidance to morticians regarding the proper application of sales and use tax. The regulation explains when morticians are retailers and when they are consumers of tangible personal property for sales and use tax purposes. It also provides guidance to morticians on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and "pre-need agreements." Regulation 1505's provisions initially became effective August 1, 1933; they were amended and renumbered as Regulation 1505 in 1970; and they have not been amended since 1980.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1505

Need for Clarification

Board staff determined that there were issues with Regulation 1505 because:

- The terminology used in the regulation is outdated;
- The regulation does not reflect the current goods and services provided by the burial service industry;
- There have been changes in the interment allowance provided by the U.S. Government, which is specifically referred to in the regulation; and
- It is no longer necessary for the regulation to provide detailed guidance and examples regarding the application of tax to amounts burial service providers receive directly from a federal agency because recent procedural changes allow the U.S. Department of Veterans Affairs (VA) to pay death benefits directly to the surviving party, instead of the burial service provider.

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As relevant here, the draft amendments added a new subdivision (a) to Regulation 1505 to define the terms "morticians" and "cash advances," and renumbered the regulation's current subdivisions. The draft amendments also added "memorial books and digital video

discs” as examples of tangible personal property sold by morticians in renumbered subdivision (b)(1).

On January 27, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting; however, staff received and worked with interested parties’ informal suggestions to refine the draft amendments, including a suggestion to change the title of the regulation from “Morticians” to “Funeral Directors.” Additionally, after the interested parties meeting, BTC staff received a letter dated February 16, 2015, from Sarah Adams, Vice President of Tax, Service Corporation International. The letter requested the Board consider an amendment to renumbered subdivision (b)(2) to include a reference to memorial books and DVDs that would mirror the BTC staff’s draft amendments to renumbered subdivision (b)(1), which Board staff incorporated.

April 28, 2015 Business Taxes Committee Meeting

Subsequently, staff prepared Formal Issue Paper 15–003 and distributed it to the Board Members for consideration at the Board’s July 28, 2015, BTC meeting. Formal Issue Paper 15–003 recommended that the Board propose to change the name of Regulation 1505 from “Morticians” to “Funeral Directors” and update all the references to “mortician” to refer to “funeral director” throughout the regulation. The change to the title of the regulation from “Morticians” to “Funeral Directors” was suggested by interested parties and BTC staff agreed this term is more indicative of the industry and the person responsible for reporting tax.

The formal issue paper recommended that the Board propose to add a new subdivision (a) to Regulation 1505, and renumber the regulation’s current subdivisions. The formal issue paper recommended that new subdivision (a) include a definition for the new term “funeral director,” and the term “burial,” which is used in the definition of “funeral director,” in order to update the regulation and provide clarity regarding the terms used throughout the regulation. The formal issue paper recommended that the Board propose to update the regulation to more succinctly refer to “cash advances,” instead of “accommodation cash advances.” The formal issue paper also recommended that the Board propose to include a definition for the term “cash advances” in subdivision (a) to provide additional clarity, add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to “cash advances,” renumber current subdivision (b)(2) as subdivision (c)(3), delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances, and renumber current subdivision (b)(5) as subdivision (c)(4).

The formal issue paper recommended that the Board propose to add language to renumbered subdivision (b)(1) and (2) to update the regulation and clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs. The formal issue paper recommended that the Board propose to rephrase the last sentence in renumbered subdivision (b)(1) to make it grammatically correct, and delete the footnote from renumbered subdivision (b)(1), which was intended to provide additional notice regarding a 1972 amendment to Regulation 1505, but is no longer relevant. The formal issue paper also recommended that the Board propose to add a new paragraph (3) to renumbered subdivision (b) to provide an updated and more helpful example of how tax applies to the items on a typical funeral director’s invoice using a current tax rate.

Additionally, the formal issue paper explained that Regulation 1505, subdivision (b)(2) currently states, in part, “[e]ffective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans.” However, the interment allowance provided by section 2303(b) of title 38 of the United States Code has been increased several times since Regulation 1505 was last amended; section 2303(b) currently provides that the interment allowance is \$700, and section 2303(c) now requires the VA to annually increase the interment allowance to reflect increases in the consumer price index. Accordingly, the formal issue paper recommended that the Board proposed to delete the language in renumbered subdivision (c)(3) that refers to a specific dollar amount for the interment allowance so there is no future need to amend the regulation each time the interment allowance changes. Also, the United States “Veterans Administration” was renamed the “Department of Veterans Affairs” since Regulation 1505 was last amended in 1980. So, the formal issue paper also recommended that the Board propose to update Regulation 1505 by adding “Government” to the end of the title of renumbered subdivision (c)(3), changing the references to the “United States” to “U.S.” in renumbered subdivision (c)(3), and revising the remaining references to the “Veterans Administration” to refer to the “Department of Veterans Affairs” in renumbered subdivision (c)(3).

Furthermore, effective, July 7, 2014, the VA amended its regulations regarding the payment of burial benefits to authorize payments of burial and funeral costs at the maximum amount authorized by law through automated systems directly to an eligible surviving spouse or any other eligible person. (38 C.F.R. §3.1702 (2014).) With these new federal procedures, there will rarely be a payment directly by the VA to a fu-

neral director. Accordingly, the formal issue paper recommended that the Board propose to delete, as unnecessary, current subdivision (b)(3) of the regulation, which provides examples that demonstrate how to prorate U.S. Government payments.

Lastly, the formal issue paper recommended that the Board propose to make other minor changes to Regulation 1505 for grammar and gender neutrality.

At the conclusion of the Board's discussion of Formal Issue Paper 15-003 during the April 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1505 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1505 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues (or problems) referred to above.

The Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by the burial service industry. The Board has performed an evaluation of whether the proposed amendments to Regulation 1505 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1505 is the only state regulation that provides specific guidance to morticians regarding the proper application of sales and use tax, and none of the proposed amendments conflict with Regulations 1610, 1614, and 1701 referred to above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1505 or the proposed amendments to Regulation 1505.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1505 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1505 will result in

no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulation 1505 result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1505 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1505 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulation 1505 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1505 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1505 will not affect the benefits of Regulation 1505 to the health and welfare of California residents, worker safety, or the state's environment.

**NO SIGNIFICANT EFFECT ON
HOUSING COSTS**

The adoption of the proposed amendments to Regulation 1505 will not have a significant effect on housing costs.

**DETERMINATION REGARDING
ALTERNATIVES**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Monica Gonzalez Silva, Tax Counsel III, by telephone at (916) 323-3138, by e-mail at Monica.Silva@boe.ca.gov, or by mail at State Board of Equalization, Attn: Monica Gonzalez Silva, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on September 15, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1505 during the September 15-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides

whether to adopt the proposed amendments to Regulation 1505. The Board will only consider written comments received by that time.

**AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATION**

The Board has prepared an underscored and strikethrough version of the text of Regulation 1505 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1505, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

**SUBSTANTIALLY RELATED CHANGES
PURSUANT TO GOVERNMENT CODE
SECTION 11346.8**

The Board may adopt the proposed amendments to Regulation 1505 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

If the Board adopts the proposed amendments to Regulation 1505, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

July 3, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18,
Section 1505, *Morticians***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1505, *Morticians*. The proposed amendments rename the regulation from “Morticians” to “Funeral Directors” and update all the references to “mortician” to refer to “funeral director” throughout the regulation. The proposed amendments add a new subdivision (a) to include definitions for the terms “funeral director,” “burial,” and “cash advances,” and renumber the regulation’s current subdivisions. The proposed amendments add language to renumbered subdivision (b)(1) and (2) to clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs, and delete the outdated footnote from renumbered subdivision (b)(1). The proposed amendments add a new subdivision (b)(3), which provides an example of how tax applies to the items on a funeral director’s invoice using a current tax rate. The proposed amendments add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to “cash advances,” and delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances. The proposed amendments update renumbered subdivision (c)(3) and delete outdated language from renumbered subdivision (c)(3) relating to the specific amount of the veterans’ interment allowance paid by the United States Government. The proposed amendments delete the outdated examples in current subdivision (b)(3). The proposed amendments also make other minor changes for grammar and gender neutrality.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on September 15-17, 2015. The Board will provide notice of the meeting to any person who

requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on September 15-17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1505.

AUTHORITY

RTC section 7051

REFERENCE

RTC sections 6015 and 6381

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (RTC, § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Reg. 1700, subd. (a)(1).)

When sales tax does not apply, California use tax is imposed, measured by the sales price of property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) The use tax is imposed on the person actually storing, using, or otherwise consuming the property. (RTC, § 6202.)

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) Also, the term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property . . ." (RTC, § 6015, subd. (a)(1).)

Federal and California law limit the application of California's sales and use taxes to transactions in interstate and foreign commerce. The Board adopted Regulation 1610, *Interstate and Foreign Commerce*, to generally prescribe the application of California's sales and use taxes to transactions involving the movement of tangible personal property into and out of California.

Also, federal and California law limit the application of California's sales and use taxes to transactions involving the United States (U.S.) Government. (RTC, §§ 6352, 6381.) And, the Board adopted Regulation 1614, *Sales to the United States and Its Instrumentalities*, to generally prescribe the circumstances under which gross receipts from the sale of tangible personal property to the U.S. Government and the consumption of tangible personal property purchased by the U.S. Government are exempt from sales and use tax under federal and California law.

In addition, California law provides that, in accordance with regulations prescribed by the Board, a deduction may be taken if a retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for sales tax or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (RTC, § 6012). And, the Board adopted Regulation 1701, *Tax-Paid Purchases Resold*, to generally prescribe the circumstances under which a retailer may claim such a deduction.

Finally, the Board adopted Regulation 1505 to provide specific guidance to morticians regarding the proper application of sales and use tax. The regulation explains when morticians are retailers and when they are consumers of tangible personal property for sales and use tax purposes. It also provides guidance to morticians on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and "pre-need agreements." Regulation 1505's provisions initially became effective August 1, 1933, they were amended and renumbered as Regulation 1505 in 1970, and they have not been amended since 1980.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1505

Need for Clarification

Board staff determined that there were issues with Regulation 1505 because:

- The terminology used in the regulation is outdated;
- The regulation does not reflect the current goods and services provided by the burial service industry;
- There have been changes in the interment allowance provided by the U.S. Government, which is specifically referred to in the regulation; and
- It is no longer necessary for the regulation to provide detailed guidance and examples regarding the application of tax to amounts burial service providers receive directly from a federal agency because recent procedural changes allow the U.S. Department of Veterans Affairs (VA) to pay death benefits directly to the surviving party, instead of the burial service provider.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1505 to address the issues described above and a discussion paper explain the draft amendments. Both were provided to interested parties.

As relevant here, the draft amendments added a new subdivision (a) to Regulation 1505 to define the terms "morticians" and "cash advances," and renumbered the regulation's current subdivisions. The draft amendments also added "memorial books and digital video discs" as examples of tangible personal property sold by morticians in renumbered subdivision (b)(1).

On January 27, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting, however, staff received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to change the title of the regulation from "Morticians" to "Funeral Director." Additionally, after the interested parties meeting, BTC staff received a letter dated February 16, 2015, from Sarah Adams, Vice President of Tax, Service Corporation International. The letter requested the Board consider an amendment to renumbered subdivision (b)(2) to include a reference to memorial books and DVDs that would mirror the BTC staff's draft amendments to renumbered subdivision (b)(1), which Board staff incorporated.

April 28, 2015 Business Taxes Committee Meeting

Subsequently, staff prepared Formal Issue Paper 15-003 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15-003 recommended that the Board propose to change the name of Regulation 1505 from "Morticians" to "Funeral Directors" and update all the references to "mortician" to refer to "funeral director" throughout the regulation. The change to the title of the regulation from "Morticians" to "Funeral Directors" was suggested by interested parties and BTC staff agreed this term is more indicative of the industry and the person responsible for reporting tax.

The formal issue paper recommended that the Board propose to add a new subdivision (a) to Regulation 1505, and renumber the regulation's current subdivisions. The formal issue paper recommended that new subdivision (a) include a definition for the new term "funeral director," and the term "burial," which is used in the definition of "funeral director," in order to update the regulation and provide clarity regarding the terms used throughout the regulation. The formal issue paper recommended that the Board propose to update the regulation to more succinctly refer to "cash advances," instead of "accommodation cash advances." The formal issue paper also recommended that the Board propose to include a definition for the term "cash advances" in subdivision (a) to provide additional clarity, add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to "cash advances," renumber current subdivision (b)(2) as subdivision (c)(3), delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances, and renumber current subdivision (b)(5) as subdivision (c)(4).

The formal issue paper recommended that the Board propose to add language to renumbered subdivision (b)(1) and (2) to update the regulation and clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs. The formal issue paper recommended that the Board propose to rephrase the last sentence in renumbered subdivision (b)(1) to make it grammatically correct, and delete the footnote from renumbered subdivision (b)(1), which was intended to provide additional notice regarding a 1972 amendment to Regulation 1505, but is no longer relevant. The formal issue paper also recommended that the Board propose to add a new paragraph (3) to renumbered subdivision (b) to provide an updated and more helpful example of how tax applies to the items on a typical funeral director's invoice using a current tax rate.

Additionally, the formal issue paper explained that Regulation 1505, subdivision (b)(2) currently states, in part, “[e]ffective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans.” However, the interment allowance provided by section 2303(b) of title 38 of the United States Code has been increased several times since Regulation 1505 was last amended, section 2303(b) currently provides that the interment allowance is \$700, and section 2303(c) now requires the VA to annually increase the interment allowance to reflect increases in the consumer price index. Accordingly, the formal issue paper recommended that the Board proposed to delete the language in renumbered subdivision (c)(3) that refers to a specific dollar amount for the interment allowance so there is no future need to amend the regulation each time the interment allowance changes. Also, the United States “Veterans Administration” was renamed the “Department of Veterans Affairs” since Regulation 1505 was last amended in 1980. So, the formal issue paper also recommended that the Board propose to update Regulation 1505 by adding “Government” to the end of the title of renumbered subdivision (c)(3), changing the references to the “United States” to “U.S.” in renumbered subdivision (c)(3), and revising the remaining references to the “Veterans Administration” to refer to the “Department of Veterans Affairs” in renumbered subdivision (c)(3).

Furthermore, effective, July 7, 2014, the VA amended its regulations regarding the payment of burial benefits to authorize payments of burial and funeral costs at the maximum amount authorized by law through automated systems directly to an eligible surviving spouse or any other eligible person. (38 C.F.R. §3.1702 (2014).) With these new federal procedures, there will rarely be a payment directly by the VA to a funeral director. Accordingly, the formal issue paper recommended that the Board propose to delete, as unnecessary, current subdivision (b)(3) of the regulation, which provides examples that demonstrate how to prorate U.S. Government payments.

Lastly, the formal issue paper recommended that the Board propose to make other minor changes to Regulation 1505 for grammar and gender neutrality.

At the conclusion of the Board's discussion of Formal Issue Paper 15-003 during the April 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to

Regulation 1505 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1505 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues (or problems) referred to above.

The Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by the burial service industry. The Board has performed an evaluation of whether the proposed amendments to Regulation 1505 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1505 is the only state regulation that provides specific guidance to morticians regarding the proper application of sales and use tax, and none of the proposed amendments conflict with Regulations 1610, 1614, and 1701 referred to above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1505 or the proposed amendments to Regulation 1505.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1505 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1505 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulation 1505 result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1505 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1505 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulation 1505 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1505 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1505 will not affect the benefits of Regulation 1505 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1505 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Monica Gonzalez Silva, Tax Counsel III, by telephone at (916) 323-3138, by e-mail at Monica.Silva@boe.ca.gov, or by mail at State Board of Equalization, Attn: Monica Gonzalez Silva, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action

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WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on September 15, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1505 during the September 15-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1505. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikethrough version of the text of Regulation 1505 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1505, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

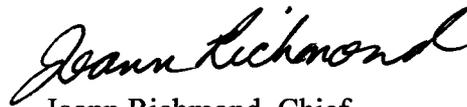
The Board may adopt the proposed amendments to Regulation 1505 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

July 3, 2015

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1505, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the September 16, 2015 Board Meeting

Joann Richmond
Joann Richmond, Chief
Board Proceedings Division

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Section 1505, *Morticians***

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

Current Law

Revenue and Taxation Code (RTC) section 6051 imposes California sales tax on retailers for the privilege of selling tangible personal property at retail. Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § (Reg.) 1700, subd. (a)(1).)

When sales tax does not apply, California use tax is imposed, measured by the sales price of property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) The use tax is imposed on the person actually storing, using, or otherwise consuming the property. (RTC, § 6202.)

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) Also, the term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property" (RTC, § 6015, subd. (a)(1).)

Federal and California law limit the application of California's sales and use taxes to transactions in interstate and foreign commerce. The State Board of Equalization (Board) adopted California Code of Regulations, title 18, section (Regulation) 1610, *Interstate and Foreign Commerce*, to generally prescribe the application of California's sales and use taxes to transactions involving the movement of tangible personal property into and out of California.

Also, federal and California law limit the application of California's sales and use taxes to transactions involving the United States (U.S.) Government. (RTC, §§ 6352, 6381.) And, the Board adopted Regulation 1614, *Sales to the United States and Its Instrumentalities*, to generally prescribe the circumstances under which gross receipts from the sale of tangible personal property to the U.S. Government and the consumption of tangible personal property purchased by the U.S. Government are exempt from sales and use tax under federal and California law.

In addition, California law provides that, in accordance with regulations prescribed by the Board, a deduction may be taken if a retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for sales tax or has paid the use tax with respect to the property,

and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (RTC, § 6012). And, the Board adopted Regulation 1701, *Tax-Paid Purchases Resold*, to generally prescribe the circumstances under which a retailer may claim such a deduction.

Finally, the Board adopted Regulation 1505, *Morticians*, to provide specific guidance to morticians regarding the proper application of sales and use tax. The regulation explains when morticians are retailers and when they are consumers of tangible personal property for sales and use tax purposes. It also provides guidance to morticians on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and “pre-need agreements.” Regulation 1505’s provisions initially became effective August 1, 1933, they were amended and renumbered as Regulation 1505 in 1970, and they have not been amended since 1980.

Proposed Amendments

Need for Clarity

Board staff determined that there were issues (or problems) within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)) with Regulation 1505 because:

- The terminology used in Regulation 1505 is outdated;
- The regulation does not reflect the current goods and services provided by the burial service industry;
- There have been changes in the interment allowance provided by the U.S. Government, which is specifically referred to in the regulation; and
- It is no longer necessary for the regulation to provide detailed guidance and examples regarding the application of tax to amounts burial service providers receive directly from a federal agency because recent procedural changes allow the U.S. Department of Veterans Affairs (VA) to pay death benefits directly to the surviving party, instead of the burial service provider.

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1505 to address the issues described above and a discussion paper explaining the draft amendments. Both were provided to interested parties.

As relevant here, the draft amendments added a new subdivision (a) to Regulation 1505 to define the terms “morticians” and “cash advances,” and renumbered the regulation’s current subdivisions. The draft amendments also added “memorial books and digital video discs” as examples of tangible personal property sold by morticians in renumbered subdivision (b)(1).

On January 27, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting, however, staff received and worked with interested parties’ informal suggestions to refine the

draft amendments, including a suggestion to change the title of the regulation from “Morticians” to “Funeral Director.” Additionally, after the interested parties meeting, BTC staff received a letter dated February 16, 2015, from Sarah Adams, Vice President of Tax, Service Corporation International. The letter requested the Board consider an amendment to renumbered subdivision (b)(2) to include a reference to memorial books and DVDs that would mirror the BTC staff’s draft amendments to renumbered subdivision (b)(1), which Board staff incorporated.

April 28, 2015 Business Taxes Committee Meeting

Subsequently, staff prepared Formal Issue Paper 15-003 and distributed it to the Board Members for consideration at the Board’s July 28, 2015, BTC meeting. Formal Issue Paper 15-003 recommended that the Board propose to change the name of Regulation 1505 from “Morticians” to “Funeral Directors” and update all the references to “mortician” to refer to “funeral director” throughout the regulation. The change to the title of the regulation from “Morticians” to “Funeral Directors” was suggested by interested parties and BTC staff agreed this term is more indicative of the industry and the person responsible for reporting tax.

The formal issue paper recommended that the Board propose to add a new subdivision (a) to Regulation 1505, and renumber the regulation’s current subdivisions. The formal issue paper recommended that new subdivision (a) include a definition for the new term “funeral director,” and a definition for the term “burial,” which is used in the definition of the term “funeral director,” in order to update the regulation and provide clarity regarding the terms used throughout the regulation. The formal issue paper recommended that the Board propose to update the regulation to more succinctly refer to “cash advances,” instead of “accommodation cash advances.” The formal issue paper also recommended that the Board propose to include a definition for the term “cash advances” in subdivision (a) to provide additional clarity, add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to “cash advances,” renumber current subdivision (b)(2) as subdivision (c)(3), delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances, and renumber current subdivision (b)(5) as subdivision (c)(4).

The formal issue paper recommended that the Board propose to add language to renumbered subdivision (b)(1) and (2) to update the regulation and clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs. The formal issue paper recommended that the Board propose to rephrase the last sentence in renumbered subdivision (b)(1) to make it grammatically correct, and delete the footnote from renumbered subdivision (b)(1), which was intended to provide additional notice regarding a 1972 amendment to Regulation 1505, but is no longer relevant. The formal issue paper also recommended that the Board propose to add a new paragraph (3) to renumbered subdivision (b) to provide an updated and more helpful example of how tax applies to the items on a typical funeral director’s invoice using a current tax rate.

Additionally, the formal issue paper explained that Regulation 1505, subdivision (b)(2) currently states, in part, “[e]ffective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for

veterans.” However, the interment allowance provided by section 2303(b) of title 38 of the United States Code has been increased several times since Regulation 1505 was last amended, section 2303(b) currently provides that the interment allowance is \$700, and section 2303(c) now requires the VA to annually increase the interment allowance to reflect increases in the consumer price index. Accordingly, the formal issue paper recommended that the Board propose to delete the language in renumbered subdivision (c)(3) that refers to a specific dollar amount for the interment allowance so there is no future need to amend the regulation each time the interment allowance changes. Also, the United States “Veterans Administration” was renamed the “Department of Veterans Affairs” since Regulation 1505 was last amended in 1980. So, the formal issue paper also recommended that the Board propose to update Regulation 1505 by adding “Government” to the end of the title of renumbered subdivision (c)(3), changing the references to the “United States” to “U.S.” in renumbered subdivision (c)(3), and revising the remaining references to the “Veterans Administration” to refer to the “Department of Veterans Affairs” in renumbered subdivision (c)(3).

Furthermore, effective, July 7, 2014, the VA amended its regulations regarding the payment of burial benefits to authorize payments of burial and funeral costs at the maximum amount authorized by law through automated systems directly to an eligible surviving spouse or any other eligible person. (38 C.F.R. § 3.1702 (2014).) With these new federal procedures, there will rarely be a payment directly by the VA to a funeral director. Accordingly, the formal issue paper recommended that the Board delete, as unnecessary, current subdivision (b)(3) of the regulation, which provides examples that demonstrate how to prorate U.S. Government payments.

Lastly, the formal issue paper recommended that the Board propose to make other minor changes to Regulation 1505 for grammar and gender neutrality.

At the conclusion of the Board’s discussion of Formal Issue Paper 15-003 during the April 28, 2015, BTC, the Board Members unanimously voted to propose the amendments to Regulation 1505 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1505 are reasonably necessary for the specific purpose of clarifying and updating the regulation to address the issues (or problems) referred to above.

The Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by the burial service industry.

The proposed amendments to Regulation 1505 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1505 or the proposed amendments to Regulation 1505.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-003, the exhibits to the issue paper, and the comments made during the Board’s discussion of the issue paper during its April 28, 2015, BTC meeting in deciding to propose the amendments to Regulation 1505 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1505 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1505 at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulation 1505 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The proposed amendments clarify the terms used in the regulation, update the guidance currently provided in the regulation so that the regulation corresponds with current industry practice, and provide a current example of how tax applies to a typical transaction using a current tax rate. The proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Sales and Use Tax Law (RTC, § 6001 et seq.) or Regulation 1505, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave, in the absence of the proposed regulatory action, or that would impact revenue. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and businesses. And, the Board has determined that the proposed amendments to Regulation 1505 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulation 1505 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulation 1505 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulation 1505 will not affect the benefits of

Regulation 1505 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulation 1505 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1505 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1505**

1505. ~~Morticians~~Funeral Directors.

(a) Definitions.

(1) Funeral Director. "Funeral director" means any person or entity that is engaged in providing a burial service or services and may include, but is not limited to, funeral directors, undertakers, morticians, embalmers, or cemetery brokers.

(2) Burial. "Burial" means all legal methods of disposing of the remains of a deceased person, including, but not limited to, interment, cremation, burial at sea, and medical school donation.

(3) Cash Advances. "Cash advances" means funds paid out to third parties as a courtesy to the client for items that are part of the funeral service but not generally sold by the funeral director.

(ab) In General.

(1) ~~Morticians~~Funeral Directors as Retailers. ~~Morticians~~Funeral directors are retailers of caskets, boxes, vaults, and clothing. They ~~also~~ are also retailers of any other tangible personal property such as memorial books and digital video discs (DVDs) furnished in connection with rendering their services if a separate charge is made for such property. ~~Unless otherwise exempt, tax~~ applies to the sales price of all tangible personal property sold by ~~morticians~~funeral directors, unless otherwise exempt. [FN a1]

(2) ~~Morticians~~Funeral Directors as Consumers. ~~Morticians~~Funeral directors are consumers of acknowledgment cards, memorial folders, registration books, embalming fluid, cosmetics, eye caps, morgue supplies, car stickers, ~~and prayer books,~~ memorial books, and DVDs which are furnished by them in connection with services they render unless a separate charge is made for such property. Tax applies to the sales price ~~to the mortician~~ of all tangible personal property sold to and consumed by ~~him~~the funeral director.

(3) Example of Application of Tax. In the example below, the burial package includes the basic services of the funeral director and staff, transfer of the decedent to the funeral home, embalming, dressing, cosmetology and placement of the decedent in a casket, facility and staff for ceremony, equipment and staff for committal service, on-line funeral notice, one visitation period, use of hearse, one "life-tribute" DVD, and a premium memorial box set. The client chose to purchase a maple casket and 10 additional DVDs for their family.

Funeral director's invoice to client:

<u>Maple Casket (t)</u>	<u>2,895.00</u>
<u>Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)</u>	<u>250.00</u>
<u>Total of Items Subject to Tax</u>	<u>\$3,145.00</u>

<u>Traditional Chapel Burial Package</u>	<u>\$4,945.00</u>
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Fees for Cash Advance items:

<u>County filing fee</u>	12.00
<u>Certified copy of Death Certificate</u>	21.00
<u>Organist</u>	225.00
<u>Total Fees</u>	<u>\$258.00</u>
<u>Total Nontaxable</u>	<u>\$5,203.00</u>
<u>Total Taxable</u>	<u>\$3,145.00</u>
<u>Sales Tax (\$3,145.00) x 8.25%</u>	259.46
<u>Grand Total</u>	<u>\$8,607.46</u>

(t) = Tangible personal property

(bc) Application of Tax to Specific Types of Transactions.

(1) Sales in Interstate or Foreign Commerce. The sale of a casket and other tangible personal property by a ~~mortician~~funeral director, which ~~he is~~is delivered or shipped to an out-of-state point pursuant to the agreement of sale, is regarded as a sale in interstate or foreign commerce and is exempt from the tax. The facts that the death of the deceased occurred in this state, that the contracting parties are residents of this state, and that services are held in this state prior to the shipment, are immaterial.

(2) Cash Advances. Tax does not apply to cash advances for such items as cemetery charges, newspaper notices, airplane tickets, ministerial fees, and flowers.

(23) Sales to the United States (U.S.) Government. All or a portion of charges for funerals of veterans and other persons may be paid by the ~~United States~~U.S. Department of Veterans AdministrationAffairs or by the Social Security Administration. Effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans. MorticiansFuneral directors may take a deduction for sales to the ~~United States~~U.S. Government when claims filed by them with federal agencies are paid directly to the ~~mortician~~funeral directors regardless of method of billing. If funeral charges are paid by another person, there is no tax exemption even though such person may receive reimbursement from a federal agency and even though the amount received as reimbursement is assigned or endorsed over to the ~~mortician~~funeral director as a credit against those charges.

In computing the allowable exemption, the funeral allowance and the interment allowance must be treated separately.

(A) Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales or tangible personal property and charges for exempt services. None are to be allocated to ~~accommodation~~ cash advances. The only exception will be when a portion of a payment is clearly identified as applying to something for which a ~~mortician~~funeral director has made a specific charge.

(B) Payments received directly from the ~~United States~~ U.S. Department of Veterans Administration Affairs which are identified as interment allowances are to be prorated between sales of tangible personal property used in actual interment and charges or advances for services in connection with the interment. The only exception will be when a portion of the payment is clearly identified as applying to something pertaining to interment for which the ~~mortician~~ funeral director has made a specific charge.

~~(3) Examples of Application of Amounts Received by Morticians Directly From a Federal Agency (Examples are at 6 percent rate).~~

~~Mortician's invoice to client:~~

Charges	
Services	\$ 400.00
Casket	355.00
Vault	200.00
Suit	<u>45.00</u>
Subtotal	<u>\$1,000.00</u>
Accommodation Cash Advances	
Cemetery Space and Opening	\$ 50.00
Clergy	25.00
Musie	<u>15.00</u>
Subtotal	<u>\$ 90.00</u>
Total	<u>\$1,090.00</u>
Sales Tax (6% of \$355, \$200 & \$45)	<u>36.00</u>
Total	<u>\$1,126.00</u>

~~Example 1. Funeral allowance only.~~

~~Cash received by the mortician directly from a federal agency as a funeral allowance, and not allocated by the United States Government to any specific portion of the above charges, was \$300. No interment allowance was received.~~

~~Since \$600 of the \$1,000 charged the client (exclude the cash advances) was for tangible personal property, 60% of the amount received from the federal agency (60% of \$300 equals \$180) is considered a sale of such property to the United States Government and is exempt from sales tax.~~

~~Computation of Tax:~~

Total Charges	\$1,090.00
Less: Accommodation Advances	<u>\$ 90.00</u>

Exempt Services	400.00	
Sale to United States	<u>180.00</u>	<u>670.00</u>
Taxable Sale		\$ 420.00
Tax at 6%		<u>25.20</u>
Taxable Sale Including Tax		<u>\$ 445.20</u>

Example 2. Funeral allowance and interment allowance received by mortician.

Cash received by the mortician directly from a federal agency, and not allocated by the United States Government to any specific portion of the above charges, was \$300 as a funeral allowance and \$150 as an interment allowance.

Since the total charges by the mortician related to interment were \$250 (vault \$200 plus cemetery space and opening \$50), and the charge for tangible personal property related to interment was \$200 (vault), 80% of the amount received from the federal agency as an interment allowance (80% of \$150 equals \$120) is considered a sale of such property to the United States Government and is exempt from sales tax.

Since \$400 (casket \$355 and suit \$45) of the \$800 charged the client for the funeral (exclude the cash advances and the vault) was for tangible personal property, 50% of the amount received from the federal agency as a funeral allowance (50% of \$300 equals \$150) is considered a sale of such property to the United States Government and is exempt from sales tax.

Computation of Tax:

Total Charges		\$1,090.00
Less: Accommodation Advances	\$ 90.00	
Exempt Services	400.00	
Sale to United States Government (\$120 plus \$150)	<u>270.00</u>	<u>760.00</u>
Taxable Sale		\$ 330.00
Tax at 6%		<u>19.80</u>
Taxable Sale Including Tax		<u>\$ 349.80</u>

(4) Accommodation Cash Advances. Tax does not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, ministerial fees and flowers.

(54) Tax-Paid Purchases Resold. A mortician funeral director may claim a "tax-paid purchases resold" deduction if the mortician funeral director reimbursed the vendor for tax which the vendor is required to pay to the state or has paid use tax with respect to the property and has resold the property prior to making any use of it.

(ed) “Pre-Need” Agreements. Where a ~~mortician~~funeral director, cemetery association or other person enters into an agreement with a customer to provide services upon the death of the customer, no sale occurs for sales and use tax purposes until the services are rendered.

An amount designated as “sales tax” in the agreement will be considered an estimate of tax which may become due when the services are rendered. No sales tax should be paid to the board in connection with “pre-need” agreements until the services are rendered.

[FNa1]

~~On October 25, 1972, the board adopted an amendment to the regulation by which the 50 percent standard service reporting procedure in effect until October 18, 1970, and the 45 percent standard service reporting procedure in effect thereafter, are no longer allowable.~~

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6015 and 6381, Revenue and Taxation Code.

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1505

Title: *Morticians*

Preparation: Monica Silva

Legal Contact: Monica Silva

The State Board of Equalization proposes to update the name of Regulation 1505 and update the information, tax rates, and examples in Regulation 1505.

History of Proposed Regulation:

September 15-17, 2015	Public Hearing
July 3, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
June 22, 2015	Notice to OAL
April 28, 2015	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

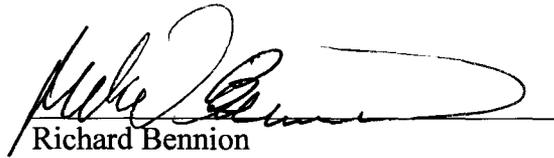
Support: NA

Oppose: NA

Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Taxes Regulation 1505, *Morticians*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on July 3, 2015, 75 days prior to the public hearing.

September 14, 2015

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT
SEPTEMBER 16, 2015

ITEM F
PUBLIC HEARINGS
F1 PROPOSED AMENDMENTS TO SALES AND USE TAX
REGULATION 1505

Reported by: Juli Price Jackson
No. CSR 5214

P R E S E N T

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For the Board
of Equalization:

Jerome E. Horton
Chairman

Sen. George Runner (Ret.)
Vice-Chairman

Fiona Ma, CPA
Member

Diane L. Harkey
Member

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

Joann Richmond
Chief, Board
Proceedings Division

---oOo---

For Staff:

Monica Silva
Tax Counsel III
Legal Department

Bradley Heller
Tax Counsel IV
Legal Department

---oOo---

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

4 ---oOo---

5 MR. HORTON: Members, let us move to item
6 F1.

7 And let me note to the audience, as well as
8 to the Members, that the -- unless there's
9 objection, there's a cameraman in the room.

10 And Ms. Richmond, will you please take us
11 there, F1.

12 MS. RICHMOND: So, our next item is item F,
13 Public Hearings.

14 We have item F1, Proposed Amendments to the
15 Sales and Use Tax Regulation 1505, Morticians.

16 MR. HORTON: Thank you, Members.

17 Members, we are now on F1, Proposed
18 Amendments to the Sales and Use Tax Regulation 1505,
19 Morticians.

20 The presenter today is Monica Silva, Tax
21 Counsel with the Legal Department and Mr. Heller.
22 Will they introduce themselves for the record,
23 please?

24 MS. SILVA: Yes, Monica Gonzales Silva here
25 with Mr. Bradley Heller for the Legal Department.

26 The proposed amendments update the name of
27 the regulation from morticians to funeral directors,
28 adds definitions, updates information, tax rates and

1 examples in the regulation.

2 We've had no public comments for today's
3 hearing, but I do want to note a typographical error
4 that was brought to my attention, specifically the
5 Informative -- the Informative Digest and the Notice
6 of Proposed Regulatory Action and the Initial
7 Statement of Reasons, contains a typographical error
8 indicating the month of July, instead of April for
9 the date of the Business Taxes Committee. We'll
10 correct that typographical error.

11 At this time we request that the Board vote
12 to adopt the proposed amendments to Regulation 1505.

13 MR. HORTON: Discussion, Members?

14 Member Runner.

15 MR. RUNNER: Move adoption.

16 MR. HORTON: Member Runner moves to approve
17 staff recommendation.

18 Second by Member --

19 MS. STOWERS: Second.

20 MR. HORTON: -- Stowers. Without
21 objection, Members, such will be the order.

22 Thank you.

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on SEPTEMBER 16, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: September 23, 2015



Juli Price Jackson

JULI PRICE JACKSON

Hearing Reporter

2015 MINUTES OF THE STATE BOARD OF EQUALIZATION

Wednesday, September 16, 2015

[B] CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

B3 John Nafeh and Ursula G. Burger Nafeh, 785086

2007, \$58,481.00 Assessment

For Appellants:

John Nafeh, Taxpayer

Ursula Burger Nafeh, Taxpayer

David B. Porter, Attorney

For Franchise Tax Board:

Judy Hirano, Tax Counsel

Ciro Immordino, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown that their corporation was a “qualified trade or business” under Revenue and Taxation Code (R&TC) section 18152.5, subdivision (e)(3).

Appellant’s Exhibit: Miscellaneous Documents (Exhibit 9.4)

Action: Upon motion of Ms. Stowers, seconded by Mr. Runner and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board submitted the appeal for decision.

PUBLIC HEARINGS

F1 Proposed Amendments to Sales and Use Tax Regulation 1505, *Morticians*

Monica Silva, Tax Counsel, Tax & Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to update the name of Regulation 1505 and update the information, tax rates and examples in Regulation 1505 (Exhibit 9.5).

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

Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board adopted the amendments to Regulations 1505 as published.

F2 Proposed Amendments to Sales and Use Tax Regulation 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability, Special Taxes and Fees Regulation 4903, Innocent Spouse or Registered Domestic Partner Relief from Liability, and Rules for Tax Appeals Regulations 5240, Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief, 5241, Acknowledgement and Review of Requests for Innocent Spouse Relief, and 5242, Requests for Reconsideration by the Board*

Bradley Heller, Tax Counsel, Tax & Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to eliminate the requirement of individuals having to file a separate request to be considered for other equitable relief (Exhibit 9.6).

Note: These minutes are not final until Board approved.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

July 3, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18,
Section 1505, *Morticians***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1505, *Morticians*. The proposed amendments rename the regulation from “Morticians” to “Funeral Directors” and update all the references to “mortician” to refer to “funeral director” throughout the regulation. The proposed amendments add a new subdivision (a) to include definitions for the terms “funeral director,” “burial,” and “cash advances,” and renumber the regulation’s current subdivisions. The proposed amendments add language to renumbered subdivision (b)(1) and (2) to clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs, and delete the outdated footnote from renumbered subdivision (b)(1). The proposed amendments add a new subdivision (b)(3), which provides an example of how tax applies to the items on a funeral director’s invoice using a current tax rate. The proposed amendments add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to “cash advances,” and delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances. The proposed amendments update renumbered subdivision (c)(3) and delete outdated language from renumbered subdivision (c)(3) relating to the specific amount of the veterans’ interment allowance paid by the United States Government. The proposed amendments delete the outdated examples in current subdivision (b)(3). The proposed amendments also make other minor changes for grammar and gender neutrality.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on September 15-17, 2015. The Board will provide notice of the meeting to any person who

requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on September 15-17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1505.

AUTHORITY

RTC section 7051

REFERENCE

RTC sections 6015 and 6381

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (RTC, § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Reg. 1700, subd. (a)(1).)

When sales tax does not apply, California use tax is imposed, measured by the sales price of property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) The use tax is imposed on the person actually storing, using, or otherwise consuming the property. (RTC, § 6202.)

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) Also, the term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property" (RTC, § 6015, subd. (a)(1).)

Federal and California law limit the application of California's sales and use taxes to transactions in interstate and foreign commerce. The Board adopted Regulation 1610, *Interstate and Foreign Commerce*, to generally prescribe the application of California's sales and use taxes to transactions involving the movement of tangible personal property into and out of California.

Also, federal and California law limit the application of California's sales and use taxes to transactions involving the United States (U.S.) Government. (RTC, §§ 6352, 6381.) And, the Board adopted Regulation 1614, *Sales to the United States and Its Instrumentalities*, to generally prescribe the circumstances under which gross receipts from the sale of tangible personal property to the U.S. Government and the consumption of tangible personal property purchased by the U.S. Government are exempt from sales and use tax under federal and California law.

In addition, California law provides that, in accordance with regulations prescribed by the Board, a deduction may be taken if a retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for sales tax or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (RTC, § 6012). And, the Board adopted Regulation 1701, *Tax-Paid Purchases Resold*, to generally prescribe the circumstances under which a retailer may claim such a deduction.

Finally, the Board adopted Regulation 1505 to provide specific guidance to morticians regarding the proper application of sales and use tax. The regulation explains when morticians are retailers and when they are consumers of tangible personal property for sales and use tax purposes. It also provides guidance to morticians on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and "pre-need agreements." Regulation 1505's provisions initially became effective August 1, 1933, they were amended and renumbered as Regulation 1505 in 1970, and they have not been amended since 1980.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1505

Need for Clarification

Board staff determined that there were issues with Regulation 1505 because:

- The terminology used in the regulation is outdated;
- The regulation does not reflect the current goods and services provided by the burial service industry;
- There have been changes in the interment allowance provided by the U.S. Government, which is specifically referred to in the regulation; and
- It is no longer necessary for the regulation to provide detailed guidance and examples regarding the application of tax to amounts burial service providers receive directly from a federal agency because recent procedural changes allow the U.S. Department of Veterans Affairs (VA) to pay death benefits directly to the surviving party, instead of the burial service provider.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1505 to address the issues described above and a discussion paper explain the draft amendments. Both were provided to interested parties.

As relevant here, the draft amendments added a new subdivision (a) to Regulation 1505 to define the terms "morticians" and "cash advances," and renumbered the regulation's current subdivisions. The draft amendments also added "memorial books and digital video discs" as examples of tangible personal property sold by morticians in renumbered subdivision (b)(1).

On January 27, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting, however, staff received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to change the title of the regulation from "Morticians" to "Funeral Director." Additionally, after the interested parties meeting, BTC staff received a letter dated February 16, 2015, from Sarah Adams, Vice President of Tax, Service Corporation International. The letter requested the Board consider an amendment to renumbered subdivision (b)(2) to include a reference to memorial books and DVDs that would mirror the BTC staff's draft amendments to renumbered subdivision (b)(1), which Board staff incorporated.

April 28, 2015 Business Taxes Committee Meeting

Subsequently, staff prepared Formal Issue Paper 15-003 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15-003 recommended that the Board propose to change the name of Regulation 1505 from "Morticians" to "Funeral Directors" and update all the references to "mortician" to refer to "funeral director" throughout the regulation. The change to the title of the regulation from "Morticians" to "Funeral Directors" was suggested by interested parties and BTC staff agreed this term is more indicative of the industry and the person responsible for reporting tax.

The formal issue paper recommended that the Board propose to add a new subdivision (a) to Regulation 1505, and renumber the regulation's current subdivisions. The formal issue paper recommended that new subdivision (a) include a definition for the new term "funeral director," and the term "burial," which is used in the definition of "funeral director," in order to update the regulation and provide clarity regarding the terms used throughout the regulation. The formal issue paper recommended that the Board propose to update the regulation to more succinctly refer to "cash advances," instead of "accommodation cash advances." The formal issue paper also recommended that the Board propose to include a definition for the term "cash advances" in subdivision (a) to provide additional clarity, add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to "cash advances," renumber current subdivision (b)(2) as subdivision (c)(3), delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances, and renumber current subdivision (b)(5) as subdivision (c)(4).

The formal issue paper recommended that the Board propose to add language to renumbered subdivision (b)(1) and (2) to update the regulation and clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs. The formal issue paper recommended that the Board propose to rephrase the last sentence in renumbered subdivision (b)(1) to make it grammatically correct, and delete the footnote from renumbered subdivision (b)(1), which was intended to provide additional notice regarding a 1972 amendment to Regulation 1505, but is no longer relevant. The formal issue paper also recommended that the Board propose to add a new paragraph (3) to renumbered subdivision (b) to provide an updated and more helpful example of how tax applies to the items on a typical funeral director's invoice using a current tax rate.

Additionally, the formal issue paper explained that Regulation 1505, subdivision (b)(2) currently states, in part, "[e]ffective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans." However, the interment allowance provided by section 2303(b) of title 38 of the United States Code has been increased several times since Regulation 1505 was last amended, section 2303(b) currently provides that the interment allowance is \$700, and section 2303(c) now requires the VA to annually increase the interment allowance to reflect increases in the consumer price index. Accordingly, the formal issue paper recommended that the Board proposed to delete the language in renumbered subdivision (c)(3) that refers to a specific dollar amount for the interment allowance so there is no future need to amend the regulation each time the interment allowance changes. Also, the United States "Veterans Administration" was renamed the "Department of Veterans Affairs" since Regulation 1505 was last amended in 1980. So, the formal issue paper also recommended that the Board propose to update Regulation 1505 by adding "Government" to the end of the title of renumbered subdivision (c)(3), changing the references to the "United States" to "U.S." in renumbered subdivision (c)(3), and revising the remaining references to the "Veterans Administration" to refer to the "Department of Veterans Affairs" in renumbered subdivision (c)(3).

Furthermore, effective, July 7, 2014, the VA amended its regulations regarding the payment of burial benefits to authorize payments of burial and funeral costs at the maximum amount authorized by law through automated systems directly to an eligible surviving spouse or any other eligible person. (38 C.F.R. §3.1702 (2014).) With these new federal procedures, there will rarely be a payment directly by the VA to a funeral director. Accordingly, the formal issue paper recommended that the Board propose to delete, as unnecessary, current subdivision (b)(3) of the regulation, which provides examples that demonstrate how to prorate U.S. Government payments.

Lastly, the formal issue paper recommended that the Board propose to make other minor changes to Regulation 1505 for grammar and gender neutrality.

At the conclusion of the Board's discussion of Formal Issue Paper 15-003 during the April 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to

Regulation 1505 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1505 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues (or problems) referred to above.

The Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by the burial service industry. The Board has performed an evaluation of whether the proposed amendments to Regulation 1505 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1505 is the only state regulation that provides specific guidance to morticians regarding the proper application of sales and use tax, and none of the proposed amendments conflict with Regulations 1610, 1614, and 1701 referred to above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1505 or the proposed amendments to Regulation 1505.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1505 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1505 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulation 1505 result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1505 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1505 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulation 1505 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1505 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1505 will not affect the benefits of Regulation 1505 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1505 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Monica Gonzalez Silva, Tax Counsel III, by telephone at (916) 323-3138, by e-mail at Monica.Silva@boe.ca.gov, or by mail at State Board of Equalization, Attn: Monica Gonzalez Silva, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action

should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on September 15, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1505 during the September 15-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1505. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 1505 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1505, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

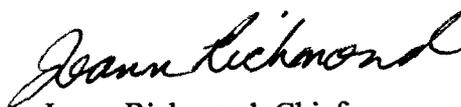
The Board may adopt the proposed amendments to Regulation 1505 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

July 3, 2015

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1505, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Joann Richmond". The signature is written in a cursive, flowing style.

Joann Richmond, Chief
Board Proceedings Division

JR:reb

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Section 1505, *Morticians***

**SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND
ANTICIPATED BENEFITS**

Current Law

Revenue and Taxation Code (RTC) section 6051 imposes California sales tax on retailers for the privilege of selling tangible personal property at retail. Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § (Reg.) 1700, subd. (a)(1).)

When sales tax does not apply, California use tax is imposed, measured by the sales price of property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) The use tax is imposed on the person actually storing, using, or otherwise consuming the property. (RTC, § 6202.)

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) Also, the term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property" (RTC, § 6015, subd. (a)(1).)

Federal and California law limit the application of California's sales and use taxes to transactions in interstate and foreign commerce. The State Board of Equalization (Board) adopted California Code of Regulations, title 18, section (Regulation) 1610, *Interstate and Foreign Commerce*, to generally prescribe the application of California's sales and use taxes to transactions involving the movement of tangible personal property into and out of California.

Also, federal and California law limit the application of California's sales and use taxes to transactions involving the United States (U.S.) Government. (RTC, §§ 6352, 6381.) And, the Board adopted Regulation 1614, *Sales to the United States and Its Instrumentalities*, to generally prescribe the circumstances under which gross receipts from the sale of tangible personal property to the U.S. Government and the consumption of tangible personal property purchased by the U.S. Government are exempt from sales and use tax under federal and California law.

In addition, California law provides that, in accordance with regulations prescribed by the Board, a deduction may be taken if a retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for sales tax or has paid the use tax with respect to the property,

and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (RTC, § 6012). And, the Board adopted Regulation 1701, *Tax-Paid Purchases Resold*, to generally prescribe the circumstances under which a retailer may claim such a deduction.

Finally, the Board adopted Regulation 1505, *Morticians*, to provide specific guidance to morticians regarding the proper application of sales and use tax. The regulation explains when morticians are retailers and when they are consumers of tangible personal property for sales and use tax purposes. It also provides guidance to morticians on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and “pre-need agreements.” Regulation 1505’s provisions initially became effective August 1, 1933, they were amended and renumbered as Regulation 1505 in 1970, and they have not been amended since 1980.

Proposed Amendments

Need for Clarity

Board staff determined that there were issues (or problems) within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)) with Regulation 1505 because:

- The terminology used in Regulation 1505 is outdated;
- The regulation does not reflect the current goods and services provided by the burial service industry;
- There have been changes in the interment allowance provided by the U.S. Government, which is specifically referred to in the regulation; and
- It is no longer necessary for the regulation to provide detailed guidance and examples regarding the application of tax to amounts burial service providers receive directly from a federal agency because recent procedural changes allow the U.S. Department of Veterans Affairs (VA) to pay death benefits directly to the surviving party, instead of the burial service provider.

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1505 to address the issues described above and a discussion paper explaining the draft amendments. Both were provided to interested parties.

As relevant here, the draft amendments added a new subdivision (a) to Regulation 1505 to define the terms “morticians” and “cash advances,” and renumbered the regulation’s current subdivisions. The draft amendments also added “memorial books and digital video discs” as examples of tangible personal property sold by morticians in renumbered subdivision (b)(1).

On January 27, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting, however, staff received and worked with interested parties’ informal suggestions to refine the

draft amendments, including a suggestion to change the title of the regulation from “Morticians” to “Funeral Director.” Additionally, after the interested parties meeting, BTC staff received a letter dated February 16, 2015, from Sarah Adams, Vice President of Tax, Service Corporation International. The letter requested the Board consider an amendment to renumbered subdivision (b)(2) to include a reference to memorial books and DVDs that would mirror the BTC staff’s draft amendments to renumbered subdivision (b)(1), which Board staff incorporated.

April 28, 2015 Business Taxes Committee Meeting

Subsequently, staff prepared Formal Issue Paper 15-003 and distributed it to the Board Members for consideration at the Board’s July 28, 2015, BTC meeting. Formal Issue Paper 15-003 recommended that the Board propose to change the name of Regulation 1505 from “Morticians” to “Funeral Directors” and update all the references to “mortician” to refer to “funeral director” throughout the regulation. The change to the title of the regulation from “Morticians” to “Funeral Directors” was suggested by interested parties and BTC staff agreed this term is more indicative of the industry and the person responsible for reporting tax.

The formal issue paper recommended that the Board propose to add a new subdivision (a) to Regulation 1505, and renumber the regulation’s current subdivisions. The formal issue paper recommended that new subdivision (a) include a definition for the new term “funeral director,” and a definition for the term “burial,” which is used in the definition of the term “funeral director,” in order to update the regulation and provide clarity regarding the terms used throughout the regulation. The formal issue paper recommended that the Board propose to update the regulation to more succinctly refer to “cash advances,” instead of “accommodation cash advances.” The formal issue paper also recommended that the Board propose to include a definition for the term “cash advances” in subdivision (a) to provide additional clarity, add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to “cash advances,” renumber current subdivision (b)(2) as subdivision (c)(3), delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances, and renumber current subdivision (b)(5) as subdivision (c)(4).

The formal issue paper recommended that the Board propose to add language to renumbered subdivision (b)(1) and (2) to update the regulation and clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs. The formal issue paper recommended that the Board propose to rephrase the last sentence in renumbered subdivision (b)(1) to make it grammatically correct, and delete the footnote from renumbered subdivision (b)(1), which was intended to provide additional notice regarding a 1972 amendment to Regulation 1505, but is no longer relevant. The formal issue paper also recommended that the Board propose to add a new paragraph (3) to renumbered subdivision (b) to provide an updated and more helpful example of how tax applies to the items on a typical funeral director’s invoice using a current tax rate.

Additionally, the formal issue paper explained that Regulation 1505, subdivision (b)(2) currently states, in part, “[e]ffective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for

veterans.” However, the interment allowance provided by section 2303(b) of title 38 of the United States Code has been increased several times since Regulation 1505 was last amended, section 2303(b) currently provides that the interment allowance is \$700, and section 2303(c) now requires the VA to annually increase the interment allowance to reflect increases in the consumer price index. Accordingly, the formal issue paper recommended that the Board propose to delete the language in renumbered subdivision (c)(3) that refers to a specific dollar amount for the interment allowance so there is no future need to amend the regulation each time the interment allowance changes. Also, the United States “Veterans Administration” was renamed the “Department of Veterans Affairs” since Regulation 1505 was last amended in 1980. So, the formal issue paper also recommended that the Board propose to update Regulation 1505 by adding “Government” to the end of the title of renumbered subdivision (c)(3), changing the references to the “United States” to “U.S.” in renumbered subdivision (c)(3), and revising the remaining references to the “Veterans Administration” to refer to the “Department of Veterans Affairs” in renumbered subdivision (c)(3).

Furthermore, effective, July 7, 2014, the VA amended its regulations regarding the payment of burial benefits to authorize payments of burial and funeral costs at the maximum amount authorized by law through automated systems directly to an eligible surviving spouse or any other eligible person. (38 C.F.R. § 3.1702 (2014).) With these new federal procedures, there will rarely be a payment directly by the VA to a funeral director. Accordingly, the formal issue paper recommended that the Board delete, as unnecessary, current subdivision (b)(3) of the regulation, which provides examples that demonstrate how to prorate U.S. Government payments.

Lastly, the formal issue paper recommended that the Board propose to make other minor changes to Regulation 1505 for grammar and gender neutrality.

At the conclusion of the Board’s discussion of Formal Issue Paper 15-003 during the April 28, 2015, BTC, the Board Members unanimously voted to propose the amendments to Regulation 1505 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1505 are reasonably necessary for the specific purpose of clarifying and updating the regulation to address the issues (or problems) referred to above.

The Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by the burial service industry.

The proposed amendments to Regulation 1505 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1505 or the proposed amendments to Regulation 1505.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-003, the exhibits to the issue paper, and the comments made during the Board’s discussion of the issue paper during its April 28, 2015, BTC meeting in deciding to propose the amendments to Regulation 1505 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1505 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1505 at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulation 1505 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The proposed amendments clarify the terms used in the regulation, update the guidance currently provided in the regulation so that the regulation corresponds with current industry practice, and provide a current example of how tax applies to a typical transaction using a current tax rate. The proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Sales and Use Tax Law (RTC, § 6001 et seq.) or Regulation 1505, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave, in the absence of the proposed regulatory action, or that would impact revenue. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and businesses. And, the Board has determined that the proposed amendments to Regulation 1505 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulation 1505 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulation 1505 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulation 1505 will not affect the benefits of

Regulation 1505 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulation 1505 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1505 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1505**

1505. ~~Morticians~~Funeral Directors.

(a) Definitions.

(1) Funeral Director. "Funeral director" means any person or entity that is engaged in providing a burial service or services and may include, but is not limited to, funeral directors, undertakers, morticians, embalmers, or cemetery brokers.

(2) Burial. "Burial" means all legal methods of disposing of the remains of a deceased person, including, but not limited to, interment, cremation, burial at sea, and medical school donation.

(3) Cash Advances. "Cash advances" means funds paid out to third parties as a courtesy to the client for items that are part of the funeral service but not generally sold by the funeral director.

(ab) In General.

(1) ~~Morticians~~Funeral Directors as Retailers. ~~Morticians~~Funeral directors are retailers of caskets, boxes, vaults, and clothing. They also are also retailers of any other tangible personal property such as memorial books and digital video discs (DVDs) furnished in connection with rendering their services if a separate charge is made for such property. Unless otherwise exempt, tax applies to the sales price of all tangible personal property sold by ~~morticians~~funeral directors, unless otherwise exempt. {FN1}

(2) ~~Morticians~~Funeral Directors as Consumers. ~~Morticians~~Funeral directors are consumers of acknowledgment cards, memorial folders, registration books, embalming fluid, cosmetics, eye caps, morgue supplies, car stickers, ~~and prayer books,~~ memorial books, and DVDs which are furnished by them in connection with services they render unless a separate charge is made for such property. Tax applies to the sales price to the ~~mortician~~ of all tangible personal property sold to and consumed by ~~him~~the funeral director.

(3) Example of Application of Tax. In the example below, the burial package includes the basic services of the funeral director and staff, transfer of the decedent to the funeral home, embalming, dressing, cosmetology and placement of the decedent in a casket, facility and staff for ceremony, equipment and staff for committal service, on-line funeral notice, one visitation period, use of hearse, one "life-tribute" DVD, and a premium memorial box set. The client chose to purchase a maple casket and 10 additional DVDs for their family.

Funeral director's invoice to client:

<u>Maple Casket (t)</u>	<u>2,895.00</u>
<u>Additional Copies of Life Tribute DVD (t) (\$25/ea. x 10)</u>	<u>250.00</u>
<u>Total of Items Subject to Tax</u>	<u>\$3,145.00</u>
<u>Traditional Chapel Burial Package</u>	<u>\$4,945.00</u>

Fees for Cash Advance items:

<u>County filing fee</u>	<u>12.00</u>
<u>Certified copy of Death Certificate</u>	<u>21.00</u>
<u>Organist</u>	<u>225.00</u>
<u>Total Fees</u>	<u>\$258.00</u>
<u>Total Nontaxable</u>	<u>\$5,203.00</u>
<u>Total Taxable</u>	<u>\$3,145.00</u>
<u>Sales Tax (\$3,145.00) x 8.25%</u>	<u>259.46</u>
<u>Grand Total</u>	<u>\$8,607.46</u>

(t) = Tangible personal property

(bc) Application of Tax to Specific Types of Transactions.

(1) Sales in Interstate or Foreign Commerce. The sale of a casket and other tangible personal property by a ~~mortician~~funeral director, which ~~he is delivered~~s or ~~shipped~~s to an out-of-state point pursuant to the agreement of sale, is regarded as a sale in interstate or foreign commerce and is exempt from the tax. The facts that the death of the deceased occurred in this state, that the contracting parties are residents of this state, and that services are held in this state prior to the shipment, are immaterial.

(2) Cash Advances. Tax does not apply to cash advances for such items as cemetery charges, newspaper notices, airplane tickets, ministerial fees, and flowers.

(23) Sales to the United States (U.S.) Government. All or a portion of charges for funerals of veterans and other persons may be paid by the ~~United States~~U.S. Department of Veterans Administration~~Affairs~~ or by the Social Security Administration. ~~Effective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans. Morticians~~Funeral directors may take a deduction for sales to the ~~United States~~U.S. Government when claims filed by them with federal agencies are paid directly to the ~~morticians~~funeral directors regardless of method of billing. If funeral charges are paid by another person, there is no tax exemption even though such person may receive reimbursement from a federal agency and even though the amount received as reimbursement is assigned or endorsed over to the ~~mortician~~funeral director as a credit against those charges.

In computing the allowable exemption, the funeral allowance and the interment allowance must be treated separately.

(A) Funeral allowance payments received directly from a federal agency are to be prorated between funeral charges for sales or tangible personal property and charges for exempt services. None are to be allocated to ~~accommodation~~cash advances. The only exception will be when a portion of a payment is clearly identified as applying to something for which a ~~mortician~~funeral director has made a specific charge.

(B) Payments received directly from the ~~United States~~ U.S. Department of Veterans Administration Affairs which are identified as interment allowances are to be prorated between sales of tangible personal property used in actual interment and charges or advances for services in connection with the interment. The only exception will be when a portion of the payment is clearly identified as applying to something pertaining to interment for which the ~~mortician~~ funeral director has made a specific charge.

~~(3) Examples of Application of Amounts Received by Morticians Directly From a Federal Agency (Examples are at 6 percent rate).~~

~~Mortician's invoice to client:~~

Charges	
Services	\$ 400.00
Casket	355.00
Vault	200.00
Suit	45.00

Subtotal	\$1,000.00
Accommodation Cash Advances	
Cemetery Space and Opening	\$ 50.00
Clergy	25.00
Musie	15.00

Subtotal	\$ 90.00
Total	\$1,090.00
Sales Tax (6% of \$355, \$200 & \$45)	36.00

Total	\$1,126.00

~~Example 1. Funeral allowance only.~~

~~Cash received by the mortician directly from a federal agency as a funeral allowance, and not allocated by the United States Government to any specific portion of the above charges, was \$300. No interment allowance was received.~~

~~Since \$600 of the \$1,000 charged the client (exclude the cash advances) was for tangible personal property, 60% of the amount received from the federal agency (60% of \$300 equals \$180) is considered a sale of such property to the United States Government and is exempt from sales tax.~~

~~Computation of Tax:~~

Total Charges	\$1,090.00
Less: Accommodation Advances	\$ 90.00

Exempt Services	400.00	
Sale to United States	<u>180.00</u>	<u>670.00</u>
Taxable Sale		\$ 420.00
Tax at 6%		<u>25.20</u>
Taxable Sale Including Tax		<u>\$ 445.20</u>

Example 2. Funeral allowance and interment allowance received by mortician.

Cash received by the mortician directly from a federal agency, and not allocated by the United States Government to any specific portion of the above charges, was \$300 as a funeral allowance and \$150 as an interment allowance.

Since the total charges by the mortician related to interment were \$250 (vault \$200 plus cemetery space and opening \$50), and the charge for tangible personal property related to interment was \$200 (vault), 80% of the amount received from the federal agency as an interment allowance (80% of \$150 equals \$120) is considered a sale of such property to the United States Government and is exempt from sales tax.

Since \$400 (casket \$355 and suit \$45) of the \$800 charged the client for the funeral (exclude the cash advances and the vault) was for tangible personal property, 50% of the amount received from the federal agency as a funeral allowance (50% of \$300 equals \$150) is considered a sale of such property to the United States Government and is exempt from sales tax.

Computation of Tax:

Total Charges		\$1,090.00
Less: Accommodation Advances	\$ 90.00	
Exempt Services	400.00	
Sale to United States Government (\$120 plus \$150)	<u>270.00</u>	<u>760.00</u>
Taxable Sale		\$ 330.00
Tax at 6%		<u>19.80</u>
Taxable Sale Including Tax		<u>\$ 349.80</u>

(4) Accommodation Cash Advances. Tax does not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, ministerial fees and flowers.

(5) Tax-Paid Purchases Resold. A mortician funeral director may claim a "tax-paid purchases resold" deduction if the mortician funeral director reimbursed the vendor for tax which the vendor is required to pay to the state or has paid use tax with respect to the property and has resold the property prior to making any use of it.

(ed) "Pre-Need" Agreements. Where a ~~mortician~~funeral director, cemetery association or other person enters into an agreement with a customer to provide services upon the death of the customer, no sale occurs for sales and use tax purposes until the services are rendered.

An amount designated as "sales tax" in the agreement will be considered an estimate of tax which may become due when the services are rendered. No sales tax should be paid to the board in connection with "pre-need" agreements until the services are rendered.

[FN1]

~~On October 25, 1972, the board adopted an amendment to the regulation by which the 50 percent standard service reporting procedure in effect until October 18, 1970, and the 45 percent standard service reporting procedure in effect thereafter, are no longer allowable.~~

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6015 and 6381, Revenue and Taxation Code.

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1505

Title: *Morticians*

Preparation: Monica Silva

Legal Contact: Monica Silva

The State Board of Equalization proposes to update the name of Regulation 1505 and update the information, tax rates, and examples in Regulation 1505.

History of Proposed Regulation:

September 15-17, 2015	Public Hearing
July 3, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
June 22, 2015	Notice to OAL
April 28, 2015	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor:	NA
Support:	NA
Oppose:	NA